

**SUFFOLK COUNTY COURT
SPECIAL GRAND JURY E**

**OCTOBER 11, 2011 TO JUNE 4, 2012
TERM 11**

**GRAND JURY REPORT
CPL 190.85(1)(C)**

Dated: _____

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PRELIMINARY STATEMENT

The Suffolk County Court Special Grand Jury E, Term 11, was empanelled on October 11, 2011, to investigate a course of conduct related to the Ethics Commission.

As a result of this investigation, the following report has been adopted pursuant to New York State Criminal Procedure Law Section 190.85 (1) (C), and is respectfully submitted to the Court.

The Special Grand Jury was tasked with investigating the history of ethics legislation, reform and use and abuses in the ethics process in Suffolk County. To that end the Special Grand Jury heard extensive testimony and received voluminous documents into evidence cataloguing Suffolk County's efforts to create an effective ethics body dating to 1968. Between 1968 and 2011 the Suffolk County Legislature passed at least twenty resolutions that created and adjusted ethics boards and commissions to provide Suffolk County's citizens and public officials an independent body that could fairly assess and resolve ethical issues and conflicts. Indeed Suffolk County was a leader in New York State in ethics reform and legislation up until the last decade.

This report chronicles actions by Suffolk County officials including Ethics Commissioners, Ethics Officials and Ethics Attorneys who abandoned efforts at reform and completely destroyed the ethics infrastructure Suffolk County Officials had worked so hard to create. Misconduct over the last ten years resulted in the complete collapse of the body known as the Ethics Commission ultimately resulting in its abolition in 2011.

The Special Grand Jury heard testimony from twenty five witnesses and received sixty-six exhibits collectively totaling over five thousand pages.

Ethics Legislation in the 1960's and 1970's

In 1968 the Suffolk County Board of Supervisors, the predecessor body to the Suffolk County Legislature, passed Resolution No. 75-1968 adopting Local Law No. 4-1968. The law was entitled "A local law to amend the Suffolk County Charter so as to provide for a Code of Ethics setting forth the required standards of conduct for the

offices, agents and employees of Suffolk County.” This seminal law created a Code of Ethics and a Board of Ethics.

The Code of Ethics prohibited county employees from engaging in certain types of conduct. The code defined conflicts of interests that might arise from particular relationships employees might have with people or entities doing business with the county. It prohibited employees from receiving gifts or favors, mandated disclosure of an employee’s interest in certain matters before county boards, agencies and bodies; created a two year restriction of future employment under certain circumstances; prohibited disclosure of confidential county information and established a misdemeanor offense for violating the Ethics Code.

The law created an Ethics Board comprised of five members as appointed by the County Executive and confirmed by the Board of Supervisors. The terms of the board members were at most five years and there could be no more than two members from the same political party. The board members were uncompensated.

The responsibility of the Board was to render opinions about the applicability of the Code. The Board was empowered to promulgate its own rules and regulations concerning both forms and procedures.

The 1968 statute established Suffolk County’s first foothold in its efforts to establish an effective ethics body. The Suffolk County Legislature was established in January of 1970. In 1972, 1973 and 1977 the Legislature passed resolutions further strengthening and defining the Ethics Code and Ethics Board. In 1972 the definition of conflict of interest was significantly expanded articulating new categories of relationships

considered a conflict of interest. The value of prohibited gifts was set at \$25.00 or more. The Ethics Board's powers were also expanded. In 1973, amendments to the Code exempted members of occupational licensing boards from certain provisions of the code. Again in 1977, legislation broadening the purview of the Code was enacted.

The Special Grand Jury heard testimony from County Official A, a member of the County Attorney's Office in the 1970's and 1980's. County Official A was integrally involved in the drafting and consideration of ethics legislation during this period. He testified that in the 1960's and 70's Long Island, and Suffolk County in particular, experienced numerous government corruption scandals. Among these was the Southwest Sewer District scandal in which government officials held interests in construction companies hired by the County to construct the facility. In Nassau County, government officials were accused of advocating the purchase of land by the County in which public officials also had hidden interests. By 1978 these repeated instances of undisclosed interests of public officials had created a crisis of confidence in government.

