

SPECIAL ETHICS COMMISSION REVIEW COMMITTEE

Of the

Suffolk County Legislature

A meeting of the Special Ethics Commission Review Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York, on Tuesday, October 26th, 2010, at 10:00 A.M.

Members Present:

Presiding Officer William J. Lindsay - Chairman
Legislator John M. Kennedy - District #12
Legislator Lynne C. Nowick - District #13
Legislator Jon Cooper - District #18

Also in Attendance:

Joseph R. Conway - Special Counsel to the Ethics Committee
Legislator Ricardo Montano - District #9
Legislator DuWayne Gregory - District #15
Terrence Pearsall - Chief-of-Staff to P.O. Lindsay
Tim Laube - Clerk of the Suffolk County Legislature
Kara Hahn - Director of Communications for P.O. Lindsay
Michael Pitcher - Aide to Presiding Officer Lindsay
Justin Littell - Aide to Legislator D'Amaro
Greg Moran - Aide to Legislator Nowick
Linda Bay - Aide to Minority Leader Losquadro
Christine Malafi - Suffolk County Attorney
Brian Mitchell - County Attorney's Office
Brendan Chamberlain - County Executive's Office
Tom Vaughn - County Executive's Office
Brendan Stanton - County Executive's Office
Joseph Sawicki - Suffolk County Comptroller
Christina Capobianco - Chief Deputy Comptroller of Suffolk County
All Other Interested Parties

Verbatim Transcript Prepared By:

Alison Mahoney - Court Reporter

(*The meeting was called to order at 10:14 A.M.*)

P.O. LINDSAY:

Could everyone rise for the pledge?

Salutation

Good morning, everyone. Welcome to the second meeting of the Special Ethics Committee. Just a few housekeeping items.

At our last meeting there was a request about a public portion, and the committee has decided at the end of our proceedings we will have on our agenda a portion set aside for public comments.

I really hoped that our proceedings would be much further along than we really are. We've had some difficulties in obtaining records. The Legislature gave this committee limited subpoena power at the last meeting. We have issued subpoenas for the records that we think that are important to our work and thus far we have not gotten the records that we requested. Although a number of commission members have voluntarily come forward and said that they will come before us and testify, we feel as a group that it's very important that we have the records in hand when they come forward, if for no other reason just to avoid them coming back a second time.

So we're going to move forward in another vein away from the commission to get some background testimony. And with us today is Mr. Anton Borovina, and I thank Mr. Borovino for coming this morning.

Mr. Borovina, would you please rise and take an oath from our Clerk?

(Anton Borovina, Esq., after having first been duly sworn by Tim Laube, Clerk of the Legislature, testified as follows:)

MR. LAUBE:

Thank you, sir.

MR. BOROVINA:

Thank you.

P.O. LINDSAY:

Would you please give your name for the record? You have to push that microphone to talk, I think. I don't think it's the stationary one.

MR. BOROVINA:

Mr. Chairman, my name is Anton Borovina. I'm an attorney with my law office in Melville, Long Island.

P.O. LINDSAY:

Okay. And you are before us today voluntarily?

MR. BOROVINA:

Yes, sir, at the request of the committee.

P.O. LINDSAY:

And you mentioned that you were in private practice now.

MR. BOROVINA:

Yes, sir.

P.O. LINDSAY:

Did you ever work for the County of Suffolk?

MR. BOROVINA:

Yes, on several occasions. I was designated Special Counsel, particularly to the Suffolk County Legislature, on various matters, including the car leasing investigation, the adoption of certain laws requiring a mandatory or permissive referendum. I'll get on to this further, but I was also retained by the County concerning a lawsuit brought by Assistant District Attorneys challenging the authority of the Ethics Commission to mandate a single form applicable to all employees, including the County District Attorney's Office. It went all the way out to the 2nd Circuit, by the way, I might add.

P.O. LINDSAY:

So you're familiar with our Ethics form.

MR. BOROVINA:

Well, I am, most certainly. If I may, I can give some background on that. I was appointed as a Law Assistant in the County Attorney's Office in 1975. At that time, there were approximately 16 part-time Assistant County Attorneys, each of whom were politically appointed. In 19 -- frankly, I was told at that time I would not be an Assistant County Attorney because it required a political designation. Nevertheless, in 1977, I believe January 1st, I was appointed an Assistant County Attorney. John Klein, then County Executive, and the County Attorney, Howard Pachman, recommended that I be appointed. I was the first full-time attorney under any title in the County Attorney's Office; since then, as we all know, the County Attorney's staff are now full-time employees. I remained in the County Attorney's Office until 1983, at which time Congressman Mrazek asked me to work with him in Washington D.C.

In 1978, I was specifically asked by the County Attorney to draft the legislation dealing with the Financial Disclosure Law. And --

P.O. LINDSAY:

Could I just stop you?

MR. BOROVINA:

Sure.

P.O. LINDSAY:

Did you say 1978?

MR. BOROVINA:

Yes, sir.

P.O. LINDSAY:

So that was the first piece of legislation that was introduced having to do with ethics on a County level; is that correct?

MR. BOROVINA:

No, sir. At that time, in the following way; prior to my being appointed in 1975, there was a Code of Ethics that was administered by a Board of Ethics; it just dealt strictly with ethics. Chairman White I believe was his name, wanted to have an attorney to give advice and to represent the board and to write its opinions. I was the first attorney, counsel from the County Attorney's Office, to act as the attorney for the Board of Ethics. I think perhaps because of that and for other reasons, including the Tar Baby Principle, when 1978 rolled around, I was then asked to draft a disclosure law.

I know for a fact that the specific reason why I was asked to disclose the disclosure law was because the County Attorney, Howard Pachman, was determined to have a drafting that would be free from partisan influences. The office at that time was dominated by Republican officials, Republican appointees, and certainly political -- politically connected officials. Howard Pachman, I think John Klein at that time as well, wanted a disclosure law that would be fair, have uniform application, be understood by all, including the members of the public and those serving the government. And so, therefore, I was asked in 1978 to draft the Suffolk County Disclosure Law which has now morphed in many good ways to the law we have today.

P.O. LINDSAY:

Okay. So they were the concerns or the background before the initial drafting of the 1978 statute?

MR. BOROVINA:

Well, the concerns at that time -- those were the immediate concerns. What was the looming, chronic concern was there were certain land scandals going on in Nassau County. There were officials who were being investigated, criminally and otherwise, for getting involved in land deals, or having a financial interest, directly or indirectly, in land deals in which the Nassau County government had an interest.

In addition, there was -- this is before the current members here, but there was what's known as the Southwest Sewer District matter, and the Southwest Sewer District matter was itself replete with a number of accusations and claims of impropriety and in some cases corruption, in some cases by County employees. And there was a desire at that time to find a mechanism, create a mechanism whereby certain County officials would have the -- be required to furnish financial information which would help the other policy makers -- and that includes, by the way, such persons as the County Executive and the County Comptroller and others, including members of this body -- to act in their official capacities knowing that they're dealing with persons who are essentially, or as much as possible, essentially free of corrupt or improper influences.

P.O. LINDSAY:

When the original legislation was drafted in '78, were there any issues for the future talked about, was there any consideration of how this would evolve?

MR. BOROVINA:

Well, in 1978, this legislation was the first of its kind. The State of New York did not have a public disclosure statute; it did not have it until 1987. We were the first -- Suffolk County was the first government to actually implement on a jurisdiction-wide basis a disclosure form. You had -- the office of the President, having, through Executive Memoranda, I recall looking at some of those requiring some form of disclosure.

Now, what were the concerns? The concerns at that time, which were true then, were also -- also prescribed the foreseeable concerns down the road. What was important was an independent body. The members of the -- in the County Attorney's Office and others were concerned that a -- in this case the Board of Public Disclosure, which had not yet been created but was on the table by virtue of this proposed Local Law, would act independently, fairly and in a bipartisan manner to administer the law.

The second was a compelling desire that there be a single form. And it was written into the statute -- I'm sorry, it was written into the Local Law which was drafted, Local Law 12-1978 -- concerning the authority of anybody on this planet to modify or to supercede, amend or to ignore the filing of a statement as prescribed by the code itself, that is the Suffolk County Code. There was a --

P.O. LINDSAY:

Now, you say your involvement is you helped draft the legislation?

MR. BOROVINA:

Yes; myself and Howard Pachman, yes.

P.O. LINDSAY:

And how did you go about formulating this original ethics statute?

MR. BOROVINA:

Well, one of the -- once I was told what the objective was, to identify instances, foreseeable instances where a financial interest, direct or otherwise, might affect other officials duties, I -- I did litigation on behalf of the government. I was in charge of civil appeals as well as its Federal and Civil cases at that time. I considered it a form of interrogatory, as what attorneys do when they're doing disclosure of corporate assets or the relationship of a member of a board of directors, of a corporation who is accused -- who might be or is accused of acting in some kind of a conflict. It was -- that's how I approached it; what kind of information do I think should be made known and disclosed which, when reviewed by others -- sometimes Judges, sometimes in this case an independent body -- would form a view as to whether or not there is a threat of -- or an appearance of impropriety or a conflict associated with the performance of that official's conduct. So, that's how I looked at it. There was no -- I did not have a standard form. There were no standard forms at that time. I researched it under -- I recall looking at McQuillan's on municipal corporations and a few other treatises; I was surprised to discover there was not very much on it in 1978.

All other Local Laws that have been adopted, I might add, by every County Executive, including the current County Executive, have used the 1978 Local Law as its basic framework. And it has been supplemented, names have changed, at that time it was the Board of Public Disclosure. In 1991, I believe, after my time, it changed into the Ethics Commission -- I'm sorry, the Board of Ethics changed its name to the Ethics Commission and the Board of Public Disclosure merged, it became abolished and its powers and duties, etcetera, were merged with the Ethics Commission. So the Ethics Commission today is the successor and interest to the Board of Public Disclosure and the Board of Ethics that existed years ago. And the Board of Public Disclosure was an entity that the Local Law that I drafted was established, the Board of Ethics preexisted my time with the County Attorney's Office.

P.O. LINDSAY:

Just one last question and then I'm going to turn it over to Legislator Nowick. So, this law that you helped formulate in '78 was the basis, it's been modified a few times since then, but has resulted in our Ethics Law here in Suffolk County; is that correct?

MR. BOROVINA:

Particularly the disclosure form and particularly the mandate --

P.O. LINDSAY:

Okay.

MR. BOROVINA:

-- that the form cannot be modified.

P.O. LINDSAY:

Okay. Do you -- you know, not so much of how the law is administered but how it's written; how would you compare that to, like, the New York State law that's come in later on after this?

MR. BOROVINA:

The New York State law is regarded. In fact, this -- I have a particular Local Law which was after my time, I can read it -- I'm going to answer your question directly. The statute adopted by the State of New York was regarded as a minimum ethical standard, a minimum ethical standard.

It was the intention of the County government, through its Legislature, both before in 1987 and frankly up to today, that its own financial disclosure be more stringent. And indeed, by my count, there are approximately 27 differences between the information required under the State form and the information required under the County form. The County form contains far more -- it includes far more topics and far more detail per topic than does the State form.

I might add, by the way, in 1988, for example -- and this Legislature found it itself, I'll just read it to you. I'm quoting from the Legislative Intent, Section 1 of Local Law No. 44 of 1988 where this Legislature stated as follows; *"This Legislature further finds that Chapter 813 of the Laws of 1987, the Ethics of Government Act, establishes minimum ethical standards for local officers and employees but allows localities, including the County of Suffolk, to enact more stringent controls,"* it goes on.

So the enabling State legislation, known as the General Municipal Law, empowered local governments to adopt more stringent guidelines if they wanted to, and this body itself recognized that when it adopted, for example, Local Law No. 44; and by the way, has done so -- every subsequent amendment of these laws have taken that into account. The Suffolk County form is far more inclusive than the State form. And it was felt in 1978 -- and to all the -- every time I've been involved with the government on this matter, that at all relevant times and in all instances the Suffolk County Code trumps the State Code.

P.O. LINDSAY:

Legislator Cooper has a specific question on this topic.

LEG. COOPER:

Thank you, Mr. Borovina. You had mentioned that there were, I think you said 27 differences between the State form and the County form. Could you elaborate on just a few of those differences, perhaps some of the ones you feel are the most critical differences.

MR. BOROVINA:

The differences require under the State form for the discloser to disclose direct and indirect pecuniary and material benefits derive -- that accrue as a result of a relationship that that person directly or indirectly has with the County of Suffolk through a contract or a business or professional relationship. It requires more exacting detail as to where your sources of income are. It is not sufficient to say that, "I make \$100,000 on the outside." It is not sufficient to say that, "I make \$100,000 because I own a business, X, Y and Z"; I have to be more descriptive in doing that.

LEG. COOPER:

I'm sorry, that's the County form you're talking about?

MR. BOROVINA:

Yes, sir.

LEG. COOPER:

Okay.

P.O. LINDSAY:

All right, Jon? All right, I'm going to turn over the questioning to Legislator Nowick.

LEG. NOWICK:

Good morning, Mr. Borovina. Thank you for coming here.

MR. BOROVINA:

Good morning.

LEG. NOWICK:

Just to go back very quickly. From what I'm understanding, in 1978 the Legislature first -- it was the first of its kind to create this particular commission. And what I think you said was there was no other guide from State or County or any other government before this, we were the first.

MR. BOROVINA:

That's correct; there was no guide, that's right.

LEG. NOWICK:

And so the biggest challenge, from what I'm hearing from you, was a financial disclosure statement --

MR. BOROVINA:

That would produce -- that would ask questions and require the discloser to provide relevant, meaningful information to other County officials and to the public.

LEG. NOWICK:

And can you just elaborate and tell me exactly what was implemented on the County financial statement?

