

**MINUTES OF THE PUBLIC FORUM
PRESENTED BY THE
COMMITTEE ON OPEN GOVERNMENT
HELD ON APRIL 29, 2014**

Presenter: Robert Freeman, Executive Director, Committee on Open Government, New York State Department of State,

Recording Secretary: Colleen Teal, Town Clerk

Present: Chuck Geraldi, Councilmember
Matthew Larabee, Councilmember
Dan Evans, Councilmember
Cynthia Creech, Deputy Court/Assessor's Clerk
Tistrya Houghtling, Court Clerk
Trina Porte, Planning Board Member
Robert Smith, Planning Board/Ethics Board Member
Scott Larabee, Buildings Maintenance/Recreation Commission Chair
Matthew Meier, Reporter for *The Columbia Paper*
Katie Kocijanski, Reporter for *The Chatham Courier*
Several members of the public

COMMITTEE ON OPEN GOVERNMENT:

Robert Freeman, Executive Director of the Committee on Open Government, New York State Department of State, spoke on New York State open government laws including Open Meetings Law and Freedom of Information Law.

Mr. Freeman thanked everyone for coming and thanked Tistrya Houghtling for making this happen; and thanked the Town Board members and the Town Clerk for attending. He stated he has been communicating with the Town Clerk for an awful long time and asked when she became Town Clerk. She responded, in 2002.

Mr. Freeman stated that he works for a very small government agency called the Committee on Open Government; it is part of the Department of State. When he says very small, the staff is two of them at full strength. They are the smallest state agency that actually does anything; he will leave the rest to our imagination. He has what he has considered forever to be the best job in state government; all they do all day every day is offer advice and opinions to anybody who has a question about what is public and what is not. Primarily in relations to two laws: our Freedom of Information Law, many of you know it as FOIL, and the Open Meetings Law. And when he suggests that they give advice to anybody, he means exactly that. They take lots of questions from especially people from local government; they get more calls from local government people than any other group. They also hear from state agencies, members of the public, members of the news media; it does not matter. Their only goal is to give what they believe to be the right answer under the law regardless of the source of the question. So they are not there to support the government. They are there to do the right thing and he is not suggesting that they are mutually exclusive. He asked if any of the audience one has ever visited their website and a couple people acknowledged that they had. They are easy to find; they are the only Committee on Open Government in the world. If someone just googles "COOG," they will get there. And they have a ton of information that is available at your fingertips: the text of

the laws, frequently asked questions, procedural rules and regulations. They have a news page that describes developments in judicial decisions as well as case law as well as legislation. Most important for so many people, they write advisory opinions. And he is not going to mislead us; they are advisory. If we read an opinion that we do not like, we can throw it away and say Freeman doesn't know what in the hell he is talking about; that is your choice. The hope of course is that the opinions are educational, persuasive, and that they encourage knowledge of and compliance with law. And for what it is worth, where the courts have reviewed their opinions, they have agreed between 85 and 90 percent of the time. So the track record is pretty good. This will sound ridiculous; over the course of years, they have written in the neighborhood of 25,000 opinions. They are indexed by key phrase. So if someone has a question about court records, you click on the "c", scroll to court records, and the opinions of significance written in the past twenty years are available online in full text. So, if someone has a question and they cannot sleep, they are obsessed, do not call then; do not call him; we can call him during business hours anytime. They will always return the call. But, you probably can find your answer on the website. But certainly anybody can pick up the phone; anybody can send him an email communication; and they will always respond. They are small but they get back to someone quickly and generally speaking, *generally speaking*, they can respond to questions on the spot. For what it is worth, this was in the Times Union; he just passed forty years with state government which tells us that he is either crazy or very old – either, both! He has had the same phone number since 1974; which means either it is a pretty good job or he is in the biggest rut every created. He would like to think that it is the former. And the truth is he does not really have a boss. Nobody tells him where to go (so to speak); nobody tells him what to say or what to write. It is an independent agency and he can pick up the phone simply because it rings. It does not matter who is at the other end. It doesn't matter who is at the other end, it could be the Governor's Office or the New York Times or any of us. Again, all they try to do is give the right answer under the law. What he hopes we leave with tonight is the general idea that the laws that we are talking about are based primarily on commonsense and reasonableness. All these laws really say, all they should ever say in his opinion, is that everything is open except to the extent that disclosure would hurt significantly; either somebody in terms of an invasion of privacy, the government in terms of its ability to do its job well on behalf of the public or on occasion, a private company, vis-à-vis its competition. So the real question is: what would happen if we had to disclose this record; what would happen if we had to discuss this issue in public and unless the answer is, in the gut is ouch, this would really hurt, disclosure – disclosure generally should be the outcome. Obviously, that is an over simplification but that is the thrust of open government laws in New York. He has to suggest to people all the time, especially government people – embarrassment is not one of the grounds for withholding records. It is not one of the grounds for entering into a so-called executive session. We look at the law before we withhold; we look at the law before we close the doors. Now, he noted he is here for us. He could talk about this stuff from now until doomsday if we let him but if we do; we will miss the issues that are really important and troubling to us. So, he invited us to fire away at any time...any questions.

Mr. Freeman stated that we should also know that there is a federal freedom of information act that applies to federal agencies. Every state has its own version of an access to records law as well as an open meetings law. And today, depending on who is doing the counting, there are about ninety nations that have passed access to information laws of one sort or

another. In fact, he told us he had said he has a great job. For years, there were only three of them in this country who did pretty much what he does: one guy from Connecticut, another one from Minnesota, and him. And the guy from Minnesota was afraid to fly so that meant that Mitch from Connecticut and he have had the amazing good fortune as state government employees to share literally all over the world including China, Japan, Eastern Europe, South America, and Mexico. He stated it has been really kind of an amazing career in state government, having the ability to meet people from all walks of life, to pick up the phone and have no idea what the question is going to be, that is what keeps him going. He stated that he would hear questions from us tonight that he has never heard before.

Question & Answer Session:

Trina Porte: I would like to ask everyone else here; I wrote a preamble about what I thought the issues on which I based my questions are. It is three paragraphs so do people want to hear that or should I just...

Robert Freeman: I think you should summarize.

Trina Porte: Okay, I will do the last paragraph which just talks about specifically our Town Supervisor.

Robert Freeman: Who is not here, right?

Several responses: yes.

Robert Freeman: Okay.

Trina Porte: The first part just talks about... well, I am sorry, I need to read a little bit of this, I apologize. The OML law change, which is the February 2012 change, it says...

Robert Freeman: I know what it says; I will tell people about it.

Trina Porte: has to be shared with the public. It states that information must be made available to the public whenever possible unless officials don't have it sooner than thirty minutes before meetings...

Robert Freeman: Not really what it says but keep going.

Trina Porte: So for a town official to intentionally hold on to information until just before a public meeting in order to shield it from being made available to the public is clearly... seems like it is clearly a violation of the intent of this exception to the OML. If the official has had time to read it, discuss it with the town attorney, add it to a public meeting...

Robert Freeman: Is the town attorney here?

Several responses: no.

Robert Freeman: Why does it have to be discussed with the town attorney?

Trina Porte: I am just saying that...

Robert Freeman: That's the way it is.

Trina Porte: Well, our Supervisor – I will just cut to the chase and stop...

Robert Freeman: Cut to the chase.

Trina Porte: Our Supervisor creates the agendas for our town board meetings; he has information in paper copies and on his laptop. He has given copies to our town attorney and he has discussed it with our town attorney prior to the meeting but he is not making it available to the public prior to the meeting.

Robert Freeman: Do you guys get it (to the Town Board members present)? You do not get it either, as Town Board members? Why not?

Trina Porte: They do not even get it during the meeting.

Robert Freeman: Alright, let's talk about this.

Trina Porte: So can I ask my questions?

Robert Freeman: Go ahead.

Trina Porte: How can we compel our Supervisor and all the town officials to comply with that law and share the information they are required to? Does this apply to other town officials about meeting agendas being posted, etcetera? How can our Town Clerk follow that and also what can our Town Clerk do if town officials and website maintenance people are not complying with the law and therefore she can't follow it if she doesn't have the information?

Robert Freeman: Hmm. Lots of questions. Let me give you some background, if I may. First of all, the Open Meetings Law applies to so called "public bodies" so it pertains in a town like this to the Town Board, the Board of Education down the road, the Planning Board, the Zoning Board of Appeals if you have one, any group of government people who are elected or appointed pursuant to law consisting of two or more members that carry out some sort of governmental function collectively as a body would constitute a public body covered by the Open Meetings Law. For obvious reasons the law applies to meetings but again to give you some perspective, questions arise to this day, they arose on day one, what is a meeting? It was contended initially by many that if a board got together simply to talk with no intent to take action, that it wasn't really a meeting. Often those kinds of gatherings were characterized as workshops or work sessions or agenda sessions, something like that. The issue went to the state's highest court within a year and a half after the Open Meetings Law went into effect and the Court of Appeals agreed with us and very simply since that time, it is clear that any time a quorum, a gathering of a majority of the total membership of whatever the board might be gets together for the purpose of conducting public business, even if there is no intent to take action, regardless of what the gathering is called, yes, that is a meeting covered by the Open Meetings Law.

Chuck Geraldi, Councilmember: Can I interrupt just for a second.

Robert Freeman: You may.

Chuck Geraldi, Councilmember: This meeting here...

Robert Freeman: I am glad you asked. You know when I do something like this there is always sort of a wise-guy who says, you know, here we are; I am in the room with two other Town Board members. We are a majority; are we in violation of the Open Meeting Law. The answer is clearly no. Why? Nobody would walk in here and say this looks like and smells like and tastes like a meeting of the Town Board. You are simply three people within a larger audience. Now, if you were sitting in the front of the room and you were functioning as the board, the answer would be different. But it is a question that comes up all the time. It is a good one. Every meeting has to be preceded by notice of the time and place; if a meeting is scheduled at least a week in advance, the law requires that notice of the time and place be given, and I emphasize given, to the news media. It must be posted in one or more designated public locations and, whenever possible, it is supposed to be given on the website as well. I emphasize the word given for a reason. The Open Meetings Law specifies that the notice given under that law is not a legal notice. You never have to pay to place a notice on a meeting under the Open Meetings Law. If you give notice to either of the representatives of the news media here, they can choose to print it; but you don't have to that is up to them. So there are any numbers of situations where notice is given to the news media, people don't read about it. It is not necessarily the fault of the governmental entity. Again, if a meeting is scheduled at least a week in advance, the notice must be given not less than 72 hours prior to the meeting. If it is scheduled less than a week in advance, the law says that notice has to be given at a reasonable time prior to the meeting. So you do what makes sense under the circumstances if a meeting is called on short notice.