After a decade of legislative tweaking to the 1968 Ethics Code and Ethics Board, a sea change in the history of Suffolk County government ethics legislation arrived in 1978 with the adoption of the first financial disclosure law. The Suffolk County Legislature passed Resolution No. 463-1978 adopting Local Law No. 12 of 1978 entitled, "A Local Law on filing of financial disclosure statements by certain county officials and employees." The legislature carefully considered the integrity crisis at hand and took significant proactive measures with this ground breaking statute.

The legislation contained a Declaration of Policy as follows:

“It is hereby declared the policy of Suffolk County:

- (1) To insure to the citizens of Suffolk County a county government that is administered free from any conflicts of interest by employees who affect the integrity of the county government;
- (2) To recognize that the citizens of Suffolk County are entitled to a high standard of candor from their public servants;
- (3) To provide a means by which those County employees may disclose those aspects of their business and personal affairs, which, even though they may not relate to the specific duties of the county employee, that reflect upon the integrity of the county government;
- (4) To discourage and detect corruption and the appearance of corruption;
- (5) To instill in the public a sense of confidence and integrity and partiality of its public servants.”

The legislature also incorporated Legislative Findings set forth as follows:

“The county legislature has made the following findings of fact and determination:

- (1) The citizens of Suffolk County desire and require accountability and candor of its government, more particularly those employees who perform responsible functions on behalf of the county government.
- (2) Any conflict of interest on the part of county employees is deleterious to the county government administration and credibility.
- (3) Those persons who hold county positions as hereinafter defined constitute a distinct class of county government employees whose public and personal affairs reflect upon and relate to the credibility and quality of government administration.
- (4) All information obtained by the Board as hereinafter created, and not made public pursuant to this law, shall be considered confidential and any disclosure shall be an unwarranted invasion of personal privacy under the meaning of the Freedom of Information Law.”

The law required all elected county officials, all department heads, chief deputy department heads and all exempt personnel with a civil service grade of 32 and above to file the financial disclosure statement in the form set forth in the statute. The form of the financial disclosure statement was carefully considered; it was wide ranging in both the type and detail of information sought.

The declaration of policy and the legislative findings in the resolution made plain the spirit and purpose of the law. The statute carefully detailed the letter of the law. It established a new body, the Suffolk County Board of Public Disclosure. This Board was to be comprised of seven individuals who were not public officials, elected or appointed, nor could they hold any office in a political party. Each member was to be appointed by the County Executive and approved by the legislature.

The Board was empowered to receive the filed financial disclosure statements, review them and determine whether there was a conflict of interest or other impropriety. The statute provided a procedure for the Board to follow in the event of a conflict and included the level of disclosure, remedy or punishment that was warranted.

Penalties for certain conduct were established including a class B Misdemeanor for filing with intent to deceive, intentionally misrepresent or to otherwise fraudulently answer any question set forth in the statement.

Section 11 of the law was entitled "Unauthorized Disclosure" and declared it to be a violation of law punishable by ten days in jail, for any board member or other individual, except the individual who filed the statement, to disclose any information contained on a disclosure statement except as authorized by "this local law." The law provided for

disclosure of confidential financial disclosure forms only when a conflict or impropriety was found and after the filer had an opportunity to be heard.

In Suffolk County's maelstrom of scandal in the late 1970's, the county had armed itself with an Ethics Board of five members and an Ethics Disclosure Board of seven members for a total of twelve ethics officials and support staff to combat not only public corruption but its appearance.

More than a decade later the State of New York finally required the filing of financial disclosure forms by its employees. The form established in 1989 was a far less comprehensive form than that required by the carefully crafted Suffolk County law.

Ethics Legislation in the 1980's

The imposition of the financial disclosure filing requirement in Suffolk was met with resistance by some government employees. County Official A testified that some in county government strongly opposed the new invasive nature of financial disclosure. Certain county employees actually resigned rather than complete the required forms.

