
Public Hearing

before

SENATE JUDICIARY COMMITTEE

SENATE BILL Nos. 161, 351, 573, and 866

(Issues dealing with public access to government records)

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: March 9, 2000
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT

Senator William L. Gormley, Chairman
Senator Louis F. Kosco
Senator Robert J. Martin
Senator John J. Matheussen
Senator Norman M. Robertson
Senator John A. Girgenti



ALSO PRESENT

John J. Tumulty
Office of Legislative Services
Committee Aide

Todd Dinsmore
Senate Democratic
Committee Aide

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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SENATOR WILLIAM L. GORMLEY (Chairman): I'd like to welcome everyone to the hearing today. What we're going to do is, we're going to start with comments on the legislation by Senator Martin, and then we'll have comments by Senator Robertson on a parallel piece of legislation that he has introduced. Then we will ask Assemblymen Geist to make comments regarding the legislation that is parallel to Senator Martin's legislation, and then we will open it up to testimony from those who have signed up to testify.

Okay.

Senator Martin.

SENATOR MARTIN: Thank you.

I also see Senator Baer here, and I believe he may want to speak later, too.

SENATOR GORMLEY: Oh yes, I'm sorry.

SENATOR MARTIN: Just to give the Committee members a brief overview, the issue of dealing with open public records has been one where some of us have recognized that there are limitations and problems with the existing law for at least a decade. Senator Baer, I believe, is actually the -- if not the originator, at least he's been, I think, the one who goes back the furthest in the current Legislature in trying to deal with this issue. He was -- he created the Open Public Meetings Act and has been interested in these public government issues.

This bill recognizes that we have certain public records now available. We have a Right to Know Act, which dates back to 1963. The problem with that law is that it only requires, by law, to be made -- only documents that are required by law to be made public, and those laws are those

that are maintained, or kept on file. The statute, in other words, is very narrow in its form. And what has happened is that many records, which the public, I think, would expect to be available to them, are not required by law to be made -- to be maintained. And so it creates an enormous loophole in the sense that there are records that are simply not, by law, required to be maintained, and therefore, the public does not have the right to receive those documents under the Right to Know law.

Operating separately from the Right to Know law is a common law in New Jersey that allows documents to be made available on a -- through a balancing test. The common law has been developed through the courts. It has a long-standing history. It has problems itself, one of which is that, in order to obtain those records, one has to show a special interest in that particular record, which is defined by various court decisions, but it isn't open to the general public. Instead, you have to have this sort of special standing in order to receive that information. It also means that typically, if you are denied, you have to resort to formal court action in order to obtain that information.

We and, I think, all of the sponsors of the legislation here today want to operate under a different approach. I fundamentally believe that the public is entitled to the records of its government, and the legislation that we've introduced today that will be the subject of this hearing basically takes that approach, as does Senator Baer's, and, to a large degree, Senator Robertson's also.

So records should be made public, except for those that are exceptions, and that's the way our legislation starts off. And we have looked

at exceptions, and exceptions, I think, form sort of the heart and soul of the debate that you will hear today as to what should be excepted and how that should -- how that should be done.

We have spent a great deal of time thinking about what should be excepted. This particular bill that I've introduced was worked on two legislative sessions ago. Senator Gormley was very much involved in that. I know he recalls vividly an all-day meeting where he and I and the Attorney General, and the Attorney General's representatives, went over a whole series of areas that should or should not be exceptions, and we reached certain determinations that we thought were appropriate, and they are contained in this legislation.

We also, along in that legislative session two terms ago, worked with the League of Municipalities, and with other interested parties, to try to understand what their concerns were. In fact, we also worked with the Governor's Office. We solicited information from every single department of the State and tried to ascertain what their concerns were. And we made adjustments to the bill, so that we thought that we had covered many of the -- many of the concerns that could be brought up.

We took testimony at that time. We -- there were certain groups that were interested in victims' rights and domestic violence issues, and those were brought in, and we attempted to carve out exceptions that we thought would respect privacy in those areas.

The only reason I'm going over this right now is, I want you to know that a lot of time has been spent on trying to create a framework that is workable, and that the exceptions that we have put into the bill and the

language that has been used has been worked out through a series of agreements by many different parties, both at the municipal level, as well as the State.

What is different about this latest version is that Assemblyman Geist, especially, as well as some others, have engaged in this process and have dealt with some other concerns. Most importantly, in looking at the legislation as it progressed, we realized that maybe there wasn't enough protection for the public to be able to get a speedy resolution to a situation in which they are denied access to information. And in this most recent version, we have created a mechanism where, if they choose, instead of going to the State courts, they can alternatively go to municipal courts. And there's provisions in which the -- that mechanism is relatively a fast, and, we think, a method whereby it won't be that cumbersome for the public to be able to get the information that they seek.

So with that, let me -- I could just say that I have no problem with the Kenny-Kyrillos bill. I think that that only deals with a little section of what -- of the larger issue of public records. I think Senator Baer's bill is very close to the one that I proposed, and I would certainly be willing to work with him in making sure that we're sort of on the same page.

Senator Robertson, I think, is fairly close. His bill, however, creates a procedure that I think is too awkward, too cumbersome to work, and I'm sure we may respectfully disagree. I don't think that the Division of Archives has a track record, has the capability of providing the kind of decision making that we would, that I think is-- Let's put it this way. I think our procedure is preferable to that, although I do understand why Senator

Robertson may have proposed that, but I just think that we can -- that it may present a series of new problems, and I don't think it's as good a methodology as we proposed.

So I am grateful to the Chairman. He has been a sponsor of this legislation. We hope he continues to be. I think we're very close, in terms of the other proposals that are in front of us here. We also, I think, can learn a lot from Assemblyman Geist, who has spent a lot of time on this issue, as well, and we want to hear comments today.

I thank you for giving me that chance to speak.

SENATOR GORMLEY: Senator Robertson, to explain your noncumbersome piece of legislation.

SENATOR ROBERTSON: I'll try to explain that in a noncumbersome way.

No, first I want to thank you, Mr. Chairman, for posting all of these bills. I haven't had to go through all that Bob has had to go through -- Senator Martin has had to go through -- trying to get this legislation to the floor. It's a very important piece of legislation. I get the sense, in looking at what the Assembly has done through the leadership of Assemblyman Geist and others, that we're going to get a bill. And I think what we need to do is to be sure that we have the best possible bill because it's extremely important for us to open public access in a way that makes it easier not only for the press, but for the average citizen to get information.

Just to highlight one or two points, with respect to my bill. I think that access to the records is one of the things that is most important. Under the current scheme, because the definition is so narrow, those records that are

required to be maintained, there's an awful lot of room for municipal government, school boards, whatever it might be, to deny someone access, and that just isn't right. Even to documents which we know are slam dunks, we know are absolutely the sort that they should be entitled to.

Unfortunately, the average citizen or the newspaper is forced to go to court, and to Superior Court, to do this. And while the newspapers have First Amendment attorneys that can go in there -- and I know, I used to work for a First Amendment firm in New York prior to coming back to New Jersey, and we represented the *Washington Post* in the Pentagon Papers case -- I understand their concerns. But I also understand the concerns of an average citizen who goes in and is denied the opportunity to see records. And what do they do if they don't have an attorney? Who do they go to?

One of the things that I've tried to do is to supplement the avenues of appeal -- or I should say, the avenues of redress -- that currently exist in the law, or even that exist in the other bill that was just discussed by Senator Martin. In Florida -- I believe it's Florida -- they have what is sort of a form of mediation program. What I'm suggesting is not mediation. What I'm suggesting is an administrative, alternative route to go to.

I spoke with the Press Association. They explained to me that they had some concerns that that might wind up being a substitute for the court route. It's not intended to be at all, in my opinion. I want it to be an additional remedy that's available to the average citizen.

My bill talks about how the forms need to be standardized so everybody's doing the same thing. So, we begin to mold the expectations of local government as to what their responsibilities are. It talks about what the

remedies are to someone who is denied. They're given some information on an 800 number that they can call that day. Not go to court, municipal or otherwise, but that day, be able to call an 800 number, and the folks down there will immediately take the complaint in and begin the process of contact into the agency that may have denied access, and let them know whether or not access should have been denied. That's one important feature. That is an additional feature to the redress that's currently available.

Another important feature has to do with attorneys for boards and auditors for boards. I know, as a graduate of local government myself, that there exists, in too many places, a culture of secrecy in government. And we have to attack that culture of secrecy, which is more than just arranging what our legal remedies are going to be. We have to somehow get into the boardrooms, and make it so that there is more of an incentive to do the right thing than to do the wrong thing.

And one of the provisions in my bill would require that an auditor for any board be required to certify as part of the audit -- under pain of losing his or her license -- certify in the audit whether or not that board is in compliance with their obligations, to certify that they are using the right forms, to certify that they're in compliance generally, and also to identify any instances where they have been found in noncompliance, that it becomes a matter of public interest. Sometimes it's caught by newspapers. Sometimes it isn't. This would permit that to be a public -- that itself could be a public record.

The same thing is true of the counsels to the boards. Under pain of professional discipline, they will be required to certify that they are in

compliance with the law. And the law will be much clearer under whatever law I think we draft, to tell you the truth, and by doing that we've created a situation where a mayor, or the president of a board, will turn to their attorney and say, "Hey, this is what we'd like you to do." And the attorney will say, "Bill or -- I can't do that, you're putting me in an awkward situation. I just can't do that because you're not in compliance, and I have to certify it." In other words, we've begun to attack the culture of secrecy. And I think that's something that needs to be done.

We don't want to just create a situation where we are inviting endless litigation in some court. What we want to do is create a situation where governments, at the local level, do the right thing in the first place and not wind up spending the public's money in needless litigation. And I think that some of the aspects of my bill do that.

Now the other thing I wanted to mention had to do with the scope of what records are or are not, and Senator Martin mentioned that this is an extremely important distinction. As a matter of fact, as I went over and I was talking to the Press Association attorneys, and I went over my own bill, and I noticed that Legislative Services drafted it in a way that was not reflective of my intent, in one important matter. It's important for all of us to understand, and I'll talk to the members who may not have ever been in court on one of these matters, there is a distinction between statutory rights and common law rights.

We have a fairly well developed common law in New Jersey on the right to access, and generally the judge will engage in a balancing test. Again, it shouldn't have to go to a judge. And that's one of the other things that my

bill does, but we'll engage in a balancing test in order to balance the need for the person, for the information, and the public's right to know, against the need for the government to maintain other legitimate interests, such as the privacy of other uninvolved individuals. And it is very important to know what the practical impact is of proceeding under a balancing test or proceeding under a statutory test.

There's a very big and very important difference, and the leading case in this area is a case that occurred in my county. The Supreme Court there was considering the disclosure of certain detailed telephone records, and in that they made it very, very clear that there is an important distinction. They said the Right to Know cases, which is -- we're talking about the Right to Know -- the courts must maintain critical focus on the nature of the public records that are sought. Not all public records are statutory Right to Know records. There is a narrow but important distinction between "records" required to be made or maintained or kept on file, which are the Right to Know records, they said, and written records that are "made by public officers in the exercise of other public functions," which are common law records.

And the difference is this: Under the Right to Know law, and that's the law that we're seeking to amend today, any citizen without any showing of personal or particular interest -- and by the way, I think that should be the case -- has an unqualified right to inspect documents if in fact they are statutorily defined records.

In contrast, the citizens' common law right to gain access to the other public records requires a balancing of interest. Now the reason that this is important is because there is a whole host of scenarios that we cannot

possibly, in advance, anticipate. There are going to be requests for information. We passed a bill just last week that talked about whether a public record should include the addresses of battered women's shelters. We hadn't anticipated that in advance. Finally, we found out about it. We put it through the legislative process, and months after it had been identified, finally there was a law done.

Well, we have a good common law balancing test for those items that might be unanticipated, and my only concern about a statute that doesn't recognize that there are different classifications of documents is that we could create a situation where we have inadvertently created an unqualified right to many, many documents that will impact on the legitimate privacy interest of citizens in the state.

I was driving down the Turnpike today and we were talking about this, and as we went through the toll booth we thought, gee, you know, somebody could try to access a document for the E-ZPass billings, if they wanted to track someone's movements. Well, the person is a private citizen, or the person has privacy interests, but the E-ZPass billing documents are, in fact, public documents. Someone else pointed out to me today that, theoretically, those who want to case a house for possible theft can get a list of all the burglar alarms that have been put on file with the local police departments.

There are a whole host of these things, and I'm not saying this in criticism of a bill at all. What I'm saying is that there are going to be a whole host of things that we couldn't possibly anticipate, so what we should be sure to do is to maintain the right of a court to engage in that logical, sensible

balancing, and if we abandon that, then I think we will have created something that will have many, many unintended results. And I think that, as we take a look at the bills we have today, there is so much to be said for every one of the bills that we are hearing today.

And I want to tell you, I congratulate Senator Martin for all the work that he's putting in because he has been the leading person in this field for a number of years, and for all the work that he has put into this, and I'm so glad that we're coming to a point now where we can come out with a bill. But my suggestion, ultimately, will be that one of the things that we really ought to do is take a look at the very best parts of all the bills that are before us, because if we're going to go forward, we should make sure that we get the very best bill possible because this is an extremely important piece of legislation that we will be living with for many, many years. We want to make sure that we improve people's direct access, and most immediate and speedy access, to the documents that they are more than entitled to.

Thanks, Mr. Chairman.

SENATOR MARTIN: Thank you. I've been asked to fill in for Senator Gormley.

I would just note, at least under our legislation, there is a proviso that allows the Legislature to take action, as well as other branches of government, to foreclose records that they deem to be a problem. So, to the extent that areas that are unforeseen emerge, Legislature is not preempted in any way from removing those and placing them under confidentiality. But your point about unanticipated --

SENATOR ROBERTSON: Well except, Mr. Chairman, to the extent that courts, when reviewing an application by someone, will have to go according to the law that's in existence at that time. So, while we can fix the law, the fact of the matter is that the person whose rights might accidentally be trampled on will not have that law available to him or to her at the time when they need it.

SENATOR MARTIN: Well, ironically, we're dealing with the same issue from two different perspectives. The reason we leave ours more general is because we don't think we can provide a laundry list of every possible open record. So, therefore, we basically say they'll be open unless government decides, for good public policy reasons, to close it, as opposed to trying to identify areas.

And so it isn't that we haven't recognized, as you've pointed out and have given some good examples, that there may be areas we can't possibly anticipate. And we're changing technology. That would be more avenues for possible concern. But rather than try to anticipate and just create a list now where I view the current law, the Right to Know law, that's a problem.

At the time it was originally enacted, it said that here's the public record, so does it have to be kept, essentially maintained, by government? And what happened since then is there's a whole bunch of records in municipal government, and in state government, where they don't have to -- they aren't required, by law, to be maintained, but they are kept in the common course of business. And everyone thinks they are public records, but when it comes to push against shove, if you go in and demand those records and it -- somebody can argue that you're not entitled to them because they're not required to be

kept by law. So you have this gigantic loophole where, unfortunately, many of the times the reason the records aren't being put out is not to protect somebody's confidentiality, but because it may prove an embarrassment to government --

SENATOR ROBERTSON: Absolutely.

SENATOR MARTIN: -- and that's why people are given the runaround.

I do agree with you in this respect: The amendments that Assemblyman Geist, I think, is going to talk about in a moment were intended to give more concern to the individual, as opposed to the press. It's -- we had built in, I think, reasonable protections for the press, and in most cases they have the resources to go to the Superior Court to be able to receive a remedy. And so we were really concerned with the citizen who goes into town hall and can't get a record from the municipal clerk or the board of adjustment or from the local school district. And we wanted to try to create mechanisms for easy access for them and create some kind of penalty not so egregious to frighten people from working for government, but just to motivate them to respond in a very quick, prompt, and courteous manner to those requests, and not tell somebody come back, you know, next week and we'll think about it. Assemblyman Geist you're --

SENATOR GORMLEY: Excuse me, we're going to have comments from Senator Girgenti, then Assemblyman Geist.

SENATOR GIRGENTI: My only question, I guess is to you, Bob -- Senator Martin. You said that you found Senator Robertson's bill cumbersome to some degree, and I assume it's because you feel that it would

be setting up more of a bureaucracy. But do you feel that it's easier to file a lawsuit, or would it be easier to go through the administrative body --

SENATOR GORMLEY: Excuse me, Senator, if I may, because I think this is -- if we could hold that question for now, because we're -- I think it's a very important issue.

What I prefer, if you could hold that, I'd like to get into testimony first, and then when we conclude testimony we'll make that the first question to Senator Martin afterward.

SENATOR MARTIN: Just one comment, you've hit on--

SENATOR GORMLEY: We need some control in this area. I have people to testify.

SENATOR MARTIN: I know.

There's two big areas. One is, what are the records and what are the exceptions, and what are the procedures, and if we focus on those two big pictures -- and you've asked a very good question because the procedures are critical. The records aren't enough unless you have procedures that make the information readily available to the public, and we'll address that.

SENATOR GORMLEY: Okay, fine.

Assemblyman Geist, if we could -- whatever you think you could be adding to Senator Martin's testimony, and then if Senator Baer would like to make comments, we would certainly appreciate his comments.

Assemblyman.

A S S E M B L Y M A N G E O R G E F. G E I S T: Chairman Gormley, Senator Martin, Senators of the Judiciary Committee, good morning.

In a government of the people, by the people, this legislation is for the people. I emphasize that because this legislation will open the doors of government like never before.

History: In the last year, the New Jersey Press Association met with Governor's Counsel. They produced a draft of legislation. Senator Martin and I introduced the legislation. In the summer, the New Jersey Press Association engaged Senator Martin, Assemblyman Geist. This legislation before you is the product of the interaction of the Governor's Counsel, New Jersey Press Association, Senator Martin's leadership, and my involvement.

Within the last month, there have been, already, seven hours of public hearing on this legislation. Within hours of the first Committee hearing, all five members of the Assembly State Government Committee became cosponsors -- the case was that compelling. All five became cosponsors of the legislation of Assemblyman Geist and Speaker Collins. Within the last week, the Committee amended the legislation to make it, as Senator Martin emphasized, more people-friendly. The Committee released it, unanimously, five-zero.

