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David H. Nguyen, District Attorney
By: N. Nguyen

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Attorney for Defendant
GEORGE MICHAEL SHIRAKAWA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

GEORGE MICHAEL SHIRAKAWA,
Defendant.

Case No.: ~~C1358363~~ 213265

**ORDER SHORTENING TIME FOR
HEARING ON MOTION TO SEAL**

Date: 11-25-2013
Time: 1:30
Dept.: 33 28

Good cause appearing, Defendant's request for an Order Shortening Time for filing and hearing the Request for Stay of Unsealing of Grand Jury Transcript is hereby granted.

The matter shall be heard on 11-25, 2013 at 130.

Dated: 11-25, 2013



GRIFFIN M.J. BONINI

JUDGE OF THE SUPERIOR COURT

RECEIVED
SANTA CLARA COUNTY
DISTRICT ATTORNEY
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GEORGE MICHAEL SHIRAKAWA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

GEORGE MICHAEL SHIRAKAWA,

Defendant.

Case No.: ~~C1258368~~ 213265
**NOTICE OF REQUEST AND
REQUEST FOR STAY OF
UNSEALING OF GRAND JURY
TRANSCRIPT**

Date:
Time:
Dept.:


**TO THE SANTA CLARA COUNTY DISTRICT ATTORNEY AND THE CLERK
OF THE ABOVE-ENTITLED COURT:**

PLEASE TAKE NOTICE that Defendant, GEORGE MICHAEL SHIRAKAWA,
on the date and time indicated above, will and hereby does request that this Court stay the
unsealing and publication of the grand jury transcript in this matter pending a ruling on
Mr. Shirakawa's Motion to Seal the Grand Jury Transcript.

This request is predicated on the files and records in this case, the attached
memorandum of points and authorities, and declaration of counsel.

Respectfully submitted,

Dated: 11/21, 2013


JAY RORTY
Attorney for Defendant
GEORGE MICHAEL SHIRAKAWA

STATEMENT OF RELEVANT FACTS

In September 2012, the Metro Newspaper of Silicon Valley published an article entitled, "The Campaign Secrets of George Shirakawa."¹ The article contained an extensive interview with Mr. Shirakawa in which he made a number of inculpatory statements concerning his failure to file campaign forms.

Based on this reporting, the Fair Political Practices Commission launched an investigation into Mr. Shirakawa's campaign finance activity. The Santa Clara District Attorney's Office ("SCDAO") commenced its own investigation into the matter.

In December 2012, Mr. Shirakawa retained Attorney John L. Williams to represent him concerning that investigation. Upon being retained by Mr. Shirakawa, Mr. Williams immediately began discussions with Santa Clara County Assistant District Attorney Karyn Sinunu-Towery regarding this ongoing investigation.

On February 18, 2013, ADA Sinunu-Towery informed Mr. Williams that the SCDAO intended to formally file charges against Mr. Shirakawa, but that she was receptive to suggestions about resolving the case. These discussions continued over the next several weeks.

On February 28, 2013, an agreement in principal was reached between Mr. Mr. Williams and the SCDAO. Mr. Shirakawa was then formally charged with four counts of violating Penal Code § 118 [Perjury; Counts 1-4], one count of violating Penal Code § 424(a) [Misappropriation; Count 5], six counts of violating Government Code §§ 84200(a)-91000 [Failure by Elected Officer to Timely File Semi-Annual Statement; Counts 6-11], and one count of violating Government Code §§ 84300(a)-91000 [Receipt of Cash Contributions of One Hundred Dollars or More; Count 12] in Santa Clara County Superior Court Case No. C1351203.

On March 1, 2013, Mr. Shirakawa made a public statement, drafted in cooperation with SCDAO in which he acknowledged his guilt with respect to the criminal conduct

¹ Tim Koehn, *The Campaign Secrets of George Shirakawa*, Metro News Silicon Valley, Sept. 12, 2012. Available at <http://www.metroactive.com/features/George-Shirakawa-campaign-secrets.html> (Attached as Exhibit 1).

1 charged in Case No. C1351203. Mr. Shirakawa resigned his office and repaid
2 \$50,000.00.

3 On March 19, 2013, the parties met in chambers with the Hon. Philip Pennypacker
4 to review the terms of the negotiated disposition. Mr. Shirakawa then entered a plea of
5 guilty to all twelve counts set forth in the Complaint in Case No. C1351203.

6 On June 5, 2013, Mr. Shirakawa was charged in the instant case with a violation of
7 Penal Code 529, False Personation.

8 Judge Pennypacker recused himself from the instant case. Defense counsel began
9 drafting a Motion to Dismiss the instant case on the theory that the charges were barred
10 by the negotiated plea agreement in Case No. C1351203. In the course of preparing this
11 motion, undersigned counsel met with Judge Pennypacker. Based on this meeting,
12 undersigned counsel believed that Judge Pennypacker was a witness with information
13 relevant to the Motion to Dismiss and said so in the Motion. In their reply, the
14 prosecution accused undersigned counsel of committing an ethical violation by meeting
15 with the Judge *ex parte*.

16 On September 17, 2013, Judge Griffin Bonini, to whom the case was then
17 assigned, informed defense counsel that more evidence was needed before he would
18 grant an evidentiary hearing on the Motion to Dismiss. Defense counsel requested a
19 delay in the proceedings in order to provide a supplemental proffer based on the
20 anticipated testimony of Judge Pennypacker. Judge Bonini denied defense counsel's
21 request for further evidentiary hearings and denied the Motion to Dismiss on September
22 20, 2013.

23 On June 5, 2013, Mr. Shirakawa was charged in the instant case with a violation of
24 Penal Code 529, False Personation. The prosecution convened a grand jury on October
25 23, 2013 and Mr. Shirakawa was indicted the following day. Defense counsel received a
26 copy of the grand jury transcript in an e-mail from the District Attorney, on November 4,
27 2013.

28 Mr. Shirakawa was indicted on October 24, 2013. He surrendered into custody at

1 his arraignment on October 28, 2013. According to the file stamp on the grand jury
2 transcript, it was filed by a clerk of the court on October 31, 2013. On November 4,
3 2013, Assistant District Attorney John Chase emailed a copy of the grand jury transcript
4 to undersigned counsel.

5 On November 13, 2013, an article appeared in the printed edition of the Metro
6 News San Jose containing details from the sealed grand jury transcript.² San Jose Insider
7 featured an excerpt of the article online.³ Specifically, the article revealed that Xavier
8 Campos exercised his Fifth Amendment right to silence when called to testify before the
9 grand jury. The reporter cited “grand jury transcripts exclusively obtained” by the Metro
10 and San Jose Insider.

11 On November 14, the San Jose Mercury News also reported on the grand jury
12 proceeding, citing transcripts that had been “released” and “made public”.⁴ The reporter
13 also focused on Mr. Campos’ decision to remain silent, but added that a grand juror asked
14 why Mr. Campos was not being indicted.

15 Joanne Martin is a Court Reporter for the Santa Clara County Superior Court. She
16 prepared the grand jury transcript in this case. When the transcript was ready, she
17 delivered it to the clerk of the court to be filed. At no point did she attempt to notify
18 defense counsel that the transcript was ready.

19 Norma Jean Walter is the New Filings Legal Process Supervisor for the Criminal
20 Division of the Santa Clara Superior Court. When a grand jury transcript is delivered by
21 a court reporter, her unit notifies the District Attorney and the Public Defender or
22 Alternate Defender. Her unit does not notify defendants appearing in pro per or
23 defendants represented by private counsel or counsel from the Indigent Defense Counsel
24

25 ² Grand Jury Transcripts in Case No. C1358363

26 ³ Josh Koehn, *Xavier Campos Takes the Fifth*, San Jose Insider, November 13, 2013. Available at
27 http://www.sanjoseinside.com/news/entries/11_13_13_xavier_campos_takes_the_fifth/ (attached as Exhibit 2).

28 ⁴ Mike Rosenberg, *George Shirakawa scandal raises new questions about San Jose politicians Xavier and Nora Campos*, San Jose Mercury News, November 14, 2013. Available at http://www.mercurynews.com/crime-courts/ci_24518833/george-shirakawa-jr-scandal-raises-new-questions-about (attached as Exhibit 3)

1 Office ("IDO"). It is her understanding that the court reporter is the one who notifies
2 private counsel when the transcript is ready. The New Filings Unit makes the transcript
3 available to the public as soon as the defendant has been arrested after the indictment.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 When a party files a Motion to Seal a Record, California Rules of Court require
6 that the record in question be lodged conditionally under seal pending determination of
7 the Motion.⁵ Here, the defense intends to file a Motion to Seal the Grand Jury Transcript
8 in this case. Pursuant to California Rule of Court 2.551(b)(4), defense is merely
9 requesting that the transcript remain conditionally sealed prior to the filing of the Motion
10 so that the defense may prepare an adequate showing on the Motion.

11 **I. STANDARD ON A MOTION TO SEAL A GRAND JURY TRANSCRIPT.**

12 California Penal Code section 938.1 governs publication of grand jury transcripts.
13 Subsection (a) specifies that upon receiving a grand jury transcript from a court reporter,
14

15 [the] clerk shall file the original of the transcript, deliver a copy of the
16 transcript to the district attorney immediately upon receipt thereof and
17 deliver a copy of such transcript to each such defendant or the defendant's
18 attorney.

19 Subsection (b) provides that beginning 10 days after the transcript is delivered to
20 the defense, "the transcript shall be open to the public unless the court orders otherwise."⁷
21 Until that point, the transcript remains sealed.⁸ As demonstrated by the Declaration of
22 Jay Rorty, the transcript was only "delivered to the defense" within the meaning of Penal
23 Code 938 .1 on November 20, 2013.

24 When it is reasonably likely that unsealing "all or any part of the transcript" could
25 jeopardize the defendant's right to a fair trial, that part of the transcript remains sealed
26

27 ⁵ Cal. Rules of Court, Rule 2.551(b)(4).

28 ⁶ CA Pen. Code § 938.1(a).

⁷ CA Pen. Code § 938.1(b).

