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COUNCIL OF THE CITY OF PHILADELPHIA
PUBLIC HEARING AND PUBLIC MEETING
BEFORE THE COMMITTEE OF THE WHOLE

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- - -

Wednesday, January 30, 2002

2:25 p.m.

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Room 400, City Hall

Philadelphia, PA

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RES. 010672 Confirming appointment of
The Honorable Nelson A. Diaz
as City Solicitor

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PRESENT: COUNCIL PRESIDENT ANNA C. VERNA
COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN DAVID COHEN
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COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN BRIAN J. O'NEILL
COUNCILMAN ANGEL L. ORTIZ
COUNCILMAN FRANK RIZZO
COUNCILWOMAN MARIAN B. TASCO

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2 COUNCIL PRESIDENT VERNA: This is the
3 Committee of the Whole regarding Resolution 010672,
4 confirming the appointment of the Honorable Nelson
5 A. Diaz as City Solicitor.

6 (Mr. Diaz comes forward.)

7 COUNCIL PRESIDENT VERNA: All right,
8 Mr. Diaz, you can start your statement.

9 MR. DIAZ: Thank you, Madam President.
10 Good afternoon.

11 I'd first like to apologize to those
12 members of my former law firm who spent a lot of
13 billable hours here, and I appreciate that they
14 took the effort and the time, all of this time, to
15 be here. There's one -- I guess we can say one
16 representative Joan Stern, who you all know well,
17 is on the Executive Committee so I guess I can
18 mention her for all of the members that are here
19 from that firm.

20 I would also like to introduce to you
21 probably for the first time here my wife, which is
22 Sarah Manzano (ph), who's in the back. If she
23 would stand so that you could meet her, Madam
24 President.

25 (Mrs. Diaz stands.)

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2 (Applause.)

3 MR. DIAZ: And my younger daughter is
4 here, Delia Diaz.

5 (Miss Diaz stands.)

6 (Applause.)

7 MR. DIAZ: There are members also from the
8 Law Department who are here, and sitting with me
9 will be Donna Mouzayck, who's the First Deputy City
10 Solicitor; Dan Cantu, Chair of the Corporate and
11 Tax Unit; William Thompson, who was acting City
12 Solicitor and now chair of the Litigation Group;
13 and one of our other executive committee members
14 just had a baby this morning, and as a result,
15 Charlie Nichols has just been called to duty to be
16 acting Administrative Law Chair, and she's
17 presently the Chief Deputy Solicitor for Health and
18 Human Services.

19 Madam President and distinguished members
20 of the City Council, although I know that many of
21 you, for purposes of the record, know me, and my
22 name is Nelson A. Diaz. I am currently serving as
23 acting City Solicitor. It is a great honor to
24 appear before you seeking confirmation as City
25 Solicitor.

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2 I also want to take the opportunity to
3 thank the Mayor for this appointment.

4 Over the past several weeks, I've had the
5 privilege to speak with many of you regarding the
6 work of the Law Department. I very much appreciate
7 the time you've spent with me, and I thank you for
8 your courtesy.

9 I offer now a few public statements about
10 my background and personal goals for the Law
11 Department.

12 As you may know, I have been engaged in
13 the practice of law for almost 30 years. I am not
14 going to provide you with a detailed listing of my
15 experience and accomplishments, but I want to
16 stress certain aspects of my career that I believe
17 will assist me in advancing the goals of the Law
18 Department.

19 Most recently, I was a partner at the law
20 firm of Blank Rome, handling matters in the
21 Litigation and Government Relations Department.
22 Before joining Blank Rome, I served for four years
23 as the General Counsel of the U.S. Department of
24 Housing and Urban Development, where I managed a
25 department of over 500 lawyers. Prior to HUD, I

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2 was a judge at the Court of Common Pleas of
3 Philadelphia for 12 years and served 18 months as
4 the administrative judge of the Trial Division,
5 where I instituted reforms that dramatically
6 reduced backlogs and delays in case processing and
7 saving millions of dollars, which you were able to
8 place back into your budgets.

9 I have lived in Philadelphia since 1969,
10 when I came here to study law at Temple University
11 School of Law. I have studied and practiced law
12 here, served as a judge here, raised my family
13 here, and am proud to claim Philadelphia as my
14 home.

15 One of my goals is to save the City
16 resources by reducing spending on outside legal
17 services. In this regard, I have already received
18 and reviewed some of our outside contracts for
19 legal services and have terminated a number of
20 them. I have begun to identify ways in which
21 certain matters can be handled more efficiently and
22 effectively without jeopardizing the representation
23 of the City of Philadelphia and will continue to do
24 so in the days ahead.

25 We have outstanding lawyers in the Law

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2 Department, many of whom are familiar to you, many
3 of whom you will call directly and bypass me and
4 many who the Mayor will call and bypasses me, but
5 we propose a 21 percent reduction in the cost of
6 outside counsel for the prior fiscal year.
7 Reducing outside counsel costs will likely require
8 that we utilize more in-house attorneys. I am
9 committed to increasing the Law Department's
10 capacity to handle major transactional matters
11 in-house, as a large portion of past outside
12 counsel costs have been spent in this area.
13 We are currently budgeted for 165
14 attorneys and are operating with only 150. Right
15 now, we're in a hiring freeze. If I am permitted
16 to hire more attorneys, I will focus on hiring the
17 best and the brightest attorneys available to fill
18 critical public-service positions. At the same
19 time, I will place particular emphasis on finding
20 highly qualified minority lawyers.
21 I am very proud of my own background in
22 opening doors to minority attorneys in Pennsylvania
23 and elsewhere. While at Temple Law School in the
24 early '70s, I founded Black and then the Puerto
25 Rican law student organizations and advocated for

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2 increased admissions for the disadvantaged for
3 Latinos and African-American applicants.

4 When the Mayor announced my appointment
5 last year, or a few months ago, he acknowledged
6 such activities which he believed assisted his own
7 admission to Temple Law School. I was the first
8 person of Puerto Rican heritage ever admitted to
9 the Pennsylvania Bar and was the first Hispanic
10 judge appointed and subsequently elected in the
11 Commonwealth of Pennsylvania.

12 I have been involved throughout my career
13 in activities promoting the advancement of
14 qualified minority lawyers and served the community
15 to my best capacity. My efforts have been
16 recognized over the years by numerous groups such
17 as the Philadelphia Jaycees, the Philadelphia
18 Commission on Human Relations, National Conference
19 on Christian and Jews, the Foundation for the
20 Improvement of Justice, the American Bar
21 Association, the Pennsylvania Bar Association, and
22 most recently, the Hispanic Bar Association of
23 Pennsylvania. I have demonstrated my commitment to
24 diversity, honesty, and integrity, and will
25 continue to do so.

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2 The Law Department has had real successes
3 in reducing expenditure for claims made against the
4 City. My goal is to continue upon the successes of
5 my predecessor in further reducing costs in that
6 area.

7 While general counsel at HUD, we settled a
8 backlog of more than 20 major civil-rights cases
9 and reduced a nationwide backlog of other
10 significant cases. My experience as a Common Pleas
11 judge provides me with a unique insight into
12 evaluating the merits of cases, valuing claims, and
13 developing procedures for minimizing litigation
14 costs. I will bring all of those skills to bear if
15 confirmed by you as Solicitor.

16 I also plan to institute a new initiative
17 to increase the collection of revenues due to the
18 City. For example, I would like to spur a
19 competition among our tax-collection vendors in
20 order to enhance their efforts.