Update: Senator Gormley, I will be brief, and I will strive not to be redundant.

SENATOR GORMLEY: If you would like to recite the entire Constitution, go right ahead, Assemblyman. It's fine with us.

ASSEMBLYMAN GEIST: I'm compelled by this issue, Senator Gormley.

This legislation has been endorsed by editorials throughout the State of New Jersey. The Legislature should return government to the people, pass legislation to open up government records to the public.

A crucial time on public access: The legislation endorsed by these editorials emphasize certain highlights, and I'll briefly emphasize these about Senator Martin's and my bill.

It would permit access to all government records, except those specifically exempted by other State or Federal mandates. It would give officials seven business days to produce the records. The bill contains key provisions to ensure government officials comply. It would set up a simple procedure for a citizen who is denied information to file a complaint and have the matter quickly resolved by a judge. It would establish civil penalties for officials who blatantly ignore the law.

These are the words of editorial boards. This editorial says, "The bill is a terrific idea. In short, it puts New Jersey law where it needs to be. The bill is good for New Jersey." Those aren't my words, those are the words of those who are articulating the need for this public right to know.

On technicalities and specificity, let me emphasize, the legislation preserves the current process, but it expands by giving freedom of choice to the ordinary citizen. An ordinary citizen will no longer have to file a sophisticated complaint, in lieu of prerogative writ. The ordinary citizen will no longer have to pay \$175 filing fee, and \$20 to the sheriff, to serve the local government with a lawsuit. That's \$200 savings to the ordinary citizen who's just interested in learning more about their local government.

The legislation has a safeguard of integrity. It recognizes the assignment judge will assign the case to a judge. That is the current safeguard of integrity that is currently the parameter for review. When there is a question about conflicts, the assignment judge will assign.

Civil penalties: I believe this legislation is no-nonsense because it says enough is enough to a public official who willfully and knowingly defies the legislative intent of opening up the doors of government -- a civil penalty of a proportionate scale, first offense, second offense, third offense.

Senator Gormley, I thank you for the opportunity. You will hear a compelling case of citizen involvement today, enthusiastically applauding you, Senator Gormley, for providing them with this forum today.

SENATOR GORMLEY: Oh, then I'll call them all, for sure.

ASSEMBLYMAN GEIST: Thank you, Senator Gormley.

SENATOR GORMLEY: Thank you.

Senator Baer.

SENATOR BYRON M. BAER: Thank you very much.

Good Morning.

First of all, I want to commend the Chair and the Committee for scheduling this so early in a two-year term. I'm very optimistic that as complex as this legislation is, and as there are many out there who would like to see no action in this direction or nothing significant and a continuation of the obsolete legislation that's been in effect, that by starting so early that I'm very optimistic that we're going to be able to finally get this very badly needed legislation enacted this term.

I'm reminded, back in the '60s, when I was a staffer and talking with folks about this legislation, and I was told, come the millennium--

SENATOR GORMLEY: Excuse me. Go ahead.

SENATOR BAER: Okay.

Well, it came.

Now, I'm just going to deal with some very general things.

I don't want to take a lot of time, and I think there will be a later time when the Committee is going to get into discussing very specific choices on legislation.

I want to point out that the principle of involving the public to the maximum degree and opening government to the public is not just based on the idea that the public is entitled to this information. It's also based on the idea that the decisions that are made by government are likely, in the long run, to be better decisions when the public knows what's going on and has an opportunity to react and communicate with public officials. I think that's one of the premises of our democracy that's set forth, in some detail, into findings in the Sunshine law, and I think that, therefore, this is not only going to bring about a greater degree of openness that the public welcomes, but it's going to bring about better government.

The legislation, as Senator Martin has pointed out -- I mean the existing law -- goes back to the '60s. And at this point it is antiquated, particularly since, in the decade since we have entered the information age and we have a great deal more awareness of the importance of information, and we have, as a result of trends over the decades, a great deal more support for the

idea that government should be made available to the public, as opposed to the we-know-best approach.

I think that some basic principles are important to the legislation that we ultimately adopt. One, the idea of maximum scope, except for -- only exceptions where the compelling reasons to make exceptions--

Two, the idea that the procedures are not only -- will not be cumbersome, and easy and available to the public, but also procedures that will enable the law to keep up to date and keep modern as new situations come to light. Because I agree with those who have spoken and indicated that there's so many hypothetical situations that can occur, nobody can anticipate them all, a little bit, by the way, like the Sunshine Act. But the idea of having a process that will deal with these that will be more than a case -- that will have impact on more than just a case by case basis is important. And although case law does set precedent, I think, with this being the information age, it's important that it be understood that those decisions will make -- be applied more generally than ever before.

One of the things that is not spelled out in this legislation, and I hope will be by the time that we're done, is that it will tie in with the Internet, so that the public will have readily available to it not only the language of the law, but all the -- in ordinary language, information that answers so many questions of applicability and procedure, as well as the new things that come along, so that that will not be an impediment to the working of the legislation.

We will undoubtedly have to deal with a lot of specifics, and, as I say, that will come up later. But I just want to say that I think that nothing

could be more important than this legislation and its long-range impact and effect on government, and that's about all I want to get into at this point.

I'm glad that there's bipartisan support already evident, and I'm glad that there has been action in both Houses already, and I look forward to continued bipartisan cooperation.

It's encouraging that there has been interest expressed from the Governor's Office, and I think that the Press Association deserves a lot of credit and encouragement to stick with it because they have been involved over a great many years in developing this legislation and helping it to evolve and working with various sponsors, such as myself, many years ago, and some of the other people who are working on this.

Thank you very much.

SENATOR GORMLEY: Thank you.

SENATOR GIRGENTI: Mr. Chairman, could I ask him a question now, or is he going to leave?

SENATOR GORMLEY: Are you going to be here for a while, Senator?

SENATOR BAER: Yes, I'll be here.

SENATOR GORMLEY: He'll be here.

Good.

We'll save this for the question portion.

Thank you.

SENATOR BAER: Right.

SENATOR GORMLEY: First witnesses.

William J. Kearns and Jon Moran, New Jersey League of Municipalities.

J O N R. M O R A N: Thank you, Mr. Chairman and members of the Committee.

My name is Jon Moran. I'm with the League of Municipalities.

I want to thank you and commend you for holding this hearing, as well, Mr. Chairman. Although we may not agree with what the other speakers have to say, or at least with everything they have to say, this is an important issue, and needs to be -- move forward.

I also want to take the opportunity to thank Senator Martin for his courtesy not only on this issue, but especially on this issue now. Senator Martin has always been willing to meet with us and to arrange meetings with other folks that are involved with the bill, and we appreciate that.

SENATOR MARTIN: At one time, I thought we had met all of your concerns and put it in there, but I guess our Prego needs a little more seasoning.

I'm sure we'll hear some.

MR. MORAN: It's just a bit more, but it's a good effort.

With me is Bill Kearns. Bill is a general counsel for the League of Municipalities. He's a former mayor, a former governing body member. He's been the municipal attorney at Willingboro, in Burlington County, for some years, and Bill is currently the President of the International Municipal Lawyers Association.

I'd just like to turn it over to Bill.

WILLIAM J. KEARNS JR., ESQ.: Thank you.

Let me just start off with saying, I think that we're probably far more in agreement than we have disagreement. You have four bills that are up for discussion today, and I think that it is constructive to have all of them being looked at, at the same time.

While we have certainly developed a body of law that addresses what are public and what are not public records, there has been confusion at various public offices as to what needs to be made available, what does not need to be made available. The League has tried to address that with a number of seminars on the issues. Certainly, when there were reports in the press last year that people came in and wanted to get a copy of the budget and were told they couldn't have it, that's a shock to all of us that deal with this all the time.

When people came into the school board office and wanted to get a copy of the superintendent's contract and were told that was confidential and couldn't be made available, that's mind boggling because I don't think there is any question that, under existing law, virtually everything that was being asked for under the Gannett series of articles was clearly a public record and should have been made available.

That's an educational process, but it is also a process that can benefit from a clarification in the law to make it even clearer as to what should be a public record, and I think that each of the bills tries to move in that direction. And while we have focused to a great extent on the language in Senator Martin's bill, which is identical of Assemblyman Geist's bill -- well, not identical, because they amended it in the Assembly and had made some amendments to it, which we would expect you would look at here.

I have to say that I think that the approach taken in Senator Robertson's bill is a better approach to the legislation. His bill identifies areas that are clearly to be considered public records, yet identifies certain things that are clearly not in the field of public records. It preserves some of the ability to deal with the gray areas.

Let me just talk about some of the very serious concerns that we have, and they deal with issues of privacy, and with all due respect to all the discussions that have gone on -- I don't not think have been adequately addressed.

There is a privacy-- And everyone seems to agree that yes, personnel files, and the information in them, should not be considered public records. The approach taken in Senator Martin's bill says that's already been addressed by executive orders and existing law. My concern is, however, that when you change the law, you change the foundation on which those executive orders were issued. And the executive order, I believe, was issued under Governor Byrne that said that personnel files are, in fact, confidential. That was issued when you had the existing law.

Now you change the law, and you say everything is public. There needs to be then, I believe, a new executive order that would exempt that. We have no indication from the administration that that has been thought about, that that has been looked at, that there will be a new executive order to address that. It seems to me that that needs to be addressed. And simply saying in the bill that items identified by executive order will be exempt -- I think it takes a new executive order, because when you change the law under which the old executive order was adopted, you change the basis for that executive order.

When we look at cases such as the North Jersey Newspaper Case, where they looked for the telephone records, that law -- that court decision was under the basis of the existing law. And they said there -- was that it was not a public record because it was not something mandated to be kept. And they said that on the balancing test it did not become a public record, and they recognized the privacy.

You change the law defining what is a mandated public record, you've changed the foundation for every one of those cases that have been decided under that. So while I think we agree, probably in principle, on the things that ought to be private and on the things that ought to be included and things that ought to be open, I think that the drafting of the legislation needs to be done carefully. And I think there needs to be an ability to take a look at the cases that have come down, decided on under the existing law, and if we want to embody that, then let's do that.

Whether we do that through this -- through the legislation, which I think is the better approach, and that is the style of the approach that Senator Robertson has taken in his bill, or whether we get some discussions with the administration, probably with the Attorney General's Office, and say, "Look, let's address these. Let's have this bill take effect simultaneously with the issuance of a new executive order that addresses those issues"-- Those are things that, I think, this Committee really needs to look at and to address.

We are not opposed to making information available to the public. That is not the issue. The issue is respecting the reasonable privacy rights not only of our own employees, but also of citizens who deal with this.

Senator Robertson mentioned and stole my line about the alarm systems because I think that's a very good one. We wind up with permit applications. They would be public records under this bill. There is nothing that would exclude those from someone being able to come and say, "Give me an electronic copy of your database of every permit that has been issued for an alarm system." Now maybe, maybe, the person who wants that simply wants to be able to go out and solicit those who don't have alarms and get business for it. But I can think of other people who might like to have that information. And under the bill, we have no right to ask who is asking for the information or why they want it.

I don't have a problem with that. I have no problem with that privacy of the individual asking for the information, but I think we have to really define and be careful to understand what it is that we're opening the doors to, and we have to respect the rights of our citizens. You cannot pick up a magazine or a newspaper today and not recognize that there is a great concern of the public with privacy. You've seen the major furor developed on Internet access and the double click and cookies being implanted on that so that people can track where you are on the Internet and what it is. People are concerned about their privacy. Just as we are concerned about making information available to the public so they can clearly evaluate whether their government is functioning well, we also have to be considerate of the privacy rights of individuals.

Now, yes, absolutely, there has to be a simpler way to address the issues. It should not require everyone who is aggrieved to go into a Superior Court lawsuit. And I personally don't think that municipal courts are the best

place for it. I think there could be some other mechanism. I tend to like-- I hate to keep saying I like Senator Robertson's bill, but Senator Robertson's bill that puts that in the Bureau of Archives is, quite frankly, the same way that they're doing it in Massachusetts. That is how they're doing it. And they issue directives, including to local officials, with regard to what is a public record and what is not. It's an effective mechanism.

And I think that is a better way of having that focused on people who deal with those records all the time than having it put into a municipal court operation. I just don't think the municipal court is the best place to deal with that.

Thank you.

SENATOR GORMLEY: Yes.

MR. MORAN: Bill's comments focused on the privacy concerns. He got into some of the technical concerns at the end. I just want to let the Committee know that the Municipal Clerks' Association is going to present testimony on those technical concerns and some of the amendments we're looking for.

I'd just like to associate myself with the Association in advance of those comments.

Thank you, Mr. Chairman.

SENATOR GORMLEY: We're going to take some questions now. We have about 20 witnesses. I'd just advise the Committee.

SENATOR ROBERTSON: I have a question.

SENATOR GORMLEY: They're going to agree with you, Norm.
(laughter)

I have Senator Girgenti, Senator Matheussen, then Senator Martin, and then Norm, in order, as how the hands were raised.

SENATOR GIRGENTI: I just have really one question based on what you just said in terms of the time frame. If this bill would be enacted -- the Martin bill -- would you need two -- it has like a 60-day period that this has to go into effect with the executive orders and these other resolutions that are considered. I think the time frame, at least, should be expanded. Would you agree with that?

MR. KEARNS: I would tend to agree, Senator, but I think that I'm not, probably, the one to answer that. I think that answer probably ought to be directed, I would think, to the Attorney General's Office -- say, "How fast could you come up with the appropriate executive orders to do that?"

Sixty days is a tight time frame, but I would not want to presume to give some time frame that would work because that's not something we have control on.

SENATOR GIRGENTI: Okay.

SENATOR GORMLEY: Senator Matheussen.

SENATOR MATHEUSSEN: I have several concerns, but let me just boil it down to one question. Why are you so concerned with the municipal court handling this matter? It seems to me that that's, from a consumer's standpoint, a resident living in a town, that's probably the easiest place for them to access it and the easiest place for them to file their grievance. What's your objection?

MR. KEARNS: My objection is that the municipal court deals primarily with traffic violations, deals with drunk driving, deals with ordinance

violations. They have heavy court calendars right now. The person who would be prosecuting this is the municipal prosecutor. Remember that both the judge and the municipal prosecutor, even if it's sent to another municipal court, are appointed at the municipal level. And if you're having that kind of concern, I think that there will be a more objective approach to it if it's coming from a State agency, or if there were one-- Have a small-claims thing where you can file it in Superior Court for \$15 and have a master appointed there to hear it. I mean, you don't have to have something that involves the very high fees for filing normal Superior Court matters. I just don't think that the municipal courts are the places to deal with that particular kind of issue.

SENATOR MATHEUSSEN: I respectfully disagree, but that's fine. Okay.

MR. MORAN: Senator, if I may on that, too. We're not necessarily against a procedure which would allow for the initial filing to be right at the municipality and the municipal court. Our problem is with then hearing the complaint in a municipal court.

So I think you could devise a procedure where the citizen could go down the hall to the municipal court, file his or her complaint, and then have another venue for the hearing of that complaint.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Two quick questions.

On that very issue, then. If I understand you, you would prefer that there was filing that could be done in municipal court that was referred and handled by a special civil part, which -- at the county level, if there was a reduced or waived filing fee-- You're not interested in what the amount is.

MR. KEARNS: Have no problem if it's no fee. That's not a concern, as far as we're concerned.

SENATOR MARTIN: If the county prosecutor appointed, or had to assign, an assistant prosecutor to, at least, represent the person in that court, you would think that was a preferable procedure?

MR. KEARNS: I have no problem with that.

And, Senator, what I look at is-- We have, at the Superior Court level, a number of masters that get appointed by the court. We have them in the matrimonial field. We have them in other fields. And they sit, and they hear matters. And they hear them expeditiously. I think that's a better procedure than having it done in any municipal court. We have no disagreement with having a simple, easy procedure. I just don't think the municipal court's the place for it.

SENATOR MARTIN: The other question-- You raised the issue that somehow, maybe executive orders would all be in jeopardy, unless they were reinstated. You recognize in the first section that-- If I understand your interpretation, it almost sounds like everything else that's mentioned there, such as statutes and legislative resolutions -- I mean, they're all treated as if the existing ones would stay in place, but somehow executive orders would require reauthorization.

MR. KEARNS: No.

SENATOR MARTIN: I don't follow that, from a procedural point of view. In other words, we contemplated this as all of those protections that are provided in statutes, in legislative resolutions, and executive orders would

remain in place. But somehow, you're saying that this would separate out executive orders and require reauthorizations?

Let me just reduce it to this. You would acknowledge that there could be a different interpretation of that? And if we had to change this to clarify that existing executive orders remained in place, would that--

MR. KEARNS: And that may address it. That may well address it, Senator. My concern is that the basic principle of legal interpretation is that the most recent enactment of the Legislature is controlling. And obviously, we can all have good faith disagreements on how something would be interpreted on that. You get two lawyers in the room, you're going to get three opinions. We have enough lawyers here that we can certainly disagree on how a court might ultimately address something.

I do not think that it is sufficiently clear that we would not have a potential problem with the interpretation, since whatever you enact becomes the most recent.

SENATOR MARTIN: If it were clear that the existing executive orders would remain in place, that would satisfy you?

MR. KEARNS: That would certainly address the issue of the personnel files.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: I have a question for you, as an attorney, because I want to get back to the distinction that's important that you mentioned in your testimony.

Let me just make sure I walk through this so I understand it correctly. The rights under a statutory-- Under the Right to Know law, the rights to access are unqualified, correct?

MR. KEARNS: That's correct.

SENATOR ROBERTSON: The rights to access in the common law, which is still a pretty substantial right, requires that there be a balancing of interest, the interest of the State to protect privacy rights, for instance, versus the interests of the public to know certain information. Is that correct?

MR. KEARNS: That's my understanding of it, although we certainly have a body of law that has developed under the common law.

SENATOR ROBERTSON: Right. So we already have it.

MR. KEARNS: We have some guidance from that.

SENATOR ROBERTSON: Right.

MR. KEARNS: But if we change what is the mandated access, we're going to be changing some of that common law because we're going to be pulling more into the mandated access.