MR. BOROVINA:

Well, on the original County financial statement there was -- you were required to -- in addition to giving your background, to state yours and your spouse's income, the general sources within ranges of what money you were making and from where. The -- in 1981 -- I'm sorry, 1979 and again in 1981, I, along with the County Attorney -- and at that time, I should tell you that Paul Sabatino, who was then a Law Assistant, I went on to other things and then I transferred the things that I was doing at the -- with the permission, of course, of the County Attorney, to have Paul Sabatino involved. So he, just at the time he was becoming Counsel to the Legislature, was also getting involved with this as well. And in terms of information, for example, in 1981, more exacting detail regarding the sources of your compensation were required.

LEG. NOWICK:

How exacting?

MR. BOROVINA:

Well, in 1978, because it was so new and because some were having an allergic reaction to the concept of having disclosure by a public official, period -- and for some good faith reasons, their view was it was just not anyone else's business -- there was a -- in an effort to make sure that it passed the Legislature at that time, the questions asked required broader kinds of answers. You were not required to be specific as to where you got that dollar from. When -- because at that time it was uncertain whether or not the Local Law would survive; that it actually would be passed by the Legislature, given the temperament, given the constituencies, political and otherwise, who were opposed to this kind of an idea at all.

In 1981, when people realized the world was not coming to an end, and actually there was a lot to be said about these kinds of Local Laws, it became more precise. Now, do I -- now all of a sudden it wasn't important -- it was not enough for you to simply say what your range was; where did you get the money? What is your pecuniary interest? By the way, what material interest did you have

which is non-pecuniary in nature?

LEG. NOWICK:

I'm sorry; for those of us that are layman, can you just explain when you say pecuniary?

MR. BOROVIKA:

Pecuniary, money. Pecuniary meaning things dealing with dollars and cents. I can have an interest that has nothing to do with money. I have an interest in getting a title, or just many interests that -- it's a material -- I have an interest in something which is not reduceable to dollars and cents, versus I have a pecuniary, that is financial interest. If I do something, at the end of the year I'm making more money as a result of it, I will make one dollar more. If I approve a contract as a Legislator or as a County Comptroller or as a County Executive, or if I'm the Director of Real Estate and I approve the sale or purchase of real estate and I recommend to my superior, the County Executive, including the County Comptroller and ultimately to the Legislature that the property should be bought or sold; I, the official, might have a pecuniary interest. I may have directly or indirectly, because of the company that has an interest in that real estate, make money, make more money than it should as a result. That's what I mean by a pecuniary interest.

And there was a concern then and a desire to detect, I underscore the word detect, before the event occurs, to detect instances where a County official might engage in those kinds of conduct. Because as you know, being an elected official yourself, you cannot tolerate reacting that is to damage -- for you having done something today based upon a recommendation by an official or employee you got last week, you will be personally accused by your constituency of non-feasance or malfeasance or misfeasance in office. Your mission, therefore, was to make sure that those who request things from you, be it those who request things from a County Executive, from the Division of Real Estate, those who -- or others, those who request a County Comptroller to spend money, those who request a Legislature to adopt a Local Law; your political reputations are on the line by the person making the request. So that was -- that was the concern in 1978.

The concern only became stronger, that is to make sure there was greater accountability by requiring more information being asked; not less but more. And certainly under no circumstance to allow some other statement or form promulgated by Ithaca, Albany or someplace else on this planet, to substitute for the kind of form that this Legislature wanted; and frankly, that's how the Local Law reads. Indeed, it is so strong that the Local Law -- and it was included, you can actually read it, the Local Law, it was drafted in 1978, I think I have it here.

LEG. NOWICK:

Go ahead.

MR. BOROVIKA:

The Local Law -- bear with me.

LEG. NOWICK:

Take your time.

MR. BOROVIKA:

The Local Law, it came into existence in 19 --

P.O. LINDSAY:

You have to hold the button.

MR. BOROVIKA:

Oh, sorry. The Local Law is so strongly worded and it was designed to prevent anybody

singled-handedly from modifying the form, and by anybody I mean -- and I'll read you the language, but I just want you to understand how strong the Local Law is. If the Presiding Officer -- I'm not saying this one, just a hypothetical point; If a Presiding Officer, with unanimous consent of the Ethics commission, with the consent of the County Executive, decided to change a semicolon on the form, the Local Law was designed that that could not occur.

The Local Law was designed that the only way the form could be changed -- so much as a semicolon, let alone to excuse someone from complying -- was that a recommendation had to be made by the Board of Public Disclosure, now the Ethics Commission, made to the Presiding Officer. The Presiding Officer then presents it to the County Legis -- I'm going to read you the language, by way way, and I submit you don't have to be a lawyer to understand it. That the Legislature itself doesn't even have the power to make amendments to the recommendation made by the Ethics Commission; it must either say thumbs up or thumbs down to that which was recommended by the Ethics Commission. And the reason for that was is that the drafters in 1978, and then again in 1981, did not want a circumstance where political influence comes in to amend forms by exerting political pressure, for example, on the Legislature. At all times, the changes had to have been started by the board, the Ethics Commission itself.

And I'm going to read to you, by the way, it's now been codified into Section 61-6 of the Suffolk County Charter. I'll -- I'm quoting from the statute itself, Subdivision A; *"The Board"* -- in this case, the Board of -- the Ethics Board, the Ethics Commission, I should say, and in my day it was the Board of Public Disclosure. *"The Board shall review the statement as set forth in Section 61-9 of this chapter."* By the way, Section 61-9 of this chapter, that's the statement, it's reproduced there. So, *"Shall review the statement as set forth in Section 61-9 of this chapter and may recommend from time to time proposed revisions, alterations or amendments to the statement form, including the information required. The board shall submit said changes to the Presiding Officer who shall introduce said changes to the County Legislature as a Local Law amending Section 61-9 there herein. Neither the Presiding Officer nor the members of the Legislature may amend said proposal but may either adopt or reject a proposal as submitted"*, it goes on.

But I want to underscore that once it is recommended, not even the Legislature itself -- you could, by the way, simply -- can you theoretically? I would argue yes, simply by deleting this provision from the Suffolk County Charter altogether, and then you're free to do whatever you want. But as long as this is on the books, the Suffolk County Legislature itself would be acting unlawfully if it was to change the semicolon.

LEG. NOWICK:

Just to stop you for a second. As far as you know, have there been a lot of changes since 1978, right?

MR. BOROVINA:

Yes.

LEG. NOWICK:

Have there been a lot of changes that came forth from the Ethics Commission to the Legislature?

MR. BOROVINA:

Yes. There's been 1981, 1984, 1983, 2004, 1999; there have been several of them.

LEG. NOWICK:

All right. So what you're saying is if the Legislature itself wanted to make changes, that's not possible unless it actually came from the Suffolk County Ethics Commission; is that what I'm understanding?

MR. BOROVIKA:

That is correct. In every one of those instances -- and I would submit you better find, because there could not have been a circumstance otherwise. In every one of those instances, the moving force, the initial moving force for the change was a recommendation by the Ethics Commission, which existed as of 1991, but before that time it was the Suffolk County Board of Public Disclosure.

You could not yourself, as a Legislative body, under your own powers, wake up one day and say, "I want to make an amendment. I want to change the semicolon or I want to change the form of the question," or "I want to add a new category. I want to make it more stringent or less stringent." You couldn't do either one of them. You certainly could not say, "I want to authorize the use of a State form", for example, or a form from another jurisdiction to substitute for the form that was initially codified into the Suffolk County Charter.

P.O. LINDSAY:

Could I just say something?

LEG. NOWICK:

Yes, sure.

P.O. LINDSAY:

So this Legislature entrusted a tremendous amount of power with this Commission.

MR. BOROVIKA:

Most certainly. And it was the -- yes, and there's a number of reasons why, Mr. Chairman. There's a case, really it's a very well-worded case by the New York State Court of Appeals that talks about Ethics Codes like this; the case was decided in the 1990's.

You want the -- you want a level playing field. You want the public to understand and respect public integrity. You also want County officials, employees, those governed by the Ethics statute to know what they're up against. They want to know that when they're about to do something, they're not going to be challenged down the road for crossing a line that is clear. They want to make sure that the line is not obscure, is not capable of being manipulated, because it's going to do a number of things. A, it's going to prevent that public official, including Legislators here, including other elected officials, from performing their official duties for fear of being excoriated by someone else who misreads, misinterprets or applies the Ethics Code as a sword, not intended as a shield.

Second, it encouraged those in the private sector, frankly, to run for office, to become County officials, and to know that by their doing so, they're not going to be put under the chopping block and made victims by those who think that the Ethics Code is a moving target and -- or that they can place an interpretation on the Ethics Code that suits their political agenda and then cause others to implement that agenda on their behalf under the name of ethics. That was a very powerful and a very dangerous thing.

It's interesting, the Ethics Code, if you told me in 1978, I was aware of it but not truly -- in years past, years since even more so. The Ethics Code really is the body that sets the temperature by which all other officials in a jurisdiction, Suffolk County, is to operate. It sets the framework by which conversations take place, by which official duties are to take place. And once that body becomes affected by itself or capable of being affected by a political agenda, it's adverse to anybody, I don't care what political party you're in. And it's, frankly, adverse ultimately to the interest of the County of Suffolk and to its citizens.

P.O. LINDSAY:

Okay, go ahead.

LEG. NOWICK:

If you could just reiterate to the committee who was required to file. Was it -- and I know you said it already, but if it -- who was required to file the financial disclosure, and was it just the government official or was it their family or spouses or just the one person?
If you could just do that or go over that one more time.

MR. BOROVIINA:

Sure. In 1978, it was certain elected and certain high-ranking policy makers -- for example, the Commissioners and their Deputies -- and that was true also in 1981. Information had to be disclosed not only with respect to the official but also with respect to the official's spouse, which was called kinship, and it was defined.

The number of -- the titles who -- or the scope, I should say, of those who are required to file a disclosure statement enlarged. It became beyond simply that you were a Commissioner, but it included other County officials and employees as well. And it was more of a judgment call as to how it exists today, but it was certainly -- today, many more employees, approximately six or 700 of them by my count, are responsible for filing the form; that was not the case in 1978, it was well under a hundred.

LEG. NOWICK:

So you're saying that right now employees are required? Well, if you could just give me an example.

MR. BOROVIINA:

You know, I don't have --

LEG. NOWICK:

I mean, I know we have like 7,000 employees, but --

MR. BOROVIINA:

Well, for example, Commissioners, the Division of Real Estate.

LEG. NOWICK:

Commissioners, Supervisors.

MR. BOROVIINA:

Commissioners and Supervisors -- well, not Supervisors, no, no. Supervisors, that title itself is too generic and doesn't exist with the County. You had Commissioners and Deputies associated with them who were required to file -- who are required to file those forms, and the threshold for persons doing that was enlarged since 1978.

LEG. NOWICK:

Legislator Cooper?

LEG. COOPER:

Thank you. Mr. Borovina, over the past 32 years, since Local Law 12- 1978 was enacted, are you aware of any instances where individuals refused to file the County Disclosure form?

MR. BOROVIINA:

No, there was a threat. As I indicated earlier, Assistant District Attorneys, as a class, thought that they were not governed by the Suffolk County Ethics Code and they brought a lawsuit, I think it was Eisenbud v. County of Suffolk. There was a Federal lawsuit and the lawsuit was dismissed at the District Court level and then I took -- they appealed and the 2nd Circuit, in 1988 or 1989, held that the Suffolk County Ethics Code complies. It enforces --

(*Mr. Borovina was handed a different microphone*)

Oh, thank you. I just found out something, I don't have to keep pressing this button; thank you, Tim.

There was another case, the Nappel case, Nappel v. County of Suffolk, and there the Appellate Division held that the Suffolk County Ethics Code predominates over all other codes. It is the -- it is the statutory mechanism that exists and is to be enforced in Suffolk County and that Suffolk County's Ethics Code is not subservient to a State form or a State Code.

And there was also a case which -- concerning our former Director of Labor Relations under -- it was called the Stettine case as well where the 2nd Department, which is an Appellate Court that governs this -- governs Long Island amongst other jurisdictions, also held -- it made conclusions of law regarding the uniform application of the Ethics Code as it applies to Suffolk County. So there were challenges. But in every instance, those challenges, in every instance, the Courts unanimously determined that the Suffolk County Code is the predominant, legal landscape and mechanism by which ethics standards are to be prescribed and enforced.

LEG. COOPER:

So those challenges aside, are you aware of any individuals that for whatever reason did refuse to file the County form?

MR. BOROVINA:

No, no. I'm reading -- of course, from reading the papers, I'm aware there is an instance now where at least one, and perhaps more, are of the view that a State form may qualify as a substitute form for that of the County, so I'm aware of one. But not during -- I'll tell you, during my time, and I left in 1983, it was never -- the idea -- it was never discussed because it was so clear that you couldn't do it.

LEG. COOPER:

That leads to my next question. In those instances where there were County elected officials who held both County and State positions, did the legislation that was drafted, either Local Law 12-1978 or any of the subsequent amendments to that, did they deal with that specifically, the mandate that the County form be filed regardless of the fact whether that official may have filled out a State form?

MR. BOROVINA:

Yes, it was. Under the -- the law -- there is a section, it's actually -- I have it here, I'll find it for you. Let me say it in sum and substance, though, then I'll be able to quote it to you.

In instances where a County official is required to file a State form, he must also -- he or she must also, in addition to filing the County form, file the State form. Simply filing the County form is not enough, you must file the two forms. There is an exception; if you are a party officer, a political leader, you may file the other form. You may file, for example, the form promulgated by Albany, by the State of New York. Other than that exception, the party officers, everybody who is required, I don't care how you get to it -- frankly, I would argue if Salt Lake City or Kansas City, Kansas promulgated a form which you happen to file as a County official here, you have to file that one in addition to the County form, never as a substitute for the County form.

LEG. COOPER:

You had mentioned that the one exception was for party officers; what was the rationale behind that?

MR. BOROVINA:

I don't know. I was -- I don't know what the rationale was. I believe perhaps it was because they were not at that time County employees or County officials, they were not perceived as policy makers within a political subdivision, including the County or a town or a village.