21 The Law Department has played, and will
22 continue to play, a major role in assisting the
23 Mayor and this administration in developing plans
24 for the Neighborhood Transformation Initiative.
25 The Law Department is particularly involved in this

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2 area of expanded code enforcement and legislative
3 reform to help speed up the property acquisition.
4 I believe I can be of particular assistance as a
5 result of my experience in the Court of Common
6 Pleas and at HUD in developing and enhancing a
7 systematic approach in code enforcement matters and
8 in sharing my view of how other cities around the
9 country have addressed the issue of blight. It is
10 anticipated that the work is likely to dramatically
11 multiply as NTI moves forward.

12 In addition to all of the work the Law
13 Department performs with respect to litigation,
14 transactions, taxes, and social-service matters, we
15 of course are also your lawyers. At this time, I
16 offer you my commitment to provide each of you with
17 timely and qualified legal services. I fully
18 understand the unique role of the Solicitor under
19 our Home Rule Charter.

20 Although the Solicitor is counsel to the
21 Mayor and all members of the Administration, I am
22 also City Council's attorney. Rest assured that any
23 response from my office to a request from any member
24 of Council will be completely confidential, honest,
25 and with my best abilities. Now, unless Council

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2 members directs otherwise, I will then make them
3 public, indeed, even if the facts that such a
4 request has been made would itself be made
5 confidential.

6 We have, and will continue, to provide you
7 services with respect to drafting and exploring
8 legislation. I fully appreciate the importance of
9 responding promptly to your requests. It is very
10 important to me that you are provided with creative
11 and thoughtful consideration of the problems you
12 present. In that regard, I have made clear to the
13 attorneys at the Law Department the need to outline
14 options and multiple courses of potential action
15 when providing legal services to you or elsewhere.

16 When Council adopts legislation, it is
17 entitled to a presumption of the legality, and I
18 will decline to give my approval of a bill only in
19 the clearest cases of invalidity. I will approve
20 any request by City Council made by resolution for
21 the retention of outside counsel to test the
22 legality of a bill.

23 I believe my experience as a lawyer and a
24 judge allow me to oversee resolutions of the very
25 complex and important problems that are brought into

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2 the Law Department. As you know, I have the
3 strongest commitment to public service, having spent
4 most of my career as a public servant.

5 Lastly, I would like to thank you and the
6 Mayor for giving me the opportunity to come before
7 you and seek confirmation to such an important
8 position of service to the people of Philadelphia.

9 I will be happy to answer any questions
10 you have.

11 COUNCIL PRESIDENT VERNA: Thank you.

12 The Chair recognizes Councilman Ortiz.

13 COUNCILMAN ORTIZ: Thank you, Madam Chair.

14 Nelson Diaz is a friend of mine from long,
15 long ago. He is not only the second Latino, but
16 he's the first Puerto Rican as City Solicitor, and
17 as the first Puerto Rican, it's an honor to have
18 that.

19 I've asked several questions of previous
20 City Solicitors, and you're the most recent one.
21 You said that currently you have 255 attorneys.

22 MR. DIAZ: No, 152 attorneys are presently
23 on the payroll.

24 COUNCILMAN ORTIZ: 150. And of that, how
25 many of them are Latino?

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2 MR. DIAZ: There was Milton Velez and I.

3 COUNCILMAN ORTIZ: Just the numbers; don't
4 give me the names.

5 MR. DIAZ: There are two at this stage.

6 COUNCILMAN ORTIZ: Two. And I imagine in
7 supervisory positions, there aren't any.

8 MR. DIAZ: There are none.

9 COUNCILMAN ORTIZ: There are none.
10 I've asked this question of previous City
11 Solicitors over the years, and those of you that
12 have been here before understand that. And I would
13 like to see, because we keep getting -- we keep
14 getting the promise that we are going to be hiring
15 more Latino lawyers, and it's never really that
16 promise kept. The previous City Solicitor that was
17 before us two years ago made that statement, and I
18 imagine that those two attorneys are the -- I don't
19 know how long they've been there, but it's -- out
20 of the number that we have, we've got to be able to
21 do better. And I know that with you there, I can
22 expect that to begin to change.

23 MR. DIAZ: I commit to you, Councilman,
24 that if the freeze is withdrawn, you will have a
25 300 percent increase on the same day.

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2 (Laughter.)

3 COUNCILMAN ORTIZ: That's terrific, that
4 will bring us to 4, but that's all right.

5 (Laughter.)

6 MR. DIAZ: 300 percent.

7 COUNCILMAN ORTIZ: Well, that's better
8 than we've had before; I mean, the commitment is
9 there.

10 And also, I commend the fact that you say
11 that -- and I like it that more contracts will
12 be handled -- more work will be handled in-house
13 rather than just be outsourced. However, of those
14 that are outsourced, how many contracts and to
15 whom -- in the last two years, how many contracts
16 have been outsourced to other law firms across the
17 City and what is the percentage of that number that
18 has been given to Latino --

19 MR. DIAZ: In the contracts that I
20 reviewed, Councilman, there is only one Latino
21 contractor who is getting a significant amount of
22 revenues -- "significant," whatever that word
23 means -- revenues from the contract opportunities.

24 COUNCILMAN ORTIZ: Only one?

25 MR. DIAZ: One --

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2 COUNCILMAN ORTIZ: Out of a total of --

3 MR. DIAZ: One that is significant, but
4 there was another contract that was let out to
5 another firm, so there are two at this point.

6 COUNCILMAN ORTIZ: "Two" keeps cropping
7 up.

8 MR. DIAZ: Two right now.

9 COUNCILMAN ORTIZ: Out of a total of -- do
10 we have a number?

11 MR. DIAZ: Yeah, it's approximately -- the
12 budget shows that we budget about 5 million, and
13 this year, we've spent about 8.7 million.

14 COUNCILMAN ORTIZ: But what is the total
15 of law firms that are non-Latino that have been
16 given contracts to?

17 MR. DIAZ: I believe of that number,
18 probably 90 percent or more would be non-Latino.

19 COUNCILMAN ORTIZ: There are only two,
20 actually.

21 MR. DIAZ: I have the percentage of
22 minority firms, but I believe you're asking me
23 about Latinos.

24 COUNCILMAN ORTIZ: Well, give me the
25 percentage of minority terms and then, you know,

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2 break it down to Latinos, what percentage we make
3 up of that, which is probably 1 or less percent.

4 MR. DIAZ: Yeah, for the fiscal year '00,
5 16.5 percent are female-owned firms; fiscal year
6 '01, 34.57 for female-owned firms and percentage;
7 and the percentage of minority firms for fiscal
8 year '02 -- excuse me, all those were for minority
9 firms -- is 35.39. For female-owned firms for '00
10 is 6.02; for female-owned firms, 4.50; and '02,
11 16.61 percent.

12 COUNCILMAN ORTIZ: Could you submit a list
13 of those firms that have been given contracts to
14 the President?

15 MR. DIAZ: I can give you exactly this
16 record that I have; that way I am prompt.

17 COUNCILMAN ORTIZ: Okay.

18 MR. DIAZ: And if I need to in any way
19 supplement it, I will, Madam President.

20 COUNCIL PRESIDENT VERNA: That would be
21 fine.

22 COUNCILMAN ORTIZ: And next year when we
23 have these budget hearings, I'll ask the same
24 questions so, obviously, you're going to have much
25 greater numbers at that time.

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2 MR. DIAZ: Thank you, Councilman.

