

SUPERIOR COURT OF NEW JERSEY  
ATLANTIC COUNTY/CIVIL DIVISION  
DOCKET NO. L-3392-08

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JOHN PAFF,

PLAINTIFF,

STENOGRAPHIC  
TRANSCRIPT OF:

VS.

- ORAL ARGUMENT -

ABSECON, et.al.,

DEFENDANTS.

-----X

PLACE: ATLANTIC COUNTY COURTHOUSE  
1201 BACHARACH BOULEVARD  
ATLANTIC CITY, NJ 08401

DATE: JUNE 26, 2009

B E F O R E:

THE HONORABLE STEVEN PERSKIE, J.S.C.

TRANSCRIPT ORDERED BY:

JOHN PAFF

A P P E A R A N C E S:

JOHN PAFF, Pro Se

SALVATORE PERILLO, ESQUIRE  
NEHMAND, PERILLO & DAVIS, P.C.  
ATTORNEY FOR THE CITY OF PORT REPUBLIC

TARA M. GARRY, ESQUIRE  
ATTORNEY FOR EGG HARBOR TOWNSHIP

\* \* \* \* \*

REGINA A. BERENATO-TELL, CCR-RMR-CRR  
OFFICIAL COURT REPORTER  
1201 BACHARACH BOULEVARD  
ATLANTIC CITY, NJ 08401

1 PROCEEDINGS

2 THE COURT: All right. This is Paff versus  
3 Absecon, docket number 3392-08. On the telephone I  
4 have Mr. Paff.

5 MR. PAFF: Yes.

6 THE COURT: Is that correct?

7 MR. PAFF: That's correct.

8 THE COURT: Please make sure you speak up.  
9 For Absecon I have who.

10 MR. PERILLO: Judge, the only people  
11 appearing on this call -- this is what I think is  
12 before the Court is Port Republic's motion for summary  
13 judgment -- Mr. Paff's cross-motion Tara Gary is  
14 appearing on behalf of Egg Harbor Township. Sal  
15 Perillo appearing on behalf of Port Republic. And I  
16 think that's all we have on the phone.

17 THE COURT: Right. The caption is Absecon,  
18 but you're correct, there's a number of municipalities  
19 involved in the case, and this matter before me this  
20 morning is on cross-motions, which I'll define in a  
21 minute with respect to Port Republic. Why do I have  
22 somebody here from where?

23 MS. GARY: Egg Harbor Township, Your Honor.

24 THE COURT: Why do I have somebody from Egg  
25 Harbor Township, just as an observer?

1 MS. GARY: Mark Friedman had a meeting with  
2 me the day before yesterday to intercede on this case  
3 and indicated there was oral argument on the  
4 cross-motions this morning and asked that I listen in,  
5 not participate, but because I think that he is always  
6 the last one at the table the township just had a feel  
7 for what was going on with Port Republic and Mr. Paff's  
8 cross-motion.

9 THE COURT: Okay. That's fine, and  
10 welcome. Are you on a cell phone?

11 MS. GARY: No, I am not.

12 THE COURT: Because you're cutting in and  
13 out. And as long as you just are going to observe  
14 anyway, it doesn't much matter, but I just wanted to  
15 let you know that I didn't hear everything you said,  
16 but what I heard is fine.

17 This is before me on Port Republic's motion  
18 filed by Mr. Facenda on May 27th for summary judgment  
19 with a supporting memorandum certification exhibits.  
20 Mr. Paff, on his own behalf, filed on June the 4th a  
21 cross-motion for summary judgment with supporting  
22 memorandum certification exhibits on June 23rd I  
23 received from Mr. Facenda, and on June 24th I received  
24 from Mr. Paff supplementary memorandum. And it would  
25 appear that there is no factual dispute at this point,

1 and as I understand the record the plaintiff demanded  
2 in a timely and procedurally appropriate fashion  
3 minutes of closed sessions of the Port Republic City  
4 Council from January 8th and January 28th, 2008.  
5 Within the statutorily provided period the town -- City  
6 of Port Republic responded by providing information  
7 that the closed session minutes were not to be provided  
8 because they dealt with open litigation matters.