I just know that the -- that they were -- they are the only class of persons who may file a non-Suffolk County form. Everyone else must file the County. And if they have the other one, they must also file the other one too. They're in violation if they file the County and neglect to file the State, for example.

LEG. COOPER:

So Mr. Borovina, before we move on. This obviously is critically important, so I would just like to clarify once again. Based on your extensive background as an attorney and as an individual who was involved in the initial drafting of the disclosure form, can you for the record reiterate your opinion as to whether, under any other circumstances, aside from party officers, the filing of the State Disclosure Form negates the need to fill out the County form. And number two, can you maybe point out the specific part of the statute that clearly states that?

MR. BOROVINA:

Let me answer your first question. There was never an instance where the filing of a State form negated or vitiated the obligation of the official to file the County form, not one, unless you were a party officer. I'm going to -- (brief pause). Bear with me, I'm going to find it.

LEG. COOPER:

Sure, take your time.

MR. BOROVINA:

Ah, I found it. I am reading -- Mr. Chairman? I am reading from the Administrative Code, Section A30-10. I can read into the record exactly what the statute says and then you may ask me questions if there's any portion you require --

LEG. COOPER:

Please.

MR. BOROVINA:

-- my understanding of what I think is clearly -- a clearly worded statute. *"Any County Legislator, County-wide elected official, County officer or employee or member or employee of the County Legislature required to file any other disclosure form or statement under any other law or statute, including Chapter 61 of the Suffolk County Code, shall file a copy of such form or statement with the Suffolk County Ethics Commission on or before the 15th day of May with respect to the preceding year, subject to any exception contained in Sub-Section A of this section as would be applicable to the particular circumstances,"* period. *"Any political party officer who is required to file a financial disclosure form or statement under any other law or a statute shall satisfy the requirements of this section by filing a copy of such form or statement with the Suffolk County Ethics Commission on or before the 15th day of May with respect to the preceding year."*

So if you are a party officer, you may use the State form, you are allowed to do so. If you are not a party officer and you happen to be required to file a State form -- frankly under any jurisdiction, it could be in San Francisco, I don't care -- technically, a strict reading of this statute means you must file that form as well as the County form. There are no other exceptions, none, zero.

LEG. COOPER:

I'm sorry, could you just read the first paragraph again, please?

MR. BOROVINA:

Sure. I'm quoting from Section A30-10; "Any County Legislator, County-wide elected official, County officer or employee or member or employee of the County Legislature required to file any other financial disclosure form or statement under any other law or statute, including Chapter 61 of the Suffolk County Code, shall file a copy of such form or statement" -- "shall file a copy of such form or statement with the Suffolk County Ethics Commission on or before the 15th day of May with respect to the preceding year, subject to any exception contained in Subdivision A of this section as would be applicable to the particular circumstances," period.

LEG. COOPER:

But it nowhere negates the requirement to fill out the County form.

MR. BOROVINA:

No. That simply says if you have the -- absolutely not. It simply says if you happen to have another form, you have to file that one, too; that's what that first sentence says. If I'm the County official and I happen, by virtue of another title or position that I hold in Albany, was required to file a form in that jurisdiction -- frankly be it the County of Albany or the State of New York -- I must give that form to the Ethics Commission, in addition to the County form. And the reasoning there, by the way, is that way there is -- that way you, the Ethics Commission, have the opportunity to see any inconsistencies between a form that I filed someplace else versus the form you filed using the Suffolk County form.

LEG. COOPER:

And for my further clarification, if the Legislature wanted to make any amendments, not to the form itself but to filing requirement or anything else related to financial disclosure or Ethics law, such as if we wanted to remove the exemption for party officers, you're saying that the Legislature does not have that power? It has to come first from the Ethics Commission, or did that only relate to the wording of the form itself?

MR. BOROVINA:

It relates to the wording -- by my read of the statute -- it's a good question. My reading of the statute, it only applies to the form. The Legislature is without the authority to itself make changes to the form, even so much as a semicolon. My answer applies to that. It does not apply to the power of the Legislature, under the Home Rule Provisions of the New York State Constitution, to prescribe its own Ethics Code which can be initiated by any member of the Legislature or the County Executive and then signed into law. So there is a world of difference between how you can change an Ethics Code versus how you can change a form. You cannot change the form, except in a narrow instance. The only one who initiates it is the Ethics Commission, no one else. The Presiding Officer can't do it, even with unanimous agreement of the County Executive and the Ethics Commission, all signing in blood, "We think we should remove a semicolon," you can't do it.

LEG. COOPER:

And one last point before we move on to Legislator Kennedy. I just want to speak a bit about the independence and the confidentiality of the Ethics Commission. First of all, why do you feel that their independence and confidentiality is important to this process?

What were your ultimate goals when you drafted the original statute, vis-a-vis the commission's independence and confidentiality? And can you elaborate any further thoughts that you may have on this subject.

MR. BOROVINA:

The reason why you wanted an independent commission -- there's just many reasons, all of them compelling. You wanted an independent commission, first and primarily to make sure that the commission enforces the code as written, is not subject to outside influences that cause the commission, cause the commission to retreat from the standards prescribed by the code itself. That

was required, and the reason for that is because there are many County officials and individual members of the Legislature, you may not recognize because you're individual Legislators, but there are other offices, the County Executive, there's the Office of the Comptroller. On a daily basis -- there's the Presiding Officer, in his own -- as the leader of the Legislative branch of this government. There are many times a day when a request is made for official action. Official action can be by virtue of creating a law designed to benefit a business, or which that person could have a material interest or a -- or have a financial interest.

You wanted to make sure that the -- that there was a body called the Ethics Commission or in my day the Board of Ethics -- or the Board of Public Disclosure, I should say, that would examine, vet, I should say, the employee or the official. Not that we can guarantee that every official or employee will be free from improper influences, but that it can be minimized and in certain instances exposed before the event occurs, that is before the employee is about ready to knock on your door and to make a request of you which will cause you to make a decision which you'll be criticized. The employee is not going to be criticized, you're the elected official and you will be criticized.

This happens to the County Executive and to the Office of the Comptroller, far more than any other two officers in the government. Because as the County Executive, as you know, he's the Chief Executive Officer of the government and he's the one who executes policies as prescribed by the County Legislature.

The County Comptroller has a vitally important role. The County Comptroller, as importantly as the County Executive, is responsible for the control and auditing of County funds, where dollars go. And there are numerous times the County Comptroller, and I project it will happen for the next 150 -- until the world caves in, that a County Comptroller will be asked to make decisions to sign or approve the use of County funds, made at the request of an official or employee. That County Comptroller or that County Executive needs to know that there was some independent body, free of partisanship, concerned with only three objectives. There's only three objectives that that independent body should have an interest; the interest of the County of Suffolk and the interest of the County of Suffolk and the interest of the County of Suffolk. There really was nothing else. And that was the purpose of 1978 through to today.

And that saves a lot of homework because, as a result, the County Executive or the County Comptroller doesn't have to do research on every employee knocking on his door. It also prevents wrong decisions being made or decisions that are capable of being criticized because it's subsequently determined that the request was motivated in bad faith or because of some pecuniary interest. So independence was absolutely important.

There's another reason why there's also independence, too. It is because if you had partisanship -- and this particularly applies to elected officials and those who want to run for office. Information of this kind, if disclosed in a biased, unfair way, can compromise the electability of persons, of Legislators, of County Executives. That's a powerful weapon. It's a weapon that should be used, by the way, if an independent Ethics Commission truly believes that there is an ethics impropriety going on. It should be applied to a County Executive, including Legislators; there's no quarrel about that. But at all relevant times, it's critical for the public and this body, as the overseer of agencies such as this, to make sure that the determinations made by this Ethics Commission is free from the kinds of influences that can cause the Ethics Code to prevent you, the Legislator, from carrying out your duties.

As a result of that, by the way, your constituency becomes disenfranchised. You will not vote when you should vote because somebody has threatened you with an ethical impropriety. Very powerful words. I've got to tell you candidly, to a private person, private persons in the private sector may not necessarily understand that. They want, of course, their elected leaders to be free from ethics concerns, that's true. But what they really don't understand is that a spurious ethical charge aimed

at a County official, a County Legislator or a County Executive will cause that person to stop dead in his tracks. It will cause -- it's the equivalent of throwing a grenade in the room. And doing that should only be applied when there are sound, explainable, articulated reasons codified by statute that prescribes that conduct. In the absence of that, the Ethics Code can become a dangerous weapon when used inappropriately, and in some instances it has been.

LEG. COOPER:

Thank you. And in a related matter, and this is my final question at this point, how important is it to the entire process that the Ethics Commission not show favoritism at any time towards any County elected official or any candidate for County office that falls under their jurisdiction?

MR. BOROVIKA:

I -- I'm surprised by the -- I respect -- I'll take the question as it comes. That question is, may I say, sir, with all due -- is an obvious question. Everybody who has a concern about what their government should do and what it stands for and how its officials respond should be offended by an application of an Ethics Code in a favoritism, favoritest way. That's the equivalent of saying it is okay for the ethics body, the Ethics Commission to discriminate based upon the respondent's political ideology, or based upon the complainant's political ideology. Such that a complaint filed by someone who is politically favored will result in action whereas the next day, under the same facts, you'll have completely different results. There is -- those who advocate that position -- I know your question was a rhetorical one, I have to go under that assumption. I respect that.

LEG. COOPER:

You're correct in that assumption.

MR. BOROVIKA:

Absolutely, absolutely. But you've got to be one can short of a six-pack in -- to say that partisanship has any room in an ethics board. It's -- I would argue it's okay, I've appeared before Boards of Zoning Appeals, other agencies, Department of Consumer Affairs; I was once, when I was in the County Attorney's Office, involved with them, too. This is not to say that other administrative bodies, including Legislators, by the way, have a right to act in a partisan way. But there is one group that is -- that cannot happen, because once it does it can affect the conduct of so many different people who are elected and can stop them dead in their tracks, and the damage can be incredible. The damage can be incredible.

And I'm a firm believer, by the way, in all my years I've worked with various County Executives under all parties, including Legislators under all. I'm a firm believer there's a law of the universe, what goes around comes around. Which is -- by that I mean is that that which you try to barbecue today will turn around, that same recipe will be used to barbecue you tomorrow. So you want to have, particularly in something like this, a clear understanding, a level, fair playing field by which particularly the elected officials, more particularly them, know that they can safely carry out their official duties without being compromised and not disenfranchising their own constituents, because that's another danger, too.

LEG. COOPER:

And I know I said that was going to be my last question, but based on your expert opinion, your experience as an attorney and as a drafter of the statute that created the ethics form or the Ethics Commission, do you think that -- can you point to any instances where that line of impartiality and consistency has been crossed and where the Ethics Commission may have failed to fulfill that primary and critical obligation?

MR. BOROVIKA:

Well, I'm aware of one personally because of the person I represent, actually, and -- but I'm also aware of what I read in the papers. The latter one, of course, is a refusal to file a County form

claiming that the State form is sufficient, and apparently having that position endorsed by the Ethics Commission. I'm personally curious to know how something like that could have happened, given the clarity of the language that was adopted since 1978 through every Local Law ever passed by this body, ever recommended by the Ethics Commission concerning uniformity and an insistence that one form is the form that rules all other forms.

But there's another one which I'm not so -- which I don't know if it's relevant to the question, I represented a particular person, Paul Sabatino, who retired from the Office of Chief Deputy County Executive in 2007. And the -- he was denied the -- based upon an opinion from the County Attorney on ethics violation matters, was denied -- the opinion of the County Attorney was that Mr. Sabatino's rights under contract are to be -- take second place as a result of the ethics violation.

And as a result of that, by the way, based upon that opinion, the County Comptroller, Mr. Sawicki, was required to listen to the legal advice of the County Attorney in making sure that Mr. Sabatino was not paid all the severance that he was entitled to be paid by contract. The argument was in that case that Mr. Sabatino, in 1989, was asked to draft certain legislation concerning the right of employees to carry over accrued, unused vacation time. Mr. Sabatino at that time, on three separate occasions, disclosed to the Presiding Officer, to the committee and to the entire Legislature, that "I am being asked to perform a service in which I have a direct interest." That was in 1989. He retires in 2007. One would think, in their wildest dreams, that what you did in 1989 should have no bearing on what ultimately happens to you in 2007; nevertheless, he was denied his rights to severance. The argument was that his -- he violated the Ethics Code by not sufficiently describing, I think those are the words, the full nature and extent of his conduct.

You should know that that argument was raised before Justice Spinner who reviewed Mr. Sabatino's case and Mister -- and Justice Spinner concluded that the argument raised by the County of Suffolk was "tortured"; I quote the Justice, was tortured. As a result of that, I subsequently learned that Mr. Sawicki, the County Comptroller, having read the opinion and able to deduce from the opinion what the law really is as opposed to the advice that he was given, concluded that he did not want even to participate in the appeal. The Suffolk County government, I think at the -- decided to appeal this to the Appellate Division in Brooklyn. The Appellate Division summarily dismissed that argument calling the claim of this kind of ethics use as a sword, as it was being used against Mr. Sabatino, as without merit. So that's an instance where the Ethics Code was used in that fashion.

I'm aware also in the papers that other Legislators, other officials have also been charged with ethics violations. I happen to know -- if the reports in the papers are true; I'm a skeptic because everything you read in the papers doesn't necessarily mean it's true.

(*Laughter*)

That said, assuming that the underlying facts, the allegations are true, it is clear in my mind that the Ethics Commission should not be entertaining those charges for so much as three seconds, they should be summarily dismissing them. It should have no life of its own. How is it that it's having a life of its own? I want to know. Because I can quote, I won't do it now, I'm sure that one of the subpoenas -- the Chairman indicated a desire for the subpoenaing of records. The subpoenaing of records, I submit, will show in ample detail how the Ethics Commission's own opinions enforcing the Ethics Code stands for the proposition that members of the Legislature who have been accused of ethics impropriety are well within their bounds and have not violated the Ethics Code. There is no question on it, there's no question about it. But in an effort to stop Legislators from carrying out their official functions, thinking that the public will not tolerate unethical behavior by their County Legislators, the charge is made hoping that County Legislators will be deterred. I find that reprehensible. I have no other words for it.