Concerned about possible political backlash that might impact the success and content of future resolutions the legislature took additional proactive measures. Resolution No. 475-1979 was passed adopting Local Law No. 13-1979. The statute contained the following provisions:

“Section 1. Section 6 (a) is hereby amended to read as follows:

- (a) The Board shall review the statement as set forth in Section 9 of this local law and may come from time to time, proposed revisions, alterations or amendments to the statement form, including the information required. The Board shall submit said changes to the Presiding Officer who shall introduce said changes to the County Legislature as a local law amending Section 9 herein. Neither the Presiding Officer nor the members of the Legislature may amend said proposal, but may

either adopt or reject the proposal as submitted. Upon the review of a statement form or its subsequent revision, alteration or amendment, the Board shall direct that a copy of same be delivered to those employees who are required to file a statement by certified mail return receipt requested or by personal delivery with receipt to be signed by the employee.

Section 2. This local law shall take effect immediately.”

DATED: May 8, 1979

So concerned were the drafters of the financial disclosure law about political pressure from within the legislature that could result in alterations to the financial disclosure form, that this provision was adopted. Its purpose, simply put was to require that recommendations by the Board would have to be approved or rejected in the manner submitted. This was a strong legislative statement of the importance of the content of the Financial Disclosure Form to both legislators and county employees.

Nevertheless, resistance to the filing of the financial disclosure forms remained stiff. In or about 1987 certain county employees brought legal action in Federal Court to be declared exempt from filing the forms. The Second Circuit Court of Appeals upheld the County’s position that all named categories of employees were compelled to file.

Nonetheless, during the 1980’s adjustments to the financial disclosure law resulted. In 1981, Local Law No. 11, clarified the filing date of the form. Other changes occurred through legislation.

The Special Grand Jury heard testimony from County Official B who worked for nearly thirty years as an attorney in different capacities for Suffolk County. He was involved in drafting language for many legislative resolutions. He described further efforts to fine tune the financial disclosure statute.

County Official B testified about Local Law No. 34 of 1985 that amended the financial disclosure law. This statute broadened the reach of the law by requiring employees making over \$25,000.00 or Civil Service Grade 16 and above to file.

Local Law No. 34 of 1985 also mandated disclosure of bank account information including the bank name, number of accounts, type of account and within certain ranges, account balance information. It also made it more difficult for employees to seek redaction of information publicly sought through the Freedom of Information Law. The law also mandated that the Board publicly meet three times a year.

In 1986, Local Law No. 9 clarified that the reporting period was twelve months prior to the filing date and required that the source of income above \$1,000.00 had to be identified.

Legislators realized that the 1985 statute setting the filing requirement at Grade 16 and above was unreasonably broad. That demarcation required classes of employees not originally intended to fall under filing requirements to file. As such, Local Law No. 20 of 1986 was passed exempting twenty-seven titles of employees from the financial disclosure filing requirement. They included nurses, tailors, mechanics, painters, cooks, drillers and drivers.

In 1987 Local Law No. 25 broadened the filing requirement to two additional groups of employees including appointed members of the Suffolk County Water Authority.

As the decade progressed, with continued fine tuning of the ethics statutes, unfortunately the air of scandal and corruption persisted. The aftermath of the Southwest Sewer District scandal infected government through the 1980's. New conflict of interest and

corruption probes were launched into the Suffolk County Vanderbilt Museum and the Suffolk County Water Authority.

In 1987 the Suffolk County Legislature created a bipartisan committee to review the efficacy of the existing ethics structure. The committee's findings were embodied in yet another dramatic change to Suffolk County's ethics enforcement with the enactment of two laws in 1988.

Resolution No. 908-1988 adopted Local Law No. 33-1988 entitled "A local law strengthening County Code of Ethics." In a measure of frank self-reflection the legislature included the following language in the resolution:

"A. This Legislature hereby finds and determines:

- (1) That problems of ethics in government, including but not limited to conflicts of interest, are not limited to any one geographic location or political subdivision and are of great concern to the people of Suffolk County;
- (2) that existing ethics laws may not go far enough towards providing clear guidelines for the proper conduct of government officials and employees and those persons dealing with government; and
- (3) that the enforcement of existing ethics related laws has suffered.

B. Therefore, the purpose of this law is to accomplish the following objectives:

- (1) To clarify and extend existing ethics related laws;
- (2) to reduce and eliminate conflicts of interest problems in County government;
- (3) to preserve and maintain the integrity of the governmental decision-making process in this County;

- (4) to provide an effective mechanism for the enforcement of this law and other ethics related laws; and
- (5) to reaffirm this County's commitment to the maintenance of the highest levels of integrity in government."