9                   Eventually some months later a second  
10 response was given in the form of a letter from  
11 Mr. Perillo. And now the issue before me is on the  
12 cross-motions whether on those facts the defendants  
13 have met their legal obligations or not, and, if not,  
14 what it is, if anything, I am to do about it in the  
15 form of any injunction, conjunctive relief or an award  
16 of costs.

17                   Mr. Perillo, from your perspective, do I  
18 have the facts and the legal issue correct?

19                   MR. PERILLO: Judge, the legal issue is  
20 correct. The factual resuscitation left out one fact,  
21 which I don't think is in dispute.

22                   THE COURT: And what is that?

23                   MR. PERILLO: When Mr. Paff sent in his  
24 over request the clerk not only responded that there  
25 were no minutes because it was covered by the

1 attorney/client privilege, but you also sent him the  
2 resolution authorizing the closed session.

3 THE COURT: Yes. I'm sorry. I didn't  
4 think -- I indicated that I thought that the response  
5 was timely submitted, and I guess I should have  
6 indicated that there was that resolution, as well. All  
7 right. Thank you.

8 Mr. Paff, from your point of view have I  
9 correctly stated the facts and the legal construct?

10 MR. PAFF: Yes. The only thing is it was a  
11 little hard for me to hear a few of the things that you  
12 said, but I think that what you said was that the issue  
13 before the Court is whether the production -- whether  
14 the production of the executive session and minutes --

15 THE COURT REPORTER: Judge, I can't hear.

16 THE COURT: Timely I think I said.

17 Mr. Paff, I'm going to have to ask you to  
18 speak up because we're trying to get a court reporter  
19 to take down what is being said, and you're coming  
20 across --

21 MR. PAFF: I think that's a problem with  
22 the line. I'm speaking very loudly. Can you hear me  
23 okay now?

24 THE COURT: Yes.

25 MR. PAFF: Thank you.

1 THE COURT: All right.

2 Mr. Perillo, before I reach the question of  
3 whether your client must -- let me ask you to tell me  
4 why from your point of view it would not be a good idea  
5 in this kind of situation for your client to respond --  
6 for your client to prepare and make available for  
7 public distribution within a few days after it happens  
8 a minutes record of a closed session, which indicates  
9 not what anybody had to say to anybody, but, rather,  
10 that on Tuesday the 14th the City Council had a closed  
11 session at which the following items were discussed, A,  
12 B and C. End of minutes.

13 And then eventually whenever later in a  
14 timely fashion the content of the discussions could  
15 become public then they would become public. What's  
16 wrong with that kind of minutes, which, as I gather it,  
17 was not provided or prepared in this case?

18 MR. PERILLO: Two things, Judge.

19 First of all, as I indicated, the clerk in  
20 response to Mr. Paff's request sent him the resolution.  
21 The resolution clearly reflected the Council going into  
22 closed session, what the purpose of the closed session  
23 was, and who was at the Council meetings.

24 THE COURT: I know that, but that's not  
25 responsive to my question.

1                   MR. PERILLO: Well, it is when you  
2 juxtapose that with the redacted minutes that were  
3 subsequently provided to Mr. Paff.

4                   THE COURT: That was many months later.

5                   MR. PERILLO: After the litigation was  
6 filed and they were provided without prejudice to  
7 demonstrate to Mr. Paff two things. One, that the  
8 resolution that he got had substantially the same  
9 information, because the redacted minutes didn't really  
10 contain anything, other than who was there and what was  
11 discussed.

12                   THE COURT: Mr. Perillo, wait, wait, wait.  
13 You're arguing your motion, and I'm certainly going to  
14 hear you do that. I already have read that argument,  
15 and I understand it. And I'm not addressing it with my  
16 question.

17                   I said, leaving aside the issue of whether  
18 they must, which is what Mr. Paff is saying, I'm asking  
19 you what would have been, from your client's point of  
20 view, the problem of promptly -- meaning within a  
21 couple of days or by the next meeting, public meeting  
22 -- preparing minutes of the private session or the  
23 closed session which said, we had a closed session  
24 pursuant to the resolution. Here's what we discussed.  
25 What's wrong with that?