I -- and particularly where the complaint is made not by members of the public, true, innocent fellows and women out there, but employees themselves who are using -- who claim that there is an Ethics violation when there isn't. And I think that you'll find that when you look at the documents and when you subpoena the documents, as this committee has every right to subpoena -- which, by the way, the Ethics Code permits; there is no confidentiality with respect to disclosure forms, they must be disclosed in the face of a subpoena. Not only does it say that in the statute, but of course the Legislature itself is the overseer of all administrative agencies of the Suffolk County government, and then you have the inherent right to do it, but that's another -- when you find those documents, you'll discover that what I say is true and that is that the Ethics Commission's own words, not mine or yours, it's their own language from prior decisions, would -- are manifest in telling the world that the challenged ethical behavior is spurious, it lacks merit. But we're here anyway.

LEG. COOPER:

Thank you.

P.O. LINDSAY:

Thank you. Legislator Kennedy.

LEG. KENNEDY:

Thank you, Mr. Chair. And thank you, Mr. Borovina. Your testimony is quite comprehensive and, as matter of fact, you're truly what I guess we would call an expert in this area, and it's very generous on your part to be forthcoming to speak to us.

I want to touch on just a couple of areas. But before we leave what you've just spoken about now as to the chilling effect that the filing of a charge with the Ethics Board can have, have any of these charges been leveled against you, or was there any effort to have you dissuaded from furnishing some of this information that you have, either with us or with anybody else?

MR. BOROVINA:

Well, as -- yes, but of course this is not the engine that drives this. As you know, it's been published in the papers, I was considered as a candidate for Special Counsel to the special committee. In an effort to, I guess, dissuade and to intimidate my appointment, the County Executive filed a grievance charge before the Disciplinary Committee of the State of New York, 2nd Department. By the way, under Judiciary Law Section 90, Subdivision 10, the filing -- a breach of confidence took place, I must tell you, I have -- it doesn't concern me. I have not -- until you just raised it now, it is -- I have not spent two minutes dwelling on it.

I will say that from my experience with the Grievance Committee, it actually exemplifies how ethics charges can be used. In any litigation, for example, it is always easy for the adversary to try to stop the other side's attorney from acting by saying, "I will file disciplinary charges." And it's a long-standing rule for decades and decades, Grievance Committees know this, they don't get involved at this stage, they wait until the proceeding is over, specifically to prevent the ongoing administrative process or judicial process from being affected by a claim, legitimate or otherwise, that there is an ethics violation or some violation by the attorney. So it was not only a breach of confidence, but it was, in my view, intended to intimidate the members of the Legislature in how and what matter they proceed.

That said, the reason why I say -- I know that the Chairman was very much involved, and members of this committee, in the appointment of Special Counsel, and in every way you acted appropriately and correctly in the choices that you did make. I raise this only because it just underscores the example of how in -- you couldn't get -- as an attorney, you can't be -- there's no -- you're not elected, so other than them saying you're committing legal malpractice or you're acting unethically, you're not going to care. This was one way of trying to get my attention and it was to no avail, and it just exemplifies the overall misuse, I would say, of ethics laws.

LEG. KENNEDY:

Thank you. There's just one other area that I want to go back to. Actually, I think you've been extremely comprehensive, but I want to go back to the responsibilities for the form, for filing the financial disclosure form. Who has the duty? How do you fulfill that duty, especially when you are a married individual and that duty then, I guess, involves the spouse, and how you can meet that -- what are the ways that you can fulfill that requirement?

MR. BOROVINA:

Well, one of the first ways is, frankly, by reading the statute. It's not that difficult. It requires the filing of the form by a day certain every year. The next thing -- now you have a deadline. The next thing is you say, "Okay, where is the form and what does it look like?" I submit that if you can file tax returns, you would know -- even as a layman, not as an accountant -- you would know how to answer what I call straight-forward questions. They're straight-forward in the form itself and you fill them out on behalf of you and your spouse. It requires -- you respond to the questions propounded. It requires you to describe direct or indirect, pecuniary or material interests that you may have. It is not, by the way, for you, the responder, to edit what you think is an interest of worth. You are to follow the question, answer the question, and then you file it to the best of your ability and you submit it, and then it goes to the Ethics Commission and they take it from there. It becomes in some certain limited respects a public document. That's how you do it.

It was not meant to be -- it was not meant to be in Latin, it was not meant to be difficult. It's meant to be intrusive. They ask questions of you, an elected official, that they would not ask of others, but then that's the price you pay for running for office. It's the price to pay for anyone who wants to run for office, even if you have not succeeded in winning, you still have to be accountable to the public when you want to be a public official.

LEG. KENNEDY:

And there's -- well, actually, as you said it, it's a much broader category. I've filed a disclosure form for 27 years. But that's really the only way to meet that requirement, and for not only the individual as being in the class, that's the governed class, but also the spouse of that individual, that's really the only way to go ahead and fulfill that obligation.

MR. BOROVINA:

That is correct. There's no other way, there's no other way.

LEG. KENNEDY:

All right, thank you. Mr. Chair, let me turn it back to you.

P.O. LINDSAY:

Mr. Borovina, I just have one follow-up question about -- you said that a complaint was filed before the Bar Grievance Committee?

MR. BOROVINA:

The Grievance Committee, yes, sir.

P.O. LINDSAY:

Was that dismissed, or what happened to that?

MR. BOROVINA:

I didn't do anything with it, did not respond to it; I have no idea.

P.O. LINDSAY:

Okay.

MR. BOROVINA:

I can tell you from experience, just my general knowledge being an attorney and involved in Appellate Division, I do appeals in the Appellate Division, etcetera, you know, the Ethics Commission -- I'm sorry, the Grievance Committee does not get itself involved in these situations. You know, I have -- the Ethics -- the Grievance Committee will look at that and they'll get to it. They'll get to it when they get to it. I have not given thought to it.

P.O. LINDSAY:

Should -- and this is probably redundant, but a complaint like that should be a confidential matter; am I correct?

MR. BOROVINA:

The Judicial -- well, yeah, that's exactly what the the statute says. The Judiciary Law, Section 90, Subdivision 10 says that the filing of a complaint regarding an attorney's conduct is to be -- is confidential. It's not --

P.O. LINDSAY:

Was it kept confidential?

MR. BOROVINA:

No, it was not. Apparently it was made the subject of a press release. Not only the press release, but next to it was the actual letter. I chuckled. It doesn't -- I'm a private practitioner, it's not going to affect me one iota, at all.

P.O. LINDSAY:

Whether it affects you or not is immaterial. The motive behind it was to inflict harm on your reputation.

MR. BOROVINA:

Yes, if you consider -- I'd say that's an accurate assessment.

P.O. LINDSAY:

Okay. Just going back to just -- you know, and this -- and that had to do with the Grievance Committee of the Bar, which really isn't the subject of these hearings. But it's something that I guess the four of us feel pretty bad about because, you know, you were in the running to become our Counsel and as a result of that, you had to experience, even if you say it didn't hurt you, an attempt to tar, to blemish your reputation, which we apologize for. Okay.

MR. BOROVINA:

Well, Mr. Chairman, you're a gentleman. Thank you. No apologies were required. I was asked to give help to the committee. You and the members of the committee deliberated on that, made the appropriate and correct decision and this is where we are today. There's no need to apologize.

P.O. LINDSAY:

Let's go back to the Ethics Commission, though. In terms -- when a complaint is filed against an elected official before the Ethics Commission, shouldn't that be a confidential matter?

MR. BOROVINA:

It is; in fact, it is prescribed as such. It is supposed to be a confidential matter. It is not intended for this to be published on the front page of The New York Times, or to be made the subject of public discourse; that is correct.

P.O. LINDSAY:

Okay. And you say you've represented a couple of clients before the Ethics Commission, I believe that was your testimony.

MR. BOROVIKA:

Yes, sir.

P.O. LINDSAY:

Were those matters kept confidential?

MR. BOROVIKA:

No. No, they were not.

P.O. LINDSAY:

And just the last follow-up on this. When a complaint is filed against an individual, and you rightfully pointed out that that's a very, very powerful tool against an elected official, or someone that has hopes of becoming an elected official.

MR. BOROVIKA:

Well said, yes.

P.O. LINDSAY:

Don't you think it's important that that complaint be addressed quickly and either be addressed in a positive way or be dismissed, one or the other, in a quick fashion?

MR. BOROVIKA:

Absolutely. Yes, you are correct. Your question causes me to think of the instances I'm aware of where that was not the case, where a delay was prolonged. Whereas, however, if a complaint -- what I found was that if a complaint was generated by someone who was politically favored, a reaction by the Ethics Commission was very quick, very quick, depending on who was making the complaint, depending on who the victim was. So yes, sir, I found that --

P.O. LINDSAY:

That shouldn't enter into a complaint. A complaint should be handled uniformly, regardless of who it's against.

MR. BOROVIKA:

Yes, I would say yes. Yes, I say that in general circumstances. I could conceive, but --

P.O. LINDSAY:

Why do you -- what is the effect of a complaint not being addressed rapidly as it pertains to an elected official?

MR. BOROVIKA:

Well, it becomes a Sword of Damocles. The elected official, I think of Legislators, those who elected you, your constituents have, I submit, a constitutional right to expect you personally, as Legislator, to represent their interests at all relevant times affecting their interest. For you to be disenfranchised, short of out-and-out removal, for you to be prevented from voting is a most serious offense to our political structure and violates our system of government, at this level and at all levels.

So the interest of the public requires that you remain actively, knowing actively involved, but under the view that your judgment, your judgement alone is what matters and you're not going to be influenced because of a retaliation against you because of the way you voted or the way they think

you're going to vote, and that you're going to be accused of an ethics violation because you're going to vote in a certain way. The Ethics Code was written that contemplated Legislators voting.

LEG. NOWICK:

Mr. Borovina, just quickly. I know as far as a grievance at the Bar Association, I believe anybody can file a grievance, whether it's an elected official or a client or anybody; am I right?

MR. BOROVINA:

That is correct.

LEG. NOWICK:

As far as the Ethics Committee, who can file a grievance with the Ethics Commission about a particular government official? Can anybody do that or is it just an government official?

MR. BOROVINA:

Oh, anybody; actually, anybody can.

LEG. NOWICK:

Anybody.

MR. BOROVINA:

And that's what the law reads. So technically speaking, I don't care who you are, what office you hold, private or public, you have the right to do it. It does create an interesting issue and that is what happens if a complaint is made by someone who is capable, by virtue of that person's office, exercising influence by merely making the complaint? That becomes -- I don't know how to resolve that. That's why God made you, you guys, you're supposed to figure this out. But --

LEG. NOWICK:

You say we're a gift from God, is that what you're saying?

(*Laughter*)

MR. BOROVINA:

I guess. But it's a difficult question, because the members -- the statute, the Ethics Code as it currently reads, and I'm not criticizing it, but this is the reality, is that anyone can make a complaint.

Now, if you are a member of the Ethics Commission and you were appointed by somebody and a person, either that person who appointed you or that person's deputy makes a complaint, your eyebrows go up. Your eyebrows go up, it's human nature. You will respond to that complaint whereas you will delay other complaints because they were not raised by the right complainant; that's a problem. It can create favoritism.

LEG. NOWICK:

As far as you know about the Code itself, there's nowhere in the code, unlike in a Court of Law, and I don't know about the Bar Association, but if there is a grievance filed, is there anywhere in the code where it says "must be" -- "a decision must be made within a certain amount, six months"? Does it -- does it any place in the code address that issue, or is it just an open-ended kind of a thing, a grievance?

MR. BOROVINA:

Well, it's open-ended. I think it was intended to -- the framers of the Ethics Code of today operate under the assumption that the Ethics Commission would discharge their responsibilities in a diligent, straight-forward way, mindful that the citizens need to know that -- need to know Ethics propriety,

but also mindful that the respondent, the elected official or the official or employee will have a reasonably prompt and fair decision and not have that investigation linger for long periods of time.

LEG. NOWICK:

So it is assumed but not written out, which may be -- okay, thank you.

MR. BOROVINA:

It is assumed, it's not written out. There's no mandate in the Ethics Code that says that you have X number of days after the filing of a complaint to react.

P.O. LINDSAY:

Legislator Cooper.

LEG. COOPER:

You spoke earlier about the need for uniform and impartial handling of complaints filed with the Ethics Commission. But how about a similar need for uniform and impartial handling of FOIL requests and the timing to process FOIL requests, whether that request comes from a private citizen, a political operative, a member of the media. Is there any justification in your mind for the Ethics Commission to respond to one FOIL request in a week, ten days, two weeks, and delay responding to another FOIL request for three, four, five, six months?

MR. BOROVINA:

No, but it does indicate where a problem arises. The Freedom Of Information Act, the FOIL, is a separate statute, as we all know. And I think your point is that when a FOIL request is made, once it is made, the mechanisms for complying with it should be uniform. If it takes you 30 days, it should take you 30 days; there shouldn't be instances where in some cases it took you one day and in other cases it took you 90 days. It should be 30 days. Barring some explanation, that's how things should go. And I guess what it is, you start with the Freedom Of Information request, you start with the one on top, deal with that one and then you go to the next one; ultimately, they get to the one that was filed X number of weeks ago. But you shouldn't have a situation where, for some reason, Freedom Of Information requests are honored sooner rather than later depending on who made the request or who the target is.

LEG. COOPER:

So again, if all the requests, if it took four months to respond to every request that would be fine.

MR. BOROVINA:

Right.

LEG. COOPER:

But if one request for some reason was responded to in two weeks and another one took four months, that would be more concerning.