This law extended the reach of the County Ethics Boards to new areas of concern. County Official B testified that these areas included banning employees from appearing before any board or county body whether or not it related to the employee's area of employment, party officials were required to disclose potential interests in county contracts, candidates for county office had to file financial disclosure forms and political party officers were prohibited from serving as commissioners or department heads.

Significant structural changes to the Ethics Board were enacted with Local Law No. 44-1988, but some discussion of relevant New York State Law decisional law emerging at the time is warranted.

As previously discussed, in 1987 New York State enacted the Ethics in Government Act establishing a state financial disclosure requirement. The New York State General Municipal Law also gives authority to municipalities to adopt local ethics codes. Aware of the potential for two bodies of ethics laws under this paradigm, the Suffolk Legislature included the following language in Local Law No. 44-1988:

"Section 1. Legislative Intent

This Legislature hereby finds and determines that, under the existing County Code of Ethics, the County Board of Ethics is not properly equipped to meet the demands of the current populace which calls for an aggressive, proactive monitoring of governmental activities and County employees that ensures integrity in government.

This Legislature further finds that Chapter 813 of the Laws of 1987, the ETHICS IN GOVERNMENT ACT, establishes minimum ethical standards for local officers and employees but allows localities, including the County of Suffolk, to enact more stringent

controls so that they may address their special needs and that such a law may regulate or prescribe conduct which is not expressly prohibited by the ETHICS IN GOVERNMENT ACT as long as it does not authorize conduct otherwise prohibited by said State law.

Therefore, the purpose of this law is to abolish the county Board of Ethics and to replace it with an assertive County Ethics Commission equipped with the full power to prevent and punish wrongdoing, misconduct, and improprieties in County government.”

The legislature clearly identified shortcomings in its ethics infrastructure and while recognizing that state law established minimum ethical standards, the legislature affirmatively asserts its right to demand more stringent ethical standards for county employees.

For the first time the new Suffolk County Ethics Commission was comprised of three members. The County Executive, the Legislature and the Legislature’s Presiding Officer each appointed a member. County Official B testified that the primary purpose of this legislation was to create independent checks and balances in the appointment of Ethics Commission members. Previously, all members were selected by the County Executive.

In 1991 Local Law No. 11 was passed entitled “A Charter Law to streamline county government by consolidating functions of Board of Public Disclosure with County Ethics Commission.” This legislation abolished the Board of Public Disclosure. County Official B testified that the commission and the board were duplicating work and with this new law, all ethics and disclosure functions were to be performed by the three member commission.

Between 1991 and 2000 only one other ethics resolution was passed, in 1993. Local Law No. 14 of 1993 prohibited county elected officials from working for a municipal union for a period of two years after leaving county service.

2001 to 2011: The Failure of the Suffolk County’s Ethics Commission

For thirty years the Suffolk County Legislature worked tirelessly, and earnestly to create and maintain an effective ethics code and infrastructure for dealing with violations. Dozens of committed legislators, elected officials and government attorneys proactively invested countless hours of work and thought into protecting Suffolk County from unethical conduct by government employees and elected officials. None of them could have envisioned the intentional and systematic assault on Suffolk County's ethics infrastructure that was to come.

Sadly, a small but powerful group of Suffolk County employees intentionally undermined thirty years of progressive ethics reform simply for personal and political gain. As a result, confidence in the Suffolk County Ethics Commission was utterly compromised ultimately resulting in the scrapping of the entire system.

It should also be noted that many county employees involved in these events acted honorably, with the intent to protect and preserve Suffolk County's ethics infrastructure. Unfortunately, in the end they were overcome by more powerful and dark forces.

The Impaired Appointment of Ethics Commissioners and Ethics Commission Officials

The history of the destruction of the Suffolk County Ethics Commission will be made plain in this report but an explanation of the categories of officials involved in relevant county departments must first be undertaken as follows.

