

**CITY OF SPOKANE ETHICS COMMISSION
MEETING MINUTES OF APRIL 18, 2018
RE: HEARING
JOE SHOGAN V. MAYOR DAVID CONDON**

The hearing is called to order at 1:02 p.m. All Commission members are present today, except Mr. Cronin, who has recused himself from this matter. Mayor Condon is present with counsel Jim King and Mr. Shogan is present with a legal advisor, but not counsel, Brian Hipperson.

There are several people in the audience, including witnesses Brian Coddington and Karen Stratton as well as reporters from the media (KREM 2/ Spokesman Review).

The Agenda for the meeting is reviewed and unanimously approved.

The members reviewed the Minutes from the previous meeting of April 11, 2018. Sara O'Hare moves to approve the Minutes and Clayton McFarland seconds that Motion. Michelle Bleek abstains as she was not present at that meeting. The Minutes are unanimously approved.

Brian announces the Commission will convene in Executive Session with Mr. Rowland for ten minutes and then reads the statement regarding executive sessions. The members exit to chambers and return to reconvene the regular meeting at 1:18 p.m.

Brian Stevenson states that, first, the Ethics Commission would like to address the respondent's objection that he cannot cross examine Ms. Sanders who is out of the country or Mr. Beggs who is out of state. Both of them have provided a Declaration for the Commission's review. Amber Waldref had notified the Commission that she would not be able to attend the meeting due to a doctor's appointment she has for her daughter at this time.

Brian Stevenson asks Mr. King what he would like to say and Mr. King states the pre-hearing order sets the rules for evidence being admitted to the Commission. He objects to Mrs. Stratton's testimony because it would be hearsay. He questions the Recall Petition being considered into evidence because it was determined by the Superior Court to be factually and legally short to command a recall petition. These facts didn't warrant a recall then. Still, rather than exclude it, he believes all the evidence should be considered. Joe responds the recall was a recall. This is a Complaint before the Ethics Commission for an ethics violation. Brian states that it is up to him to make a determination as to what is admitted. But, adds, however, that he will allow all of the Exhibits submitted to be admitted into evidence at today's hearing.

Brian then requested that Mr. Shogan begin his argument.

ORIGINAL

JOE SHOGAN – Presentation of Argument

First, Mr. Shogan introduced Brian Hipperson, who is a former Deputy Prosecutor and Judge Pro tem and is present today as a legal advisor, but not as his attorney, to help him today. Mr. Hipperson greets everyone and also advises that he does know Ethics Commission Member Michelle Bleek, as she was his legal assistant for a number of years, but has not worked with her or communicated with her for at least the 8 years since. He does not feel there is any conflict as such. Michelle Bleek states she was unaware that Mr. Hipperson would be present today and affirms that she has not worked for him since November, 2010 and has not interacted with him since that time. She adds that she has no knowledge of Mr. Shogan previously. Mr. King has no objection.

JOE SHOGAN - Opening Statement

Mr. Shogan stated we are here today about a politician, but it doesn't involve politics. Joe states he, himself, served for six years on the Spokane City Council. But he has no political aspirations, unlike the Mayor today, he said.

Joe states that Monique Cotton was the not the first person who had a problem with Chief Straub. Prior to Monique Cotton's issue, the Police Dept. had to move another City employee, Carly Cortright, out of the Police Dept. to a different department within the City at City Hall. Joe said they solved her problem by giving her a new job. She went away on vacation, and came back with a brand new job.

The executives of the Police Dept. prepared and sent a memo to the Mayor stating that they had lost confidence in Chief Frank Straub and that he had to go in order to restore order to the police department. He believes Monique Cotton was present at these meetings. Later, when Karen Stratton heard about the situation she directly asked Mayor Condon if Straub's termination had anything to do with Monique Cotton and he said, "no".

As a result, Joe would like a recall of the Mayor. He states we are here today for accountability. He states that the Seabold Report can be used by either party. We are here over one word, "no" – the Mayor's answer to the question posed to him by Karen Stratton. He is asking that today they finally hold Mayor Condon accountable.

KING - Opening Statement

Mr. King states he would remind them all that Mr. Shogan has the burden of proof here today and it's not made by an argument.

Mr. King stated that, in September, 2015, the Lieutenants & Captains Association, after meeting with Mayor Condon to advise that the Police Dept. had the threat of a revolt because of Straub's management style. The Mayor conferred with Asst. Chief Dobrow who advised the Mayor that if swift action was not taken against Chief Straub, he was going to lose his police staff. The next Monday morning, the Mayor advised Chief Straub that his officers were prepared to revolt and that he had lost confidence in him. He asked

Chief Straub for his resignation, and initially the chief agreed to submit his resignation. The Mayor convened an executive session and advised counsel of the situation with Chief Straub. At that Meeting, Karen Stratton asked the Mayor if this situation had anything to do with Monique Cotton. The Mayor responded, "no".

Mr. King states that the letter written by the Lieutenants and Captains had nothing to do with Monique Cotton and she was not mentioned by them at any time. The Mayor's answer to Councilmember Stratton's question was a truthful, "no". Mr. King stated that part of the assignment in the work to the Seabold Group was to assess if Monique Cotton was involved in any way and they had not determined that she was. Therefore, Mr. King stated, the Mayor was truthful and the firing of Straub had nothing to do with Monique Cotton. Therefore, he would ask the Commission to recognize the burden of proof being made by just one person and compare the evidence.

PLAINTIFF SHOGAN - CASE IN CHIEF

BRIAN BREEN – Direct Examination

Mr. Shogan calls Brian Breen and he is sworn in. Mr. Shogan states he will be referring to Exhibits C-3 and C-4 - Pages 1,2,3 and page 104 of the Seabold Report. Mr. Shogan reminds them that the Exhibits were approved at the prior hearing, where Mr. King was not present, and so it was accepted into evidence.

Mr. Breen states that he had received information regarding the problem at the Spokane Police Department from a number of people regarding Cotton and Straub. Mr. King objects to the hearsay nature of this statement.