1                   MR. PERILLO: The second point I was going  
2 to make, Judge, is that the case that Mr. Paff was  
3 involved in in Perth Amboy, the unreported opinion,  
4 which we attached to our brief deals with the issue of  
5 attorney/client privilege versus the other exceptions  
6 under the Open Public Meetings Act, and there the  
7 Appellate Division gave the analogy in the  
8 attorney/client privilege and, for example, the  
9 personnel section, and at page 5 of that opinion --

10                   THE COURT: Mr. Perillo, maybe it is too  
11 early in the morning. I'm having trouble getting  
12 through to you. You're telling me, as you have already  
13 told me in the brief, why your client didn't fail to do  
14 anything the statute requires them to do. I understand  
15 that argument.

16                   And as I said, if you need to elaborate on  
17 what you have already told me in the brief in a minute  
18 I'll give you that opportunity. That's not what I'm  
19 asking you. What I'm asking you is why from a public  
20 policy point of view -- what's wrong from a public  
21 policy point of view with a -- I'm not going to use the  
22 word "requirement" yet, but with a protocol, let us  
23 say, that after a closed session meeting, the contents  
24 of which the governing body deems it should remain  
25 closed, the preparation and publication of a set of

1 minutes that says, Pursuant to authorized resolution we  
2 had a closed session on last Thursday, and here is what  
3 we talked about. We talked about this litigation. We  
4 talked about that problem. What we said is  
5 confidential. Yours very truly. What's wrong with  
6 that?

7 MR. PERILLO: It is not legally required.

8 THE COURT: I know that, or at least I know  
9 that that is your position. My question to you is what  
10 is wrong with that?

11 MR. PERILLO: Well, it would require a  
12 clerk to do something beyond what the law requires.  
13 Could a clerk do that? Yes. Would that be  
14 substantively the same as what she did by sending the  
15 resolution? Yes.

16 So, you know, there's nothing wrong with  
17 it, other than there is this very fine distinction,  
18 which you don't want me to get into now between the  
19 attorney/client privilege and all the other exemptions.

20 THE COURT: I'm not into the issue, and I  
21 don't even think Mr. Paff is, with respect to  
22 attorney/client privilege. You have raised that.  
23 Nobody is arguing that. This isn't about a requirement  
24 -- I'm going to have Mr. Paff tell me in a minute, but  
25 I don't understand that I am being asked to force the

1 governing body here to disclose the substance of the  
2 discussions or who said what. That's not, I don't  
3 believe, before me.

4 MR. PERILLO: For example, Judge, if you  
5 had -- if a municipality adopted that as a policy the  
6 problem that would occur is, for example, in some cases  
7 people will meet with a Council at a closed session on  
8 matters of litigation or matters of attorney/client  
9 privilege and revealing who was present at that closed  
10 session could be damaging to the municipality's legal  
11 position. For example --

12 THE COURT: Who has talked about that? I'm  
13 not talking about that. I am talking about simply a  
14 minutes that says on the flip side exactly what the  
15 authorizing resolution says. The authorizing  
16 resolution authorized the governing body to go into  
17 closed session. I'm now talking about a minutes that  
18 says, Pursuant to that authorization we did go into  
19 closed session, and here are the three subjects we  
20 discussed: One, two, three, period. End of minutes.  
21 What's wrong with that?

22 What attorney/client privilege, what  
23 litigation privilege, what any privilege is compromised  
24 by that approach?

25 MR. PERILLO: Let me make sure I understand

1 Your Honor's question. In that scenario would the  
2 clerk also list who was present at the closed session?

3 THE COURT: Not if the listing of that was  
4 in any way restricted by any legitimate interest of the  
5 governing body.

6 MR. PERILLO: If this policy that we're  
7 talking about did not include listing who was there  
8 then there would be nothing wrong with it.