⁸ *Id.*

1 until after trial.⁹ To determine whether such prejudice is reasonably likely, courts look to
2 the following factors:

- 3 1) Size of potential jury pool;
- 4 2) Nature of publicity;
- 5 3) Extent of publicity; and
- 6 4) Existence of reasonable alternatives to sealing.¹⁰

7 Where a reasonable likelihood of prejudice exists, the statutory right of the public
8 to access the grand jury transcript must give way to the defendant's right to a fair trial.¹¹

9 Based on the sequence of events in this case, it appears as though the grand jury
10 remains under seal in spite of the fact that it was leaked to the media. A Sealing Order is
11 necessary to mitigate the harm that has already been done to Mr. Shirakawa as a result of
12 this leak.

13 **II. TEN DAYS IS INSUFFICIENT FOR THE DEFENSE TO PREPARE AN** 14 **ADEQUATE SHOWING ON THE MOTION TO SEAL.**

15 In *Press Enterprise v. Superior Court*, the court held that it was not reasonably
16 likely that release of the grand jury transcript would prejudice the defendant, an alleged
17 serial rapist and murderer.¹² Relying on the factors above, the court emphasized that the
18 defense failed to make an adequate showing that unsealing the grand jury transcript
19 would prejudice the defendant:

20 In turn, there was no showing that this case has generated public interest
21 outside the local area of the cities of Riverside and Moreno Valley. The
22 trial court generally referred to the extensive press coverage of the
23 homicide. The Press-Enterprise has published articles concerning this case
24 and we can safely presume that it will continue to do so, including articles
concerning the grand jury proceedings, but it is not even clear that the
newspaper has published these articles in all or only some of its local
editions. We also infer from the trial court's rulings that other local
newspapers have covered this case but the trial court only refers to one

25
26 ⁹ *Id.* See also *Alvarez v. Superior Court* (2007) 154 Cal.App.4th, 642, 653.

27 ¹⁰ *Press-Enterprise v. Superior Court* (1994) 22 Cal.App.4th 498, 504-05.

28 ¹¹ *Alvarez, supra*, 154 Cal.App.4th at 653. (San Jose Merc. News as real party in interest).

¹² *Press Enterprise, supra*, 22 Cal.App.4th at 500.

1 other newspaper, Perris Progress, and does not indicate its circulation. The
2 record does not make clear the nature and extent of coverage by other news
3 media, such as radio or television. Thus, although the trial court reasonably
4 concluded that readers of the Press-Enterprise and other local newspapers
5 would be in the jury pool, there is no basis for concluding that publicity of
6 the contents of the entire grand jury transcript would be so extensive and
7 widespread that it threatens to prejudice the entire jury pool so that twelve
8 unbiased jurors could not be found.¹³

9 In the wake of *Press-Enterprise*, a request to seal a grand jury transcript under
10 Penal Code 938.1 is vulnerable to attack where the requestor fails to conduct a thorough
11 survey of media coverage and its effect on the jury pool.

12 The defense is in the process of commissioning the survey, but needs additional
13 time to conduct it and analyze the results. Typically, these surveys are crafted by an
14 expert witness based upon a detailed statistical analysis of the relevant news media in
15 circulation. Once the survey is conducted, additional time is needed to analyze the results
16 according to demographic information and compare it to similar cases.

17 **III. A STAY IS NECESSARY TO SAFEGUARD MR. SHIRAKAWA'S**
18 **RIGHT TO A FAIR TRIAL PENDING A RULING ON THE MOTION**
19 **TO SEAL THE GRAND JURY TRANSCRIPT.**

20 Mr. Shirakawa is entitled to the benefits of a sealed transcript pending his Motion
21 to Seal as set forth in California Rule of Court 2.551. After *Press-Enterprises*, he is
22 equally entitled to a commissioned pretrial survey of the jury pool in support of his
23 Motion to Seal. Based on the widespread prejudicial press in this case, the leaked grand
24 jury transcripts, and the content of the transcripts themselves, defense counsel will not be
25 able to safeguard Mr. Shirakawa's right to a fair trial if the grand jury transcript is
26 unsealed and becomes fodder for additional editorializing.

27 Mr. Shirakawa is uniquely vulnerable to attacks in the press because of his
28 conviction in Case No. C1351203. At trial, the defense would move to exclude evidence
from the previous case under Evidence Code sections 1103 and 352. As illustrated in the
above media excerpts, that case has been chronicled in detailed and published widely
throughout the community.

¹³ *Id.* at 504.

1 The nature and extent of publicity in this case both favor keeping the grand jury
2 transcript under seal. Prior to the filing of Case No. C1351203, and continuing to the
3 time of this writing, local news media has clamored for Mr. Shirakawa's prosecution and
4 punishment. The defense is in the process of gathering and analyzing this media. To
5 date, defense counsel is aware of at least 25 news articles or television segments from ten
6 separate media sources discussing the allegations and criminal charges, and court
7 proceedings in these matters. These include:

- 8 1) *Mercury News Editorial: Shirakawa's Actions Abuse the Public Trust* in San Jose
9 Mercury News (October 2, 2012):¹⁴

10 "This kind of thing isn't new for Shirakawa. When he was running for supervisor in
11 2008, we said he 'has all the danger signs of a politician prone to conflicts of
interest, including a history of financial difficulty.' He failed to pay federal income
taxes in 2003 and 2004, and he has had problems with child support."

- 12 2) *County Supervisor George Shirakawa Submits Fraudulent Meal Receipts* in Metro News
13 Silicon Valley (October 31, 2012):¹⁵

14 "Metro has now found that Shirakawa also violated expense limits and
15 policies against taxpayer-funded alcohol consumption by exploiting a
16 loophole that allowed officials to submit a "Missing Receipt Memorandum"
17 in cases when the original, itemized receipt was misplaced. From January
2009 through September 2012, Shirakawa expensed 185 meals to the
county and yet only three were accompanied with itemized receipts,
according to county forms."

- 18 3) *Judge in Shirakawa Corruption Case Bows Out, Hires Own Lawyer*,
19 *NBCBayArea.com* (September 20, 2013)

20 Reporting on Judge Pennypacker's recusal in the proceedings, including
21 undersigned counsel's meeting with the Judge to which the prosecutor objected.¹⁶

- 22 4) *Mercury News Editorial: Shirakawa Mailer Case Needs Full Investigation* in San
23 Jose Mercury News (October 3, 2013):

24 ¹⁴ Anonymous, *Mercury News Editorial: Shirakawa's Actions Abuse the Public Trust*, San Jose Mercury News
25 October 2, 2012. Available at [http://www.mercurynews.com/ci_21682429/mercury-news-editorial-shirakawas-](http://www.mercurynews.com/ci_21682429/mercury-news-editorial-shirakawas-actions-abuse-public-trust)
26 [actions-abuse-public-trust](http://www.mercurynews.com/ci_21682429/mercury-news-editorial-shirakawas-actions-abuse-public-trust) (attached as Exhibit 4).

27 ¹⁵ Josh Koehn, *County Supervisor George Shirakawa Submits Fraudulent Meal Receipts*, Metro News Silicon
28 Valley, Oct. 31, 2012. Available at <http://www.metroactive.com/features/shirakawa-meal-receipts.html> (attached as
Exhibit 5).

¹⁶ Chris Roberts, *Judge in Shirakawa Corruption Case Bows Out, Hires Lawyer*, *nbcbayarea.com*, September 20,
2013. Available at: [http://www.nbcbayarea.com/news/local/Judge-In-Shirakawa-Corruption-Case-Bows-Out-Hires-](http://www.nbcbayarea.com/news/local/Judge-In-Shirakawa-Corruption-Case-Bows-Out-Hires-Lawyer-224653591.html)
[Lawyer-224653591.html](http://www.nbcbayarea.com/news/local/Judge-In-Shirakawa-Corruption-Case-Bows-Out-Hires-Lawyer-224653591.html) (attached as Exhibit 6).

1 "It's important that politicians and campaign consultants know crimes like
2 this will be prosecuted vigorously. Besides, this particular crime isn't only
3 about Shirakawa. Those mailers were not the work of a single person.
4 Somebody designed them, printed them, and paid for them. In two
5 elections, the people responsible probable are still making money on local
6 campaigns, if not from a public payroll."¹⁷

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10 5) *George Shirakawa Jr: A Superfund site* in San Jose Mercury News (October 5,
11 2013):

12 "It's time to declare everything around Shirakawa -- and the ex-supe
13 himself, for that matter -- a toxic Superfund site. It's that serious. We might
14 even be able to get federal money to clean it up. Consider the language
15 from the 'citizen's guide' to Superfund sites: 'Superfund cleanups are very
16 complex and require the efforts of many experts,' it says. 'The goal is to
17 protect you and the environment you live in from the effects of hazardous
18 substances.' Precisely."¹⁸

- 19
20
21
22 6) *George Shirakawa Jr to Be Sentenced Nov. 8, Even as More Conflicts of Interest*
23 *Muddle Case* in San Jose Mercury News (October 11, 2013):

24 Up to the time of sentencing, Mr. Shirakawa had no witnesses on his behalf
25 apart from his own attorneys.

26 From the discussion of evidence otherwise inadmissible to the speculation about
27 co-conspirators, the press has already demonstrated its willingness to introduce highly
28 prejudicial information into the jury pool.

Moreover, recent tallies reveal widespread readership for three of the papers that
printed that printed multiple inflammatory articles of the allegations and criminal
proceedings in Mr. Shirakawa's cases—the San Francisco Chronicle (218,987 average
readers),²⁰ the San Jose Mercury News (702,407 Sunday readers),²¹ and the Metro News
Silicon Valley (435,780 average readers).²²

¹⁷ Anonymous, *Mercury News Editorial: Shirakawa Mailer Case Needs Full Investigation*, San Jose Mercury News, Oct. 3, 2013. Available at: http://www.mercurynews.com/opinion/ci_24233030/mercury-news-editorial-shirakawa-mailer-case-needs-full (attached as Exhibit 7).