You mentioned the word agenda. It is kind of a mythical word in New York because the Open Meetings Law says nothing about agendas. The law doesn't require that there be an agenda. If the board wants to have one, great; if it doesn't want to have one, so be it. If the board wants to have one and follow it to the letter, super, but it doesn't have to follow it at all. So an agenda is one of those things that frequently is posted or given, if you will, with notice but there is no obligation to do so. There is no obligation to do so.

Now, the provision of law that was mentioned a moment ago is the result of any number of complaints that we got over the course of the years from people like you. You would sit here in the second row and the board is at the front of the room referring to page 2, second paragraph, and you have no idea what they are talking about. People would attend, people wanted to know what was going on, and often it was really hard to follow. So we, the Committee on Open Government, we submit a report to the Governor and the Legislature every year. We make recommendations. We made recommendations for years and generally speaking, the state legislature ignored us. Then all of a sudden in 2011, the bill passed and it went into effect on Ground Hog Day 2012. I don't know whether that is symbolic or not but in any case, it deals with records *scheduled* to be discussed during an open meeting. Not every record that might be referenced at an open meeting but rather those that are scheduled to be discussed during an open meeting. Those records that are available under FOIL or that consist of a proposed resolution, policy, local law, something like that is

supposed to be made available, the law says, to the extent practicable prior to the meeting, online and/or in response to a FOIL request.

Cynthia Creech: Every month at the Town Board meeting, there is a Supervisor's Financial Report...

Robert Freeman: Is that scheduled to be discussed in public?

Multiple responses: Yes.

Robert Freeman: Well, if it is, it is one of those things that clearly is available under FOIL because it consists of numbers. It would be public; it would be available under FOIL. It is one of those items which to comply with this new provision should be posted online in advance if you can.

Jagat Pandy: We are using an agenda but what if we used, for your purpose, information?

Robert Freeman: It doesn't matter. Let me give you a little bit more information about information.

Colleen Teal, Town Clerk: If they are publishing an agenda and saying that these are the items we are going to discuss wouldn't that...

Jagat Pandy: What is the time limit on this?

Robert Freeman: There is no particular time limit because we don't know necessarily when a record scheduled to be discussed will be created. And one of the great difficulties that I hear from Town Clerks is what if somebody hands me the record a half an hour before the meeting. Let me ask you this, I sense a degree of difficulty involving the Supervisor. When do you think he prepares this stuff?

Trina Porte: It depends on the item. Some of the things he has months in advance...

Robert Freeman: Well if they are months in advance and we know that they are going to be discussed at an upcoming meeting that is the kind of material that should ordinarily be posted online in advance and/or made available in response to a FOIL request.

Trina Porte: Then how can we get him to do so?

Robert Freeman: Has he been educated with respect to this issue?

Trina Porte: He knows that this is; yes, he knows that this is the law.

Robert Freeman: Are you familiar with the entries on our website that deal with this issue.

Trina Porte: When you and I email corresponded last fall, I asked you if I could send an excerpt from the ... and you read it and I have a copy ... and I sent it.

Robert Freeman: And he doesn't care?

Trina Porte: No.

Colleen Teal, Town Clerk: Can I ask for clarification on one of

Robert Freeman: You may; you may ask for clarification on anything.

Colleen Teal, Town Clerk: I know a lot of documents ... my understanding is that the work in progress, so a draft...

Robert Freeman: Stop, stop, stop. FOIL in New York is a little bit different from other access laws around the country and around the world. It has defined what a government agency record is since 1978. When we were drafting what amounts to the essence of the current Freedom of Information Law in 1977; we tried to correct what we thought were the deficiencies in the federal act. And one of the deficiencies that exists to this day is the federal act doesn't tell us what a federal agency record is. To this day there are issues that sort of percolate through the federal courts which involve who prepared it, where did it come from, what is its function. All of those issues were resolved here by 1978. And think about 1978. High tech was an electric typewriter. We used carbon paper to make copies. There was no such thing as email; there was no such thing as the internet. How do you have a phone without a cord? Science-fiction. But we got lucky and since 1978, FOIL has defined the term record expansively to mean any information in any physical form whatsoever kept, held, filed, produced or reproduced by, with or for a government agency. So a draft is a record. Its content, as in every other situation, is the key factor in determining what is public and what is not. If a draft involves the budget and it is filled with figures, statistics, facts, projections, estimates in the form of numbers, they were all found to be available under FOIL by the late 1970s. So if that is the kind of record we are talking about, even though it may be a draft, if it is scheduled to be discussed in public; yes it is supposed to be made available in advance to the extent that you can.

Colleen Teal, Town Clerk: So anything that would be available once it is completed...

Robert Freeman: Not completed, no...

Colleen Teal, Town Clerk: What I am saying is, anything that would naturally be ... take a budget, it is definitely a public document...

Robert Freeman: Yes, but you have a tentative budget, under Town Law, a preliminary budget, and you have the final budget; they are all public.

Colleen Teal, Town Clerk: Yes, but you are saying sometimes it is the content so one easy way is that if the end result is public, then every step along the way...

Robert Freeman: Oh but the idea behind this provision is to give the public an idea of what the board is discussing.

Colleen Teal, Town Clerk: Because I know with the budget, the whole budget process, from the time of the submissions of our requests right down to the final, is kept and that is all public - every draft form of it.

Robert Freeman: It should be; it should be. And when you can, again, it is supposed to be made available online in advance or, again, in response to a FOIL request.

Tistrya Houghtling: So one issue that I see is a lot of the information that by law should be filed in her office and I should be able to FOIL her office for, our Supervisor is keeping private...

Robert Freeman: Stop, stop, stop. I am going to suggest, if Colleen has not done this already, to assert herself.

Colleen Teal, Town Clerk: I have.

Robert Freeman: I know you do. What I am thinking about are provisions of law...you were not at the Town Clerk's Conference that is going on now. The first thing that I said, I spoke yesterday at the annual meeting of the Association of Town Clerks – 350 Town Clerks in the room – and before I started, clerks came up to me and they said, the Supervisor is doing this and he won't let me do that. So the first thing I said was well, you want to look at *the law*. In the case of the Town Clerk usually it is Section 30 of the Town Law. Section 30 says that the Town Clerk is the custodian of all Town records whether they are kept in her office, or the Supervisor's office, or the Highway Garage; it doesn't matter, technically they are hers. She is also, by law, the so called Records Management Officer. That means that she has responsibilities that deal with retention and disposal of records. So she has a variety of responsibilities that are statutory and one of the points that I have said so many times, I said it the other day, if the Town Supervisor wants to have control over the records, if the Town Supervisor wants to ensure that the minutes are the way he wants them, he should run for Town Clerk and when he wins, fine. But until that occurs, it is not his role; it is not his role. The other point to make and this is for some of you in the room, the Supervisor doesn't make the rules; the Town Board makes the rules by majority vote. If you don't like what the Town Supervisor is doing and you feel that some other procedure or policy should go into effect, you know, if you have three (3) votes, you out vote him; you out vote him. So he is not the emperor. The Town Board makes the rules.

Trina Porte: So since there are a couple of Town Board members, three Town Board members, present in this room, I am going to ask you based on what Mr. Freeman has just said to please, if our supervisor...

Robert Freeman: I didn't expect you to be put on the spot.

Trina Porte: I am asking you as well, this is also a question, can they, if he says, if our supervisor is trying to push through a piece of legislation that he has not shared information on, are they within their rights to say we need to table this motion because we have not seen the information...

Robert Freeman: Of course, of course.

Trina Porte: and therefore, I am asking you gentlemen to please do so.

Robert Freeman: Well, what I would do is try to pass another resolution that says that any information that is to be discussed in an open meeting shall be equally available to every Town Board member.

Colleen Teal, Town Clerk: We have one that said basically... the process was going very well. When I first started, the Board Members would get a stack material twenty (20) minutes before the meeting. And I asked, how do you act on this? So the process changed where everything came through my office, the official copy was filed there, copies were sent to every Board member the moment it came through my door. I would also compile, for the meeting, a second copy because many of them would forget to bring them to the meeting. But stuff was given sufficient time to... and the rule was, if it did not come in a week prior to the agenda – or a week prior to the meeting, it would not be on that month's agenda. It would wait until the following. And that is actually on our website still. That has come apart; actually to the point where ... what I have done is reached out to state in various situations... they have replied to me that as long as I put my requests to him out there in writing that I need this document by law, I am covered. I cannot force him to give it to me.

Robert Freeman: You know, if push came to shove, it seems to me that he could be forced to give it to you.

Trina Porte and Judy Zimmer: How?

Robert Freeman: How.

Trina Porte: He does it....

Judy Zimmer: Who enforces these laws?

Robert Freeman: Who enforces them? For better or for worse, all of you do. All of you do and I hate to suggest that you should go to court for everything but it seems to me that he can be, let's say informed of the nature of the law; he can be informed that the court could say, these are not your records, they are her records. This is not for you to decide, this is for the Board to decide. And of course the other thing, you have an election coming up in November?

Multiple responses: No.

Robert Freeman: You know, I have to say to people all the time, you don't like the way so and so is functioning as a government official, you vote the rascals out; that is what we do. That is what we are supposed to do anyway.

Denise Church, Petersburg Board Member: I am from Petersburg; I am not from New Lebanon. But I saw in the paper and I wanted to come to learn about these issues. Thank

you for having this. So we do exactly what you were saying. I am actually a Town Councilmember, a Town Board member – Denise Church. That is what we do; we get our documents a week before the meeting – the Board members. And then we have them on the desk when we come in for the meeting. We do not, however, pass out to the audience what we get- our piles. They get the agenda and that is it. Some of it is posted on our website. But I think, I forget who said it, but if the Board members do not like the way the Supervisor ... I could see myself saying we are not going to discuss this tonight because we don't have any documentation. And you just have to stay strong. And if you, the board members, don't have documentation, you don't discuss it, end of story, if there is documentation.

Robert Freeman: She's tough.

Tistrya Houghtling: Not only not vote on it, not even discuss it.

Robert Freeman: You have to be strong; you have to be wise.

Denise Church: You are an elected representative of your Town; you cannot let him do things that are illegal.

Robert Freeman: I have to say this all the time, the Supervisor is one out of five; he is one out of five. He does not rule.

Denise Church: We are lucky, our Supervisor would not do that ... [overtalking]... and I don't blame him for that because he does not want to give wrong information.

Colleen Teal, Town Clerk: Can I ask you to clarify one other thing?

Robert Freeman: You can ask ten more things.

Colleen Teal, Town Clerk: Personnel, in public office...

Robert Freeman: Yeah.

Colleen Teal, Town Clerk: Personnel policies, that is all public.

Robert Freeman: It sure is; it sure is.

Colleen Teal, Town Clerk: Our current Supervisor has a private business and I think doesn't understand the difference; it is substantial.

Robert Freeman: I hope everybody knows that people in government have less privacy than anybody else. We are supposed to be more accountable than anybody else. You are stuck with us; until the next election; until budget cuts; until, in my case, retirement or death whichever comes first. As I have said, I have been eligible for both for a long time but...

