

**SDCERS Board Special Meeting January 30, 2006 8:30a.m. at SDCERS**  
***Reported by Patricia Karnes***

Board Present: Murray, Sullivan, Flynn, Hebranks, Meyer, Preovolos, Sheffler, Kipperman. Absent: Thomson.

SDCERS attorneys: Roxanne Parker-Interim General Counsel for SDCERS, Harvey Leiderman of Steefel, Levitt & Weiss (outside counsel).

Also: Aguirre, with several of his attorneys, Representative from Scott Peters' office, two FBI men, Chapin's and Grissom's attorneys, media, Ty Rogers and Patricia Karnes from City of San Diego Retiree Association, etc.

Order the official CD recording from Donna Hawthorne, Board Secretary. Email: dhawthorne@sandiego.gov  
There is no TV recording of this meeting.

(Due to complications and complexity of the meeting, I'll be ordering the CD to fill in some of the pieces. It was as if three Shakespearean plays were rolled into one. I notice my note taking tended to freeze each time Preovolos tried to prevent Aguirre's comments.)

**ACTION PLAN OF SDCERS' NEW NAVIGANT COMMITTEE -GOALS**

Next meeting: February 10, 2006 9:00a.m. at SDCERS

Mark Sullivan, chair for the new Navigant Report Committee, presented five areas for the committee: Restore Funding Level and Actuarial Soundness, Governance and Education, Safeguarding and Maintaining Independence, Contingency Planning in Event of City Bankruptcy, and Retiree Health Care. (While health insurance is paid by the City now, health care administrative costs are still being paid by SDCERS, and this must be resolved.) He concluded with three discussion points: Priorities, Available Resources, Timeline.

Preovolos read from a letter sent by an applicant for head administrator of SDCERS, Grissom's previous position, offering ideas to make the job more attractive: focus on substance rather than the emotion of the issue, independence of Mayor's appointees, internal auditor who would report to an audit committee as well as the Board, etc.

Aguirre spoke up, saying that he was concerned about the direction the Board was sliding. He noted that any change in the composition of the Board must go to the voters per the Charter and the Board had limitations in the Charter and Muni Code. He advised the Board to undo the "illegal actions". In particular, he asked the Board to re-consider a new title-name for SDCERS that Sullivan had suggested. Aguirre added that Saathoff had been trying to de-couple SDCERS from the City in the past. He also pointed out that the Mayor had asked the appointees to resign because no one believes that the Board appointees could act independent any more. As a result, the Board decided to retreat on the name change issue.

Meyer disagreed with Sullivan's committee priorities, suggesting that they focus

on bankruptcy, or if the City becomes a bad borrower. How do you want to judge the City's credit worthiness, he asked.

Aguirre, who was sitting in the back of the meeting room, appeared to make frequent exits, apparently he called the Mayor, as he returned to say that the Mayor is not planning on bankruptcy.

(At other moments, it almost appeared that the Board was using the term "bankruptcy" as a cover code for planning financial separation from the City, in order to keep paying "illegal benefits". But I must be mistaken in this.)

Hebranks hoped Sullivan's estimate of a year for the committee to cover the topics would not take that long.

Sheffler pointed out there needed to be interactions with Unions on health care, and other issues.

Flynn said that the Navigant Report is the first time articles were put together and it points out that the problem is the result of plan action by staff and previous Boards. Partnership with the City caused the problem, use a partnership to resolve it, he advised.

Kipperman added that they don't have to do one thing at a time.

Murray wanted to start with stopping the cozy arrangement of the money due from the City. He felt the need for independence from political influence and he noted that the San Diego Union Tribune reveals continuing political interference. Preovolos agreed with Hebranks that the Board has a need to set a time period and see results in 90-100 days. Preovolos' remarks included four thoughts: 1) In the history of SDCERS, this Board is stunning. 2) What is independence: to or from? 3) The City should stand up to it's own mistakes. 4) The Board will correct old mistakes.

#### ACTIVE DROP'S 3% TO THE CITY'S UNFUNDED ACCOUNT

At this point Sullivan asked Preovolos to give SDCERS' staff direction to place the topic of the 3% with-holding on February's agenda. If DROP actives are paying, why are not retirees also paying down the unfunded liability, Sullivan asked. Whose interest was considered when the City created this, he also asked. If it is not resolved, SDCERS will be pulled into the police lawsuit, he summed up.

Sullivan acknowledged that Bob Wilson, SDCERS staff, was preparing a report for February. Sullivan wanted to ask Aguirre about this also. Aguirre went forward to answer Sullivan, but Preovolos said this was not on the agenda until next month and therefore Aguirre could not answer Sullivan.

#### INDEMNIFICATION OF GRISSOM AND CHAPIN

##### Public Comment

Three public comments on the virtues of Chapin and then Chapin spoke, more than three minutes, giving the Board background and setting the stage for her lawyer to present her case for indemnification.

Aguirre began, using three minutes of comment time donated by another attorney. He said that he had the right to be legal counsel, that a year ago he had warned of unlawful behavior and now that person has been indicted. He added

that the Board continued to ignore his warnings. Last year, he pointed out, this Board had underfunded SDCERS again.

Independence means giving you advice that you don't want to hear, he directed at Preovolos and the Board. He argued that there was no basis to indemnify an individual engaged in criminal indictments.

Then Preovolos said that Aguirre had had his 3 minutes and he could not add 3 minutes from his own speaker slip. Aguirre pointed out that Chapin had been allowed more than 3 minutes, etc. Aguirre continued, saying that the Mayor wanted the Board out because they don't want to hear.

Aguirre listed reasons Chapin should not qualify for indemnification: Chapin continued to give Diann Shipione problems (Diann was cleared by the Ethics Commission's investigation. Was this what Aguirre referred to?), Chapin abused Closed Sessions, legal action was necessary before Chapin agreed to turn over legal documents, Aguirre added.