MR. BOROVINA:

Very much so. I'd want to know, giving doubt to the Ethics Commission, I would want to know that if -- let's go under the assumption of requests that took them three days to respond. I will go under the assumption that the information they wanted was -- tell me the paperclips on the Ethics Commission desk because it requires, it's that easy to find out. Barring something like that, everything should take three months. In fact, by the way, if you're that busy, you shouldn't be dealing with the paperclip request, you should be dealing with FOIL requests on a priority basis. You deal with the one that is the oldest and then you work your way down. There should not be -- you should not accelerate Freedom Of Information requests.

LEG. COOPER:

So talking hypothetically, if one individual requested copies or financial disclosure forms for all County Legislators, let's say, and that information was forthcoming in let's say ten days or ten weeks, and another individual made that exact same request and months later is still waiting for the information, you can't see any reasonable explanation for that?

MR. BOROVIKA:

I would be very angry if that were to happen. I would think -- I would say that using -- that's a good example. That would be a clear and present indication to me that there's something amiss, and I would look into it. I would look into it. I don't understand. There should not be a circumstance, using your particular question as a hypothetical, there should not be a circumstance why it took ten months to honor a request and it took three weeks to honor the other and the only difference was the person making the request; that is clear and compelling instance of discriminatory conduct, in my opinion.

LEG. COOPER:

Okay. Thank you very much.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

I want to go back to this process of filing a charge with the committee and ask if we should be bound by common sense or is there really something that we need to -- common sense would say that there's a certain level of validity, of veracity with something that's presented, and that the Commission could easily dismiss something that's beyond reality or at the very least say, "Okay, this seems to be a regularly filed charge and let's go forward." But the whole function of filing a charge in the first instance triggers this whole mechanism that has this chilling aspect. What, if anything, should we do there?

MR. BOROVIKA:

Well, you have to -- you have tensions that are legitimate and you have to respect them. You have the tension of the public that demands accountability, an ethical proprietary of its elected officials and employees, so you need that kind of inquiry. You need to vet these kinds of applications. You cannot make a rule that shuts down the ability of a person to make a complaint.

The other side of the coin, however, is that you can't have a situation where once the filing takes place, there is a view that you can process that depending on your own whim and caprice or depending on what suits you and who made the request, who's the respondent and what particular animus you have either towards the person making the request or making the response. So -- and you raised an interesting point, Legislator Kennedy. There is -- there could be a situation where a request is made, it is so patently specious, I would argue, contrary to what I said to Mr. Cooper a few minutes ago, it's so specious that the very first time it's presented it is just thrown out the window; okay, that should happen. And it may take days, it may take a period of time. The Ethics Commission only meets once a month. Now, it's interesting; they meet once a month which tells me that they meet once a month. Interestingly enough, depending on who's filing the complaint, also they'll meet more than once a month, whatever it takes I guess to accomplish a particular objective. So but once, barring truly specious complaints, they really should be treated uniformly. And if there's going to be risk, it should be that even the specious complaints are still treated like everyone else's. If you're going to err in terms of timeliness, be uniform in your err.

LEG. KENNEDY:

Okay. And I'll go back to just a couple of more simple, procedural questions.

Today we have a transcriber here. There was publication about the fact that this special committee was going to meet at ten o'clock this morning. With the Ethics Commission, is there anything equivalent to that, any regularity of meeting, any documentation for what transpires? Is there anything that goes on that substantiates what the deliberations and the matters are beyond the charges?

MR. BOROVIKA:

They meet formally, I believe -- I think it's the first Monday of every month. I'm sure there are mechanisms in place where they can meet more in that period of time. The deliberations, the meetings of the Ethics Commission are confidential. I know that when they are -- I know that recorded transcripts are taken in certain instances. I -- certainly in my time, when I was Counsel, there were no transcriptions taken. An employee would -- or a County official would seek an advisory opinion. There were seven members of the Board of Public -- Board of Ethics, they would discuss it, they would vote and then -- but it was all quiet. It was all in a room, it was very informal, the world was different then. I would write the opinion and circulate it with the -- and that's how it went. I don't know if today if everything they do is subject to a court, a legal stenographer; that's what I'm getting at.

LEG. KENNEDY:

Hold on a second. Can you stop for a second? So the Commissioners would deliberate. You're going back to the time when you were a staff attorney with the County Attorney's Office, and then you would draft the opinion for the Commissioners to consider and then adopt?

MR. BOROVIKA:

Yes.

LEG. KENNEDY:

That's how the process went.

MR. BOROVIKA:

Right. Before I was involved, I think it was Chairman White I recall, a very nice fellow. The Board of Ethics would write it themselves. They said, "You know something? We're part-timers, we don't really know what the" -- "We'd like to have an attorney." And so they woke up one day and they said, "We spoke to the County Attorney then," Howard Pachman, "We'd like to have an attorney assigned to us when we meet," and I was it. He did not -- I don't think he wanted to give it to an Assistant County Attorney because of their political background and because they were part-timers; I was the first full-timer and it came to me.

LEG. KENNEDY:

Okay. Just one other question, then, for contrast purposes. The State Ethics Commission deliberates on ethical questions that are posed to it and issues opinions; I know, I believe I know.

MR. BOROVIKA:

They do, under the State code.

LEG. KENNEDY:

Okay, right. And those opinions are accessible, aren't they?

MR. BOROVIKA:

Yes, they are.

LEG. KENNEDY:

Okay. They're published, and as a matter of fact they're indexed, and as a matter of fact they're a source sometimes to turn to.

MR. BOROVINA:

Oh, absolutely, Legislator Kennedy. Now, in those instances, there is centrally sensitive information, names, things are redacted. But the opinion itself? Public record, public record.

LEG. KENNEDY:

And what purpose does that serve by making it a public record?

MR. BOROVINA:

It enables anybody -- the public, overseers, this Legislative -- this body and others -- to ascertain for themselves that the commission has not acted in an arbitrary, capricious or partisan manner, because the commission ultimately knows that somebody, at some time and some place, will compare opinions. And they will come to the conclusion, maybe, using Legislator Cooper's hypothetical as one, they'll come to the conclusion that there was a misstep, that somebody was not treated in a fair and bipartisan way, and people should know that. Just like people should know financial disclosure, just like the public should know your ethic -- your complaints with ethic standards, they should know the Ethics Commission. That's one way of doing it, you make them public. And they are public, in my estimation, for a number of reasons. You are -- it is this body that regulates all other administrative agencies of the Suffolk County government. You stand second to none, including the Ethics Commission in your power to do so.

It is the statute itself, by the way, which provides a secondary source of authority which says that disclosure forms -- including advisory opinions, by the way -- are publishable, they can be disclosed as authorized by law.

LEG. KENNEDY:

Okay. Thank you again.

LEG. NOWICK:

Just one more. Does our code allow for the release of those decisions, just the way you talked about with names redacted?

MR. BOROVINA:

Yes.

LEG. NOWICK:

Does it mandate or just allow it if needed?

MR. BOROVINA:

Well, it mandates it. Well, it mandates, it's not that you hand it out to people on the street.

LEG. NOWICK:

No, I know that.

MR. BOROVINA:

But if someone makes the request, you can get it. Redaction, if you're the County official and you filled out the form, your authority to strike out language that you don't want to be made public is actually very restricted. It's -- the code specifies that kind of language which can be redacted of a truly embarrassing or personal nature, but it's extraordinary, those are really extraordinary. Generally, information filed in disclosure forms are --

LEG. NOWICK:

Oh, not disclosure, I'm talking about a grievance.

MR. BOROVINA:

Oh, the actual grievance? I'm sorry, I misunderstood your question.

LEG. NOWICK:

When a grievance --

MR. BOROVINA:

The actual investigation of an ethics impropriety.

LEG. NOWICK:

When there's a decision on a grievance.

MR. BOROVINA:

When -- the only time it becomes --

LEG. NOWICK:

Is there any mandate to make -- I guess make that public, or is there -- or is the Ethics Commission allowed to release that information, of course redacting names?

MR. BOROVINA:

Once the Ethics Commission makes a finding of what I regard as -- once they think there's been a probable violation, they've conducted an investigation which has due process mechanisms in it, the respondent has been called with right to Counsel, they've heard evidence, they have not made a conclusory or summary conclusion or finding, and they find that a particular County official has exercised an official duty on the basis of being unduly influenced, they simply make that finding and they file it with the Clerk of the County Legislature and others. So to that extent, therefore, it becomes a public document.

LEG. NOWICK:

It becomes FOILable.

MR. BOROVINA:

It becomes -- I would say it becomes FOILable. So that if you have -- by the way, the right -- it doesn't become FOILable until the Ethics Commission has actually decided that there was -- that have engaged -- not you personally, you have engaged in unethical conduct. Everything prior to that time is confidential.

LEG. NOWICK:

But the Ethics Committee can also say, "No, we do not find this grievance to have any substance."

MR. BOROVINA:

In which case, in which case the entire thing is confidential.

LEG. NOWICK:

So then that's not -- that decision would not be FOILable?

MR. BOROVINA:

No. It's FOILable -- no, because under an advisory -- no, the answer is no because it has not ripened into a determination of an adverse finding.

P.O. LINDSAY:

Just to follow up on that.

MR. BOROVINA:

May I say, by the way, Mr. Chairman, you can understand why that is the case. There would be -- you can imagine that a complainant -- from any political persuasion or truly independent, it doesn't matter -- knows that they would still accomplish their objective of damaging you personally by filing the complaint knowing that at the end of the day, even if you are vindicated by the Ethics Commission, your complaint would still be public. It will still come out in the public domain and therefore embarrass you.

P.O. LINDSAY:

Okay.

LEG. NOWICK:

I'm sorry, but that's -- well, then that would be under the assumption that nobody actually knew there was a grievance filed in the first place.

MR. BOROVINA:

Yeah, but if there's a leak, someone would know. It can happen.

P.O. LINDSAY:

And this isn't hypothetical, this is based on your experience with clients before the Ethics Commission now.

MR. BOROVINA:

Yes.

P.O. LINDSAY:

The commission is bound by confidentiality if a complaint is filed against another elected official or someone in the government; that's correct, right?

MR. BOROVINA:

Correct, yes.

P.O. LINDSAY:

Does that confidentiality extend to the person that's filing the complaint?

MR. BOROVINA:

Actually, I don't -- no, I think it can be waived by the person filing the complaint.

P.O. LINDSAY:

How is it waived?

MR. BOROVINA:

By the person simply saying, "I today filed a complaint with the Ethics Commission."

P.O. LINDSAY:

Well, I mean, hypo -- you know, not hypothetically, but what if the County Executive files a complaint against a sitting Legislator and then makes it public?

MR. BOROVINA:

A person who files a complaint can make it public. The respondent and the Ethics Commission itself cannot make it public.

P.O. LINDSAY:

Okay, but I think that's probably a flaw in the system.

MR. BOROVINA:

I think it's a -- I think it is. The -- you know, a complaint filed by someone, let's say on the inside, someone of that rank, I don't care if it's the County Executive, I don't care if it's the County Comptroller or the Presiding Officer or Legislators. I guess the -- well, not I guess, there is a concern that a complaint filed by that kind of a person can exert influence simply by -- because of the origins of the complaint.

P.O. LINDSAY:

Absolutely.

MR. BOROVINA:

And all the more reason you have to be very circumspect. A County Executive -- and I use the word County Executive, I don't give a hoot who, it could be the County Comptroller, it could be the Presiding Officer, so I don't mean it to be the County Executive, but you understand the principle at stake. A person of that rank -- including their deputies, by the way -- who decides to file a complaint better be damn certain. It better levitate. The Ethics violation should float and be obvious to all. Because in the absence of that, the Ethics Code becomes an engine, a font by which political agendas can be achieved by using the Ethics Commission as a sword.

P.O. LINDSAY:

And that was never the intent of the statute.

MR. BOROVINA:

No, never the intent of the statute. It was the intention -- no, it was never the intention of the statute. You wanted a situation where if you were the County Executive or you're the County Comptroller, you wanted assurance that if I the County employee am making a request upon you to spend money, that you had a reasonably good idea that I was not the I making my decision to make the request on you, was not acting on the basis of any pecuniary material interest, because I had the obligation to disclose it to the Ethics Commission. You, therefore, could respond on what I have recommended. Thinking that, all of us are operating under the same ethics standard, not a standard promulgated by some other agency, or like Utica or Buffalo or Albany or something like that. So you go under that assumption, you are -- you may not have thought of it this this way, but you go under the assumption that I was required to answer 27 more questions than my counterpart in Albany because that's what the Suffolk County Legislature and the Ethics Commission decided, I have to answer 27 more questions. And that gives you a level of assurance in terms of the people that you deal with as the Presiding Officer.

P.O. LINDSAY:

And my last question, and I'm sorry we've kept you here so long, but your testimony is very informative. Legislator Kennedy talked about the publishing of advisory opinions. Our statute now allows the Commission -- allows, doesn't mandate -- that they publish the Commission's opinions; is that correct?

MR. BOROVINA:

Yes, it does.

P.O. LINDSAY:

Okay. Anybody have any other questions? Mr. Conway, do you have anything?

MR. CONWAY:

No.

P.O. LINDSAY:

Okay. I thank you very much, Mr. Borovina, for spending the morning with us. Your testimony was very important.

MR. BOROVINA:

Thank you.

P.O. LINDSAY:

Mr. Sawicki, do you want to come forward? We're just -- make yourself comfortable. We're just going to take a bathroom break for two minutes.

(*Brief Recess Taken: 11:56 A.M. - 12:05 P.M.*)

P.O. LINDSAY:

Okay. Mr. Sawicki, thank you for being with us today. Would you take an oath given by our Clerk?

MR. SAWICKI:

Yes.

(Joe Sawicki, Suffolk County Comptroller, after having first been duly sworn by Tim Laube, Clerk of the Legislature, testified as follows:)

MR. LAUBE:

You may be seated. Thank you.

P.O. LINDSAY:

Would you state your name for the record?