Colleen Teal, Town Clerk: I think, for the most part, very very little is not public.

Robert Freeman: The law is clearly based upon a presumption of access. Certainly there are some items that may be withheld either in whole or in part but most of what we do in government is public.

Trina Porte: I did pursue an Article 78 action for a particular issue last year and was told that it would cost \$15,000 at a minimum; so I am asking, do we have any recourse other than Article 78 or are we reliant upon our Town Board members to insure that due diligence occurs because

Robert Freeman: I will tell you what I suggest all the time. First of all, yes, you know your Town Board members I think should act to the extent that they possibly can in a way that makes sense. And again, the Supervisor is one out of five. Second, for what it is worth, and I am not suggesting that you go to court, but today ... I used to say that the Open Meetings Law has baby teeth; they have grown just a bit. If a board deliberates in private and those discussions should have occurred in public, and the court sees it that way, a court *must* award attorney's fees to John or Jane Q. Public. Second, let's say that those significant deliberations that occurred in private that should have occurred in public were followed by some sort of action taken. A court can invalidate the action taken. A court now also, some consider this to be the worst penalty of all, can order a board to take training given by...yeah, me. And that has actually occurred on a couple of occasions. One school board said oh, we will come to Albany and I said oh no, we are doing this on your home turf where anybody can be there, anybody can ask questions. The news media can be there with their pads or their cameras or their laptops or whatever they want and it was an educational kind of function. The other thing that I suggest all the time, all the time, do you remember what Judge Louis Brandeis said 101 years ago, *sunlight is the best disinfectant*. I really believe that to be so. I think you tell the world. And you see these two people sitting in the front of the room, they are here to tell the world; they are here to be used. They are here to be used. And I hope that they will tell you that if they call me, I am 'on the record' all the time. And I really don't care...

Matthew Meier, Reporter for *The Columbia Paper*: He really is.

Robert Freeman: ...who I embarrass; I don't care who I embarrass. All I try to do, as I said before, is give the right answers under the law. And if a person in government or an entity is not complying with law, I have no hesitation about saying that. And what do they do; they tell the world. And the more that the world knows, the better things become. Either good things begin to happen or bad things stop happening. I tell people all the time that I am here to be used, so are they, so are they. You are here to be used (to the press). I am not saying that in a pejorative way but you are there to tell the world what is going on in an objective way.

Judy Zimmer: I have a couple of questions. Yes, that point about letting the world know, you see, I think we have like a core group that comes to meetings but this town is bigger than the core group that comes to meetings and, you know, if someone has a lot of charisma and they are running for office and maybe they are making a few promises to some people. You know, it happens, so we do have to find ways to get out there and it's like.... I see this

kind of, well it is not civil disobedience because actually we would be following the law if we came upon... if the word got around that a private meeting was happening then we would all just show up, right. I mean is that like, that kind of strategy, because we have to be very proactive...

Robert Freeman: Not only that kind of strategy, but if you know that there is going to be a private meeting, you get in touch with these people (the press) and you say maybe you know it and maybe you don't but I think that there is going to be a private meeting of the town board; I don't know whether you are interested or not but you might be. And often, if they write about it, it won't be a private meeting.

Tistrya Houghtling: In my experience, it is not private meetings or the meetings are not being announced; they are being announced and they are public meetings but we are coming as the public and it might as well be a private meeting because we have absolutely no idea- even our own Town Clerk up there has no idea what they are talking about.

Robert Freeman: That is why that law was passed. And that is why I suggested a moment ago that the board has to assert itself and give the clerk strength so that she can assert herself in order to carry out her statutory responsibilities.

Colleen Teal, Town Clerk: My manual, when talking about minutes and the importance of minutes, always says to prepare myself with the documents that are going to be discussed at the meeting so I am familiar with what is going on. You can't do that when you are handed them five minutes before the meeting.

Jagat Pandey: That is exactly what we have to complain about.

Robert Freeman: You know, and the reality is too, especially in a small town, the clerk- the clerk is the backbone of town government. You are here every day, right.

Several responses: Yes.

Colleen Teal, Town Clerk: Seven days a week.

Robert Freeman: Seven days a week; you know what is going on. You do so much of the real work. My opinion for a long time has been that, especially in small communities, the Town Clerk is the most valuable player in town government.

Jagat Pandey: Then they complain that she is doing too much.

Robert Freeman: That she is doing too much?

Jagat Pandey: Yes.

Robert Freeman: She is just trying to do her job. And the other problem is that Colleen will pick up the phone because she is there every day and ask the question. She is the person who is educated with respect to these laws. Realistically, Town Board members, you are

part-time, right? Yeah, you are essentially a volunteer; you are pretty much a volunteer. So in so many instances, the Clerk is the person who takes it on her own shoulders to attempt to educate other people in town government about what is right and what is not. And too often a supervisor will say 'well you are only the clerk.' You know, that is simply a mischaracterization. She is the most important person in town government. And I am not saying that because I like her; I am saying it because it is true.

Trina Porte: I was just going to ask, another issue related to this issue of us relying on our Town Board members to compel our Town Supervisor to follow the law is also the fact that our Town Supervisor when he was elected the first time, two and half years ago, hired a confidential secretary and he files his information through her and bypasses the Office of the Town Clerk. Is that legal?

Robert Freeman: Let me ask you a question, doesn't the Town Board determine who gets hired and who doesn't?

Trina Porte: Yes.

Robert Freeman: Well, you know...

Colleen Teal, Town Clerk: The attorney said the confidential secretary is solely his appointment.

Robert Freeman: Solely his appointment? Is that in the law? Is that true?

[overtalking]

Robert Freeman: You know something; it doesn't matter because she, Colleen, is the custodian of all town records. This notion of confidential secretary, you know the "dittley principle of law?" It don't mean "dittley." It just doesn't. You know, if I stamp something 'confidential' do you know what it means? Absolutely nothing.

Trina Porte: So once again how can we compel the confidential secretary and our supervisor, is our only recourse the Town Board?

Robert Freeman: You use the law in a way that is advantageous and correct. And go to our website, click on to see "custody of records." There will be numerous opinions there that will give you the kind of background; I hope the kind of strength, to deal with this kind of question.

Trina Porte: We have tried.

Robert Freeman: You have tried; try again. Try harder.

Tistrya Houghtling: I have two questions. Let's just say- I am not saying there is, but let's say there was a town board member or a clerk that said "The supervisor won't share the records? I will." And before the meeting or even they stall the beginning of the meeting,

they get their stack two minutes before the meeting like they usually do and they go to the copier and make copies and come in here. Can they share them if the supervisor won't?

Robert Freeman: Why not?

Trina Porte: But sometimes they don't have them. I checked the stacks at the last meeting; they did not have anything except...

Unknown speaker: At the meeting? During the meeting?

Trina Porte: Nothing, they were not even given copies of what the Supervisor....

Tistrya Houghtling: Then how can they even talk about it?

Robert Freeman: Well, you know the term boycott? I think you Town Board members who cannot follow what is going on because you have not been given the stuff in advance should simply say to the Supervisor this has to end. We have responsibilities as members of the Town Board. Either the information is shared with us or we don't take any action.

Trina Porte: Thank you. *(to Robert Freeman)* Please. *(to Town Board members)*

Cynthia Creech: But you are saying the public wouldn't have any recourse unless it had been filed with the Clerk's Office and we could FOIL...

Robert Freeman: Oh no. You could bring a lawsuit too but I am not that suggesting you do that because it takes too much time and costs too much money.

Tistrya Houghtling: Can we FOIL the Supervisor directly if we know he has stuff that he is not sharing with the...

Robert Freeman: She is the Records Access Officer, right. She is the person who has been designated by the Town Board to coordinate responses to FOIL. It is not the Supervisor. That is why I said, Supervisor, if you want to be the Town Clerk, fine; run for that office but until that occurs, it is not your job; they are not your records.

Cynthia Creech: So our route to get things would be to get them from the Clerk in advance of the meeting.

Robert Freeman: Yes, to the extent that you possibly can, yes.

JJ Johnson: But then she takes abuse.

Jagat Pandy: But then he abuses her.

Robert Freeman: She is up to it. She is up to it.

Jagat Pandy: That is when the abuse comes.

Robert Freeman: I know her, she can handle it.

JJ Johnson: I don't know, it is a lot.

Jagat Pandy: She is an elected official.

Robert Freeman: Yes she is.

Jagat Pandy: Supervisor is an elected official.

Robert Freeman: Yes he is.

Jagat Pandy: If the supervisor doesn't respect other elected officials, what does the public have the right to do?

Robert Freeman: Again, the supervisor is one out of five. The suggestion is that you encourage the other board members to assert themselves in a way in which the supervisor essentially loses his strangle hold on whatever it might be.

Judy Zimmer: I have a couple points. First of all, it has always bothered me what happened to you, Colleen, when the Supervisor came in with your hours being cut. Can you explain what happened because I am not sure that was legal.

Colleen Teal, Town Clerk: It was. Yeah, that is a non....

Judy Zimmer: Okay, but I think...

Colleen Teal, Town Clerk: What happened was he got rid of the accounting firm... well; he got rid of the bookkeeper and the HR person and put those duties in my office. The bookkeeping had already been there and I was expressing to him and the town attorney it wasn't legal. There is a conflict of interest there because there are checks and balances between the Supervisor's office and the Town Clerk's office that the state wants kept. And it took about a year battling, and I had the lawyers from the Association of Towns and OSC sending me opinions and sharing them, and it took about a year until the bookkeeping part was removed. The HR part was removed about three months before that so it was about nine months that all the HR was in my office. In the midst of all that, they cut my staff in half so they overloaded my office and cut my staff in half with a double whammy. But I survived.

Robert Freeman: Sound like my office, we are down to two, we used to have four.

Judy Zimmer: She is still catching up on minutes. She has been coming in how many weekends? And this, because she is salaried, she doesn't get reimbursed.

Robert Freeman: Can I make a point about minutes? As long as you raise the issue of minutes, we look at the Open Meetings Law; it contains what you might view as minimum requirements concerning the contents of minutes. At a minimum, they have to consist of a

record or summary of motions, proposals, resolutions, action taken and the vote of the members. They can be more expansive but they don't have to be. Now if somebody wants a detailed account of what is said; anybody has the authority to audio record, video record or broadcast an open meeting. So long as the use of the equipment is not disruptive or obtrusive. So if people complain about minutes that might be somewhat sparse, you know the answer is, you want a more expansive record, record- go ahead and record to your hearts content.

Jagat Pandy: But he or she has to announce that before the meeting starts.

Multiple responses: No.

Robert Freeman: Who has to announce what?

[overtalking]

Robert Freeman: No, no you don't need permission. You could have a tape recorder under your seat right now and not tell anybody. In fact New York is one of the states where if you are on the phone with me and you want to record our conversation, you don't have to tell me about it. If you were in another jurisdiction, the answer might be different but as long as one party to a conversation has consented, you can record.

