

# Wiener Out of Control

## ***Skullduggery at Board of Supervisors leaves City Hall wide open for corruption to run rampant***

by Patrick Monette-Shaw

San Franciscans should not only be alarmed by the now four-month complete shutdown of our local Sunshine Ordinance Task Force (SOTF), we should pay close attention to how the shutdown of the SOTF came to pass.

As the *Observer* reported in July in “Who Killed Sunshine?,” Supervisor Scott “*The Tinkerer*” Wiener single-handedly killed open government by shutting down our local Sunshine Task Force, leaving San Franciscan’s without any citizen oversight of access to public meetings and access to public records, and leaving City Hall wide open for corruption to run rampant. To support his false claim that the Sunshine Task Force engaged in official misconduct of its own and had undermined transparency in government, Wiener failed to provide any evidence and lied at least four times during a full Board of Supervisors meeting on May 22.

He wrongly claimed on May 22 that the Task Force had exempted itself from the San Francisco Charter, and wrongly claimed the Task Force had said “How dare you shine sunlight on us?” when the Task Force had never claimed any such thing. Wiener claimed he asked for an “audit” of the costs of

compliance with the Sunshine Ordinance, when in fact he asked for a “survey.” Wiener also inflated the average number of times City employees had to attend hearings to resolve Sunshine complaints.

**Official Misconduct** Clearly peeved that the Task Force had referred him to the Ethics Commission for official misconduct in September 2011 over the Parkmerced development deal, Wiener engineered kicking physically disabled member Bruce Wolfe off of the SOTF on May 22, filling the remaining “member of the public” seats with nondisabled appointees.

Wolfe was the only physically handicapped member of the Task Force, which now has been unable to meet for four months due to lacking a physically disabled member. The Board of Supervisors knowingly removed the only disabled member of the SOTF and failed to appointment a disabled replacement, as required by Sunshine Ordinance Section 67.30(a). The Supervisors did this, despite the fact that over half of them are lawyers who should have known of this legal requirement in the Sunshine Ordinance — including Supervisor Scott Wiener, a Harvard Law School graduate and a former San Francisco Deputy City Attorney.

**Non-Compliance Adjournments** On both June 6 and July 11, the Task Force voted to adjourn its meetings without taking any action on its agendas due to not being in compliance with Sunshine Ordinance Section 67.30(a). The Task Force subsequently cancelled its August meeting for being non-compliant with Section 67.30(a), and also cancelled its September meeting, as a disabled member has not yet been appointed to the Task Force.

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**Last Sunshine Task Force:** Suzanne Manneh, Allyson Washburn, Vice Chair Bruce Wolfe with guide dog Lady, Jay Costa, Richard Knee, Deputy City Attorney Jerry Threat, Sunshine Chair Hope Johnson, and SOTF Administrator Andrea Ausberry (prior to the Board of Supervisors **Great Sunshine Purge of 2012**).

## Wiener's Latest Misinformation

On July 17, during a hearing to re-appoint Michael Antonini to the Planning Commission, Supervisors David Campos and Jane Kim criticized Wiener's handling of the SOTF appointments on May 22. Campos and Kim noted that the SOTF members removed on May 22 were ousted because they took a "different approach" than members of the Board of Supervisors may prefer.

**History Re-written** True to form, Wiener didn't skip a beat, using revisionist history to lie again on July 17. Wiener claimed that the actions to remove Task Force members on May 22 were "primarily taken by the Rules Committee and to a lesser extent by the full Board [of Supervisors]." Wiener repeated his remarks that "the Sunshine Task Force was being run in an incompetent manner which violated the City's charter," and that it was the Rules Committee that "recommended removing almost all the [SOTF] incumbents except for one and the [full] Board voted to remove that final incumbent. So the majority of the removing happened before [the nominations] got to the full Board," Wiener testified on July 17.