3 COUNCIL PRESIDENT VERNA: Thank you.

4 The Chair recognizes Councilman Nutter

5 COUNCILMAN NUTTER: Thank you,

6 Madam Chair. Good afternoon, Mr. Solicitor.

7 Let me first say that notwithstanding the
8 comments of my colleague Councilman Ortiz and his
9 identifying you as a friend, I would not take that
10 into consideration as I contemplate the weightiness
11 of this vote regarding your confirmation.

12 (Laughter.)

13 COUNCILMAN NUTTER: I know you well enough
14 on my own to do that.

15 Let me simply ask you though, about --
16 from time to time, some Council members, including
17 myself, get a notion of trying to legislate around
18 here from time to time, and we often get opinions
19 back with a laundry list of reasons why you can't
20 do certain things. Sometimes the footnote was
21 actually longer than the information on the rest of
22 the page.

23 In particular, it's often raised this one
24 opinion, Formal Opinion No. 7, which talks about
25 the creation of boards and commissions by City

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2 Council, and I think it generally says that it's
3 not something that we can do.

4 Would you share with us, if you will, your
5 opinion about that opinion. And is that still a
6 good opinion in the Law Department?

7 MR. DIAZ: I would have to look at it, but
8 I have to tell you that when we review legislation,
9 we provide the same responses and advice -- or I
10 will, anyway -- that we give to everyone at Council
11 and to the Mayor. It will be consistent and the
12 advice will be the same.

13 In any fashion that you may need advice
14 which you think we are not providing adequately and
15 you need a second opinion I've shared with the
16 President that I would be more than happy to seek
17 that second opinion to make sure that you are
18 comfortable and confident with the advice that we
19 provide.

20 COUNCILMAN NUTTER: I appreciate that
21 offer and let me, at least at this moment, since
22 I've over the years probably driven half of your
23 staff, your relatively new staff, crazy in my own
24 right and tell you that I have enjoyed great
25 service from the Law Department; there are many

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2 fine people up at the table and behind the rail; I
3 won't go into all of that.

4 You mentioned in your statement also about
5 the opinion process. Could you share a little more
6 detail from start to finish in terms of when the
7 request comes in, what happens to it, what won't
8 happen to it, where does it go, where does it not
9 go, and those kinds of details.

10 MR. DIAZ: I'll be happy to share what
11 I've learned in the last month and a half.

12 Some of you have relationships with
13 individuals within our City department; you begin
14 in many occasions the process by asking him or her
15 questions related to that. At times, they will
16 come to me and they will sit with me and try to
17 evaluate and attempt to do the appropriate research
18 necessary and then get my final approval to send.
19 On other occasions, they give you their advice off
20 the cuff, which is not official from the City
21 Solicitor if not signed and approved.

22 We try to do it collectively. I try to
23 engage the executive committee, what you see before
24 me, in those opinions before we send them out, and
25 we try to keep whatever we can. And if we need

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2 expertise outside, we try to attempt to get that
3 expertise from the outside to comply with your
4 request.

5 COUNCILMAN NUTTER: Is it assumed, or is
6 it the policy of assumption, which I know is always
7 bad, that an opinion request is confidential, both
8 in its nature as well as who the requesting party
9 is, until there is an actual opinion developed, and
10 then it's left to the requesting party to make the
11 affirmative decision as to whether or not that
12 opinion is subsequently made public?

13 MR. DIAZ: You're absolutely correct,
14 Councilman.

15 COUNCILMAN NUTTER: Thank you
16 Thank you, Madam President.

17 COUNCIL PRESIDENT VERNA: Thank you.
18 The Chair recognizes Councilman Clarke.

19 COUNCILMAN CLARKE: Thank you,
20 Madam Chair.

21 Good afternoon, Mr. Diaz.

22 MR. DIAZ: Good afternoon, Councilman
23 Clarke.

24 COUNCILMAN CLARKE: Mr. Diaz, I want to
25 make a brief statement. I'm a ward leader and I'm

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2 going to be up for reelection in June. The
3 questions I am going to ask you have nothing to do
4 with that fact.

5 What is the status of the takeover of the
6 Parking Authority?

7 MR. DIAZ: The Parking Authority is
8 presently under litigation. There is a question of
9 jurisdiction, which is pending before the Supreme
10 Court of the Commonwealth of Pennsylvania, and
11 until the Commonwealth of Pennsylvania decides a
12 jurisdictional issue, it is essentially at a stay
13 situation in which we have a contract relationship
14 which exists between the Parking Authority and the
15 City and the State.

16 COUNCILMAN CLARKE: Is there anything that
17 we can do to expedite Supreme Court's decisions?

18 MR. DIAZ: If you have any friends up
19 there, you can call 'em, but they --

20 (Laughter.)

21 MR. DIAZ: That's facetious and I
22 apologize for that.

23 Obviously, the Supreme Court has its
24 process and procedures. And they are an entity
25 which has a separation of powers and, therefore, we

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2 have to await the results when it is timely, as far
3 as they're concerned.

4 We've attempted, as much as we can, to
5 pursue our response, and I will continue to pursue
6 that on my level.

7 COUNCILMAN CLARKE: It's my understanding
8 that the revenue that's collected by the Parking
9 Authority is the City of Philadelphia's money;
10 shouldn't that come to account as to, you know,
11 whether or not we should actually have full control
12 over the Authority? While I understand it was a
13 State-created entity, the reality is that this is
14 revenue solely generated by the City of
15 Philadelphia.

16 MR. DIAZ: Yeah, as I understand it, the
17 revenue at this point is not being dissipated, but
18 because of the agreement we have with the Parking
19 Authority, the expenditures are flowing in the
20 normal course as prior to the takeover.

21 COUNCILMAN CLARKE: In your mind -- you
22 may not be the appropriate person, but I'm going to
23 ask you --

24 MR. DIAZ: I'm sorry, I didn't hear you.

25 COUNCILMAN CLARKE: I said, in your

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2 mind -- you may not be the appropriate person and
3 we probably need Mr. Dubow, but I'm on this line of
4 questioning -- what's the financial impact on the
5 Parking Authority takeover?

6 MR. DIAZ: Initially -- and you're right,
7 it's a Dubow question, but in my review, initially,
8 the purpose was with regard to the School
9 District's financing opportunities. At this point,
10 it has had no impact either way.

11 COUNCILMAN CLARKE: Okay. There's been
12 some concern raised in some of the discussion
13 particularly around NTI and some of the other
14 issues about the State's authority and ability to
15 take over other authorities. I'm not going to ask
16 you for the strategy associated with that, but do
17 we have in fact a clear-cut strategy to circumvent
18 any of those attempts?

19 MR. DIAZ: We do. We will, upon Council
20 or the Mayor's request, continue to fight in favor
21 of the Home Rule requirements and their violation
22 of our Home Rule Charter and local domain, and we
23 will continue to fight in the courts, as directed
24 by this Council and the Mayor, against any other
25 takeovers.

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2 COUNCILMAN CLARKE: Okay, one question
3 with respects to the legislation, then I'll pass.
4 Last year, with the support of members of Council,
5 I passed a bill; it was called the "Gun
6 Verification Bill," and it essentially required
7 that an individual, upon getting a permit, would
8 have to fill out certain information with respects
9 to the gun that they were getting the permit for.
10 It was a verification process on a yearly basis
11 that will require that individual to notify the
12 City of Philadelphia if in fact they sold that gun
13 or somehow that gun became lost.

14 That bill actually became law. But my
15 understanding is it has not been enforced, and when
16 I questioned that, I was told that a police
17 officer, if he attempted to request that
18 information at the time of the application process,
19 that they can be in violation of the law.