Mark Baumli: Getting to that point, that is why I was on your website. Colleen, again I am good friends with Colleen and I appreciate her very much, but again when it comes to doing her duties and her job, she was behind on getting her minutes done and they were quite behind. And I came to the board last fall, the prior board, and said listen I have got an opinion that was written in 1997 off of your website that says these minutes...

Robert Freeman: Two weeks.

Mark Baumli: Right, they have two weeks that they have to be available to me. Again, don't need great detail; I just want to know what happened – any motions.

Robert Freeman: You don't need great detail and then the other thing, how many of you are familiar with boards that approve their minutes? Everybody approves their minutes, right? There is no law that says that minutes have to be approved. It's a myth; it's a myth. She prepares the minutes. She prepares the minutes and is supposed to do so within two weeks. And they don't have to be approved.

Mark Baumli: So when I asked the board to take action or do something upon that... Let me read from last month's... the town attorney, what he said...

Robert Freeman: Who is the town attorney?

Multiple responses: Andy Howard.

Mark Baumli: He tried to imply that minutes have to be available within two weeks of Colleen preparing them.

Robert Freeman: He would be, what is the word I am looking for? Wrong.

Mark Baumli: *(reading from the minutes of the April 8th Town Board meeting)* Attorney Howard further noted that once those minutes are prepared, they are available to be viewed by any member of the public even if they have not been formally adopted. Mr. Baumli noted that by law they have to be available within a certain number of days. Attorney Howard responded yes, even if they have not been adopted, once they are prepared, they are available so to the extent there are minutes, you certainly are entitled to them. And to the extent that there may be circumstances which resulted in certain minutes not being prepared, there is nothing yet to provide you. So basically, what he said is if Colleen doesn't have them written then they are not....

Robert Freeman: I am reading from the law- minutes of the meetings of all public bodies shall be available to the public in accordance with provisions of the Freedom of Information Law within two weeks from the date of such meeting. Not from when they are prepared. That law is crystal clear.

Mark Baumli: So what do you do when your town attorney is telling you something totally different?

Robert Freeman: Look, the attorney is going to give his best legal advice; the attorney does not make the rules and you take out your provision of the law and

Mark Baumli: Unfortunately, I left that home. That was what I said that night...

Robert Freeman: you say, Mr. Attorney, what does this phrase mean, 'within two weeks of the date of such meeting'? You can be sarcastic and nasty just as I am.

Trina Porte: I have done this on the Planning Board. I have read a section of the law on subdivisions in email or in public and he has said 'you don't have to follow that.' That is our town attorney.

Robert Freeman: [overtalking][unclear]...be ignoring the town attorney whenever possible.

Trina Porte: But I am one person.

Unknown speaker: Our town attorney is very closely... umm... very similar to our town supervisor.

Robert Freeman: I am shocked to hear this. I'm shocked.

Trina Porte: But the problem is that I am one person of seven on the Planning Board and I am one person of an audience. And when I get up and say 'Mr. Supervisor' or 'Mr. Board

Chair this is erroneous.' It is frustrating in the extreme to be blatantly told fictitious information in a public meeting.

Robert Freeman: Here are these people sitting here who have the ability to tell the world and embarrass the hell out of him. I think that is what you do, you get in touch with them and you say 'I don't get it, I don't get it'.

[unclear][overtalking]

Trina Porte: They are usually there. But the problem is once [overtalking]

Mark Baumli: Getting back to... and we do have some board members here...

Chuck Geraldi, Councilmember: Be nice to some of us, alright.

Mark Baumli: No, I am really not a nice person... so

[overtalking]

Mark Baumli: We can all sit here and bash [the Supervisor], but as I said, he is one person; the rest of the board members sit up there like deer in the headlights. Man, they just look at you like the rest of them did when I brought up to the last board and this board you got to take action on our clerk not preparing the minutes; none of them. After our supervisor spoke; none of them said a word. So who is to blame? [the Supervisor], absolutely not.

Robert Freeman: Not after tonight. Not after tonight. Who is the third member? So we have three members. [overtalking] Remember two out of three ain't bad? Well three out of five ain't bad.

Mark Baumli: Well we need a whole new process. Because like I said they are like deer in the headlights...

[overtalking]

Robert Freeman: Okay, stop. We need town board members to open their eyes, avoid the headlights, and do what they have to do.

Judy Zimmer: I have one more concern. My concern is retaliation like... ummm ... the people who work here, the Supervisor knows is coming up against him and it is just like any kind of work situation where if you come up against your boss, you know you may suffer having your life kind of be difficult in lots of ways. And I just don't know how people can be protected against that.

Robert Freeman: Who are you thinking about? You know there is no action that the Supervisor can take against the other Town Board members. Who are you thinking about?

Judy Zimmer: Well, my daughter...

Robert Smith: He just makes Colleen miserable; that is what he just does.

Judy Zimmer: I clean the Town Hall and I am not stupid.

Tistrya Houghtling: She is saying as employees; there was definitely a time when I stopped coming to board meetings because I had vocal things to say and then I noticed come budget time my salary was slashed quite a bit.

Robert Freeman: But again, who makes that decision? It is not the Supervisor, it is the Town Board.

Tistrya Houghtling: I know; it didn't go through but in that initial presentation...

Robert Freeman: Now, the board members, I would hope, will be given some degree of strength so that they can buck the Supervisor when it is appropriate to do so.

Cynthia Creech: Well, I called you a couple of weeks ago and this was a moral issue, not a legal issue, but I called you about... Two months ago at a board meeting I asked [the Supervisor] about an action, I asked for clarification of an action and I spelled out the action. And two days after that, he emailed a personal friend of mine complaining about what was wrong with me; what is the matter with Ms. Creech? Why is she causing trouble? Why is she doing this; other people have noticed. And then someone else that is a public...

Robert Freeman: It sounds as though he is trying to bully.

Multiple responses: Yes.

[overtalking]

Cynthia Creech: Here is the problem that I see, we all... just about everybody in this room comes to board meetings at one time or another if not fairly frequently. And we sit and we listen and it would be lovely if we had the Supervisor's Report or any of the things that they are discussing. If we had just an outline of it, preferably a detailed report, but even an outline would be lovely. And if you ask a question, it is made crystal clear in specific terms, you are not going to be answered. So we are just sitting here somewhat...

Robert Freeman: Can I interject? First of all, the Open Meetings Law gives the public the right to do this; it refers to the right to attend, to listen, to observe. It says nothing at all about the public's right to speak. If a board, a board, does not want to let the public speak, it doesn't have to. Now, most boards do permit some sort of limited form of participation. If they choose to do that, our suggestion has been that they adopt reasonable rules that treat members of the public equally so that they can't say, well, you know, we like; we will let you speak for three minutes; but she is a pain in the neck so we will let her speak for one...
[overtalking]

Trina Porte: That happens all the time. That happens all the time.

[overtalking]

Robert Freeman: What I am getting to again is that it is *the board*; not the individual member who makes the rules. The board doesn't have to answer your questions; they can choose to do so. And certainly, the Supervisor, as one out of five, can be essentially overruled, voted down, whatever you want to say. And certainly too, you as a citizen, can tell your fellow citizens that it is your belief that so and so acted in a way that was unprofessional, that was discourteous, that was not fair, that we wouldn't expect that from our elected officials or anybody.

Jagat Pandey: And vice versa. The public also should be respectful to the board and vice versa.

Denise Church: We have that problem in Petersburg.

Robert Freeman: There is no question about that; it should be mutual. But for the Supervisor to send an email to somebody else and say "This Ms. Creech, she is a real pain or whatever..."

Matthew Meier, Reporter for *The Columbia Paper*: This is definitely not the first time this has happened...[unclear]

Trina Porte: It has happened to me too.

Robert Freeman: That doesn't make it right; it doesn't make it right.

Tistrya Houghtling: And not for nothing, Cynthia is a very respectful person and presented it in a very... she didn't say 'what the hell are you doing? You did some stupid stuff here.' She very clearly just said this is what was passed, this is what was done; they don't match up. Can I please have clarification?

Denise Church: When do you guys talk during your meeting?

Tistrya Houghtling: The end.

[overtalking]

Denise Church: Because we were having a problem in Petersburg. We have bullies in our audience actually. And we are having trouble keeping control of our meetings. So our Town Supervisor wants it at the beginning of each meeting and then throughout the whole meeting, people speak out and sometimes people are listened to and other times people are told to be quiet. So we are struggling with that in a big way. And we wanted to put it at the end.

Tistrya Houghtling: Do you have a dedicated time and you can sign up when you come in?

Denise Church: Yes. But are you allowed to say anything in the meeting?

Multiple responses: Usually no.

Robert Freeman: Can I make a point about that? I will be a little bit flippant about that. I live in what I have come to call the Stepford School District; you know, it is where all the kids are above average and all the teachers are wonderful? What if a parent gets up and says 'Johnny's teacher is just wonderful, we love her.' The school board loves to hear that, right? Well, what if the next parent gets up and says 'Wait a minute, wait a minute. My kid has the same teacher and the teacher stinks.' What is the board going to say? 'Shut up, go away, personnel matter, can't do that.' There are federal cases which indicate that if the door is open, it is open all the way. If a board is willing to permit positive comments regarding the staff, it must permit negative comments as well. However, if it wants to establish a rule to the effect that they will accept no comments that focus on specific staff members, that is okay. Everybody is on an equal footing. And people have said to me, well what about my First Amendment right to speak. There is no First Amendment right to speak at a meeting. There is no Constitutional right even to attend a meeting. It is a statutory right. It is something that the state legislature has given to the public. But there is nothing that would preclude any one of you from standing on the steps of Town Hall and saying whatever you want; from getting in touch with the local news media; from establishing a blog; or your own website. You have the First Amendment capacity to do that.

JJ Johnson: And people don't even care; they don't care.

Colleen Teal, Town Clerk: I wanted to ask you, because I do have three board members here, an area that I have a difficulty with every time I get new board members, like you were saying educating every time you get a new board – executive sessions.

[overtalking]

Robert Freeman: Shall we talk about that?

[overtalking]

Colleen Teal, Town Clerk: There is a desire to say 'personnel matters...'