¹⁸ Scott Herhold, *George Shirakawa Jr: A Superfund Site*, San Jose Mercury News, Oct. 5, 2013. Available at http://www.mercurynews.com/scott-herhold/ci_24241429/george-shirakawa-jr-superfund-site (attached as Exhibit 8).

¹⁹ Karen de Sa, *George Shirakawa Jr to Be Sentenced Nov. 8, Even as More Conflicts of Interest Muddle Case*, San Jose Mercury News, October 11, 2013. Available at http://www.mercurynews.com/politics-government/ci_24293420/former-santa-clara-county-board-president-george-shirakawa (attached as Exhibit 9).

²⁰ Neal Lulofs, *Top U.S. Newspapers for March 2013*, Alliance for Audited Media, April 30, 2013. Available at <http://www.auditedmedia.com/news/blog/top-25-us-newspapers-for-march-2013.aspx>.

1 Forcing Mr. Shirakawa to choose between publication of the transcript or
2 preparing an adequate showing on the Motion to Seal would amount to a denial of his
3 rights to due process²³ or effective assistance of counsel.²⁴ Therefore, he requests a stay
4 of the unsealing of the grand jury transcript until the court can rule on the Motion to Seal.

5 **CONCLUSION**

6 An initial review of the media in this case suggests that local media outlets would
7 seize upon the grand jury transcript to further demonize Mr. Shirakawa. Additional time
8 is needed to prepare a formal Motion to Seal, which will involve hiring an expert on
9 pretrial publicity to create, conduct, and analyze a survey to gauge the biasing effect of
10 this media on prospective jurors. Therefore, the defense requests a conditional stay of
11 unsealing the transcript pending the preparation and outcome of the Motion to Seal.

12
13 Respectfully submitted,

14 Dated: Nov 21, 2013

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16 JAY RORTY
17 Attorney for Defendant
18 GEORGE MICHAEL SHIRAKAWA
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25 ²¹ Pete Carey, *Mercury News Scores Circulation Gain*, San Jose Mercury News, April 30, 2013. Available at
26 http://www.mercurynews.com/business/ci_23142326/mercury-news-scores-circulation-gain.

27 ²² 2010 Circulation Map for Metro News.
28 Available at http://www.onlinemediakit.com/pdf/Circulation_Map_ALL.pdf.

²³ Cal. Const. art. I, § 7; U.S. Const. Amend. V.

²⁴ Cal. Const. art. I, § 15; U.S. Const. Amend. VI.

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DECLARATION OF COUNSEL

I, JAY RORTY, declare:

1. I currently represent George Shirakawa in this matter.
2. Over the last month, my office created an inventory of media coverage relating to the criminal proceedings against Mr. Shirakawa in both his past case (Superior Court Case No. C1351203) and the instant case. As of November 14, I was aware of at least 25 news articles or videos from ten separate news agencies describing the allegations criminal proceedings against Mr. Shirakawa in detail. That press predates Mr. Shirakawa's indictment by grand jury.
3. Most of those articles are highly inflammatory. Several mention evidence that I will move to exclude at trial. For example, I will move to exclude any mention of Mr. Shirakawa's conviction in Case No. C1351203 or the underlying conduct in that case.
4. Mr. Shirakawa was indicted on October 24, 2013. He surrendered into custody at his arraignment on October 28, 2013.
5. According to the file stamp on the grand jury transcript, it was filed by a clerk of the court on October 31, 2013.
6. On November 4, 2013, I received an email from Assistant District Attorney John Chase. Attached to the email was the grand jury transcript.
7. On November 13, 2013, an article appeared in the printed edition of the Metro News San Jose containing details from the sealed grand jury transcript. San Jose Insider featured an excerpt of the article online. Specifically, the Insider article revealed that Xavier Campos exercised his Fifth Amendment right to silence when called to testify before the grand jury. The reporter cited "grand jury transcripts exclusively obtained" by the Metro and San Jose Insider.
8. On November 14, the San Jose Mercury News reported additional details from the grand jury proceeding. While the article also focused on Mr. Campos' invocation

1 of his right to remain silent, it added that a grand juror wanted to know why Mr.
2 Campos was not being indicted.

3 9. At trial, I would move to exclude any reference to Mr. Campos' testimony before
4 the grand jury under Evidence Code 352 and on relevance grounds.

5 10. On November 18, 2013, I contacted Joanne Martin, a Court Reporter for the Santa
6 Clara Superior Court. Ms. Martin told me as follows: She prepared the grand jury
7 transcript in this case. When the transcript was ready, she delivered it to the clerk
8 of the court. At no point did she attempt to contact me to notify me that the
9 transcript was ready because she did not believe she was responsible for doing so.

10 11. On November, 20, 2013, I contacted Norma Jean Walter in the New Filings Unit
11 of the Criminal Division of the Santa Clara Superior Court. She told me as
12 follows: She is the New Filings Legal Process Supervisor who oversees the other
13 clerks in that Unit. When a grand jury transcript is delivered by a court reporter,
14 her unit notifies the District Attorney and the Public Defender or Alternate
15 Defender. Her unit does not provide such notice to defendants appearing in pro
16 per or defendants represented by private counsel or counsel from the Indigent
17 Defense Counsel Office ("IDO"). As far as she knows, the court reporter is the
18 one who notifies these parties when a transcript is ready. Her unit makes the
19 transcript available to the public as soon as the defendant has been arrested after
20 the indictment.

21 12. At no point prior to November 20, 2013 did any clerk of the Santa Clara Superior
22 Court notify me that the grand jury transcript was available or deliver it to me.
23 After speaking with Ms. Walter on that date, I picked up my copy of the transcript.

24 13. In order to adequately prepare a Motion to Seal the Grand Jury Transcript, it is
25 necessary to conduct a pretrial publicity survey to gauge the extent to which the
26 media has biased the jury pool. Although I have taken steps to initiate the survey,
27 I need additional time to locate an expert who will draft the survey, conduct it, and
28

1 analyze the results. Without this evidence, I will not be prepared to show that Mr.
2 Shirakawa is entitled to have the transcript sealed until the conclusion of trial.

3 14. Given the widespread media bias against Mr. Shirakawa, I believe that unsealing
4 the grand jury transcript, even temporarily, would jeopardize his right to receive a
5 fair trial in Santa Clara County.

6 I declare under penalty of perjury that the foregoing is true and correct, except as
7 to those matters herein stated on information and belief, and as to those matters, I believe
8 them to be true.

9
10 Executed on Nov 21, 2013 at Santa Clara, California.

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13 JAY RORTY
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ENDORSED
FILED

PROOF OF SERVICE

The undersigned declares:

2013 NOV 22 A 9:21

I am a citizen of the United States. My business address is 831 California Street, Santa Cruz, California, 95060. I am over the age of eighteen years and am not a party to the above-entitled action.

On the date set forth below, I caused a true and correct copy of the within:

**NOTICE OF REQUEST AND REQUEST FOR STAY OF UNSEALING OF
GRAND JURY TRANSCRIPT**

to be served on the following parties in the specified manner:

Via _____

Superior Court of California
County of Santa Clara
190 West Hedding Street
San Jose, CA 95110

Santa Clara County District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on the _____ day of _____, 2013 at Santa Cruz, CA.

JAY RORTY

EXHIBIT LIST

1. Tim Koehn, *The Campaign Secrets of George Shirakawa*, Metro News Silicon Valley, Sept. 12, 2012. Available at <http://www.metroactive.com/features/George-Shirakawa-campaign-secrets.html>.
2. Josh Koehn, *Xavier Campos Takes the Fifth*, San Jose Insider, November 13, 2013. Available at http://www.sanjoseinside.com/news/entries/11_13_13_xavier_campos_takes_the_fifth/.
3. Mike Rosenberg, *George Shirakawa scandal raises new questions about San Jose politicians Xavier and Nora Campos*, San Jose Mercury News, November 14, 2013. Available at http://www.mercurynews.com/crime-courts/ci_24518833/george-shirakawa-jr-scandal-raises-new-questions-about.
4. Anonymous, *Mercury News Editorial: Shirakawa's Actions Abuse the Public Trust*, San Jose Mercury News October 2, 2012. Available at http://www.mercurynews.com/ci_21682429/mercury-news-editorial-shirakawas-actions-abuse-public-trust.
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EXHIBIT 1

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The Campaign Secrets of George Shirakawa

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The county's top elected official used [campaign funds](#) like a personal bank account to pay his friends and his girls and go on a gambling junket. Then he broke the law by not filing disclosure statements.

September 26, 2012 - by Josh Koehn



Illustration by Fred Harper

George Shirakawa's face flushes crimson as he begins a [mea culpa](#) for failing to file campaign disclosure forms the last four years. He then confirms that more than \$50,000 in campaign funds were paid out to a close friend, a former lover and two of his daughters. At least that's what was documented, back when he completed forms four years ago. It's harder to figure out what's gone on in George Jr.'s nepotistic campaign organization since his reporting went dark.

The chair of Santa Clara County's [Board of Supervisors](#) says that he expects to pay fines totaling more than \$10,000 for not filing campaign forms after he was elected in 2008—but that could be a fraction of the Fair Political Practices Commission penalty if an investigation determines that Shirakawa broke the law.

Wearing a white, crew-necked dress shirt and black suspenders as he sits at the head of a [conference table](#) in his office, the longtime public officeholder feels compelled to offer an apology for his stunning lack of transparency.

"When you make a mistake, you have to make it right," Shirakawa says. "And I'm not giving you an excuse. I do feel bad about it. But it's nothing sinister. There's nothing to hide. Most of the money is coming to me."

This is true. Shirakawa found himself deep in the hole after defeating Richard Hobbs in November 2008 for a seat on the county Board of Supervisors. His victorious supervisor campaign had \$109,978 of debt, almost a third of which consisted of [personal loans](#) Shirakawa made.

"I'm straightforward with you," he says. "A lot of the money comes back to me, absolutely. Absolutely. That's money I put into the campaign."

