5/14/2019 Special Meeting

SUFFOLK COUNTY LEGISLATURE

SPECIAL MEETING
OF THE
SUFFOLK COUNTY LEGISLATURE
SEVENTH DAY
May 14, 2019

A SPECIAL MEETING OF THE SUFFOLK COUNTY LEGISLATURE
WAS HELD AT THE
WILLIAM H. ROGERS LEGISLATURE BUILDING
IN THE ROSE Y. CARACAPPA LEGISLATIVE AUDITORIUM
725 VETERANS MEMORIAL HIGHWAY
SMITHTOWN, NEW YORK

Minutes Taken by:
Diana Flesher - Court Stenographer

Minutes transcribed by:
Diana Flesher, Court Stenographer
Alison Mahoney, Court Stenographer
Kim Castiglione, Legislative Secretary
Gabrielle Severs, Court Stenographer

* Index Included at End of Transcript
5/14/2019 Special Meeting

THE MEETING WAS CALLED TO ORDER AT 11:37 AM

P.O. GREGORY:
Okay, can I have all Legislators to the horseshoe, please. Good
morning, Mr. Clerk. Yeah, good morning. Please do the roll call.

MR. RICHBERG:
Good morning, Mr. Presiding Officer.

("Roll Call by Mr. Richberg, Clerk of the Legislature")

LEG. KRUPSKI:
Here.

LEG. FLEMING:
Present.

LEG. SUNDERMAN:
Here.

LEG. MURATORE:
Here.

LEG. HAHN:
Here.

LEG. ANKER:
(Not present)

LEG. LINDSAY:
Here.

LEG. GONZALEZ:
(Not present)

LEG. CILMI:
(Not present)

LEG. FLOTTERON:
Here.

LEG. KENNEDY:
Here.

LEG. TROTTA:
Here.

LEG. McCAFFREY:
Here.

LEG. BERLAND:
Here.

LEG. DONNELLY:
Present.

* Index Included at End of Transcript
5/14/2019 Special Meeting

LEG. SPENCER:
(Not present)

D.P.O. CALARCO:
Present.

P.O. GREGORY:
Here.

MR. RICHBERG:
Fourteen. (Not present: Legislators Cilmi, Gonzalez, Spencer, Anker)

P.O. GREGORY:
Okay. Will you all please rise for the salute to the flag.

SALUTATION

Quick moment of silence for all those in harm's way that seek to protect us.

11:38AM

Okay, thank you. Okay, today we are convened -- we have a special meeting. There was a notice sent out on April 30th that reads "please be advised that a special meeting of the Suffolk County Legislature will be held on Tuesday May 14, 2019 at 11:30 AM in the William H. Rogers Legislature building at 725 Veterans Memorial Highway, Hauppauge, New York pursuant to section A2-6 (B) of the Suffolk County Administrative Code for the following purposes: We are to conduct a public portion -- one hour public portion; two, to receive the preliminary investigative report from Joel P. Weiss, Esquire; number three, to consider a vote on procedural motion number 13-2019 vesting subpoena authority with Joel P. Weiss, Esquire in relation to an investigation, if necessary; and for the Presiding Officer to lay certain bills on the table, if necessary.

Okay.

11:39AM

PUBLIC PORTION

So we are in a public portion. We have one card. Jon Kaiman, Deputy County Executive.

MR. KAIMAN:
Good morning, Mr. Presiding Officer and members of the County Legislature. While I'm available on behalf of the County Executive to discuss any issues at greater length, the only point I'd want to make at this portion of the meeting is that with regard to the promotional issue that is the subject of great discussion by the Legislature and others, I just wanted to put on the record that the County Executive's Office and the Police Department have been fully cooperating with Department of Justice providing them all documents relating to the promotional -- the subject promotional issue including canvas documents, personnel documents and process documents. So there have also been several conversations with Department of Justice folks who are reviewing the matter, will

11:40AM
continue to review the matter and we will continue our full cooperation with them as will the police and, I believe, the District Attorney's Office as well.

So that's really the only point I wanted to make for now. And, again, I remain available if there's any other questions or concerns that would like to be raised or that I should address.

P.O. GREGORY:
Okay.

MR. KAIMAN:
Thank you.

P.O. GREGORY:
All right. Anyone else who would like to speak, please come forward. Okay. Make a motion to close the public portion; second by Legislator Fleming. All in favor? Opposed? Abstentions?

MR. RICHBERG:
Fourteen. (Not present: Legislators Anker, Cilmi, Gonzalez, Spencer)

P.O. GREGORY:
Okay, at this time I'm going to ask that Joel Weiss, Esquire, please come forward.

MR. WEISS:
Let me start off standing. Good morning.

P.O. GREGORY:
Please sit.

MR. WEISS:
Let start off sitting. Good morning. I'm Joel R. Weiss, not Joel P. Weiss. I don't own up to anything that he has done whoever he is. I don't care about my middle initial but there are so many Joe Weiss' floating around out there, I use it for that reason.

And I want to make a brief statement prior to what I suspect will be Executive Session. And it's a statement solely relating to one introductory matter, but a matter of some importance. And, in fact, dovetails with what Mr. Kaiman has just spoken about.

I want to also add, by the way, before I continue, I believe it is an honor to appear in front of you and to be fulfilling this function and I thank you for that.

Now, on May 8th David Kelley as Counsel to the Suffolk County Attorney wrote to me and made the following request: And this is the request at the end of the letter. Quote, in view of the foregoing, we respectfully urge you to refrain from any further investigation of this matter in lieu of and in deference to the review of this matter by the Civil Rights Division without creating any possible impediments or obstruction to the fair and impartial process underway close quote.
On May 9th, the next day, his letter was made public by being
distributed to all Legislators, as I understand it, and a variety
of other individuals including apparently the District Attorney,
the County Attorney, etcetera. And, in fact, an article on his
letter and quoted from his letter has appeared in Newsday.

This letter contains two essential assertions. The first, that the
Presiding Officer had an apparent conflict of interest as an
ostensible witness. And, quote, by making a procedural motion and
by causing the investigation to proceed, he may be in violation of
Chapter 77-3 of the County Code as well as Chapter 71, close quote.
Further, that this conflict of interest extends to his ostensible
quote unquote agent outside counsel. That would be me.

And the second assertion that the United States Department of
Justice Civil Rights Division has jurisdiction over this matter, in
essence has it covered, and should be deferred to so as to not
impede and obstruct them. Those are his two assertions.

Both assertions are flatly and completely inaccurate. And I will
address them one at a time.

Starting with the letter that asserts that the US DOJ Civil Rights
Division preempts this, I will now read an e-mail I sent to the
Department of Justice and the response that they sent back to me.
And I forwarded Mr. Kelley's letter and here we go: At 9:18 AM,
what a coincidence, 9/18 is my date of birth, on 9:18 AM on May
9th, I forwarded Mr. Kelley's letter to Carolyn Weiss, no relation,
of the US DOJ. And then I wrote Ms. Weiss, I have three key
questions in regard to the forwarded letter.

One: Does the letter accurately describe the role of the US DOJ
Civil Rights Division in relation to the specific matter that I am
investigating as independent outside counsel to the Suffolk County
Legislature?

Two: Does your Division's role in relation to this matter prohibit
or exclude my investigation?

Three: Does your Division view my investigation of this matter as
being an impediment or obstruction to your Division's role herein?
I respectfully seek a written answer by sometime tomorrow, the
earlier the better, thank you, Joel Weiss.

On May 9th the same day at 4:32 PM Carolyn Weiss responded as
follows: And by the way, then called me and said I may share this
letter publically in light of Mr. Kelley's letter being made
public. And here's what she wrote: We have reviewed the
response you have sent and provide the following information
in response to your questions. We conduct our monitoring of the
Suffolk County Police Department pursuant to a Consent Decree that
was entered in United States versus Suffolk County. That Consent
Decree is grounded in Title VII of the Civil Rights Act of 1964 as
amended. Specifically the Consent Decree, which is a publically
filed document, covers disparate treatment and disparate impact
indiscrimination against African Americans, Hispanics and women in all SCPD employment practices.

Next paragraph. Given the scope of this Consent Decree, we reviewed the SCPD's employment practices through the lens of Equal Opportunity Employment based on race, ethnicity and gender. We do not review or have authority to act on nepotism or whistleblower-related activity per se.

Let me just read that again. We do not review or have authority to act on nepotism or whistleblower-related activity per se. Rather we look at whether and how any employment practices may implicate Title VII. Similarly we have jurisdiction over the SCPD's compliance with its own policies and procedures to the extent that any non-compliance may implicate Title VII.