Robert Freeman: Stop, stop, stop. An executive session is defined by the law to be a portion of an open meeting during which the public may be excluded. So it is not separate from a meeting, it is a part of a meeting. And to go into an executive session, a simple procedure has to be accomplished in public. It has three components. Number one: somebody on the board has to introduce a motion to close the doors. Number two: the motion has to indicate what they want to talk about and we will get to that more in just a moment. And number three: the motion must be carried by a majority vote of the total membership notwithstanding absences and vacancies. So in a board that consists of five at full strength, there always has to be three affirmative votes to carry a motion, to carry a motion to do anything. From there, we look at the eight (8) grounds for entering into executive session. Most of them do not come up with any degree of frequency. And we ask, does this fit? Does this subject fit within the eight grounds? You mentioned two key words: personnel. You

have heard the word personnel; I move to go into executive session to discuss a personnel matter? What the hell does that mean? There are thousands of issues that could be characterized as personnel matters. And in fact, if you read the eight grounds for entering into executive session, the word personnel is not there. It is not there. Now there are some personnel related issues that *may* be discussed in private but there are just as many others that cannot. We talked a little while ago about the budget. The school board is doing the budget right now. They say to themselves things are pretty tight this year, do we have enough money, can we really afford, do we really need this art teacher position in the elementary school. What if there is only one elementary school and one art teacher? Everybody is going to know whose position it is, right? No basis for going into an executive session. Why? Because the issue involves policy. How do we, as the board, choose to allocate public money? Is art really important to the education of our kids? Policy questions. If, on the other hand, the question is does this teacher deserve tenure, should he or she be kept or fired? In that situation, as Colleen said a moment ago, the focus is on a particular person. And the law says, and I will quote it to you, that a board *may*, and I emphasize *may* because you don't have to go into an executive session even if you have the ability to do so, a board *may* enter into an executive session to discuss the *medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.* So to qualify, the issue has to focus on somebody or some specific corporate entity in relation to one or more of those qualifiers. Now, if the motion to close the doors indicates that a board wants to discuss a personnel matter; nobody knows whether the board is likely to be complying with the Open Meetings Law. But what we have advised, and the courts have agreed, is that the motion should include two components: number one, reference to that key word *particular* so that we know that their focus is on somebody or some specific corporate entity and number two, reference to one of those qualifiers. I move to enter into an executive session to a matter leading to the employment of a particular person or something like that. The board would not have to name the individual but if they tell you that much what they are really saying is 'yup, we have read the Open Meetings Law and unless we are fibbing, we are about to discuss a subject that may *properly* be considered during an executive session.'

Colleen Teal, Town Clerk: The other area that is very...

Robert Freeman: Litigation.

Colleen Teal, Town Clerk: Yes, and one of the problems that I am having is... one thing that I have always understood is you can never, ever, ever vote to spend taxpayer money in executive session.

Robert Freeman: No, spend is the wrong word. The law says we cannot appropriate public money during an executive session. If money already has been appropriated in a budget and a board is now choosing to spend it; it is not an appropriation. But realistically...

Colleen Teal, Town Clerk: But if there is a lawsuit that is going to be settled, the money is not in the budget...

Robert Freeman: No, it is not in the budget; that would be an appropriation, wouldn't it? Yeah. So the vote would have to occur in public. But let's talk about the litigation exception. Should we do that?

Chuck Geraldi, Councilmember: Can I ask one question? What you said before, appointments to boards, can we interview in executive session?

Robert Freeman: Unless it is the town board.

Chuck Geraldi, Councilmember: No, we do planning boards and...

Robert Freeman: Of course, a matter leading to the appointment of a particular person. Sure you can.

Colleen Teal, Town Clerk: I think it would be very hard for someone to interview for a position in a public forum.

Trina Porte: I would like to interview in a public forum because then what the supervisor says about me would be on the public record. I disagree completely, I am sorry but I am looking at reappointment and I...

Robert Freeman: Yeah, but then again...

Trina Porte: would love it to be in public.

Robert Freeman: Do you know the Rolling Stones Principle of Law? You can't always get what you want.

Judy Zimmer: Back again to the executive session then moving on. Does the clerk... is she required to go to an executive meeting?

Robert Freeman: No.

Judy Zimmer: Then how do we know that they are talking about what they said they are talking about?

Robert Freeman: Well...

Colleen Teal, Town Clerk: Can I clarify something else? You said fourteen days... this is what I have expressed to my board, I don't want to be in the executive session; I don't want to know half of what goes on in there. But I have said to them, if you are going to take action in an executive session, you have to have minutes and I have to prepare them within seven days...

Robert Freeman: She is one hundred percent right.

Colleen Teal, Town Clerk: So I have said to them go in and discuss all you want, but take your action out here and then your action becomes part of the regular minutes and there are no separate minutes.

Robert Freeman: You have a little bit of a conflict in laws. On the one hand, the Town Law says the clerk is responsible for preparing the minutes. On the other hand, the Open Meetings Law says that the only people who have the *right* to attend an executive session are the members of the board. They may authorize others to attend but they don't have to. So how does the clerk do her job? We have made simple suggestions. Either the board can, number one, invite the clerk to be present during the entirety of the executive session; number two, the board could say we want to vote during the executive session, we will invite you in when we are about to take our action so that she can prepare the appropriate minutes; or number three, they come out and vote in public.

Jagat Pandey: That is the way it should be.

Robert Freeman: Well, that is the way that it often is.
[overtalking]

Robert Freeman: She knows the law; she has paid attention over the years. She really does.

Jagat Pandey: Yes, yes.

[overtalking]

Unknown speaker: How is it done currently, with current litigation?

Robert Freeman: Current litigation?

Unknown speaker: When you have an executive session in the town now, whatever it may be in regard to, and let's say that they do have a vote or whatever, and the Town Clerk is not allowed in the executive session, are they supposed to say ahead of time that we are going to conduct business afterwards? That is what the school board normally does.

Robert Freeman: First of all, a school board, let's talk about a school board separately for a moment. A town board, a village board of trustees, a city council, when it is properly in an executive session, may take action during the executive session. School boards cannot. School boards cannot except in two circumstances. One, when it is initiating charges against a tenured person, the so-called '3020a proceeding'; or when a public vote is likely to identify a student because federal law would prohibit that kind of disclosure. But if they want to take action in any other circumstance, they have to return to the open meeting for the purpose of taking their action. Go to our website, go to the advisory opinions under the Open Meetings Law, click on 's', scroll down to 'school board voting' and then you stick it in their faces.

Unknown speaker: I just had a couple of quick questions about the minutes. So minutes being available, like you said, in the event of an executive session, it would be within seven

days. Can that be just the draft?

Robert Freeman: Yes.

Unknown speaker: And it doesn't have to be online? Because we have people in our town that are saying they *must* be online.

Robert Freeman: No; there is no obligation to post minutes on the website.

Unknown speaker: That's what I tried to tell them.

Robert Freeman: You can tell them that I said so. That's what I said at the beginning.

Unknown speaker: And like a draft, if Colleen just had draft prepared...

Robert Freeman: Stop, stop, stop. Let's say it is the board's practice to approve its minutes; two weeks have gone by, the board hasn't met. She hasn't had a chance to get them approved. To comply with the law, very simple suggestion, whoever prepares the minutes should do so within the proper time, make them available on request, and if they haven't been approved, they can be stamped or marked 'draft', 'unapproved', 'preliminary' or something like that so that the world has a general idea of what transpired, concurrently the world is given notice to the effect that the minutes are subject to change. Shall we talk about litigation for a minute? The law says the board *may* enter into an executive session to discuss quote "proposed, pending or current litigation." People ask all the time, what is the difference between proposed, pending, current? I don't know. What we should know is what the courts have told us. And remember I said right at the beginning that the notion is that everything is supposed to be open unless disclosure would hurt. Well that is how the courts have looked at the litigation exception and what they told us years ago was that the intent of the exception is to enable a board to discuss its litigation strategy in private so as not to divulge its strategy to its adversary who, after all, may be out in the crowd. If you are involved in a lawsuit, the last thing you want to do is tell your opponent what you plan to do in court. So the town board has the same capacity to engage in a private discussion but in those same cases, the courts have also said that the threat, the fear, the possibility of litigation without more is *not* enough to justify an executive session. If it were, let's face it, there would be nothing left to the Open Meeting Law. How many times have people said 'if you don't do it my way, I am going to sue you?' Well, until the board begins to discuss what it would do in a defense in court, there would not yet be a basis for conducting an executive session.

Katie Kocijanski, Reporter for *The Chatham Courier*: Can I ask a question directly to the town board members?

Robert Freeman: That is up to them; it is not up to me.

Katie Kocijanski, Reporter for *The Chatham Courier*: I am not normally at your Town Board meetings; I'm the normal reporter for the Chatham Courier. My name is Katie Kocijanski. Our freelancer, Gail Heinsohn, covers these meetings so I am not normally

here. I guess what I am trying to understand is what the issue is with the minutes. It sounds like there...

Colleen Teal, Town Clerk: They were about six months behind.

Katie Kocijanski, Reporter for *The Chatham Courier*: Six months behind.

Denise Church: It is easy to do when you have so much... our town clerk has the same problem.

Unknown speaker: And they cut her hours.

Trina Porte: And we were under the [misunderstanding] that there were draft minutes and then there were some kind of future official minutes. And that has been determined; I think tonight, we all know now that the minutes are the minutes. And therefore, once Colleen writes something down, that is totally... that is it. That is good enough and that is what you get.

Colleen Teal, Town Clerk: And you will find on the website... if the board... if there is anything that needs to be corrected, I go in and correct the minutes and post the corrected. But I don't remove that 'draft'... they stay on there and that is just convenience. The 'draft' logo is taken off when publish them into the minutes book. But if there is a change, what you see on the website is really the final. It is just that 'draft'...

Trina Porte: So I have a question about that, if a person, say myself, is misquoted in the minutes and we request a correction, I have been told in the past by the Planning and Zoning Clerk that is completely unallowable and the board has to pass that correction as a body.

Robert Freeman: Well, I think the correction should be made as a body but it seems to me too that we want to abide by the Spike Lee principle of law- we do the right thing. If there is a mistake, you have the tape recording of the meeting and you said up and it says down. It seems to me that more than anything else the minutes are supposed to accurately reflect what transpired.

Colleen Teal, Town Clerk: And that is why... although my minutes do not need to be approved...

Robert Freeman: And they don't have to be verbatim.

Colleen Teal, Town Clerk: I have always wanted my board to approve them because I may make a mistake. I want another set of eyes to say 'whoa, that wasn't what we...' and I do include discussion. I have been requested by board members to include it. It makes it easier for them to keep track of what they are doing. And I know I don't *have* to.

Unknown speaker: I sit on a school board, the Berkshire Union Free, and I also go to the New Lebanon School Board Meetings and they are both using BoardDocs which going to the

Lebanon School Board Meetings and being able to see the BoardDocs, I mean, once the agenda is posted and all the addendums are added to it, they are there. And everybody can go on that site and look them up and find... And as a board member for the other school district, there is an administrative comment section where the Superintendent can put in his take on things; it is only for the board's eyes. And then everything is in one place, you know, there is no... Everybody on both school boards has an iPad; they have their iPads open at the meetings and they can pull up the agenda. They can open up all the addendums and everything else. And to me, it has made... especially New Lebanon School Board, because there were issues there with stuff happening and nobody knew what the heck was going on. That has pretty much eliminated a lot of that because all the financials are on there. As soon as they cross the desk, they are attached. Everything is in email now so you can just hit paste.