MR. SAWICKI:

For the record, Joseph Sawicki, Jr., Suffolk County Comptroller.

P.O. LINDSAY:

We anticipate your testimony being a little bit shorter than Mr. Borovina because he answered a lot of questions we had for you, but we might want to reinforce them.

You stated that you're the Comptroller for the County; how long have you held that position?

MR. SAWICKI:

I'm in my eighth year, the last year of my second term.

P.O. LINDSAY:

And what are the duties of the Comptroller?

MR. SAWICKI:

The duties by State law and County Charter is to act as the Chief Financial Officer of the County.

P.O. LINDSAY:

You're one of six County-wide elected officials; is that correct?

MR. SAWICKI:

That's correct, sir.

P.O. LINDSAY:

Okay. Do you fill out the County disclosure forms?

MR. SAWICKI:

Yes, I do.

P.O. LINDSAY:

Before you were elected as Comptroller, who was your employer?

MR. SAWICKI:

I served as the Chief Deputy Treasurer to Treasurer John Cochrane for two years. Prior to that, I was the Chief Financial Officer and the Comptroller of Suffolk OTB for approximately seven years. And prior to that, for approximately eleven years I served in the New York State Assembly representing the 1st Assembly District.

P.O. LINDSAY:

Okay. So you were an elected official from the State?

MR. SAWICKI:

Correct.

P.O. LINDSAY:

Okay. Legislator Nowick is going to take over from here.

LEG. NOWICK:

Good morning, Joe. Thank you for being here.

MR. SAWICKI:

Good morning, Legislator.

LEG. NOWICK:

I'm sorry, it's good afternoon.

MR. SAWICKI:

Is it? Okay.

LEG. NOWICK:

So you've been in the Assembly, you were in the Assembly for eleven years. And as an Assemblyman and as the ranking Republican on the Assembly, you were on the Assembly's Ethics Committee; is that true?

MR. SAWICKI:

Yes, I was appointed as the ranking Republican member, if my memory serves me correct, I believe three years, three or four years out of my eleven in the State Assembly. It was the Assembly Committee on Ethics, at least back then, I can't believe we're talking 20 years ago already, was the only committee in the State Assembly that had an equal number of Republicans and Democrats, for obvious reasons. You know, because you were dealing with very confidential and ethical matters inside the State Assembly.

LEG. NOWICK:

Well, then I guess -- or I should ask you, it's fair to assume that in such a position for three years, that you have extensive background dealing with ethics?

MR. SAWICKI:

We handled basically complaints and other matters raised by members, raised against members of the Assembly, your colleagues who sat on the floor of the Assembly chamber with you. And again, I'm going back 20 years, Legislator, but it was -- you know, it was an excellent opportunity to learn

how ethics was working in the State of New York.

LEG. NOWICK:

Just let me ask you something so I have an idea how that worked. Our Ethics Commission here is a separate body. Are you talking about not unlike our committees that we have in the Legislature, is that what you had in the Assembly, an Ethics Committee?

MR. SAWICKI:

Correct, like a -- it was basically a standing committee.

LEG. NOWICK:

Like a Budget Committee, Ways & Means, you had an Ethics.

MR. SAWICKI:

Correct, Ways & Means, Transportation, Education, etcetera.

LEG. NOWICK:

So when -- the Ethics Committee of the Assembly, complaints did go to the Ethics Committee, not unlike the Commission we have; correct?

MR. SAWICKI:

Correct.

LEG. NOWICK:

And did you have a code that you followed, or how did you make your decisions in the Assembly?

MR. SAWICKI:

We had Counsel advising us and we would meet jointly to discuss a particular situation. And again, my memory is a little vague, Legislator, but it was -- we would only convene to address ethics issues raised against other members of the Assembly.

LEG. NOWICK:

So it was ad hoc in a way?

MR. SAWICKI:

Not really ad hoc. It was a standing committee, I mean, as a Chairman and a ranking Republican. But, you know, for obvious reasons, it was comprised, again, of equal number of Democrats and Republicans, whereas every other committee had an overwhelming number of the majority member of the Assembly, and we all know who they are.

LEG. NOWICK:

Okay. And you said there was an attorney that would sit with you at the Ethics Committee meeting who would help and guide you?

MR. SAWICKI:

Yes.

LEG. NOWICK:

And who was -- was the attorney someone that worked in New York State, in the Attorney General's Office, or how did that work?

MR. SAWICKI:

I believe, Legislator, it was Counsel to the Ethics Committee itself. And I just really don't recall, cannot recall who it was, but I believe it would have been on a Legislative -- on the Legislature, staff

of a member of the Legislature. My guess is it was Counsel to the Ethics Commission -- Ethics Committee. The Senate also had a similar committee, you know, in the State Senate.

LEG. NOWICK:

When you were in the Assembly, did you yourself fill out a State Ethics form every year?

MR. SAWICKI:

Yes. The --

LEG. NOWICK:

Would that be considered a financial disclosure ethics form?

MR. SAWICKI:

Yeah, absolutely. And I believe the first year we were required to do so was 1989.

LEG. NOWICK:

Okay. And you, in your position, I guess you are one of -- is it one of six elected officials in Suffolk County that have in the past filled out both the State and County forms; the State because you worked in the State, the County, obviously, that you worked in the County.

MR. SAWICKI:

Right. I've been filling out these forms consecutively since 1989 in my position -- when I left the Assembly, I went over to OTB. My position there as an officer of the corporation, I had to fill one out, and then of course as Chief Deputy Treasurer and now as Comptroller. So it's 22 years worth of financial statements, the first three or four years being on the State level and then subsequently the County's.

LEG. NOWICK:

OTB is the County, right?

MR. SAWICKI:

Correct.

LEG. NOWICK:

OTB would be the County.

MR. SAWICKI:

County form, yes.

LEG. NOWICK:

Being familiar with both of these forms, which of these forms would you say is more detailed and more comprehensive?

MR. SAWICKI:

Without a doubt, the County form is more stringent.

LEG. NOWICK:

What's the difference?

MR. SAWICKI:

If I -- I mean, there are a bunch of differences. I'd probably number -- if you include technical differences, over 20, perhaps 25 that I could find, you know, taking the time to digest the two and comparing them side-by-side. But if I could just name, say, a half of dozen of the major differences, what I consider the major differences.

The Suffolk County form, as you know because you fill one out, you guys fill one out, is sworn and actually notarized. The State form has a very innocuous signature page on page, it looks like eleven, below question 19, and the reporting individual basically just signs it, it's not notarized. It's signs and it attests to the fact that, quote, *"The requirements of law relating to the reporting of financial interests are in the public interest and no adverse inference of unethical or illegal conduct or behavior will be drawn merely from compliance with these requirements."*

LEG. NOWICK:

Joe, if I could just stop you --

MR. SAWICKI:

I don't know what that means.

LEG. NOWICK:

-- and ask the Counsel, our Counsel something. When you attest, is that the same as swearing to?

MR. SAWICKI:

Well, the word attest is not used here, that's my word.

LEG. NOWICK:

Oh, I'm sorry, I thought you were reading that.

MR. SAWICKI:

You're signing, quote, "The requirements of the law relating," blah, blah, blah. I'm sorry, Lynne.

LEG. NOWICK:

Legislator Cooper, do you want to --

MR. SAWICKI:

I saved you, Joe, didn't I?

LEG. COOPER:

Thank you. Mr. Sawicki, in all the years that you've been filling out disclosure forms, have your forms ever been FOILED?

MR. SAWICKI:

Only -- for the first time in 22 years, they were FOILED this past July. Legislator, can I go back and answer a couple of -- just some quick questions to Legislator Nowick, which when I was reading that I kind of went over.

Again, the difference between the State and the County form? The County form requires specific dollar amounts, whereas the State uses continuously throughout the form "ranges of values". A fourth major difference, what I consider as Schedule C of the County form, requires that we list all interests in County, State, municipal and other New York public agencies, all interests. The State form list says you have to list only those over \$1,000 and excludes any interests that you receive from a competitive bid contract or an RFP contract from disclosure; I find that disconcerting, especially on the State level.

The State form excludes disclosure of accounts receivable from sales of goods and service. I don't know what you would have accounts receivable for if you don't have to report your business' sales of goods and services.

And also, the County's form requires a schedule of accounts receivable for both you and your spouse, whereas the State form does not. And lastly, the State form excludes disclosure of your primary and secondary residences, whereas the County form says you have to disclose all your real estate holdings. So there again, those are a half of dozen of the 20 something that I --

I'm sorry, Legislator Cooper. So going back to when my -- mine were FOILED at the end of July for the first time in 22 years, and then again early August.

LEG. COOPER:

And do you know -- do you recall by whom, who submitted that FOIL request?

MR. SAWICKI:

Yes. The first FOIL -- because when I responded -- let me back up. I was notified by the Ethics Commission Executive Director, Al Lama, that Kevin McDonald, a Kevin McDonald from Patchogue, and his address is on his FOIL form which I had to request weeks later. And apparently it's Ethics Commission practice and policy to notify any of us when our forms are FOILED.

I wrote back to Executive Director Lama asking that certain -- for privacy and security reasons of my family, certain information be redacted. And then when I wrote -- no sooner than I wrote that letter, a day or two later someone else FOILED my disclosures, a fellow by the name of Frank Seabrook from the Liberty Report. And again, I was curious as to if the Ethics Commission was going to grant my request to honor to redact certain information, basically my wife's place of employment and the address of my personal residence. And I never found out until weeks later, weeks, literally weeks later, almost over a month later that they acquiesced to my request which, you know, which was fine. But it took me, you know, several letters back and forth, like three letters back and forth to see if -- to learn whether they acquiesced to my request for the redaction.

LEG. COOPER:

Do you have any reason to believe at this point that either of those FOIL requests were politically motivated, and if you can explain?

MR. SAWICKI:

Yeah, actually I do. Actually, I do, Legislator Cooper. And it was -- what bothered me the most is that I learned subsequently that the first FOIL by a Kevin McDonald was released by the Ethics Commission to him on August 12th, August 11th or August 12th.

LEG. COOPER:

And when was the FOIL request submitted?

MR. SAWICKI:

And the date of the FOIL request was July 28th. I then received a call that following Monday, which would have been August 16th I believe, from a reporter from a major news organization asking me about my financial statements. And being very curious, I just asked a simple question; "Well, how in the world did you get my financial statements? Because I was not informed that anybody from this news organization FOILED them." And they indicated to me that the County Executive, Steve Levy, had given them to the boss of this individual the prior week. If that's the case, that means after Kevin McDonald got them, conceivably -- I can't say for certain he's the one -- but conceivably he turned them over to the County Executive's Office within a day or two. Because I have no other way of knowing whether this news organization got them legitimately from him, or how else would they get my -- they didn't -- you know, no one had the decency or the courage in the County Executive's Office to FOIL my disclosure statements. The County Executive certainly didn't. He's been making public statements for the last six weeks or eight weeks about my financial disclosure statements claiming that a friend or an acquaintance gave it to him. It's a bizarre state of affairs, I can tell you that.

LEG. NOWICK:

Just to interrupt one moment. Mr. Kevin McDonald, is that the name?

MR. SAWICKI:

Yes.

LEG. NOWICK:

Do you have any idea of who that was or his background or why he would want it? Was he a reporter, was he just an individual; do you have any idea? Were you able to --

MR. SAWICKI:

The FOIL -- I requested the FOIL from the Ethics Commission. It took three letters to request a copy of the FOIL from both Kevin McDonald and Mr. Seabrook; I'm trying to find a copy of their FOIL. Kevin McDonald listed his address here in Patchogue. He wanted -- and the reason for the request, "To examine the financial disclosure documents as a voting taxpayer to determine future voting decisions."

Now, also on the last page of that FOIL, there is about three-quarters of the page "board decision regarding release of these statements". There's a space for "approved" or "disapproved" -- I don't know where this statement came from, but obviously it's an internal document of the Ethics Commission -- and it's completely left blank, whether it's approved or disapproved. "Reason for disapproval" was not checked off, "Dated" was not indicated. So -- and not only for Mr. McDonald's, but also Frank Seabrook who FOILED, the same statement was left blank. So to me, that indicates that there was no action by the Ethics Commission itself. Maybe it was done by the Executive Director, I don't know, I cannot tell. But it's disturbing if there's an internal form that says this is supposed to be approved or denied by the Ethics Commission and it's blank, when my personal financial disclosure statements are given out to the public.

LEG. NOWICK:

And I'm sorry, but I'll give it right back. Just to make it clear, does that mean that his FOIL request was not approved or approved?

MR. SAWICKI:

I have no clue.

LEG. NOWICK:

You don't know if he ever got your financial?

MR. SAWICKI:

Oh, he got my financial statements, because the County Attorney who represented the Ethics Commission wrote to me, I believe it was a Susan Flynn, and said that they were given out to Kevin McDonald on August the 11th and then Frank Seabrook not until September -- first week of September, September 2nd or something like that. Because I had to press them for an indication as to why -- as to whether or not they were released and was my request for redaction included or excluded? And again, it took over a month and a half to get that answer.

LEG. COOPER:

Mr. Sawicki --

P.O. LINDSAY:

Jon, could you suffer one --

LEG. COOPER:

Sure.

P.O. LINDSAY:

So just to get the timeline. This is -- Mr. Sawicki, this is one of the things that's frustrating for us because we have requested the FOIL records from the commission, but not just a request, but when they were replied to, and thus far we haven't gotten the second part of that request and have had to subpoena them. So we don't know these timelines, but -- so there was two requests made for your records between, what is that, a two week period, between the last week of July and the second week in August? Is that --

MR. SAWICKI:

Just about, yes.

P.O. LINDSAY:

Yeah. And the requests were filled the second week of August and the second week in September?