20 Can you first tell me what the status is
21 of that.

22 MR. DIAZ: I would be happy to review
23 that, but there's always a question of whether it's
24 a preemption and whether it's a preemption, either
25 a State or a federal preemption with regard to

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2 legislation that is passed. The law may be
3 permissible with regard to the limitations, and so
4 I would be happy to look into that. I was unaware
5 that there was a lack of enforcement.

6 COUNCILMAN CLARKE: Okay, with respects
7 to --

8 MR. DIAZ: And, excuse me, Councilman, and
9 I will make sure that I get a response to you in
10 writing within the next few days.

11 COUNCILMAN CLARKE: Okay, yeah, that would
12 be very helpful.

13 As it relates to guns, the City of
14 Philadelphia a's lawsuit with the gun industry,
15 where are we at with that?

16 MR. DIAZ: That case was taken by the
17 litigation group of our office. The case lost in
18 the District Court, it was in appeal in the Third
19 Circuit, and it was also lost in the Third Circuit.

20 COUNCILMAN CLARKE: What are we going to
21 do?

22 MR. DIAZ: Right now, the only option is
23 certiorari to the Supreme Court, and that
24 probability is remote.

25 COUNCILMAN CLARKE: The possibility that

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2 we will --

3 MR. DIAZ: That we could be successful
4 with certiorari to the Supreme Court.

5 COUNCILMAN CLARKE: Are we going to --
6 you're saying we're attempting?

7 MR. DIAZ: No, we have not attempted that,
8 but I'm saying that's remote.

9 (Conferring with colleague.) Bill, are we
10 doing anything with it or are we going to let it
11 die?

12 They're still evaluating.

13 COUNCILMAN CLARKE: Do you need some
14 encouragement?

15 I mean, this is a political decision that
16 ultimately will be a legal issue, but the reality
17 is that there is a big problem out there with these
18 illegal guns, and I'm concerned, particularly given
19 the current administration in Washington and their
20 individual who has the head of the Justice
21 Department and his love for the gun industry and
22 the NRA, and I just think that if we're not even
23 more aggressive on this issue that, you know, we'll
24 really be in trouble in this city.

25 MR. DIAZ: I will evaluate it with more

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2 vigor and attempt to look at the merits.

3 One of the benefits of serving in the
4 federal government is that I've had to take cases
5 before the Supreme Court, and sometimes, it's not
6 to our benefit, but I will evaluate it with a lot
7 more vigor.

8 COUNCILMAN CLARKE: I'm going to ask you
9 this question one more time: Do you need some
10 encouragement?

11 MR. DIAZ: I have received the
12 encouragement from you, yes, sir.

13 COUNCILMAN CLARKE: All right. And from
14 the Mayor? Do you know if the Mayor --

15 MR. DIAZ: I have not discussed it with
16 the Mayor.

17 COUNCILMAN CLARKE: Okay, I have one last
18 question.

19 With respects to outside counsel fees, and
20 I know Councilman Ortiz touched on this, can you
21 talk to me about the criteria associated with
22 outside counsel fees; how do we determine who gets
23 what?

24 MR. DIAZ: My understanding is that it's
25 based upon a percentage which is 20 percent less

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2 than usually their going rates but with a cap of
3 about \$200 for outside counsel, and it may vary
4 from 150 to \$200.

5 COUNCILMAN CLARKE: Okay. And,
6 Councilman, I know you asked that question but I
7 didn't quite hear the response with respects to the
8 outside legal counsel; did you ask for a breakdown
9 across the board?

10 COUNCILMAN ORTIZ: Yes, yes.

11 COUNCILMAN CLARKE: All right, and that
12 information will be provided to the Council
13 President?

14 COUNCILMAN ORTIZ: It will be forwarded to
15 the Council President.

16 MR. DIAZ: The expenditures, though, for
17 this past year was about 8.5, 8.7 million, and they
18 exceeded the budget, and there is a request for a
19 transfer ordinance, which you will be hearing,
20 which will request a change of \$3.7 million, and
21 apparently, the cost was complicated as a result of
22 related legal issues like the School District, the
23 stadiums and the Parking Authority and other
24 significant cases.

25 The interesting thing, though, is that of

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2 the amount spent on the stadium, which is about
3 \$866,000, most of that will be recoverable through
4 the bond sales, so it won't be a washout, but it
5 will show as an expenditure to the Law Department.

6 COUNCILMAN CLARKE: Okay. Thank you,
7 Madam Chair.

8 MR. MCPHERSON: Councilman Cohen.

9 COUNCILMAN COHEN: Welcome to the City
10 Council and probably the politest and nicest
11 session you will endure with City Council. From
12 here on in, the circumstances sometimes change.

13 Now, I want to deal with what I regard as
14 a basic issue that causes conflict between the City
15 Council and the City Solicitor. The Home Rule
16 Charter says you are both the lawyer for the Mayor
17 and for the City Council, and if you read the
18 newspapers, you will learn that we're supposed to
19 be involved in some bitter battle with the Mayor.
20 How do you deal with that situation when a legal
21 situation comes up and you are the lawyer on both
22 sides?

23 MR. DIAZ: I have had a personal
24 relationship with many of you, including you,
25 Councilman Cohen, and I would hope that you would

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2 understand that, one, I understand the separation
3 of powers, having been on the bench and
4 understanding the fact that I also have a
5 separation-of-powers conflict with regard to when I
6 became administrative judge in dividing up some of
7 the responsibilities; i.e., the legislature, the
8 City Council, and the court system.

9 It is my belief that if you are not
10 satisfied with the advice that I give, that if the
11 Council by resolution asks for outside counsel, I
12 will do that; I will seek outside counsel to make
13 sure that you are confident and comfortable, and I
14 will seek outside counsel of your choice. First.

15 Secondly --

16 COUNCILMAN COHEN: Let me ask you this
17 specific question: If the issue comes up, for
18 example, we had a hearing on bills today in the
19 Rules Committee involving the School District,
20 which touched on the question of the new State
21 Reform Control Commission's alleged control of the
22 School District. If asked -- if we passed the bill
23 and you stated in your testimony you would give
24 Council the presumption of legality except if it's
25 very, very clear that it's illegal.

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2 MR. DIAZ: No, I won't do that unless you
3 ask me, unless you ask me to make a determination
4 on the legality of a statute, I will not in any way
5 opine.

6 COUNCILMAN COHEN: What will you do when
7 the Mayor asks you?

8 MR. DIAZ: I was also opine.

9 COUNCILMAN COHEN: You will also what?

10 MR. DIAZ: Give an opinion.

11 COUNCILMAN COHEN: Given an opinion. And
12 that's the opinion and you will give an opinion --
13 would you give an opinion without hearing the
14 arguments of either side first?

15 MR. DIAZ: I will look at the legislation,
16 I will look at what you have proposed, and then we
17 will review not only the City Charter but the State
18 Constitution and then make a determination on
19 whether or not it violates any of those provisions,
20 and there are also endemic provisions that relate
21 to both the executive and the legislative body.

22 COUNCILMAN COHEN: Well, the most
23 aggravating experience this Council has, I believe,
24 is if we pass a bill and the Mayor either lets it
25 become law, signs it, or vetoes it but the veto is

1 1/30/02 COMMITTEE OF THE WHOLE - RES. 010672
2 overwritten so that the bill is enacted into law,
3 and then the City Solicitor rules that the bill is
4 ineffective because it's illegal. In the Council,
5 we counsel that a "super veto," because then the
6 City Solicitor has abrogated to himself powers
7 greater than either the Mayor or the Council has.