Ethics Commissioners

Although there were three sitting Ethics Commissioners at any given time, during the following events there were many more than three commissioners. This report will refer to the conduct of these commissioners and identify them as Ethics Commissioners.

Ethics Commission Officials

The Ethics commission was supported by a variety of county employees. Secretaries from the County Attorney's Office, process servers and an executive director who was not a commissioner, all worked to advance the work of the Ethics Commission. These individuals will be referred to as Ethics Commission Officials.

Ethics Commission Attorneys

The Suffolk County Attorney represented the Ethics Commission. As such, numerous Assistant County Attorneys provided legal advice to the Ethics Commission. Also, the County under certain circumstances hired outside private counsel to provide legal advice to the Ethics Commission. All attorneys will be referred to hereinafter as Ethics Commission Attorneys.

I.

County Official C

County Official C testified extensively about the circumstances under which he was appointed to the Ethics Commission between 2001 and 2011.

Prior to his appointment, County Official C believed he was going to be interviewed by county employees for the position. In advance of the interview he had a conversation with County Official D who was a close advisor to County Official E. County Official D has worked in Suffolk County Government for decades in the Legislative Branch and was out of county service at the time of the events described herein. County Official E worked in the office of the County Executive. County Official C testified that County Official D told him what to tell County Official E in his interview in order to be considered and appointed. County Official D told County Official C to emphasize the following relevant points:

1. That County Official E “should feel free to, of course, to have confidential meetings with you” at another advisor’s residence regarding the work of the Ethics Commission.
2. That he should tell County Official E that “he has a confidential relationship with you that you respect and anytime he wants a meeting in his own office or at [another advisor’s house], he knows where to find you.”

With that advice in mind County Official C met with County Official E. County Official C testified that County Official E told him that if he was appointed as an Ethics Commissioner “don’t embarrass me” and that County Official E was trying to get County Official C to say “I’m your guy.” County Official E then said, “I don’t want veto power, but I want to know, you know, before you, before you do something that could be, that you know could be potentially problematic.” He further testified that County Official E “was really just trying to feel me out to see if I’d be, you know, willing to, I guess...play along. You know, . . . be a good boy.”

County Official C testified that he told County Official E, “you tell me how you want me to communicate with you” in reference to the confidential work of the Ethics Commission. County Official C testified, “If you want me to talk to [another advisor] I’ll talk to [that advisor] ... I mean, you tell me whom I’m supposed to, whom I’m supposed to communicate with so that you can get the information that you need and you can be comfortable with what’s going on. You make that decision, I don’t care how you do it.” County Official C described County Official E’s meeting with him as “two seconds on

what's your vision for the Ethics Commission and the rest of the time was you know, is he [County Official C] going to be a good boy.”

After the meeting County Official C told County Official D to reaffirm to County Official E that County Official C would comply with the requests of County Official E by stressing that County Official C “knows who he’s responsible to and you know, and he’ll be a good boy...he can be a team player.”

The Special Grand Jury finds that this agreement between County Official C and County Official E was a pernicious undermining of the Suffolk County’s ethics code, rules, regulations and spirit and was totally improper. This improper agreement completely compromised County Official C and the work of the commission for the entirety of the time he served on it.

County Official C testified that despite the public belief in his credentials in the area of ethics at the time he made the agreement with County Official E he was unaware of any confidentiality restrictions that existed in the ethics statutes. He acknowledged that the agreement with County Official E was totally improper, and articulated that he sincerely regretted making the agreement.

County Official C testified that when appointed to the commission he was provided with a copy of the Ethics Code and other relevant statutes, but did not receive formal training in the details of the ethics laws with which he was unfamiliar. He relied on the ad hoc but competent advice of County Official F, an Assistant County Attorney who advised the Ethics Commission honorably for many years.

Since during the last ten years Ethics Commissioners were appointed by either the Legislature, the presiding officer of the Legislature or the County Executive, no inference should be drawn as to whose appointee is being referenced herein.

II.

County Official G

County Official G also testified about the circumstances under which he was appointed to the Ethics Commission. He testified that beginning in the 1980's he had a business relationship with a woman who later married County Official E. He indicated that in 1989 his wife met and befriended County Official E's future wife.