Robert Freeman: Do you know what I think the difference is? I think that what you are describing is sort of the best of all worlds. School boards have resources that go far beyond what most towns have. School boards have their administrators, among others, they have budgets that *dwarf* those of the town and you can do things... You know I have been to school board meetings where every school board member has the lap top; every school board member has the ability to follow along. Many, many, many towns simply don't have the resources to do something like that. It is a great suggestion but it just doesn't happen with any frequency.

[overtalking]

Unknown speaker: The savings just in the paper is...

Robert Freeman: I am not going to disagree. I think that it...

Unknown speaker: No board member, whether it is a town board member or a school board member, has time to sort through a packet. You know, usually it is packet that thick and you have to wade through all that stuff. If it is on a computer, everybody has a computer at home now.

Jagat Pandey: Yes for home we have. But the information that we need from the town clerk; she doesn't even know a half hour or forty-five minutes before the meeting.

Robert Freeman: Again, that is the difference between an organization which has significant resources and an organization like this where the town supervisor thinks that he is the emperor.

Tistrya Houghtling: And this is just a reminder maybe to the board members but the court... At one point, the supervisor did say 'I wish we had a projector that way I could put it up and everyone could follow along,' which I think would solve all of the problems. The court went ahead with grant money and bought a very nice projector so maybe that is something...

Robert Freeman: Maybe he should be reminded of this.

Tistrya Houghtling: ...the board members could remind him that we have a very nice projector and screen that can be set up and everybody could then...

Trina Porte: Colleen, could you just set that up before meetings and use it?

Colleen Teal, Town Clerk: I don't have... the difficulty here is understanding... yes, that solves the public's ability to follow along. There is a bigger problem when...

Robert Freeman: You don't get the stuff?

Trina Porte: Of course. But that would at least give *us* the information.
[
overtalking]

Tistrya Houghtling: You guys could come sit in the audience and so you can see the projector too.

Trina Porte: But seriously so people...

Robert Freeman: But seriously folks.

Colleen Teal, Town Clerk: But doing *my* job is very difficult when I don't have the...

Denise Church: So is the issue that you that you are not getting the documents for the agenda in a proper time period?

Unknown speaker: Or even at all. [overspeaking]

Unknown speaker: If even at all. [overspeaking]

Colleen Teal, Town Clerk: I get the agenda with the attachments about ten minutes before the meeting.

Robert Freeman: So that is the issue... [overspeaking].

Colleen Teal, Town Clerk: I am used to getting everything... I used to make the agenda. Any resident that ever wanted an item on the agenda could come through me and put in a request. I would send an email out to the board. Now this is done only and solely by the supervisor. I don't even know that the board members necessarily have any input...

Unknown speaker: Is it normal for a supervisor to make the agenda?

Robert Freeman: Is it normal for the supervisor to make the agenda; I don't think it is abnormal. I think it is fairly common practice but then again it is abnormal for a supervisor not to share the information with any number of people, certainly other board members.

Katie Kocijanski, Reporter for *The Chatham Courier*: I have witnessed other town boards in my coverage area where they have the agenda ahead of time.

Robert Freeman: Yes.

Colleen Teal, Town Clerk: We always did, like a week ahead.

Robert Freeman: Do you remember *Animal Farm* where some animals were, let's say, more equal than others? Well that's not the way it is supposed to be in town boards.

Trina Porte: Well, what is frustrating is sometimes we will have an agenda for the Town Board meeting even a day or two in advance but *none* of the items to be discussed are even given to the Town Board members at that time. And yet the Town Attorney is sitting up there with copies.

Robert Freeman: We have talked about this a lot.

Judy Zimmer: So we are all encouraging the Town Board members to stand up and not take it anymore. But if, for whatever reason, that doesn't happen, do we, as the public sitting there, do we have the right to... if we don't have the right to speak until the very end, I am just thinking...

Cynthia Creech: You were saying we really don't have a right to speak necessarily at all.

Judy Zimmer: ...when did you get the minutes? Ten minutes ago. I call that this meeting... I mean what can we... We are depending on the board but is there a back-up system of the public? If the board doesn't happen; if that doesn't happen, can we stand up and say you have only had the information for ten minutes; legally this meeting should not happen [overtalking]

Robert Freeman: I would like to say that if there are enough of you who get together and say that, that it will have some impact. If it is just you; nah, who cares?

Trina Porte: Would it be an act of civil disobedience if say six of us got up and just started saying 'stop this meeting, stop this meeting'?

Robert Freeman: Would it be an act of civil disobedience? Of course, of course it would.

[overtalking]

Unknown speaker: Would it be effective? [overtalking]

Unknown speaker: It would be awesome. [overtalking]

Trina Porte: Could we be arrested by our constable? [overtalking]

Robert Freeman: You know, it could happen, it has happened. But let's go back to litigation for a moment. We talked about the scope of the exception. I want to talk about the motion also because there are cases that have dealt with that as well. And I will tell you a story about a former reporter (just because he retired) named Les 'Let's Get Arrested' Hendricks. Les Hendricks used to work for the Schenectady Gazette and covered the beautiful little town of Cobleskill. He went to meetings of the Cobleskill Town Board and there was a meeting where they just didn't want him to be around. A motion was made proposed, pending or current litigation. Get out Les. Well, he refused to leave and they had him arrested. Before the Judge could determine whether the charge should stick, he had to figure out whether the board complied with the Open Meetings Law. And by the way, he is now a Federal Judge, Judge Kahn. And this is what the Judge said; he wrote that a motion for entry into executive session quote 'cannot merely regurgitate the statutory language of the law to wit proposed, pending or current litigation.' Only a judge would ever write 'to wit.' He said that the motion must identify *the* (*the* in italics), *the* litigation. I move to enter into executive session to discuss the case of the XYZ Company versus Town of Cobleskill. As in the case of the so-called personnel exception where the motion has to be sufficiently detailed to give you an idea that really is a valid basis, the same is true for the case of the litigation exception.

Unknown speaker: So it could be a motion to enter about Local Law number 3, for example?

Robert Freeman: Why would they go into executive session about a local law?

Unknown speaker: Not a local law they can't, okay. But a lawsuit they can?

Tistrya Houghtling: But you are saying they have to name what lawsuit they are talking about.

Robert Freeman: They have to name the lawsuit.

Tistrya Houghtling: Which is different from the personnel matter because then they are not naming the person involved.

Robert Freeman: Well, they are not naming the individual but they are telling you that they are discussing a particular person in relation to one of those permissible subjects.

Colleen Teal, Town Clerk: Can we do one more thing with litigation? Okay, so they go in, they have not divulged which litigation, but they come out and they are making a settlement. Then I get angst because I am not sure what is disclosable and what is not.

Robert Freeman: You get angst, huh? I happen to know a good shrink; I have been living with her for forty-two years.

Colleen Teal, Town Clerk: But once they have settled, is that now all public?

Robert Freeman: Sure is. If there is a settlement agreement, it is public. In fact, there are judicial decisions that deal with the situation where one of the terms of the settlement agreement is that the terms of the settlement agreement shall be confidential.

Colleen Teal, Town Clerk: We have one.

Robert Freeman: The courts have said you cannot do that. The law determines what is public and what is not; not the private agreement.

Colleen Teal, Town Clerk: Especially when it is taxpayer money.

Tistrya Houghtling: But there was a litigation here at the town that got approved and everybody said word is mum, you can't... nobody can know anything about it.

Robert Freeman: Let me make... No, no, no. There is case law dealing with the situation where the agreement says neither party will talk about this or disclose on its own initiative, but the court was careful to say that does not mean that it cannot be requested under FOIL.

Tistrya Houghtling: So I could FOIL it?

Robert Freeman: It is available under FOIL.

Trina Porte: The only exception to that is juvenile records. Yes?

Robert Freeman: Well that is not a settlement anyway. There are lots of exceptions. If a kid, if a juvenile is arrested, there is a section of the Family Court Act that says that it cannot be disclosed and, in fact, in general – and our court clerk knows about this – if anybody here is arrested and the charge is dismissed in your favor, the record becomes sealed. But if there is a conviction, the answer is different. Anybody can walk into the court house and get a record. Right? I should point out too that the courts are not covered by FOIL but they are covered by other provisions of law and we should assume, in general, that most court records are public.

Tistrya Houghtling: That is something though that has been defined by my higher ups and hopefully you will agree with what they have told me but there have been board members and members of the press that have come in and said I want a list of all the heroin cases in town. No. If you have a certain person, an arrest date, a certain case that you are wishing to see and I look in my system and it is not sealed because it is not a 'YO' and it is not dismissed...

Robert Freeman: Stop, stop, stop. That is the courts and I am not going to tell you what the courts can and cannot do but in FOIL the answer would be different in the case of equivalent records made. FOIL says that an applicant must reasonably describe the records requested. Reasonably describe, what does that mean? There is a Court of Appeals decision, you probably remember me talking about this, and the key case was decided in 1986. It involved a real bad guy and I say that because he just got out of jail recently. Boom Boom Konigsberg? Boom Boom wrote to the Department of Correctional Services after having been in state correctional facilities for a while and said I want anything you can find by

means of my name or my id number. And they said what do you want? And he said I want it all. They pulled together something like 2300 pages of material and then said what do you want? He said I want it all. They said sorry, you have not reasonably described the records; sue us. Well, they didn't know that Boom Boom had, let's say, unusual associates. He had the resources to go all the way to the Court of Appeals, the state's highest court. And the Court of Appeals said two things. Number one: Department, you were able to locate these 2300 pages of material based upon the terms of Boom Boom's request, therefore, he met the responsibility of reasonably describing the records. Now it is your job to go through the stuff to figure out what is public and what is not. Point number two, a critical point: the court also said that whether or the extent to which that standard is met is frequently dependent upon the nature of the agency's filing or record keeping or retrieval system. Sometimes we keep records by last name in alphabetical order, sometimes by location, sometimes chronologically. I offer my silly stupid phonebook example all the time. I walk into your office; I see the Columbia County phone directory. I say ah-ha, a town record. I hereby request all the listings pertaining to those people whose last name is Teal. Piece of cake, right; that is how the phone book is written: last name, alphabetical order. Even if there are ten thousand people with the same last name, the request would reasonably describe. I walk in the next day and I say you know I like the Teal part. Now I want all the listings pertaining to those people whose first name is Colleen. Huh. What an unusual name, the request is specific. Specificity is not the issue. That's where you go back to the applicant and you say wait a minute; we keep this group of records by last name in alphabetical order, not by first name. I know that there are Colleens there but I am not required to go through the haystack in an effort to find the needles. Sorry, your request is not reasonably described, see you later. Now, let's say that it is 2014 and you maintain the old fashioned paper phone book but you have the same data electronically. If you can sit at the keyboard and all of a sudden all of the Colleens can come up; if we have the ability to extract whatever it may be with reasonable effort, yes we are required to do so to comply with FOIL. So sometimes, going back to your situation, if you were subject to FOIL, if you could locate all of those cases, other than those that were sealed, dealing with heroin; yes, you would be required to do so. And I do not know why you are being told you shouldn't. Do you?