Last paragraph. Our authority and activities based on that authority do not preclude another entity or individual from conducting an investigation into the same or related employment practices. We consider our review of the SCPD as broad transfer and assignment practices. And your investigation, as you've explained it to us, as being separate and distinct. We have not found our separate investigatory jurisdictions to be in conflict as they are exercised simultaneously. Therefore, we do not see your investigation as an impediment to our review.

So right out of the proverbial horse's mouth, Mr. Kelley's letter is wrong on all counts. In simple terms in the DOJ's view, there is no conflict with the DOJ's separate and different function. In the DOJ's view they do not, quote, do not review or have authority to act on nepotism or whistleblower-related activity per se, end quote, period.

This Legislature does have that authority. You can act on this whistleblower complaint and the apparent violations of the Suffolk County Code Nepotism Statute and the New York State Civil Service Law among other things.

Further, the DOJ does not view this investigation as an impediment to their review.

As to the other assertion in their letter regarding Mr. Gregory's conduct and the outside counsel investigation, number one, Presiding Officer Gregory received a whistleblower complaint as he is authorized to do pursuant to Chapter 71. Two, he told you, this Legislature, accurately that he is required to conduct an investigation under 71 sub 3 (B).

LEG. FLEMING:

I'm sorry, Mr. Presiding Officer, I don't mean to interrupt you, but some of us are a little confused as to what you're referring to. I know we have the David Kelley letter. You read from an e-mail, I think, and then another letter and now you're reading another document. Could we just have some clarification?
MR. WEISS:
No. Now I'm summarizing.

LEG. FLEMING:
These are your notes you're reading from.

MR. WEISS:
I am now summarizing.

LEG. FLEMING:
Okay. Could we just get a copy of the documents that you've referred to? It's been a little confusing to understand what you're reading to and what you're talking --

MR. WEISS:
I'd be very glad to. I have copies of the DOJ letter for all of you.

LEG. FLEMING:
Good.

MR. WEISS:
If I can hand them forward now.

LEG. FLEMING:
That would be very helpful. And the e-mail, I think, as well that you referred to, that would be helpful as well.

MR. WEISS:
That's what I mean. The DOJ e-mail.

LEG. FLEMING:
Oh, so there's just one document.

MR. WEISS:
One document that I'm reading from.

LEG. FLEMING:
Okay, thank you, Mr. Presiding officer.

MR. WEISS:
Just take a few for me. May I hand these up to somebody and pass them around?

MR. RICHBERG:
We will.

MR. WEISS:
Thank you, sir. May I continue?

P.O. GREGORY:
Yes.

MR. WEISS:
Okay. So Presiding Officer Gregory received the whistleblower allegation. He told you, the Legislature right here accurately
5/14/2019 Special Meeting

that he's required to conduct an investigation under the law. He then told you quote, I am almost -- I consider myself a witness in this process so I'm going to be seeking outside counsel parenthetically. To my understanding he's not much of a witness. No insult to you, sir. But he's not much of a witness to this matter in that he legally received a whistleblower complaint. It is in effect hearsay as to him. He did not witness the underlying events. And as a statutorily listed recipient of such a complaint, he logically needs to hear what it is.

In my view that doesn't make him a witness in any tainted sense whatsoever. Of course your view counts and mine doesn't. He disclosed his reservations to you about conducting this investigation individually by himself and appropriately said he would seek outside counsel. And he did not do that unilaterally.

You are presented with a proposed resolution. It was edited in response to your comments and you passed it overwhelmingly. That is to have outside independent counsel. The resolution authorized the retention of a law firm to conduct the investigation. Thereafter, I was retained as quote an independent legal advisor, independent legal advisor and special counsel to the Presiding Officer for the purposes of conducting this investigation. I am not the Presiding Officer's agent as Mr. Kelley's letter suggests. I am independent outside counsel. And I have conducted this preliminary investigation accordingly.

I'm almost done with this statement but I want to just say something about that business of independency. And forgive me for a little bit of personal history. I'm not going to tell you about my mediocre stripe bass fishing or my great racquets ball playing. I'm going to talk about serious things. And the serious thing is this: I went to law school in Boston immediately after the Senate Watergate hearings, 1974. Those hearings made -- those hearings made an enormous impact on me. And what I saw there was interestingly a united congress, a united senate, a bipartisan process and a process geared toward making sure that the political process had integrity and a process that confirmed the idea that a Legislative body has an oversight role in making sure that government has integrity.

And the reason I mention that aside from being thematic here is that in terms of my being independent counsel, when Presiding Officer Gregory talked to me about playing this role, I said two basic things: I said, number one, I'd be honored to do so. And I said, number two, I will not do it unless I'm entirely independent to follow the facts just to where they lead. I am not at all susceptible to any political considerations or really direction from anybody. I'm too much of an independent guy at age 66 and have kind of always have been. So -- I'm not bragging. I'm just simply saying to you this investigation so far has been conducted independently by me with nobody pulling the strings.

So I'm independent outside counsel. And Mr. Kelley's letter is entirely inaccurate on both key issues, whether there's a tainted process here, whether the DOJ objects and is being impeded. This
nepotism related whistleblower investigation is appropriate and it's legitimate. No one else is doing it. And I'm making a preliminary report to you, I think, in Executive Session just a little later today and I thank you.

P.O. GREGORY:
All right, thank you, thank you, Mr. Weiss. I at this point am going to take a point of personal privilege since my character was attacked with this Weiss letter. And I think it's my duty to respond. I'm saddened -- I won't say I'm saddened but it's unfortunate that Mr. Kelley's not here to stand behind his words. I had a lot of respect for him. I was actually on the Executive -- Democratic Executive Committee when he screened in 2002? The District Attorney. I advocated for him because I thought he had a tremendous background. I still think he has a tremendous reputation. Why he would get involved in this process I have no idea. I think he does not know what he's getting into. I think his reputation will not be the same after having left this because he is, in effect -- I can only assume that he doesn't know all the facts. And as special counsel to the County Attorney who is -- you know, I'm not even sure why he's obtained, but, you know, I think he's not aware of his responsibilities as special counsel to the County Attorney.

So I looked it up. I looked up our Charter and section C-16-2, the County Attorney -- it reads in part -- "the County Attorney shall be the attorney and counsel for the County and every agency and office thereof and shall have charge of all business of the County and its agencies. The County Attorney shall prosecute and defend all civil actions and proceedings brought by or against the County, the County Legislature, emphasis added, and officer whose compensation is paid from County funds for an official act except as otherwise provided by this Charter. He shall perform such additional and related duties as may be described by law and directed by the County Executive or the County Legislature" if it's decided again.

So in sum and substance the County Attorney is the DA's attorney. He's the County Executive's attorney. He's the attorney for all county employees including myself. So I find it astonishing that special counsel, who is in this instance the de facto County Attorney and my lawyer, would make allegations of possible, or insinuations at least, of improper and unethical conduct, me his client. It's pure innuendo.

He also mentioned a conflict of interest on my part but fails to mention his own potential conflict of interest. He has taken an adversarial position against his own client no doubt at the request of the District Attorney Tim Sini, who he has a personal relationship with and was, in fact, the District Attorney's campaign chairman.

How could he serve two masters with conflicting and adversarial interests? Tim Sini's actions are being scrutinized in the investigation at hand. Either Mr. Kelley is incompetent or not knowledgeable of his role of the County Attorney. And I do not
think he is incompetent.

I also think Mr. Kelley was not made aware of the situation at hand. To make baseless allegations against me, his client, at the request of this group of individuals is beyond offensive. I will not allow them to insult me through Mr. Kelley. I'm sure these individuals did not inform of their own actions that questions their character before unleashing Mr. Kelley to attack me like some attack dog. I worked too hard to build my reputation. And I won't allow this collection of wanna-be-gangsters, and, yes, I said wanna-be-gangsters, to tarnish what I have worked to build without a response, some of which -- and I'm going to submit all this in an affidavit, but just the highlights.

The main beneficiary of this promotion called a person who was coming before this body, the Legislative committee, the day before this person was to make a public appearance. He does not have this person's phone number and it was an attempt, I believe, to intimidate that witness from coming forward.

The District Attorney called many of you to persuade you and dissuade you about that very same witness and I believe in an act to intimidate that very witness. The District Attorney -- on May 2nd, I received a call from an individual that said the District Attorney was telling people he was going to quote ruin my career, or ruin me, end quote. Two people have confirmed that threat. We all should be alarmed by the actions of these individuals. And there are more that I will commit to a sworn affidavit.