Joe asked Mr. Breen if he had filed a public records request in 2015 and Mr. Breen said, yes, he had. It was a request for all public records regarding the circumstances surrounding Frank Straub and Monique Cotton. Mr. Shogan asked if he received a response. Mr. Breen said that, initially, he received no reply to his request to the City. It was a long, long time before he got any response. City Councilman Snyder (at the time) had to make his own request for the documents. Mr. Breen states he felt there had been an effort by the City to delay its responses to him and Mr. King objected, as speculation, and Brian Stevenson sustained that objection. Mr. Breen states that he then retained Rick Eichstaedt in order to obtain his public records. In fact, there was a settlement paid by the City in the amount of \$50,000 to the Center of Justice in settlement of its claims that the City withheld its public records disclosures until after the election. The City also added an Ordinance to its Municipal Code making it a violation of the Ethics Code to hinder Public Records Responses.

Joe Shogan asked Mr. Breen if he ever received an apology from Mayor Condon and Mr. King objects: "this hearing has one issue: September 21st but Mr. Shogan was following a line of questions that were not related under the Complaint." Brian Stevenson agrees and sustains Mr. King's objection.

Milt interjects that we are here only under the guidelines of the Pre-Hearing Order. "We are here because Karen said he (the Mayor) was not truthful and asks, what about Mr. Breen's testimony supports that?"

Joe states that we are here because Karen Stratton claims the Mayor was untruthful to her and Mr. Breen's testimony supports that claim.

KAREN STRATTON

JOE SHOGAN DIRECT EXAMINATION

Mr. Shogan calls Karen Stratton to testify and she is sworn in. She states she is a Spokane City Council Member for the 3rd District. Karen stated she was called to an Executive Session after the City Council Meeting wherein the issue was the Spokane Police Dept. and Chief Straub. Also present were Mayor Condon, City Administrator, Theresa Sanders, and the City Attorney at that time, Nancy Isserlis. They were shown a letter written to the Mayor by the Capt. & Lt.'s Association protesting Chief Straub's management style.

Joe asked Karen if she was interviewed by Capel and she said, "yes". She adds that the Council took a look at it and discussed what they could disclose or discuss under the circumstances. They took a vote of people who wanted to discuss/disclose the matter for the Capel investigation / report. Karen stated she had heard rumors, and, so, she did ask the Mayor if this firing of Straub had anything to do with Monique Cotton and his answer to her was, "no". She believes now that was not the truth because there had been rumors around about how and why the SPD was paying Monique's salary, even though she was working for and at the Parks Dept. and also that the reason she had actually been moved to the Parks Dept. to begin with was over issues regarding Chief Straub. Karen said this information was a shock to her and also that she had already been aware that Monique Cotton was not the first of the SPD's problems, because Carly Cortright was actually the first female that was moved out of the SPD and over to City Hall in response to her complaints over Straub. Karen states, so, when Monique moved from SPD to Parks, the entire City Council was taken aback. Karen stated she had asked the Chief directly how long Monique was going to be over at Parks and he had responded she would be there as long as they needed her there. When the Chief resigned, they had talked about the two women (Cotton and Cortright). Karen stated that, in addition, other police Lts. & Capts. had already been demoting in order to remove their close proximity to the Chief, which, to Karen, was a sign the Mayor must have known about the problems in April. Also, another indication to Karen was that Attorney Bob Dunn had written to the Mayor requesting payment of \$13,000 for his legal services provided to Monique Cotton. One other thing Karen states that had made her question the Mayor's truthfulness was how the Mayor had made Cotton's move to the new Parks job sound like it was an advancement for her, but, then, later, he had stated to Karen that it was a way to protect Monique's privacy. There are no further questions for Mrs. Stratton by Mr. Shogan.

MR. KING'S CROSS EXAMINATION OF STRATTON

Mr. King asked Ms. Stratton if she believed the complaints written about by the Cpt. & Lts. In the letter to the Mayor. Karen states that she did. Mr. King asks, if Karen recognized at that time that the Mayor had a real threat within his police force with their stated loss of confidence in Straub, and Karen said that she did. She believes that administration was very concerned. Mr. King asks, "so the Mayor had a chief without the support of his staff? Karen agreed, yes. Jim King asks Karen wouldn't she also agree that the Mayor was responsible for taking the allegations set forth in the Cap. & Lt.'s letter very seriously. Karen responded yes, just as he should when a female employee lodges a sexual harassment complaint. Mr. King asked, "the action the Mayor took at that time was to request Chief Straub's resignation, correct"? Karen states she was not really critical of the Mayor, but she always wondered what happened to those sexual harassment complaints filed against the Chief. But, at the time of receiving the letter from the from the Capt. & Lt.s' letter, she said she didn't have an issue with the Mayor firing Straub. But that it was later, after the Chief resigned, the rumors continued and she read the articles in the paper about Monique Cotton. While she states she has a great deal of respect for the Mayor. She freely admits that when she was first elected all was well, but, professionally, this occurrence has changed how she sees her real job at City Hall.

Mr. King asks Ms. Stratton if she has any direct evidence that causes her to conclude Monique Cotton was the cause of Frank Straub's termination. Karen states she was upset that he was not processed for the sexual harassment claims and at the end of the day, she stands by that.

JOE SHOGAN REDIRECT OF STRATTON

Joe Shogan asks Ms. Stratton, "so you directly asked the Mayor, "did this have anything to do with Monique Cotton"? Karen answered, "yes". Joe asks Karen to read the Spokesman Review article (Exhibit 6), Page 3, top of the page:

"Ms. Cotton raised concerns in April and made it very clear at that time that that she did not want to pursue a formal complaint or investigation," Condon said in a statement. "Had we aired this publicly sooner that would have meant going back on my word to Ms. Cotton and bringing more hurt and stress to an already difficult situation."

