

Laguna Honda Hospital Fallout Watchdogs, Whistleblowers, and Grand Juries

by Patrick Monette-Shaw

Fallout from Laguna Honda Hospital's patient gift fund scandal just keeps expanding, with citywide — not just District 7 — implications.

Between two Civil Grand Jury reports, and two Sunshine Ordinance complaints involving access to public records, San Francisco's Ethics Commission and the Controller's whistleblower program aren't faring well as a result, nor is the City's Department of Public Health.

One Civil Grand Jury report released June 20 — *San Francisco's Ethics Commission: The Sleeping Watchdog* — reported the City's Ethics Commission hasn't enforced the Sunshine Ordinance and has allowed Sunshine Task Force rulings to be ignored by City officials. One focus of its report is that Ethics Commission executive director John St. Croix wields excessive influence over Ethics Commission members, and appears to overreach his authority.

Another finding is that no City employees have ever been disciplined for failing to adhere to the Sunshine Ordinance.

The Grand Jury noted that one Ethics Commissioner acknowledges there is an expectation that Ethics Commissioners are to blindly support decisions made by executive director St. Croix to dismiss cases. Shockingly, all cases referred to Ethics are first reviewed by a single individual — St. Croix — to determine the merits and disposition of cases. The Grand Jury recommends that the full Ethics Commission hold hearings to review and vote on investigations recommended for dismissal by St. Croix.



City Attorney Dennis Herrera, a candidate for mayor and a protégé of former City Attorney Louise Renne, has a rotten open-government "Sunshine" record. Renne, Herrera's mentor, actively and very publicly opposed strengthening San Francisco's Sunshine Ordinance in 1999.

Photo: Courtesy of *Westside Observer*

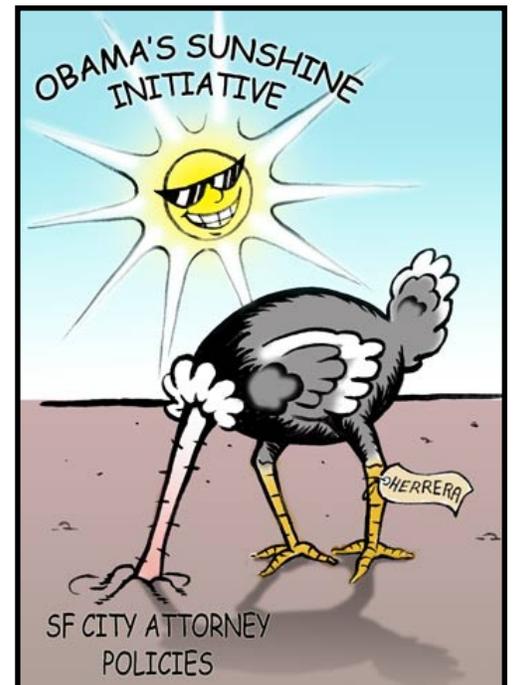
Lurking behind St. Croix's and Lediju's refusal-to-comply [with the Sunshine Ordinance] is City Attorney Dennis Herrera, whose office provides legal advice to both agencies. Some observers suspect the City Attorney is the ultimate barrier to open government in San Francisco.

A second Grand Jury report released in June — *Hunters Point Shipyard: A Shifting Landscape* — alleges San Francisco's Department of Public Health should "rigorously enforce conflict of interest guidelines governing dealings between its officials and the companies they are monitoring." It's about time somebody noticed rampant conflict of interest violations within DPH.

As I reported last month, the City Controller's whistleblower program and the Ethics Commission were found by the Sunshine Ordinance Task Force to have violated state public records law to release records, since both agencies seem hell bent on preventing release of whistleblower complaints that may expose potential wrongdoing at the highest levels of City government.

Two separate Sunshine complaints filed by this author resulted in both agencies being ordered to provide the requested records within five business days. Both agencies have refused to provide public records requested last January for over six months, and now both agencies are flouting the Sunshine Task Force's Orders of Determination to release the records, asserting they will not comply.

On June 13 and June 24, St. Croix notified the Sunshine Task Force that Ethics will not release the records requested, validating the Grand Jury's finding that Ethics simply ignores the Task Force's rulings. Tonia Lediju, the City Controller's manager of its whistleblower program, responded to the Task Force's order saying that the Controller's Office "respectfully disagrees" with the Task Force's Order of Determination, and her written response would serve in lieu of attending the Task Force's July 12 Compliance and Amendments Committee hearing.



Cartoon: Doug Comstock, courtesy of the *Westside Observer*

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Given their flat refusal to comply with the Task Force's Orders of Determination, will Lediju and St. Croix be disciplined? Under the Sunshine Ordinance, "willful failure shall be official misconduct." Such discipline is the purview of the Ethics Commission.

Link Between Whistleblower Complaints and Grand Jury

Even before two former DPH doctors at Laguna Honda Hospital — Derek Kerr and Maria Rivero — filed their third whistleblower complaint regarding misappropriation of Laguna Honda's patient gift fund in March 2010, they had previously submitted two other whistleblower complaints.