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What Shirakawa has not been transparent about is how he has collected money to pay off his campaign debt. Also, a close examination of documents that were filed in 2008 and early 2009 shows that Shirakawa made payouts to family members, friends and the mother of one of his children before, during and after the 2008 supervisor race.

Shirakawa is the top political official in a county that spends more than \$4 billion each year of the public's money. He's president of the Board of Supervisors, which oversees county [law enforcement](#)—including incarceration, prosecution, coroners, courts and public defenders—as well as tax collection and assessment, elections and a large network of health care, mental health and other social services.

Unlike Supervisors Mike Wasserman or Liz Kniss, Shirakawa does not live in a wealthy area like Palo Alto or Los Gatos, and he didn't grow up rich like Dave Cortese or get a Ph.D. from Stanford University like Supervisor Ken Yeager. He comes from humble roots on the [East Side of San Jose](#), the son of a Japanese-Latino father who worked in the fields and was in an internment camp as a youngster during World War II. Shirakawa attended public schools in San Jose and served as a police sergeant in the U.S. Army, then went on to youth counseling and sports coaching jobs at Yerba Buena and Foothill high schools in San Jose.

His father, George Shirakawa, Sr., was elected to the San Jose City Council in 1990. A beloved public figure (a San Jose elementary school is named after him), George Sr. died in office while running for re-election in 1994. His son, then in his early 30s, was appointed by councilmembers to fill his seat. George Jr. was then elected to serve a second term, part of which he spent as vice mayor.

After leaving the council, Shirakawa went on to work as a lobbyist while also serving on the East Side Union school board. Before taking over his father's City Council seat, Shirakawa was elected to serve on the Franklin McKinley school board in 1992.

Shirakawa is one of the longest-serving elected officials ever in local politics, which makes his refusal to file campaign-disclosure documents after his 2008 county supervisor race all the more baffling.

Unless a campaign is closed out in good financial standing or the debt is absorbed, elected officials and losing candidates must continue to file semi-annual forms disclosing how much money is being collected, where it is coming from and how it is being spent.

According to the county Registrar of Voters, Shirakawa has failed to file nine forms pertaining to his 2008 committee, from 2009 through 2012. Without these forms, it's impossible to know if Shirakawa has complied with ethical standards on campaign contributions, as well as how those contributions may have influenced his vote on county contracts worth millions of dollars.

None of this, however, stopped Shirakawa from filing for re-election this spring. Had he failed to do so, Shirakawa would have relinquished a position that paid him \$215,000 in total compensation in 2011. Instead, he ran unopposed—no doubt, in part, because of his name power—and automatically retained his seat for another four years.

The stated reasons Shirakawa failed to file disclosure documents pertaining to his 2008 campaign changed several times over the course of a 45-minute interview on Sept. 12 in his county office.

"I didn't know the law says you have to file like you would if you're running," Shirakawa says. "I didn't know. I should have just closed the damn account a long time ago. That's the truth. You'll see I'm closing that shit out, and everything else I have I'm going to close out."

Moments later, though, Shirakawa admits that he did know he owed campaign disclosure filings to the Registrar of Voters, which sent him more than a dozen delinquent notices after he joined the Board of Supervisors in January 2009.

"I got the letters, and like I said, there's no excuse," he says. "It was on my mind. I know I have to do it; I didn't do it. There's no excuse, brother."

Shirakawa says he has "paid down, probably, 100 percent" of his personal loans to the campaign, which in total came to \$78,100. (The supervisor refused to answer where this money came from in a follow-up email.) He is more confident in saying that he still has outstanding debts to other people. And yet there is no record to show any of this aside from some handwritten notes Shirakawa provided on two pieces of yellow scratch paper, one of which, he says, informally lists the top expenses immediately after the 2008 election.

Fourth on the list of expenses is a "staff retreat," for which Shirakawa says he and seven staffers went to Reno for the weekend. "That should give you some fodder to write about," he says. The supervisor believes the trip cost "roughly" \$3,500, and he insists that work was done during the retreat—in between dinners, gambling and going to a comedy show.

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Ties That Bind

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Elected officials chafe at the notion that their votes are influenced by political contributions they receive. Every man or woman in office likes to say they vote their conscience, and that political contributions never enter into the decision-making process.

Once in office, elected officials tend to maintain relationships. Career politicians always have another expensive election cycle on the horizon.

Supervisor Shirakawa is without dispute a career politician, but he argues that money has never swayed his vote on the

DYNASTY: George Shirakawa has spent nearly two decades in elected office, moving up from a Franklin McKinley school board position to San Jose City Council and then the Santa Clara County Board of Supervisors.

Board of Supervisors or at any other level. It's no secret, however, that Shirakawa maintains close ties to labor unions, public-safety groups, construction companies and developers. He suggests his 2008 campaign disclosure forms, which he will "try" to file before his second term begins in November, will likely include the following associations:

"Obviously, there's folks who are friends. There's lobbyist guys—all the lobbyist guys will be on there; a lot of labor folks will be on there; the Asian-American community, as I told you. You'll see the names. It's the same names you saw in 2008. You'll see."

What one might not see, however, is that Shirakawa has a longstanding policy of nepotism when doling out campaign cash. Shirakawa insists that he has often assumed the lead role of treasurer for his elected positions.

"I do it all," he says. "The name on [campaign filings] is probably one of my old buddies. I don't know. I do it all, except during the campaigns. You always have a treasurer in name, and [they] do a little help. Some people have a treasurer, but I like doing as much as I can, because it's my responsibility. Plus I like doing it."

But Shirakawa's record of delinquent filings suggests he likes the idea of filling out forms more than actually doing it.

According to campaign disclosure forms Shirakawa filed right up until a few months after he won the county board seat in 2008, Linda Delgado was listed as his campaign treasurer. What the forms don't note is that Delgado is the mother of one of Shirakawa's children.

"She served as treasurer, she does a lot of work with database for me. Um, she's my son's mother," Shirakawa says. "She's my son's mother. And she's actually, kind of, gonna try and help me out. But it's my responsibility."

Exactly how involved Delgado was in the campaign during that time isn't all that clear. Several of

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Shirakawa's colleagues said they didn't know who Delgado was when asked, including his chief of staff, Eddie Garcia. (Curiously, Garcia and Delgado are Facebook friends.) But during the 2008 campaign, according to filed forms—the last of which was amended a day after *Metro's* interview with Shirakawa because errors were noted in the accounting—Delgado was paid \$22,924.90 in salary and expenses. She was also listed as still being owed \$2,950.

In filings for the 2012 primary, which were also late, Delgado was named treasurer and paid at least \$7,500 for managing a campaign in which Shirakawa ran unopposed.

Shirakawa also employed one of his daughters, Elena Reyes, as his campaign manager for a short period in 2008. In a two-month span running from mid-March to mid-May of 2008, Reyes was paid \$3,900.

"She was working as a campaign manager, and then she went to work for Kansen after that," Shirakawa says in reference to San Jose Councilmember Kansen Chu, who is also closely aligned with the South Bay Labor Council.

Shirakawa also paid daughter Reyes at least \$3,900 in this last election cycle, according to 2012 filings.

There were claims during the 2008 campaign that Shirakawa was a deadbeat dad behind in child-support payments. Shirakawa's camp aggressively denied these accusations and sent out a mailer in the final weeks of the campaign featuring Shirakawa's ex-wife, Esther Carrillo, disputing the accusations.

Carrillo was not paid any campaign money, according to forms that are on file with the Registrar of Voters. But their daughter, Catalina Carrillo, was paid \$3,866.62 for work allegedly done in April and May of 2008. Additionally, Catalina Carrillo was listed as being owed another \$2,500.

During that same time period in the first half of 2008, according to the campaign disclosure forms that were filed during the race, Shirakawa also employed one of his close friends, Ruben Flores, to work as his campaign manager.

Flores is the brother of Alex Flores, whose name popped up in the news this spring when it became known that Shirakawa had his own personal bodyguard provided by the Santa Clara County Sheriff's Office. Shirakawa admitted that he handpicked Alex Flores, who was a high school football player at Yerba Buena High School when Shirakawa worked at the school as a coach. Amid widespread criticism, the Sheriff's Office reassigned Alex Flores, who was being paid roughly \$90,000 a year to be little more than Shirakawa's driver.

Ruben Flores also attended Yerba Buena High School, graduating in 1992.

"Ruben worked in the first half of my campaign for me as campaign manager," Shirakawa says, "and then Gustavo [Caraveo] took over in July."

Ruben Flores received \$17,185 total for his work in 2008, including \$1,300 in the last half of that year, according to a campaign filing covering July 1 through Sept. 30, 2008. "He's Alex's brother," Shirakawa says. "One of my players."

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FRIENDS AND FAMILY: Ruben Flores, a close friend of George Shirakawa, helped run the supervisor's campaign in 2008. Flores also happens to be the brother of Shirakawa's recent bodyguard, provided by the county sheriff's office.

School Buddies

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Halfway through our conversation, Shirakawa's chief of staff, Eddie Garcia, interjects. Late filings for obsolete committees are not uncommon, Garcia notes. I agree while informing him that the Registrar of Voters also has a delinquent file under Garcia's name for his 2008 race to be an East Side Union school board member—a role he assumed after Shirakawa vacated the position.

"For my school board stuff?" Garcia says. "You're kidding me."

Garcia notes two heart attacks he suffered in 2010, but his missing semiannual disclosure filings date back to

the last half of 2008, all of 2009 and the first half 2010.

"Hmm," Garcia says. "OK. I'll go double-check."

"That doesn't look good, Josh," Shirakawa says to me. Both men then erupt in laughter. Within a minute, however, Shirakawa turns serious again:

"One thing I will tell you I learned from my dad, Josh, and I'm gonna end it at this: It's funny when you see, particularly people in this community, who raise money and make decisions and they're effective leaders. When there's people of color, like me, if you don't raise money you're not effective. But if you raise money, well, then they're influenced wrong. So, there's a double standard there. I'll tell you that. My point is I'm not going to apologize about raising money. Not doing that kind of stuff. Because if you don't, you're considered not effective; and if you do, you're overly influenced."