8 MR. DIAZ: Well, the City Charter,
9 Mr. Councilman, gives that power to the City
10 Solicitor to opine on whether or not there is a
11 violation or a constitutional defect on a legal
12 bill, and I will only do so at either your request,
13 meaning the Council's request, or at the Mayor's
14 request. Otherwise, I'll presume that it is legal.

15 COUNCILMAN COHEN: Well, that's not much
16 assurance because the request would come from the
17 Mayor. If we override a veto -- for example, the
18 NTI law became law yesterday. The Council passed
19 the bill, the Mayor did not veto it, he did not
20 sign it, it became law without his signature. But
21 there have been indications that the Mayor believes
22 that the bill is illegal or may be illegal. That's
23 the case in point.

24 MR. DIAZ: He has not asked for an --

25 COUNCILMAN COHEN: And we believe that

1 1/30/02 COMMITTEE OF THE WHOLE - RES. 010672
2 that bill is enacted in the law and represents the
3 law of the City today.

4 MR. DIAZ: He has not asked, nor has the
5 Council asked, me to opine on its legality. The
6 questions and the issues have been -- and the
7 participation of our office has been in the
8 drafting of the legislation and the components of
9 the drafting of the legislation. If I am asked to
10 make a determination, I will, based again on the
11 separation of powers and the constitutionality of
12 the bill. And I have not been asked.

13 As I indicated to you, some of our folks
14 go directly to some of our lawyers, get some
15 advice, and then decide that that advice is all
16 they need or want. If you want me to determine its
17 legality, I need that request.

18 COUNCILMAN COHEN: Well, why would we want
19 to if we believed it's legal and we passed the
20 bill? We wouldn't pass the bill if we believed the
21 bill was illegal.

22 MR. DIAZ: That's why I haven't opined,
23 'cause no one has made that request.

24 COUNCILMAN COHEN: So the request would
25 have to, as a practical matter, come from the Mayor

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2 and --

3 MR. DIAZ: Or the City Council.

4 COUNCILMAN COHEN: And then proceed at
5 this point.

6 MR. DIAZ: The Mayor or the City Council,
7 and they would both get the same decision.

8 COUNCILMAN COHEN: See, like Darrell
9 Clarke, I'm a Democratic ward leader, and in my
10 very early days, late in the '60s, the Mayor of the
11 City was also a ward leader, and there was a day
12 when a there was a Democratic City meeting of the
13 Democratic ward leaders where we were discussing
14 various issues related politically to the City.
15 Some question came up with respect to the legality
16 of something, and the then-mayor said, "Well, I'll
17 get the City Solicitor to write an opinion saying
18 it's legal." And somebody said, "Well, how can you
19 say what the City Solicitor will do?"

20 (Laughter.)

21 COUNCILMAN COHEN: And the Mayor just
22 laughed and said, "The City Solicitor will do it or
23 it will be another City Solicitor the next day."

24 MR. DIAZ: That may happen to me also,
25 Councilman. They may seek another City Solicitor

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2 if they disagree with my opinions, but I commit to
3 you and promise that I will call them as I see
4 them, which is what happened on the bench. Even
5 though I happen to be heavily involved in
6 Democratic politics, when a Republican issue came
7 before the court, they all felt, and they so
8 expressed, that they had a fair shake in my
9 courtroom.

10 COUNCILMAN COHEN: Well, all right. Let's
11 assume I still have my doubts later on, but we'll
12 say the jury's out on that question, but it would
13 be a wonderful thing to have a City Solicitor to
14 rule the way we hope you will rule in the future
15 and respect the rights of your two clients.

16 But isn't there really an inherent
17 conflict of interest in the Home Rule Charter as
18 it's written?

19 MR. DIAZ: There may be on occasion,
20 depending on the occasion.

21 For example, I have offered to you that if
22 you feel that there is an opinion in which you
23 would like to get a second opinion, I will be
24 happy, upon resolution of the Council, to seek
25 advice outside of the City Solicitor's Office.

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2 COUNCILMAN COHEN: What would your feeling
3 be about an amendment to the Home Rule Charter that
4 would separate the City Solicitor and make the City
5 Solicitor the lawyer for the Mayor and provide for
6 a separate solicitor for the City Council?

7 MR. DIAZ: As an advocate for more
8 lawyers, I would welcome the fact that if you had
9 more legal officers in the City Council, as we have
10 throughout the City, so the separation within the
11 Charter would not in any way bother me if there was
12 a charter amendment. I'm an advocate of having
13 lawyers earn and provide and participate in public
14 service.

15 COUNCILMAN COHEN: That means you would
16 favor such an amendment?

17 MR. DIAZ: I didn't say that. I said that
18 I would favor having more lawyers around, and if
19 the Charter so was amended, I could live with it.

20 COUNCILMAN COHEN: And it would certainly
21 make impossible the arise of a conflict-of-
22 interest question.

23 MR. DIAZ: It would also limit your
24 influence over the City Solicitor if it was broken
25 up that way. Right now, you have tremendous

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2 influence over the City Solicitor. You could
3 disapprove my appointment, for example

4 COUNCILMAN COHEN: Well, we'll find that
5 out after today, but we're going to take you on
6 your word, and you will be the City Solicitor, and
7 I think that's very clear to you and to everybody
8 else, but we'll find out later not about your
9 intentions; we know they're good, we know your
10 family, we know your wife, we deeply respect her
11 and miss her terribly not being present in the City
12 Council

13 Let me ask you the last question which
14 I've never gotten an answer to: How do you relate
15 to individual Council members? Are you my personal
16 lawyer on business that I handle as a City
17 Councilman?

18 MR. DIAZ: I am the lawyer of the City
19 Council, the body and, therefore, I would give you
20 advice, but if there is issues that pertain to the
21 body, the body controls. You know, the old adage
22 that the majority controls? The majority controls
23 my destiny also -- on every issue, on every advice,
24 and on every request.

25 COUNCILMAN COHEN: Well, I wish you a good

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2 term and an interesting term -- interesting it will
3 clearly, that I think we can (inaudible) for you.
4 Congratulations.
5 MR. DIAZ: Thank you, Councilman.
6 COUNCIL PRESIDENT VERNA: Thank you.
7 The Chair recognizes Councilwoman Miller.
8 COUNCILWOMAN MILLER: Thank you, Madam
9 Chair.
10 Good afternoon, Mr. Diaz.
11 MR. DIAZ: Good afternoon, Councilwoman.
12 COUNCILWOMAN MILLER: You know, I, too,
13 have had a good working relationship with you prior
14 to coming to City Council with my former employer,
15 State Representative David Richardson. I've
16 enjoyed working with you and look forward to it.
17 MR. DIAZ: He was one of my heroes, as you
18 know. And as a result, two years ago, I moved into
19 your district, after living in four or five other
20 different districts. I moved out of Councilman
21 Clarke's district into Councilwoman Miller's
22 district.
23 COUNCILWOMAN MILLER: Welcome to the 8th
24 Councilmatic District.
25 Okay, I do have a couple questions I want

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2 to ask, particularly one. It troubles me when I
3 read the newspaper and see where, you know,
4 taxpayers have to pay \$125,000 and, in fact, with
5 several beatings at the prison, it's more than a
6 half a million dollars that we've had to put out.
7 And I was wondering, does the Law Department play
8 any role in the training of correctional officers
9 so that they understand the legal ramifications.
10 Financial ramifications of their actions as it
11 relates to abusing prisoners?