This is patently untrue, and Wiener's revisionist history-making:

First, the Rules Committee forwarded a recommendation to re-appoint Member Bruce Wolfe, and it was, indeed, the full Board that overturned the Rules Committee recommendation, the lie being that the full Board did not play a "lesser extent" role, they played a very aggressive role under Wiener's insistence to remove Wolfe.

Second, of the 10 vacancies on the Sunshine Task Force considered on May 22, only half (five) were new appointees. Wiener incorrectly claimed on July 17 the remaining five were removed by Rules, since one member (Wolfe) was actually recommended for re-appointment by Rules, and the other four were continued to the call of the Rules Committee's chair.

**"Different Approach" Proviso** Indeed, several of the Supervisors expressed concern on July 17 that removing appointees such as Antonini or Wolfe from boards and commissions based solely on whether the appointees exercise a "different approach" than would the Board of Supervisors will open a can of worms. Indeed, what seems to annoy "*The Tinkerer*" Wiener the most is that while the Board of Supervisors can review or modify decisions of the Planning Commission, the Board has no authority to review or modify decisions made by the Sunshine Task Force.

Wiener wrongly testified on May 22 that the Task Force had been grossly inefficient, and had defied a City Attorney's opinion and a City Charter rule as the basis for his efforts to purge the Task Force of previous members. Truth is, Wiener appeared to remove Task Force members because of the "different approach" the SOTF used arriving at its conclusions, and it's the difference in approach that put Wiener in a Tinkerbelle-like tizzy.

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## How Did We Get Here?

On Thursday, May 17, 2012, the Board of Supervisor's Rules Committee considered the nominations of 23 applicants for appointment to 10 of the Sunshine Task Force's 11 seats. Following testimony and debate, the Rules Committee forwarded to the full Board of Supervisors the names of six applicants recommended for appointment to six of the SOTF's seats, including Bruce Wolfe for Seat 8, the seat Wolfe has held for a number of years. For unknown and unstated reasons — but most likely at Wiener's request — Supervisor Mark Farrell introduced a motion on May 17 to "divide" the recommendation for Wolfe's appointment from the other five recommendations; but Wolfe was recommended separately for re-appointment.

The Rules Committee also recommended on May 17 to place appointment of four other SOTF seats to the "Call of the Chair," continuing those appointments to a future Rules Committee meeting when its chairperson schedules a subsequent hearing to finalize the four remaining appointments.

The SOTF appointments were first received on May 9, and assigned to the Board’s Rules Committee for a hearing eight days later on May 17. The full Board considered the Rules Committee recommendations during a Committee Report on May 22, when Wiener engineered overturning the Rules Committee recommendation to re-appointment Wolfe — throwing Wolfe off of the Task Force, as the *Westside Observer* reported in our July issue.

**Wiener’s Crony Appointment** Wiener’s nominee to replace Bruce Wolfe was Todd David, who appears to have had no qualifications to serve on the Sunshine Task Force. Indeed, Mr. David’s application listed no qualifications to serve. Mr. David’s Form 700, *Statement of Economic Interests* — a document required as part of SOTF’s application process — failed to include the pre-printed form, Schedule B, *Interests in Real Property*. Instead, Mr. David submitted a written statement in lieu of Schedule B in which he neglected to report the appraised value of a multi-family residential property he owns at 384 Eureka Street appraised at \$2.1 million, and neglected to report rental income he receives from the multi-unit property.

Notably, although the Rules Committee had only considered David’s typed statement, rather than the required Schedule B, the Rules Committee did *not* recommend Mr. David for appointment to the Task Force. It was Wiener who chose to substitute Todd David in place of the Rules Committee’s recommended appointee, Bruce Wolfe.

Although David applied for a single seat (SOTF Seat 9), Wiener’s substitution assigned Mr. David to Seat 8, the seat the Board of Supervisors has historically advertised as reserved for a physically disabled member.