SENATOR ROBERTSON: Well, isn't that, in fact, the case, because the common law definition-- It's now being said that the common law definition, under the Martin bill-- The common law definition will become the statutory definition, except to the extent that there are other enactments that exempt things. The common law definition becomes the statutory definition, in essence.

MR. KEARNS: I don't read that as Senator Martin's bill. Senator Martin's bill says everything is a public record, unless there is an exemption.

SENATOR ROBERTSON: Well, that's what the common law--

MR. KEARNS: No, I don't think that's what the common law says. I think what the common law says is that anything-- Right now, we have the statutory, which says if it's mandated, it's public record.

SENATOR ROBERTSON: Right.

MR. KEARNS: The common law says there may be an access to other records. There is a common law right to know, but we have to do a balancing test.

SENATOR ROBERTSON: Right, but the point is that they define records as anything that's kept, essentially.

MR. KEARNS: Correct, but under Senator Martin's bill, they would take everything there, and it would be mandated.

SENATOR ROBERTSON: That's my point.

MR. KEARNS: And that's my concern.

SENATOR ROBERTSON: They're taking the broader language of the common law and putting it in the statutory law.

MR. KEARNS: Yes.

SENATOR ROBERTSON: Isn't the risk that we run, however, thus converting what had been the subject of sensible balancing and making it an absolutely unqualified right--

MR. KEARNS: Yes.

SENATOR ROBERTSON: --that won't -- that may not permit a judge to do sensible balancing?

MR. KEARNS: I think that's absolutely true.

SENATOR ROBERTSON: And that's the thing that I'm concerned about, that we're taking away, from the courts, the ability to avoid

truly unintended consequences because we have given the statutory imprimatur to everything. And so they no longer have that ability. And a new sort of-- And the other thing about municipal courts-- And a new sort of case law will have to be developed in part at the municipal court level. And I do have some concerns about that.

MR. KEARNS: Exactly.

SENATOR ROBERTSON: One little thing--

SENATOR MATHEUSSEN: Be establishing--

SENATOR ROBERTSON: Just one little other question. Executive orders, with respect to personnel files-- Does that reach down into your governments, as well?

MR. KEARNS: You know, that's an interesting question, whether an executive order impacts at the local level. There have been a couple of executive orders. One is Executive Order, I think, 11, under Governor Byrne. I think its intent was to preserve all personnel files and the privacy on them. I'm not sure whether that does that. And I really have not researched that particular point.

SENATOR ROBERTSON: Can't a governor issue an executive order that impacts on you, or can somebody come into court and say, "Gee, it's nice to have an executive order, but that's only for State documents, it's not for my board of education."

MR. KEARNS: I think that is a legitimate issue, and I have not researched that particular point on it. Certainly, the executive order issued by -- under Governor Whitman that mandated the release of various police information, came through the Attorney General, who's the chief law

enforcement of the State. And that does mandate that we have to release certain information on investigations, quickly, on that.

SENATOR ROBERTSON: Well, that's different, in as much as the local police authorities report indirectly to the Attorney General.

MR. KEARNS: I would have to say, Senator, that that is a question I don't have a clear answer for.

SENATOR ROBERTSON: And I guess my point, Mr. Chairman, is that the more unintended consequences we can avoid, the better off we are. Thank you.

SENATOR GORMLEY: Thank you.

MR. KEARNS: Thank you.

SENATOR GORMLEY: The next witnesses will be Sharon Brienza -- Brienza. (indicating pronunciation) Excuse me if I mispronounce it.

SENATOR GIRGENTI: Bill-- Mr. Chairman, just one more question I have of him.

SENATOR GORMLEY: Okay.

We have one more question.

SENATOR GIRGENTI: Just very quickly, if we passed this legislation--

SENATOR GORMLEY: Come up to the microphone up front, please. Come to the microphone.

SENATOR GIRGENTI: I'm sorry I didn't jump earlier.

If we pass this legislation before us right now, 866, specifically, Senator Martin's bill, would that render the common law obsolete, in your opinion?

MR. KEARNS: Yes. Essentially, it would take everything, and it would mandate it to all being available. There would be no balancing for the courts to do.

SENATOR GORMLEY: Sharon Brienza and Michael Pane.

SENATOR MARTIN: Senator Girgenti, just so you know, it's not our intention to render the common law--

SENATOR GORMLEY: Up to the front row, please.

SENATOR MARTIN: --which is why, in other versions -- at one time it was in there, and then it was removed so that the common law -- certain aspects of it would remain in place.

And with respect to Senator Robertson's concern about unforeseen consequences, we've tried to track the history in Florida and North Carolina and other states have taken the approach that's in my legislation. And we have not seen any unforeseen consequences that have created the kinds of problems that have been suggested, but have not been given any real clarity.

M I C H A E L A. P A N E, ESQ.: Senator and members of the Committee, my name is Michael Pane, P-A-N-E, and I'm the attorney for the Municipal Clerks' Association of New Jersey.

SENATOR ROBERTSON: Turn your microphone on, please.

SENATOR GORMLEY: You want the red light on. (referring to PA microphone)

MR. PANE: With me is Sharon Brienza, who is the First Vice President of the Municipal Clerks' Association. She is the municipal clerk in Branchburg. She will begin, and then I will say a few words after that about some of the technical issues and a few words about some of the other bills which we have not had a chance to review in detail, but I did take a fast look at it.

SHARON BRIENZA: Good morning.

The Municipal Clerks' Association of New Jersey is firmly committed to total citizen access to government records, except in those instances where the public interest or privacy rights direct withholding documents.

As municipal clerks, we recognize the importance of public access to records perhaps more than most other public officials, and is one of the areas in which we are trained.

Shortly after the Gannett articles were published, we ran public access seminars in conjunction with the league throughout the state to further train the municipal clerks.

The Municipal Clerks' Association of New Jersey is not opposed to this bill, and we are pleased the Assembly considered some of our recommendations that are now included in their bill. While we appreciate the time you have spent on this bill, we hope the Senate will follow their lead, agree with their changes, and address some other areas where we have concern.

The language in the bill does not allow a municipality to place reasonable limitations on times for viewing public records during business hours. If someone came into an office and requested a great deal of

information, this could be a burden in many municipalities with an already limited staff. Reasonable time limitations during business hours would help address that concern.

We also believe the average person should have a ready means of resolving a dispute as to the right of access to a public record. However, we don't believe that appearing in municipal court is the proper remedy to that. We agree with the league that there should be another mechanism for resolving a dispute as to the right of access to public records. And that would also allow the process that would not further inhibit our already overburdened municipal court system.

While municipal clerks are trained on the access of public records, many times they are ordered, by elected officials, not to release certain records. This could put a municipal clerk in a very precarious position, as they know that any violation of their duties can lead to the forfeiture of their license.

Rather than monetary fines for violations, perhaps a person who refuses to provide public records, which he or she knows, or should have known, are public records, could be removed from office after the first offense.

I have just briefly reviewed the other bills that -- 573, 351, and 161, and I do have to say that I do like a lot of points in all three of them, and that perhaps the sponsors of all four of these bills should get together and maybe just prepare one bill that would address all of these issues. I particularly do like Senator Robertson's, where he does outline what is and what is not a public record.

Thank you.

MR. PANE: I will begin by saying that the association is gratified that when the Assembly Committee dealt with the counterpart of this bill, A-1309, they did take some of the suggestions, which you should find-- You should all have a copy of our statement that we prepared on this bill. And they did take a number of those suggestions and incorporate those in the amendments that they put forward, notably, the definition of custodian and municipal clerk, and also the inconsistency between Sections 6b and 6c.

The ones that they did not deal with, as Sharon indicated, which are of some importance, are, first of all, the limited ability of small municipalities to provide access to records and the ability for people to view records with someone -- in the presence of a municipal official, since with custody comes the responsibility for doing that on an unlimited basis. And thus, we suggested, in our amendments, that there be no less than three times during the week -- during the work week when such records would be available for viewing and that those sessions be no less than two hours at a time. So we believe that such a provision would give adequate access.

Another suggestion that the Assembly Committee was good enough to accept was the notion that whenever anyone, even anonymously, sent in a request for documents, that if the custodian anticipated that the cost of reproduction would be in excess of \$15, that the people would have to post a cash deposit because, obviously, that's something that represents a serious issue.

As to the issue of penalties, this is an area where-- We believe that it's important to remember, first of all, not only are municipal clerks often in a position where elected officials -- in some cases, even appointed officials --

will try and tell them not to release information. And should they be put in a position where they have to have a Nuremberg defense, as it were, we have suggested that any action as to the municipal clerk be put to the director of the Division of Local Government Services because, in fact, these are licensed officials and, as such, any complaint can be against their licenses, which the Association believes is entirely appropriate.

We also believe that, ultimately, any elected official who tries to prevent access to information which should be public, should simply be removed from office. Now, if that's too much for a first offense, then have some sort of penalty for the first offense, a monetary penalty, and then removal for the second offense. I personally don't think that's a problem. The Association doesn't think that's a problem.

I should point out, however, something that is of significance. And that is that, if you look at the comparable provisions under the Open Public Meetings Act which provide for fines, I'm sure if you did a survey, you would find that in the 25 years or so since the Open Public Meetings Act has been in effect, we've probably had no more than 10 or 15 officials who have actually received fines under that law. It has not been a provision that has had much utility. And frankly, the levels of the fines have not even been terribly impressive as a deterrent, in my own view.

Now, the last issue is, of course, the issue of the -- of what happens when the average citizen wants and deserves a fast disposition of his or her complaint when there's a denial. There's no question that the citizen shouldn't be hassled. There's no question that the citizen should be able to get speedy access. The question is, what's the best kind of access? Filing in the municipal

court? Not a problem. That's okay. What happens then? Well, at the Assembly hearing, many average citizens expressed great skepticism as to whether even a municipal court in an adjoining municipality would be able to give them a fair hearing. Why? Because the political system being what it is, many of these people are, in fact, serving in more than one municipality, and often that creates a problem in and of itself.

Perhaps even more interesting is the question of how do we train municipal prosecutors and judges? I think the one thing that should have come out of our deliberations today, and certainly from any discussion of the issue -- and I've been discussing this issue now for close to 18 years -- is that we're not talking here simple issues. We're talking relatively complex issues. And you give -- take the turnover in municipal prosecutors, and you take the knowledge that's required, is the State -- is the Administrative Office of the Courts going to have an ongoing training program for any municipal prosecutor?

I think, and the Association thinks, that a more reasonable approach and a speedier approach is to have a special master who, upon filing of a complaint in a municipal court, can immediately be notified, bring the parties in, hold hearings. You don't need the involvement of the county prosecutor, you need a skilled master who can be both a mediator and also recommend a speedy disposition to the assignment judge. And what happens then? If indeed the municipality feels compelled to appeal, the law provides that any citizen, whose rights are vindicated at such a hearing, gets reasonable counsel fees. So it seems to me, in that respect, that the law becomes self-executing.

Having said that, on behalf of the Association, let me just make a couple of brief comments on some of the things that I've heard today and on some of the things about the bills, when I looked at them very briefly last night. And once again, these are personal comments.

It does seem to me that perhaps Mr. Kearns's concerns could be met if the Committee staff were to try and develop what would amount to a compendium or a codification of all those executive orders, all those rules of court, all the other decisions and issues--

SENATOR GORMLEY: No. No. That would not be necessary.

MR. PANE: I think it would be a good idea, and it would clarify the issue. But in any event--

As to the three bills, I think that Senator Robertson's bill does have some very good points in it. I like the process. The only thing-- And I like the definitions. The only thing about it that I thought was something that should be, perhaps, weakened was-- I feel-- My first reading of it seems to give a great deal of exemption for attorney-client documents, and my feeling is that could be weakened because I think, in most cases, once the matter is concluded, those documents, absolutely, should be a matter of public record.

I think the idea of having the attorney sign off on the conduct of the body, in terms of public records, is an excellent one. And I think it encourages probity in every respect. And as he said, it develops a culture of openness.

The Kyrillos bill-- Our Association had some input on an earlier version in the last session. Once again, it's good. One of the things about it that's particularly good is the fact that it enables a government agency that has

spent a lot of time and money putting a document into some kind of electronic form to be able to recoup some portion of its costs for having done so, instead of just making a simple copy at the actual cost of reproducing the disk or whatever.

The Baer bill, once again, is one that, in one form or another, has been around for a while. It has some very fine ideas. And we think, as has been said before, that a combination of the bills would certainly end up being appropriate. It's kind of like the situation of the two clergymen of different faiths, who always debated their respective faith's merits. And finally one of them said to the other, "Brother, let us both be content that we are doing God's work. You, in your way, and I, in His." And I think that that's kind of the way, sometimes, we approach these things. And there's merit to all of the suggestions that are before this Committee today.

Thank you.

SENATOR GORMLEY: Thank you.

All right, one question. Senator Martin.

SENATOR MARTIN: On the penalties, you take sort of a draconian position that says that people should be threatened with removal from their position for not complying with the legislation. In some ways, that's commendable that the Association would take that position. We were concerned, however, that you create such a severe penalty that anyone would be low to engage in that. I mean, if we have a penalty for theft of a dime that you get your head cut off, maybe judges would be reluctant to oppose that. And I think that's the kind of situation--

MR. PANE: Understood, Senator. And that's why Sharon, in her remarks, indicated that perhaps a first offense might be a dollar penalty, and the second offense removal.

I should add, however, that in the language that we tried to come up with to revise that section -- if you look on Page 4 of the statement, we made -- that we have worded this in such a way that when we say, "who knowingly and willfully refuses to provide records, which he or she knows, or should have known, are not subject to withholding, under any portion of Federal or State law, shall be subject to." So, essentially what we're saying here is, if it's that obvious, they really don't deserve to be there because they're doing something that's directly against their duty to the public.

Thank you very much.

MS. BRIENZA: Thank you.

SENATOR GORMLEY: Thank you.

The next witnesses will be Joseph Szostak and Cathi Marangos.

Make sure the red light is on. (referring to PA microphone)

Is Cathi Marangos here?

JOSEPH SZOSTAK: Cathi has a four-month-old son with her who is very hungry, and he's being fed now. And she will be right with me.

SENATOR GORMLEY: Okay, fine.

MR. SZOSTAK: But we're giving separate testimony anyway.

SENATOR GORMLEY: Okay, go ahead.

MR. SZOSTAK: First, let me thank the *Courier-Post*, Skip Hidlay, and Gannett News for inviting me to speak here today. And thank you, Mr. Chairman and Committee members, for listening.

I am Joseph Szostak, spelled S-Z-O-S-T-A-K. And I have resided at 104 Willow Street, in Fair Haven, for the last 28 years. I strongly advocate and endorse the passage of Senate Bill 866. For too long, Fair Haven, and what ironic name that has turned out to be, has been hiding its government business from the public. Bill 866 would provide the residents, like Cathi and myself, the key to open doors that are constantly being slammed in our faces when we taxpayers seek information, I feel, that we have the legal right to know.

In Fair Haven, we have experienced stonewalling when we requested to see minutes and taxpayers' applications concerning historic preservation renovations. Minutes not taken at public meetings were suddenly manufactured, with errors. Ordinances were not surrendered for our perusal. Minutes are kept in private homes.

I am first-generation American, and have resided in and taught in Monmouth County schools for 39 years, retiring four years ago. Twenty-five of those years, I was a professor of music and department chair at Brookdale Community College, the Community College of Monmouth. My parents migrated to America from Poland, in quest for the American dream of a promised better life, supported by laws that guaranteed their freedoms and liberties.

I'm here today because I wish that dream preserved for my three adult sons to inherit. I cannot afford to finance lobbying bodies like the League of Municipalities and others that are representing school boards. So I implore you to pass 866 as our lobby for the constituents that you represent.

Despite of being accused of being a naysayer and a malcontent, despite being reviled and verbally abused from the council table, by Mayor Hinton and Councilman Brian O'Reilly, with no regard for my age or respect for my standing in the community, I still love my town of Fair Haven.

As a taxpayer, I believe I have the perfect right to question. I plead with you to give us the wherewithal to do our job. I am willing to speak to anyone, anywhere, anytime, in support of Bill 866.

Before closing with two examples of the secretive and despotic goings on in Fair Haven, may I once again thank you. It has been a refreshing morning of democracy in action in a courteous and respectful atmosphere, for a change.

The last two years have been a bitter and divisive time in Fair Haven. Twice the powers that be tabled unpopular, regulatory historic preservation ordinances, one of which contained a jail sentence for residents for noncompliance. Both were tabled a week before election.

Well, it's almost spring again. And in Fair Haven, along with the red robin and the crocuses blooming and the balm year breezes wafting off the Navesink River, another bid for a new regulatory historic preservation ordinance is in the wind again.

Although appointed by the Mayor, chaired by a councilman, and a chair of the historic commission in limbo on the Committee, Mayor Leonard calls the group informal.

I've been forbidden a list of the Committee's membership. The few names that we have were divulged to us by a borough official. I've been forbidden to observe their meetings. I cannot see their minutes. So Fair

Haven's government business is emanating from a private home by a largely incognito group whose deeds will become known, most likely, when it's a done deal.

I realize that some of this falls under the Sunshine law not being observed, but Sunshine and public really go together. My only written piece of evidence was a newsletter I submitted called the *Fair Haven Voice*, which expresses a different point of view than the Fair Haven Borough Council and Mayor. We financed this printing ourselves, we citizens. And we distributed it by hand to 2100 homes, since we are too poor to afford postage. It has been banned from our borough hall, where we requested to place it on a table outside the busy Fair Haven Public Library. I requested twice to place it there, and twice, Mayor Leonard refused my request.

I invite you to peruse it, but be forewarned. Don't try my roasted pink flamingo recipe. It will kill you. It's just a joke.

Thank you very much.

SENATOR GORMLEY: Cathi.

SENATOR ROBERTSON: Mr. Chairman, may I ask a quick question?

SENATOR GORMLEY: Have a seat.

CATHI MARANGOS, ESQ.: Thank you so much.

SENATOR GORMLEY: Just make sure the red light is on.
(referring to PA microphone)

MS. MARANGOS: Yes, the red light is on.