12 MR. DIAZ: I know we monitor, through Leon
13 King, many of the prison-population expenditures
14 and programs that are run up in the prison as a
15 result of Judge Shapiro's oversight over the court
16 system. We also are involved in evaluations of the
17 services that are provided.

18 With regard to the training process, I
19 know that we participate both in the police
20 training at the Academy, and we participate in some
21 activities up at the prison, but I am not certain
22 with specificity what that is.

23 COUNCILWOMAN MILLER: Well, I would hope
24 that this is an area that you would look into and
25 figure out a way that the Law Department or

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2 somebody can really explain to the correctional
3 officers what they're costing the City. I would
4 have loved to have seen that money go towards
5 buying books or computers for schools rather than
6 to go pay a convicted felon for a suit because he
7 was abused.

8 MR. DIAZ: Madam Councilwoman, I am aware
9 that after there were some problems, as you know,
10 up in the prisons, that we did some sexual-
11 harassment training as a result of some obviously
12 public issues that occurred there. So we have done
13 training in the past, and I will make sure that we
14 respond to you as to whether or not there are
15 particular areas and issues that we feel that we
16 can participate in.

17 COUNCILWOMAN MILLER: Okay. One other
18 quick question and this relates to NTI, and I was
19 glad to hear you mention some of the Law
20 Department's involvement in NTI. In my Council
21 district, we have a problem and we need legal
22 assistance with cleaning up a number of
23 environmental sites, and the current owners are
24 dissolved or corporations that are dissolved or
25 otherwise long-gone, and we need legal help to move

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2 through the courts to remediate some of these
3 former industrial properties so we can clean them
4 up.

5 So that's an area that we'd like you to,
6 you know, prioritize in your office, 'cause with
7 NTI, that's really a big problem.

8 MR. DIAZ: What we can do immediately is
9 talk to our EPA lawyers to try to figure out
10 whether or not there is an issue of contamination
11 that we can get also the feds to come in and assist
12 us in the remediation issue, so I will have our EPA
13 folks contact your office.

14 COUNCILWOMAN MILLER: Okay.

15 MR. DIAZ: Or our environmental lawyers.

16 COUNCILWOMAN MILLER: All right. Council
17 President, I want to yield to Councilman Clarke.

18 COUNCILMAN CLARKE: Thank you,
19 Councilwoman.

20 Council President?

21 COUNCIL PRESIDENT VERA: I'm sorry?

22 COUNCILMAN CLARKE: The Councilwoman
23 yielded to me and I just wanted to wait until
24 you...

25 COUNCIL PRESIDENT VERNA: I'm sorry, I

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2 didn't hear you.

3 COUNCILMAN CLARKE: I had something to
4 say, and the Councilwoman yielded to me.

5 COUNCIL PRESIDENT VERNA: Oh.

6 COUNCILMAN CLARKE: And I wanted to wait
7 until you got --

8 COUNCIL PRESIDENT VERNA: Oh, very fine.

9 COUNCILMAN CLARKE: I'd like to make a
10 motion that we recess this public hearing
11 temporarily and move to a public meeting for the
12 purpose of an administrative motion.

13 (Duly seconded.)

14 COUNCIL PRESIDENT VERNA: It has been
15 moved and seconded that the hearing be recessed to
16 a public meeting.

17 All in favor will signify by --

18 COUNCILMAN MARIANO: Roll call, Madam
19 President.

20 COUNCIL PRESIDENT VERNA: All will signify
21 by saying aye.

22 Those opposed?

23 The ayes have it.

24 Can we have a roll-call vote, please. Do
25 we have a list?

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2 Councilwoman Blackwell?
3 COUNCILWOMAN BLACKWELL: Aye.
4 COUNCIL PRESIDENT VERNA: Councilman
5 Cohen?
6 COUNCILMAN COHEN: Aye.
7 COUNCIL PRESIDENT VERNA: Councilman
8 Cohen, was that "aye"?
9 COUNCILMAN COHEN: Aye.
10 COUNCIL PRESIDENT VERNA: Councilman
11 Longstreth?
12 COUNCILMAN LONGSTRETH: Aye.
13 COUNCIL PRESIDENT VERNA: Councilman
14 Mariano?
15 COUNCILMAN MARIANO: Aye.
16 COUNCIL PRESIDENT VERNA: Councilwoman
17 Miller.
18 COUNCILWOMAN MILLER: Aye.
19 COUNCIL PRESIDENT VERNA: Councilman
20 Rizzo?
21 COUNCILMAN RIZZO: Aye.
22 COUNCIL PRESIDENT VERNA: Councilman
23 Clarke?
24 COUNCILMAN CLARKE: Aye.
25 COUNCIL PRESIDENT VERNA: Councilman

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2 O'Neill?
3 COUNCILMAN O'NEILL: Aye.
4 COUNCIL PRESIDENT VERNA: Councilman
5 DiCicco?
6 COUNCILMAN DICICCO: Aye.
7 COUNCIL PRESIDENT VERNA: Councilwoman
8 Krajewski?
9 COUNCILWOMAN KRAJEWSKI: Aye.
10 COUNCIL PRESIDENT VERNA: Councilman
11 Nutter?
12 COUNCILMAN NUTTER: Aye.
13 COUNCIL PRESIDENT VERNA: Councilman
14 Kenney?
15 COUNCILMAN KENNEY: Aye.
16 COUNCIL PRESIDENT VERNA: Councilman
17 Ortiz?
18 COUNCILMAN ORTIZ: Aye.
19 Councilman DiCicco, did you vote?
20 COUNCILMAN DICICCO: Yes. Aye.
21 COUNCIL PRESIDENT VERNA: Councilman
22 Goode?
23 COUNCILMAN GOODE: Aye.
24 COUNCIL PRESIDENT VERNA: Councilwoman
25 Blondell --

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2 COUNCILMAN ORTIZ: Point of order. Are we
3 voting on the confirmation?

4 COUNCILMAN CLARKE: No.

5 COUNCIL PRESIDENT VERNA: No, on the
6 resolution.

7 COUNCILMAN ORTIZ: Wait.

8 COUNCIL PRESIDENT VERNA: On the approval
9 of the resolution, wasn't that it?

10 COUNCILMAN CLARKE: No.

11 COUNCIL PRESIDENT VERNA: What was -- I'm
12 sorry. What --

13 COUNCILMAN CLARKE: I just made a motion
14 to go into a public meeting.

15 COUNCILMAN RIZZO: Point of order.
16 (Inaudible.)

17 COUNCIL PRESIDENT VERNA: In a public
18 meeting?

19 COUNCILMAN CLARKE: Yes.

20 (Unintelligible; Council
21 members talking over each other.)

22 COUNCILMAN CLARKE: I made a motion that
23 we temporarily recess the public hearing for the
24 purpose of an administrative motion. That was
25 seconded and we were in the midst of taking --

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2 COUNCILMAN ORTIZ: I thought we were
3 voting on the confirmation.

4 (Unintelligible; Council
5 members talking over each other.)

6 COUNCILMAN KENNEY: I mean, just in my
7 humble opinion, Mr. Diaz is here as a courtesy to
8 us. He has given testimony, we all admire him and
9 want to support him and want to vote for him. This
10 type of maneuver in the midst of his confirmation
11 hearing and potential vote is totally out of order,
12 I believe, and totally insulting to Mr. Diaz.

13 I wish we could simple --

14 COUNCILMAN CLARKE: (Inaudible.)

15 COUNCILMAN KENNEY: May I finish my point,
16 please? Thank you.

17 I would ask the Chair to allow us, if
18 we're going to vote on Mr. Diaz's appointment,
19 which I am very ready to do, that we do so without
20 embroiling him in some maneuver.