MR. SAWICKI:

According to their -- the letter to me from the Ethics Commission, yes. The first request was made by Kevin McDonald on July 28th; Executive Director Lama informed me of that FOIL on August the 2nd. On August the 4th, I wrote to Judge Lama asking for certain information, which I'll get into later with you, be redacted on mine. Then on August the 5th, former Judge Lama writes another letter saying that -- now here we've got probably a week later after Kevin McDonald's came in on July 28th, August the 5th another FOIL was submitted for mine -- again, the first time in 22 years -- by Frank Seabrook of the Suffolk Liberty Report for disclosure statements for '09. I again wrote Judge Lama saying, "Okay, please tell me if my original letter, how my original letter sits with you asking for certain information be redacted." Then again on August 12th, a week later, Frank Seabrook files a second FOIL, making three total, now wanting all my disclosure statements from '05 through '09. Not until -- not until after several other letters in between, not until September 22nd did Susan Flynn, Counsel to the commission, advise me that Mr. McDonald was given my redacted financial disclosure form on August the 11th, and Mr. Seabrook was given my redacted form on September 2nd.

So when I make the characterization that the County Executive had them in the second week of -- second and third week of August; if Mr. Seabrook didn't get them until September 2nd, that means either he got them from a Mr. McDonald, or he may have improperly got them out of the files in the Ethics Commission, which I hope didn't happen but I have no idea how he got them.

So I think, you know, again, it's a matter of decency, it's a matter of courage. If you're going to go after another elected official, which I find, again, bizarre, and look at his financial statements and try to make something out of them, at least have the decency to FOIL them yourself, not hide behind some phantom taxpayer.

P.O. LINDSAY:

Jon, I'm just -- and this -- you know, the timeline is very informative for us because I assume that the decision was made just prior to August 11th to release your first form. Why wasn't both forms -- both requests fulfilled August 11th? I mean, you know, that's what's bizarre about the whole thing. A FOIL request isn't a complicated matter.

MR. SAWICKI:

Right. And by law they have to -- you know, the commission, the Executive Director has to provide them.

P.O. LINDSAY:

You know, and I don't know why there isn't any consistency there.

MR. SAWICKI:

And why the form isn't filled out sufficiently about why it was approved or denied. I mean, I have nothing to hide, I don't care if it's approved. But at the same time, if it's going to be used against me somewhere in some kind of political witch-hunt, to me that's a problem. That's an abuse of my financial disclosure statement.

P.O. LINDSAY:

Jon.

LEG. COOPER:

Joe, I haven't seen the correspondence that you received from the Ethics Commission, but you had read the letter in response -- or that Kevin McDonald had sent and you quoted him as saying, and I'm paraphrasing a bit, but as a voting taxpayer, to determine his future voting decisions. There didn't appear to be any indication that his intended purpose, his real intended purpose was to turn it over to a third party; is that correct?

MR. SAWICKI:

That's absolutely correct, no indication whatsoever.

LEG. COOPER:

And can I say the same for Mr. Seabrook's request?

MR. SAWICKI:

Absolutely.

LEG. COOPER:

First of all, I would ask if you would be willing to make copies of those documents, that correspondence available to the committee?

MR. SAWICKI:

Of course.

LEG. COOPER:

Thank you. Based on what transpired and what you have learned, do you think that the disclosure form which was FOILED on a couple of occasions, whether that was used improperly?

MR. SAWICKI:

I believe it's used improperly when a County-wide official, the Chief Executive Officer -- and Ladies and Gentlemen of this panel, this committee, it's probably a half of dozen times over the course of a month that I was called by other reporters and editors of various news organizations asking me what I was trying to "hide", quote/unquote.

I'll be damned if I'm trying to hide anything. For 22 years I always put down where my wife worked, and for this man to attack my credibility, my reputation is a disgrace and it's despicable actions.

My wife is a nurse at a private residential care facility on the north fork, and she has been for over eight years. There's nothing to hide. I put it on my -- I disclosed it fully on my disclosure -- on my statements. I asked for the sake of her safety and privacy and security that the name of her employer and the address of her employer be redacted, I asked the Ethics Commission to do that for me. And I did that, incidentally, after consultation with our District Attorney, Tom Spota, and I remember the conversation very clearly. One afternoon I said, "Tom, you know some of these people are FOILING my disclosure forms. Obviously we know what's going on, there's all kinds of political hype around now, you guys are getting hit with all these crazy disclosures, FOILS as well." I said, "You know, I think I'm going to ask for Maryann's place of employment to be redacted."

Because, you know, we do some crazy audits, I assist him with investigations, we've got all kinds of controversial audits going on. I don't need some wacko out there trying to hunt down either me or my wife or anybody else, you know? So he said, "You know, that sounds like a normal request," he says, "I would do it if I were you." So I did, again, in consultation with the District Attorney.

Now I'm being questioned by a fellow public official who I've worked closely with over the last six years. Why? Because I have taken him to the carpet and been critical, as the Comptroller, of him filing the State form initially instead of the County form; that's a reason to attack me personally and use my disclosure forms? I don't think our disclosure forms were ever intended to be used as political weapons for extortion or for blackmail.

As Anton Borovina was saying earlier, these disclosure forms are to weed out corruption in government. They are to disclose if there's any conflicts of interest whatsoever. All public officials in this County, especially people who have the opportunity to sign -- who award contracts and sign contracts, they have to be responsible. And the purpose of this Ethics -- the disclosure statement is to disclose to the public and to the Ethics Commissioners that if there's a potential problem out there, not to be used as a blackmail weapon. Don't forget, these forms were, I believe, put together and adopted into law 20 some years ago. I mean, there was no age of the Internet, you know. And so I think Legislator Lindsay found the front page of his Ethics form on the Internet one day. I mean, that's a disgrace, they shouldn't be used for an abuse like that.

Transparency for public officials? Absolutely, absolutely. As the Comptroller, I've always fought for that. And as the Comptroller, I've always said and maintained, and this is obviously where Steve Levy gets angry with me and upset with me, is that there's one form for all of us to use, it's the County form. I mean, I'm an accountant. I'm a former State Legislator, I went to college four years, I can read the Ethics Law and the Disclosure Laws of this County. It's clear, the County's form has to be filed by every County official. And the CEO of this County is supposed to be setting the bar for ethics, not trying to circumvent. Do I sound upset because I was attacked personally? You're damn right I'm upset, and it's wrong. It's wrong for public officials to do that to each other and it's wrong for him to abuse the power of his office to hang that over my head or your head, Legislator Cooper, anybody's head and to threaten and say, "I got you. You better not cross me or I'm going to make this public or I'm going to go to the press or I'm going to send out 15 press releases this afternoon attacking you," like they do to Legislator -- like he did to Legislator Gregory. That's a waste of taxpayers' money and an abuse of taxpayers' money in and of itself.

LEG. COOPER:

Joe, I'm not sure whether you were here when Mr. Borovina testified when I had asked whether there should be some uniformity and impartiality by the Ethics Commission responding to FOIL requests.

And I had expressed some concern over what appeared to be disparities in the amount of time it takes them to respond to one request over another, and he had expressed great concern over that point.

In your case, just looking at the dates that you recounted, it appears as though they responded with lightning speed to the FOIL request from Kevin McDonald, I'm not sure about Frank Seabrook. And again, I don't know Kevin McDonald's affiliation, whether he is just a private individual, whether he has ties to a political advocacy group. But I do know, it's well-known that Frank Seabrook does head up a local Conservative Republican organization.

MR. SAWICKI:

Out in Riverhead.

LEG. COOPER:

Yes. So is it -- do you share Mr. Borovina's concern that some requests which may or may not be politically motivated are -- were apparently processed very quickly and other requests from other individuals in the media, it appears as though a lot longer time is taken to respond to those requests, for whatever reason. Is that of any concern to you?

MR. SAWICKI:

Absolutely. I mean, I can't speak of other individuals who have FOILED such disclosure statements of ours. How long it took them. But, I mean, Mr. Seabrook obviously had to wait almost a month, Mr. McDonald waited a short two weeks. But again, what was so disturbing is that members of the media had them the next day and the day after; I mean, it's incredible.

And again, I'm not -- I don't know for sure if this fellow Kevin McDonald ever gave them to Steve Levy. So, you know, why doesn't Steve Levy tell us how he got my financial statements? I'd like to know. I'd like to know how the County Executive got my financial statements, not hide behind this taxpayer friend or citizen or however he phrases it in the media.

LEG. COOPER:

Thank you.

P.O. LINDSAY:

John Kennedy.

LEG. KENNEDY:

Thank you, Mr. Chair. Thank you for coming before us, Mr. Comptroller. You know, it occurs to us, in the process of going through this, we're looking at whether or not there's places that we might be able to plug up some of the holes or fix some the irregularities, if there are any, within our existing code. And you seem to have unique experience, having dealt with both our State Ethics Commission, not only having dealt with it, having chaired the committee in the Assembly and implemented it, and now being subject here on a local level. What, if anything, do you have in the way of suggestions for us? From your perspective, what do you think would be beneficial or would help with our County Ethics Code at this point?

MR. SAWICKI:

First off, I guess a Legislative question or a Legislative issue is that you have to make it even clearer than it already is that every County official file the County form. I mean, I don't know how much clearer you can make it, but I guess you've got to do that because some people don't know that you have to file -- aren't sure that you have to file the County form and the State form suffices.

Let me reiterate a point that Mr. Borovina was making earlier. From an accounting point of view, from an accounting control, from a financial internal control point of view, our system breaks down, our internal controls break down if we don't have one uniform system of detecting, to detect conflicts of interest. There has to be one uniform system, the forms have to be filed and they have to be filed uniformly every single year. And they have to be gone through, they have to be gone through, reviewed, analyzed by the Commissioners.

And that brings me to another point, if I can go off on a little, Legislator, on the side -- a little bit as a tangent, if I may, because this talks about, speaks about accountability. It's great that 650 something employees or officials in the County fill out the form. How do we know that the Ethics Commission is reviewing them? How do we know how complete they are? How do we know that the Ethics Commissioners are doing their job? I'm not saying they're not doing their job, I'm just raising the question; how do we know whether they are or not? Let me point --

LEG. KENNEDY:

Well, let me just respond to that. And I think it, again, goes to some of what either is within the statute and hasn't occurred or something that, again, needs to be made clearer. There is an annual reporting requirement.

MR. SAWICKI:

I know, I was going to get to that.

LEG. KENNEDY:

Okay.

MR. SAWICKI:

Yeah. But before I go to that, the State Comptroller, the State Comptroller actually performed an Ethics oversight audit; and I'd be happy to give you copies of this after the meeting.

Just last year, it was released in March or April of this past year, and the premise is this, it's perfect, it's absolutely perfect for where we are today. Quote, the beginning of the Executive summary; *"Taxpayers have the right to expect that their local government is operated in a transparent and ethical manner and that government officers and employees are acting in the best interest of taxpayers and are not conflicted by personal interests."*

Major findings; they sampled, the State Comptroller sampled 31 municipalities across the State, school districts, towns, villages, etcetera. Of the 31 they sampled, this is quoting again from their report, *"20 of 31 municipalities we visited require certain officials and employees to file annual disclosure forms to identify potential conflicts of interest. However, we found that these local governments enforce this requirement very inconsistently and seldom reviewed the information on the forms. Of the 20 municipalities that have these ethics laws in place, we found that 12 of the 20 did not collect all the disclosure forms, nine of the 20 did not ensure that the forms were complete, and 14 of the 20 didn't review the forms to identify conflicts of interest. Without enforcement of disclosure requirements and careful review of the information on the disclosure forms, taxpayers will have little assurance that local governments are seriously" -- "are serious about identifying conflicts of interest that would compromise officials impartiality in decision making."*

So that extrapolates into my next question; how do we know our own Suffolk County Ethics Commission is doing their job? And I just bring that point to you because, I mean, the bottom line, we need to know if they're doing their job. The Ethics Commission is the last layer of protection Suffolk taxpayers have for good government, to ensure that their government's working properly without any conflict, without any conflicts of interest.

LEG. NOWICK:

Can I --

LEG. KENNEDY:

Sure, if you want to follow-up on that.

LEG. NOWICK:

It will just take me a second. Joe, you said as Comptroller, it's your job to keep track of whether or not an elected official or a government official, not that you keep track if they file the financial disclosure but you keep track of any type of inconsistencies in their form. How do you know? Does the Ethics Commission report things to you or how does that work?

MR. SAWICKI:

No, no, that wasn't me, Legislator Nowick, that was the State Comptroller.

LEG. NOWICK:

Oh, okay.

MR. SAWICKI:

The State Comptroller did an audit to -- you know, entitled Ethics Oversight of Municipalities in New York State.

So there's no way they can audit every single municipality, you know, across the state; they randomly selected 30 and they honed in on 20 of them.

LEG. NOWICK:

Okay.

MR. SAWICKI:

You know, randomly sampled. And I believe the Town of Smithtown was one, and a village, there was a village in Nassau County, but it's all in the report.

So the bottom line is I don't think there's -- I don't think -- other than what Legislator Kennedy indicated before about an annual written report prepared by the Ethics Commission to the Executive and to the Legislature wherein they're supposed to basically indicate what work they've done for the year, I don't know if they've ever done that. I can't find a copy of one. I don't know if you as Legislators have ever received an annual report from the Commissioners. And that's in Article 30, Sub 3, Subsection 7. Again, who knows? It's an accountability issue, who knows if the job is being fulfilled the way the intent of this legislation was designed years ago; as the Comptroller, that's my big concern.

LEG. KENNEDY:

Well, and let's stay on that for a second. So that we're looking at it from the functional aspect, is, in fact, the body doing what it is that they were empowered to do?

And then let's talk a little bit about your role as the Comptroller with following the financial transactional chain with us in Suffolk County. As the Comptroller, you ultimately have the -- not just the authority, but the responsibility, I believe, to make sure any disbursement by this entity is done properly and with authority and there's no overpayment or payment for services or transactions not rendered; is that correct?

MR. SAWICKI:

That's correct.

LEG. KENNEDY:

Okay. I believe that recently you had an opportunity to take a look at some billing associated with Counsel for the current Ethics Commission. Can you tell us anything about that?