9 THE COURT: Okay. It only took me  
10 11 minutes to get to that.

11 Mr. Paff, the converse of that discussion  
12 you have just heard is even if I think, as it should be  
13 quite obvious to you that I do, even if I think that  
14 that's a good idea and ought to be Port Republic's  
15 policy where do you perceive in the statute I'm  
16 authorized to mandate that?

17 MR. PAFF: Two places, Your Honor. One is  
18 in the source of the requirement is 10:4-14, which  
19 requires the nonexempt portion -- it requires meeting  
20 minutes to be promptly available to the public to the  
21 extent that those minutes do not compromise some  
22 legitimate governmental objective. And the second  
23 place is 10:4-16, which allows the Court to issue  
24 prospective relief to insure future compliance by a  
25 public body with the requirements of the act.

1                   So my contention is that the production of  
2                   the meeting minutes in redacted form was not trumped,  
3                   and because of that, and because of there not being an  
4                   acknowledgment or any indication that Port Republic is  
5                   going to do things differently in the future that the  
6                   Court should issue an order telling them, declaring  
7                   what the law requires them to do regarding the release  
8                   of their closed session minutes and an injunction  
9                   requiring to follow that requirement.

10                   THE COURT:   Okay.   Okay.   Okay meaning I  
11                   hear you.

12                   All right.   Mr. Perillo, let me ask you to  
13                   address the issue basically in those terms because I  
14                   will tell you that -- let me take a look, for example,  
15                   at -- I'll get your precise exhibits here.   I'm looking  
16                   for the letter, which exhibit, is it, gentlemen, the  
17                   letter that was eventually sent?

18                   MR. PERILLO:   The November letter, Judge?

19                   THE COURT:   Yes.

20                   MR. PERILLO:   I know that was attached.

21                   MR. PAFF:   Exhibit 2 to my certification.  
22                   If you're looking for the November 5th, 2008 letter  
23                   from counsel to me that accompanied the executive  
24                   session minutes.

25                   THE COURT:   Here it is.

1                   Mr. Paff, just for future reference, it is  
2 much easier at least for me, I won't speak for my  
3 colleagues, to put tabs on exhibits. It is harder to  
4 find them when you don't.

5                   Here. The November 5th, 2008 letter from  
6 Mr. Perillo to Mr. Paff -- see, from my point of view,  
7 Mr. Perillo, this letter, forgetting about timing for  
8 the minute, this letter goes way beyond, and I'm not  
9 being critical, I'm being complimentary, but it goes  
10 way beyond what I'm even talking about requiring. The  
11 minutes that I'm talking about in concept would consist  
12 of the following: At the third paragraph first line,  
13 "the first matter discussed," and let's pretend I'm  
14 doing in this the term of minutes, "the first matter  
15 discussed was the land acquisition of the Roll property  
16 Block 37, Lot 7, Block 31, Lot 1," period.

17                   Then I would move to the next paragraph.  
18 "The second matter discussed involved the installation  
19 of South Jersey Gas lines."

20                   Then I would move to the first line of the  
21 next paragraph, "The final matter involves the Crown  
22 Castle cell tower proposed lease," period.

23                   Then I would go to the first sentence of  
24 the next paragraph, "No other matters were discussed at  
25 the closed sessions," period.

1                   By me that's good minutes for this purpose  
2                   at that time. And my question to you is why those  
3                   minutes, as I have just theoretically defined them,  
4                   shouldn't have been prepared and publicly available  
5                   within a week or two after the closed session. That's  
6                   all we're talking about. That's all I'm talking about  
7                   in any event. What's wrong with that?

8                   MR. PERILLO: Two things, Judge. First of  
9                   all, respectfully, it is not legally required. The  
10                  policy or the procedure that Your Honor has outlined on  
11                  the surface seems benign. But the problem, especially  
12                  with for small municipalities, is one of application.  
13                  The concern with the attorney/client privilege that's  
14                  evidenced in the Perth Amboy case that Mr. Paff was  
15                  involved in is that any disclosure could arguably  
16                  constitute a waiver of the privilege, and it is for  
17                  that reason the Appellate Division in that case  
18                  compared the attorney/client privilege to the personnel  
19                  exception, and at page 5 of their decision they  
20                  indicate, "that although the personnel exception allows  
21                  for a closed session meeting, the minutes of that  
22                  meeting must be available to the public." The  
23                  Appellate Division then goes on to say, "there is no  
24                  similar rationale for dealing with the attorney/client  
25                  exception. In fact, any disclosure of such privileged

1 information prior to the conclusion of litigation  
2 waives the privilege." And they go on to say that  
3 Mr. Paff contends to disagree with that and the  
4 Appellate Division disagreed with it.