21 Thank you.

22 COUNCILMAN CLARKE: Madam Chair?

23 COUNCILMAN GOODE: A point of order, Madam
24 Chair.

25 COUNCIL PRESIDENT VERNA: Yes, the Chair

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2 recognizes Councilman Goode.

3 COUNCILMAN GOODE: Councilman Kenney's
4 issue that he raised was not a point of order.

5 COUNCIL PRESIDENT VERNA: I'm sorry. The
6 stenographer did not hear you.

7 COUNCILMAN GOODE: Councilman Kenney's
8 points were not a point of order.

9 COUNCILMAN KENNEY: Point of order again.
10 I'm waiting for the Chair's ruling on my point of
11 order.

12 COUNCILMAN GOODE: Excuse me.

13 COUNCILMAN KENNEY: As opposed to
14 individual Council members ruling on my point of
15 order.

16 COUNCILMAN GOODE: As a matter of
17 procedure, you were going to move from a public
18 hearing into a public meeting. Councilman Mariano
19 asked that we have a roll call on the movement from
20 a public hearing into a public meeting for the
21 purpose of entertaining this motion.

22 COUNCILMAN KENNEY: Which motion?

23 COUNCILMAN GOODE: There was a motion on
24 the floor to consider whether to move from a public
25 hearing into a public meeting to entertain this

1 1/30/02 COMMITTEE OF THE WHOLE - RES. 010672
2 motion that's been distributed to members of
3 Council that -- and I'm calling for the previous
4 question of --
5 COUNCILMAN ORTIZ: Madam President, point
6 of order.
7 COUNCILMAN GOODE: -- of whether we move
8 into that public meeting or not.
9 COUNCILMAN ORTIZ: Point of order, Madam
10 Chair.
11 (Unintelligible; Council
12 members talking over each other.)
13 COUNCILMAN GOODE: That is a point of
14 order because there was a previous question --
15 COUNCILMAN ORTIZ: Point of order. There
16 was a confirmation hearing going on and --
17 COUNCILMAN KENNEY: The point of order is
18 that the original --
19 (Striking of gavel.)
20 COUNCIL PRESIDENT VERNA: I ask that --
21 COUNCILMAN ORTIZ: We have a confirmation
22 going on and when you move to move from a public
23 hearing to a public meeting, it usually means to
24 vote on the hearing that you're currently holding.
25 COUNCILMAN GOODE: But if there are nine

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2 people -- if there are nine people who are --

3 (Unintelligible; Council

4 members talking over each other.)

5 COUNCILMAN ORTIZ: And to present a
6 resolution and put it on my desk at this point with
7 an issue that was decided yesterday by the Mayor --

8 COUNCILMAN GOODE: If the Chair is going
9 to entertain a motion --

10 (Unintelligible; Council

11 members talking over each other.)

12 COUNCILMAN ORTIZ: It's underhanded and --

13 (Striking of gavel.)

14 COUNCIL PRESIDENT VERNA: Please.

15 COUNCILMAN ORTIZ: It's underhanded.

16 COUNCILMAN GOODE: Like yesterday.

17 COUNCILMAN KENNEY: I apologize to
18 Mr. Diaz.

19 COUNCILMAN CLARKE: I respectfully
20 apologize to Mr. Diaz also, but we have business
21 that we need to take care of.

22 COUNCIL PRESIDENT VERNA: Councilman
23 Clarke, the purpose of your motion was so that we
24 could consider the resolution.

25 COUNCILMAN CLARKE: No, Council President,

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2 that was not the purpose of --

3 COUNCIL PRESIDENT VERNA: To take it to
4 the public meeting?

5 COUNCILMAN CLARKE: The purpose was to
6 recess temporarily this public hearing and go into
7 a public meeting. I did not indicate --

8 COUNCIL PRESIDENT VERNA: And for the
9 purpose of the public meeting would be, I assume,
10 to consider the resolution.

11 COUNCILMAN CLARKE: No.

12 COUNCIL PRESIDENT VERNA: No? What was
13 the purpose of the public meeting?

14 COUNCILMAN CLARKE: The purpose of that
15 was to present a motion that required a scheduling
16 of a hearing on Bill No. 010529 so Council can
17 promptly consider amendments in order to adopt a
18 compromised redistricting plan.

19 COUNCIL PRESIDENT VERNA: We don't have a
20 copy of that motion. And this is -- I thought you
21 were referring to the bill that we were -- the
22 resolution that we were considering.

23 COUNCILMAN CLARKE: No.

24 COUNCILMAN ORTIZ: Madam Chair, there was
25 a point of order as to procedure. I think the

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2 introduction of resolutions -- and I'd like Rick
3 and the parliamentary to judge on this. I think
4 the passing of -- the introduction of resolutions
5 are done within a scheduled Council hearing. This
6 is not a scheduled Council hearing; this is a
7 hearing on, one, the confirmation of Mr. Diaz and
8 on the tax plan of Mr. Saidel.

9 Resolutions, bills, and ordinances are
10 introduced within scheduled Council hearings.
11 There will be a scheduled Council hearing on
12 Tuesday. At that point, we will take on the issue
13 to either override or to not override the veto of
14 the redistricting issue, and then we should be able
15 to take on the issue of introduction of new bills
16 to be able to deal with redistricting.

17 COUNCIL PRESIDENT VERNA: Our attorneys
18 are conferring.

19 COUNCILMAN CLARKE: Madam President,
20 respectfully, I did not introduce a resolution; I
21 made a motion on the floor. This is a Committee of
22 the Whole. Based on the laws of Council, I am able
23 to do that. This is not a resolution that is
24 required to be circulated 24 hours before this
25 particular Committee of the Whole.

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2 (Unintelligible; Council
3 members talking over each other.)

4 COUNCILMAN CLARKE: This is a motion on
5 the floor that was duly seconded. We had a voice
6 vote, we have now requested a roll-call vote.

7 COUNCILMAN GOODE: Point of order, Madam
8 President.

9 COUNCIL PRESIDENT VERNA: Excuse me just a
10 moment, please.

11 COUNCILMAN COHEN: I didn't hear the exact
12 words.

13 (Unintelligible; Council
14 members talking over each other.)

15 COUNCILMAN COHEN: I assumed the motion
16 was a motion to go into the public meeting. That's
17 what --

18 COUNCIL PRESIDENT VERNA: I assumed that
19 it was for the purpose of considering the
20 resolution of confirmation, and I'm sorry that I
21 was distracted.

22 COUNCILMAN COHEN: We can't hae a
23 committee hearing unless it's been advertised in
24 advance.

25 COUNCILMAN CLARKE: That's not true,

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2 Councilman. A member can make a motion at any time
3 in a public hearing.

4 COUNCIL PRESIDENT VERNA: Would you be
5 able to address this, Rick?

6 COUNCILMAN NUTTER: Can I have a point of
7 information, please. Could any of the members make
8 reference -- there's been reference made to the
9 rules. Can someone point out what particular rule
10 they're talking about with regard to this proposed
11 procedure? It would be helpful if we could just
12 read it. What is the --

13 COUNCILMAN CLARKE: Councilman, it is a
14 right of a member to make a motion in the Committee
15 of the Whole in a public hearing.

16 COUNCILMAN NUTTER: I understand that,
17 Councilman, I'm not disputing that. I'm just
18 asking, could someone point out to me in the rules
19 the issue that's being raised and the procedure
20 that's being utilized. I'd just like to understand
21 that.