SENATOR MARTIN: Hi, Cathi.

MS. MARANGOS: Hi, Professor Martin.

My name is Cathi Marangos, and I'm a member of the Bar here in New Jersey and also the state of New York. Professor Martin was one of my teachers at Seton Hall. But I'm not here today as a lawyer or a lobbyist, I'm here as a mom. Better than being the member of any bar, I have four wonderful children, and I'm raising them in Fair Haven, which is really a beautiful town. I know some of you have been there.

I came to tell you about my rigamarole of trying to find out what was going on in my town. Since moving there, I'd go to the council meetings, maybe, every three months or so. One day there was a legal bill being paid as part of the lists of things that were being done. I wanted to know what it was for. And the Mayor said, "That guy is the zoning board attorney." And he asked the counsel liaison to zoning, she goes, "Oh, I don't look at the bills." No one had looked at this bill, or no one could tell me what it was for. It wasn't any combination of \$200 or any combination of \$50, which are what the zoning board attorney gets for attending a meeting or preparing a resolution. And no one knew what it was for. They promised to look into it. And I asked if I could see that bill.

I was nursing a different baby at that time. That little girl is now turning four this month, and I still haven't ever seen that legal bill. At the following council meeting I asked if they had brought the bill as they had promised. They hadn't brought the bill. They had, in fact, paid it. Even though nobody knew what it was for. And I thought that really stinks. I followed up for about four or five months, going back to borough hall, asking about that legal bill. No one ever could tell me what it was for, and no one could ever show me a copy of it.

I guess it's about three summers ago now. I attended a hearing in the basement of our borough hall, where they were explaining how a historic preservation commission would work. And the commissioner who was conducting the presentation assured us that there were 50 happy applicants who had been helped by the process of reviewing their proposed home improvements. And she invited us to go upstairs, during business hours, and look at the applications of these 50 happy people. And when I asked the borough clerk if I could, in fact, look at them, he told me that the commissioner had taken them home. "I'll come back next week." "Come back next week." "Well, she's on vacation. She promised to bring them back. They'll be back at some point." And you come back week after week after week, and you never get to see them. I never heard of anybody taking municipal documents home, but it's a small town, and the people are volunteers, so I figured, what the heck, I'm not going to rock the boat. Eventually, they'll come back. I'll get to see them.

Anyway, one day I opened my local newspaper-- Well, first, I did a little research, and I saw that removing documents from municipal buildings was a high misdemeanor. So I said, "Bring the stuff back. I'm going to have to call the police. It's a misdemeanor. I'm going to call the police. I've been waiting for too long." And the police referred it to the local prosecutor's office. And then I opened up my *Asbury Park Press* to read that the applications were, in fact, the property of the commissioner, and that the town had no obligation to let us see them, even though we had been offered the chance to see them.

That article in the *Asbury Park Press* was xeroxed and given to your assistant for distribution, so you all have it on your desk. I underlined the part

where the town attorney mentioned that they were the property of the commissioner, in the far column.

So at one point, some partial applications were made available to us that the town pulled out of the Building Department's records. But you could never tell from looking at them, the information we wanted to know, which was, what did the people apply to do, what were they allowed to do? And we'll let our neighbors in Fair Haven see how the historic commission has been conducting itself, and they can decide for themselves whether or not it would make them happy.

We never really got to see the documents that would answer our questions. We also asked to see the minutes of the commission, and that was another big rigamarole of, "Come back. We don't have them. Someone took them home." It became a part-time job, wanting the town to show it to us.

If you want me to answer a question, I will, if you have any questions.

Go ahead.

SENATOR GORMLEY: Excuse me, can I handle that?

MS. MARANGOS: If there's any questions--

SENATOR GORMLEY: Excuse me, I'll--

MS. MARANGOS: If there's any questions--

SENATOR GORMLEY: I'll--

MS. MARANGOS: It's not whether or not criminalizing--

SENATOR GORMLEY: Excuse me.

MS. MARANGOS: I'm sorry.

SENATOR GORMLEY: I handle that.

MS. MARANGOS: I'm sorry, sir.

SENATOR GORMLEY: No big deal.

MS. MARANGOS: All right.

SENATOR GORMLEY: It's very relaxed.

Senator Robertson, go ahead.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

See, he's the Chairman, so he gets to do it.

I have a question for you, and also for your patriot gentlemen who testified immediately before you. Is he still here?

MS. MARANGOS: Mr. Szostak is probably out in the hallway.

SENATOR MATHEUSSEN: He's taking the baby for a walk.

MS. MARANGOS: Exactly.

SENATOR ROBERTSON: Oh, okay.

I understand your frustration because I've been involved historic preservation for many, many years. I've run into some of the same problems in my neck of the woods. And did you ultimately wind up going to court on any of this stuff, by the way?

MS. MARANGOS: The town litigated with a property owner over vinyl siding, but that's not what's at issue here.

SENATOR ROBERTSON: No, I'm saying did you have to go-- Did you wind up going to court to get the court's help in obtaining this relief?

MS. MARANGOS: You know, I considered that, but the point of the matter is that the way that the current law is written now, I'd probably lose.

SENATOR ROBERTSON: All right.

MS. MARANGOS: Okay? Just as the Shade Tree Commission has no strict constraints on what minutes and records it must keep, the Historic Commission doesn't either. The way the law is written now, there are very few mandatory documents that must be kept. And that's the whole rigamarole.

I mean, the people at borough hall, they say, "Well, what's it to you? Why do you want this? It's not your house. It's not your application." And I know that what they're getting at is the common law argument.

I just want to see it. The way the law is written now-- I mean, I'm an attorney, so I would be spending my own time away from my kids. I mean, the filing fees, you know, are a little chunk that we could bite off, but chances are, I would lose. The way the law is written now, you're not really guaranteed access to very much, only things that they're mandated to keep, like the budget. But without breaking down that budget and seeing the actual bills that are being paid and how the money is being spent, what's the point of having access to the budget?

SENATOR ROBERTSON: And would it-- Perhaps, I could ask the gentleman-- I was just saying that I-- Before you came in, I was saying I understand your frustrations. I've been involved in historic preservation for many, many years and have faced some of the same problems. And my question is, would it have helped you to have had an 800 number that you could just pick up the phone and call down in Trenton and get somebody else to review what happened immediately, for no cost?

MS. MARANGOS: With all due respect, Senator Robertson, I've been--

SENATOR ROBERTSON: Well, I was actually asking the gentleman.

MS. MARANGOS: I'm sorry.

MR. SZOSTAK: I don't know. I really don't.

The point made by someone here about borough attorneys serving other capacities in other communities-- I was nodding my head saying, "Amen, Amen, Amen," because it is a very tight little network.

SENATOR ROBERTSON: Well, that's why I was asking about Trenton. If you picked up the phone and called a State agency that is charged with the responsibility of responding to complaints from all around the state, would that have been helpful?

MR. SZOSTAK: Yes, because we got a person involved in our case. She wrote a letter to Governor Whitman, and she handed it over to--

What agency was that? The Government--

MS. MARANGOS: The Division of Local Government.

MR. SZOSTAK: The Division of Local Government. And we did get results. So I would put my-- I would rather-- Yes, I think I would like the 1-800 number, or someplace outside of our county.

MS. MARANGOS: May I answer the question as well, Chairman?

SENATOR GORMLEY: No. Excuse me.

MS. MARANGOS: Okay.

SENATOR GORMLEY: Are there any more questions?

SENATOR ROBERTSON: I have no more questions.

SENATOR GORMLEY: If you'd like to make a final comment, go ahead.

MS. MARANGOS: May I finish my testimony?

SENATOR GORMLEY: Go ahead.

MS. MARANGOS: So we were never allowed to see the applications, and we weren't allowed to see the minutes.

As Mr. Szostak noted, some people from the State got involved, and they let us see partial information. And they said, "We're not required to keep this stuff, therefore, there's nothing that we're required to let you see."

I seriously thought about litigating, but I just thought part of the problem is the amount of money that my municipality is spending on legal fees. I wanted to see how much they spent taking a vinyl siding case to the appellate division. I never got to see those legal bills, but I wanted to see it. I didn't want to be part of the problem of spending my neighbor's money, litigating up to the appellate division under a law that they didn't really -- weren't really required to keep this stuff, and therefore, weren't required to let me see it.

The instance where someone from Trenton got involved was there was a joint meeting held of the Mayor and council and the planning board. And we were not allowed -- as members of the community, we were not allowed to ask questions. And later, at a council meeting, the Mayor and council laughed about that. We said, "You know, we were promised, at the council meeting immediately before this joint meeting, the opportunity to ask questions and be heard." And they laughed. And they said, "Well, go ahead and prove it. There's no minutes of the meeting."

We were horrified. And it was at that point that someone from out of state wrote a letter to Christie Whitman and asked her how our State

operated. And six months after that meeting, they passed minutes from somewhere of that meeting.

MR. SZOSTAK: You see, the usual procedure is to have the minutes taped, and they take their data from the minutes.

SENATOR GORMLEY: Okay.

I want her to conclude her testimony. I want her to be finished with her testimony.

MS. MARANGOS: With all due respect, I don't see how a bureaucracy in Trenton would help me to get information from my local borough hall, when I can just bundle the baby in the stroller and walk there myself and ask for it. If the law mandates that they allow me to inspect it, I can make copies in the local public library for 15 cents. And that's what I hope you will do today, mandate that they make their books and records available.

I should, as a citizen, be able to understand the exact dollar amount that my town has spent in litigation with my neighbors over their home improvements. I should be able, as a member of the community, to know how many people applied to this commission, whether it's the Historic Commission, or any other local entity that has power over our lives. In fact, the power to imprison me for six months or more -- my kids would end up in foster care, but that's another story. They have power over my life.

I should be able to go and see, "Well, this man applied to change his screen door. He was denied. This man applied to put up vinyl columns." As we sit in this room here made of fake stone, a man applied to put vinyl columns -- and he was told no, he could only put wood columns. I should be able to see the records that document those decisions so I can make a chart.

I can let my neighbors look at that and decide if that would make them happy or not. The administration of my community should not be able to stand up there and say, we have 50 happy applicants, 50 people were helped. We should have access to the facts.

I'm asking you all to push Senator Martin's bill forward so that we'll be able to do that. We'll be able to walk right down to our local borough halls and get the information that we need.

SENATOR GORMLEY: Thank you.

MS. MARANGOS: I thank you for your time, and I apologize for not following the procedure, exactly.

SENATOR GORMLEY: That's fine. It's the first time you've done it. Thank you.

Thank you for your testimony.

The next set of four witnesses: Thomas Cafferty, William Hidlay, Richard Bilotti, John Connell. This is the press team.

SENATOR MARTIN: Full court press.

SENATOR GORMLEY: Full-- Well--

SENATOR MARTIN: It's not a half court press.

SENATOR GORMLEY: I understand.

THOMAS J. CAFFERTY, ESQ.: Good morning, Mr. Chairman. If I may, my name is Thomas Cafferty, and I'm General Counsel for the New Jersey Press Association.

The New Jersey Press Association is a not-for-profit corporation first organized in 1857. We count among our membership 19 daily

newspapers, over 160 weekly newspapers, 4 college newspapers, as well as corporate and individual members.

I appreciate the opportunity to appear today in what is truly a significant step along a path to open records to the public; a path that we started more than a decade ago with a bill that was then first introduced by Senator Matthew Feldman. In fact, the decade that my client told me, when we started this process, I both had hair, and it was black. So that might give you some idea of the length of time we've been at it.

The New Jersey Press Association's purpose is to help newspapers remain editorially strong, financially sound, and free from outside influence. To achieve those goals, newspapers must depend on free and open access to public records, assured by statute. But no public record statute should be written with the NJPA or even the media in mind.

The law should have one purpose, to ensure the maximum access to public records for all citizens of New Jersey, rich and poor, powerful and powerless, while recognizing and protecting the State's need for occasional confidentiality to function, and an individual's right to privacy. NJPA believes S-866 properly recognizes and balances all of these interests, and we support its passage without reservation.

Now, I have presented to the Committee a lengthy statement, which I will not repeat here, which summarizes the benefits of S-866. And I think that was already accomplished by Senator Martin and Assemblyman Geist. And we have also raised, in that lengthy statement, a number of concerns that we have with the other bills that are before the Committee today. Suffice it to say, now, with respect to those other bills, while we think they all

attempt to make progress, we believe none of them contain the aggregate amount of progress that is represented by S-866.

What I would like to do, with your permission, Chairman, is to spend some time -- my time, discussing some of the comments that the Committee has heard from prior speakers this morning because I think it may be more profitable to do that.

SENATOR GORMLEY: Yes, that would be a better direction, thank you.

MR. CAFFERTY: First, from the League of Municipalities, we heard a proposition that the executive orders passed by various governors since the adoption of the first Open Public Records law in 1963, and there are several of them, Executive Orders numbers 9, 11, and currently 69, would, in some fashion, have to be repromulgated.

I could not disagree more with that proposition. S-866 specifically preserves, from access, any record made nondisclosable by any other statute, regulation, executive order. We have, for example, entitled 2-A, a series of evidential privileges that makes information--

SENATOR GORMLEY: Can I-- I think you have general agreement on that point.

MR. CAFFERTY: Okay.

SENATOR GORMLEY: But I talked to the sponsor -- even put language in just saying what already the law is -- we'll just say it again. So you don't have to-- You're on point here.

Go ahead.

MR. CAFFERTY: Second is, I heard an argument made that the common law is, or will be, obsolete if S-866 is adopted. And I think that is equally without legal basis. The best example I can give you for that proposition is a case I litigated, that went up before the Supreme Court, involving death certificates, when the *Home News and Tribune* of New Brunswick sought access to a death certificate of a young child named Timothy Wiltsey, who had disappeared at a fair in South Amboy. Unfortunately and sadly, some months or years later his body was found in Edison. The *Home News* went to see the death certificate. We were unable to see the cause of death. We were unable to see the cause of death on that death certificate because there was regulation, which will continue if S-866 is passed, that says the cause of death is not public unless the requestor is a next of kin or an executor.

When we litigated, we challenged that regulation, and we had a second count seeking access to that record under the common law right to know, notwithstanding the regulatory prohibition of access. And when the day was done, in an opinion by the Supreme Court, we got access to that death certificate under the common law right to know. And we did so because the Supreme Court specifically recognized that these two means of access are independent, separate means of access. And that is not going to change by the passage of S-866. Indeed, the common law will remain viable, and that is precisely why S-866 preserves and does not abrogate the common law. And I will come back to the common law in a moment to discuss why that should not be the only remedy, which, I think, if some other bills--

SENATOR GORMLEY: I think you have agreement on that point, also.

MR. CAFFERTY: Okay.

Alarm systems: We heard from the League of Municipalities, if S-866 is passed, we're going to have people look to see who have alarm systems, and we heard Monday, before the Assembly Committee, that pet food suppliers will find out who has dog licenses and contact them. And the easy answer to that question is (a) you can do that today under the existing law because those are all records, required by law, to be made, maintained, and kept on file. But more importantly, the easy answer is, if there are abuses, you regulate the abuses. If people abuse the telephone by soliciting sales to your home, you don't pass a law, I would respectfully submit, that takes telephones out of people's homes. You pass a law regulating the abuse. And I would submit that if there are abuses, that's what you regulate. You don't say the records aren't public.

The Municipal Clerks' Association suggested that the penalty section of S-866 be altered, at least in the context of clerks, such that the remedy against a clerk would be a charge against their license or a disciplinary proceeding against their license.

There's two answers to that. First of all, I don't think there should be a differential penalty just because someone has a license. If an attorney violates a law, that attorney is subject to violation of that law. Separate and apart from that, the attorney may be, and should be, subject to disciplinary proceedings against his license, so too with clerks. And the existing language of S-866 does precisely what the Clerks' Association asked because the final

paragraph of Section 9 of S-866 says the court also may recommend, to an appropriate entity, that appropriate disciplinary proceedings be initiated against a public official. So it's there, and that opportunity is there.

Finally, I want to talk about the fact that a bill that mirrors the common law definition and leads to, essentially, the common law to adjudicate these claims is not an adequate answer to the problems that you've heard and are about to hear, I think, this morning. And that is so for several reasons.

No. 1, in all my years of dealing with access issues, the common law requires resort to courts to vindicate. And as we all know that is not an easy procedure. It is a time-consuming procedure, and it is an expensive procedure with a lot of hurdles that you must meet to achieve access under the common law. The simple answer is, they're both means of access. Statutory and common law, and even statutory after S-866 is passed, have deficiencies. They work because they work in concert with each other and as separate, additional means of access. And indeed, that is what should be continued.

In conclusion, New Jersey's current Right to Know law, adopted in 1963, has proven lawfully inadequate in meeting its stated goal of making public records readily accessible for examination by the citizens of this state. Indeed, we heard the Clerks' Association suggest an alteration to S-866 to have specified times of access. Presumably, we'll have a plethora of those specified times. But the point is, that's a retrenchment from where we are today. The current law says public records shall be available during -- at all times during public business hours. And there's no reason to change that. This should not be viewed as an inconvenience or some different thing that government has to do. It is a function of government. It is an essential function of government.

The problems we have today, and why the current statute has not met its goal, is in part because of the laws confusing a limited definition of what is a public record. For the most dedicated custodian committed to fulfilling the legislative purpose of the current law, it is no small task to determine whether a particular record is required by some law to be made, maintained, and kept on file, and if so, whether it is exempt by some other statute or resolution. And for the custodian who seeks to thwart public access, for any variety of reasons, including potential embarrassment or chicanery, the current statute proves fertile ground.

Regardless, however, of the purposes of the custodian, the result of our current statutory public records scheme has been the same, inordinate difficulties and expense to citizens seeking to obtain public records and to governmental entities as they are compelled to seek legal advice in responding to routine requests for records.

S-866 recognizes that public records are no individual's personal treasure. At the end of the day, public records belong to the public. They are created, maintained, and stored at public expense. They are paid for by the public's tax dollars. They are, in the final analysis, the public's records. And S-866 ensures that the public owners of those records have access to them.

Thank you, Mr. Chairman.

SENATOR GORMLEY: Thank you.