Mr. Shogan asks Ms. Stratton to read the bottom of Page 2 from the Seabold Report. Mr. King objected and Brian sustains that objection. Mr. Shogan then asks Karen, "did the mayor lie"? Mr. King objects and states that is not Karen's role to decide today.

BEN STUCKART, City Council President

JOE SHOGAN - Direct Examination

City Council President Ben Stuckart is called to testify and he is sworn in. He wants to state he has been subpoenaed to be here today. He wants the council getting along. He also wants it known that he had to pay \$4,000 of his own money to defend issues

surrounding this matter last time. He was informed the governing body can choose to divulge privileged information by a majority vote.

Mr. Shogan asks Mr. Stuckart if he is the current Spokane City Council president and that he was also so at the time the occurrences at issue herein. Mr. Stuckart answered, "yes". He provided an Affidavit to Capel for the Seabold Report which stated that the Mayor had stated, "no, absolutely not" when asked if the Straub firing had anything to do with Monique Cotton. That was his opinion at the time. When Nick Deshais of the Spokesman Review requested public records, he said he determined that the Mayor / his administration had lied three times. 1) In the Executive Session 2) In Response to the question asked during the press conference (Pg. 88 Capel Report) and 3) by the Sanders statements.

JIM KING - Cross Examination

Jim King confirms with Mr. Stuckart that when he was interviewed by Capel, he never questioned the Mayor's reasons that he had given for terminating Straub, until all the other information started coming out. And then he felt, being asked by the perpetrator if he was involved was also a little disappointing. Ben states he did think that this issue had been resolved with the NOW Complaint settlement. Mr. King states he is not referring the NOW complaint.

SHOGAN - Redirect Examination

Joe Shogan states the issue is if the Mayor was forthcoming and truthful. It has been shown that records were withheld from the Request for Records. Joe Shogan states he reserves the right to recall Mr. Stuckart.

THE COMMISSION TAKES A TEN MINUTE BREAK and the HEARING IS RECONVENED AT 2:54

Brian states that they are here today to determine one thing only under the Clarified II Complaint. He asks Mr. King to set forth the Respondent's Case.

RESPONDENT'S CASE

ERIN JACOBSON – Former Asst. City Attorney –

Direct Examination by Mr. King

Erin Jacobson is called forward and sworn in. Mr. King asks Ms. Jacobson where she works and she states she is now employed by Archbright and has been there two years. When asked to provide her work address she stated that she works mostly from her home. She used to work for the City of Spokane as an Assistant City Attorney who handled Labor & Employment matters.

Mr. King asks Ms. Jacobson if she could explain what her assignment was on or around September 20 or 21st of 2015. Erin states that it was to provide advice and legal counsel regarding employment issues. Mr. King states that Nancy Isserlis had received the letter

from the Lt. & Cpt. Assoc. Nancy and she then met with the Mayor about it. (The Mayor has waived the/his attorney client privilege for Erin for this period of time so that she may answer.) Mr. King asked Ms. Jacobson if Ms. Cotton was involved in or a part of the issues regarding Chief Straub during that time. Erin states that, "her name never came up in any discussions". Ms. Jacobson states that she, Nancy Isserlis, and the Asst. Chief at the time, Rick Dobrow met at the mayor's home on that Sunday to discuss all the issues around the Lt. & Cpt. Assoc. letter. Erin states that Monique Cotton was never mentioned by anyone during that meeting and states that she never had any impression in her mind, when or while they met, that Monique was any part of it. Erin confirms that she was present however at the meeting when Karen Stratton had asked the Mayor if any of the issues regarding the chief's termination had anything to do with Monique Cotton. Mr. King asked Erin if she recalled how the Mayor responded and Erin states the mayor had answered, "no".

Ms. Jacobson invokes attorney client privilege for the period of September 18 through September 21.

JUSTIN LUNDGREN, Assistant Chief Of Police. Spokane Police

JIM KING - Direct Examination

Mr. King calls Justin Lundgren to testify and he is sworn in. He is the Assistant Chief of Police for the City of Spokane. He has worked for the City since September. 1997. He was a member of the Capt. Assoc. Mr. King refers Lundgren to the letter sent to the Mayor dated September 28, 2015 (Ex. 22) addressing the Police Department's concerns about Chief Straub and asks him to describe what the environment was like in the department at that time. Lundgren states, "it was one that was toxic and which used threats, humiliation, and demotions to control." "It was not a favorable place to work at that time."

Lundgren said "prior to 9/8/2015 they had a meeting about how Straub was performing, so that the Mayor and City Administrator would be aware of what was going on at the Police Dept. and after that they then articulated in a letter to the City's Attorney in order to protect the membership from any other abuse.

Mr. King asked, "did you have Monique Cotton in mind at all when you set forth your complaint to the Mayor and Nancy Isserlis / legal?" Lundgren responded, "no, nothing about Monique Cotton prompted their complaint."

JOE SHOGAN – Cross Examination

Joe Shogan asks Lundgren what his position is again. He states he is the Asst. Police Chief.

Shogan refers Lundgren to Exhibit 22 – He refers to the letter they had written, noting the Chief's unreasonable outbursts to the Mayor and asks whether Monique Cotton was present at that meeting. Lundgren answered, "no". He stated he believes Monique was present at a meeting on or about 3/30/2015, when he was not, but then she was not

present for the drafting of the letter to the Mayor. Dave McCabe did not sign that letter, but only because he was not in town. He cannot speak to the other signatures.

Amina asked Lundgren, "if he had heard any rumors about Cotton and Straub's relationship"? Lundgren answered that there were rumors that they had some sort of relationship". He states neither Chief Straub nor Monique Cotton ever said anything to that effect to him, however.

Joe asked Lundgren about how he had said the environment at the SPD was toxic under Straub: "What was going on"? Lundgren answered that he "can recall Straub threatening to choke an officer and using vulgarities". "Chief Straub would use shame and humiliation and be crass." And, "there was a member who had a confidential medical problem and the chief did not protect that officer's private medical information and even spoke of it in a demeaning way."