Their first whistleblower complaint in September 2009 alleged a potential conflict of interest involving Dr. Bob Cabaj and Davis Ja & Associates who may have been awarded a contract by Deborah Sherwood, Dr. Cabaj's Research and Quality Management Director in DPH's Community Behavioral Health Services section, in a clear conflict-of-interest situation.



The *Westside Observer* notes that Ethics Commission director John St. Croix, who earned a salary of \$137,897 in 2010, may also be a major stumbling block to implementation of Sunshine laws, though Ethics Commission Deputy Director Mable Ng, and City Attorney Dennis Herrera, often share the blame.

Their second whistleblower complaint, also in September 2009, was against Mitchell Katz, former Director of Public Health, regarding payments Katz received from Health Management Associates, a Chicago firm. HMA was first awarded a \$250,000 consulting contract in 2005 to examine integration of long-term care services between Laguna Honda Hospital and San Francisco General Hospital, and the "medical model of service" at LHH. The contract was amended to add another \$30,000 in services. Conclusions in HMA's 2005 report appear to have been written even before that consulting gig began.

The City Controller's on-line vendor payment system shows that between FY 08-09 and FY 10-11, HMA has been paid \$87,233, with an outstanding balance of \$161,516, totaling \$248,749. Other records show HMA had two concurrent contracts during this period totaling \$238,795. Since 2005, HMA is thought to have received over \$500,000 in contracts with San Francisco.

In 2008, Dr. Katz started receiving fees from HMA, which he collected through 2010. In 2009 HMA was awarded a new contract recommended by Katz and approved by the Health Commission.

Katz reported on his Form 700 Statements of Economic Interest that he received \$10,000 as a consultant to HMA in each of calendar years 2008, 2009, and 2010, for a total of \$30,000. DPH contracts Katz approved with HMA is another obvious conflict-of-interest case. Could it be that the whistleblower conflict-of-interest complaint against Katz is what drove Katz to suddenly resign to take a job in Los Angeles?

It's probably no coincidence the two whistleblower complaints in 2009 led the Grand Jury to acknowledge conflict of interest problems are rampant at DPH.

Foot Dragging at Ethics

Notably, the City Controller's Office lumped Kerr's and Rivero's two separate September 2009 whistleblower complaints into a single investigation, on the dubious pretext that both complaints were against the same City department and involved similar issues. San Francisco's Ethics Commission, which also received both whistleblower complaints, also appears to have lumped the two cases into its own single investigation.

The Ethics Commission reportedly referred the combined complaints to the District Attorney and the City Attorney in November 2009. The City Attorney declined investigating, but the District Attorney sat on the case for nine months before declining in July 2010 to press criminal charges and returned the case to Ethics, which has now been investigating the case for an additional 11 months.

While Ethics is charged with investigating conflict-of-issue complaints, it has literally sat for over 20 months — approaching two full years — on the two whistleblower complaints against DPH officials. Ethics now claims it is still investigating.

The *Sleeping Watchdog* Grand Jury report noted that Sunshine Task Force actions deserve timely hearings before the Ethics Commission, and that waiting for the District Attorney or City Attorney to inform the Ethics Commission they are not going to pursue a case causes unnecessary investigative delays.

Just as there is nothing in the City Charter that prevents the Controller's whistleblower program from concurrently investigating cases while Ethics is investigating the same case, there's also nothing that prohibits the Ethics Commission from concurrently investigating cases referred to the City Attorney or District Attorney following a 14-day period. The Grand Jury recommends that after the 14-day window, Ethics investigations should start promptly.

The Grand Jury's *Sleeping Watchdog* report also noted that the failure of the Ethics Commission to enforce Sunshine Task Force actions weakens the goal of open government, and reduces the effectiveness of the Sunshine Ordinance.

"The Ethics Commission is denying justice to the public through its delays and burial of complaints," said Dr. Rivero. "It should be reorganized or disbanded, since it appears to be wasting taxpayer money."

The Grand Jury is believed to still be working on yet another report regarding the City Controller's whistleblower program; the third Grand Jury report is expected to be released after the July edition of the *Observer* goes to print.

Isn't it a pity that although San Francisco voters have tried multiple times to strengthen our local whistleblower and open government laws, the two agencies charged in the City Charter with routing out government fraud and inefficiency — the Ethics Commission and the City Controller's whistleblower program — are asleep at the wheel, and it is only by profound luck that the citizen's Civil Grand Jury is now exposing in a series of reports the corruption of San Francisco's open government legislation?

It shouldn't take six months of wrangling to order release of records under the Sunshine ordinance. And it shouldn't take two years to investigate whistleblower complaints that should be made public.

Where will this end? When will this end? When all of the "Get Out of Jail Free" cards, or "Get Out of Town Free" cards are issued to City officials to let them off of the "transparency and accountability" hook?

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