

TRANSCRIPT OF PROCEEDINGS

In the Matter of:)
)
KEEFE, KEEFE & UNSELL, P.C.) Docket No. MUR-7102
AND THOMAS KEEFE, JR.)
)

Pages: 1 through 51
Place: Washington, D.C.
Date: January 5, 2021

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FEDERAL ELECTION COMMISSION

In the Matter of:)
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 KEEFE, KEEFE & UNSELL, P.C.) Docket No. MUR-7102
 AND THOMAS KEEFE, JR.)
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Virtual Hearing
 Suite 206
 Heritage Reporting Corporation
 1220 L Street, N.W.
 Washington, D.C.

Tuesday,
 January 5, 2021

The parties convened, pursuant to the notice, at
 10:07 a.m.

BEFORE:

SHANA M. BROUSSARD, COMMISSIONER
 ELLEN L. WEINTRAUB, COMMISSIONER
 STEVEN T. WALTHER, COMMISSIONER
 ALLEN DICKERSON, VICE CHAIR
 SEAN COOKSEY, COMMISSIONER
 JAMES JONES, MULTIMEDIA SPECIALIST
 LISA STEVENSON, ACTING GENERAL COUNSEL
 VICTORIA ALLEN, ACTING DEPUTY SECRETARY

APPEARANCES:

For the Respondent:

LAWRENCE NORTON, Esquire
 CHRISTOPHER CLIMO, Esquire
 MEREDITH McCOY, Esquire
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1 To minimize crosstalk, please adhere to
2 strict parliamentary procedure on recognition by
3 speaking the words "Madam Chair" and then waiting for
4 the chair to recognize you by name. If you have
5 technical issues, please let me know. We have two
6 additional staff, Jim and Tiffany, also to help us
7 troubleshoot.

8 Anyone, including our non-FEC guests, may
9 use the chat feature at the bottom of your screen to
10 request technical assistance. However, please note
11 that the chat feature is only available for technical
12 assistance. If you are waiting -- excuse me, if you
13 are participating by telephone dial-up, then just
14 please wait for a brief break to let us help you.

15 If you are having trouble hearing what is
16 being said because, for example, someone is talking
17 too quietly, please make sure that your device's
18 volume is turned up. If you are a commissioner, the
19 acting general counsel, the staff director, a
20 presenter, counsel for the Respondent, the recording
21 secretary, or the moderator, please use the
22 parliamentary procedure I just spoke of to seek
23 recognition from the chair, and when recognized, ask
24 the speaker to speak louder or get closer to their
25 microphone.

1 I would just add as a side note that we do
2 have a court reporter, so if everyone could speak into
3 their microphone so that the court reporter can hear,
4 we would appreciate it. Please keep in mind there
5 will be no opportunities for sidebars within this
6 session. And for FEC staff, we suggest using your FEC
7 email.

8 If we lose contact with a commissioner or
9 with counsel for the Respondent, I will inform the
10 chair.

11 Madam Chair, are you ready -- that we have
12 all -- I can confirm that all confirm that all
13 commissioners and counsel for the Respondent are
14 online. Would you -- are you ready for me to begin
15 the recording?

16 CHAIR BROUSSARD: Yes, Madam Secretary.
17 Let's begin.

18 MS. SINRAM: Jim, if you would start your
19 recording.

20 MR. JONES: The recordings are active.

21 MS. SINRAM: Madam Chair, you may gavel in
22 the hearing when ready.

23 CHAIR BROUSSARD: Thank you.

24 Good morning, everyone. The probable cause
25 hearing for Matter Under Review 7102, Keefe et al.,

1 will now come to order. Welcome, everyone. And I hope
2 you all had a great holiday. And it's good to see you
3 in whatever capacity this is today.

4 Representing the Respondents is Lawrence
5 Norton, Chris Climo, and Meredith McCoy from the law
6 firm Venable LLP. I want to note that Mr. Norton
7 served as the Commission's general counsel several
8 years ago, from 2001 to 2007, and that Ms. McCoy was a
9 former attorney with the Office of General Counsel and
10 an executive assistant for the commissioners.

11 Today's hearing is actually our first formal
12 meeting of any kind since February of 2017, with a
13 full complement of commissioners. Besides myself, we
14 have with us Vice Chair Dickerson and Commissioners
15 Cooksey, Weintraub, Trainor, and Walther. Greetings
16 to all my fellow commissioners.

17 In addition to the commissioners who are
18 here today, we have from the Office of General Counsel
19 Acting General Counsel Lisa Stevenson, Charles
20 Kitcher, Steven Gura, Mark Shonkwiler, and Kimberly
21 Hart. And Staff Director Alec Palmer is also present.

22 On November 23, 2020, the Office of General
23 Counsel sent its probable cause brief to Respondents
24 and notified them that it is prepared to recommend
25 that the Commission find probable cause to believe

1 that Keefe, Keefe, Unsell -- & Unsell P.C., excuse me,
2 referred to in the brief as the Firm, violated 52
3 U.S.C. §§ 30122 and 30118(a) by making prohibited
4 corporate contributions in the name of others,
5 totaling \$18,900, to C.J. for Congress and by using
6 corporate resources to facilitate prohibited
7 contributions.

8 Two, that Thomas Keefe, Jr. violated 52
9 U.S.C. §§ 30122 and 30118(a) and by consenting to
10 facilitate prohibited corporate contributions in the
11 name of others, totaling \$18,900, to C.J. for
12 Congress.

13 Three, the Firm violated 52 U.S.C. §§ 30122
14 and 30118(a) by making prohibited corporate
15 contributions in the name of others totaling \$10,800
16 to the Hillary Clinton campaign by using corporate
17 resources to facilitate such contributions.

18 And four, that Thomas Keefe, Jr. violated 52
19 U.S.C. §§ 30122 and 30118(a) by consenting to and
20 facilitating the prohibited corporate contributions
21 made in the names of others totaling \$10,800 to the
22 Hillary Clinton campaign.

23 On December 8, 2020, Respondents filed its
24 reply brief and notified OGC that Respondents were
25 requesting a probable cause hearing. On December 21,

1 the Commission granted the request and scheduled
2 today's hearing. And there were a sufficient number
3 of votes to grant the request without requiring
4 Respondents to toll the statute of limitations.

5 Mr. Norton, for today's hearing, as you were
6 advised by OGC on the December 28 letter, we will
7 follow the procedures set forth in the Commission's
8 policy statements on probable cause hearings. You
9 will be allowed 15 minutes to make an opening
10 statement and you will have five minutes to make a
11 closing statement. Your opening statement should only
12 present issues, arguments, and evidence that you have
13 already briefed or brought to the attention of the
14 Office of General Counsel. And you may reserve time
15 for a closing statement if you so desire.