Clayton McFarland asked if he was aware of anything with Monique and he said Monique never mentioned anything to him. He states he had a limited interaction - he never personally observed anything. He said, "their (Capt.& Lts.) letter was not a part of any situation that Monique Cotton may have been involved with."

Kenny Hall asked if Chief Straub had been adversarial and combative with everyone and Justin responded that when he was upset Chief Straub would get combative with anyone. He added, "when he was upset he had a quick temper".

Sarah asked, "if, when they drafted their letter, there were any women on the command staff and Lundgren responded he " would have to see when Judy Carol retired because he is not sure if she was a part of things or had already left, but she had been a female on the command staff".

Lundgren stated Monique Cotton never mentioned anything about Chief Straub to him. He had limited interaction with her, but never observed anything personally. He states their letter was not a part of anything involving Monique.

FORMER ASST. CHIEF PATRICK (RICK) DOBROW)

Mr. King – Direct Examination

Jim King Calls former Assistant Chief Rick Dobrow. He is sworn in. His name is Patrick (Rick) Dobrow. He now works for the Community Colleges of Spokane. He states left the City, by retirement, on March 1, 2016. He had been with the City of Spokane for 21 plus years. His career with the City began when he transferred to Spokane from California with 13 years law enforcement experience. He was promoted to First Class Supervisor Sargent, in 2002. He was promoted to Lieutenant in 2011 and then Captain in 2013. He was promoted to Assistant Chief of Police in 2014 and then was interim Chief of Police from 2015 to 2016, when he retired.

Mr. King presents Exhibit 23 which is the document dated 9/18/2015 that he helped draft in response to toxic behavior by Chief Straub, together with Shelby Smith, Tim Schwering and Sara Linds.

Mr. King asks, "things were toxic"? "How so"? Mr. Dobrow states "Chief Straub had unreasonable behavior – no skill with a code of conduct...how we treat people."

Mr. King asked why it had been done confidentially as it had been. Mr. Dobrow states it was done so because they feared retaliation. He stated morale of the rank and file was actually fair considering how Straub behaved, but he attributes that to how the captains insulated the rank and file from Chief Straub's behavior. But, he, and other leaders, were miserable. Dobrow states he was so miserable at that time that he dreaded going to work every day...and witnessing his co-workers mistreated as well.

Mr. King asks Dobrow if their letter had anything to do with Monique Cotton or if Monique Cotton was any issue or part of their complaint letter to the Mayor and Dobrow states, "No, Monique Cotton was not any part of the conversation or in the planning or the drafting of the letter to the Mayor by the Cpt. & Lts.

Mr. Shogan – Cross Examination of Dobrow

Mr. Shogan asks Mr. Dobrow if he was present when then Chief Fran Straub screamed at Monique Cotton and he said he was present at one isolated incident where Straub had screamed at Monique.

Mr. King – Redirect of Dobrow

Mr. King asked if Chief Straub had acted that same way to Shelby Smith, John Griffiths, Monique Cotton and Eric Olson. Dobrow states he was spared being screamed at by Straub but all of them mentioned were screamed at by Straub.

Amina asked if was aware of a relationship with Cotton and he answered that he did hear rumors but doesn't know when - he doesn't have a time line for when. Amina asks if rumors regarding the chief should be a concern. "Like did it just go around by rumors or if it was substantiated"? Amina adds, "Did they check with labor laws or how did they treat it? Dobrow states he was never told a reason for Monique Cotton's transfer. He saw her at meetings and had normal interactions with her.

Michelle Bleek asked Dobrow if Straub seemed indiscriminate about whom he got angry with and Dobrow stated, "he seemed indiscriminate to say the least".

Clayton asked Dobrow when it was that Straub's behavior started and he stated it began immediately and that it worsened when Meidl took a demotion to get away from Straub.

Amina asked if Monique Cotton ever complained to him and he stated no, they have very limited contact. He did not know the depth of the mistreatment.

No further questions.

MAYOR DAVID CONDON

JIM KING - Direct Examination

Jim King called Mayor Condon to testify and he is sworn in. He states he is David A. Condon, Mayor of the City of Spokane.

Mr. King asked the Mayor why he had asked Chief Straub for his resignation. Mayor Condon stated that it was after he received the letter from the Capt. & Lt.'s Association. That weekend, he had met with Nancy Isserlis (City Attorney at the time) Erin Jacobson, (the City Attorney's Employment Attorney) and Asst. Chief Rick Dobrow. He learned of a pattern of behavior by Straub wherein his staff had lost confidence in him. By September 18, 2015, they were at the point where they couldn't work for Straub. The Mayor said, he had 300 plus officers who are led by six people who could no longer lead under Straub".

Mr. King asked Mayor Condon if Monique played any part in his decision to ask for Straub's resignation. The Mayor answered, "no". Monique Cotton did not come up in the conversation at all. The Mayor denies it was a lie when he told Karen Stratton (on September 21, 2015) that Monique Cotton was not involved in his decision to ask for the Mayor's resignation - because she was not involved in his decision.

JOE SHOGAN – Cross Examination

Mr. Shogan refers to Exhibit 1, dated 4/26/16, Page 12, Line 1 of Ms. Capel's report, and asked the Mayor if he recalled a quote wherein he said Ms. Cotton had said she did not want to pursue her complaint against Straub, that it would be going back on his word to Cotton....that he wanted to honor Ms. Cotton's wishes. Mr. King objects. He states it is argumentative and misstates what the Mayor had said.

Mayor Condon states he never spoke with Carly Cortright. She was not in the police department after her transfer.

Joe Shogan asked, "who approved Carly Cortright's transfer to the City"? Mayor Condon responds, "well, the City is the Police Dept., the transfers happen within the organization and the City Administrator. Joe asked what was her new job after you transferred Carly Cortright? He said he did not know the exact job description. Mr. Shogan asked, 'it wasn't in the Police Department, was it?' And the Mayor said, "no, it was not". No further questions. Mr. King has nothing further.