But before these individuals attack my character, they should clean up their own house and stop acting like the fictional Sopranos crime family. The fact that these individuals are bringing Mr. Kelley to use his reputation in an attempt to intimidate me shows the level of carelessness if not recklessness of these individuals that we should all be alarmed about.

I am an army veteran who stepped up to risk my life to stand up for my principles. I don't scare easily. Everything I have said, again, I will commit to a sworn affidavit. Thank you. All right.

So, Mr. Weiss, Mr. Clerk, we're going to go into Executive Session now. I'm going to make a motion to go into Executive Session.

LEG. BERLAND:
Can I ask a question?

P.O. GREGORY:
Yep.

LEG. BERLAND:
There's been a lot of stuff said. Is there any opportunity for any, you know, anyone from either the County Executive or from the Sopranos (laughter) or anyone --

P.O. GREGORY:
This is not a back -- no, this is not a back and forth. The
5/14/2019 Special Meeting

Administration had an opportunity to speak. Mr. Weiss responded to
the letter that was submitted and distributed to all of you, that
was public. I think he responded appropriately as well as I think
I, of course, think I responded appropriately.

LELeg. BERLAND:
Well, we just got handed this. So, I mean, maybe I would have
asked questions if I knew that this was in existence, but I didn't.

P.G. GREGORY:
Okay. Well, we can ask questions in Executive Session.

LELeg. KENNEDY:
Why are we going into Executive Session? I can't find a reason.
Over the weekend I read the law. This is not actual police
activity?

MS. SIMPSON:
If I may, Leslie -- Legislator Kennedy, this does still involve a
personnel matter where other personnel, individuals, are being
discussed as well as the whistleblower, the investigation itself.
Additionally, we stated in our procedural motion that the report
was going to be provided to this Legislature under seal. The only
way we can do that is if it is --

LEG. DONNELLY:
We've already had components of the report released in public.

MS. SIMPSON:
Components, but not the full report.

LEG. DONNELLY:
But it's still violating the procedure then, isn't it?

P.G. GREGORY:
No.

MS. SIMPSON:
We did not release any elements of those documents.

LEG. KENNEDY:
But it's out there.

LEG. DONNELLY:
The Counsel was just speaking on it.

MS. SIMPSON:
Regardless of that fact, there are other elements that have not
been discussed in his report. Since we said it was going to be
under seal, confidential information, it should be continued to be
reported in a confidential manner.

LEG. BERLAND:
But if I may, this letter that we just got, in all due respect, if
you were going to, you know, discuss this with us, you should have
let us know that this was coming because I would like to ask Mr.
Kiman questions on this. I'd like to ask -- well, I mean, I would
like to know because you -- I mean, you know, I'm a lawyer, too,
and lawyers characterize things. And you characterized your
questions in one way and I don't necessarily agree that maybe your
questions are characterized in the right way. And there may be
some other people who agree with that as well. So to not be able
to discuss his handout with the, you know, the other side who, you
know, his letter was written, his e-mail was written in response to
what the County -- well, the County Attorney's letter. What's the
guy's name? I'm sorry.

12:03PM

MS. SIMPSON:
Mr. Kelley.

LEG. BERLAND:
Mr. Kelley.

MS. SIMPSON:
Mr. Kelley is not here to respond to the letter personally.

12:03PM

LEG. BERLAND:
Well, but, you know, Mr. Kiman came and spoke. I
assume representing the Administration.

P.O. GREGORY:
But how can Kiman discuss what the intention of his lawyer's
letter was about?

LEG. FLEMING:
May I suggest that our questions just --

LEG. BERLAND:
Just address what, you know, what Mr. Weiss had said about his --

MR. KAIMAN:
If I could address the --

LEG. BERLAND:
-- characterization of it. Because I don't necessarily agree that
how he asked his questions and the questions he's specifically
answering -- asking are, you know, necessarily the correct
questions. But it just seems like if you want to really be fair
about this whole procedure, to have the public portion first, then
to have his statement, and not to have any time for anybody or
anything to publicly discuss what was said, and now go into
Executive Session, I don't think is fair and open.

So I would ask that there may be, you know, a point of personal
preference for me to have someone be able to respond to what he
said. I think that's only fair. And if you want to have the
appearance of an open, fair and honest conversation, then I think
that responses to this have to be made out in the open, so.

12:04PM

P.O. GREGORY:
Okay. Legislator Fleming. Oh, I'm sorry. Leslie -- Legislator
Kennedy.
LEG. KENNEDY:
Okay. I would like someone to either read the District Kelley letter into the record, or if not, to put it in the record. Can we do that?

MS. SIMPSON:
We can do that.

LEG. KENNEDY:
Okay. I want it on the record that I disagree. I feel -- and I'm not an attorney, but from what I read in simple English, I don't think we have to go into Executive Session for this.

P.O. GREGORY:
Okay. Legislator Fleming.

LEG. FLEMING:
Thank you. I certainly agree that Executive Session is appropriate for a large part of this discussion. However, Mr. Weiss has given us a lot to think about. And I would ask that Legislators be given the opportunity to put questions either to Mr. Weiss or to members of the County Executive staff confined -- oh, I'm sorry -- that are questions -- that we be permitted to put questions that are confined to the subject matter that Mr. Weiss has now opened up for public discussion.

P.O. GREGORY:
Okay. Anyone else?

LEG. FLEMING:
And I think that's what Legislator Berland was attempting to do.

LEG. BERLAND:
Yes.

P.O. GREGORY:
Okay. Well, we do have -- I heard someone make a motion to go into Executive Session. I heard someone second it.

LEG. BERLAND:
Are we not going to have an opportunity to ask --

LEG. FLEMING:
I'll move to table the motion to go into Exec Session until we continue this -- until this decision has been made.

LEG. BERLAND:
I'll second that.

P.O. GREGORY:
I'm fine with having everything in public because I think there needs to be transparency and sunlight on this issue. Because if not, it's going to continue. You know, having Executive Session only allows this culture, if you will, to breathe life; it breathes life into this culture. That doesn't suit our employees well and
it doesn't suit the -- serve the taxpayers of this County. I'll have anything in public.

LEG. FLEMING:
With all due respect, I mean, the Public Meetings Law is an important statute for a lot of reasons. , and I have to respectfully disagree that it doesn't protect staff, because I think it does, especially if we're in Executive Session for personnel purposes, which I think a lot of this is, we're protecting people who, you know, might otherwise be harmed by a public discussion in the midst of a personnel investigation. I thought that's why we were going to be going into Executive Session.

But with regard to Mr. Weiss' role and this now conflict that we've just learned about between Mr. Kelley and Mr. Weiss' perception of what's happening at the Department of Justice, that's on the record now and I think we need to discuss it and I think the public does deserve to know.

P.O. GREGORY:
No, my comment, I think you misunderstood my comments. I said the culture of cronyism and nepotism doesn't serve the taxpayers. That's what I was referring to; not going into Executive Session. That's what I'm saying, so.

LEG. FLEMING:
I just think it's important for the public to understand that we don't go into Executive Session just to hide things; that there are very, very legitimate purposes for Executive Session, whether it be litigation or personnel. We, you know, governments routinely do that for good purpose.

P.O. GREGORY:
Yep, yep. Oh, yeah.

LEG. FLEMING:
I don't want to mean to say that we're hiding anything. But at this point we've got an open discussion that we're just learning about and two varying perspectives, and I think there are some Legislators at the horseshoe here who have some questions to put to try to clarify that.

P.O. GREGORY:
Yep. Legislator Hahn.

LEG. HAHN:
I agree, I think there are some extremely important transparency issues here. However, ultimately this a whistleblower case, and we need to do whatever we must do, whatever we can to protect that fact and that individual. That is the utmost importance or there will be no more whistleblowers, ever. But I do agree there are very important transparency issues and making it clear that we as a Legislature are doing our oversight -- handling our oversight responsibilities properly while protecting a whistleblower, ,and so there's a very delicate balance here. There are questions that can
be asked on the record and there are questions and understanding that must happen behind closed doors. And so the delicate balance is one that our Presiding Officer will be tightrope walking here and we need to all be in support, helping to find the way to best manage this balance. It's incredibly important to the reputation of this body.

P.O. GREGORY:
Legislator Calarco.