16 Following your presentation, commissioners,
17 the general counsel, and the staff director will have
18 the opportunity to ask questions. Our probable cause
19 hearing procedures also permit commissioners to ask
20 clarifying questions of the general counsel and the
21 staff director.

22 And I would remind everyone that only
23 commissioners, not Respondent's counsel, may direct
24 questions to the general counsel and the staff
25 director.

1 The Commission will make a transcript of
2 this hearing available to the Respondents, which will
3 become part of the record.

4 I want to say again welcome to Mr. Norton,
5 and please proceed, sir, with your opening statement.

6 MR. NORTON: Thank you, Madam Chair
7 Broussard, Vice Chair Dickerson, Commissioners. It's
8 good to see some of you again, and it's good to meet a
9 number of you for the first time. I appreciate your
10 making time today.

11 Keefe, Keefe & Unsell is a small law firm in
12 Belleville, Illinois, where Partner Thomas Keefe, Jr.
13 has been practicing law for 42 years. In June 2019,
14 based on a complaint filed more than three years
15 earlier, the Commission found reason to believe that
16 the firm or its partners had reimbursed contributions
17 by several of the firm's employees to the unsuccessful
18 2016 congressional campaign of C.J. Baricevic.

19 Within a couple of weeks after receiving
20 notice of the Commission's reason to believe finding,
21 Respondents sought to put this matter behind them by
22 voluntarily producing an affidavit from their long-
23 time office manager, Debra Eastridge. Ms. Eastridge,
24 who has been with the firm since 1992 and is entrusted
25 with all aspects of the firm's finances, stated in her

1 affidavit that she had reimbursed the Baricevic
2 contributions which Mr. Keefe, Jr. had asked employees
3 to make, but she was unaware of any reason the firm
4 could not reimburse the contributions until she
5 learned of the complaint in this matter and that she
6 handled the reimbursements in the same manner as other
7 expenses and made no effort to conceal or disguise
8 them.

9 Ms. Eastridge's affidavit addressed
10 precisely the wrongdoing alleged in the complaint.
11 Then the specific issue that the Commission stated in
12 its factual and legal analysis warranted
13 investigation, namely, the source of the
14 contributions. The Office of General Counsel,
15 however, has approached this investigation as a
16 fishing expedition, unbounded by the Commission's
17 limited authority, which is to investigate specific
18 complaints.

19 Their roving inquiry has improperly sought
20 information concerning Respondent's fundraising
21 history and experience on campaigns, evidence of any
22 contributions that the firm or its partners might ever
23 have reimbursed, and whether any of Respondent's
24 activities were knowing and willful.

25 At the outset, OGC demanded information

1 concerning any reimbursed federal, state, or local
2 contributions, which OGC said was relevant to show a
3 pattern or practice, and they told us that, if
4 necessary, the Commission would subpoena this
5 information. Later, with no explanation, their demand
6 shifted to requesting information about reimbursed
7 federal contributions only.

8 Either way, the pretext for seeking this
9 information turned the investigation into an open-
10 ended attempt to gather and compile information about
11 any similar violations, something other agencies, such
12 as the Federal Trade Commission and Securities
13 Exchange Commission, may do, but the FEC may not.

14 OGC also insisted on evidence aimed at
15 trying to show that Respondents were aware the
16 contributions could not be reimbursed but that they
17 authorized or consented to the reimbursements anyway,
18 in other words, that they acted knowingly and
19 willfully.

20 OGC demanded that each Respondent account
21 for a decade's worth of fundraising activity,
22 including donor cards and solicitations, whether
23 they've worked on campaigns or took courses on
24 campaign finance law, and the circumstances under
25 which Respondents learned of the federal contribution

1 reimbursements and why they did or did not take
2 corrective action, such as disciplinary measures.

3 Given the enhanced civil penalties and
4 criminal liability that can result from knowing and
5 willful violations of the act, the Commission's
6 practice is to put respondents on notice through the
7 factual legal analysis whenever an investigation will
8 inquire into such activity, even if it is premature at
9 the reason to believe stage to make a finding that the
10 alleged conduct was knowing and willful.

11 This practice is memorialized in OGC's
12 governance manual, which OGC shrugs off in a footnote
13 as non-binding. This, frankly, struck me as a
14 remarkable view given the robust debate over certain
15 provisions of the manual among commissioners and the
16 general counsel and the Commission's assurance to
17 Congress that making the manual public would "provide
18 an invaluable resource to respondents, practitioners,
19 and members of the public."

20 In this case, the Commission did not find
21 reason to believe that the Keefe's reimbursement of
22 the Baricevic contributions were knowing and willful,
23 nor did the factual and legal analysis put the
24 Respondents on notice that the Commission might make a
25 knowing and willful finding at a later stage. OGC,

1 however, disregarded the limits of the reason to
2 believe finding and sought this information anyway.
3 When OGC insisted that each Respondent had to submit a
4 separate affidavit, Respondents wanted assurance that
5 this would not spur yet another set of demands.

6 For purposes of settlement, Respondent's
7 counsel made detailed proffers as to the affidavits we
8 expected each Respondent would submit if OGC agreed
9 that such affidavits would provide a basis for
10 conciliation.

11 These supporting proffers affirmed that Ms.
12 Eastridge reimbursed the Baricevic contributions
13 without the direction or knowledge of any of the
14 individual Respondents. OGC also insisted that a
15 settlement address whether there had been
16 reimbursements of contributions to the 2016 Clinton
17 presidential campaign, even though these contributions
18 were not properly part of the investigation.

19 The complaint does not say a word about
20 contributions to the Clinton campaign, and the factual
21 and legal analysis refers to them only as
22 circumstantial evidence that firm employees could not
23 have afforded to make the Baricevic contributions.

24 Nonetheless, for purposes of settlement, we
25 proffered that we expected the Respondent's affidavit

1 would say that the Clinton contributions were
2 reimbursed by Ms. Eastridge in the same manner as the
3 other contributions and without the knowledge or
4 direction of any of the individual Respondents.

5 When that, too, was not enough, Respondent
6 submitted a written request that the Commission
7 authorize pre-probable cause conciliation based on
8 their proffer and Ms. Eastridge's affidavit. Even
9 after that, the demands ramped up. In their letter
10 informing us that there was no quorum to vote on our
11 request for pre-probable cause conciliation, OGC said
12 it now needed affidavits from every firm employee who
13 made a contribution, including non-respondents and all
14 related documents.

15 When OGC saw that time was running out, they
16 demanded that Respondents choose between tolling the
17 statute of limitations or forfeiting their pending
18 request that the Commission vote on their request for
19 pre-probable cause conciliation. As an inducement to
20 negotiate a settlement that the Commission had not
21 authorized, OGC offered to take knowing and willful
22 findings "off the table," their words, which they had
23 improperly put there in the first place.