Brian asked if there are any questions by the Commission. Amina asks Mayor Condon, "when were you made aware of Cotton's problems with Chief Straub? He answered, "the, you have the dates of the meeting in the Spring of 2015, I believe, so maybe in April, 2015". "And what actions did you take"?, Amina asked. "We immediately gave it to the City Administrator, (Theresa Sanders) which was our policy at the time, and an initial meeting was done where you have the evidence, that again, continued to not... Monique it was my understanding, with the City Administrator and, provided the information that

she did at that time.” Amina asked, “was there an investigation”? “Did you instruct that there be an investigation”? Mayor Condon states, “In essence, at the time, that was our policy and that the meeting that began the review that the City Administrator did, where no formal complaint was filed, which at the time was our understanding of what we needed to do and then, review some of the other specific allegations of Ms. Cotton, but no one would substantiate anything.”

Amina asks, “so, did you have a meeting with Ms. Cotton and her attorney”? Mayor Condon answered, “there was a meeting subsequent.” “It was not the subject matter of the meeting.” It was actually a professional meeting the day prior to a press conference that’s referenced in the Capel report and it was to discuss the press conference on behalf of the Parks Dept. and Mr. Dunn showed up at that meeting.

Amina asked the Mayor, “did Ms. Cotton request to keep the information she provided to you confidential? Mayor Condon responded, “No, at that point, she was being interviewed by the Parks Dept. for a permanent placement and she wanted to guarantee that she would be selected, but that was up to the determination of the Parks Dept. and the Park Board.” “It’s an autonomous Board”. Amina asked, “who initially decided to transfer Ms. Cotton to the Parks Dept.”? Mayor Condon states, the City Administrator, during that time, was aware that the Parks Dept. was looking for a communications person and marketing director and had been interviewing candidates. And they selected her. (Monique Cotton). Amina asked, “who suggested she should apply? Mayor Condon answered, “the city administrator.” Amina states, “So, the transfer to Parks had nothing to do with her Complaint?” “Or issues?” Mayor Condon answers, “based on, professionally, no, she filled the slot they were looking for and it also alleviated her concerns of working in that environment.”

Amina asked the Mayor, did you, were ever advised by her attorney to not disclose any information about her issues with the Chief”? Mr. King states, “with all due respect, that question would ask of Mayor Condon to divulge communications under the attorney client privilege information about pending litigation with Chief Straub and so, for that reason, he would object.”

Illegible statement by King setting forth his objection...

Amina states, “my question?... Milt Rowland states, “you asked the Mayor whether his attorney had ever advised him to say no, and, even though you really weren’t trying to intrude on the attorney client privilege, I don’t know if there is any way to answer that without revealing an attorney – client confidence.” Adding, “I realize that wasn’t your intent.”

Clayton states, to the Mayor, “so is it true, you are aware this Commission has been tasked to determine whether the Code of Ethics had been violated on September 21st at the executive session of the City Council. Clayton asks the Mayor, “so, did you mispresent the truth to Council Member Stratton at that meeting”? The Mayor answered, “no”. And when you considered asking for Chief Straub’s resignation was the issue of

Monique Cotton's allegations against him ever considered? The Mayor answered, "no". Clayton then asked, "Did you have any form of communication from the Chief, Lt. & Capts. concerning Chief Straub's issues prior to 9/18? Prior to that? Mayor Condon answered they reference a meeting that month that happened about ten days previously, I think it's in your testimony, I don't know the exact date, but they were follow up memos from that meeting and that was the first I heard of those concerns. Clayton asked, so the 18th put in on paper then? The Mayor responds, "exactly".

Kenny states, so, then, now, bear with me, in my profession, it's pretty standard practice, if someone has a problem, we work with them trying to get them to correct their ways before firing them. And in this, it seems more like it's a bang-bang issue, it's more like the 18th letter - I want your resignation. Is that that case? The Mayor said, "they reference a period of time and that's why, the severity of them is what caused the decision". Kenny asked, was there an investigation done? And the Mayor answered, "there was not. "

Clayton asked, "between the period of time that Monique Cotton had come to you with these allegations and your asking for Chief Straub's resignation, why had there not been any action taken place against Chief Straub between those two periods of time"? Why hadn't there been any action taken against Chief Straub at that time? Mayor Condon states, "there were, as we started the initial review of her (Cotton's) concerns, neither would confirm anything, and that's why we did, as was our practice at the time, gave another opportunity for that employee to work somewhere else and so they took that, and so that issue was done with and, presumably, at the time, the Parks Board was quite pleased with the work that Ms. Cotton was doing and why she was a finalist to be interviewed for that position. So it had been taken care of, in that sense.

Amina asks Mayor Condon, "when you were made aware of the issues Ms. Cotton had with Chief Straub, were you concerned that that, were you...did you think, that transferring Ms. Cotton to the Parks Dept. would, I guess, my, I don't know how to word the question, but did it concern you to want to follow up on the matter even though Ms. Cotton didn't want to file a formal complaint? Mayor Condon states there were no further issues that she had brought forth. "Quite the opposite, like I said, it was seemingly working well in the Parks Dept. with her marketing background and communications background." Amina asks, "so, with all the issues she disclosed to you, did it bring any further concerns that you should look into how the Chief was running his office? The Mayor responds, "So, as the testimony has shown you, there was a review of the one incident on the 31st and you will see the Asst. Chief referred to as not singling out, not specific and, at that time, that was the only incident I was aware of, and from that point forward, it was working out. Of course the Chief spoke to his responses to that meeting and those actions were taken, but it was seen as an isolated circumstance and were moving forward from it. Amina asked "if the issues that Ms. Cotton had disclosed to you, were substantiated and found to be true, would that be grounds for you to replace him"? The Mayor responded, the policy, at the time, if they would have been substantiated, which they were not, obviously it would have weighed very heavy on my decision similarly as to what this was. But, it was not, and the situation was rectified, not substantiated, and the work environment was

changed. Amina asked the Mayor so do you know if Mrs. Cotton wanted to file a formal complaint and the Mayor said, "she did not". She didn't specifically tell him that.