12:10PM
D.P.O. CALARCO:
So I think I seconded the Executive motion action and I'm actually a little troubled by just the whole proceedings that we started here this morning. To date I have not received the actual complaint. I don't know what was alleged, so therefore I do not know what Mr. Weiss was charged with. It is very difficult for us to make decisions on what has or hasn't happened without the facts and without knowing the underlying allegation that we charged Mr. Weiss with investigating. During the debate a month ago we were never given a clear understanding of what the allegation was, but more that there was an allegation that the Presiding Officer took very seriously. And I respect his opinion. And if he feels there is a serious allegation, then it deserves to be investigated.

I don't really think it's appropriate for us to go on any public forum at this point in time until we hear from Mr. Weiss, hear exactly what the charge that was given to Mr. Weiss, and hear what the plan was that he developed as we charged him to do under the procedural motion that we approved last meeting. I think it's inappropriate to characterize what has or hasn't happened until any of us has had the ability to hear all that information. At some point in time we may charge Mr. Weiss with going forward with a further investigation. We may decide that we want to take it inhouse ourselves, we may decide that we need to get more information from different players in the issue. But I really don't think for us to move forward at this point without going into Executive Session and hearing the information is prudent, because the allegations that are being made and some of the statements that are being made right now are tainting our ability to be impartial.

12:11PM
LEG. FLEMING:
I disagree with that.

D.P.O. CALARCO:
I think until we know what's actually alleged I don't think we know what's going on. There are people -- we are saying something happened and I don't know what has happened. And I don't even know what the facts are that back up what has or hasn't happened. I think we need to hear that.

12:12PM
P.O. GREGORY:
Yes, Legislator -- Okay, we're getting a list. Legislator Berland.

LEG. BERLAND:
Yeah. Okay, I have specific questions about the testimony that was made, so I would like to ask some questions. Can I ask those
questions or can I not ask those questions?

P.O. GREGORY:
I think that's what we're discussing now.

LEG. BERLAND:
We're discussing whether I can ask them.

P.O. GREGORY:
Whether we want to do this in Executive Session or --

LEG. BERLAND:
Okay, but I -- all right. I know I personally have specific questions about the testimony that Mr. Weiss just gave.

P.O. GREGORY:
But they're for Mr. Weiss?

LEG. BERLAND:
Well, specifically, yeah. I mean, you know, comparing the two letters I have some questions specifically for him. Can I ask him that now? Because he's still there, right?

LEG. FLEMING:
I think there's a pending motion to table that has a second that's to table with -- until this issue is resolved.

LEG. BERLAND:
Well, I was just trying to clarify the issue, whether we're not allowed to ask him any questions at all or we're not allowed to ask any questions at all to anybody regarding the topics that were discussed this morning. That's what I'm trying to clarify.

P.O. GREGORY:
I think --

LEG. BERLAND:
If he's testifying, am I not allowed to ask him a question?

P.O. GREGORY:
I think -- well, that's the issue, is do we go into Executive Session, and you ask the questions or not, or do we --

LEG. HAHN:
Take a vote.

LEG. BERLAND:
But it's not an Executive Session question. It has nothing -- it totally has to do with what he said, you know. He seems lovely, but I have a question for him (laughter).

MR. WEISS:
That makes one of us.

LEG. FLEMING:
Can I ask that we call the vote on the motion to table for the
5/14/2019 Special Meeting

12:14PM

P.O. GREGORY:
All right. Hold on, the list is getting big. I got Kevin, excuse me, Legislator McCaffrey, Lindsay and then Krupski.

LEG. McCAFFREY:
Thank you. I may not be the attorney in the room but I think I have been subject to the Open Meetings Law longer than anybody else, since 1990 in village government. And I agree exactly -- before 1990? Okay, I'm sorry. I defer to -- you look so young, Al.

LEG. KRUPSKI:
I was just a kid.

LEG. McCAFFREY:
I know. But all I can say, though, is I'm familiar with it. And I agree exactly what you said. I said prior to this all -- Mr. Weiss bringing this stuff out into the public, I believe that that was something that maybe was subject to the -- not subject to the Open Meetings Law and we could have gone into Executive Session. But I also believe now that it's out there I think all of us in open session, especially in light of all the allegations that have been made, that we have the opportunity to ask questions specifically about what has been put on the record here today.

P.O. GREGORY:
Okay.

LEG. McCAFFREY:
And I also truly believe that at this point now that we should be able to ask questions of the Administration on this as long as they abide by the same laws -- rules that we agree to, that it should be limited in scope to what's been put on the record today.

P.O. GREGORY:
My -- just my opinion to that would be that that would be inappropriate. And I say that because the Administration to this point has not cooperated with the investigation. So to allow them to come before the Legislature when the Investigator of the investigation is making his presentations and now they want to be heard when they haven't been wanting to cooperate, I think it's --

LEG. BERLAND:
But just your allegation that they haven't cooperated --
P.O. GREGORY:
They haven't, they haven't.

LEG. McCAFFREY:
But after what was put on the record --

P.O. GREGORY:
No, let me -- so you don't like cooperate? They haven't responded to the Investigator's efforts to speak with them, as I understand it. So whether that's cooperation or not I don't know, but they shouldn't, nonetheless, I believe, shouldn't allow them the opportunity to come before this body who's making a consideration of the Investigator that's investigating them. They can't have it both ways, simply put. I mean, I'm not the attorney here, but to me that seems like they're trying to have it both ways.

LEG. McCAFFREY:
But there have been serious allegations made, put on the record, wanna-be-gangsters, fictional Soprano crime family. I think they should have the opportunity to address that. I mean, I surely would if that was an innuendo made about myself as well. And I think they should have the opportunity in public with everybody here to be able to discuss that and at least, you know, have something to say about that.

P.O. GREGORY:
Okay, all right. I think Bill was next and then Al.

LEG. LINDSAY:
Yeah, I agree with Legislator McCaffrey. There's allegations that were made today of a criminal nature that had nothing to do with your initial investigation. And to run into Executive Session to discuss the investigation and maybe even some of these other allegations I think would be unfair.

I think the Administration, if they haven't cooperated with the investigation, well now is an opportunity for them to answer those questions publicly. So why wouldn't we afford them that opportunity and bring this all to light? So I think in all fairness to all parties involved, some very serious allegations have been made and I think everyone should have an opportunity in public to make their -- to respond to those allegations.

P.O. GREGORY:
Okay. Legislator Krupski.

LEG. KRUPSKI:
So I think it would be fair, things that were discussed this morning in open session, to have a further discussion in open session to try to clarify what -- so everyone agrees what the facts are in going forward. And I wouldn't mind hearing from our Legal Counsel as to that. That's my opinion on that.

P.O. GREGORY:
So we have a tabling motion to go into Executive Session. You guys
want to vote or not or you just want to -- it seems kind of -- all right. All right, we'll call it. So I know you did the motion. I don't know if anyone seconded it.

LEG. BERLAND:
I second it.

P.O. GREGORY:
Oh, Legislator Berland seconded it. So motion to table for Executive Session. All in favor -- or actually roll call. How about that.

("Roll Call by Mr. Richberg, Clerk of the Legislature")

LEG. FLEMING:
Yes to table until we resolve the issue.

LEG. BERLAND:
Yes.

LEG. KRUPSKI:
Yes, to table.

LEG. SUNDERMAN:
Yes.

LEG. MURATORE:
Yes.

LEG. HAHN:
No

LEG. ANKER:
(Not Present)

LEG. LINDSAY:
Yes.

LEG. GONZALEZ:
(Recusal)

LEG. CILMI:
(Not present)

LEG. FLOTTERON:
Yes.

LEG. KENNEDY:
Yes.

LEG. TROTTA:
Yes.

LEG. McCAFFREY:
Yes.
LEG. DONNELLY:
Yes.

LEG. SPENCER:
(Not Present)

D.P.O. CALARCO:
No.

P.O. GREGORY:
Yes to table. And I forgot earlier -- well, call the vote. I forgot to recognize Legislator Gonzalez's recusal that he filed with my office. And Legislator Cilmi has an excused absence and who else is not here?

MR. RICHBERG:
Your vote? I'm sorry, your vote? Your vote? Your vote?

P.O. GREGORY:
No, I said I'm a yes to table.

MR. RICHBERG:
Twelve. (Opposed: Legislators Hahn and Calarco; Not Present: Legislators Anker, Cilmi and Spencer; Recusal: Legislator Gonzalez)

P.O. GREGORY:
Okay, all right. So, Mr. Weiss, have about it. Legislator Berland, you go first. You were the --

LEG. BERLAND:
Hi, good morning.

MR. WEISS:
Hi. Hi.