5           So the danger with the distinction between  
6 the attorney/client privilege and all the other  
7 exceptions is a meaningful one. The argument could be  
8 made that the procedure that Your Honor has suggested  
9 doesn't run the risk of violating the attorney/client  
10 privilege because all your suggesting needs to be said  
11 is we had a closed session and this item was discussed,  
12 and it was covered by the attorney/client privilege.  
13 That is exactly what the resolutions were that Port  
14 Republic adopted going into closed session, say. And  
15 that's exactly the information that was given to  
16 Mr. Paff within the statutory period of time before he  
17 started his litigation.

18           THE COURT: No, it is not. That's where  
19 you and I differ. What Mr. Paff was given within the  
20 statutory period of time was the resolution that  
21 authorized the closed session. He was not given any  
22 official statement by anyone until your letter of  
23 November as to what the closed session discussed.

24           MR. PERILLO: Judge, he was given the  
25 resolution and a letter from the clerk saying that

1 there are no minutes because it was covered by the  
2 attorney/client privilege. He was given --

3 THE COURT: He was given nothing until your  
4 letter of November to indicate what the closed session  
5 discussed. I'm not talking about attorney/client  
6 privilege. I promise you I'm not going to require you  
7 to violate it. I'm not talking about litigation  
8 privilege. I understand those concepts. I'm going to  
9 go nowhere near that.

10 MR. PERILLO: There are motions, which are  
11 attached to our May 26th submission. For example, the  
12 resolution going into closed session on January 29th,  
13 2007, "the matter discussed was the Crown Castle Tower  
14 proposed lease." That is, I think, almost the same as  
15 what Your Honor suggested was in my letter and should  
16 have been communicated by the clerk to Mr. Paff.

17 THE COURT: What are you talking about?  
18 What document?

19 MR. PERILLO: I'm talking about the  
20 resolution that was adopted by the City Council going  
21 into closed session.

22 THE COURT: Yes. I know that resolution  
23 going into closed session. What I don't have is  
24 anything that confirms that when they went into closed  
25 session they discussed what the resolution authorized

1       them to discuss. That's all I'm talking about.

2                   MR. PERILLO: Judge, if you look at the  
3 resolution and then you look at the next exhibit, which  
4 is the clerk's letter, she indicates that she is  
5 sending him the resolution and not sending the minutes  
6 because the discussion in closed session was covered by  
7 the attorney/client privilege.

8                   THE COURT: She doesn't indicate what was  
9 discussed in the closed session ever until your letter.

10                   MR. PERILLO: Judge, it says, "the Crown  
11 Castle Tower proposed lease."

12                   THE COURT: Not in her letter.  
13 Mr. Perillo, I don't know whether it is just somebody  
14 in a very good movie once said a failure to communicate  
15 or not. I'm not succeeding with my command of the  
16 English language here. I know what the town authorized  
17 the closed session to discuss. I know what they did.  
18 So does Paff. I also know in November what it was  
19 substantively that they did discuss, and that's fine.  
20 That's not the issue before me, and attorney/client  
21 privilege is not the issue before me, and litigation  
22 privilege is not the issue before me. None of that is  
23 the issue before me.

24                   MR. PERILLO: Judge, when I look at my  
25 November 5th, 2008 letter on page 2 the sentence that

1 you say should have been communicated to Mr. Paff is  
2 the final matter involved, the Crown Castle cell tower  
3 proposed lease. That's exactly what's in the  
4 resolution.