WILLIAM C. "SKIP" HIDLAY: Thank you, Mr. Chairman and esteemed members of the Senate Judiciary Committee. My name is Skip Hidlay, and I'm the Executive Editor of the *Courier-Post* in Cherry Hill, which serves the tri-county region of South Jersey, Burlington, Camden, and

Gloucester counties. I too have submitted a written statement, and I don't intend to read that statement verbatim, but I really encourage you to take some time and go through it, in particular, looking at some of the details. I also have submitted two E-mails of testimony that I received from two different citizens who could not be here today. It was testimony that was also presented in writing to the Assembly State Government Committee.

In addition, we have provided you with copies of the Gannett New Jersey Newspaper's series on public access, which we published last year. And in addition to copies of that series, we provided you copies of news stories that we wrote based on a statewide scientific public opinion poll, which we conducted after the series to find out what the public's position on public access is.

What I'd like to do right now is just hit a few high points for you. Again, I want to thank you for taking the time to hear my testimony, and in particular, the testimony of the citizens you just heard and the ones who will come behind us.

I strongly urge you to approve public access bill S-866 proposed by Senator Martin and Assemblyman Geist. The bill would dramatically improve the public's access to information about the activities of State and local governments.

Although I am appearing before you as a journalist, I want to stress I do not view this as a news media bill, but rather, I believe it is an open government bill that is sorely needed to enable New Jersey citizens to keep themselves better informed about the affairs of their government. In a state that is literally the cradle of American democracy, improving public knowledge

of a participation in state and local government should be a top priority of this Legislature. The people's right to know is one of the more cherished threads in our national fabric. It's stitched into the seams of our nation because a government of, by, and for the people can't work well unless the electorate is well informed.

I have been a journalist for 20 years, and I have worked in eight states. I am saddened to report that New Jersey's current Right to Know law is the worst I have ever lived and worked under. It's hard to be an informed citizen in New Jersey because it truly seems the goal of current State law is to keep citizens in the dark about their government's operations and to allow government officials to keep their actions secret, as clearly you heard by the testimony of the two citizens from Fair Haven. What's more, the law has no teeth. There is no punishment for government officials who willfully violate the law and withhold documents that should be open to public inspection.

A stronger open government law would enable citizens to check on how government officials are spending their tax dollars. This provides a strong countercheck against wasteful government spending. A stronger law also would be a valuable safeguard against corruption and government misconduct.

In early 1999, the seven newspapers that make up the Gannett New Jersey Group, including the *Courier-Post*, conducted a survey to determine how well New Jersey's current open government law is working. We sent 84 representatives into 213 municipalities in search of public documents from school boards, police departments, and local governments. What we found was discouraging, if the goal of democracy is truly to encourage and promote citizen participation. Our surveyors asked for budgets, monthly bill lists, salary

and overtime records, and contracts of school superintendents, all records that the State Attorney General's Office says should be open to the public under the current law. But, of the municipal and school offices visited by our surveyors, less than half provided all of the documents requested.

The same school districts that literally beg voters to approve their budgets at the polls were reluctant to release specific details from their budgets. That, to me, is simply incredible. We're talking about school officials refusing to reveal how they plan to spend taxpayers' money. In addition, more than two-thirds of the school districts visited by our surveyors either refused or were unable to release copies of the school superintendent's contract.

More alarmingly, as you will hear after me, the Gannett Newspaper's investigation found that citizens throughout New Jersey are routinely denied access to government records that should be made public under current State law.

We followed up this series with, as I mentioned, a statewide scientific public opinion poll. The poll found that 93 percent of New Jersey residents believe it is either very important or essential for a citizen to have access to information and records their State and local governments use to make their decisions. So I think it is really accurate to say that this bill, S-866, is overwhelmingly favored by the public in New Jersey.

SENATOR GORMLEY: I submit that didn't have to be scientific to get that poll result.

MR. HIDLAY: Well, this was done scientifically.

SENATOR GORMLEY: Okay.

MR. HIDLAY: I could go on and on with example after example. I want to share with you one anecdote, and it's related to the Attorney General's Office. It is not contained in my written statement. You're going to hear undoubtedly, if not publicly, at least behind the scenes, some efforts by the Attorney General's Office to weaken this bill and weaken any other bill.

I was part of a delegation, along with Mr. Cafferty and John O'Brien from the New Jersey Press Association and a number of other editors, who met with former Attorney General Peter Verniero, in his office, to discuss the problem of access to public records and violations of the Open Meetings law.

SENATOR GORMLEY: Excuse me -- time frame. When did that meeting occur?

MR. HIDLAY: Do you recall that, Mr. Cafferty?

MR. CAFFERTY: Probably a year and one-half ago.

MR. HIDLAY: About a year and one-half ago.

SENATOR GORMLEY: Was it around the time we were doing our meetings with the Attorney General's Office or later?

MR. CAFFERTY: I guess it was later.

SENATOR GORMLEY: It's all rolling together, all these meetings. But we had some very lengthy meetings with the Deputy Attorney General.

MR. CAFFERTY: It was later, and it was not open records, it was on open government, which I think Mr. Hidlay is--

SENATOR GORMLEY: Oh, it was broader.

I'm sorry, go ahead.

MR. HIDLAY: Right, but the point I'm trying to make is that we explained the problems that not only the newspapers were having, but that citizens across the state were having, getting access to their governments. And Mr. Verniero said to all of us in the room that he was going to send a letter to mayors and to local prosecutors pledging that the Attorney General was going to start getting serious about enforcing the law. That letter was never written.

SENATOR GORMLEY: I remember the headline after he agreed to it.

Go ahead.

MR. HIDLAY: In any case, my point is that I think the various opposition you're hearing from the League of Municipalities, from the Municipal Clerks' Association, what you undoubtedly will hear from the School Boards Association, and the Attorney General's Office, I submit to you that their claims are being made by people who are really trying to block access to governments and are interested in maintaining the status quo because it serves their interest.

What we're talking about is really a smokescreen being put out there by people who want to keep the actions of government as secret as they possibly can. And I just appeal to you not to be fooled by these. And I really do encourage you to look at some of the details of the battles that the *Courier-Post* has had to go through to get some basic records, such as budgets, such as payroll records, and the results of those, in terms of the public interest.

SENATOR GORMLEY: Who turned you down for a budget? Who did you battle with?

MR. HIDLAY: Well, for instance, we set out to do an investigation of why crime is so bad in the city of Camden when millions and millions of dollars are spent on the police department. So we asked for the city's budget, the police department's portion of that budget, and access to payroll records because huge amounts of overtime were being paid out. We had to fight, in court, for four months. We had the Camden Superior Officers' Association siding with us, saying those records should be public. The judge involved in the case ordered -- had to order the city twice to produce the records because the first time they disobeyed his order -- just refused to do it -- stonewalled us and stonewalled us. We had to go back into court.

We finally got those records. We used those records as part of a computer-assisted analysis of what was going on. What we found out was that part of the reason that crime was so rampant in Camden is because, on most nights, they only had 14 officers patrolling the streets, yet they were paying, literally-- Officers were making over \$100,000 a year -- \$50,000, \$60,000 overtime. They were working desk jobs.

As a result of that reporting and other reporting we did, the police chief at the time took early retirement. The Attorney General's Office installed Lee Solomon as the State-appointed monitor over the police department. A new police chief was installed. And by-- This was-- The time period here was in October of 1998. Our series came out-- Basically by January of 1999, Lee Solomon and the new Police Chief, Robert Allenbach, had completely reorganized and redeployed the officers in the police department so that it more than doubled the number of police on the streets at night in the high

crime period between 11:00 p.m. and 1:00 a.m. And the result was that, in February of 1999, Camden had it's first homicide-free month in nine years.

SENATOR GORMLEY: I appreciate the result.

MR. HIDLAY: I'm finished.

I just would urge you to approve Senator Martin's bill, S-866.

SENATOR GORMLEY: Thank you.

SENATOR MARTIN: Just before he speaks, I just want to say I appreciated your testimony. It is not our, at least it's not my thought that most municipal officials deliberately defy the law. One of the intentions of my legislation is to try and make life easier and clearer. I think the issues are complex, frequently, and they have a lot of law that they have to try and comply with. And I truly believe that if this legislation or some component or some amalgamation of the different bills that are passed, that it will make clerks' jobs easier because it will make the law more clear, in terms of what they have to provide and what they don't.

I think that some of the -- in the past, some of the difficulties have to do with the current complexity of the law and not deliberate defiance. I think you came on a little strong with that. There may be some specific examples where there has been deliberate attempts to -- not to provide information. That's clear enough. But I don't think, in most cases, it's based upon that premise. And I just want--

I know the League is here and the Clerks are here and school board officials and others, and I don't want to paint this brush to say that we need this in most municipalities because they have deliberately defied current law.

I think this kind of legislation is partially needed because it will actually help them to do their jobs in a more professional manner.

MR. HIDLAY: Senator, I would agree with that. And it's not our contention that the overwhelming majority of municipal officials are deliberately violating the law. But I think there are enough examples, and the survey clearly shows that there is, if nothing else, widespread confusion about what is public and what is not. And I think that your bill would go a long way to clearing up that confusion. But I do think there are cases of flagrant violations, as well.

RICHARD BILOTTI: Thank you very much, Mr. Chairman and Committee members. I'm Richard Bilotti. I'm the Publisher of the *Times* of Trenton. I'm here today as a former president of the New Jersey Press Association, a present member of the Board of the Press Association. I have been a publisher in my home state for 20 years and a journalist for 35 years. And I can cite dozens upon dozens upon dozens of instances and problems that I've had with access to records.

Very briefly here, I would just like to cite two cases which we are presently involved with, right here in Mercer County. Several months ago, Mercer County purchased Baldpate Mountain, a piece of property in Hopewell Township, for \$11.4 million. It was part of an open space project. Public funds were used to purchase that land. We have been trying to get the appraisals of that property from the county for four months, and our lawyers are working on that project at the present time.

In today's newspaper, in fact, at the city level now, so we have two different forms of government here-- I'd like to read the first three paragraphs

of the story from the front page of the *Times* today. And it says, it's dateline Trenton, "If the city builds the downtown hotel-conference center it is planning, it would do so with public money, but the city administration said yesterday the nonprofit corporation created to oversee hotel construction won't have to share information about the project with the public. Lemuel H. Blackburn Jr., attorney for nonprofit corporation Lafayette Yard Community Development Corp., which was formed by the city to build the 199-room Marriott hotel project, said the nonprofit agency isn't obligated to release information to the public. 'It's not a governmental agency,' Blackburn said yesterday. 'They are a nonprofit corporation, period. So a nonprofit corporation -- as a nonprofit corporation, they don't have a legal obligation to show you anything.'"

Now again this is a nonprofit corporation funded with public money from the State, from the city. It is a nonprofit corporation that has been attached to the War Memorial, which has been recently renovated with State funds for \$40 million. There is information, or rumors, whatever you want to call it, that the Marriott may be given the War Memorial as a part of this hotel project. I mean, this is information that should be public. And again, this is presently in the hands of our attorneys.

This is all information-- I mean, we're doing this, we're using our attorneys. Fortunately, we can afford to do that. But this is public information. People should know it. I urge you, strongly, to support Senator Martin's bill, S-866.

SENATOR GORMLEY: Thank you. We might even put some budget language in this year, if we're involved. Maybe we could help you out with that -- with some budget language.

As a matter of fact--

I'm sorry.

Do you have any further testimony?

JOHN C. CONNELL, ESQ.: Thank you, Mr. Chairman and Committee members. Good afternoon and thank you.

My name is John Connell, with the law firm of Archer and Greiner. I appear here today on behalf of the Gannett New Jersey Newspaper Group, including its seven daily newspapers, its many community newspapers published throughout the State of New Jersey.

I've been given the role of presenting, if you will, closing arguments today. And I'd like, in that context, to address what I consider to be the political propriety of Senate Bill 866, which we support.

My testimony has already been given to the Committee in the form of a written statement, and I will limit my comments, therefore, to simply excerpts from that statement.

Senators, when it comes to citizen access to public records in this state, the government in New Jersey is, and has been, for the most part, closed for business. Imagine, if you will, the entire repository of all government records in this state filling the entire volume of this Senate Chamber from floor to ceiling, wall to wall. Then consider the sphere of defined statutory public records under the current law. Those records would barely fill a briefcase.

Now, introduce the exemption to those statutory public records, and I submit to you, we might fill my folder.

It has not always been this way. Access to public records is among the most treasured, political traditions of our system of representative democracy. One need look no further than our own Declaration of Independence to see this. In that document, there was decried the authority of a British king as a consequence of, and I quote, “a history of repeated injuries”--

SENATOR GORMLEY: We’re very familiar with that document.

MR. CONNELL: But there is a section that you might not be aware of.

SENATOR GORMLEY: Cardinale would be misty-eyed right now. Go ahead.

MR. CONNELL: And that section reads, among the list of user patients and abuses: He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records--

SENATOR GORMLEY: Also, the tenure of judges is cited there, just for the record, so you know the other abuses they cited.

MR. CONNELL: That’s right.

SENATOR GORMLEY: That’s right, you won’t get into that.

MR. CONNELL: The signatories to this charge included Abraham Clark, John Hart, Francis Hopkinson, Richard Stockton, and John Witherspoon, the five representatives from the New Jersey Delegation.

Nearly 200 years later, in 1963, this Legislature enacted the Right to Know law, which declared to be, I quote, “the public policy of the State.

The public records shall be readily accessible for examination by the citizens of this state, for the protection of the public interest.” Thereafter, my law partner, then Attorney General George Kugler, issued a report urging a broad application of that statutorily declared public policy. Well, as we’ve heard today, the law has not fulfilled its promise.

Open public records serve a very basic but vital purpose in the scheme of a representative democracy. The documents recording the big business of government must be accessible to the public citizenry who are the government’s boss. The state of West Virginia bluntly, but pithily, declares, in their public records law, “the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for the people to know.”

I’d like to add some commentary about the issue of personal privacy, which we’ve already heard about today and, I think, will come up again.

It may well be said that denial of access is justified if disclosure were to intrude upon personal privacy interests. This argument proves much too much. According to this reasoning, if any personal information about an individual is contained in government records that are otherwise public records, those records are exempt from disclosure, presumably until all such privacy rights are extinguished. This reasoning, ipso facto, defeats the very declared public policy of access to public records. That policy is supposed to protect the interest of the public, that is the citizenry in open government, by facilitating access by the citizens to government records. But privacy

proponents mutate this purpose by insisting that the public interest to be protected is that of the government in protecting individuals' privacy.

So the question then becomes, Senators, whose interest is the public interest? Is the government's interest always consonant with the public's interest? I don't think so.

As Walter Lippman once said, the frontier between what is concealed because publication is not, as we say, compatible with the public interest, fades into what is concealed because it is believed to be none of the public's business.

But the business of government is not about widgets, it's about people. The fact is, if a member of the public cannot learn information about the people who are licensed, regulated, sanctioned, paid, prosecuted, investigated, imprisoned, contracted, solicited by the government, speaking for the government, enforcing the laws of the government, benefiting from government decisions, receiving government money, telling the government how to govern, and making and implementing government decisions, then the public is not going to know very much about how the government works.

As Justice Glenn Terrell of the Florida Supreme Court once wrote, quoting Thomas Jefferson, every government degenerates when entrusted to the rulers of the people alone. The people themselves are the only safe depositories.

In conclusion, it is no exaggeration, as Mr. Hidlay suggested before, that the cradle of our national independence resides here in New Jersey. Some 200 years ago, Mistery Clark, Hart, Hopkinson, Stockton, and

Witherspoon risked their lives for freedom from governmental abuse, which expressly included access to public records.

Ultimately, the battlefields of New Jersey, including Trenton, Princeton, Red Bank, Monmouth, and Springfield, were so many in bloodstain that this state became literally known as the cockpit of that revolution. Those ancestors of ours did not fight and die to keep government secret.

This bill attempts to protect the freedoms secured by access to the public records of government, which is undeniably in the public interest. This bill deserves your support.

Thank you.

SENATOR GORMLEY: Do we have any questions for the--
Senator Robertson.

SENATOR ROBERTSON: Let me first say I have a couple of questions for Mr. Cafferty and--

Let me first say, Mr. Hidlay, that the Gannett series was outstanding, and in fact, it identified so many of the areas specifically that folks couldn't get access to, despite the fact that it's very, very clear they were slam-dunked. As a matter of fact, even though my approach is a little different than my colleague, Senator Martin, because of concerns I have about losing the value of the common law approach, it was your series that I accessed in order to try to begin to make a laundry list of those things that should be absolutely clear.

And in fact, you talked about the language that I've chosen, and it said -- it included things like budgets, bills, vouchers, contracts, including

collective negotiations, agreements, individual employment contracts, employee salary and overtime information. Those are all the ones that you had identified, so that was extremely helpful. So it has an impact beyond even when you have a personal meeting with senators or legislators.

But I have a question for Mr. Cafferty. I believe that whenever we sit down to try to craft a piece of legislation, there are always competing interests, not necessarily monetary interests, but interests in terms of rights. In this case, there is somewhat of a competition between the right of access and the right of privacy, previous comments notwithstanding. I believe that there is a bit of a competition there. Certainly, the courts have recognized that.

One of the questions that has been brought up, Mr. Cafferty, that you disagreed with was whether or not the common law would survive in an atmosphere where we have put everything under the statutory scheme. And you indicated that, yes, it will survive because it provides two separate means of access. And that is correct. There will always be a statutory-- It's a question of how broad we make it, and there will be a common law right of access.

The thing that I'm concerned about is, are there going to remain two separate means of redress for those who are interested in and then have legitimate privacy interests?

SENATOR MARTIN: Since the Chair has stepped out, and I'm acting as the Chair, I just want to-- Before you answer that, I want to help Senator Robertson.

SENATOR ROBERTSON: I'm sorry.