24 The right to ask the Commission to vote on
25 the request for pre-probable cause conciliation should

1 not be treated as expendable if it becomes
2 administratively inconvenient. The right is
3 established in the Commission's regulations and
4 highlighted in the letter sent to every respondent who
5 receives notice of a reason to believe finding. It's
6 also spelled out in the Commission's guidebook on the
7 enforcement process and in OGC's enforcement manual.

8 If there is insufficient time now to provide
9 Respondents with this procedural right, it is not a
10 circumstance of their making. There was a quorum for
11 the entire three plus years that this complaint sat
12 idle. In addition, Respondent's request for pre-
13 probable cause conciliation circulated on tally while
14 there was still a quorum, but no vote was taken on it
15 and no subpoenas were approved to address purported
16 gaps in the evidence.

17 The Commission's enforcement procedures,
18 including the rights of respondents, as established by
19 Congress and by the Commission, are only meaningful if
20 they are adhered to. Here, they were not. And these
21 procedural defects are not mere technicalities. The
22 Keefe firm and its partners have been unable to put
23 this matter behind them without the Commission making
24 findings that they violated federal law, not because
25 of the insufficiency of prescribed procedures or even

1 the temporary absences of a quorum but because the
2 procedures have been bypassed and ignored.

3 If there is any doubt that this
4 investigation has been nothing more than a fishing
5 expedition, look no further than the fact that OGC is
6 now asking the Commission to make probable cause
7 findings against the firm and Mr. Keefe, Jr. based on
8 the very same affidavit that they have had all along
9 and the same affidavit that they deemed insufficient
10 for conciliation.

11 The Commission is unique among federal
12 agencies because it regulates political speech
13 protected by the Bill of Rights. As a result, it is
14 held to a higher standard than other agencies. A
15 person charged with violating campaign finance laws
16 should not have to go to federal court to get due
17 process. To avoid compounding the violations of
18 Commission procedure and due process that are rife in
19 this proceeding, we ask that the matter be dismissed.

20 Before I conclude, I want to briefly address
21 OGC's recommendation that the Commission find probable
22 cause against Thomas Keefe, Jr. for consenting to the
23 reimbursed contributions. In their brief, OGC argues
24 that Respondent's position that Ms. Eastridge acted
25 unilaterally was "unexamined and questionable."

1 However, the burden at probable cause is not on Mr.
2 Keefe to establish a negative, namely that he did not
3 direct Ms. Eastridge to reimburse contributions. It
4 is on OGC to establish that he did.

5 There are no facts in the record to support
6 this conclusion. There is also no basis under the law
7 to draw adverse inferences against Mr. Keefe, as OGC's
8 brief attempts to do from evidence that is absent from
9 the record and that OGC never subpoenaed.

10 Most troubling is OGC's argument that there
11 is nothing in the record to explain why the firm would
12 have been interested in making the contributions. No
13 contributor has to show the Commission that it had an
14 acceptable reason for making a political contribution.
15 The First Amendment countenance has no such language.

16 In sum, the case against Mr. Keefe, Jr. is
17 based on pure speculation, not on evidence. It is
18 another act of overreach in a case that is replete
19 with it.

20 Madam Chair, I appreciate your time and
21 attention, Vice Chair Dickerson and Commissioners, and
22 I welcome your questions.

23 CHAIR BROUSSARD: Thank you, Mr. Norton.

24 I open this up to Commissioners. Are there
25 any questions?

1 VICE CHAIR DICKERSON: Madam Chair?

2 CHAIR BROUSSARD: Yes, Mr. Vice Chair.

3 VICE CHAIR DICKERSON: A brief one, Mr.
4 Norton. Perhaps you could help me work through this.
5 I understand that there is some conceded violations by
6 your clients. Could you give me just the four corners
7 of what you concede occurred?

8 MR. NORTON: Yeah, sure. Happy to. So,
9 Vice Chair Dickerson, we produced an affidavit from
10 Ms. Eastridge acknowledging that she had reimbursed
11 contributions to the Baricevic campaign on her own
12 volition. We're not disputing based on her affidavit
13 that these contributions were reimbursed. And that, as
14 I said earlier, is all that was addressed in the four
15 corners of the complaint, that the firm or its
16 partners must have reimbursed the contributions and
17 that was the articulated basis for the investigation
18 and the Commission's factual and legal analysis.

19 VICE CHAIR DICKERSON: Thank you.

20 COMMISSIONER TRAINOR: Madam Chair?

21 CHAIR BROUSSARD: Commissioner Trainor?

22 COMMISSIONER TRAINOR: Mr. Norton, can you
23 just outline for me again when was the first time that
24 your clients had notice that OGC would be looking into
25 a knowing and willful violation?

1 MR. NORTON: When we received notice that
2 the Commission had found reason to believe in July of
3 2019, we met -- we spoke with or met with OGC within a
4 couple of weeks of the finding, and it was in that
5 meeting that we were advised that OGC would require
6 evidence from us.

7 We represented to OGC that we had a desire
8 to settle the case and put the matter before them, and
9 we were told in the very first meetings that we would
10 need to establish whether Respondents were aware of
11 the prohibition on contributions in the name of
12 another and other evidence that would establish
13 whether they may have been aware of the -- either when
14 they consented, if they consented or authorized the
15 contributions, whether they were aware that they were
16 prohibited. So from the very first meetings in July
17 or August of 2019.

18 COMMISSIONER TRAINOR: Okay. And then, with
19 regard to, in your presentation, you talked about the
20 fact that there was a quorum of the Commission for --
21 what did you say, several years when this was first
22 filed that this could have been handled?

23 MR. NORTON: Yes. The complaint was filed
24 with the Commission in June of 2016, and it was not
25 until July 3, 2019, that we were notified that the

1 Commission had found reason to believe the violations
2 occurred. There was no action taken on the complaint
3 for over three years.

4 COMMISSIONER TRAINOR: Okay. Okay. Thank
5 you.

6 CHAIR BROUSSARD: Commissioner Weintraub?

7 COMMISSIONER WEINTRAUB: Thank you, Madam
8 Chair. Thank you, Madam Secretary. And hello, Mr.
9 Norton. It's nice to see you again and Ms. McCoy.

10 MR. NORTON: Hello, Commissioner Weintraub.
11 Good to see you too.

12 COMMISSIONER WEINTRAUB: I wish we could
13 meet under friendlier circumstances.

14 MR. NORTON: We'll have that opportunity
15 sometime.

16 COMMISSIONER WEINTRAUB: Yes. And it brings
17 me back to many discussions that you and I have had
18 over the years about the timing of OGC complaints,
19 including when you were general counsel.

20 MR. NORTON: We had a few.

21 COMMISSIONER WEINTRAUB: As you know,
22 contributions in the name of another are very serious
23 violations, have long been considered by the
24 Commission to be amongst the most serious violations
25 of the FECO. And there is no dispute here that it

1 happened, that the wall was violated. I'd like to
2 make sure that we're holding the right people
3 accountable. And I regret that we don't actually have
4 the affidavit that you had proffered from Mr. Keefe.
5 I think that would have been useful to me.