**Complaints** Following a complaint to the Board of Supervisors that it should not have accepted a typed statement in lieu of the Schedule B, a Board clerk replied that it would be disclosed only if Mr. David submitted the actual Schedule B to the Ethics Commission; the Board’s clerk appeared unwilling to ask Mr. David to resubmit the required form.

Neither the Board of Supervisors nor San Francisco’s Ethics Commission took action on David’s substitution of a written statement in lieu of Schedule B. So a complaint was filed with the California Fair Political Practices Commission (FPPC) regarding Mr. David’s substitution of a typed statement in lieu of Schedule B. The FPPC did take action, and determined David had violated California’s Political Reform Act by failing to disclose his interests in real property, and issued a warning letter to Mr. David on August 22, after he submitted an amendment including the proper Schedule B.

### More of Mr. David’s Forgetfulness

During a Board hearing on his appointment to SOTF, Mr. David stated that “There’s nothing more important for government than to be transparent so that the voters who have elected you know that you’re making really good decisions.”

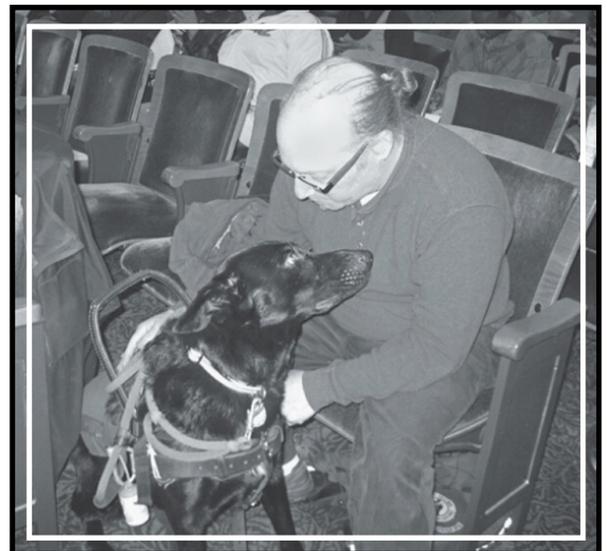
David’s “transparency” seems to be entirely opaque. In addition, there were a number of other oddities on his application to the SOTF, and his responses to transparency questions are troubling.

**Discrepancy** When asked why his application hadn’t indicated that the California Secretary of State suspended “TSD Capital, LLC’s” (Todd Stuart David Capital) privileges to operate as a business entity in California in December 2011 for

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Disabled Task Force Vice-Chair Bruce Wolfe with his guide dog Lady, joins the audience at the Task Force meeting after his removal on charges cooked-up by Supervisors Scott Wiener and Mark Farrell.

© Photo: courtesy of Westside Observer Newspaper

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failure to meet franchise tax requirements because he failed to file a return or failed to pay taxes, David responded only that he needed to speak with the Secretary of State about this “discrepancy,” since David claims he filed a “final” tax return for his TSD Capital business “three or four years ago” dissolving that business. Why the State took action in December 2011, and Mr. David is only now learning that a “discrepancy” exists with State records is curious, at best.

**Can’t Recall** When asked why he submitted his application on April 27, he couldn’t recall. The date April 27 is significant as being the last date of any SOTF appointee’s term, and the date on which previous member’s appointments were scheduled to end.

**Insider Maneuver** When asked why he had faxed his SOTF application to Supervisor Wiener’s fax machine, instead of to the fax machine for the Clerk of the Board, David lamely claimed he had Wiener’s fax number handy, and had asked Wiener’s staff to just walk his application down the hall to the Clerk of the Board. Why did David seek Wiener’s intervention, when Wiener doesn’t sit on the Board’s Rules Subcommittee?

Notably, Wiener does sit on the Board’s Land Use and Economic Development Subcommittee, which subcommittee may be asked in the future for a land use change to convert a parking lot in Noe Valley into a mini-park to prevent the parking lot being sold and turned into condos. Mr. David serves as the president of Resident’s for Noe Valley Town Square, an organization planning to secure a \$2 million *Open Space Funds* commitment from the City’s Recreation and Parks Department. Asked if anyone is hoping that by Mr. David serving on the SOTF it may help the Resident’s for Noe Valley Town Square secure the \$2 million in Open Space Funds, he responded that “the project will or will not receive funding base [sic] on its own merits.”