LEG. BERLAND:
A couple of things I don't quite understand.

MR. WEISS:
Okay.

LEG. BERLAND:
So in your questions to the DOJ, okay, you asked them general questions. Did you ask them if they're specifically investigating the same thing that you're investigating, without saying what that thing is or that person or that incident? Because we don't really know what it is. Do they know what it is?

MR. WEISS:
You're ready?

LEG. BERLAND:
I'm ready.
MR. WEISS:
Okay. Let me make just a short introductory comment related to
Mr. Donnelly's point. What we've discussed so far, as I view it,
is jurisdictional in nature, and I'm glad we're doing this. And
what I mean by jurisdictional in nature is I have a nine-page,
single-spaced report on facts related to this personnel matter that
I haven't touched on at all. This just has to do with the fact
that Counsel for the County Attorney questioned the legitimacy of
this investigation. And I want to address that given that they've
put it into the public domain. And my understanding, they gave
their letter which was -- excuse me, Mr. Kelley's letter, which was
written to me, to all of you, and I think to the press. So, thank
you, I think it's right that we address this now, and I think it's
something entirely separate from what I'll discuss about the facts.

Now let me stop interrupting your question and answer your
question.

LEG. BERLAND:
Thank you.

MR. WEISS:
I talked to the DOJ several weeks ago because I became aware that
they had this Consent Decree. And I wanted to see whether I could
find out any information. Because it's just little ole me
investigating this; I do not have a staff. But I've have done this
as a Rackets Bureau Chief, as a Frauds Bureau Chief, as a white
collar defense lawyer for 42 years. So --

LEG. BERLAND:
Can you --

MR. WEISS:
So just --

LEG. BERLAND:
So with all due respect --

MR. WEISS:
Get to the point?

LEG. BERLAND:
Do they know about it or do they not know about it?

MR. WEISS:
The simple answer is as to this letter, I communicated with
Ms. Weiss entirely by this letter except to call her and say I'm
sending you a letter that's been distributed by David Kelley, I'm
going to send you a few --

LEG. BERLAND:
So it's the hypothetical letter.

MR. WEISS:
No, it's --
LEG. BERLAND:
It's not a --

MR. WEISS:
No, it's not hypo --

LEG. BERLAND:
It's hypothetical --

MR. WEISS:
No, it's not hypothetical.

LEG. BERLAND:
-- or is it -- does it pertain to the actual thing that we're
talking about? The actual person and facts which we don't know
which you know; it's a very simple yes or no question.

MR. WEISS:
Yes, and the very simple answer is inferentially of course it
pertains, but if you ask me the boundaries of my conversation with
her, they're in the four corners of this letter. So when we go
into Executive Session and I brief you on all of the facts, you may
get more of a sense of that. But the letter was simply here's what
Mr. Kelley says this is about, and take a look at it and could you
answer these three questions; do you agree with his positions? And
by the way, there are two sides to this story.

LEG. BERLAND:
Right, but wait. If you look at --

MR. WEISS:
Hang on. Please don't interrupt me and then I'll --

LEG. BERLAND:
Well, I can interrupt you, but go ahead.

MR. WEISS:
Okay. Basically there are three accounts here: One is my summary,
one is Mr. Kelley's summary, but one is the Department of Justice's
letter official --

LEG. BERLAND:
Right, but that's the whole point that I'm trying to get from you,
because if you're asking them in a hypothetical sense or you're
asking them about this specific thing. If they're investigating
this particular incidence, that's something this body needs to
know. And I was under the impression they were not; maybe they are
and I don't know. But when you look at their letter it says,
"Given the scope of the Consent Decree, we review the Suffolk
County Police Department's employment process to" -- sorry, wrong
line. "We do not review or have authority to act on nepotism or
whistleblower-related activity per se." Per se, for those of you
who, you know, are not lawyers, my understanding is there's strict
-- there's strict instruction of what they do, they don't
necessarily do that. That does not mean that if this particular
whistleblower did not go to them that they're not investigating
So -- you know, so that's why, you know, I think it's very misleading what this letter says, because they do investigate whistleblowing situations, they can investigate whistleblowing situations. And I still don't have an answer to the question are they investigating this whistleblowing situation which -- you know, which I don't know. So based on your conversations with them, do you know if they are or you don't know if they are? And if you don't know there they are -- if they are or not, then apparently this is a hypothetical and this doesn't relate to this particular instance. So which one is it?

MR. WEISS:
Okay. First of all, I think you're failing to -- I'm going to answer this. You're failing to focus on one key sentence in the letter: "We do not review or have authority to act on nepotism or whistleblower-related activity per se."

LEG. BERLAND:
Per se.

MR. WEISS:
Meaning even if they find it, they can't act. You can act, they can't. They can't press a resolution --

LEG. BERLAND:
That's not the question. That's not the question.

MR. WEISS:
And the answer --

LEG. BERLAND:
Are they investigating this? Without saying what "this" is, are they investigating this; yes or no?

MR. WEISS:
My best understanding, as best I can answer your question -- from a prior conversation with them, not recent, is that they're aware of some facts related to this. But they're not investigating this vis-à-vis taking any action, whistleblower, nepotism or otherwise. I think they're taking in the facts related to it. I think they're more than a decade look-see under the Consent Order, but they are not addressing this in this way.

LEG. BERLAND:
They're not addressing this particular instance.

MR. WEISS:
In this way. In this way. My belief is that they're aware --

LEG. BERLAND:
You're still not answering my -- you're lawyering me and that's --

MR. WEISS:
And you're lawyering me.
LEG. BERLAND:
You know, I appreciate that, I like that.

MR. WEISS:
But having said that --

LEG. BERLAND:
But this is not the content for this.

MR. WEISS:
I don't know if the record can get us both talking at the same
time. But what I'm saying is my best understanding is, as I just
said, they're aware of some of the underlying facts that we are
looking at, but they are not acting on or investigating them in
this manner. They're taking the menace part of a big picture;
that's my best understanding.

LEG. BERLAND:
Okay, which still doesn't answer my question, but okay.

12:26PM
Let me ask you another question. When you were talking about this
letter, this e-mail before we had it, you said -- I thought you
said that they also commented on the -- whether the Presiding
Officer should be participating --

MR. WEISS:
No.

LEG. BERLAND:
-- because he's a witness or not.

MR. WEISS:
No.

LEG. BERLAND:
But that was not the case; that was just your personal opinion on
that. So your opinion different -- your legal opinion, your
opinion attributed to you as opposed to Mr. Kelley's opinion;
correct?

12:27PM
MR. WEISS:
Well, I would disagree with your characterization because I'm
reciting facts like what happened in front of you guys that a
resolution was passed. So those things are not my opinion, but it
is my account of the events, as Mr. Kelley has made an account.

LEG. BERLAND:
Right, but that wasn't --

12:27PM
MR. WEISS:
And I base my account on the transcript --

LEG. BERLAND:
It wasn't the DOJ -- that's not in the DOJ's letter because that's
when I heard you in the first instance.
MR. WEISS:
Not in the DOJ's letter.

LEG. BERLAND:
I thought they commented on the witness part, but they did not.

MR. WEISS:
Did not.

LEG. BERLAND:
So that's your opinion versus Mr. Kelley's opinion.

MR. WEISS:
Well, I disagree with your characterization, but it's me versus Mr. Kelley.

LEG. BERLAND:
Your statement versus his statement; how's that?

MR. WEISS:
That's good, and I agree.

LEG. BERLAND:
All right. Can I ask the -- Mr. Kaiman to step up?

Okay. Is it your understanding that the DOJ is investigating this or is not investigating this; do you have a yes or no answer for that one?

MR. KAIMAN:
Yes, I do, and the answer is yes. The answer is yes, they are investigating the specifics of this question. And I would point out that we would disagree with Counsel's characterization.

The DOJ does not investigate whistleblowing and nepotism, that is correct. They are investigating the underlying assertions to determine whether or not some act took place that would violate some procedure or certainly civil rights. If they did, that would be the basis for the whistleblower charge or assertion. And so they are specifically looking at the information relating to this incident.

I am personally aware -- and I've seen the documents that we have sent. The Suffolk County Police have sent over documents relating to the dozens and dozens of pages of documents relating to the canvass that the Police Department did in exploring a certain promotion; that they looked at the backgrounds and all the information that the Police Department had relating to the decisions they were to make relating to the underlying assertion. And we believe that that person who made the assertion also had made a claim to the DOJ as well. And so they are investigating the specific acts.