Tistrya Houghtling: Well first of all I don't have a system that would organize it in that way...

Robert Freeman: That is the easy way on that one here.

Tistrya Houghtling: ...nor a way to say I want this specific type of arrest. But I was told we are not required to follow FOIL just as you are saying and that certainly if someone comes with a specific case...

Robert Freeman: Because that is how you can find it.

Tistrya Houghtling: ...they can look at it but it is not my job to compile lists... it would take me...

Robert Freeman: No, FOIL pertains to existing records. The law does not require the government create something new in response to a request. In fact, I say to people all the

time, never ever request a list unless you know that one exists. Never ever ask how much; don't ask for a total. There probably isn't one. You now, if I go to you and I say, Colleen, how much did you spend on heating the Town Hall last year; you probably don't have a total. You probably have what all of us have; twelve monthly bills. So you request records that contain or that indicate or that reflect or something like that instead of a list.

Matthew Meier, Reporter for *The Columbia Paper*: I just had a question moving on to criminal investigations. We have a situation. Unfortunately, there was a death in the County shortly after I started at the paper in which a young man was hit by a car, killed instantly. The family does not have closure. The investigation in the hands of the state police is still ongoing a year and months after he died. And we have put in several FOIL requests.

Robert Freeman: Was it a hit and run?

Matthew Meier, Reporter for *The Columbia Paper*: No, it wasn't a hit and run.

Robert Freeman: Was somebody arrested?

Matthew Meier, Reporter for *The Columbia Paper*: There was no arrest.

Robert Freeman: Have they concluded that there will be no arrest?

Matthew Meier, Reporter for *The Columbia Paper*: That's the thing. We are still waiting on the results of a second FOIL that we sent out requesting the accident report to learn more information about what exactly transpired at the scene. We've had trouble in the past when we put out requests where they will say oh, well, the investigation is ongoing; it's pending. We can't disclose anything that is going to compromise the investigation. We understand that but in a situation such as this where it has been more than a year, what records would you ask for?

Robert Freeman: You would ask for the same records and say stop blowing smoke. Your investigation is over. How can you prove that disclosure at this juncture would interfere with any investigation? I think that you shift the burden to the extent that you can. That is number one. Number two, the state's highest court has rankled with respect to what it characterized as the blanket denial of access: you can't have any of it; you can't have any of it. FOIL says that all records are available except those records or portions of records that fall within the series of exceptions to rights of access. If the accident occurred a year ago, it is inconceivable that every aspect of every record relating to that accident can justifiably be withheld. You know that can't possibly be so. That is what you tell whoever it is that is saying no. And you go to our website and you click on 'b' for 'blanket denial of access,' you click on 'b' for 'burden of proof' and you take the money and run. That's what I would do. The police don't like to disclose, you know that. They like to engage in the Nancy Regan response: just say no.

Scott Larabee: What can the town board do when the supervisor is taking action without bothering to consult them?

Robert Freeman: The reality is, if it is one of those actions that can only be taken by a board, it seems to me that his action can be ignored because it is not action at all. It is a nullity.

Scott Larabee: A recent example, over the winter someone hit the stone pillar at the park. Colleen was unable to get estimates. She asked me to try and get an estimate which I was able to procure. I forwarded it to Colleen; she sent it on to the insurance company and copied the supervisor on it. I received an email from [the supervisor] today that he sent I believe to Colleen, to the insurance company, and to the contractor saying well since it's spring we want to get this taken care of, can we go ahead with it and if the insurance company says it's okay to go ahead with it, how soon can you do it?

Denise Church: I think if it is under a certain dollar amount he is allowed to do that.

Scott Larabee: This was about a two thousand dollar claim.

Denise Church: That is too high.

JJ Johnson: He does this stuff all the time.

Trina Porte: He has also hired bookkeepers; he has hired consultants; all without the legislative processes.

Robert Freeman: You know, I don't mean to pass the buck but god knows I am not an expert with respect to procurement. Who are the experts? They are at the State Comptroller's Office. I think you call the Comptroller's Office.

Denise Church: The Association of Towns too.

Robert Freeman: The Association of Towns too but John or Jane Q. Public cannot call the Association of Towns and get an answer. But you can call the Comptroller's Office. And I believe it would be your best to get an answer.

Colleen Teal, Town Clerk: Or if board members have questions, they can call the Association of Towns.

Robert Freeman: Oh, absolutely. Board members can call the Association of Towns; you call Lori Mithen. Lori is really good, she knows the answers.

Trina Porte: You told me her information was incorrect about some OML stuff that we emailed about though.

Robert Freeman: Nobody is right all the time; not even me. I know that is hard to believe.

JJ Johnson: I have three questions. I have been writing the political blog in this town since 2009.

Robert Freeman: Political blog?

JJ Johnson: Yes, I write about all the corruption and all the B.S. that goes on in this room. [overtalking] So people either like me or they hate me in this town; there is no in between. We have a committee in this town that has existed for about a year now. It is called the Economic Development Committee. Now, the members of this committee are responsible for getting together and talking about: how are we going to bring in new business? What are we going to do to make the place look better? Etcetera. Nobody knows who is on this committee.

Robert Freeman: Who appointed them?

JJ Johnson: Good question. That is another one of my questions.

Unknown speaker: [The supervisor] created it.

[overtalking]

Robert Freeman: Let me interject two points. Number one, if there is a record that indicates who was appointed, certainly that would be public under FOIL. Number two, assuming that this is an advisory kind of body, and my assumption is that it would be, there are lots of cases which indicate, for better or for worse, that it is not subject to the Open Meetings Law. Number three, FOIL is much more expansive than the Open Meetings Law. Remember I said in the beginning, FOIL deals with all government agency records. A record includes any information kept, held, filed, produced by, with, or for an agency. Even though this group is not subject to the Open Meetings Law, any record that it acquires or prepares falls within the coverage of FOIL. So there are lots of ways to...

JJ Johnson: So I would FOIL them directly?

Robert Freeman: No, through the Town Clerk.

JJ Johnson: Now, I have done that. They don't give her anything. She has no minutes, she has no agendas.

Robert Freeman: She can get them; well, I don't know that they have minutes or agendas. They don't have to have minutes or agendas. But whatever they do prepare...

JJ Johnson: We do have some right to know what they are discussing, what their plans are, what they're...

Tistrya Houghtling: They have raised money for the town.

Multiple responses: Yes.

[overtalking]

Trina Porte; And they were quoted as saying they were paying for half of a town contract.

Robert Freeman: Then, there *must* be records. And the Town Clerk, as you know, is the custodian of all town records. They might not want to give them to her but they are her records, they are supposed to give them to her.

JJ Johnson: Because Colleen, if she had them, I would have them.

Robert Freeman: I know; Colleen is good.

JJ Johnson: Another thing, I know... Two things, one is at the state level and one is right here again in this town. I am one of the state organizers against the SAFE Act. I organized the first Anti-SAFE Act rally in Albany in January of 2013. We drew 8500 people. The registration deadline was April 14th for people with firearms. We know that most people, speaking of civil disobedience, said [unclear] with your registration, we hope they did. The SAFE Act... something written into the SAFE Act says that the New York State Police, who is the registering agency, does not have to release the information on how many people registered...

Robert Freeman: No, it doesn't say that.

JJ Johnson: That is what they said on the news.

Robert Freeman: No, it is not the registering agency; your County Clerk is probably the registering person. The State Police maintains the data base that identifies all of the applicants and the licensees. The data base is what is not public. Now, if the State Police has developed statistics which indicate how many people have done this or not done that, my belief is that is public. The identities of those people whose names appear on the registry, their data base, would not be public. But, I can tell you, I received... When Newtown occurred, I don't know if you recall that the newspaper downstate, *The General News*, published the list of the names and the addresses of all the licensees in Westchester and Rockland Counties. Why? People... I got calls from all over the country. I was on *Good Morning America* and *Fox News*. I did an interview with the *BBC* in my kitchen at midnight via Skype. It was crazy. They said can they do this? And I said yes. Why? Why yes? Because the law in effect for *years* has said that the names and addresses of licensees are public. The names and addresses are public. That was the first week. Second week, Putnam County Clerk says I don't care what the law says, I am not disclosing. So fifty more calls from around the country asking whether they could do this and I said no because the law says the names and addresses are public. Third week, what about this new SAFE Act? And we are still getting questions about the SAFE Act. The SAFE Act, for the first time gives licensees and registrants an option, an option; you can opt out of disclosure of your name and address. And that is a form that you give to...

JJ Johnson: Every County Clerk has them.

Robert Freeman: Every County Clerk has them. If you don't opt out, your name and address remain public. And there is a recent decision that says exactly that. Why, because

Putnam County said we don't care, we are not disclosing. And the court said well people have been given the option. If they have chosen *not* to opt out of disclosure, their names and addresses remain public. That is where we are.

JJ Johnson: So I can FOIL the NYSP?

Robert Freeman: Nope, they don't have to give you anything.

JJ Johnson: They don't have to tell me the numbers?

Robert Freeman: I think that they do; but they say no. And I think they are simply wrong.

JJ Johnson: So I can push it?

Robert Freeman: Well, you can push it if you want. And I am guessing that since you are with an Anti-SAFE Act group, you can get a lot of support. It's interesting because people who are both in favor of the SAFE Act and against the SAFE Act want exactly that information to determine the level of compliance.

JJ Johnson: Exactly and they don't want us to know because they...

Robert Freeman: They don't want you to know.

[overtalking]

JJ Johnson: Okay, my last thing, I know this isn't your issue because it falls under the Election Law but I just wanted to get your opinion. We had a Republican Caucus here. [overtalking] People were coming in; we had not started the meeting. No nominations had been done, the Sheriff that was...

Robert Freeman: So was this the caucus during which the nominations for the next election during which...

JJ Johnson: Yes.

Robert Freeman: That had to be opened to the public under the Election Law. It is Section 1... I think it is Section 2, Subdivision 28 or something like that. You have a definition of...

JJ Johnson: They locked the doors. We had a closed caucus so far as the opposing parties...

Robert Freeman: No, anybody could be there.

JJ Johnson: They locked the doors.

Robert Freeman: If this was the caucus during which the party would nominate people to run in the next election during which all Republicans could vote, it would be open to the public. That is what the Election Law says.

JJ Johnson: They locked the doors.

Robert Freeman: I am telling you what the Election Law says.

JJ Johnson: There were members of the Republican Party trying to get in and we told them...

[overtalking]

Robert Freeman: I gave you the answer; I gave you the answer and next time you will know and you will call me in advance.

JJ Johnson: I am JJ, by the way.

Robert Freeman: Hello, JJ.