Shirakawa may not understand the seriousness of the campaign violations and seems caught off guard at the suggestion of a troubling trend during the interview.

"What trend is that?" he asks.

"That you're horrible with paperwork."

"That speaks for itself," Shirakawa says and busts into laughter.

Shirakawa has missed deadlines that extend from political office to his personal life. On July 20 of this year, Shirakawa finally closed out his 2006 school board filings and paid a fine of \$400 to the county Department of Revenue. (The reason for this payment could not be confirmed by press time. However, Shirakawa's recent school board committee filings show a cash balance of

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\$2,854.49, which has yet to be accounted for.) In 2008, a lien was put on Shirakawa's home for a late garbage bill. Liens were also put on his home in 2003 and 2004 because of unpaid federal tax returns. How Shirakawa came up with the money to loan his campaign \$78,100 remains a mystery.

"I'll tell you, I told you, I made a mistake," he says about his late forms. "I apologize to you and anybody else. And I take full responsibility. I will take responsibility. I have to pay a large fine, a huge fine. I'm not happy about that, not because I'm concerned about you and somebody else talking about that. I'm not happy I put myself in a position. All I can do is get better."

Again, Garcia breaks into our conversation to talk about his own late filings for school board, noting that these races don't involve much money being raised.

"I raised zero money and expended zero money," Garcia says. "I'm pretty sure I closed out that account. That was the last one I did after the election in 2008."

"Actually," I say, "you had about \$12,000 left over." The precise cash balance was \$11,843.

"You gave me some [money], too; it's on there," Shirakawa says, jumping back into the conversation. "And I gave some [money] to Eddie in the past, by the way. I think you should have a meeting with Eddie on his stuff." Again, both men start laughing.

In a later conversation, Garcia tells me he sent his school board forms to the Registrar of Voters but they must have been lost in the mail. "You know how the U.S. Postal Service is," he adds.

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FATHER: George Shirakawa Sr. passed away in office in 1994 while serving as a San Jose councilmember. His son, George Jr., was then appointed to take over his City Council seat. Photograph by George Sakkestad

The Debt

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On one of two pieces of writing paper Shirakawa provided, titled "Partial List Checks," there is an informal list of contributors that the supervisor says helped him pay off some of his \$110,000 campaign debt in the first quarter of 2009. "Garcia for School," referencing his chief of staff's school board campaign, is listed as a \$2,500 contributor.

Shirakawa has yet to compile an official paper trail of money he has collected since the beginning of 2009. But if the following denominations are correct, he may have exceeded the \$500 contribution limits per filing period.

The largest contribution on the handwritten list—\$5,000—came from "Cal Waste," in reference to California Waste Solutions, which handles recycling subcontracting duties for San Jose. The company received its first contract with the city in Shirakawa's last year as a San Jose councilmember.

Second highest on the handwritten list of contributors provided by Shirakawa is Marvelous Inc., itemized as a \$4,000 contributor. No phone number for the company could be found, and Shirakawa did not respond to an email asking about his association with the business.

Third most on the list, at \$3,500, was Seville Group, a construction management company that received at least one contract of more than \$200,000 from the East Side Union school board when Shirakawa served as a board member. The Seville Group also gave Shirakawa's campaign \$1,000 when he was running for the county board in 2008. The firm has notably been enmeshed in a pay-to-play scandal with the Sweetwater school district in San Diego, with multiple public officials facing criminal charges for accepting unreported gifts from the firm. One contractor pleaded guilty earlier this year to making illegal gifts to public officials.

Jean Lu also contributed \$1,000 to help pay off Shirakawa's debt, according to the supervisor's notes. Lu is a board member for the Taiwanese Chamber of Commerce for the San Francisco Bay Area. Shirakawa benefited from his relationship with that chamber as recently as a year ago, when he was paid \$6,625 to attend an eight-day event on the chamber's behalf.

Shirakawa also received \$1,000 contributions from the Santa Clara County Building and Trades Council, the International Union of Painters and Allied Trades, and the OE3—the county's engineers union.

Shirakawa's informal list of contributors, which he admitted was hashed together the day of Metro's interview in his office, notes: "A number of 50D500 checks not included."

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When exactly the information will come to light about money Shirakawa's campaign received to pay off its debt is uncertain. An official at the FPPC—the state's bipartisan political watchdog group, which conducts audits and investigations, and hands out fines—could not comment publicly because an investigation could be launched as a result of Metro's inquiries. The FPPC has investigated Shirakawa twice in the past. In 2001, he was warned about improper disclosure on a mass mailer. In 2006, there was a similar issue, but in that incident the FPPC had insufficient evidence to move forward. (Ironically, Shirakawa was part of a group called "Chicanos Against Corruption" in the latter case.)

An FPPC official did confirm an investigation, if initiated, could be completed before the end of this year. Shirakawa could be fined up to \$5,000 for each late campaign disclosure form from the 2008 race. With the Registrar of Voters confirming that nine forms are missing from that particular campaign, that brings potential fines for these violations to \$45,000.

However, if the county fines Shirakawa, he could end up paying a \$10 per day fine for each form that is late, which would come closer to Shirakawa's estimate of \$10,000. He could also pay nothing if the county chooses not to fine him.

For the moment, though, Shirakawa will not commit to a timeline for when he will submit his campaign filings. "I can't give you a date," he says. "I'll do it as soon as I can. I think I can get it done before November."

When told he could avoid all fines by just never turning in his forms, Shirakawa insists that won't be the case. "Don't worry about that. I'm gonna turn in my forms," he says. "Unless I'm dead, I'm gonna turn in my forms."

"There's no excuse, man. I made a mistake, man. I'm looking in the eyes of a man and telling you I can't tell you a good excuse, because I probably would try to use it if I could. But I can't give you a good excuse."

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EXHIBIT 2

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Xavier Campos Takes the Fifth

Josh Koehn

Comments (7)



[San Jose](#) City Councilman Xavier Campos won't cooperate with prosecutors investigating an illegal political mailer.

As deputies led George Shirakawa Jr. away last Friday to begin serving a year-long county jail term—for charges that could have sent him to state prison for up to eight years—details emerged about a suspiciously-timed contribution from powerful California Assembly leader Nora Campos.

Prosecutors now allege that the incarcerated former county supervisor engaged in a "Godfather-like" conspiracy to strongarm [East Side city](#) council candidate Magdalena Carrasco out of the 2010 race against the assemblywoman's brother, Xavier Campos. When Shirakawa and Nora Campos failed to musde the candidate aside, Carrasco's opponents stole the election by branding her a sympathizer of Vietnam's communist government in a fraudulent mailer to Vietnamese-American voters.

Xavier Campos refuses to cooperate with the legal investigation, according to grand jury transcripts exclusively obtained by [Metro](#) and [San Jose Inside](#). Of 15 witnesses called before the late grand jury in late October, only two refused to answer questions from prosecutors and jurors: Campos and the mother of one of Shirakawa's children, Linda Delgado, who served as treasurer to both.

In fact, after stating his name for the record, Councilman Campos refused to even say what he does for a living.

"I would like to answer the grand jury's questions this morning," Xavier Campos said. "I have been instructed by my attorney to assert my constitutional right not to answer any question or make any statement during today's proceedings."

"Are you invoking that right when I ask you your occupation?" inquired Karyn Sinunu-Towery, a top prosecutor for the [Santa Clara County District Attorney's](#) office.

"On the instructions of my attorney, I assert my right not to testify," Campos replied.

"Is Nora Campos your sister?" Sinunu-Towery asked.



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"On the instructions of my attorney, I assert my right not to testify," the councilman repeated.

"Mr. Campos, what is your right not to testify?"

"On the instructions of my attorney, I assert my right not to testify."

"Are you invoking your Fifth Amendment Right?"

"On the instructions of my attorney, I assert my right not to testify."

A quick consultation with a judge prompted Xavier Campos to correctly invoke his constitutional right against self-incrimination. This isn't the first time, however, that Campos has refused to explain his role in criminal activity, which seems to surround him wherever he goes.

Before Campos went to work for Shirakawa, he served as chief operating officer of the Mexican American Community Services Agency. Short on monies to operate its network of charter schools, housing projects and social [service programs](#), the nonprofit misappropriated \$1 million from the [retirement contributions](#) of its own employees.

MACSA CEO Olivia Soza-Mendiola and Chief [Financial Officer](#) Benjamin Tan were both charged with felony grand theft and subsequently pleaded guilty. Campos, who attended meetings during which the illegal diversion of funds was discussed, was not prosecuted and has steadfastly declined media questions about the criminal activity that stripped MACSA's teachers of retirement funds.

In 2012, 16 days after *Metro* first reported signs of Supervisor Shirakawa's campaign law violations, including the failure to file statements of his political contributions and the use of funds for gambling and payments to family members, Campos scrambled to clean up his own paper trail.

Though Delgado received a paycheck as treasurer to both campaigns, she wasn't managing the filings. Campos' disclosure forms were delinquent by more than a year.

Trying to quietly distance himself from Shirakawa, Campos dismissed Delgado and named himself campaign treasurer. He then forgave a \$10,000 loan he mysteriously provided to his campaign in October 2010 and closed the account. The source of the loan's funds remains unknown, since Campos, who held no job after leaving his job with Shirakawa's office, won't discuss the matter. California's Fair Political Practices Commission (FPPC) is investigating.

In June, Shirakawa faced a new felony charge after his DNA was found on stamps affixed to a political mailer that deceptively cast Campos opponent Carrasco as a communist in the days preceding the 2010 primary vote. Rather than categorically refute any role in the mail fraud scandal, Campos called the allegations a "distraction," adding that he "never wanted to be involved in any activities that distract our city's attention from" crime and a lack of public services. Then he fell silent. But his older sister, California Assembly speaker pro Tempore Nora Campos, and others told the grand jury enough to indict Shirakawa, and more charges could be coming.