6 But I'm still trying to figure out exactly
7 how this happened. I get that Ms. Eastridge, who
8 presumably when she made any kind of payments on
9 behalf of the firm, out of the firm accounts, was
10 doing it because she thought that's what the partners
11 would want her to do. It's not her money, right?

12 MR. NORTON: That's right.

13 COMMISSIONER WEINTRAUB: So she said -- I'm
14 looking for the exact language -- "I was unaware of
15 any reason why the firm might not be able to reimburse
16 these campaign contributions, until I learned of the
17 complaint in this matter." And you've repeated that
18 language, that she was unaware of any reason why the
19 firm might not be able to reimburse the contributions
20 in your briefing materials.

21 And what I've been wondering is, but why did
22 she think it was appropriate to do that? I mean, was
23 she in the habit of -- was there a pattern and
24 practice of reimbursing political contributions? Did
25 she reimburse dry cleaning expenses, charitable

1 contributions? I mean, why -- what made her think
2 this was firm business to reimburse the contributions?
3 And the reason that I ask is that, as I said, I want
4 to make sure we're holding the right people
5 accountable here, and when I hear somebody say, well,
6 here is an organization where none of the important
7 people knew what was going on, only some lower-level
8 employee was involved in this, I want to make sure
9 that the lower-level employee is not getting thrown
10 under the bus here and that there really was no
11 involvement by other people in the firm, that there
12 wasn't some wink and nod, that there wasn't some
13 implied suggestion to Ms. Eastridge that the firm was
14 going to cover these expenses. So can you give me any
15 illumination on that?

16 MR. NORTON: Thank you for your question,
17 Commissioner Weintraub. Look, she's a "lower-level
18 employee" only in the sense that she wasn't a lawyer
19 in the firm. This isn't General Electric. It's not
20 even the Federal Election Commission. It's a four-
21 lawyer law firm in Belleville, Illinois. Ms.
22 Eastridge has worked with the firm since 1992, has
23 been the office manager since 2000. Like a lot of
24 small businesses, she ran the firm's finances and
25 controlled the checkbook.

1 She also lacked the sophistication that
2 those of us on this call have and that, frankly, many
3 people, as you know, Commissioner Weintraub, don't
4 understand, which is that contributions cannot be
5 reimbursed. So she thought that because Mr. Keefe,
6 Jr. had asked employees to make the contributions,
7 that it was appropriate for her to go ahead and treat
8 it as an expense and reimburse the contributions.

9 She too had been asked and made a
10 contribution of her own. I agree with you that these
11 are alleged violations that the Commission has treated
12 seriously historically and for understandable reasons.
13 I don't dispute that they are serious violations. I
14 would say that every case is not a scheme. Every case
15 is not the Fieger case or Pierce O'Donnell, where
16 thousands of documents are seized and a reimbursement
17 "scheme" is exercised over years and months. None of
18 that happened here. There were contributions made to
19 Baricevic by a handful of employees. She knew that
20 the owner and partner of the firm, Mr. Keefe, Jr., had
21 asked employees, including herself, to make the
22 contributions, and she issued checks to reimburse
23 them.

24 She had her own counsel, by the way, in
25 connection with the preparation of the affidavit, so I

1 don't think there's any sense that she's being thrown
2 under the bus.

3 COMMISSIONER WEINTRAUB: That's good to
4 hear. Now she also said that around the same time she
5 learned that Kelly Crosby Keefe, an associate attorney
6 with the firm, also made a contribution and she issued
7 a check to her as a reimbursement for her
8 contribution. And I'm assuming from the name that
9 Kelly Crosby Keefe is some relative of Mr. Keefe, Jr.,
10 the senior partner.

11 MR. NORTON: I think that's probably a fair
12 inference, but I don't know the relationship, and
13 there's nothing in the record concerning the
14 relationship.

15 COMMISSIONER WEINTRAUB: But there was at
16 least one lawyer who knew that -- who received a
17 reimbursement.

18 MR. NORTON: The associate, right, the one
19 associate.

20 COMMISSIONER WEINTRAUB: So, again, I feel
21 like there's some missing information here. Did the
22 associate who was an attorney and might be held to a
23 higher standard of knowing the law, did the associate
24 keep the reimbursement? Was there any conversation
25 between the associate and the senior partner that

1 might have alerted the partner to the fact that these
2 reimbursements were being made? I mean, I just feel
3 like there's information that's missing here.

4 MR. NORTON: Well, if there's information
5 that's missing, it's because the staff never did an
6 investigation. There's nothing in the record as to
7 that question. There's been no discovery as to that
8 question. And I don't personally know the answer to
9 it.

10 COMMISSIONER WEINTRAUB: Were members of the
11 law firm made available to OGC to interview?

12 MR. NORTON: They were never asked to be
13 made available to OGC for an interview. OGC never
14 asked counsel to make anyone, the Respondents, any
15 employee in the office, or anyone else who might be
16 within their control available for an interview or a
17 deposition, never asked. What they asked for was
18 affidavits, and we proffered what those affidavits
19 would say if they provided a basis for settlement.
20 They decided that wasn't enough.

21 COMMISSIONER WEINTRAUB: I have no further
22 questions at this time, Madam Chair.

23 CHAIR BROUSSARD: Thank you, Commissioner
24 Weintraub.

25 I have a few questions, Mr. Norton. And

1 first, in all these years, I've never actually had a
2 chance to interact with you, so I do want to say
3 hello. And I've seen your name for many years on
4 print, so it's nice to actually put a face to it, so
5 hello again.

6 I have a question, Mr. Norton. It says in
7 your reply brief and in your cover letter and even
8 today, you mention that OGC has conducted no
9 investigation. What exactly do you mean by that, sir?

10 MR. NORTON: What I mean is that there was
11 no subpoena ever issued in the case at all for
12 testimony or documents and no requests ever made that
13 anyone sit voluntarily for a deposition. What we
14 provided -- what exists in the record at the moment is
15 an affidavit that we voluntarily provided in an effort
16 to settle the case and address the allegations in the
17 complaint and the basis for the factual and legal
18 analysis.

19 What I mean is that if OGC -- and they
20 suggest in their brief that there are gaps in the
21 evidence, Commissioner Weintraub suggests the same,
22 there were tools to seek that evidence and request it,
23 and they never did it.

24 CHAIR BROUSSARD: Thank you. I'd like to
25 take the opportunity to ask the Office of General

1 Counsel to respond. And can you provide a brief
2 history of the efforts that staff made or methods used
3 to gather any relevant evidence?

4 MS. STEVENSON: Good after -- good morning.
5 I was going to say good afternoon, but I've lost track
6 of time. Good morning, Commissioners. Yes, I'd be
7 happy to provide clarifying information, and, of
8 course, the staff can chime in if I don't accurately
9 state.