5 THE COURT: It is not in a confirmation  
6 that the statute requires after the meeting that that's  
7 what they discussed. All that you have given him is  
8 what the resolution authorized the governing body to  
9 discuss in closed session. There's nothing before your  
10 letter that indicates what it was they did discuss in  
11 closed session.

12 MR. PERILLO: Judge, I don't want to be --  
13 I don't want to beat a dead horse, but the clerk sends  
14 him a letter --

15 THE COURT: All that letter had to say --  
16 all that letter had to say, as far as I'm concerned  
17 when she sent it to him was, there are no minutes at  
18 the session, the closed session. The governing body  
19 discussed exactly these subjects that were authorized  
20 in the resolution. That's all it had to say. That's  
21 all it had to say.

22 MR. PERILLO: But, Judge, substantively  
23 that's what she said.

24 THE COURT: It is not what she said. She  
25 said there are no minutes, I'm not going to tell you

1 what they discussed.

2 MR. PERILLO: No, she said, "I am denying  
3 your request for executive session minutes in relation  
4 to the resolutions. All subjects discussed are exempt  
5 due to litigation and attorney/client privilege."

6 THE COURT: And what subjects were they,  
7 Mr. Perillo, from her letter?

8 MR. PERILLO: When you take the resolutions  
9 that she enclosed with her letter, the resolution for  
10 January 29th indicates the subject of the Crown Castle  
11 Tower proposed lease.

12 THE COURT: Which one of us is Abbott and  
13 which one is Costello?

14 MR. PERILLO: Hopefully neither.

15 THE COURT: Did you ever see that?

16 MR. PERILLO: Yes, I'm old enough to  
17 remember Abbott and Costello, Judge.

18 THE COURT: Did you ever see the bit?  
19 Who's on First? That's what this is. That's exactly  
20 what this is. Who's on first.

21 Okay. What else do you need me to know,  
22 Mr. Perillo?

23 MR. PERILLO: Judge, Mr. Paff is seeking  
24 injunctive relief, which given, the factual pattern  
25 that we're dealing with in this case, we have got a

1 municipality, albeit a very small municipality, that  
2 goes into closed session. Some of the municipal  
3 defendants in this case adopts the resolution to go  
4 into closed session. There's no dispute that the  
5 resolution that they adopt completely complies with  
6 law. Mr. Paff then sends in a request for the minutes  
7 of the closed session. Some of the municipal  
8 defendants in this case, he receives the timely  
9 response from the clerk. We have talked at length  
10 about what that response was. He then starts a  
11 lawsuit, and in an attempt to try to eliminate the  
12 lawsuit or settle the lawsuit when the lawsuit is  
13 started I promptly send him the November letter, which  
14 I think mimics basically what the clerk had told him in  
15 response to his request. Your Honor thinks it went a  
16 little bit further. And that's where we are.

17                   Given that factual scenario where there  
18 are -- there's nothing close to any other allegation of  
19 any violation of the Open Public Meetings Act or the  
20 Open Public Records Act the issuance of injunctive  
21 relief based upon that factual pattern would appear to  
22 give a message that Port Republic has done something  
23 wrong enough for the Court to take what I submit is a  
24 somewhat unusual step in terms of issuing injunctive  
25 relief going further. So if there was a deviation from

1     what Your Honor thinks the procedure was that should  
2     have been followed certainly a decision to that effect  
3     their message to Port Republic and Port Republic, I'm  
4     sure, will have no difficult complying with Your  
5     Honor's ruling, but the issuance of an injunction based  
6     upon this factual record I would submit would go quite  
7     further than we should go.

8                     THE COURT: Well, that to be honest with  
9     you, Mr. Perillo, is exactly what I was trying to  
10    invite by my discussion in the beginning. I'm not  
11    looking to be the ultimate authority for how to run  
12    municipal government. But what I was fishing for and  
13    didn't get and still haven't gotten is Port Republic's  
14    view that, well, Judge, we don't think it is required  
15    under the statute, but we can't imagine any reason why  
16    it is not a good idea, and, therefore, we'll do it  
17    voluntarily. I didn't get that.