Clayton asked the Mayor if he had forgotten about Ms. Cotton's allegations when he read the letters on September 18th? The Mayor responded, "they were not part of the decision but, of course, everything, I mean, you remember stuff here, but the decision wasn't..."

Amina asked the Mayor, if anyone asked about the City Council, if they asked were you still trying to keep her situation confidential, as she had requested"? The Mayor answered, "no, it had no bearing on the decision and that was the question that was asked that me. Amina asked, "if anyone had asked you about Ms. Cotton, would you keep that information confidential because she requested? The Mayor states most personnel matters are not discussed and, so, you see my answers were not specifically answered. It had no bearing on the situation and so you can see it was a passing question, not a long drawn out question.

Clayton asked, "at the September 21 City Council executive session, when you answered City Council member Stratton's question with a "no" - was that before or after the City Council had elected/voted to allow that to be open information? The Mayor said "no, they did that afterward".

Michelle Bleek states, "we keep going back to Ms. Cotton's original discussion regarding her allegations against Straub. Without her participation, could have anything have been done to look further into it, or did her lack of participation, close a door? Mayor Condon responds, "it substantially hindered things because they had no way of substantiating it."

Sara O'Hare asks the Mayor, so in the spring of 2015 was when we learned Monique Cotton had an issue with Frank Straub. The Mayor says yes. And to Amina's question, you said at the time the procedure was to meet with the City Administrator? The Mayor stated the policy, at the time, was for the first line supervisor to look into the inquiry, and the first line supervisor would be the City Administrator. Sarah asks, so it's like a process was begun, but, for it to, from what she is hearing, Monique Cotton didn't file anything formally so where would you consider the formality line being cut at? Someone drawing-up paper work? Or at the beginning of talking with City Administrator? The mayor states, "well, for it to go any farther, to start a formal process that you have to file a formal complaint, and fill out the pretty simple form, and start and compel people to talk about it you need to have something that is substantiated. Sarah says, okay, perfect so you would consider the filing of it the start of something? The mayor said, "of anything further, sure." Sarah asks, "and not the speaking with the City Administrator"? That would not count as a start? For a formal complaint? The Mayor answered, "no".

Amina says, let me see if I can phrase this question correctly, "is it his (the Mayor's) understanding that he is legally required to not disclose information? If Ms. Cotton had asked you to not expose the issues she had with Mr. Straub? Ok, let me rephrase that again. Is it your understanding that you were legally required not to disclose what Ms.

Cotton told you about the former chief"? Mayor Condon states, as an employer, you don't discuss personnel matters...as any employer does in this state.

Brian asks if there are any further questions.

Michelle asks, at the time Monique Cotton met with the City Administrator because that was the procedure at the time. What is the procedure now? The Mayor states we have gone to a mandatory reporting on all and any complaints. We allow them anonymously and we allow them by email. And we go through the whole process and gone through mandatory report system. And then, all investigations are done through Human Resources. There has been a considerable amount of work to go through that methodology, but that is what they have decided to employ.

Amina asks, in regards to, Erin Jacobson, did you, did it ever, or any of the attorneys, or assistant attorneys you talked to, in regards to Cotton, did it ever come, did the subject ever come across, of Mr. Straub's resignation, did you seek advice or did you discuss, did that come across when you were discussing about Cotton's issue? Mr. King said that he as the same objection... as it is attorney-client privilege... remainder of his comments are illegible... we object to that. Thank you Mr. Chair.

Milt Rowland states there is a question about the partial waiver doctrine. But,illegible... And he thinks there is really no way to answer that question without violating the attorney client confidence.

Amina said she... the Mayor and the City and the Mayor to consent to it, and who else? The..? Milt states well, the Mayor is the holder of the privilege. It is Mr. King's responsibility as his attorney to protect it and he literally has no choice in that matter.

Kenny Hall has two last quick questions for me: Ms. Cotton, she didn't stay in the parks department, did she? The Mayor said, "she left employment from the Parks Dept. Kenny asked, did she seek to be reemployed by the Police Department when Straub left? The Mayor said, not this his knowledge. She was actually applying for the Parks Dept., position. She was a finalist for the position but did not show for the final interview, is his recollection.

Brian asks if there are any more questions from the Commission, one last time. There are none.

Claimant and Respondent have a chance to follow-up questions. Mr. Shogan's right arm is about to fall off.

Mr. Shogan, "well, the issue seems to be whether the follow up investigation by the City to the Complaint, and his Exhibit 5, states, Brian Coddington, the Mayor's spokesman, said Sanders had investigated Cotton's allegations, but produced no written report or findings. There is no discipline from it, Coddington said in the investigation. So, Mayor was there an investigation of Cotton's complaint by City Administrator Sanders or not? Yes or no? The Mayor answered, "there was no formal investigation. There was a review

of the assertion she made and it did not go into the formal process that was set forth at the time. Shogan states he is going to call Brian Coddington, he is on his list, and ask him whether he said Sanders investigated Cotton's allegations, but produced no written report or findings. Was there an investigation by Sanders or not, Mr. Mayor? Mr. King objects. His comments following are inaudible "collateral issues"... Mr. Rowland states, it has been asked and answered, but if you want to give Mr. Shogan more time to keep asking a second time... Mr. Steverson sustains Mr. King's objection.

Joe Shogan says, well I will defer to the Commission member then, didn't you ask a question whether there was a further investigation of Cotton's complaint? Mr. King objects, his follow up statements are inaudible. Mr. Steverson says, I agree. Any further questions Mr. Shogan? He states he will wait until Brian Coddington is called. Which I have listed and, since this has been brought up by the Commission, I'll call Brian Coddington, after the defense rests. Joe states, cross Rebuttal/ cross examination Mr. King? Mr. King states he has no further questions of the witness, Mayor Condon. Brian dismisses Mayor Condon from the stand.