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Dirty politics won in 2010, when East Side's Shirakawa-Campos axis fended off a challenger, leaving behind a trail of DNA and suspicious cash transfers

BY JOSH KOEHN

As deputies led George Shirakawa Jr. away last Friday to begin serving a year-long county jail term—for charges that could have sent him to state prison for up to eight years—a 283-page transcript sitting five floors beneath the courtroom escaped the media's attention. It detailed a frantic, behind-the-scenes scramble for power that saw money shuffled amongst accounts and to consultants. Prosecutors now allege that the incarcerated former county supervisor engaged in a "Godfather-like" conspiracy to strongarm East Side city council candidate Magdalena Carrasco out of the 2010 race.



The complete story appears in the printed edition of Metro, available free throughout Santa Clara County.

TAGGED: politics, district attorney, fppc, george shirakawa jr., grand jury, macsa, magdalena carrasco, nora campos, salvagate, san jose city council, xavier campos

Comments (7)

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frustrated finfan

Wed, Nov 13, 2013 - 11:00 am

"I assert my right not to testify,"

Translation: I don't know the Constitution well enough to cite it correctly, and I'm too stupid to remember my attorney's exact instructions.

Reply to this comment

Aware D5

Wed, Nov 13, 2013 - 11:05 am

Wow. Wow. Wow. So this clown once again has no comment? The Eastside has no real representation because of him, he can't comment on just about anything and tries to stay invisible because he's terrified of the questions swirling around him because of all his shady dealings. No Comment should have been his election slogan. He pleads the 5th to not incriminate himself, criminals plead the 5th! Mobsters plead the 5th! Gang members plead the 5th! Lifetime criminal conspirators plead the 5th! Well Mr Campos I guess it is finally becoming quite clear who you really are. If you didn't want to be under the microscope, if you didn't want to be accountable publically for your actions maybe you shouldn't have stepping into the public arena of politics!!!

You are a bigger joke than Shirakawa because at least with his criminal behavior he peppered it with a few good deeds. You are absolutely useless on the council. It seems that the Eastside Latino Democrats have yet another disgraceful family legacy. Hang the Campos name up on the Wall of Shame with Shirakawa. It is becoming very obvious that you and cohorts criminally conspired to "win" that election. FOR THE FIRST TIME IN YOUR LIFE, DO THE RIGHT THING AND RESIGN. Shirakawa's sad saga cost tax payers over 7 million in elections, trials etc, you are a selfish and shameless failure if you drag out the obvious and do the same. TELL THE TRUTH! ANSWER THE QUESTIONS! Then do your time in the cell beside Gorgeous George.

Reply to this comment

retired3

Wed, Nov 13, 2013 - 12:19 pm

Once a crook, always a crook. What a joke!

Reply to this comment

GreyGhost

Wed, Nov 13, 2013 - 1:59 pm

Manny Diaz, Nora Campos, Xavier Campos, George Shirakawa. What an illustrious 20 years we have had on the East Side.

At least Blanca Alvarado had a shred of decency, leaving aside the ridiculous Mexican Heritage Plaza.

[Reply to this comment](#)

Audrey Huynh

Thu, Nov 14, 2013 - 8:30 am

It looks like the Campos/Shirakawa/Campos parody of The Sopranos is finally crumbling, although Livia was able to deftly distance herself and move into fancy digs at 70 West Hedding.

Thanks for your effort Mr. Koehn.

[Reply to this comment](#)

Kevin Riley O'Keeffe

Fri, Nov 15, 2013 - 7:29 pm

Can someone please post a link to that "Licked" story? I live east of the Missouri river these days, so its not like I can just grab a copy of the Metro.

[Reply to this comment](#)

[Silicon Valley Newsroom](#)

Fri, Nov 15, 2013 - 11:06 pm

Kevin, the complete issue of Metro can be found here:
<http://issuu.com/metrosiliconvalley/docs/msv1346>

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EXHIBIT 3

George Shirakawa scandal raises new questions about San Jose politicians Xavier and Nora Campos

By Mike Rosenberg mrosenberg@mercurynews.com San Jose Mercury News

Posted:

MercuryNews.com

Grand jury transcripts released Wednesday in the illegal campaigning indictment of former Santa Clara County Supervisor George Shirakawa, Jr. raised new questions about the role of San Jose City Councilman Xavier Campos and his sister, Assemblywoman Nora Campos.

Shirakawa is charged with helping Campos, his friend and former aide, win the San Jose City Council seat vacated by his sister in 2010 by sending out campaign postcards falsely impersonating Xavier Campos' opponent and suggesting she was a communist. Xavier Campos has denied any involvement with the mailers and has not faced any charges while Nora Campos, D-San Jose, has for the most part stayed out of the saga's public spotlight.

But criminal grand jury transcripts of the Shirakawa case made public Wednesday showed prosecutors asking pointed questions to both Campos siblings, who were subpoenaed to testify before the jury in a closed-door hearing on Oct. 23.

Upon taking the stand, Xavier Campos spelled his name and then repeatedly invoked his Fifth Amendment right to avoid making statements that could incriminate himself. Even when prosecutors asked him basic questions – such as his job title and whether he was the brother of Nora Campos – Campos refused to acknowledge them, saying only that his lawyer had advised him not to comment.

During the hearing, Xavier Campos' attorney spent several minutes trying to persuade Santa Clara County Superior Court Judge Peter Kirwan to let Campos leave the stand so prosecutors could not ask him more questions. The attorney, Gregory Ward, said it would only make Campos "look bad" to repeatedly plead the fifth.

When that failed, Ward asked for prosecutors to read jurors a statement that would make it clear that pleading the fifth was not necessarily an indication of any wrongdoing.

At one point, an unidentified juror asked: "We would like to know why we are not trying to indict Xavier. Is there not enough evidence?"

Another juror interrupted, saying: "You can't ask that," and the proceedings continued.

Through their spokespeople, both Camposes declined to comment. A spokesman for Nora Campos said the transcripts speak for themselves.

Throughout the closed-door hearing, the Santa Clara County District Attorney's Office tried to link Shirakawa and the Campos siblings.

They noted the trio shared many of the same campaign staff and helped each other run for office. Of particular concern to prosecutors was that Nora Campos had given Shirakawa a \$5,000 donation from her campaign fund without asking why he needed it. Prosecutors called the funds

a "reward" for something Shirakawa had done.

At the time, Shirakawa was not in the middle of an election but needed to "retire his debt," Nora Campos told the jury.

Lisa Jensen, initially the campaign manager for Xavier Campos' opponent, Magdalena Carrasco, alleged Nora Campos made a point of trying to get Carrasco not to run, calling her stance "slightly threatening."

During her testimony, Nora Campos said she had only requested a "conversation" with her brother's opponent.

The grand jury hearing only targeted Shirakawa -- who has been linked by DNA to the illegal mailers. He was indicted by the jury on Oct. 28 and faces a trial next year. Those charges come on top of the one-year jail sentence term Shirakawa was given last week in connection to separate counts that he spent campaign and public funds on gambling and lavish dining.

Assistant District Attorney Karyn Sinunu-Towery, the prosecutor in the case, declined to say whether either Campos sibling was being investigated.

"We are just letting the transcript speak for itself," she said. "It just gets curiouiser and curiouiser."

Contact Mike Rosenberg at 408-920-5705. Follow him at [Twitter.com/RosenbergMerc](https://twitter.com/RosenbergMerc).



George Shirakawa, left, the disgraced former member of the Santa Clara County Board of Supervisors, with his lawyer, John Williams, at his sentencing at the Santa Clara County Hall of Justice in San Jose, Friday, Nov. 8, 2013. The sentencing follows his conviction for misuse of public funds and campaign finance irregularities. (Patrick Tehan/Bay Area News Group) (Patrick Tehan)



San Jose City Council Member Xavier Campos . (Nhat V. Meyer/Staff File)

EXHIBIT 4

Mercury News editorial: Shirakawa's actions abuse the public trust

San Jose Mercury News

Posted:

MercuryNews.com

Santa Clara County Supervisor George Shirakawa is acting as if his failure to file campaign finance disclosures from 2009 through June of this year is no big deal. That's not true, and he knows it. We hope District Attorney Jeff Rosen prosecutes this lapse to the fullest extent of the law -- not only to hold Shirakawa accountable, but to make it clear that the DA's office takes seriously the obligation of all office holders to follow disclosure laws that hold them accountable to the public.

As one of five county supervisors and, this year, as president of the board, Shirakawa has responsibility for how hundreds of millions of taxpayer dollars are spent annually. Like all candidates and elected officials, he is required to file regular documentation of his campaign fund donations and expenditures with the county registrar's office. Shirakawa's failure to act despite repeated notifications from the registrar constitutes blatant abuse of the public trust.

Rosen says he'll look into Shirakawa's records and determine whether misdemeanor charges should be filed in addition to whatever fines the state Fair Political Practices Commission might levy. The length of time this has dragged on, in our view, should be enough to merit more than a civil-penalty slap on the wrist. But Rosen also will be looking at how the money in the campaign fund has been spent. Payments to friends and family now showing up in public documents look suspicious enough to keep investigators busy.

This kind of thing isn't new for Shirakawa. When he was running for supervisor in 2008, we said he "has all the danger signs of a politician prone to conflicts of interest, including a history of financial difficulty."

He failed to pay federal income taxes in 2003 and 2004, and he has had problems with child support. Other than a school coaching stint years ago, his only real job outside of elected office has been as a lobbyist, gaming the connections he made while on the public payroll. In previous campaigns he has been warned by the FPPC over improper disclosures of funding for mass mailings.

Metro Newspaper reported that Shirakawa made a total of \$78,000 in loans to his political committee to finance his 2008 campaign. The law permits candidates and office holders to continue raising money to repay loans like this, but Shirakawa failed to submit eight required campaign-contribution filings to disclose donations and expenses.

Neither the district attorney nor the state FPPC were aware that this was going on. Now both are investigating. In a quirk of law, Shirakawa can't be fined until he has made his filings -- a loophole that should be closed.

Fortunately, the DA has no such limitation if he decides filing charges is appropriate.