SENATOR MARTIN: That issue about the common law, ironically, at one time in the earlier versions of the legislation, the Governor's Counsel had recommended removing it and only having a statutory. We fought them to -- and insisted that the common law remain as a separate piece of protection that would exist. So, it's not like we're unaware of its importance. In fact, we would not have accepted an earlier version of this bill that the Governor's Counsel wanted to sign off on because it aggregated and specifically wanted to remove the common law. We insisted that it remain, and we still insist that. So my legislation does not in any way intend to have that removed. I know Mr. Cafferty is going to agree with that because we had discussed that very issue.

SENATOR ROBERTSON: And if I might, Mr. Chairman, just mention that, and let me draw the distinction again, so I can draw the Committee's attention to it. I understand that the common law exists as a second means of access. The question is, once we move all documents into the statutory realm, we are providing a much broader playing field. The question is whether or not people's legitimate rights to privacy will wind up still having both a statutory protection and a common law protection.

MR. CAFFERTY: In response to that, first of all, I obviously agree totally with what Senator Martin said in terms of the importance of preservation of the viability of the common law. It has been, from day one, the position of the New Jersey Press Association that if the price to pay for passage of a new public records statute is the aggregation of the common law, that's too high a price.

SENATOR ROBERTSON: And you're absolutely right.

MR. CAFFERTY: So that's No 1.

No. 2, I think I disagree with one of the premises-- I know I disagree with one of the premises of your question, Senator, and that is that all of the records will now be made accessible by virtue of the statutory S-866, should that become law. And I disagree with that proposition because S-866 exempts from the category of public record reams of record that are made so exempt by any other statute, rule, or regulation, an exemption that does not exist at the common law.

SENATOR ROBERTSON: That's my point. That's my point.

MR. CAFFERTY: First of all, I don't think we're talking about--

SENATOR GORMLEY: Excuse me. Excuse me, if I may.

MR. CAFFERTY: I'm sorry.

SENATOR GORMLEY: No. You're making a good point. Norm's asking a good question and also bringing up a good point, but I don't think we're going to change the positions on it, and we have to-- If I may, because I'm dealing with a limited time frame and a large number of witnesses and an Education Hearing that starts at 2:00.

SENATOR ROBERTSON: And I realize that, Mr. Chairman, but this is-- The reason I say it is critical, and my question was interrupted a few moments ago--

SENATOR GORMLEY: I'm not trying to say that in terms of everyone's approach to this that every point isn't important. What I'd like to do, though, is see if we can just streamline this a bit. Okay. There are a number of citizens, beyond the press, who want to appear. They're reiterating your position, but at least it would be a minute or two, each of them should

have the opportunity to be on the record. And as I said, we start the Education Committee in this room at 2:00, and the bill on school construction is up, which also has some interest. Okay, so I'm just trying-- And I would like to take a short break.

Realizing that what you're saying is correct, go ahead.

SENATOR ROBERTSON: I just want to know, will there be a common law balancing act protection for those who may have legitimate privacy rights, not statutory protection, but legitimate balancing test protection that currently exists in the common law.

MR. CAFFERTY: That will continue to exist in the common law in terms of the statute. In terms of the statutory, there is no balancing in the statutory now except that there is a plethora of records that may fall under the official information privilege, under the rules of evidence, which contains a balancing. It's a catch-all privilege, and that in itself effectively contains the common law balancing test, and that is incorporated as to those records that are arguably subject to that privilege, they will continue to be subject to that privilege and the test they're under.

SENATOR ROBERTSON: And I understand what you're saying, so that as I ask will there continue to be a common law balancing act protection, the answer, generally, is that there will be statutory protections. And I think you do lose something by not having both on the other side of the question. In your experience, and especially in your experience with this particular bill, has it been easier for you to get relief for your clients from a judge who is willing to use a balancing test or from the Legislature in its legislative process promulgating new enactments?

MR. CAFFERTY: That's a loaded question.

SENATOR ROBERTSON: It was intended to be.

MR. CAFFERTY: The answer to that question is, well, I have not had a court case that took 12 years to resolve, as has this process. Mr. Connell has had a court case, he told me, that took 10 or 11 years. And the answer is -- I don't think the process -- the answer is if this bill is passed, I'm going to get the records a lot more quickly than I am, and a lot less expensively, than having to litigate under the common law.

SENATOR ROBERTSON: Absolutely right. And my concern is whether or not a person who has a legitimate privacy right will have his or her interest protected as quickly, or will their only recourse wind up being coming to the Legislature to have an enactment. And that is a much longer process than a court and way longer than what I have been suggesting, which is to be able to pick up the phone and get the thing moving the same day.

MR. CAFFERTY: Well, I don't just, very briefly-- I don't think that is their only recourse, to come to the Legislature. There are reams of exceptions under the current law adopted by regulatory agencies. There are exceptions created by executive order, and all of those remain viable.

SENATOR ROBERTSON: I'm talking about the ones that aren't there yet.

MR. CONNELL: If I could just respond to that very briefly.

SENATOR GORMLEY: Briefly?

MR. CONNELL: Yes, very briefly. The case Mr. Cafferty was referring to of mine, that was 10 years before the court's, was held up, specifically, because the government, on behalf of the individuals who were

supplying government with personal information, were acting on their behalf to restrain our access to that information because of privacy concerns.

SENATOR GORMLEY: Thank you.

What we're going to do is, we're going to take a 15-minute break, and then we're going to hear from the balance of the witnesses. And as I said, we're dealing in a tight time frame. The balance of the witnesses are in favor of the legislation, but we want them to have the opportunity to, at least, express a particular circumstance, or whatever, that might have caused it.

Senator Girgenti.

SENATOR GIRGENTI: Yes. Mr. Chairman, just one question. I don't know -- one of you can probably answer. Have you read Senator Baer's bill?

MR. CONNELL: Yes, I have.

SENATOR GIRGENTI: And what is your feelings on the listing of exemptions that he puts into the legislation, as opposed to the present field that we have before us?

MR. CONNELL: Here's the problem, briefly, with that. The problem with listing the exemptions, and then it takes a fundamentally different approach, because it says, "Everything is public, and there is no longer a right, by executive order or regulatory authority, to exempt." Once you take that approach, you must list all the exemptions in the bill. The problem with doing that is precisely what Senator Robertson did. That approach then, if it's not listed there, you have to come back to the Legislature to get that exemption. That's not the approach of the Martin bill. And so, I think, from an approach standpoint, the Martin bill is preferable.

SENATOR GORMLEY: Thank you.

Reconvene in 15 minutes.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: The first witness will be Ron Miskoff, Society of Professional Journalists.

Now, if I may, everybody who is testifying agrees with the bill that I agree with and that Senator Martin has introduced. This is an hint of how we're actually going to vote on this. Okay, everybody. (laughter) This is not hard. So we like what you want to do. So if I may, we have a number of witnesses, and I'm dealing with a very tight time frame. And I think you did see I tried to move the process along, as best I could earlier, but at 2:00 there's a hearing in this room on the \$10 billion construction fund for education. And what I want to do is, at the end of this hearing -- the next Committee meeting we'll have the bill up, it will be listed, and we're going to take a vote, and we're going to move it.

Okay. And with those hints about the direction of the Committee, I'd like everybody, if they could just point up something that's different or something they'd like to highlight, but -- two to three minutes. I don't mean this to limit speech because these are people who are in favor, and we wanted to try to give everybody a chance.

So with that, Mr. Miskoff.

RON MISKOFF: Okay, thank you very much. I'll try to be as brief as I can. My name is Ron Miskoff. I am the President of the New Jersey Society of Professional Journalists.

SPJ is the oldest and largest journalism organization in the United States. It was founded in 1909, and has 14,000 members and 300 chapters. We represent news gatherers from publishers to reporters, editors, news aides, and the newspaper broadcast on-line and cable industries.

In preparation for this morning, SPJ has developed a coalition of other citizen-activist organizations that share our view of records that ought to be opened up more. Some of those include Common Cause, New Jersey Citizen Action, VOICES, which is a citizen umbrella group, The League of Women Voters, and the Public Interest Research Group.

We also have been working with the New Jersey Broadcasting Association and the New Jersey Press Association, which has toiled very hard to bring this bill before you, especially Tom Cafferty, who you heard a little while ago. And I want to state now that we do support this bill. However, we feel this is a very good time to make our feelings known about some aspects and to seek to improve the bill even as it goes before the two Houses.

I'm sure you're aware of the stories that were done by major newspapers on the inconsistency of records access and how there seems to exist no comprehensive system for requesting and obtaining records, and how clerks and other custodians are often arrogant and aloof about providing records. Records that, bottom line, belong to the citizens of New Jersey.

At the Society of Professional Journalists, we feel that the Legislature's grappling with this issue and working to enact new legislation

shows great courage and is a recognition of the rights of the people to have access to their own records, which we feel belong to them anyway. Basically, the philosophy is, "You own what you buy."

Now, to the bill at hand. What we like about it, and I'll be brief about that because we like a lot of things in it, is that all government records shall be subject to public access and that, also, it includes computer records, and that those records ordinarily will remain open even during governmental investigations. And finally, that it allows the Superior Court to force the release of a record without disturbing common law rights.

The things that we have a little problem with are, exemptions can be made too easily by a resolution from either House, by executive order, and so on, and this allows the likelihood of mischief on the part of the State to keep records from the public.

Another problem we have are the copying fees. We feel they are out of line with not only commercial pricing, but pricing in other states. The formula which charges 75 cents for the first 10 copies, and so on, would make a document of 100 pages cost 37.50. At a local print shop or a library, the price would probably be half to a third of this price. This is a record in which the public has already paid for the record, as well as the copying machine. You could describe this as a de facto tax on records.

PrintImage International and its forerunner, the National Association of Quick Printers, has been financing studies of costs of photocopying for many years. Their key person in these studies is a man named Larry Hunt, who is a Florida printer and consultant. In his most recent study, completed last October, the average cost of copies in the U.S., of just

one original, was a little over 10 cents. This price is actually lower than it was a year before by a penny and lower by a half penny from the year before that.

That's the trend in photocopying. The prices contemplated in this bill seem to have been written in the early days of photocopying when special paper was needed to make copies, when copies were produced by merging two sheets together under terrific heat and then peeling apart the results, when copiers ran at one or two a minute. A salesman from Xerox once told me about a copier called the Shake 'n Bake, where you'd actually sprinkle the toner on the electrostatic material and shake it.

SENATOR GORMLEY: We actually have 70 monks in the mountains of Sussex County doing it. They're going to handle the copies, yes.

MR. CONNELL: That's the guys. That's the guys. (laughter)
Brother Dominick.

So, today everything is changed. Copies can be produced on plain paper. There's no need to do anything except push the button most of the time. And copiers in most offices, such as the ones where records are stored, usually run from 20 to 100 copies a minute.

Now, other neighboring states have set up copying charges as well, and none is as high as are outlined in this bill. Rhode Island charges cannot exceed 15 cents. Massachusetts can charge no more than 20 cents, and many agencies in Massachusetts don't charge at all. New York has a 25-cent ceiling. Connecticut is the highest, at 50 cents. In Florida, it's 15 cents. In Indiana, which has led the nation in progressive records legislation, charges only 10 cents.

We know the State mandate/State pay specter is employed when people talk about lowering copy prices. But we feel that citizens requesting records should not have to pay for office overhead, removal of the records from the shelf, insurance, and so on, because the cost of these copies ought to be kept to a minimum just to cover the cost of making the copy and no more. Since these records are already in the possession of the citizens of New Jersey, they should not have to be payed for twice.

Now moving on, also under this bill, the right of an official to arbitrarily refuse a request that would substantially disrupt agency operations or, in an investigation, a record that would be inimical to the public interest, leaves open a major hole in obtaining records. These phrases almost beg for confrontation. Who decides what is substantial disruption, what is inimical? Some officials could argue that the release of almost any record creates a substantial disruption. In other words, my substantial may not be your substantial.

Although there is nothing inherently wrong with using a municipal court to open records, we feel the method for arbitration has some inequities and some unsolved problems. The assignment judge of the local vicinage can decide to return the case to the municipality where it originated, allowing local politicians to influence the judge, who is appointed by them in most cases. The myriad municipal courts will render decisions that will create the feel of arbitrary and irregular direction for the citizens of New Jersey because so many of them will be doing it.

If a requestor follows through on the procedures to the appeal stage, he or she could be held liable for taxed costs just for exercising the right

to obtain a record. The system for arbitrating State agency requests differs completely from municipal records. Why do we deal with a complicated dual system? Where would school boards fall? What about regional boards, authorities, commissions? Are State agencies considered municipal bodies? Which system would apply to them? And while the municipal court option is expedited, no such requirement that I could read in the bill is made to expedite obtaining records under the Administrative Procedure Act for State records. And that ought to be looked at.

The method for challenging decisions on State records does not have a time limit specified by law, as does the municipal court option.

We're recommending that-- SPJ understands its role in the dissemination of information.

SENATOR GORMLEY: Excuse me. Excuse me.

MR. MISKOFF: Yes.

SENATOR GORMLEY: I'm going to have to balance this. If you just sum it up.

MR. MISKOFF: Okay.

SENATOR GORMLEY: We'll take your testimony. We'll review it. As I said, we're not trying to cut off public comment. We're just dealing with a limit--

MR. MISKOFF: I understand. Let me just make one--

SENATOR GORMLEY: --and I want to be fair to everybody else who is still here.

MR. MISKOFF: I'll make one final point then concerning the-- We feel there should be some sort of person or office added beyond the records

custodian to clear up any individual problems. Let's call this person a records counselor, who would negotiate with the requestor and the custodian, right on the phone, if necessary, to come to an agreement. This gives the bill heart. The counselor could inform the custodian or the requestor whether the bill falls under the Act or not. In many cases, gross ignorance on the part of officials has caused many disputes. The counselor could be housed in any State agency. Any legal, knowledgeable official on the State level could eliminate the need for court cases and disputes with an informal decision or negotiation.

We feel these other options you're providing, going to municipal court, using the traditional method of the Superior Court, they're fine. It's just that the whole system is litigious in nature. Why not have some oil between the gears to smooth the way to obtaining records so not every case will end up in front of a judge with days, or even weeks, of preparation, only to tell a record keeper, "Buddy, you really do have to give up that record." The municipal court option, like its big brother, Superior Court, doesn't provide any informational, counseling, educational way to inform both record keepers and the public. We recommend this, that there should be a system for providing this. How is it working? Are copies fees out of whack? Is change needed?

And this is what would make this bill citizen-friendly, instead of purely adversarial. And it could be accomplished without disturbing anything else in the law. The counselor could say to a record requestor, "Well, now that we've discussed this, I should inform you that you still have the right to go to municipal court or Superior Court, and this would be a purely voluntary system.

I'll conclude there. Thanks very much for letting me speak. If you have any questions, I'd be happy to answer them.

SENATOR GORMLEY: Thank you. No. Thank you.

Next, Dolores Toussaint, Waterford Township.

DOLORES TOUSSAINT: Good afternoon. Thank you for having me here today. I'm here in support of Senate Bill No. 866. I'd like to share with you today some of the experiences I've had in the past with obtaining records from my township and my county government.

Waterford Township, in 1997, I made a request to review the MUA minute book. The reaction of the MUA Superintendent was -- he looked down at his feet, sneeringly said, "It's missing." I asked when it would be available, and I was told, "I have no idea." I called the solicitor. I received no response when I asked, "Should any resident have to call the solicitor for access to records that are public records?"

On another occasion, I requested copies of Waterford Township MUA minutes. The recording secretary and the office secretary were directed to remove pages containing expense figures from the minutes before giving me copies.

I was denied access to the minute book of the Camden County Planning Board on four different visits to the planning board office. Mr. Chamberlain advised me that the minute book was lost. On one occasion, the minute book was sitting on a cabinet beside Mr. Chamberlain, not three feet away. I asked if that was the minute book, and he told me, "It was the agenda book." I asked if I could then see the agenda book and, indeed, it was the minute book.

In December 1999, I made a request in writing to see the Camden County Planning Board Budget for '98 and '99. It took approximately seven weeks to have access to the budget information.

I made a written request 10 weeks ago to see Waterford Township attorney bills, still I have not been given access to these records. A written request to see information concerning the Waterford Township Pinehurst Development Plan was unanswered for months until the township administrator finally contacted the solicitor, and he gave his approval.

Office of the Camden County Clerk: I went to the Clerk's Office and asked to see the financial disclosure forms for several county office holders. The office clerk left the area for approximately 45 minutes and upon her return stated she could not find them.

Camden County Improvement Authority: I made a recent phone call to the office requesting financial disclosures of the Camden County Improvement Authority commissioners. The response was, "They're not public information."

I strongly support and urge passage of this important bill. The very foundation of our government is government of the people and for the people. Not providing open government to the residents of New Jersey denies us our basic constitutional rights to know.

Thank you very much for having me here today.

SENATOR GORMLEY: Thank you for being so succinct but getting all your points out.

Thank you.

Thomas Cushane, Pittsgrove.

THOMAS A. CUSHANE: Good afternoon, Mr. Chairman and honorable members of the Committee. My name is Thomas A. Cushane. On behalf of the many citizens who, like me, have been denied access to public information in some fashion or another, I commend you and the members of the Committee for holding this hearing today and giving our grievances the import they richly deserve. This is my story.

On January 7, 1998, I sent the first of many written requests for photocopies of the Upper Pittsgrove Township, Salem County tax assessment map and its corresponding list of deed holders to Upper Pittsgrove Township's administrator. In my request, I made it clear that I would pay all duplication costs, as prescribed by State law. The information I requested, unfortunately, was denied in a letter that I received a week later.

I attended an Upper Pittsgrove Township Committee meeting shortly thereafter. When I addressed the Mayor and Township Committee, I was repeatedly asked why I needed the information I had requested. Although I was under no obligation to tell them, I did anyway, explaining that I was simply looking for a small parcel of land on which to build my first house. After lengthy discussion, the Mayor told me that if the Township is obligated by law to give me the documents I had requested, it would do so, but not before the Township's attorney told me that I would probably have to go to Salem County officials to get them. A week later, I received a letter informing me that my request would not be honored.

I sent several more requests for the same information, to no avail. Having no other recourse, I hired an attorney, who telephoned Township officials several times on my behalf in an attempt to resolve our dispute. The

Mayor, in response, sent me a letter advising me to meet with the Township's Tax Assessor who, he advised, would supply me with copies of the documents I had requested.