Brian says, Mr. Rowland? And Mr. Rowland states now would be the time for a rebuttal witness. Brian asks Mr. Shogan? Mr. Shogan calls Brian Coddington. Mr. Coddington is sworn in.

Mr. Shogan asks, Mr. Coddington, "did you or did you not say the City Administrator, Theresa Sanders, "investigated Cotton's allegations, but produced "no written report or findings"? Did you say that or not? Mr. King objects lack of...inaudible...collateral and immaterial. Milt Rowland states it is collateral, but if the Commission...inaudible...latitude.. may allow it. Mr. Steverson allows Mr. Shogan to ask his question.

Shogan to Coddington: Did you or did you not state, state publicly Theresa Sanders investigated Ms. Cotton's complaints? I responded to a question about whether she did or didn't... (Mr. Shogan interjects "yes" did she investigate the Complaints? Mr. Coddington states he responded to a question about whether or not she did or she did not. Mr. Shogan, "did she investigate the complaints"?)

Brian states, "Yes", I responded to that question." Shogan, asks did she did conduct an investigation? Brian states that she had interviewed with or spoken with Monique Cotton. Joe Shogan, but she produced no written findings or report? Brian states, there was nothing to produce. It was my understanding Monique didn't want to participate in the discussion. Joe states, since Monique isn't here, she seems to have cast a pall over all this. And Monique was not represented by an attorney when she first met with the Mayor in April, was she? Mr. King objects – collateral/ irrelevant. Joe said someone brought up attorney client privilege, but Monique Cotton didn't have an attorney, so there was no attorney client privilege we are talking about. I want to talk about what the Mayor promised her he wouldn't divulge. That's not attorney-client.

Brian, Mr. Rowland? Mr. Rowland states he thinks we are getting to the point....illegible...fairly narrow issue before this body. He thinks the other issues.....illegible.....brought up wonderfully by counsel.

Brian states that he agrees (with Mr. Rowland). He adds, "Continuing to question about whether there was an investigation or how Mr. Coddington understood that question is leading us afield.

Mr. Shogan states, I just (defer?) to the Commission, I asked if there were any further investigation with regard to Cotton's Complaint. The Mayor said no. Obviously, Theresa Sanders said something and Brian Coddington was aware of it. That's all the questions I have.

Brian states, I think he described...illegible.

Joe Shogan, "thank you."

Mr. Steverson Mr. King? He has no more questions.

Mr. Steverson asks if there are any questions from the Commission.

There are none. Brian dismisses Brian Coddington.

Mr. Steverson asked if there are any further witnesses. Mr. King says he has none. Mr. Shogan states he would like to call Theresa Sanders, as an adverse witness, but, of course, she is in the Holy Land at present. Mr. Steverson said, okay. Mr. Shogan states, so again, we have her declaration, self-serving, said that the Mayor didn't do anything wrong, but she is not here to allow me to ask anything about the conversation with the Mayor and herself, Karen Stratton in executive session.. And then states, "to sum up" but Mr. Steverson interjects to ask. 'what are you getting ready to sum up"? And Mr. Shogan said, "my closing argument. Brian states, okay well hold on for one second. There are no further witnesses, right? So we are going to move to closing arguments.

SHOGAN CLOSING ARGUMENT

Mr. Shogan? "First of all, the Seabold investigation is beneficial and detrimental to both sides, but both versions of either the _____ or the original report contains reference naming Mayor Condon as withholding information requested in a public records request from Brian Breen. The issue of this answer by Mayor Condon to Karen Stratton's question, was, did Monique Cotton have anything, anything at all, to do with this. The Mayor's answer was no. Yet, it's been shown that he withheld information. That is what we are talking about here, withholding information. How can we believe the mayor's saying no, when, in fact, he was withholding information? That's the whole issue of this. I said, one word. He could have said, yes, I was aware of her, but no, it didn't influence my decision. Instead he said just said, No. Zero. Yeah, I talked to Monique Cotton about Straub in April, but, I put it out of my mind. She had nothing to do with my decision, even though the executive staff talked of personal attacks, demeaning behavior,

condescending treatment and emotional outbursts. But no, I put that all out of my mind. I just took these two letters. That was it. My case again is that he withheld information. And that's a fact. In the Seabold report, both versions, Karen Stratton, Council President Stuckart, all of you all of me are the public... public records request... public information. When he withheld information and delayed it and revealed it later in November and then said, well but, said well, hey, I promised her I wouldn't bring it up. I didn't want to hurt her.

Who is his responsibility to? Monique Cotton? Or the Public? Especially to the Council which was in executive session at the time the question was asked. Again, he could have said, yeah, she was a part of it, but I am not going to go into it because I promised her I wouldn't. He didn't do that. He just flat out said no! Monique had nothing to do with getting rid of Straub. And this has happened before with Carly Cortright. Who is not here. Who made this universal statement I never talked to anyone in public about my transfer. I almost submitted those documents to you. No attorney should ask his client if they ever talked to anybody about anything! Ever! You get a new job, you come back from vacation. Never talk to anybody about why I am here. Mr. King said I haven't met my burden of proof. I submit I have. I've got testimony by Karen Stratton. Testimony from Ben Stuckart. They both said the Mayor was dishonest. Of course, Sanders isn't here, so we have the Mayor saying no, Monique Cotton had nothing to do with my decision. It went completely out of my mind. I find that very very difficult to believe. And why is a public records request important again? It's withholding information. That's why we are here. The Mayor withheld information. Therefore, he was not truthful when he responded to the question by Karen Stratton. "Did Monique Cotton have anything to do with the termination of Mayor Straub? It's up to you to determine whether this Mayor is held accountable for his action. He never has been. This is the last chance. It rests with you. Thank you.