10 But, after the notice of reason to believe
11 was provided, it is my understanding that staff met
12 with Mr. Norton and asked for affidavits and documents
13 to support the allegations contained in the RTB notice
14 or their response thereof, including, in lieu of
15 affidavits, informal witness interviews and that Mr.
16 Norton declined to provide witnesses in response to
17 that request and did not provide any documentation in
18 response to informal document requests.

19 It is correct that we did not move to
20 subpoenas given the absence of a quorum, but attempts
21 at informal investigation were made and Mr. Norton
22 declined to respond, other than a proffer, which is
23 not part of Commission practice to accept in lieu of
24 actual documentary and witness interview information.

25 CHAIR BROUSSARD: Thank you.

1 Mr. Norton, would you have any care to
2 respond to this?

3 MR. NORTON: I have no recollection of any
4 request that we make particular individuals available
5 for witness interviews, and there's no confirmatory
6 email. It never appeared in the letters that we
7 received from counsel in OGC. If this is something
8 that they raised, I have no recollection of it.

9 CHAIR BROUSSARD: Thank you. So, if I
10 understand correctly, sir, there is -- you do not
11 recall if there was requests for an affidavit or an
12 interview from Keefe, Jr.?

13 MR. NORTON: No, no. We were asked at a
14 certain point for -- we submitted the affidavit from
15 Ms. Eastridge. We believed that that addressed, fully
16 addressed, the allegations in the complaint and the
17 Commission's finding. We were told by OGC that that
18 was insufficient. We were not asked then to provide
19 anyone for deposition testimony or for interviews. We
20 were told that we needed -- they needed affidavits
21 from each of the Respondents, including Mr. Keefe, Jr.

22 And so we proffered orally, over the phone,
23 to counsel from OGC what those affidavits would say,
24 what we believed they would say if OGC agreed and
25 would provide the affidavits if OGC agreed that those

1 affidavits would provide a basis for settlement.

2 CHAIR BROUSSARD: Thank you. In regards to
3 the request to have interviews or conduct informal
4 interviews, there seems to be some contention that
5 that was never requested or asked, but in your letter
6 dated August 23, 2019, on page 4, you informed OGC
7 that, "Among other things, you have told us that this
8 case cannot be settled without interviewing or
9 obtaining sworn statement from each and every one of
10 the alleged conduits." And that statement seems to be
11 an acknowledgment on your part that OGC did, indeed,
12 ask for interviews, sir. Do you disagree?

13 MR. NORTON: I don't have that letter in
14 front of me, Chair Broussard. Look, I think we're --
15 I think it's immaterial whether OGC wanted a witness
16 interview or an affidavit. What they wanted were
17 statements, and they agreed that we could provide
18 affidavits and did not insist that we provide in-
19 person interviews in lieu of those affidavits. And we
20 said we were willing to do that. But we weren't going
21 to continue to pour water into a bottomless well. We
22 wanted to know that those affidavits would get us to a
23 place where OGC would recommend that we settle the
24 case. And OGC agreed to accept the proffer under
25 those terms.

1 So there was no insistence that it be done
2 one way or the other. If OGC mentioned at one point
3 that they would accept interviews in lieu of
4 affidavits, that's possible. I have no recollection
5 of it. But, certainly, OGC agreed that we could --
6 that we needed to submit affidavits and that they
7 would accept those affidavits. When we made the
8 proffers, they advised us immediately that the
9 proffered affidavits would be insufficient to
10 recommend pre-probable cause conciliation to the
11 Commission. And then we submitted our written request
12 for pre-probable cause conciliation.

13 CHAIR BROUSSARD: And I want to go back for
14 a minute, I don't want to take too much time from any
15 other Commissioners, so please let me know if you had
16 a question, but I want to go back to the affidavit if
17 we could, sir.

18 MR. NORTON: Sure.

19 CHAIR BROUSSARD: In that affidavit, she was
20 the office manager, and you did mention it's a small
21 firm and that she seems to have had a big
22 responsibility at least in being able to issue checks
23 or reimbursement checks up to \$18,000. But it doesn't
24 appear in that affidavit, and as Commissioner
25 Weintraub mentioned, there seems to be a little bit

1 more -- it feels like we're wanting of a little bit
2 more information. She does not appear to deny that
3 she had any discussions or received any instructions
4 prior to the issuance of the reimbursement of checks.
5 Would you agree with that?

6 MR. NORTON: I would agree it's not
7 addressed in her affidavit that's part of the record.
8 We did address it in our proffer.

9 CHAIR BROUSSARD: Okay. But that
10 information provided -- that information would seem to
11 suggest that she had no such direction or what seems
12 to be the contention from Respondents, but that's a
13 crucial element of this whole entire case, and so I
14 would have expected the affidavit to flesh out this
15 point a little bit more. If that was an inadvertent
16 omission, inadvertent, of course, I would have
17 expected you or someone to have amended the affidavit
18 at a certain point. Am I missing something with that?

19 MR. NORTON: We, I think, were prepared to
20 submit an augmented affidavit from Ms. Eastridge
21 addressing that point that was consistent with exactly
22 the proffer from each of the Respondents, that no one
23 directed or authorized her to make the contributions
24 and no one had any knowledge that she did. But, yes,
25 I agree with you that the record, the affidavit before

1 you does not specifically address that point, and
2 there's nothing in the record that addresses that
3 point.

4 CHAIR BROUSSARD: I want to follow up with
5 OGC. Were there any additional requests to augment or
6 amend the Eastridge affidavit or in regards to the
7 contention about the lack of the receipt of the other
8 affidavits for the original Respondents, meaning for
9 the partners?

10 MS. STEVENSON: Can you give me one second,
11 Commissioner? I'm conferring with the team.

12 CHAIR BROUSSARD: Thank you.

13 (Pause.)

14 MS. STEVENSON: I'm not sure if this fully
15 answers your question, Commissioner, but in response
16 to the proffer, our letter responding to the proffer
17 was, yes, we followed up requesting additional
18 information, both as to the proffered affidavits from
19 the other Respondents, as well as the affidavit from
20 Ms. Eastridge. So we did request additional
21 information going to the scope of the question that
22 you asked.

23 CHAIR BROUSSARD: Thank you.

24 COMMISSIONER COOKSEY: Madam Chair?

25 CHAIR BROUSSARD: Yes, Commissioner Cooksey.

1 COMMISSIONER COOKSEY: If you're done asking
2 your questions, I had a couple questions.

3 Mr. Norton, I guess let me begin with this.
4 Do the Respondents have any legal obligation to submit
5 to a voluntary interview with OGC as part of an
6 investigation?

7 MR. NORTON: No, they do not.

8 COMMISSIONER COOKSEY: And if you refuse to
9 submit to a voluntary interview or deposition or
10 anything, are you subject to any adverse inference as
11 a result of that?