George Shirakawa

EXHIBIT 5

Features & Columns

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County Supervisor George Shirakawa Submits Fraudulent Meal Receipts

ShareThis

Board of Supervisors prez faked reports to hide expensive dinners charged to cash-strapped county

October 31, 2012 - by Josh Koehn



\$100 STEAKS! Shirakawa charged 185 meals to taxpayers.

with San Jose Police Chief and Command Staff."

County policies limit meal reimbursements to official business, cap dinner costs at \$30 without the finance director's approval and require an "original/itemized receipt" or a signed statement that "No ALCOHOL was served." Though the dinner violated all of those rules, taxpayers picked up the \$548 tab, as they have with more than 250 charges Shirakawa has rang up in the past four years.

According to Moore, there was no official business to discuss. Instead, Shirakawa crashed a purely social dinner party unannounced. It was "not a meeting and wasn't planned," Moore says.

When the dinner ended, Moore says, Shirakawa offered to split the tab, which, the police chief says, included bottles of wine. "Trust me, it was going to be coming out of my pocket," says Moore. "He sure as heck didn't tell me he was going to put it on a county credit card."

While the county struggled to eliminate annual deficits exceeding \$200 million and replace social services eliminated by state cuts, Shirakawa ran up meal tabs and misrepresented his expenses with fraudulent declarations. The top elected official in an agency with a \$4.1 billion annual budget, he is already under investigation by the District Attorney's political integrity unit and the state's

Two weeks after he was elected president of Santa Clara County's Board of Supervisors, George Shirakawa, Jr. attended San Jose Mayor Chuck Reed's Feb. 9 State of the City address. He then strolled across the street to the Fairmont Hotel, where San Jose Police Chief Chris Moore and other senior members of the force were getting ready to order \$50 steaks and rib chops at The Grill on the Alley. Shirakawa sat down and joined the party.

When the check came for the dinner of filet mignon, NY pepper steak, lobster bisque and gelato, the board president pulled out his county-issued Visa card and included the charge on his signed February 2012 expense report as "Meet

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political watchdog group after *Metro* reported that the supervisor broke state law by repeatedly failing to file financial disclosure documents related to \$110,000 in debts from his 2008 campaign.

Metro has now found that Shirakawa also violated expense limits and policies against taxpayer-funded alcohol consumption by exploiting a loophole that allowed officials to submit a "Missing Receipt Memorandum" in cases when the original, itemized receipt was misplaced. From January 2009 through September 2012, Shirakawa expensed 185 meals to the county and yet only three were accompanied with itemized receipts, according to county forms.

Amazingly, Shirakawa never lost the [top copy of the receipt](#)—the one with the tip and total—only the slip that details the number of guests and the items consumed. Two county audits of his charges did nothing to slow Shirakawa's spending, and in some respects, the incompetent inspections seemed only to embolden his [free spending](#).

Living Large

While many Santa Clara County homeowners sweated to pay their semiannual property tax payments in the recession that followed 2008's economic collapse, and businesses cut back on expenses, Shirakawa spent \$36,830 of their taxes on plane tickets, hotels, rental cars, dining and other items—like a television and a \$627 glass door mini-fridge that he claims were related to county business—since January 2009.

Even Dave Cortese, the supervisor who spent the most money with a county-issued charge card, \$41,893, only recorded three restaurant transactions in the last four years. Liz Kniss spent \$9,000 less than Shirakawa in the last four years, and nearly all of her charges related to travel and membership dues to various government-related organizations with wonkish acronyms. Supervisor Mike Wasserman uses his card almost exclusively for office-supplies purchases with contracted county vendors, and Supervisor Ken Yeager, who spent just \$7,354 in the past four years, promptly reimburses the county if he has a \$5.75 Samuel Adams with his \$18 Kobe burger while at an out-of-town convention.

Shirakawa is the board's runaway frequent diner, a regular at taquerias, Chinese restaurants, Italian bistros and rib joints, picking up the tab for everything from \$7.95 red velvet cakes at the Cheesecake Factory to \$78 steaks (\$102.76 with tax and tip, not including beverages or side dishes). He pays with county funds for his meals with political consultants, friends and staff members.

They wash their meals of spare ribs, chicken lettuce wraps, egg rolls, calamari and green beans down with Devil's Canyon Amber Draft, Stella Artois and a pina colada, as Shirakawa did with his buddy, San Jose Councilman Xavier Campos, and San Jose's Deputy City Manager Noberto Duenas at P.F. Chang's on Feb. 17.(Campos had no mention of the outing on his public calendar, but his office confirmed that he did have a note of the dinner on his personal calendar.) Shirakawa then papered over the misconduct with a [fraudulent declaration](#) that no alcohol was consumed.

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OFFICIAL COUNTY BUSINESS: Evergreen Inn and Pub, one of Shirakawa's favorite haunts, is known for big portions, has a full bar and offers 'Hot Spot' gambling at its tables.

In 2009, Shirakawa and his [ShareThis](#) chief of staff, Eddie Garcia, spent three days in San Diego, staying at the 4-star Marriott Marquis waterfront hotel and tooling around San Diego in a Mercury Grand Marquis luxury rental to tour an ambulance service's facility. Cost to taxpayers: \$1,742.

Occasionally, Shirakawa's spending goes so far as to require some corrective action. In the last two years alone, he was forced to reimburse the county for 16 rejected charges totaling \$4,614.18. These charges included rental cars, hotel rooms on a Valentine's Day and New Year's Eve, a couple of dinners and plane tickets and two golf outings.

In October 2011, Shirakawa bought a \$479 Southwest Airlines plane ticket to go to Henderson, Nev., where he then used his county credit card for a \$583 charge at the Revere Golf Club. Only after county staff advised Shirakawa's office of the impropriety of the charges were the \$1,000-plus in expenses repaid.

Shirakawa also reimbursed the county for half of these improper expenses in just the last month, after Metro began making Public Records Act requests into supervisors' calendars and expenses.

Shirakawa's expense reports show that he rang up charges in 2009 and 2011 at Rio Suites casino in Las Vegas and Thunder Valley Casino in Lincoln, respectively. Both gambling establishments reversed charges a couple months after the county processed them—essentially an interest-free casino loan, courtesy of taxpayers.

Shirakawa's P-Card also shows an unexplained September 2010 charge at Harvey's Casino in Lake Tahoe. Eight months later, Shirakawa repaid the \$20.46, writing to the finance department that he had provided both his personal and county card numbers to the casino, leaving open the possibility that he could have used his government-issued credit card to take out a line of credit with Harrah's Gaming, which has a partnership with Rio Suites and other casinos so players can gamble at different locations under the same profile. Shirakawa has not responded to Metro's requests to discuss his expenses.

"Please accept this payment to the County of Santa Clara for \$20.46 as reimbursement for a charge to my P-Card," Shirakawa wrote. "My personal and business information are on the same profile with Harrah's Entertainment and a charge of \$20.46 was inadvertently charged. I have since corrected the link."

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SCENE OF THE DINE: El Pirrin is one of Supervisor Shirakawa's favorite spots to conduct official county business.

Unenforced Rules

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What makes the lack of accountability all the more stunning is that Shirakawa's P-Card transactions have been audited twice, and no serious concerns were raised. In February 2010 and May 2011, county Controller-Treasurer Marilou B. Mutuc audited Shirakawa's P-Card expenditures.

The 2010 audit examined transactions from the last half of 2009. Mutuc only took issue with the purchase of two items from non-approved vendors—and missing itemized receipts.

"Other than the observations stated

above, the County of Santa Clara Board of Supervisors, District Two's P-Card transactions audited for this period followed the policies and procedures set forth in the Procurement Card program," Mutuc wrote. "The Department's P-Card records are well organized and maintained. The Department is making an effort to use the P-Card whenever possible to maximize the rebate offered by U.S. Bank."

Rather than ensure responsible use of public funds by an elected official, it seems the finance department was more concerned with its rebate. County Executive Jeff Smith, whose office oversees all departments, did not respond to requests for comment.

One of the few county employees who did respond to requests for comment, but only in broad terms, was the P-Card program director, Jenti Vandertuig, who recommended a couple weeks ago that a list of Shirakawa's transactions be sent to the county exec's office "so they're not caught off guard." Vandertuig estimates that 700 county employees possess P-Cards. She says she instituted a policy in her own department a few years ago that her employees could no longer hold staff lunches on the county's dime due to recent budget cutbacks.

"We always advise everybody, titles don't matter," she says.

Shirakawa must not have gotten the memo. He frequently lunches at out-of-the-way places like Willow Glen's Great Wall Restaurant or El Pirrin on the East Side, describing the events as "staff meetings" or a "briefing," without further notations on the topic of discussion, as is generally required by Internal Revenue Service guidelines for entertainment expenditures.

Frequently, the person dining with the supervisor is his chief of staff, his bodyguard/driver or a close political associate like Campos or Franklin McKinley School District Board Member George Sanchez in a weird counterpoint to tradition. Shirakawa also has the county pick up the tab when he treats lobbyists and political consultants to a meal, among them Rich Robinson, Jude Barry, Ryan Ford, Rolando Bonilla, Tom Saggau, Joe Guerra and Dustin DeRollo.

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Metro's independent efforts to track down the receipts that Shirakawa concealed from county finance officials uncovered a third violation of the no-alcohol policy. On June 26, Shirakawa and his eight-person staff took a "farewell lunch" for policy aide Gustavo Caraveo. It ran until 6:19pm, included fruit cobbler, crme brulee, two Stella Artois beers and three \$102 steaks, and closed out at a belt-loosening price tag of \$470.94.

It was the same month that Shirakawa issued his first budget message as board president. "We are very concerned about local impacts to single moms, child care and In-Home Supportive Services for the disabled," he said.

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EXHIBIT 6

<<

HOME > NEWS > LOCAL

Judge in Shirakawa Corruption Case Bows Out, Hires Lawyer

Unusual maneuvering in political corruption court case.

By Chris Roberts | Friday, Sep 20, 2013 | Updated 5:32 PM PST



George Shirakawa is pictured at right.

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PHOTOS AND VIDEOS



and Videos

himself from a reported.

because of that "ex parte communication," the newspaper

The lead judge in charge of the prosecution of former [Santa Clara County](#) supervisor George Shirakawa has made an unorthodox move.