MR. KING CLOSING ARGUMENT

May it please the Commission, I will try to be very brief. I appreciate your patience and attention and acuity of the questions that you asked. And both the Mayor and I appreciate your service. This is not, despite Mr. Shogan's impassioned approach, a matter that deals with withholding of information. The only issue before you is did the Mayor speak honestly and accurately when he told Ms. Stratton on the evening of September 21st, in response to her question that Monique Cotton played no role, was not a factor, in his decision to ask for Chief Straub's resignation. You heard it from the Mayor, you heard it from

from the advisors that he met and conferred with before he made the decision. You heard from the officers involved regarding the toxic environment at the police department. You heard from a Mayor, charged with public safety in this community that he was at risk of losing the senior leadership of a 300 man department in a City of 300,000 citizens with the consequent potential effect on public safety. I would submit to you that facing that kind of decision over the weekend and having to arrive at a solution in the best interest of the City would overwhelm and overcome any and all other considerations. If you don't act with dispatch, if you don't act with emphasis, if you don't act decisively, you are going

to lose a police department or its senior staff and the citizens of the community who elected him are going to bear the brunt of it. There is a burden of proof in this case. Mr. Shogan told you in his opening that he would show that Monique Cotton was one of the drafters of the letters, was at the meeting when the letter was written that went to Mayor Condon on September 18, 2015. There was no evidence of that. Councilperson Stratton has agreed that the Mayor faced a tremendous decision regarding Chief Straub on the basis of the Capt. & Lt.'s letter and the command staff, that, although she might have come to a different decision, she takes no quarrel with the action he took on the basis of that letters. Yet, Mr. Shogan wants to contort this into a notion that somewhere in Mayor Condon's mind on that evening, or when he asked for the resignation that morning, that he was really thinking of Monique Cotton. Well, Councilperson Stratton's opinion doesn't prove that. Her opinion that he was not honest with her is not evidence. And, there is no evidence in the terms of the contemporaneous statements, documents, testimony from people who were with the Mayor when that decision was forced upon him on September 18th through the time he implemented that decision on the morning of 21st, that indicated that anything about Monique Cotton ever came up from *anybody*. That's evidence. Not Councilperson Stratton's opinion. Councilperson Stratton said that later on I started to think about this and decided he hadn't been honest when he said, "No". But she sites no document, she sites no witness testimony, no evidence whatsoever that would indicate that Mayor was being anything other than candid.

So is this Commission to be governed and ruled by evidence, by facts that you have heard from the witnesses, by documents that you have seen with the witnesses? Or is this Commission to be guided only by the subjective, after-the-fact opinion of a political opponent of the Mayor who, at the time, thought he made the right decision and didn't disagree with the decision. Which one are you going to take? Which is more credible? Which has a sounder basis in your wisdom of experience, as a basis for making your decision. I would submit to you it's not the subjective opinion of a political opinion, it's the people that were there, their credibility and the circumstances that the Mayor faced. Mr. King states, "I can't say it better than the Seabold Report said. It's before you in evidence. Ms. Cotton was not a factor in Mayor Condon's decision to ask for Chief Straub's resignation. (Page 88.) Mayor Condon truthfully answered the Council's question about Ms. Cotton during the 9/21/2015 executive session. And I quote "Council member Stratton asked in words or substance whether Mayor Condon's decision to ask for Straub's resignation related to Monique Cotton or rumors related to Monique Cotton. He responded, "No". As discussed above, that was a truthful answer. Ms. Cotton was not a factor in the Mayor's decision. At most, she was one of many who had been exposed to Chief Straub's abusive managing style." That is evidence from the investigator who interviewed everyone in this case under oath. I believe it should be given weight, rather than the rumors that Councilperson Stratton was collectively exposed to after the fact and documents that don't shed any light on this issue at all that Councilperson Stratton said that she was interested in. So I would ask you to ask yourself here, where is the evidence here? Who has the burden of proof? Has the case been proven by a preponderance of the evidence, and not by the subjective opinion of a political enemy. And I think that if you do that in an objective and dispassionate way you can only come to one conclusion.

He answered the question accurately and honestly. He made this decision. It was the right decision. This city and this commission and this mayor should move forward.

Mr. Shogan states he gets the last word and Milt advises that he is permitted a brief rebuttal and Mr. Steverson asks that he keep it short please.

Mr. Shogan states this Mayor, this Mayor that didn't know or denied there was an investigation of Cotton's complaint by Sanders, this Mayor that made a commitment to Sanders... talk about public safety and the benefit of the City, this mayor stated, I couldn't review anything about Cotton because I promised Cotton. One Citizen! I promised her I wouldn't bring it up, until after the election. Mr. King conveniently has brought up politics. Karen Stratton is a political opponent. You want politics? Why was the Mayor so worried about not revealing that Straub sexually harassed Cortright? Sexually harassed Cotton? Because he was up for re-election against a female opponent. The Seabold Report that Mr. King loves to quote, says at the bottom of Page 2, the Mayor withheld information. Now, how the heck, does Karen Stratton supposed to know that the Mayor didn't tell the truth when, he, by statement, withheld information. That is the whole issue here! He withheld information. She didn't say was Cotton the only factor, a factor, she just said, was she connected and he said no. He wanted to get "reelection", he held off his story, persuaded the Review to publish it after the election. Because of a commitment he had made to Cotton? Public Safety? Again, he withheld information. That made his answer No. About a connection, any type of connection between Monique Cotton and Straub's firing. The day for accountability and reckoning is here and it is up to you to decide if there is going to be any accountability.

Mr. Steverson we have found ourselves here four hours later. Mr. Rowland? Milt states he can declare the hearing has been completed. That would conclude the meeting.

Brian thanks everyone. The hearing is officially closed. They won't have a decision tonight. He states you have to keep in mind that all the members are all volunteers to serve the City this way and each member takes its work very seriously and they aren't in a position to deliberate that night. So we will schedule another special meeting for the Commission to engage in deliberations and render a decision.

Mr. Hall makes a Motion to adjourn. Second by Michelle. All in favor. Meeting is adjourned.

Reviewed and approved this 20 day of June, 2018.



Approved