There's been conversations. We have been cooperating with everything the DOJ has been doing in terms of providing documents,
in terms of speaking to them, in terms of explaining to them whatever process was undertaken. And that we believe, contrary to Counsel's assertion, that the DOJ, specifically in their letter where they do say per se, they do not investigate whistleblower or nepotism per se because that is a local thing for a local body to determine, but they are investigating the underlying charge and they have been doing so thoroughly and that review is continuing.

LEG. BERLAND:
Okay. So let me make sure I have something straight here. So contrary to the allegation that you have not been cooperating with this whole investigation, which I still do not know the full details of, you're saying you have been giving documentation to the DOJ?

MR. KAIMAN:
Correct, we've been fully cooperating. And members of the Administration have received letters from Mr. Weiss; however, there was concern about the potential conflicts that he may have; does his firm represent criminal defendants or people suing the County. He is now representing them as an attorney, that there this is no conflict. But we're not clear that he might not have conflicts. He is a private individual. We understand that Counsel has represented that there's no conflict with the Presiding Officer. The Presiding Officer has said at the last statement that he is personally a witness. He has now contradicted that saying that his client is not a witness but he's -- the specific language of the Presiding Officer indicates that, in fact, he certainly appears to be. That needs to be fleshed out, I suppose, but that conflict weighs heavily on the circumstances surrounding this case. And so we would argue that for individuals who may be subject to certain allegations that we, by the way, take serious exception to the way they were characterized by the Presiding Officer, it was highly inappropriate, offensive and I believe clearly inaccurate, nevertheless, those types of assertions being presented in a public body suggests that other officials who are subject to this type of inquiry should only be -- participate in a lawful manner. And it is not clear that Mr. Weiss has the legal authority based on potential conflicts that he may have or that his client has. And if his client has --

P.O. GREGORY:
I'm going to stop you there. This is totally inappropriate.

LEG. BERLAND:
Okay. So --

P.O. GREGORY:
It goes beyond the bounds. They're not participating in the investigation. Now they're going to come here and try to undermine the action; not even the investigation, but the actual investigator? This is garbage. This is garbage. And this is exactly why they shouldn't be allowed to speak on the record. You can't have it both ways. We have to go into Executive Session. This is garbage.
LEG. BERLAND:
Well, but then --

MR. KAIMAN:
We're explaining our position.

P.O. GREGORY:
No, you're not. You're not explaining your position, you're attacking the investigator.

MR. KAIMAN:
I'm not attacking him, I'm saying that --

P.O. GREGORY:
You are. You're saying that -- now your lawyer, who is my lawyer, says that I may have some conflicts, now you're throwing into the ethersphere that the actual investigator may have some conflicts? I mean, this is ridiculous.

MR. KAIMAN:
It was a concern of mine which is why we --

P.O. GREGORY:
This is ridiculous. Your lawyer didn't say it in his letter, but now you're going to just throw it out there?

D.P.O. CALARCO:
Mr. Presiding Officer?

P.O. GREGORY:
We have to stop this. This is --

D.P.O. CALARCO:
I'd like to make a motion to go into Executive Session again.

P.O. GREGORY:
This is garbage.

D.P.O. CALARCO:
I think that we are at a point --

LEG. BERLAND:
Wait. Can I just --

D.P.O. CALARCO:
-- where we are not --

LEG. FLEMING:
Motion to --

P.O. GREGORY:
No, he is not allowed to say another word.

LEG. BERLAND:
Okay, but I --
P.O. GREGORY:
Step away from the microphone.

LEG. BERLAND:
I am concerned how Mr. Weiss, who's the Legislature's attorney, says he is not sure, I think, because we didn't get a yes or no answer whether the DOJ is investigating. But the representative from the County Executive's Office says -- Mr. Kaiman says that he fully told Mr. Weiss that they were complying with the DOJ and that they handed over documents to the DOJ. So it's such a disconnect for me. You know, either he knows that the DOJ's investigating it or he doesn't; and either he knows that the documentation is being submitted to the DOJ or he doesn't; either you know that they are cooperating with the DOJ but make it seem like they're not cooperating with anyone, which is not fair either, in all due respect.

P.O. GREGORY:
Did I say that? I didn't say that.

LEG. BERLAND:
You did, you said they're not cooperating.

P.O. GREGORY:
No, I didn't. I said they're not cooperating with the investigator, to my knowledge. I didn't know -- I didn't say anything about the DOJ.

LEG. BERLAND:
But if they're not cooperating with this, then there's the second half of that sentence is because of the letter they feel that they should be cooperating with the DOJ, not with this investigation, and that's a whole other decision we have to make.

P.O. GREGORY:
But you're assuming they're both the same. I think the e-mail says that they're separate and distinct. So they're two separate investigations. They may be looking at the County's hiring overall as it relates to women, minorities and civil rights issues. Mr. Weiss is not looking at civil rights issues; he's looking at nepotism issues.

LEG. BERLAND:
No, but I'm talking about the specific -- the specific individual and specific --

P.O. GREGORY:
There's specific issues about nepotism.

LEG. BERLAND:
Right, but this specific individual which we still do not have the specifics of, I can't tell whether they're talking apples or oranges.
P.O. GREGORY:
All right, which we need to go in Executive Session about.

LEG. BERLAND:
But then that -- then this whole thing should not have happened and he should not have presented what he presented before that.

P.O. GREGORY:
And he was responding. I imagine, to the letter that was in the -- that they had released to the public. As my lawyer, he should have sent that letter to me.

MR. KIMAN:
He did.

P.O. GREGORY:
Not to every one of you and whoever else. He didn't do that. So Mr. Weiss responded in the public way, you know.

LEG. FLEMING:
Thank you. If I could just put a couple of clarifying questions to Mr. Weiss confined just to what he -- these couple of documents that we've gotten at the last minute here.

One question that I have for you, sir, is with regard to Mr. Kelley's letter and the reference in Mr. Kelley's letter of a March 19th correspondence by the Civil Rights Division who in Mr. Kelley's letter contacted the County Attorney's Office to inform the County of its particular concern with the recent transfer and appointment to the Detective Sergeant position. So he's -- in Mr. Kelley's letter, he's referring to a specific correspondence from DOJ Civil Rights Division to the County Attorney. We don't have that document, so I think that's a big concern. Are you, sir -- this is just a yes or no question -- are you in possession of that March 19th correspondence?

MR. WEISS:
No, and I can --

LEG. FLEMING:
Thank you. I had a yes or no for you on that. The other question is can you provide that correspondence to us? That's just a yes or no.

MR. WEISS:
Well, I told you I'm not in possession of it, so how could I?

LEG. FLEMING:
Thank you. So I think that is an important question to put to the County Executive staff, what is this reference? Because I think the clarification that we need is precisely what are the parameters of this alleged Department of Justice investigation. So that's a big question I have and I would like to put it to the County Exec, but of course, Mr. Presiding Officer, this is your meeting and I'm -- you know, if we can't ask those questions I appreciate it. But I would like to note that we need that to make a good decision
The second question I have is in the Kelley letter there's a reference to a continuing review of the Police Department's processes for filing specially assignments and transfers. And I believe that that continuing review may be the subject, sir, of your inquiry to Ms. Carolyn Weiss.

So my question to you, sir, is for what reason did you choose to contact Ms. Weiss -- Carolyn Weiss, no relation -- of the Employment Litigation Section? And were you aware that there was a correspondence from the 19th of March; did that come from Ms. Weiss? Why did you contact Ms. Weiss and the Employment Litigation Section.

MR. WEISS: Okay, this is not a yes or no, right?

LEG. FLEMING: Sir, why did you -- I appreciate your sense of humor, but this is extremely important stuff.

MR. WEISS: It's not humor, I just wanted to know if you want me to elaborate.

LEG. FLEMING: My question, sir, is for what reason did you choose Ms. Weiss and the Employment Litigation Section for your question as to whether your investigation is -- might impede her investigation? Does she -- is she doing this continuing investigation or is she doing the specific investigation that was the subject of the March 19th letter that you haven't seen?

MR. WEISS: Okay. I contacted Ms. Weiss because I came to understand that she was a senior member of the staff that is part of the oversight of the Suffolk County PD for I believe ten years or more on a variety of bases, mostly related to civil rights and mostly related to discrimination --

LEG. FLEMING: And I think --

MR. WEISS: -- race and gender.

LEG. FLEMING: Appreciate that. I think that's an important point here, because this indicates to me that there may very well -- if we can't put the questions to the County Exec, we need to put the questions to the Department of Justice or see that March 19th letter.