12 MR. NORTON: The Commission has subpoena
13 authority to compel a deposition, and if we refuse to
14 sit for a deposition, I think there is authority in
15 the law for the Commission to draw adverse inferences
16 from our refusal to answer questions under oath.

17 COMMISSIONER COOKSEY: But a subpoena
18 request would be different than a request for a
19 voluntary interview?

20 MR. NORTON: That's right. We have no
21 obligation to submit to a voluntary interview.

22 COMMISSIONER COOKSEY: And so, as a result
23 of refusing to submit to a voluntary interview or
24 exercising any of your other rights to cooperate or
25 not to cooperate, none of that is evidence of a

1 violation, any more than hiring an attorney to
2 represent you as part of an investigation is evidence
3 of a violation.

4 MR. NORTON: That's right. It's not only
5 not evidence of a violation, but no adverse inference
6 can be drawn from the fact that we didn't sit for
7 voluntary interviews.

8 COMMISSIONER COOKSEY: Sure. So who has the
9 evidentiary burden to meet the probable cause
10 standard? Is it you, or is it OGC?

11 MR. NORTON: I think it's pretty clear that
12 OGC has the evidentiary burden.

13 COMMISSIONER COOKSEY: Okay. So looking at
14 the body of evidence here, we have the Eastridge
15 affidavit, is there anything in the record that
16 contradicts any of the statements of the Eastridge
17 affidavit?

18 MR. NORTON: There is not, Commissioner
19 Cooksey.

20 COMMISSIONER COOKSEY: Okay. Those are the
21 questions I have. Thank you.

22 MR. NORTON: Thank you.

23 COMMISSIONER TRAINOR: Madam Chair?

24 CHAIR BROUSSARD: Commissioner Trainor.

25 COMMISSIONER TRAINOR: Mr. Norton, since we

1 have this affidavit, I want to go through it real
2 quickly. Let me pull it up here. There's an
3 interesting part of this affidavit as we talk about
4 there being a potential scheme or whether or not
5 someone put Ms. Eastridge up to taking the fall in
6 this particular case. She talks about the fact that
7 she didn't sign her own check, that she had someone
8 else sign her reimbursement check. Do you know if
9 that's a normal practice for her and the firm, for her
10 not to sign her own reimbursement checks?

11 MR. NORTON: I don't know the answer to that
12 question, Commissioner Trainor. I think it struck me
13 as good practice that she didn't issue her own
14 reimbursement checks, but I don't know whether that
15 was the --

16 COMMISSIONER TRAINOR: Well, for --

17 MR. NORTON: I'm sorry.

18 COMMISSIONER TRAINOR: -- for me as well, I
19 think it's good practice, but more importantly, I
20 think it speaks to the fact that there's not a scheme
21 in place here, that this is -- she honestly believed
22 that this was something that could be reimbursed and
23 went through the normal procedures for reimbursement
24 that the firm would engage in. Do you agree with
25 that?

1 MR. NORTON: That was my understanding, that
2 she handled this, as she said in the affidavit, the
3 same way she handled an expense request or an expense
4 reimbursement of any other kind and that she didn't
5 sign her own check because she doesn't sign her own
6 checks generally. I think that's right.

7 COMMISSIONER TRAINOR: Right. And then,
8 with regard to the associate at the firm, is there any
9 jurisprudence that says that we should hold an
10 associate at the firm to some higher standard as any
11 other donor to a political campaign?

12 MR. NORTON: I'm unaware of any basis for
13 that, Commissioner Trainor.

14 COMMISSIONER TRAINOR: Okay. Thank you.

15 MR. NORTON: I did want to just quickly on
16 your question earlier about when we were first asked
17 for evidence aimed at establishing knowing and
18 willful, I just pulled up my own chronology, and that
19 was a phone call with OGC on July 24. So that would
20 have been exactly three weeks after we received
21 notification of the reason to believe finding.

22 COMMISSIONER TRAINOR: Okay. Thank you.

23 MR. NORTON: Thank you.

24 VICE CHAIR DICKERSON: Madam Chair?

25 CHAIR BROUSSARD: Vice Chair.

1 VICE CHAIR DICKERSON: I wanted to give OGC
2 a chance to respond to one of the claims that Mr.
3 Norton has made. He has suggested in pretty strong
4 terms that it's been Commission practice in the
5 factual legal analysis to put respondents on notice if
6 they will be subject to a knowing and willful finding
7 in the future or to an investigation aimed toward
8 that. Do you agree with that characterization?
9 What's OGC's position on that?

10 MS. STEVENSON: When we have made RTB
11 findings on knowing and willful, we do put the
12 respondents on notice of that fact. In this instance,
13 the investigation was looking into the scope of the
14 violations and was not -- whether or not there was
15 evidence of knowing and willful would be organically
16 disclosed as part of the investigation but was not
17 being directly investigated as part of the scope. And
18 the scope of the investigation was laid out in the
19 FTICR to the Commission. And we told --

20 VICE CHAIR DICKERSON: And do you --

21 MS. STEVENSON: Sorry, go ahead.

22 VICE CHAIR DICKERSON: Sorry. Please go
23 ahead.

24 MS. STEVENSON: No, I simply was going to
25 say that in the FTICR we advised the Commission that if

1 evidence of knowing and willful arose organically as
2 part of the investigation, we would make
3 recommendations thereafter.

4 VICE CHAIR DICKERSON: That seems to put a
5 lot of emphasis on the word "organically." Do you
6 agree with the characterization that the investigation
7 was aimed towards finding evidence one way or the
8 other as to a pattern or practice of this activity?

9 MS. STEVENSON: Certainly, the investigation
10 included a scope of whether or not there was a pattern
11 or practice of this activity. That's part of OGC's
12 typical practice when we're looking at contributions
13 in the name of another. And the scope did include the
14 partners of the law firm.

15 VICE CHAIR DICKERSON: Mr. Norton, do you
16 have any views on that given your substantial
17 experience in this area?

18 MR. NORTON: The Commission's practice, and
19 we cited the Commission to the Victor MUR, but there
20 are -- I have not found any other MUR where the
21 Commission did anything different, that is, where the
22 Commission -- I think, over the years, the Commission
23 has been more reluctant to find reason to believe
24 concerning knowing and willful violations because
25 evidence at that point is limited and the finding may

1 be premature.

2 But, certainly, the Commission's practice
3 has been that where it is premature to make a finding
4 at the reason to believe stage, it's incumbent on the
5 Commission because of the ramifications of knowing and
6 willful finding to put the respondents on notice in
7 the factual and legal analysis that they may make
8 findings, that the Commission may make findings of
9 knowing and willful at a later time. The words
10 "knowing and willful" don't appear anywhere in the
11 factual legal analysis here.