**“I don’t recall”** When asked why he hadn’t listed several of his civic affiliations on his SOTF application — as Executive Director of edMatch, and as a steering committee member of Parents PAC (a political action committee) — Mr. David replied “I don’t recall” why he had omitted both affiliations from his application, calling into question whether Mayor Ed “I Don’t Recall” Lee is now coaching others on how to use former Mayor Willie Brown’s “I don’t recall” line of defense.

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## Parallels to the Mirkarimi Case

On August 16, San Francisco’s Ethics Commission deliberated its findings against Sheriff Ross Mirkarimi. Troublingly, Mirkarimi’s lawyer David Waggoner noted that the Ethics Commission had not sustained in full any of the six charges in the amended charging document with which Mayor Ed Lee eventually charged Mirkarimi.

Waggoner noted that the Ethics Commission had instead substituted some sort of a single hybrid charge that it made up on the spot on August 16, combining portions of separate charges that weren’t completely sustained into a fresh new charge that surfaced just seconds before Ethics concluded its deliberations, a new charge Mirkarimi hadn’t even been aware of during the Ethics Commission’s months-long kangaroo court. Waggoner also noted that if the Ethics Commission rejected some of the counts against Mirkarimi, by the clear language of the Charter the Commission wouldn’t be sustaining all of the charges, and if Ethics wasn’t going to sustain all of the initial charges, then the Commission couldn’t recommend Mirkarimi be removed, because the Charter’s clear language doesn’t give the Ethics Commission the option to pick and choose among some charges, but not other charges.

**Grave Concerns** To his credit, Ethics Commission president Benjamin Hur was the lone dissenting vote against finding Mirkarimi guilty of official misconduct. Hur indicated he had “grave concerns” that overly-broad interpretations of which behavior constitutes official misconduct may give mayors a “strong tool” — and perhaps free license — to attempt removing political opponents inappropriately.

The parallels between the Mirkarimi case and the SOTF appointments are striking: Unsupportable and false accusations were simply tossed out by Mayor Lee against Mirkarimi as they were by Supervisor Wiener against Wolfe to see if they would “stick.” Then, both the Ethics Commission (in Mirkarimi’s case) and the full Board of Supervisors (in the Bruce Wolfe case) simply made up processes along the way to wrongly remove political opponents.

It's a sad state of affairs when complaints have to be filed with the FPPC to obtain accurate Form 700 *Statements of Economic Activity* from SOTF appointees.

It's also sad that another member of the community had to file a complaint against Supervisor Wiener with the State Bar of California for possible violations of ethical codes of conduct required of lawyers. The State bar complaint involves the SOTF's September 3, 2011 official misconduct finding referred to San Francisco's Ethics Commission regarding Wiener's role in the Parkmerced development deal. The complaint asks the State bar to investigate whether Wiener violated Business and Professional Code sections 6128 and 6068 that prohibit all lawyers in California from providing false statements and prohibits all forms of deceit (including selective presentation of incomplete facts).

While many of us — including Bruce Wolfe — try to do the right thing to protect the rights of citizens to know what our government is up to, there are powerful forces and people such as Wiener for whom truth and transparency appear to be inconvenient, and who may prefer to deny access to either. Now is the time to pay attention, and demand that the Board of Supervisors reappoint Wolfe to the SOTF immediately so the Sunshine Task Force can resume citizen oversight of City Hall.

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*Monette-Shaw is an open-government accountability advocate, a patient advocate, and a member of California's First Amendment Coalition. He received the Society of Professional Journalists–Northern California Chapter's **James Madison Freedom of Information Award** in the Advocacy category in March 2012. Feedback: <mailto:monette-shaw@westsideobserver>.*