Obviously, there was a grave miscommunication between Upper Pittsgrove Township's Mayor and Tax Assessor. Because when I met with the Tax Assessor and showed him the Mayor's letter, he took it from me and, without even looking at it, crumpled it up, threw it into the trash can next to his desk and said, "That's what I think of your letter. I'm not giving you anything." When I asked him why that was, the Tax Assessor said, "I don't have the time or the manpower." When I asked him if tax records are public records, he said that they were not, and added, "You don't know who you're dealing with." When I reminded him that he had provided me with copies of the deed holder lists of other towns of which he is employed, he said, "I work for four towns, and you're the only one who has ever asked me for this. I gave you a copy of that as a favor, but I'm not doing you any more favors." He then directed me to leave the municipal building, and as I was walking out, shouted, "And don't come back."

I directed my attorney to file a lawsuit in Superior Court. As you can well imagine, the wheels of justice turned slowly. Nearly two years expired before Upper Pittsgrove officials offered to settle out of court by presenting me copies of the Township's tax map and deed holder list and paying me the statutory \$500 in attorney fee compensation. My attorney told me that, given the way the current law is structured, I had little choice but to accept their offer.

It was no victory. I had won in principle, yet in reality I had lost, for my attorney fees -- without a trial, mind you -- totaled \$1264.60, and after waiting nearly two full years, I no longer needed the records I had requested. Having purchased a house in a neighboring municipality, the tax map had, for me, outlived its intended purpose.

I have here in my left hand (indicating written testimony), Mr. Chairman, the original bill submitted to me by the attorney who handled my case against Upper Pittsgrove Township. In my right hand, Mr. Chairman, is an uncashed check from Upper Pittsgrove Township made payable to me in the amount of \$500. The difference -- \$764.60 -- is my cost of waging a battle against bureaucratic and misguided officials.

What is wrong with this picture? Why did it take two years, seven letters, a public meeting, a lawyer -- and countless meetings with him -- and \$764.60 of my hard-earned money, to get public information that, by then, was useless to me? What should be more public than tax records that show who owns property within a town's borders? What should be open to public inspection more than documents that specify the assessed value of property?

I have heard from others of the closed mentality of officials at Upper Pittsgrove Township and other communities like it. Yet, I was always respectful and patient in requesting what is due me or any other citizen. I have been a police officer here in New Jersey for eight years. I have been commended in all of my performance evaluations on my ability to deal effectively and respectfully with members of the public. I am not an unreasonable person. It is not, nor has it even been, my vocation to harass local officials. I was forced to act, however, when government representatives

didn't perform their legal duties in accordance with the law. I acted out of concern for all citizens and to stop what I considered to be arrogant denial on the part of some elected officials.

In this case and others like it, either the Township Committee and the Mayor, or their attorney, didn't understand the law. Or, perhaps, they understood their obligation to provide copies of public records to citizens upon request but chose to ignore it. Perhaps they knew that, when denied access to public information, a citizen's only recourse is to file a lawsuit and hope it doesn't cost him too much. Perhaps their effort to block my request was a calculated one designed to facilitate maintaining an uninformed electorate. Who knows? Upper Pittsgrove Township, obviously, thought I would eventually go away, but I didn't. I wonder, however, how many other citizens did.

Before you stands a bill, S-866. It's a good bill, one with teeth; a bill that will discourage local and State officials from ignoring their legal and civic obligations to serve the electorate; a bill that pays the legal expenses of citizens who seek redress of their grievances in court and streamlines the hearing process; a bill that provides a specific time frame in which elected officials and municipal employees must accommodate requests and levies sanctions, real sanctions, against those who don't.

That is my story, Mr. Chairman. I strongly urge you to support Senator Martin's bill, S-866.

SENATOR MATHEUSSEN: Mr. Chairman, I'd just like to say thank you to the witness. As a police officer, one of the finest in my hometown, I was unaware of his story, and I'm glad I heard it today. I wonder

if the Tax Assessor would have had a different approach if you had introduced yourself in a different way to him at the first time.

MR. CUSHANE: That would have been inappropriate.

SENATOR MATHEUSSEN: It would have been, but it would have been, maybe, effective. I don't know.

Thank you.

MR. CUSHANE: Thank you.

SENATOR GORMLEY: Tom Tittle. (no response)

Dorothy Bukowski.

DOROTHY BUKOWSKI: Good afternoon, Mr. Chairman, and members of the Committee. Thank you for hearing me today. What I'm going to be speaking about is probate access to records from the Surrogate's Office and from the police. Before I start, I wanted to tell you that it costs \$3 a page if you want anything from the Surrogate's Office. It's, like, way high.

This testimony is being given for both of us, for June Wisneski (phonetic spelling) and Dorothy Bukowski, myself, and should be counted as two votes in favor of this bill, because both of us have had trouble getting public records in two different court cases in the same family in Union County, New Jersey, in the Surrogate's Office, and a death report from the Linden Police Department. The cases are Joseph Wisneski Sr. and Leo Curona (phonetic spelling). Joseph Wisneski is June's dad, and the Leo Curona case is all of our nieces arguing the case of Leo Curona.

June had trouble getting information and copies of public records and files in the Wisneski and the Curona case. And myself, I had trouble getting information and copies of public records and files in the Curona case.

This bill should state that once you read a public document that is put in a public file, you should be able to get a copy of it if you pay a copy fee. The late Surrogate, Ann Conti, and the present assignment judge, Edward Beglin, both refused to give June copies of records in her case that she read in the file. Please see the attached exhibits that you have, Exhibits 2, 3, and 4, which are copies from Conti and Beglin refusing to give June copies of the court records.

This bill should also read, which has not been brought up today, that you should be able to get copies of records in your court file if you are in litigation or are involved in a probate matter in New Jersey. The way that the law reads now, "A person cannot get court records in their own court file, if they are not a New Jersey resident, in probate and civil court matters." The way this proposed bill now reads, on Pages 3 and 4, is that you have to be convicted of an indictable offense and need this information to use in your own court defense in a criminal court to get court records if you are not a New Jersey resident. Why can't out-of-state residents get access to their court files in a civil court case in New Jersey? Does an out-of-state litigant have to arrange to get indicted to get access to records in their court cases in civil court to get copies of these records?

Because June is not a New Jersey resident, although she lived here many years, the Linden police and the Union County court system refused to give June access to her father's body, will, court records, and a police report.

In the Curona case, the Union County Surrogate's Office and the assignment judge, in an ex parte proceeding with Attorney Monica Kowalski (phonetic spelling), refused to give June and Dorothy, myself, and three other defendants copies of the verified complaint filed in November 1997 because

it contained exhibits that the judge had not wanted the defendants to see, such as the death certificate, the will, Exhibit 1. The surrogate told June that Kowalski orally complained that a court order was made from the verified complaint.

The venue of the Curona case was changed, and access was denied to defendants in both Union and Middlesex County's Surrogate's Offices. The defendants did not know about the verified complaint and did not get a copy of it until 14 months later, January 1999. In both cases, Conti and Beglin allowed and/or arranged to have embezzlement of assets and hid this information from the litigants in this case. The access issue to get information in the Wisneski case is so strong that June filed a writ of certiorari in the United States Supreme Court on January 3, 2000, to get copies of court records showing predetermination of trial issues against June, secret ex parte court proceedings against June, embezzlement over \$250,000 in the State assets from June. The question regarding access is mentioned in Exhibit 5. June was not granted discovery in her court case until over two years after the Wisneski trial. June is still trying to get a copy of the June 14, 1991 memo.

And in the Curona case, Conti and Beglin allowed a cleaning woman, who was married to two different men at the same time, while according to her attorneys was having a loving relationship with my uncle, Leo Curona, to clean out the estate house and throw out assets while the estate is in litigation. In this way, all the papers that we had to substantiate that it was a lie or that there was any employee-employer relationship was removed.

Please, pass this bill. And June would have been here today except something came up. She would have flown in from Nevada. So if you have

any questions, if you want to write to me, you have my paperwork in front of you there.

Thank you.

SENATOR GORMLEY: Thank you.

Next witness Shawn Gromo.

S H A W N L. G R O M O: My name is Shawn Gromo. I live in Lacey Township, New Jersey, and I'm here to voice my favor of the S-866.

My story is I'm currently a county employee, and I brought to the prosecutor's attention in 1996 a financial mismanagement within the county. I was told shortly thereafter that financial mismanagement is not considered to be a law-- There's no law against financial mismanagement and that there was not case against the agency. A year later I was subpoenaed for a grand jury investigation. After the investigation, the prosecutor again made a press conference announcing that there was no criminal activities going on within the agency. I asked for a copy of the report. The Board of Health, whom I'm employed by, said that I'd be able to get a copy of the report, and what I received was a copy of the letter that the prosecutor read at the press conference.

I then brought that to the Board's attention. I was then advised to go to the Prosecutor's Office directly and ask for the information, which I did. I was informed by the Prosecutor's Office that unless I went out and hired an attorney there was no way that I could get the information.

I come here as a concerned citizen. I come here wanting to contribute to the government which I'm part of. It's just incredible that I have to go through such lengths to get things done here in the State of New Jersey.

In response to Senator Robertson's question about whether the Governor makes an executive decision do other agencies have to abide by it, the answer is no. A few years ago, as an example, the-- We experienced a very bad snow day, and the Governor declared a state of emergency. However, the Freeholders in Ocean County decided that we weren't part of the State, therefore, we didn't have to abide by the Governor's ruling. We were all charged a day's pay for not coming in that day.

The other thing is for what Senator Baer was saying about the Internet. Again, having testified to a -- as part of a grand jury investigation, I would remind you all that a couple of years ago, the President of the United States' grand jury testimony was made public. You can go on the Internet now and you can actually view his testimony in terms of his relationship with Monica Lewinsky. Yet, here in New Jersey, we can't get a copy of a report which would be beneficial to the citizens to understand how their agencies are mismanaged. The other thing, too, is if you go on the Internet and just put in grand jury into any search engine, you'll get responses from various states, California, Mississippi, Louisiana. You'll get actual schedules, agendas, and minutes from -- or reports from actual grand jury investigations.

Once again, I'm here to issue my support for making things more available to the public. As Senator Baer said, it would give more citizens the ability or encourage citizens to partake in their government.

Thank you.

SENATOR GORMLEY: Thank you.

Bernard Lutftgas.

B E R N A R D L U T F T G A S: Good afternoon, Mr. Chairman, and members of the Committee. Before I start, I would like-- This reminds me of Nero fiddling while Rome is burning. We've waited so many years to change this that finally we're going to get some relief.

SENATOR GORMLEY: Thank you.

MR. LUTFTGAS: I was up all night writing my letter. I come before you today in favor of Senator Robert Martin's S-866, and its counterpart, A-1309, Senate Assembly Government Committee, and its chief sponsor, George Geist. God bless them for introducing those two bills.

All of you must have read the horror stories of the public when somebody requests public records for many of the governmental agencies. Those same agencies which are the guardian of our records, which they see as for their own use, which the original Right to Know law, 47:1A-1 et seq., was created, but has failed. It has no teeth. I have litigated using this law across the State in Ocean County, in Atlantic County, in Camden County, in Middlesex County, in Monmouth, and in Passaic, different agencies in the past 24 years. I probably litigated, as a private citizen, more Right to Know law cases than all the citizens in this state put together, with the exception of the newspapers. They have a personal reason why.

I believe it will impress you. I won one of such cases before our State's Supreme Court. I didn't use a lawyer. And that's my present to all of you, *Lutftgas vs. New Jersey Turnpike Authority*. It was very simple. I wanted to see public records. They denied me as a vendetta. One of the attorneys doesn't particularly care for me. So they said no, and they spent their money. I spent close to \$5000 of my own money. Supreme Court rule, you cannot

charge lawyers \$10 for an accident report. It should be 75 cents. It was six and zero. Justice Pollack disqualified himself. He used to be a toll collector for the Turnpike. He was one of their lawyers.

My history with government abuse started in 1976 when I was a student at Ocean County College. As a student, I requested, "Show me what is the Athletic Department doing with the student money?" John Stoff (phonetic spelling), the Director, refused to answer my question. That's a no-no with me. He thought I was going to go away. I did, to one of the school's professors, who gave me the key to what we call the New Jersey Right to Know law at the college library. God bless the libraries.

I knew little about how to file lawsuits at that time. With a copy in my hand of the Right to Know law, 47:1A-1 and 47:1A-4, I marched into the home of a newly sworn lawyer, Alan Chesler, in Freehold, and my first of many such civil suits was created. I filed a Right to Know lawsuit against Ocean County College to release public documents, which include -- one of the defendants was the President and the Dean. Prior to filing this suit, my wife went to the President and the Dean, and she said, "You don't know Bernie." She said, "We have more money than him." And my wife said, "Whose money?" Their defense was I wasn't a U.S. citizen, nor was I a New Jersey citizen, and I agreed to let my wife inspect the documents. My wife, like me, was not a citizen.

The next year I filed a new suit to prove that I don't have to be a U.S. citizen or New Jersey citizen to inspect copies or obtain public records and documents. But this time I did it my way, without a lawyer, and I subpoenaed many public officials, including the head of the Department of

Higher Education. I got to see all those documents. What I uncovered was the documents -- the budget -- of the Athletic Department that they gave my wife in 1978, and which they supplied me in 1980, was \$20,000 apart. Because the attorney for the College, the attorney for the Freeholders, the attorney for the Ocean County Prosecutor's Office was one in the same. In 1987, you appointed Edward Turnbach, the prosecutor, to a Superior Court Judge in Ocean County. No one investigated this abuse. The College spent in excess of \$45,000 in legal fees defending--

SENATOR GORMLEY: Excuse me. Excuse me.

MR. LUTFTGAS: Yes.

SENATOR GORMLEY: If you could get to a couple points about the bill, because, as we told you--

MR. LUTFTGAS: I'll go briefly.

SENATOR GORMLEY: Would you, please?

MR. LUTFTGAS: Okay. Yes.

SENATOR GORMLEY: Because you're back in 1980. If there is certain points on the bill that you would like to bring up--

MR. LUTFTGAS: This is--

SENATOR GORMLEY: We know your concern on this issue. You've expressed it, but if you could point out the facets of the bill that you think are pivotal, or whatever, because we would like to try to get some other witnesses in. And people are starting to walk in for the Education Hearing. I apologize for interrupting.

MR. LUTFTGAS: Senator, I wanted to bring up that when I sued the Atlantic County Board of Elections, I got to see the records of the Board of Elections and the County Clerk.

SENATOR GORMLEY: Oh, I'm glad that you brought up my county's lawsuit.

MR. LUTFTGAS: Yes, sir.

SENATOR GORMLEY: I'm good. I'm glad you covered my county. I appreciate that. (laughter)

MR. LUTFTGAS: Okay. Now, I want to bring up about the Barnegat Board of Education--

SENATOR GORMLEY: Okay.

MR. LUTFTGAS: --that refused to let me see records.

SENATOR GORMLEY: Okay.

MR. LUTFTGAS: They spent almost a quarter of a million dollars. And their attorney, which charged the School Board \$708 to collect a \$90 check, you made him a Superior Court Judge. Fortunately for us, he just retired.

SENATOR GORMLEY: Okay.

MR. LUTFTGAS: Okay. Also, the Township charged \$10 to listen to the tapes of the Planning Board. That was abolished because of me.

When I sued the Barnegat School Board with regards to them going on trips and not turning in receipts and taking their wives and children, they used the law -- an old law -- which I would ask for this Committee--

SENATOR GORMLEY: We'd appreciate your concluding.

MR. LUTFTGAS: --to have abolished--

SENATOR GORMLEY: Excuse me. Excuse me.

MR. LUTFTGAS: Yes.

SENATOR GORMLEY: We'd appreciate your concluding.

MR. LUTFTGAS: Huh?

SENATOR GORMLEY: Conclude -- end.

MR. LUTFTGAS: With regards to transcripts, I ordered two transcripts, which are public records, in November of 1995 and May of 1996. I'm still waiting.

Senator, when you go to court and you litigate a case, the shorthand reporter that transcribes the minutes on that tape -- one transcriber cannot read another's transcriber. Those are public records, those court records. Why shouldn't I ask a different transcriber to make me a transcript? They cannot read it. There's a problem. Those are public records. Everybody should be able to obtain a copy. By who? By a certified shorthand reporter. You can't do it presently because nobody can read another person's notes.

SENATOR GORMLEY: We're going to have to ask you to--

MR. LUTFTGAS: One second.

SENATOR GORMLEY: Excuse me. That was the final comment. You made the final comment.

MR. LUTFTGAS: I understand.

SENATOR GORMLEY: No. No. That concludes the testimony. Thank you.

MR. LUTFTGAS: Senator, one second.

SENATOR GORMLEY: That concludes the testimony. We have to get on. I'm sorry. I asked you to make one point, and you made the point, and I appreciate that.

MR. LUTFTGAS: Yes, but there's other points--

SENATOR GORMLEY: I know, but I want to get on to some other witnesses. I'm sorry, but we have to try to get some--

MR. LUTFTGAS: May I say one last thing?

SENATOR GORMLEY: All right. Go.

MR. LUTFTGAS: In the *Highlands vs. Nero* (phonetic spelling), the Supreme Court said the reason why we have the Right to Know law to--

SENATOR GORMLEY: Excellent. Thank you.

MR. LUTFTGAS: I think it's unfair for you to not permit me to finish what I have to say. I think that's very unfair. This is as much unfair as the school boards and other agencies that don't let me have records, and I have to sue them.

SENATOR GORMLEY: Thank you for your comments.

MR. LUTFTGAS: I want to leave this for the record.

SENATOR GORMLEY: The next witnesses are Councilwoman Ann P. Hanley and, I believe they're from the same town, Richard J. Simonsen.

A N N P. H A N L E Y: Good afternoon. My name is Ann Hanley. I'm the Councilwoman from Bradley Beach, and I am in full support of your bills.

SENATOR GORMLEY: Is the red light on? (referring to PA microphone) Red light?