12 It absolutely departs from my understanding
13 of Commission practice, and it is contrary to what is
14 specifically spelled out in the enforcement manual,
15 which is the importance of making sure that if that
16 evidence will be -- if there is a possibility that the
17 Commission may make findings concerning knowing and
18 willful, that it will provide notice to the
19 Commission.

20 Look, it's one thing when the Commission, in
21 the course of investigating a matter, comes across
22 other violations. That happens, and that's one thing.
23 But it's quite something else to say at the outset,
24 we're going to seek evidence to establish that this
25 was knowing and willful. We're going to seek evidence

1 of any contribution you might have ever reimbursed,
2 federal, state, or local. There's no authority for a
3 commission to do that. The authority is to
4 investigate the complaint.

5 VICE CHAIR DICKERSON: And to that point,
6 Ms. Stevenson, can you point us to precedent of the
7 Commission, preferably public precedent that would
8 cover the approach that OGC conducted in this
9 investigation?

10 MS. STEVENSON: Vice Chair Dickerson, as I
11 noted before, when we are investigating a pattern or
12 practice, we look at the scope of prior contributions,
13 particularly where the affidavit here referenced the
14 office manager's experience in providing
15 reimbursements for contributions in general. I don't
16 have at my fingertips precedent that I could cite for
17 you but would be happy to provide that in the next
18 executive session when we respond to any questions
19 from the Commissioners.

20 VICE CHAIR DICKERSON: Thank you. I
21 appreciate that, Madam Chair.

22 CHAIR BROUSSARD: Vice Chair, I'm sorry, I
23 wasn't sure if you had concluded your questions.

24 VICE CHAIR DICKERSON: I had. I was passing
25 the gavel back. Thank you.

1 CHAIR BROUSSARD: Thank you. I want to --
2 there was some interesting conversation with what the
3 Office of General Counsel mentioned and some of the
4 other questions mentioning pattern, and that makes me
5 go back to I want to talk about the Clinton
6 contributions. Now we have this established in the
7 affidavit that is for Ms. Eastridge, of course, that
8 in her capacity as the office manager she issued
9 reimbursement checks from the firm to each of its
10 employees who made contributions to the Baricevic, and
11 I'm not sure if I even said that correct, so if I did
12 not, I apologize. I've struggled all week long trying
13 to make sure I said it correctly.

14 But I don't see any reference in the
15 affidavit to the Clinton contributions, and we talk
16 about pattern, and these contributions were made about
17 13 days before. How do we account for that omission?

18 MR. NORTON: I'm sorry, I'm not sure I
19 understand your question. Why didn't her affidavit
20 address the Clinton contributions?

21 CHAIR BROUSSARD: Yeah.

22 MR. NORTON: Because our position is and has
23 been that the Clinton contributions are not properly
24 part of the case. There's no mention of them in the
25 complaint at all, none. And they're tucked into the

1 factual legal analysis in the context of establishing
2 that the employees likely did not have the ability to
3 make the contributions with their own funds. There's
4 nothing in the record for purposes of probable cause.

5 The only reason the Clinton contributions
6 are relevant today is because OGC says we were
7 unwilling to conciliate in regard to them. That's not
8 true. We disagreed then and disagree now that the
9 Clinton contributions are properly part of the case,
10 but we were willing to go down the path of the Clinton
11 contributions a couple of years ago to try to be done
12 with this, and we proffered, each of the Respondents
13 proffered, that those Clinton contributions, made two
14 weeks prior to the Baricevic contributions, were
15 reimbursed by Ms. Eastridge in the same manner as she
16 described reimbursing the Baricevic contributions and
17 without the knowledge or the direction of any of the
18 Respondents.

19 CHAIR BROUSSARD: I think that circles back
20 to my question from before of, if Ms. Eastridge played
21 a role in that, why not amend her affidavit to include
22 that information?

23 MR. NORTON: We attempted through our
24 proffer to establish to OGC what we were willing to
25 establish through affidavit in an effort to settle the

1 matter. And, Ms. Broussard, if OGC had told us that
2 that information would have been satisfactory, we were
3 willing to provide affidavits from each of the
4 individual Respondents and revise the Eastridge
5 affidavit to address that as well.

6 CHAIR BROUSSARD: Thank you. I'm sorry, I
7 apologize. Did I cut you off, Mr. Norton?

8 MR. NORTON: Oh, no. Thank you.

9 CHAIR BROUSSARD: I also want to turn to the
10 Office of General Counsel. Do you have any
11 information you want to clarify in regards to these
12 points?

13 MS. STEVENSON: Chair, I believe that we've
14 covered all of the points in response to questions
15 from the Commissioners. As I indicated before, it is
16 not Commission practice to accept a proffer in lieu of
17 affidavits. When Mr. Norton made the proffer, we
18 responded with the additional information that would
19 be required to provide a full enough record for the
20 Commission to evaluate whether or not to proceed with
21 probable -- PPCC conciliation, and Mr. Norton declined
22 to provide any additional information, which is why we
23 find ourselves where we are now.

24 CHAIR BROUSSARD: Are there any further
25 questions?

1 COMMISSIONER WALTHER: Madam Chair?

2 CHAIR BROUSSARD: Commissioner Walther.

3 COMMISSIONER WALTHER: Yeah. I am no
4 longer -- as of the beginning of our conversation am
5 no longer able to see anything, so somehow I'm looking
6 at a worker saying Zoom, that's it. But I'd like to
7 ask the question of one, what information would you
8 have put in a proffer regarding the Clinton matter?

9 MR. NORTON: I'm sorry, Commissioner
10 Walther, I didn't hear you.

11 COMMISSIONER WALTHER: Was there some
12 request that your proffer had to include information
13 regarding the Clinton matter?

14 MR. NORTON: Yes, yes. My understanding
15 from OGC was that we needed to submit -- in order for
16 OGC to recommend that the Commission engage in pre-
17 probable cause conciliation, we needed to submit
18 affidavits from each of the individual Respondents and
19 that those affidavits needed to address the Clinton
20 contributions.

21 COMMISSIONER WALTHER: And say what?

22 MR. NORTON: Whether they were reimbursed
23 and the manner and circumstances in which they were
24 reimbursed. And we proffered that they were
25 reimbursed or that the affidavits we expected would

1 establish that they were reimbursed by Ms. Eastridge
2 in the same manner as the Baricevic contributions.
3 OGC told us that that was insufficient and those
4 affidavits, if we submitted affidavits that mirrored
5 our proffer, that that would be insufficient to
6 justify pre-probable cause conciliation.

7 COMMISSIONER WALTHER: Did they ever ask
8 that you provide more information so you could make
9 that finding?

10 MR. NORTON: The information that they were
11 seeking, which changed with almost every request, was
12 outside the scope of the investigation, and we at that
13 point concluded that there was nothing more we could
14 do that would satisfy the Office of General Counsel,
15 that we were essentially pouring water into a
16 bottomless well.

17 COMMISSIONER WALTHER: And is there
18 correspondence back and forth discussing the issue of
19 bringing in another matter, another action with your
20 client?