I believe what Mr. Weiss is referring to is a continuing investigation. Members of the public that are here because they're interested in it. It's been investigated for many, many years and it is of great interest to many of us on the Legislature, the sort
of overall general practices that have been the subject of a Consent Decree for many, many years.

This, however, this investigation appears to have separate -- a separate residence in the DOJ, in the Civil Rights Division, and we haven't heard that. There's a March 19th letter. We don't know who the lawyer in the DOJ is who generated that letter. And I think it would be very important to hear from County Attorney or the County Executive staff as to what that investigation entails.

P.O. GREGORY:
I mean, I think if they're willing to provide that letter, I think that would answer your questions, other than --

LEG. FLEMING:
It may. And the follow-up questions which --

MR. WEISS:
(Inaudible)

LEG. FLEMING:
In the David Kelley letter, there is reference to investigation that is of particular concern with regard to the recent transfer and appointment. And Mr. Kaiman has said that documents have been turned over; the Kelley letter references interviews. And the questions, the careful question that Mr. Weiss put to Ms. Weiss may very well not be triggering a response with regard to that specific investigation. They're triggering a response with regard to the overall investigation under the Consent Decree. So we need more info, and I think we can get it from the County Exec, DuWayne. If we can get that March 19th letter, the document -- who they were in correspondence with at DOJ; was it this Employment Litigation Section or was it someone else?

P.O. GREGORY:
Right. So you're making a formal request of the Administration to provide the March 19th letter from the DOJ Civil Rights Division to the Administration?

LEG. FLEMING:
To the County Attorney that's referenced in Mr. Kelley's letter. But I think we should also understand the discussions, because we are hearing a lot of emotion, a lot of characterization about motives and, you know, whether people are acting in good faith or bad faith. But there is reference to some correspondence that happened. And I think we have a lack of clarity as to what the specific subject of those correspondence may be.

P.O. GREGORY:
Okay. So would you be -- Mr. Kaiman, would you be -- your Administration be willing to provide that -- entertain that request?

MR. KAIMAN:
Yes. Yeah, we have the letter and we could provide it to the Legislature.
P.O. GREGORY:
Okay, excellent.

LEG. FLEMING:
Who is the letter from? I'm sorry, I wasn't supposed to ask a question. Can you -- through you, can I ask it?

P.O. GREGORY:
Go ahead.

LEG. FLEMING:
Who -- is it Carolyn Weiss?

MR. KAIMAN:
We have a copy on the e-mail.

LEG. FLEMING:
Or is it a member of the Employment Litigation Section?

MR. KAIMAN:
It's from Carolyn Weiss.

LEG. FLEMING:
Oh, it is.

MR. KAIMAN:
It's actually from Debra Kennebrew, Employment Litigation Section by Carolyn Weiss. So it appears to be from Carolyn Weiss' staff on behalf of Carolyn Weiss.

LEG. FLEMING:
So the reference, then, to the -- I mean, the references in the e-mail that we got this morning may, in fact, entail the same investigation. I just don't know the answer to that. I think we need that answer.

P.O. GREGORY:
Did you ask a question? I was talking to Legislator Calarco.

LEG. FLEMING:
Yes. I appreciate the letter. I just -- we need an answer. We need clarity on what the subject of the investigation -- whether there are two investigations or whether there's an overall investigation and a specific investigation. We can't go forward until we know the answers.

MR. KAIMAN:
The letter -- if I can, the letter does specifically respond to this very specific investigation. It's several pages. We're e-mailing it to you folks right now so you can print it out and distribute it.

LEG. FLEMING:
It appears to be in conflict with what Mr. Weiss has given us from the same writer or from the same division.
MR. KAIMAN:
I would agree.

P.O. GREGORY:
Okay. Legislator Donnelly then --

LEG. DONNELLY:
So just -- I'm very troubled by this whole proceedings, but I just have -- it's a yes or no question to the counsel. Yes or no: Are we clear?

MR. WEISS:
I do.

LEG. DONNELLY:
So Mr. Kelley referenced that the Presiding Officer was a witness. You differ with that opinion. Is that just your opinion; yes or no?

MR. WEISS:
No, it's not just my opinion.

LEG. DONNELLY:
Okay.

MR. WEISS:
It's not just my opinion. It's an analysis of a transcript.

LEG. DONNELLY:
Okay. That is all. Thank you.

P.O. GREGORY:
Legislator McCaffrey.

LEG. McCAFFREY:
Yes. Once again, a yes or no. We had a conversation, and I think you commented you appreciated my candor. I was open and honest. Just want a yes or no on this: Were you aware prior to today that the DOJ was investigating this specific instances?

MR. WEISS:
It's a hard question to answer yes or no, but I'd lean toward yes, that they are looking at these facts in their overall investigation. So that would be a qualified yes.

LEG. McCAFFREY:
So yes, you were aware, prior to Mr. Kaiman disclosing what he put on the record today, that you were aware that they were already investigating this specific instance from the DOJ's perspective?

MR. WEISS:
And -- I'll make it short. It's not a clear yes or no.

LEG. McCAFFREY:
Really short would be yes or no.
MR. WEISS:
But basically I was aware that they were examining this in the scope of a very broad investigation but not focusing on this per se.

LEG. McCAFFREY:
Under the scope of which they have been investigating the Consent Decree.

MR. WEISS:
Yes, yes.

LEG. McCAFFREY:
Okay. So they are investigating this case and you were aware of that prior to this.

MR. WEISS:
In general, yes.

LEG. McCAFFREY:
Either you were or you weren't.

MR. WEISS:
I was aware they couldn't act on it.

LEG. McCAFFREY:
Not the whistleblower. I'm talking about in the scope for which they have authority under the Consent Decree.

MR. WEISS:
And I was also aware they were investigating something different from what I'm investigating related to these facts. And I can elaborate on that in Executive Session until the cows come home.

LEG. McCAFFREY:
Okay.

MR. WEISS:
Otherwise I'd be invading what should be in Executive Session.

P.O. GREGORY:
All right. Everyone good? Want to go in Executive Session? Are you ready to go in Executive Session? Yeah, I think they are getting -- they're sending the copy of the letter now. That's what Mr. Kaiman said. They're e-mailing it.

MS. ELLIS:
We are printing it out.

MR. KAIMAN:
We just e-mailed it to everybody.

MR. KEYES:
We e-mailed to everyone.
P.O. GREGORY:
Okay.

MS. BIZZARRO:
Just be aware it's a confidential-type letter and just keep that and understand that. You know, I've been working with the DOJ for many years, so I just want you to be aware of that. Thanks. I appreciate it.

P.O. GREGORY:
Thank you, Lynne.

LEG. FLEMING:
May I ask a question?

P.O. GREGORY:
Yes.

LEG. FLEMING:
Can I ask Ms. Bizzarro a question? Then if you've been working for many years, maybe, Lynne, you can clarify. In his may 9th e-mail to Carolyn Weiss, Mr. Weiss asks a question: "Does the letter," referring to Kelley's letter, "accurately describe the role of the DOJ Civil Rights Division in relation to the specific matter that I am investigating as independent outside counsel?" Were you aware, Ms. Bizzarro, in your interactions with DOJ, were you aware that the investigation had become more specific with regard to this specific transfer or was --

MS. BIZZARRO:
Meaning -- I'm sorry. You're meaning with the DOJ?

LEG. FLEMING:
Correct.

MS. BIZZARRO:
Right. Yes.

LEG. FLEMING:
So he's asking -- Mr. Weiss is asking the DOJ, am I -- is what Mr. Kelley says accurate with regard to the specific transfer that we are looking at and the DOJ's investigation of it? Were you aware, was the County Executive's staff aware that the DOJ had shifted and was not just looking at a general procedural matter, which is what her answer seems to say; and that they were now looking at a very specific transfer? Is that something the DOJ is doing?

MS. BIZZARRO:
I can't answer for the County Executive. And I don't -- I was never sent Mr. Weiss' e-mail nor did I ever see Carolyn Weiss' e-mail in response to that e-mail. What I can say is that I have been dealing with the Department of Justice for quite some time regarding the general nature of the Consent Decree and the variety of issues that arise under it. I know -- I am certain that the Department of Justice received a complaint -- from who, I don't
know, regarding certain -- regarding that complaint certain allegations were made. And it is my position that the Department of Justice has been looking into and investigating this very subject that you have been discussing.