You think there is no judgement day, Aguirre told the Board, ...but next year will be much worse. Resign as the Mayor has requested. He gave them more information: Saathoff had wanted independence and Chapin had lined up a SDCERS position for herself at the Board's retreat. She O.K.ed MP I and MP II. Aguirre asked where was Roxanne Parker's withdrawal, in writing, from this discussion, as she would be in conflict of interest (Chapin had been her supervisor.) Harvey Leiderman functioned as outside counsel for the Board as a result of Roxanne's conflict.

"Continue at your own peril", advised Aguirre. Preovolos responded that State Proposition 162 (regarding political control over retirement systems) has no power with the politicians of San Diego, and that he, Preovolos, was offended, again, by Aguirre.

#### INDEMNIFICATION DISCUSSION - GRISSOM

Harvey Leiderman advised the Board that they need not act in haste, they could postpone even if the defense attorneys were looking at early February dates. It was important for them to understand the indictments.

Grissom's attorney argued that Grissom was only charged because he didn't tell the Board, officially by July 2002, that Saathoff was getting presidential leave. This wasn't a secret, he argued because Chapin knew, the Council had voted on it the previous month, and the firefighters' union knew about it. Grissom only received the increased benefits that everyone else received. He mentioned that attorneys can't withdraw mid-case. He also mentioned indemnification would help in recruiting new staff.

Sullivan viewed the charge as political and wondered if Chapin and Grissom were little fish used to catch the bigger fish of City government. Sullivan wanted to indemnify in six month time periods, Harvey said indemnification must be conditioned now, not by pieces.

The indictment, Harvey added, does include multi- allegations regarding Grissom. On page 16/20 of the indictment it lists personal interest in MP II, personal job security in MP II, Grissom was involved with Saathoff to get Saathoff's presidential benefit, Grissom drafted part of MP II, Grissom schemed

to underfund SDCERS. Hebrank added that Navigant noted SDCERS staff assisted the City.

Flynn pointed out that Grissom was a conduit of information and that conduit should be open and it is important that new staff be aware of that. Flynn could not make all the findings to justify indemnification.

Harvey said it was important to read and understand the indictments. He told Kipperman that while Kipperman must determine if he regarded Navigant' report as facts, that Kipperman didn't have the task of judgement. Kipperman apologized for not having read the indictments and later abstained from voting on Chapin and Grissom.

Grissom's attorney asked to table the motion, so Chapin's attorney could make additional points. It was not tabled. Preovolos asked Chapin's attorney to speak to those points. Steve Madison said Chapin and Grissom should be allowed to present the best defense in a highly visible and political situation to level the playing field. He added that he was not aware of any corrupt intent as they only received the same benefits increases as other employees. So, in his view, they acted in good faith and in apparent interest of SDCERS when they carried out the interest of the Board.

When Aguirre requested to make a comment, Grissom's attorney agreed to hear Aguirre, so Preovolos went along. Aguirre seemed to say to Madison, Chapin's attorney, that Madison was a council/counsel, person (elsewhere?) and can't collect pay as Chapin's attorney from this Board, because he is using his position to make money. Madison didn't respond to Aguirre's comment at this point.

#### INDEMNIFICATION VOTE -SEVEN VOTES IN FAVOR REQUIRED

Meyer asked for a continuance, contingent on having enough trustees at the next meeting. He had not heard that any one would not be there. (Comments suggested that the Mayor's office is not appointing replacement members with the goal of crippling the Board's ability to act. Also that there is a run-off in the labor representative election.) Meyer said that Chapin and Grissom can't be thrown under the bus, in hindsight they would have made different decisions. Motion to continue was moved and seconded by Kipperman and failed.

Vote on Grissom's indemnification FAILS

Yes: Sullivan, Murray, Preovolos, Sheffler. No: Flynn, Hebranks. Abstain: Kipperman. Thomson absent.

#### INDEMNIFICATION DISCUSSION - CHAPIN

Madison joked that he must have the record for the fastest attack by Aguirre. He went on to make a case for Chapin's indemnification. All allegations point to Chapin's obligation to make public notice of Saathoff's presidential benefit, that public comment at meetings made this not a secret. Chapin received and accepted advice of fiduciary counsel. Aguirre's 3rd amended case has a demurrer filed by SDCERS. Chapin has an outstanding record and there is nothing in Navigant's report.

Aguirre made a point of order that Roxanne was source of Navigant's information

regarding Chapin and if Roxanne's participation today was disregarded, then must disregard her comments in Navigant.

Madison went on to explain Chapin's email that said that the Board had not reviewed the Presidential Leave and didn't need to. Madison said the leave was a benefit and benefits are approved by the City Council. Indictments make general references to a conspiracy about a scheme.

Sullivan added that others in the City are not charged and their actions were more involved in the plan to take money from the system.

Hebranks couldn't say that Chapin had acted in the best interest of the system. Preovolos said it was difficult to opine about what really happened. He added that the system transcends the individual.

Vote on Chapin's indemnification FAILS.

Yes: Sullivan, Murray, Preovolos, Sheffler. No: Flynn, Hebranks. Abstain: Kipperman. Thomson absent.

Madison asked if he could come back without prejudice for another vote in the future. Preovolos agreed.

Preovolos then expressed his gratefulness to the Board and the way they expressed their opinions.

Meeting adjourned just before noon.

Postscript: Jennifer Vigel quoted Aguirre in a San Diego Union Tribune article, on 1-31-06, page B3, entitled, "City won't pay legal fees for pair in pension case, Federal arraignment expected tomorrow": "All the other money being spent on counsel was trying to keep everybody together so nobody rats anybody else out."