MR. SAWICKI:

Yeah. The Ethics Commission, again, what bothers -- what disturbs me from a controlled point of view is the Comptroller's office, is that they want to operate and function under a veil of secrecy, the attorney/client privilege, and I respect that relationship where it's necessary. But there's also a bottom line where as the Comptroller, I need to know that the bills I'm paying and I'm using public funds to pay these bills, and this goes -- the segway right into Levanthal & Sliney who are the outside lawfirm for the Ethics Commission, that these bills are proper and valid and with merit.

We've attempted -- we've attempted to ask on several occasions Mr. Levanthal to show us more

extensive billing than he had already provided us over the past two years, and what we found when we started this whole concept with the Ethics Committee and all these ethic problems and looking at some of these other ancillary issues, is that the bills themselves were paid, signed off by the Ethics Commission, signed off by the County Attorney, signed off by the Executive Director, but they were very innocuous in the wording, extremely innocuous in general. So we said, "You've got to be more specific." "You know, we're doing kind of like an audit review," not a real typical audit report, "but an audit review of your bills and your contracts." I received no cooperation whatsoever from Levanthal and Sliney to this point.

And the door was always open, I must add this, the door was always open that they could come in and sit with my auditors and let's discuss this client/attorney privilege thing. Just give me a comfort level that I can properly sign-off on taxpayers using -- the use of taxpayer's money to pay your law firm's bills. Instead, I was met with resistance. They requested that I subpoena the bills, he subpoena the information that we were looking for. And I'm saying, "Wait a minute. I'm the Comptroller, I don't have to subpoena anything. I want you to show me the documentation that justifies your bills. Don't hide behind this attorney/client privilege. We don't need to know exactly what, you know, you did every single minute and who you talked to and who the confidential clients were. You've got to give me some kind of justification that the bills are proper." Instead -- and then I -- then when we -- after a couple of weeks went by, when we received no cooperation whatsoever, I put a hold on the payments and said, you know, "Maybe this will bring you to the table. All we want to do is sit down and talk, speak with you, discuss this with you."

Then I'm the subject of press releases from the County Executive's Office attacking Levanthal & Sliney, and I'm scratching my head and saying, "Wait a minute. Isn't this law firm hired by the Ethics Commission?" I mean, granted his contract, which is another problem, contract is signed by the County Attorney, the contract with Levanthal is signed by the County Executive and the Ethics Commission. So who does the -- so I'm being attacked by the County Executive in a press release why I'm withholding payment and why am I auditing Levanthal's bills. Number one, I'm doing my job that the taxpayers elected me to do as the Comptroller, watching out for their money. And number two, how is the County Executive now injecting himself into the Ethics Commission's work and the Ethic's Commission's outside Counsel? I don't understand that.

LEG. KENNEDY:

Well, let me see if I can go to -- and fist of all, I'm glad that you're doing your due diligence as the Comptroller to inquire into the basis of disbursements. How long has this firm been in this relationship with whomever the purported client is? I guess it's the Ethics Commission, but I don't know.

MR. SAWICKI:

There are three contracts that go back to '09, and we have no idea -- I have copies -- actually I have copies of the contracts, and I copied the front page. So if you want to talk about accountability, but more so independence, the independence of the Ethics Commission, copies of the front page of the contract show that the firm might have been recommended, Levanthal & Sliney might have been been recommended by the Ethics Commission. But the County Executive is still signing off on these contracts, and the County Attorney is signing off on the vouchers and the payments, and that's disturbing because that points to a real lack of independence on anything they're doing. So --

LEG. KENNEDY:

I have --

MR. SAWICKI:

And then, you know, it kind of makes sense; when I start questioning their bills, then I get attacked by the County Executive for doing my job. So it's bizarre, this whole thing is bizarre, that's all I can

tell you.

LEG. KENNEDY:

I have the three contracts in front of me. And generally we get specific tasks that a firm will be engaged to perform, but I don't see them. I would very much like to follow-up about what's been paid to date, whether it's by a blanket retainer or if it's by the hour; what, in fact, it's for, if it's for just advisement? I mean, are they representing --

MR. SAWICKI:

They're representing the Ethics Commission.

LEG. KENNEDY:

But in what capacity? Are they -- do they appear in -- do we know --

MR. SAWICKI:

I don't --

LEG. KENNEDY:

Does anybody on the board here know? We have no idea. Okay.

MR. SAWICKI:

You know, you have the County Attorney's staff on one hand. I mean, there are eight names on the letterhead of the Ethics Commission; three Commissioners, which obviously are not County employees, the remaining five are all County employees of the County Attorney's Office. Okay, so, you know, we can talk about the independence of that issue until the cows come home. But if you have the County Attorney assisting the Ethics Commission, why do you need outside ethics counsel as well?

LEG. KENNEDY:

Okay. Again, I mean, the more we talk the more questions arise and the more, I guess, we need to understand exactly what is or isn't going on. But let's come back again to the audit function with Levanthal and Sliney. So there is a bill or a number of bills that are in dispute now or you have asked for some additional substantiation and you've been rebuffed; where is it now?

MR. SAWICKI:

It's at a standstill. I will not pay any further bills until we receive cooperation from Mr. Levanthal. I understand recently that Mr. Levanthal has, in fact, reached out to our office and has offered to come in and sit down with our auditors, which I think should have been done from the get-go, instead of going press releases and make this a big public function. All we're trying to do is determine if the bills are proper and correct and valid and have merit. So that's a good thing, so we're moving in a little direction there.

But until our auditors are satisfied that the bills constitute a proper use of taxpayers' money and that the time spent was valid, we're not going to pay anything. And there's a third -- each contract was for \$10,000. There's a third contract that has just come down for \$10,000 representing the Ethics Commission before this Ethics Committee. I don't know if you have a copy of the third contract.

LEG. MONTANO:

Yes.

MR. SAWICKI:

But again, I question the need for that. I mean, does the Ethics Commission need outside Counsel to represent them before an Ethics Committee? I mean, is that a really wise and prudent use of taxpayers' money? In my opinion, no. I believe the law firm is comprised of attorneys themselves,

I would think they could represent -- as the Commissioners are most -- I think they're all attorneys.

LEG. KENNEDY:

Okay. I, for one, need to go ahead and take a look at this. And I certainly think that there's probably some more conversation that we could have specific to this and any other financial transactions that are --

MR. SAWICKI:

Legislator Kennedy, let me just point to a clause in the contract which I wanted to bring to your attention today.

LEG. KENNEDY:

Please do.

MR. SAWICKI:

There's even a clause in the contract with Levanthal and Slimey -- Sliney, that, quote, "All material and information shall be kept confidential and can only be disclosed to authorized personnel of the Department of Law, during the agreement or thereafter." In other words, the County Attorney controls all documents considered by the outside Counsel of the Ethics Commission. That I think is a major independence issue. That's in every single contract with Levanthal & Sliney; there's a clause in there, I believe it's on page five, it's No. 13 if you have the contract there.

LEG. KENNEDY:

Okay. Again, as I said, I would very much -- I personally would like the opportunity to go ahead and review these, and then I would like, if necessary, to invite you back to speak to us about this or --

MR. SAWICKI:

When -- there was one instance where, when we were going back and forth with Levanthal & Sliney, that, you know, they continue to object to my requests and hide behind the attorney/client privilege. And earlier I referred to a press release being issued by the County Executive's Office; it's interesting to note that in that press release was delineated every single item I was asking for from Levanthal. So obviously, Levanthal, in their independent capacity, quote/unquote, to the Ethics Commission, runs and gives the County Executive's Office what we're looking for. So again, what's that -- what relationship is that all about?

LEG. KENNEDY:

I am struggling, and I want to speak to our Counsel, as an attorney, I am having difficulty understanding where this process is going. But let me just ask one other question; who represents you in County matters?

MR. SAWICKI:

The County Attorney. I don't know if I'm going to get too much reputation after -- representation after today, but --

(*Laughter*)

The County Attorney. All of us in County government are represented by the County Attorney, period.

LEG. KENNEDY:

Okay. I'm going to turn this back to the Chair.

MR. SAWICKI:

Once in a while you can seek outside Counsel, but that's pretty difficult.

LEG. KENNEDY:

Thank you.

P.O. LINDSAY:

Does anybody else have any other questions; no? Okay.

I thank you, Mr. Sawicki. Oh, I was going to ask you; you have anything else you want to add?

MR. SAWICKI:

I do, thank you. To respond to I think it was Legislator Kennedy about changes to the current law that I would propose, real quick? Again, we'll go back and we got off this, you know, when I started talking about the audit report by the State Comptroller.

I believe also in terms of having -- clarifying that one uniform report is made, I believe that we need to go further. Secondly, we need to go further than what is listed on page four, question E, sources of income for any of us are expected to be listed for greater than a thousand dollars. For full transparency, we should expand that question and expand the disclosure statement to include not only direct family business income, which is already listed, but also disclose any clients or customers of the outside business that receive County funding. And that would include any consulting fees, any grants, any work obtained through a bid or the RFP process; basically any and all contracts with the County.

If we don't have that disclosure provision, any County official involved with the awarding of a contract could potentially influence and steer a contract to a vendor that has a significant business relationship with a family member. And it goes -- what it does, and I've discussed this with members of the State Comptroller's Office, it goes one step further to ensure that there's not a conflict of interest. Why your family members, your sons, your wife, your whoever, why your family member's business is listed as a business and, you know, you get X number of dollars a year, blah, blah, blah. If you have any significant clients that obtain work from Suffolk County, I think that's important to know. Right?

LEG. NOWICK:

Just to clarify.

LEG. KENNEDY:

Absolutely, and I appreciate that suggestion.

LEG. NOWICK:

Just to clarify what you said. When you say family members; that would be just the spouses or you're talking about children, children unmarried, children still living at home?

MR. SAWICKI:

Well, I think any family member is defined -- I mean, the State Comptroller's disclosure statement and requests to officials -- and again, I've filled out several when I was with OTB, asked -- almost goes that far. I want to specify it and make it in black and white, you know, the language black and white.

They want to know, do you have -- do you or a related member, related member is defined as a family member, have any business, direct or indirect business relationship with the State; and of course, we would make that with the County. But when you -- to me, indirect means if you're -- for instance, if my son worked, was a managing -- was a partner with an accounting firm and the

County's audit was up and I was steering -- and I wanted -- you know, I said, "Gee, that would be nice to give my son's accounting firm the work," it should be disclosed that my son works for this accounting firm. Or even extrapolate a little further, if my son has a PR business and the PR business gets extensive work from whoever has a contract with the County, maybe it's Maryhaven and Maryhaven hires my son, my son's advertisement agent or PR agent to work for him, to work for them, that should be disclosed. Because if -- and again, I'm just making this up with Maryhaven. If Maryhaven or any kind of agency receives County grants or County funding, any one of us may have the opportunity to kind of push for that grant to go to Maryhaven because, "Gee wiz, my son's public relations agency or advertising agency may benefit from that." So you see where I'm going with that, Lynn?

LEG. NOWICK:

I sure do.

MR. SAWICKI:

I think we need to spell out accounts receivable, further define that in our statement. Accounts receivable is only what's outstanding at year-end. I think -- but that might be incorporated if you make the prior change I said about all sources of income. Because the bottom line, if your accounts receivable is only outstanding numbers at the end of the year, so if certain accounts are paid within the year, they're not going to be listed on that statement because they will no longer be accounts receivable.

And it should also be -- it should also be defined to be listed as business, any business income from your family member as an accounts receivable, and not a personal -- you know, so there's no confusion, it's personal or whatever. I don't understand how it could be personal, the accounts receivable, but it's usually a business term.

The -- as we talked about earlier, I think that -- oh, about the notification process that I went through with the Ethics Commission. When we are informed someone has FOILED our disclosure statements, the Ethics Commission, I think it should be a policy, maybe an adopted policy by this Legislature. The Ethics Commission should provide automatically not only a statement saying, "Hey, so and so FOILed your statements," give us a copy of the FOIL request and advise when our statements were given out. That may give us a little leg up as to how they're going to be used, if they're going to be used by perhaps a political opponent.

There's no reason why a log can't be maintained by the Ethics Commission. One of the letters I received, it was kind of a -- in one of the letters, I was notified that they're not mandated by law to notify us, to give us copies of the FOIL, they're not mandated to let us know when our FOILs -- when our statements were actually released, but they did so to me anyhow; you know, thanks for the favor. But minimum controls have to be in place just to guarantee that any public dissemination of all of our collective financial statements belong to that person, that very person who is FOILING them, and there's some accountability. It's going to be difficult to let -- probably difficult to legislate an unauthorized use and define an unauthorized use, but I think as much has to be built in to the wording in the Legislature to prohibit and just to guarantee for all of us as elected officials who give our life to this business every single day, to guarantee that our statements are not going to be misused or abused against us as political weapons, as blackmail, as "I got you" politics.

Is it going to be difficult to legislate that? Yes, that's why you guys are the Legislators and I'm the Comptroller. But the bottom line is these -- I might be redundant here, but if I can end with this; these ethics public disclosure statements have been designed for public transparency, and rightly so. They're designed to weed out conflicts of interest. And taxpayers, our taxpayers in Suffolk deserve assurance that their public officials are acting in a responsible manner. But when they're used in such a way to beat us over the head with a broom and to whip us in line politically, it's absolutely wrong. And I fully believe that they were never intended to do this.

P.O. LINDSAY:

Okay. I thank you, Mr. Sawicki, for spending the afternoon with us and your testimony was very informative.

MR. SAWICKI:

Not as long as Mr. Borovina, but we got it. Thank you.

P.O. LINDSAY:

Thank you.

MR. SAWICKI:

Thanks for inviting me.

P.O. LINDSAY:

I don't have any other business for the committee, unless one of the committee members has anything. No? Okay.

We're adjourned for today. And we'll see you in the future, especially when we get some documents.

(*The meeting was adjourned at 1:02 P.M.*).