He's recused himself from the case -- and hired [his](#) own attorney, according to the San Jose Mercury News.

[Superior Court Judge](#) Philip Pennypacker spoke "one-on-one" with Shirakawa's defense attorney without a prosecutor present -- and has recused

Pennypacker might have been called as a witness today in a hearing determining whether Shirakawa pleaded guilty to using public funds -- he gambled with some public money and [campaign contributions](#) -- before charging him with another, unrelated felony, the newspaper reported.

Shirakawa's [defense attorney](#) made a filing earlier this month that indicated he talked to the judge in his capacity as a "witness," the newspaper reported. He won't be called to testify, but he appears out of the case.

The charges against Shirakawa, who is alleged to have been involved in an illegal 2010 campaign mailer, will stand.

Find this article at:

<http://www.nbcbayarea.com/news/local/Judge-In-Shirakawa-Corruption-Case-Bows-Out-Hires-Lawyer-224653591.html>

☐ Check the box to include the list of links referenced in the article.

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EXHIBIT 7

Mercury News editorial: Shirakawa mailer case needs full investigation

San Jose Mercury News

Posted:

MercuryNews.com

"If the law supposes that," said Mr. Bumble,... "the law is a ass—a idiot."

— Charles Dickens

Not always.

— Mercury News Editorial Board

The bizarre twists in the prosecution of George Shirakawa Jr. finally are resolving into common sense. If the price of that is paying a public defender for the apparently destitute former \$143,031-a-year Santa Clara County supervisor, well, that's how the system works. Everybody has a right to representation in court.

Last spring Shirakawa made a plea bargain for five felonies, involving perjury and misappropriation of public funds that had dragged on for years, courtesy of inept county officials. He blamed it on a gambling addiction.

After Shirakawa's guilty plea, District Attorney Jeff Rosen learned from the state attorney general's office that Shirakawa's DNA tied him to a particularly heinous violation of campaign laws in 2010 — an illegal, vicious mailer to Vietnamese American voters that painted Magdalena Carrasco as a communist and probably cost her the San Jose City Council District 5 seat won by Shirakawa's buddy and political ally, Xavier Campos.

(Could it be a coincidence that a similar mailer in 2008 had falsely painted Richard Hobbs, Shirakawa's opponent in his first supervisor race, as a communist?)

Naturally, Rosen's office filed charges over the mailer. The crime was serious. It had real consequences — Carrasco lost by just 20 votes — and it was the kind of dirty trick that makes people jaded about politics and politicians. But Shirakawa's lawyers argued that the plea bargain on the original corruption charges made him immune to prosecution for the separate, unrelated crime despite the new evidence — kind of a get-out-of-jail-free card.

It's come out all right, though. Last month, Superior Court Judge Griffin Bonini ruled what had seemed obvious: The mailer charges were not covered by the plea deal and could proceed. The law is not "...a idiot" after all.

As to this week's appointment of a publicly paid lawyer to defend Shirakawa in the new case — yes, it's annoying. But it's not surprising that developer John Vidovich and other friends who may have helped pay for Shirakawa's defense are not anteing up more to fight the mailer charge, which is harder to blame on an addiction.

Some say the DA is persecuting the former supervisor, who has tried to play the victim card

since the first hints of his financial problems surfaced last year. But it's important that politicians and campaign consultants know crimes like this will be prosecuted vigorously.

Besides, this particular crime isn't only about Shirakawa. Those mailers were not the work of a single person. Somebody designed them, printed them and paid for them. In two elections. The people responsible probably are still making money on local campaigns, if not from a public payroll.

Shirakawa deserves a defense, but Rosen needs to pursue this case as far as he can.

EXHIBIT 8

George Shirakawa Jr: A Superfund site

By Scott Herhold sherhold@mercurynews.com San Jose Mercury News

Posted:

MercuryNews.com

Every week the stain around former Santa Clara County Supervisor George Shirakawa Jr. spreads a little wider. It's now flooded a piece of the county bureaucracy, leaked into the court system, and lapped around the county's big ambulance contract.

What to do? Glad you asked, because I have a solution: It's time to declare everything around Shirakawa — and the ex-supe himself, for that matter — a toxic Superfund site. It's that serious. We might even be able to get federal money to clean it up.

Consider the language from the "citizen's guide" to Superfund sites: "Superfund cleanups are very complex and require the efforts of many experts," it says. "The goal is to protect you and the environment you live in from the effects of hazardous substances."

Precisely. Shirakawa has not simply sullied the name of his beloved father, George Shirakawa Sr. He's betrayed the friendship of an old friend. He's misused public money and been accused of political dirty tricks. He's left a trail of dumbfounded observers.

County Executive Jeff Smith has felt the effects of the Shirakawa stain. He's had to explain why his finance people did not catch Shirakawa's free-spending ways and why the registrar never insisted on complete campaign filings. His ex-finance director refuses to accept a demotion.

Now lawyer Jay Rorty and Judge Philip Pennypacker have been ensnared in controversy after holding a private conversation about Shirakawa's case without the prosecutor. While it may have no long-lasting effect, it's the kind of thing that the bar and judicial authorities have reviewed in other cases.

Paying for lawyers

To add insult to injury, taxpayers will have to pay for Shirakawa's defense on the charge that he sent out a phony mailer sliming San Jose council candidate Magdalena Carrasco in 2010. The new case has postponed Shirakawa's sentencing on five felony charges.

Why the stain? I count three reasons. First, the affair Shirakawa betrays a laxness in the county's culture: The county has rarely gotten intense attention from the public or the media. So sloppy practices result. Errors linger.

Second, nobody was really prepared for the audaciousness of Shirakawa's wrongdoing. It's fashionable to say that he was addicted to gambling. But he was more than an addict. The attempt to slime Carrasco, if true, shows he could be part of a Nixonian dirty tricks team.

Dumbfounded

Part of the lag in recognizing Shirakawa's sins was due to the simplest of human reasons: He is a hail-fellow, well-met, sort of guy, not someone you'd think capable of organizing criminal

schemes.

The reaction suggests that folks are torn between the fear of being too soft on Shirakawa and the residual allegiance they have for a guy who in some ways was their boss. That caution prolongs the case and makes court proceedings more expensive.

I went to a hearing Wednesday at which Rorty was appointed at public expense to defend Shirakawa on the dirty-tricks case. Shirakawa will soon have his fourth judge.

The only solution is decisive action. The Superfund people have something that they call a "Hazard Ranking System." If a problem scores high enough, federal officials put it on a list. Shirakawa already has a commanding score. The stain might be his lasting legacy.

Contact Scott Herhold at 408-275-0917 or sherhold@mercurynews.com.
[Twitter.com/scottherhold](https://twitter.com/scottherhold).



George Shirakawa Jr., right, and his attorney John Williams leave Santa Clara County Superior Court in San Jose, Calif. on Monday, March 18, 2013. (Gary Reyes)

EXHIBIT 9

George Shirakawa Jr. to be sentenced Nov. 8, even as more conflicts of interest muddle case

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted:

MercuryNews.com

SAN JOSE – As if the trials of onetime Santa Clara County Supervisor George Shirakawa Jr. weren't muddled enough, on Friday a newly appointed fourth judge on the high-profile case expressed his numerous conflicts of interest – from sharing a child care provider with a key witness expected to testify for the defense, to once working under the direct supervision of the prosecuting DA.

Neither side, however, took issue with Superior Court Judge Daniel Nishigaya taking over the case, which is well into its eighth month after a series of legal hiccups and surprising detours. And that led to some long-stalled progress: A sentencing date of Nov. 8 has finally been set to determine Shirakawa's debt to society for lying on campaign finance forms and gambling away public funds.

At least one witness is now expected to testify in person for each side before Nishigaya, a former supervising deputy district attorney who will rule on whether Shirakawa serves time in county jail for his 12 criminal convictions. The DA is pushing for a one-year sentence; the defense wants community service.

To make its case, Shirakawa's attorney John Williams said Friday he intended to call to the stand Michele Lew, president and CEO of the prominent local agency Asian Americans for Community Involvement.

Nishigaya had earlier revealed he knows Lew outside of court and shared the same day care. The judge also revealed he once worked under the lead prosecutor in the Shirakawa case, Karyn Sinunu-Towery, and also served as one of her campaign treasurers when she ran for district attorney in 2006.

The judge aired those potential conflicts after reading an April letter Lew wrote to the court expressing the willingness of her 40-year-old nonprofit "to be considered as a placement site for Mr. Shirakawa's community service, including volunteer service up to 20 hours a week for one year."

Reached by phone Friday afternoon, Lew – who has served as a community member to the Mercury News' editorial board – said she was not advocating a particular sentence for Shirakawa, merely stating that should a judge order community service, her agency would be willing to receive him. Lew added that she is not prepared to offer her opinion on whether community service alone is a sufficient sentence.

Regardless, she will be the first person to testify in court on Shirakawa's behalf, other than his two attorneys. In court dates stretching back to March, Shirakawa has yet to appear with a single supporter by his side.

Lew said if her agency is chosen, "we'd have to sit down and talk with him. Typically, court-

mandated volunteers help us with clerical tasks such as putting together folders and organizing materials. That may be a role for him to play – miscellaneous clerical tasks."

But Lew's letter stated another possible role for the longtime local politician caught gambling with campaign contributions and funds drawn from his county credit card. Lew said her group could "envision Mr. Shirakawa volunteering with our Center for Addiction Recovery and Empowerment (CARE), which helps individuals and their families address problem gambling issues."

A less sympathetic view of that behavior will come from the victims' perspective that prosecutors want the judge to hear. A county official, either County Executive Jeff Smith or Chief Operating Officer Gary Graves, will likely describe the harm Shirakawa caused to taxpayers. Graves said he or Smith will likely tell the court how Shirakawa's misuse of public funds also harmed the county's reputation.

"We aren't particularly excited about having to sit there and testify, we're trying to put this behind us," Graves added. "But obviously if that's what they want us to do we'll do it – it is what it is and we'll do what is necessary."

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