MS. HANLEY: My name is Ann Hanley, Councilwoman from Bradley Beach. I was elected in May of 1998. I have been a councilwoman for

a year and a half, and I have had many issues with public access. And I am an elected official.

SENATOR MARTIN: And who is the gentlemen next to you?

RICHARD J. SIMONSEN: My name is Richard Simonsen. I'm also a councilman with the Borough of Bradley Beach.

We've listened to people in the public make comments on the lack of public access. I guess this is a different side of the picture. Councilwoman Hanley and I were elected in 1998. Since that time, we've made numerous requests for documentation such as payroll records, overtime fees, engineering fees, attorney's fees, and we've been denied all requests.

SENATOR GORMLEY: You're members of the governing body?

MS. HANLEY: Yes. We are members of the governing body.

MR. SIMONSEN: Yes, we are.

SENATOR GORMLEY: We knew that, but we just wanted to make that very clear.

MR. SIMONSEN: No. We are. Out of frustration, we sought legal counsel, which--

MS. HANLEY: On more than one occasion.

MR. SIMONSEN: He was able to send letters, which were neglected. The only thing that motivated the town to give us the requests that we made were-- It was a newspaper article written by the *Asbury Park Press*.

MS. HANLEY: Two weeks ago in the paper, on Sunday.

MR. SIMONSEN: It took four months to receive the payroll records, and they still weren't the payroll records we were requesting.

Bradley Beach is a recipient of, also, a regional contribution agreement with Wall Township, through the Council on Affordable Housing. On February 15 of this year, we made a request to the Borough Clerk for a list of the homes that were repaired with taxpayers' money and, to this date, we have still never received that list. I've contacted the Executive Director of COAH, Shirley Bishop, who has told me since the 15th of February, she's been waiting for legal advice. These are public records. We have no idea why we've been shut out other than that we disagree in certain categories with the current Mayor of the town.

SENATOR GORMLEY: There would seem to be some tension there, yes.

MR. SIMONSEN: Yes, there's a lot of tension there.

We've gone through the Prosecutor's Office. We've gone through the Division of Local Government Services. We've exhausted everything.

MS. HANLEY: We've also gone to Rutgers University for courses on government, which tell us to go to the Division of Local Government, etc. We have been stymied, and that's part of the reason we came here to support the bill.

SENATOR MATHEUSSEN: What's the response you got from the Division?

MR. SIMONSEN: Nothing. Nothing.

MS. HANLEY: No calls.

MR. SIMONSEN: In fact, one of our instructors, twice, was at two different courses with the Deputy Director of the Division of Local Government Services.

SENATOR MATHEUSSEN: I can't hear you. I'm sorry.

MR. SIMONSEN: At two different occasions, the instructor in classes was the Deputy Director of the Division of Local Government Services, who I've called four times in the last two weeks.

SENATOR MATHEUSSEN: The last two weeks?

MR. SIMONSEN: The last two weeks.

MS. HANLEY: I have had occasions over the year where we have also tried to speak to people, but they have not responded.

SENATOR MARTIN: Are you using them to try to get the information or get advice?

MS. HANLEY: Well, to support the fact that we have a right to the information, yes.

MR. SIMONSEN: I guess our last--

SENATOR MARTIN: I'm not trying to be confrontational. I was trying to understand why you were using the Division of Local Government Services.

MS. HANLEY: Well, I guess to find out what's the proper procedure, and why would we be denied, and why would we have to seek legal counsel, as members of the Council? We represent the people, and we're asking for public information. And it's a personality thing, which I don't--

SENATOR GORMLEY: We're just listening to this. It's a little different from what we usually--

MS. HANLEY: Well, that's really why we came.

SENATOR GORMLEY: Senator Matheussen.

SENATOR MATHEUSSEN: What does the municipality's own solicitor say about it? Have you inquired to him or her about that? Have they given you a legal opinion as to why you have not received those documents?

MR. SIMONSEN: No.

SENATOR MATHEUSSEN: Have you asked for one?

MR. SIMONSEN: Yes. They won't put anything in writing.

SENATOR MATHEUSSEN: And yet, they won't substantiate the reasons why you're not allowed to see these documents?

MR. SIMONSEN: In December of last year, at a public meeting, we asked again, in public, why were we not allowed this information. On the record, a statement was made by the borough attorney saying that we would be allowed these records. We've never seen them. We've requested it again. This has been going on since the summer of 1998.

SENATOR MATHEUSSEN: You need some strong legal advice.

MS. HANLEY: And if information is requested, we get partial, not all.

MR. SIMONSEN: It's pick and choose.

SENATOR MATHEUSSEN: I don't know that this bill is going to fix your immediate problem. I'll tell you that right now.

MS. HANLEY: Well, we're just encouraging the fact that -- the public has the right to know.

SENATOR MATHEUSSEN: Absolutely.

MS. HANLEY: And we're disillusioned with the system.

MR. SIMONSEN: Our final recourse, I guess, is to file a lawsuit, which will become extremely expensive.

SENATOR MATHEUSSEN: Absolutely.

MR. SIMONSEN: And at \$3000-a-year salary on Council, we spent over \$2000 on legal fees already.

SENATOR MATHEUSSEN: That lawsuit, unfortunately, maybe we have to fund it by the very same taxpayers that you're representing -- that you're elected to represent.

MR. SIMONSEN: That is also one of the comments that the Mayor's made is, we've wasted taxpayers dollars by making these inquisitions. And we deeply support this bill.

Thank you.

MS. HANLEY: Thank you very much.

SENATOR GORMLEY: Here's what we're going to do. It's a little after 2:00. There are six people left who had requested to testify: James Raleigh, Staci Berger, Andrew Bondarowicz -- excuse me if I mispronounce the name -- Doug Krisburg, Alan Rosenthal, and Sandra Matsen. What we'll do is, there will be, obviously, a voting session, a committee--

JAMES RALEIGH: Mr. Chairman. I'm James Raleigh. I'll be glad to come to your voting session. (speaking from audience)

SENATOR GORMLEY: Thank you. Thank you very much.

Well, I've just checked with the Chairman of the Education Committee, who is also the sponsor of this bill, and he said the Education Committee can now start at 2:30. Okay. So we will start--

SENATOR MARTIN: I said come hell or high water.

SENATOR GORMLEY: But at 2:30, it's going to start. I mean, this is the Chairman of the Committee. Okay.

We'll start with James Raleigh.

SENATOR MARTIN: The reason Senator Gormley has allowed that -- and we know some people have taken enormous time to come down here on a day-- But in order to be able to get each of the remaining witnesses in, we really appreciate brevity.

SENATOR GORMLEY: Because the next agenda is not exactly a light one.

MR. RALEIGH: My name is Jim Raleigh. I signed in today as -- for the Friends of Monmouth Battlefield because we've been involved in several added matters. As a delegate to the League of Historical Societies, I got to be the stuckee as the President of the League of Historical Societies. So last week, I testified, particularly, that there are two parts to this discussion. One, of course, is the cost on both sides. The other that is identified here, besides the changes in the procedure, is electronic records.

I, specifically, in trying to be brief last week, I said something about the DEP maps. What I wanted to say is with the data that's being collected, we are now getting electronic databases that you cannot print out on a single piece of paper. And so, capturing that record is extremely important not only for following government business today, but it's going to be important for historians down the road.

I think we want to watch what's been happening not only in other states, but also in what's been happening in business and industry, because they've had to capture electronic records for far longer than we've been doing a good job in New Jersey. We've lost an awful lot of electronic records while we're getting around to say what we have to say.

Thank you.

SENATOR GORMLEY: Thank you very much.

Sandra Matsen.

S A N D R A M A T S E N: Good afternoon. Sandra Matsen. I'm President of The League of Women Voters of New Jersey. I'd like to go on the record that we support S-866 and its presumption that citizens are entitled to access government records.

We would ask, however, that the Committee consider a voluntary statewide system of mediation and education. A State officer who issues opinions, conducts educational sessions on access to public records, and attempts to resolve disputes will be advantageous to both citizens and custodians. A voluntary system allows requestors who prefer to challenge a custodian's decision in court to do so.

We appreciate the addition of the municipal court route in S-866 to provide citizens without deep pockets, and skilled lawyers to represent them, a means of challenging a custodian's decision. We believe, however, that it will lead to a hodgepodge of decisions, and it provides no central body responsible for education on the law.

Thank you.

SENATOR GORMLEY: Thank you.

Alan J. Rosenthal.

A L A N J. R O S E N T H A L: Thank you very much. My name is Alan J. Rosenthal. I am a licensed private investigator here in New Jersey. I have a whole mess of things to say, but I wanted to keep it as brief as possible. My colleagues and I -- we're the hands-on people who obtain the records. We

obtain records from the courts, all the State agencies, some municipalities. Basically, anything that we need to litigate a case, we're sent to get them.

Personally, I have hands on with every county in this state, many of the municipalities, almost every agency. And as I read through the bills, I'm in favor. I'm grateful, in this age of overprivacy and overzealousness -- I'm very grateful for this bill, and will be reporting back to my colleagues as well. I think, from a practical aspect, there needs to be a couple of things that need to be tightened up. As I read it, and as I-- When you are in the courthouses, you're in the various places where you're dealing with people and personalities. You can't legislate courtesy or anything like that, but certainly I would appreciate it. I hate getting the feeling of being an interloper when I'm asking for a file. But I am there on behalf of the public, that is, maybe the attorney who hired me, the plaintiff for the defendant that that attorney represents, and so the citizens.

We have a real hard time getting some files. We get backlogged. It costs money to send us in. One of the things I have always thought about when I get in my car, and I'm told that I have to come back or keep coming back -- I have to go out, and I have to make a living. Some of the people that we work for -- I do some pro bono work -- they can't afford to have me keep going back and racking up mileage and everything else for somebody to go and pull the file and give it to us and let us review it. That's one thing.

So I'm just going to go down this real quick list, and then I'll be out of your hair. You mentioned -- I don't know one bill from the other. I read them all fast. There's mention of immediate access. I think that needs to be clarified. Immediate access for me is, and for the folks that pay me to go

is, when I walk up to the counter, I want to see the file. I don't want to put in a request and come back for a week.

I have a case I'm working on right now -- well, I was supposed to be working on it today, anyway -- I have to go to DMV. I have to go to the county clerks. I have to do everything, and there's a trial ongoing now. I have to get these files now. So that's an important thing.

There's business deals that are going on right now. There's due diligence. There's safety when you're dealing with various issues, not only domestic abuse areas. There's service of process, trying to find people for a judgment. We need a witness in court tomorrow, or we have an individual who is a defendant. We need to find them, get them served before a statute runs out or before he leaves either the state or the country.

Some of the problems that we have -- I think the denial of the appeal process, I think that's great. I think it needs to be tightened up. I think if there needs, really, something, we have to get it and get an answer now.

Turnaround times, I think, should be addressed. DMV-- As a licensed private investigator, I have access to records. I have this trial going on right now. I'm going to wait three to six weeks after I walk over there and give them my request. We need access to paper documents. A lot of things are going on microfilm. Sometimes we need to look at a pattern of fraud or patterned behavior and read multiple court cases. If you have it all in microfilm, you can't really do that and you can't find the discrepancies or the patterns. Obviously, we need to do that. I talked about the lowest common denominator is the individual who can't afford it and needs access to the court.

I'm going to come down here and try to sum up. Training of personnel is important.

Examples of some problems, real quick. Seventy-five cents for the first 10 pages. No, not really. It's \$5 for the first page, or a \$5 minimum. It's not really in the statutes, but it's there in the guidebooks. So when I go over to the Hughes Justice Complex and get a printout for a judgment, one page, \$5 minimum. Let's see, in 75 cents, 50 cents, 25 cents -- in Essex County, if I pull three files and I get 10 pages of each, then that should cost me -- at 30 pages, I should walk out of there paying \$15 -- \$7.50 and \$5 and \$2.50. I walk out of there spending 22.50 because they make you fill out a form for each file jacket. Okay.

Middlesex County, I've had a situation where I asked for 30 pages from a document. I was told we're only going to give you 10 pages a day. That was from one supervisor, and I got another supervisor to give it to me nonetheless. My clients can't afford to pay me to go back in three days to pull a file, plus you have the time and litigation.

Probate, \$3 per page. Some places don't take company checks. They'll take attorney checks. Some don't take cash. Six dollar criminal lookups. Warren County, \$6 per name. That's Warren County. Elizabeth County (*sic*), Tuesdays and Thursdays they put out the big printout books on the counter. Why not do it Monday through Friday? It's no big deal. They did increase it from Tuesday to Tuesday and Thursday. I went in there yesterday. I had to soft talk somebody to give me the file. Otherwise, it's \$6 per name. New Jersey Secretary of State, \$10 expedite fee on everything you

do over there. Have you ever seen anything expedited? Okay. And I tell you, if you don't pay the \$10 fee, you wait six to eight weeks.

SENATOR GORMLEY: We now have the drift. If you could sum up, we'd appreciate it.

MR. ROSENTHAL: I'm sorry, sir.

SENATOR GORMLEY: Could you sum up, please?

MR. ROSENTHAL: Yes. Actually, I'm really at the end here.

A good thing, 15 cents a copy over at the New Jersey Library. The gentlemen--

SENATOR GORMLEY: There's something right. Good.

MR. ROSENTHAL: There's something good, yes.

SENATOR GORMLEY: Okay.

MR. ROSENTHAL: --did have a valid point about getting transcripts of court files. It's very expensive, and it's very timely. Maybe there could be a better way. So it's the practical aspect that I'm hoping that-- I don't know if you're amending this bill or if it's the final version, but I wanted to bring it to your attention.

SENATOR GORMLEY: Thank you. Thank you very much.

MR. ROSENTHAL: Thank you very much.

SENATOR GORMLEY: The next witness is Doug Krisburg. (no response)

Next witness, Andrew Bondarowicz.

A N D R E W B O N D A R O W I C Z: Thank you, Mr. Chairman, for giving us a few minutes today. I'll try to be very brief, in the interest of time.

My name is Andrew Bondarowicz. I represent the New Jersey Association of Counties.

It was close. (referring to punctuation of name)

SENATOR GORMLEY: I'm sorry. I apologize.

MR. BONDAROWICZ: You get used to it after a while.
(laughter)

But NJAC is in general support on the bill. We fully agree with the concepts behind the bill. We do have some concerns that were addressed before by previous speakers in terms of personal employee files and confidentiality of certain records.

One issue that hasn't been addressed that we think does deserve, at least, some consideration is to establish a more formal interactive system, for example, when a request is put in, so that some type of identification or some method to interact with that individual will help to expedite a lot of these requests. When you have an anonymous request and you have to wait for that individual to come back, it creates a lot of confusion in terms of addressing some of these issues. By having some way to be able to interact with individuals, you can make sure that things get processed quickly. And if there is some confusion as to their request, that can be dealt with without having to draw out the process indefinitely.

Thank you.

SENATOR GORMLEY: Thank you.

Next witness, Staci Berger.

STACI BERGER: Good afternoon. My testimony, I think, starts off with good morning, because I was here at 10:00. I think I have the dubious

distinction of being the last person to testify. Doug Krisburg was not able to make it, so don't wait for him.

Citizen Action is the state's largest consumer watchdog coalition. We represent about 60,000 family members, 85 affiliated organizations. I talk very quickly. This is the first hearing I think I've sat through where people won't tell me to slow down. So I'm just going to kind of give you a quick overview of my testimony. You should have it in front of you. If not, I have additional copies.

And I just want to take a couple of seconds to rebut some of this stuff that was said this morning. We're a little bit concerned about the emphasis that is placed on privacy rights by a couple of speakers who went earlier this morning. The change in S-866, which we support, with a couple of minor exceptions, should not be -- the overall point of the bill is to make public records public, and we don't think that, sort of, raising the red herring of privacy rights is appropriate at this point. Things that are currently confidential will remain confidential. We think that the law is well written in that regard. We're not really concerned about people going in to look for burglar alarms. I'd be more concerned about lists of things that are already public for which people are receiving tremendous amounts of junk mail and that kind of stuff. If we want to talk about bothering people, we should have some sort of other legislative hearings to talk about that.

But the point of the bill is to make sure that people can get the records that they're entitled to, which is why the issue of fees is of tremendous concern to us. We think that the way that they're structured is a barrier. I understand, in talking to some folks, that part of the issue is not wanting to

raise an issue of a State mandate/State pay. We would ask that you change the legislation to request that OLS investigate whether or not lowering the fees would, in fact, trigger a State mandate/State pay and not just leave it the way that it is, but to actually do something to figure out if there's a way to change it, because we do think they're too high. Including labor costs in those fees, we think, is a double penalty against people.

At this point, we paid for the tax. We paid for the records. We're paying for the offices where the records are kept. We're paying for the copying machines. We're paying for the people to make the copies. What's left to pay for?

Second, we support the calls that were made by other organizations prior to us, especially The League of Women Voters and the Society for Professional Journalists, for a mediation system. What works at ELEC, we think, would work here with an advisory opinion. In the way that that Commission is set up, obviously, it's voluntary. If you submit something, you can then abide by those rules, or you can take it to the court if you don't like the alternative.

In no manner, shape, or form do we attempt to stop somebody from the right to sue. Obviously, part of our country's fabric is the ability to sue somebody else over something, whether it's relevant or not. So we wouldn't want to stop people from being able to do that, but we do think that there doesn't have to be that sort of antagonistic approach to this, where everybody has to go to court as the instantaneous result.

If there's a way to set up a voluntary mediation system without it costing an arm and leg, and frankly, we think that there is, we would be

interested in working on that. And even if the legislation can't be changed, at this point, which is sort of the sense that I'm getting from the comments that were made today, we would want maybe a study to do that or some sort of commission to be commissioned to investigate that as an option so that we don't just leave it the way that it is.

One other thing, just the viewing time -- the woman from the Municipal Clerks' Society suggested -- we don't think that that's appropriate. Public records should be public when it's convenient for the public, not when it's convenient for the people who work for us.

So those are my only comments. I'll take questions, if I have them, but I'm sure that you don't, because you're trying to get to another meeting. But I'll hang around.

Thank you very much.

SENATOR GORMLEY: Thank you.

That concludes the hearing.

(HEARING CONCLUDED)