22 COUNCILMAN CLARKE: Well, I'm not raising
23 that issue and then I have to talk to other Council
24 members.

25 COUNCILMAN NUTTER: Can someone point out

1 1/30/02 COMMITTEE OF THE WHOLE - RES. 010672
2 the -- or could you, Councilman, point out in the
3 rules what it is that you're referring to by way of
4 the making of the motion in the Committee of the
5 Whole. What rule is being utilized?

6 COUNCILMAN CLARKE: Councilman, I made a
7 motion; I am able to make a motion in the Committee
8 of the Whole.

9 COUNCILMAN NUTTER: I appreciate that.

10 COUNCILMAN CLARKE: I did not question
11 that motion.

12 COUNCILMAN NUTTER: I hae to apologize.

13 COUNCILMAN CLARKE: If other
14 Councilmembers question that motion, it is there
15 responsibility to --

16 COUNCILMAN NUTTER? What was the motion?

17 COUNCILMAN CLARKE: I'm sorry?

18 COUNCILMAN NUTTER: I apologize. I was
19 not here for the motion, and when I came in, I
20 thought we were voting on the Solicitor. What was
21 the motion?

22 COUNCILMAN CLARKE: I made a motion, it
23 was duly seconded to --

24 COUNCIL PRESIDENT VERNA: There's a point
25 of order on the floor.

1 1/30/02 COMMITTEE OF THE WHOLE - RES. 010672

2 Councilman Goode?

3 COUNCILMAN GOODE: Madam President, I have
4 infinite confidence in your ability to maintain
5 order in this Council, and I was making a point of
6 order. I think where we're at is where you said,
7 Let's move into a public meeting from a public
8 hearing.

9 COUNCIL PRESIDENT VERNA: But I assumed
10 that it was regarding the resolution for Mr. Diaz
11 that we were considering.

12 COUNCILMAN GOODE: At that point,
13 Councilman Mariano said, Let's hae a roll call. If
14 someone wants to clarify his motion or he wants to
15 clarify his motion that we move into a public
16 meeting from a public hearing for the purpose of
17 entertaining this motion, not a resolution, but his
18 motion, that's fine. If someone wants to make a
19 motion again, I'll make a motion that we move from
20 a public hearing to a public meeting for the
21 purpose of entertaining his motion that's been
22 distributed to all members of Council that are
23 present if someone will second it.

24 (Duly seconded.)

25 COUNCILMAN GOODE: And having been moved

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2 and seconded, the issue is whether you want to call
3 for a question a roll-call vote on whether we will
4 move from a public hearing into a public meeting to
5 entertain this motion.

6 There are nine people, as their signatures
7 indicate, that want to move into a public meeting
8 from a public hearing, that's that.

9 COUNCIL PRESIDENT VERNA: Councilman
10 Clarke, can I see you please.

11 (Councilmembers confer
12 privately among themselves off the
13 record.)

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1 1/30/02 - WHOLE - PUBLIC MEETING

2 (Striking of gavel.)

3 COUNCIL PRESIDENT VERNA: We are now back
4 into our public meeting.

5 Someone wants to be recognized? The Chair
6 recognizes Councilman Nutter

7 COUNCILMAN NUTTER: Thank you, Madam
8 President.

9 Madam President, I've had an opportunity
10 to talk with Councilman Clarke about the issue at
11 hand and the concern about having a hearing
12 scheduled on a particular bill. By way of the
13 conversation between myself and the Councilman, and
14 I think there's still good faith between the two of
15 us, Madam President, I am asking if you would make
16 an announcement with regard to the scheduling of a
17 hearing on Thursday, February, 7th, at 10 o'clock
18 a.m. here in Council chambers with regard to Bill
19 No. 010529; and further ask that you would direct
20 the Chief Clerk and any other parties to take the
21 necessary steps to schedule such a hearing.

22 And it's my understanding, Madam
23 President, that with your making that announcement
24 in the hearing, based upon that announcement,
25 Councilman Clarke will have some comments

1 1/30/02 - WHOLE - PUBLIC MEETING

2 subsequent to your announcement.

3 COUNCIL PRESIDENT VERNA: Thank you.

4 We did have this discussion earlier, and I
5 have just asked for our formal request list for a
6 public hearing that Bill No. 010529 will be
7 scheduled for a public hearing on Thursday,
8 February 7th, at 10 a.m. It is being delivered to
9 the Chief Clerk.

10 COUNCILMAN CLARKE: Madam President, thank
11 you ery much.

12 And may I say, I'd like to, first of all,
13 apologize to Mr. Diaz for his discomfort during all
14 of this. As you know in this particular chamber,
15 there has been numerous times when things didn't go
16 necessarily as scripted, and I just want to
17 reiterate to you, Madam Council President, that
18 there was no intention to embarrass neither you or
19 this illustrious body, and want to thank you for
20 that.

21 And I also would like to formally withdraw
22 the motion that I had put on the floor earlier.

23 COUNCIL PRESIDENT VERNA: Thank you very
24 much.

25 Anyone else have any statements?

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2 (No response.)

3 COUNCIL PRESIDENT VERNA: Seeing none,
4 this concludes our public meeting. We will now
5 return to our public hearing regarding Resolution
6 No. 010672.

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1 1/30/02 - WHOLE - PUBLIC MEETING

2 Mr. Diaz, I apologize to you from the
3 bottom of my heart. I am sorry that this all had
4 to happen while you were testifying. So if you
5 will continue, I believe there -- were there any
6 other -- I believe there were other lights on at
7 the time, and people were not recognized to ask
8 questions or make comments of Mr. Diaz.

9 Does anyone have any questions or
10 comments?

11 COUNCILMAN ORTIZ: Madam Chair?

12 COUNCIL PRESIDENT VERNA: The lights are
13 not going on.

14 COUNCILMAN ORTIZ: Madam Chair, I move for
15 the approval --

16 COUNCIL PRESIDENT VERNA: Excuse me. I
17 believe Councilwoman Blackwell, your light's not on
18 either.

19 COUNCILWOMAN BLACKWELL: Thank you, Madam
20 President.

21 I would like to say that I have known and
22 worked with Mr. Diaz for more years than I suppose
23 either of us can remember -- certainly Lucien
24 Blackwell before me. We commend him for not only
25 the work that he did in Washington with HUD, but

1 1/30/02 - WHOLE - PUBLIC MEETING

2 for the work that he has done throughout the City
3 for the total community, the Latino community, the
4 African-American community, and the total
5 community. His has been a lifetime of service and
6 it does us great.

7 It is an honor for us to be a part of his
8 confirmation hearing today and we look forward to
9 working with him in every way.

10 Thank you.

11 COUNCIL PRESIDENT VERNA: Thank you.

12 The Chair recognizes Councilman Ortiz.

13 COUNCILMAN ORTIZ: Madam Chair, I move
14 that we confirm Nelson Diaz as City Solicitor.

15 (Duly seconded.)

16 COUNCIL PRESIDENT VERNA: All in favor
17 will say aye.

18 Those opposed?

19 The ayes have it and confirmation has been
20 voted on.

21 (Standing ovation.)

22 COUNCIL PRESIDENT VERNA: Resolution No.
23 (inaudible) will be continued to another date, so
24 this concludes the public hearing of the Committee
25 of the Whole. Thank you all very much.

1 1/30/02 - WHOLE - PUBLIC MEETING
2 (Proceeding ends at 4:12 p.m.)
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RE: Resolution No. 010672

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Josephine Cardillo

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Registered Professional Reporter
and Notary Public

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