18                    MR. PERILLO: Well, I would be happy to  
19    give that to you, Judge. I'm the attorney. I'm not  
20    the --

21                    THE COURT: I understand.

22                    MR. PERILLO: I'm not the city. But I  
23    would be certainly happy to indicate to Your Honor that  
24    I would recommend that to the city. You know, for all  
25    the reasons I indicated I think the clerk substantially

1 did that, but I would make it clear, as Your Honor has  
2 suggested.

3 THE COURT: I just don't know where that  
4 leaves me this morning. Mr. Paff is entitled to a  
5 ruling. And, as I have indicated, I don't think this  
6 is a tough call from a policy point of view. The only  
7 difficult issue I have as far as I'm concerned is  
8 whether the statute commands the result.

9 Whether -- the question of whether the  
10 result I have described is the right one is to me is a  
11 no-brainer. And, as I have said, there's no work  
12 involved. All she had to do when she wrote the letter  
13 was to say at the closed session they discussed exactly  
14 the subjects that were authorized in the resolution,  
15 which is all your letter eventually said, and that's  
16 all I'm talking about. I'm not talking about  
17 disclosing anything of a confidential nature, whether  
18 it is attorney/client or litigation privilege or  
19 anything else, just the subject matters that were  
20 discussed. That's all I believe that the statute gives  
21 Paff and people like him a right to, and, yet, on the  
22 other hand, if, indeed, as he says, and, frankly, as  
23 I'm inclined to agree, if the statute requires it, then  
24 it requires it.

25 But I, for the life of me, can't figure out

1       why it has taken all of this paper and all of these  
2       trees and all of this time to get this narrow an issue  
3       before somebody like me.

4                   MR. PAFF:  May I respond or participate?

5                   THE COURT:  Sure.

6                   MR. PAFF:  I just wanted to clarify a few  
7       things.  I'm not -- I just wanted to state I don't  
8       agree with Your Honor's statement that all that's  
9       required is a letter from the clerk identifying what  
10      topics were discussed.  What I believe I'm entitled to  
11      is a redacted -- perhaps heavily redacted copy of the  
12      actual minutes.  The minutes are valuable to me, and  
13      because --

14                  THE COURT:  It doesn't matter why they're  
15      valuable to you.  If the statute requires them, you  
16      need have no reason.  If the statute doesn't require  
17      them, all your reasons aren't good enough.

18                  MR. PAFF:  I believe the statute requires  
19      it.  But there's policy reasons that I can go into.

20                  THE COURT:  I'm not interested in that.  
21      I'm interested only in whether the statute requires it.

22                  MR. PAFF:  Okay.

23                  THE COURT:  And I agree, I mean, I was  
24      using shorthand when I said that she could put it in a  
25      letter.  Of course it needs to be in the form of

1 minutes if it is going to be required. But all I'm  
2 talking about is how insignificant and inconsequential  
3 the disclosure that is appearing to be at issue before  
4 me is. All it needs to say is we met, we talked about  
5 the issues, the subjects that were authorized in the  
6 resolution, end of minutes. It is a two-sentence  
7 minutes.

8 Okay.

9 MR. PERILLO: Your Honor, the redacted  
10 portion -- the unredacted portion would be two  
11 sentences. There should be large gaps of substantive  
12 text that's been redacted, so to me it isn't the  
13 minutes themselves were only two sentences long.  
14 There's maybe here is who was present, here is the  
15 topic that was discussed, and then Mr. Lawyer said,  
16 followed by 25 lines of black text, and then after that  
17 is meeting adjourned. That's what I would envision the  
18 minutes to look like.

19 THE COURT: Not I. That's what the minutes  
20 would look like when the issues are completed and the  
21 substantive content of the discussions is available for  
22 public view. In which case they don't need to be  
23 redacted.

24 MR. PAFF: I'm saying redacted text. The  
25 minutes are a contemporaneous record of what happened

1 at the meeting. The minutes shouldn't be amended, I  
2 mean, absent.