Trina Porte: So we were told at the Democratic Caucus that it was okay for us to... we had a closed caucus...

JJ Johnson: But you didn't lock it?

Trina Porte: We didn't lock it.

Robert Freeman: Closed caucus to do what?

Unknown speaker: The problem with the caucuses is it really hard to keep track of the vote so that's why our County Office is telling us to lock the door because it is really hard... When you have people come in, you have to make sure they are a registered voter in your town. And if you have people coming in after you start, it just gets too confusing and you're not keeping track...

Robert Freeman: Yeah, but there is this thing; what is it called again? It's the *law*. Yeah, it's the law. The law is supposed to overcome confusion.

[overtalking]

Robert Freeman: Alright, more questions?

Chuck Geraldi, Councilmember: I have a couple. The Economic Development Committee they were discussing; what records do they have to keep? Like, it was discussed that they had collected money that was donated to the town.

Robert Freeman: There is a section of Town Law; Section 29 that discusses the powers and the duties of the supervisor which says that the town supervisor is required to maintain books of account. And it also says that those books of account are available to anybody during all reasonable hours – that is Section 29, Subdivision 4. And I could be making this up, but you can check it.

[overtalking]

Chuck Geraldi, Councilmember: But that is the only record that they have to keep? The Economic Committee does not need...

Robert Freeman: I don't know; it is not a creation of law. I guarantee that there are records and again the books of account have to be maintained by the supervisor. Presumably there are records which indicate what comes in and what goes out.

Chuck Geraldi, Councilmember: But they don't have to keep track of where this \$8,000 came from or that they... And the supervisor has to keep track that he got \$8,000...

Robert Freeman: I can't answer the question; I don't know the answer. Again, the Comptroller's Office would probably know. And it wouldn't be they, the Committee, which would have to keep the records; it would be somebody else in town government who would be obliged to do so.

Chuck Geraldi, Councilmember: FOIL requests. Me, being a town member, I go to Colleen. Do I have to fill out FOIL requests or can she give me this information?

Robert Freeman: I will give you two answers. I think that we should all be civilized and respect one another. I work for a public body also. If one of my members calls and says, hey Bob, can you send me such and such? I'm not going to say put your request in writing and I have five business days and it will be a quarter a page. I just do it. And if indeed a request from a board member is reasonable, it doesn't involve something that must be withheld – which hardly ever would be the case in town government – and if, again, the request is reasonable, it seems to me the town clerk should say sure, come on in. On the other hand, there are town board members who some people could characterize justifiably as lunatics where they say I want all the social security numbers of all the employees. But that is an unreasonable request. In that situation, where so-and-so is acting unilaterally, not at the direction of the board, not with the consent of the board but on his or her own, the suggestion has been that he or she can be treated in the same manner as any member of the public.

Chuck Geraldi, Councilmember: Now, how far up the chain of government would this work? I come in and I say to Colleen, I would like this and she says okay. Now if I go to the County and ask for the same information, do I have to fill out FOIL requests?

Robert Freeman: That is up to them. It is a completely different unit of government.

Colleen Teal, Town Clerk: I have a FOIL form; I just don't make people use it.

Robert Freeman: You can't make people use it. If you have a form and it is convenient for people to fill it out, great. But FOIL does not say a word about a form as long as the request is made in writing and it reasonably describes the record, that's adequate.

Trina Porte: Is there any way between the minutes and what actually happens at a meeting – because you mentioned earlier that the minutes can be as brief as motions and votes...

Robert Freeman: Yes, motions, proposals, resolutions, action taken, and the vote of the members.

Trina Porte: And you mentioned that people are free to record but my concern is that some people cannot get to meetings. And it would be wonderful if there were some requirement or accommodation that could be made to have a larger communication such as minutes that are more anecdotal that could be accessed by people remotely or through the mail or something. Is that...

Robert Freeman: What do you mean?

Trina Porte: Well, our minutes are not strictly motions and votes; our minutes include some information on subject matter and discussion. And one thing that some people who have requested minutes have said when they need minutes, they mean that larger version. And Colleen has complied...

Robert Freeman: She doesn't have to. She doesn't have to. And, again, you could sit here; you've been taking a lot of notes. You can do with them as you see fit. Anybody can record.

Trina Porte: There are about 2,200 people who can't necessarily make it to this meeting so...

Robert Freeman: You know, people have said oh god, my kid has a baseball game at seven o'clock, I can't go; can you hold the meeting at two in the afternoon? No. We just can't please all the people all the time. That's the answer. You have a friend, you send your friend to the meeting.

(switched tapes- second gap in tape)

Robert Freeman: ...the President of the Union who was a teacher, because the meetings were set at 7:00 in the morning, he sued them and he won. Because the court said that is not a time that is reasonable. Most people who would be interested in attending do not have a reasonable capacity to do so. So we have to do what is reasonable.

Matthew Meier, Reporter for *The Columbia Paper*: I have a school district who has told me that the parent teacher organization for them, because they are a 501C3, they are technically separate of them and they have actually characterized them as independent and they say that...

Robert Freeman: That is true.

Matthew Meier, Reporter for *The Columbia Paper*: And they are. If they are not producing records and they are not handing them over to the school district, then the school district does not have anything to hand to me. But last time that I was talking to them, they indicated to me that they are a 501C3, they are independent of us. They never mentioned

that they did not have any records that were turned over. What strategies would you recommend to pressure them to see if they have anything that they are withholding?

Robert Freeman: The PTA?

Matthew Meier, Reporter for *The Columbia Paper*: The school district.

Robert Freeman: The school district?

Matthew Meier, Reporter for *The Columbia Paper*: Yeah, I kind of find it incredulous that there is an organization raising money for a school district...

Robert Freeman: How do you pressure them? You ask for records and you say if you have got them, irrespective of the source, they are subject to rights conferred by FOIL, number one. Number two, the PTA as a 501C3 is required to keep what is called as a form 990. Do you know about the form 990? Every not-for-profit has to maintain a basic annual financial statement which it has to disclose on request. It is also available on Guide Star (GuideStar.org); it is also available from the IRS. But again, whatever it submits to the school district would be subject to rights of access. Also, just for your knowledge, where does the PTA hold its meetings?

Matthew Meier, Reporter for *The Columbia Paper*: In the school of course.

Robert Freeman: Okay, it's open to the public. Do you know why? It is because there is a section of the Education Law- it is Section 414, Subdivision 1, Paragraph C- which deals with the use of school house and grounds. And very basically, a school board can authorize that school grounds be used for various functions. And if the function involves a civic purpose, recreation, purpose pertaining to the welfare of the community, the law says it shall be non-exclusive and open to the general public. So if the PTA holds a meeting at the elementary school anybody can go including you.

Chuck Geraldi, Councilmember: Does that apply to towns too?

Robert Freeman: Nope. Nope.

Tistrya Houghtling: I have another question. Going back to this Economic Development Committee, it is a little bit vague. First of all...

Robert Freeman: I think it is a lot vague apparently. I mean, nobody knows who is even on it or where it came from.

Tistrya Houghtling: Well it was created by the Supervisor and then he appointed this guy and then told the guy to raise money for the town. And then somehow the money got raised for the town ... the town had already spent it, before the guy had raised it, and then the guy had raised it when the supervisor was asked about it, he said I have no idea, that's on this guy. How can he put a town financial thing on a guy that's not part of the government?

Robert Freeman: Go to our website, FOIL advisory opinions, click on 'T', and scroll down to Town Supervisor. And there is something like books of account of or something like that. It is Section 29, Subdivision 4 of the Town Law. Take a look at it. And the town supervisor is required to maintain and make available books of account. And presumably they indicate whatever came in and whatever goes out.

Tistrya Houghtling: And she should have it so I should be able to FOIL her.

Robert Freeman: No. He has it.

Tistrya Houghtling: I can FOIL him directly?

Robert Freeman: You go to him because it is under the Town Law. At the expiration of his term, his records go to her, just as yours do.

Tistrya Houghtling: So I wouldn't FOIL him?

Judy Zimmer: What if he says no? What if he just says no?

Robert Freeman: Then you show him the law and you have to do this you idiot. Right? Sorry.

Colleen Teal, Town Clerk: Our records management policy is posted and does tell you how... what your... appeals.

Robert Freeman: If a FOIL request is denied, the law says that the person denied access has the right to appeal. And the appeal goes either to the governing body, the town board, or somebody designated by the governing body.

Trina Porte: Is it okay or legal or whatever word you chose, for someone to be on more than one board and/or on a board such as Planning, Zoning or Town and also...

Robert Freeman: I can't answer the question. It has nothing to do with FOIL or the Open Meetings Law. I know some things but not everything.

Trina Porte: So where would I go for something like that.

Robert Freeman: You know, the Ethics Laws are a crock in this state, they really are. They really are and they don't tell you much of anything. You have a friend sitting next to you. She gets in touch with the Association of Towns; she gets the answer. They won't answer you but they'll answer her.

Denise Church: I just had a thing, my husband is on the Planning Board in Petersburg and I am on the Town Council and it was just in the *Eastwick Press* this past week that whenever... it's a form of nepotism. We have 1600 people in our town; there is going to be some crossover but I am not supposed to vote on anything regarding the Planning Board for now on.

Robert Freeman: You should see what I have to submit. I just did it today. I have been submitting financial disclosures statements for years and years and years. I have to submit to an Ethics Commission; JCOPE [NYS Joint Commission on Public Ethics], you have heard of JCOPE? An indication of every source of every asset that I have with ranges of assets: \$0 to \$1,000 is category 1; \$1,000 to \$5,000 is category 2; and it goes on and on.

Colleen Teal, Town Clerk: Our assessor actually has to do that with our local Ethics Board every year.

Trina Porte: Is that for your work or for your personal finances.

Robert Freeman: Personal.

Trina Porte: Really?

Robert Freeman: And it applies to my spouse and any minor children that I might once have had.

Trina Porte: So if somebody gives your puppy a quarter, you could be in trouble.

Robert Freeman: Gives my puppy a quarter? I do have to report interest on my bank accounts for example. Not the quarter but if the quarter is invested. I opened a Vanguard Mutual Fund, that's public?

Jagat Pandey: I would like to make a comment from the public. My name is Jagat Pandey. I am a resident of New Lebanon. And thank you for your good information and being available for me.

Robert Freeman: Thank you for being here. Thank all of you for being here.

[applause]

Robert Freeman: Use all of it well; use it well.

Unknown speaker: Do you have cards?

Robert Freeman: I have a couple of card. We used to have a hand-out but we don't have the resources to print anymore. My suggestion is that on our website; go to publications, we have a whole list. One of them is "Your Right to Know." But the reality is it is much more valuable online than it used to be in printed form because it includes links to all kinds of other stuff. You can print it out if you want, but again, it is more valuable online.

Respectfully submitted,

Colleen Teal, RMC
New Lebanon Town Clerk