LEG. FLEMING:
Because I guess I'm confused and you're at a disadvantage because you haven't seen this correspondence. We just got it this morning only because I asked for it after it was quoted to us. But Ms. Weiss, Carolyn Weiss replies to Mr. Weiss in her May 9th e-mail as saying, "We consider our review of the SCPD's broader transfer and assignment practices and your investigation, as you have explained it to us, as being separate and distinct." Unfortunately, in the correspondence we don't have the "as he has explained it," part so I'm not sure what was explained and maybe we could put that to Mr. Weiss.

But my first question to you is does this make sense to you that she's saying, "we consider our broad investigation of personnel practices at the county and your investigation as you've described it, as separate and distinct." Does that make sense to you based on your work with DOJ and Ms. Weiss?

MS. BIZZARRO:
It seems to me, and again I don't have the opportunity of reading what was sent and what was -- you know, the response and what was sent. It sounds to me that she's saying "you're investigating something and I'm investigating something," and that's it. They're just two separate investigations that are going on.

LEG. FLEMING:
Okay. Thank you. I would ask Mr. Weiss as well for everybody's -- we don't have these things marked or anything, but I'm talking about the May 9th, 4:32 e-mail. It's four paragraphs. In the fourth full paragraph, the second line says, "We consider," and this is from Ms. Weiss, right, "We consider our review of the Suffolk County PD's broader transfer and assignment practices and your investigation, as you have explained it to us, as being separate and distinct."

So, Mr. Weiss, how did you -- what did you say when you explained it? Because let me just refer to your e-mail where you say, second line of your e-mail -- first line: "Does the letter accurately describe the role of DOJ's Civil Rights Division in relation to the specific matter that I'm investigating?" But we don't have the benefit of anything that you said to them about what you were investigating. We do, however, know that she says, based on what you said, these are separate and distinct investigations. Could you just fill us in, please, on how you described your investigation to Ms. Weiss?

MR. WEISS:
I can, but I don't think you want me to outside of Executive Session because I spoke at her for some time detailing a bunch of very specific facts that I believe have been constrained so far to brief you on in Executive Session. I'd be describing violations of
certain rules, procedures, laws, some very distinct and specific facts. And I don't know if you want me to do this outside of Executive Session but it's going to be --

LEG. FLEMING:
Well, no. I appreciate that, and I look forward to that discussion. I do think we're at a bit of a disadvantage and the public has been poorly served by your having introduced this information and the fact that we have two different investigations going on, and we can't explore it now because we have to go in Executive Session.

But from my reading, Mr. Presiding Officer, at this point it does seem as though Ms. Weiss thinks that the two investigations are separate and distinct. Thank you.

P.O. GREGORY:
Okay. All right. I'm going to call a motion to -- we have a motion and a second. I'm going to make a motion to go into Executive Session; second by Legislator Calarco. All in favor? Opposed? Abstentions?

MS. ELLIS:
Fifteen. (Not Present: Cilmi, Muratore/Recused: Gonzalez)

P.O. GREGORY:
Please clear the room. It's going to take about three minutes for the mikes to go off and IT to do their thing..

(The committee met in Executive Session from 12:53 p.m. until 3:07 p.m.)

P.O. GREGORY:
Okay. All right. We're back. Mr. Clerk, please do the roll call.

("Roll Call by Mr. Richberg, Clerk of the Legislature")

LEG. KRUPSKI:
Yes.

LEG. FLEMING:
Present.

LEG. SUNDERMAN:
Here.

LEG. MURATORE:
Here.

LEG. HAHN:
Present.

LEG. ANKER:
Here.
LEG. LINDSAY:
Here.

LEG. GONZALEZ:
(Not present)

LEG. CILMI:
(Not present)

LEG. FLOTTERON:
Here.

LEG. KENNEDY:
Here.

LEG. TROTTA:
Here.

LEG. McCAFFREY:
Here.

LEG. BERLAND:
Here.

LEG. DONNELLY:
Here.

LEG. SPENCER:
Here.

D.P.O. CALARCO:
Present.

P.O. GREGORY:
Here.

MR. RICHBERG:
16 (Not Present: Gonzalez, Cilmi).

P.O. GREGORY:
Okay. So we're back out of Executive Session. And we received the preliminary report from Joel Weiss, Esquire. We have determined or discussed several options, I guess. Not options but things to move forward on, one of which is we have decided not to seek subpoena power; or there was a suggestion that we wouldn't seek subpoena power because it wouldn't be an added value to the findings, if I may say that, right? I'm not mischaracterizing anything -- in the investigator or Mr. Weiss' conclusions. There has been a request to have the Police Commissioner come before the appropriate committee to discuss the underlying transfer in this case.

There's several resolutions that I'll be putting forward seeking the support of my colleagues, one of which is to direct the commissioner to rescind a transfer of the individual in question. But we'll be addressing those various resolutions and alternative legislator solutions in the coming weeks.
And at this point, I am going to state for the record that I am withdrawing the subpoena procedural motion from the agenda and we --

LEG. TROT TA:
I'd like to make a motion to approve it.

D.P.O. CALARCO:
It was withdrawn.

LEG. TROT TA:
Too late. Never mind.

P.O. GREGORY:
So at this point, we will stand adjourned. And at 4:00 promptly, we will be starting our General Meeting of the Legislature, so please stand by for that. Thank you.

THE MEETING CONCLUDED AT 3:10 PM
{ } DENOTES SPELLED PHONETICALLY
### INDEX

<table>
<thead>
<tr>
<th>Word</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>violations</td>
<td>2 - 6:35, 36:56</td>
</tr>
<tr>
<td>vis-à-vis</td>
<td>1 - 23:41</td>
</tr>
<tr>
<td>vote</td>
<td>2 - 3:33, 16:45, 16:56, 17:2, 17:3, 17:8, 19:1, 20:12, 20:18</td>
</tr>
<tr>
<td>voting</td>
<td>1 - 17:9</td>
</tr>
<tr>
<td>Weiss</td>
<td>1 - 11:1</td>
</tr>
<tr>
<td>Watergate</td>
<td>1 - 8:34</td>
</tr>
<tr>
<td>ways</td>
<td>3 - 18:15, 18:16, 26:54</td>
</tr>
<tr>
<td>weekend</td>
<td>1 - 11:15</td>
</tr>
<tr>
<td>weeks</td>
<td>2 - 21:23, 38:56</td>
</tr>
<tr>
<td>weighs</td>
<td>1 - 26:30</td>
</tr>
<tr>
<td>whatsoever</td>
<td>1 - 8:12</td>
</tr>
<tr>
<td>weekend</td>
<td>1 - 11:15</td>
</tr>
<tr>
<td>weekend</td>
<td>1 - 14:52</td>
</tr>
<tr>
<td>weekend</td>
<td>2 - 23:5, 23:7, 25:36</td>
</tr>
<tr>
<td>white</td>
<td>1 - 21:27</td>
</tr>
<tr>
<td>whole</td>
<td>7 - 12:43, 15:13, 22:43, 26:12, 28:34, 29:5, 33:9</td>
</tr>
<tr>
<td>William</td>
<td>1 - 1:23</td>
</tr>
<tr>
<td>willing</td>
<td>2 - 3:28</td>
</tr>
<tr>
<td>withdrawing</td>
<td>1 - 39:3</td>
</tr>
<tr>
<td>withdrawn</td>
<td>1 - 39:10</td>
</tr>
<tr>
<td>witness</td>
<td>14 - 5:10, 8:2, 8:4, 8:5, 8:7, 8:11, 10:19, 10:22, 10:23, 24:31, 25:6, 26:26, 26:27, 33:17</td>
</tr>
<tr>
<td>women</td>
<td>2 - 6:1, 28:40</td>
</tr>
<tr>
<td>word</td>
<td>1 - 27:53</td>
</tr>
<tr>
<td>words</td>
<td>1 - 9:11</td>
</tr>
<tr>
<td>writer</td>
<td>1 - 32:56</td>
</tr>
<tr>
<td>written</td>
<td>4 - 5:43, 12:8, 21:12</td>
</tr>
<tr>
<td>wrote</td>
<td>3 - 4:50, 5:30, 5:49</td>
</tr>
<tr>
<td>years</td>
<td>8 - 21:28, 30:37, 30:55, 31:2, 35:8, 35:22</td>
</tr>
<tr>
<td>York</td>
<td>2 - 3:29, 6:36</td>
</tr>
<tr>
<td>YORK</td>
<td>1 - 1:29</td>
</tr>
<tr>
<td>young</td>
<td>1 - 17:20</td>
</tr>
</tbody>
</table>

**Page 49**