3 THE COURT: I don't have -- I understand  
4 your position, Mr. Paff, but that's not -- I'm not sure  
5 I agree with it. I'm not sure I disagree with it. But  
6 in any event, it isn't before me today, and I'm not  
7 going to rule on it today. I know what you're saying.  
8 I'm not sure you're right, but I don't have to decide  
9 that at this point. All I have to decide at this point  
10 is whether the statute requires within a period of time  
11 after somebody demands it a set of minutes that  
12 complies with the law, and whether that's the same set  
13 of minutes that will eventually be produced in an  
14 unredacted form or whether it is an expedited and  
15 sketchy set of minutes or whatever is not a subject  
16 that I need to discuss today. All I will do today is  
17 to determine that within the statutory period of a  
18 demand in response to a demand the municipalities must  
19 disclose the nonprotected portions of the minutes of  
20 the nonpublic meeting.

21 Now, whether the city chooses to prepare a  
22 fully -- a full set of those minutes and produce a  
23 redacted version, or as Mr. Paff says, they must, or,  
24 rather, whether the city chooses to prepare and to  
25 provide a set of minutes that identifies only the

1 subject matters that was -- that were discussed in  
2 either event I am being very careful to protect the  
3 municipality's interests in the confidentiality of any  
4 lawyer/client communications or of any substantive  
5 discussions about the substance of the case that is  
6 protected from public disclosure at that point or even,  
7 if appropriate, the identity of those there, other than  
8 the members of the governing body. But within those  
9 limits, as I have indicated, I believe that the statute  
10 requires in response to a demand a set of minutes that  
11 identifies the subject matters that were discussed at  
12 the least. And that is the requirement that I shall  
13 order granting the plaintiff's motion for summary  
14 judgment and denying the defendant's.

15 Gentlemen, thank you very much.

16 MR. PAFF: Judge, can you rule on the issue  
17 of costs?

18 THE COURT: Well, obviously, in that  
19 circumstance costs will abide the event, which under  
20 the statute means an appropriate award of costs is --  
21 will be approved.

22 MR. PAFF: Do I need to submit another form  
23 of order, or is the form of order that I submitted --

24 THE COURT: The form of order that you  
25 submitted is okay on the motion. As far as costs are

1 concerned, you'll discuss it and agree or you won't.  
2 If you don't, you can make the appropriate subsequent  
3 motion.

4 MR. PERILLO: Judge, before we get off the  
5 phone, Mr. Paff's motion asks for a much more expansive  
6 ruling from the Court than Your Honor has just given.

7 THE COURT: I don't think so. I just read  
8 his language, and it seems to me I'm saying what he  
9 said. Publicly disclosed draft versions of City  
10 Council's nonpublic minute -- meeting minutes redacted  
11 as lawfully allowed.

12 So you can take out whatever the law allows  
13 you to, and if that means, as far as you're concerned,  
14 the kind of minutes I have just described as far as  
15 today is concerned, so be it.

16 As I said, I view this issue from where I  
17 sit differently from where each of you does. I think  
18 it is a much smaller, more narrow issue that could and  
19 should not trouble anybody.

20 MR. PERILLO: I guess that was my point,  
21 Judge. If Mr. Paff -- even though his order is what  
22 Your Honor indicated, certainly his application, his  
23 brief, his argument, went well beyond that.

24 THE COURT: I understand that, but my  
25 ruling goes where it goes. I am not -- for the third

1 time I will indicate I am not ruling today, because I  
2 don't have to, on the facts of this record, I don't  
3 have to rule on whether the kind of minutes I'm talking  
4 about as opposed to the kind of minutes he is talking  
5 about suffices. All I'm saying is that on this record  
6 it does because on this record there is no -- there is  
7 no legally enforceable interest in the kind of minute  
8 preparation that he is talking about. It may be on a  
9 different record there would be, but not on this  
10 record.

11 MR. PERILLO: Okay.

12 THE COURT: Thank you very much.

13 MR. PERILLO: Thank you.

14 (End of proceedings.)

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## C E R T I F I C A T I O N

I, REGINA A. BERENATO-TELL, C.C.R., R.M.R, C.R.R.,  
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