21 MR. NORTON: Was there correspondence back
22 and forth about -- I'm sorry?

23 COMMISSIONER WALTHER: Well, I guess, if
24 they wanted a proffer and they couldn't when your
25 proffer was insufficient and they wanted more from

1 you, I guess, was that somehow -- it's confusing to me
2 that this Clinton matter is in this matter, but I'm
3 wondering what role was played back and forth on that
4 issue when you got to the proffer stage.

5 MR. NORTON: So we did submit a written
6 proffer to the Commission. There is a letter that we
7 received in response to the proffer, and then we
8 responded to that letter. I think that's, as best I'm
9 aware, the only correspondence concerning the
10 counsel's office demands.

11 COMMISSIONER WALTHER: Was there any
12 correspondence with the Clinton matter advising them
13 that they may be looked at negatively in view of the
14 fact that it was a transaction like this?

15 MR. NORTON: I'm so sorry, I'm just having a
16 little difficulty hearing you. I'm sorry, would you
17 mind --

18 COMMISSIONER WALTHER: I'm sorry about that.
19 I just wanted to know what contact was made with the
20 Clinton matter that relates to the prosecution of the
21 actions of your client? In other words, were they
22 brought into this in any way?

23 MR. NORTON: Was the Clinton -- I'm sorry?

24 COMMISSIONER WALTHER: Were they put on
25 notice that there was some potential issue that was

1 being argued as being supportive of --

2 MR. NORTON: Was the Clinton campaign
3 brought in?

4 COMMISSIONER WALTHER: Yes.

5 MR. NORTON: No, no, they were not. So,
6 when we completed our proffer, it was barely a second
7 before counsel started reeling off additional things
8 we needed, that our proffer was insufficient because
9 we hadn't proffered when everyone found out about the
10 reimbursements and then exactly what they did in
11 response, that the proffers were insufficient. We
12 thought the proffers were fine. We needed to produce
13 every email, note, and record relating to the
14 reimbursements.

15 Then, when we had an exchange of
16 correspondence regarding our formal request for pre-
17 probable cause conciliation, that's the first time I
18 remember OGC coming back in their letter and saying,
19 oh, by the way, we not only need these affidavits, but
20 we need an affidavit from every single employee who
21 made a contribution and every document or email that
22 might relate to any contribution that was reimbursed.

23 So that's the history in terms of the effort
24 to try to conciliate this at the pre-probable cause
25 stage.

1 COMMISSIONER WALTHER: Thanks.

2 MR. NORTON: Thank you.

3 COMMISSIONER TRAINOR: Madam Chair?

4 CHAIR BROUSSARD: I thought I was unmuted.

5 Yes, Commissioner Trainor.

6 COMMISSIONER TRAINOR: It's okay. I have a
7 question for OGC.

8 Ms. Stevenson, you said -- why aren't
9 proffers acceptable under Commission practice?

10 MS. STEVENSON: When OGC is authorized to
11 conduct an investigation, as it was here when the
12 Commission found reason to believe, the
13 investigation's scope is to gather evidence, and
14 proffers are not accepted as evidence, which is why,
15 here, the focus was on affidavits, witness statements,
16 or informal interviews and, if necessary, to move on
17 to depositions and subpoenas.

18 COMMISSIONER TRAINOR: Okay. Thank you.

19 MR. NORTON: If I might, I would just add in
20 response to that that while a proffer doesn't
21 constitute evidence in the record for purposes of
22 probable cause, the proffer should absolutely be
23 sufficient for the Commission to evaluate whether to
24 authorize the staff to engage in pre-probable cause
25 conciliation. That was the purpose of it.

1 CHAIR BROUSSARD: Thank you. I --

2 COMMISSIONER TRAINOR: Thank you, everybody.

3 CHAIR BROUSSARD: Oh, I'm sorry,
4 Commissioner Trainor, I apologize.

5 COMMISSIONER TRAINOR: I was just telling
6 everybody thank you.

7 CHAIR BROUSSARD: I have one final question.
8 I would just ask that OGC clarify for the Commission
9 the level of evidence that they believe that leads us
10 to justify the RTB findings of probable cause
11 recommendation.

12 MS. STEVENSON: As outlined in our probable
13 cause brief, we believe there is sufficient evidence
14 to find probable cause as to the law firm and the
15 other Respondents in regards to all of the reimbursed
16 contributions set forth in the brief itself.

17 CHAIR BROUSSARD: Is there anything specific
18 you'd like to highlight to reflect that Keefe
19 consented to the contributions?

20 MS. STEVENSON: Hang on a second.
21 Obviously, here, yes, it's all circumstantial evidence
22 that we've laid out in the brief. The evidence in the
23 record supports an inference that Keefe authorized the
24 reimbursements. He solicited the reimbursements. He
25 was the sole corporate officer. He supervised the

1 office manager, who wrote the reimbursement checks,
2 and he took no action to seek refund of the illegal
3 contributions upon learning of the reimbursements. So
4 that would be the evidence that we laid out in the
5 probable cause brief.

6 CHAIR BROUSSARD: Thank you. I think we've
7 had a healthy round of questions, and I just want to
8 ask one more time if there's anything?

9 (No response.)

10 CHAIR BROUSSARD: So I want to just say
11 quickly, given the impending statute of limitations, I
12 may ask the General Counsel if they feel comfortable
13 if they think that any new arguments have been made
14 today or are different from what Mr. Norton and his
15 colleagues may have presented before?

16 MS. STEVENSON: Madam Chair, we do not
17 believe there are any arguments that went beyond the
18 scope of what was previously briefed, nothing new.

19 CHAIR BROUSSARD: Thank you. Thank you.

20 Mr. Norton, you have five minutes available
21 for closing arguments. Would you like to do so, sir?

22 MR. NORTON: No, I don't have any further
23 argument. I do want to thank the Commission for
24 making time today. These hearings were not a feature
25 of the process -- General Counsel and the Commission,

1 and we certainly discussed them as far back as 2003.
2 I will say, having participated today, I thought, from
3 my perspective, it was productive and worthwhile, and
4 I appreciated the opportunity, so thank you. And I
5 just hope everyone stays well.

6 CHAIR BROUSSARD: Thank you. I appreciate
7 that. I hope you and your colleagues stay well also.
8 And everyone else on the call today, I want to thank
9 you very much for appearing today, and that will
10 conclude this hearing. It is adjourned. Thank you.

11 MR. NORTON: Thank you.

12 (Whereupon, at 11:11 a.m., the hearing in
13 the above-entitled matter adjourned.)

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CERTIFICATE

DOCKET NO.: MUR-7102

CASE TITLE: Keefe, Keefe & Unsell P.C. and
Thomas Keefe, Jr.

HEARING DATE: January 5, 2020

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Election Commission.

Date: January 5, 2020



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