County Official G testified that County Official E's wife attended his daughter's graduation and that she would socialize often with County Official G and his wife. It was through this long standing close personal relationship that County Official G became a personal friend of County Official E.

County Official G also had a business relationship with the wife of County Official E for many years, including during the time he served as an Ethics Commissioner.

County Official G made it clear to the Special Grand Jury that he had no background, training, expertise or legal experience in the area of ethics. He testified that County Official E continually urged him to serve on the Suffolk County Ethics Commission. Although not particularly interested in doing so, after numerous requests County Official G acquiesced and agreed to be considered for the position to which he ultimately was appointed.

Since during the last ten years Ethics Commissioners were appointed by either the Legislature, the Presiding Officer of the Legislature or the County Executive, no inference should be drawn as to whose appointee is being referenced herein.

County Official G testified that he received no formal training about the Ethics Code with which he was totally unfamiliar. He testified that he received admonitions from County Official F that all matters before the Ethics Commission were strictly confidential.

As set forth later in this report County Official G failed to recuse himself from voting on ethics opinions that related to County Official E and his wife notwithstanding his personal and business relationship with them. Also, as described herein, County Official G admitted to violating the law by publicly confirming confidential details of the Ethics Commission's work in a complaint against a former county employee.

The Special Grand Jury finds that County Official G's independence as an Ethics Commissioner was significantly impaired.

III.

County Official H

County Official H was hired to assist the Ethics Commission with its work. County Official H was an Ethics Official as defined above.

Suffolk County employees other than sworn police or correction officers are categorized as either management employees, meaning that they serve at the pleasure of their designated supervisor, or are civil servants protected by collective bargaining agreements and are members of the Association of Municipal Employees (hereinafter AME). The work hours and rate at which the two classes of employees receive vacation, sick time and other accruals are different.

The Special Grand Jury received documentary evidence and testimony that clearly established the fact that County Official H was hired as a civil servant and member of AME. The legislative resolution that established County Official H's position clearly stated that his position was to be funded as a civil service position listed in Bargaining Unit 2, AME's White Collar Unit.

The Special Grand Jury received into evidence a document entitled "New Employee Orientation" which County Official H testified that he signed. His signature acknowledged his receipt of the Collective Bargaining Agreement for his AME position and his AME Enrollment Card.

County Official H's work station was in the Suffolk County Attorney's Office. County Official H testified that he was told by a person, whose name he could not recall, that he was to fill out his hours, sick, vacation and personal time accrual records as a management employee, not at the rate of accruals for an AME employee. By doing so County Official H would receive more favorable accruals than he was entitled because management employees receive more favorable accruals than comparable civil servants. His time and accrual records, commonly known as "time sheets" were signed and authorized by County Official I, a high ranking attorney in the County Attorney's Office. It should be noted that the County Attorney's Office is a department directly reporting to the County Executive's Office. As such, County Official H received vacation, sick and health benefits at a rate and with a monetary value far in excess of that to which he was entitled.

County Official H testified that he had a business in addition to his employment by the County. He indicated that he told county officials that he would not be able to work the

number of hours required for his county position. County Official H accurately recorded the hours he worked, but those hours dropped at times to less than fifty percent of the work hours required plunging County Official H into part time employee status.

Ultimately county officials from the County Comptroller's Office, upon discovery of this arrangement that continued for years, calculated the financial advantage County Official H had received from supervisors in this department of the County Executive's Office. A review of his time and accrual if properly recorded calculated at the rate of an AME employee revealed differences in his vacation, sick and personal time and that he had also received over \$14,000.00 in health benefits to which he was not entitled.

The Special Grand Jury received no evidence to support fraud or theft by County Official H. However, the Grand Jury finds that County Official H's independence in his role on the Ethics Commission was significantly impaired and resulted in the appearance of impropriety because the advantage he was given was directly attributable to the Executive Branch of Suffolk County Government.

Abuse of the Ethics Commission Process

The Special Grand Jury heard extensive testimony from County Official I, who was employed by the County Attorney's Office. County Official I testified about the facts and circumstances of ethics complaints filed against County Official J and County Official B.

1. Ethics Complaint against
County Official J

County Official I testified that she was approached by County Official E and County Official K both of whom objected to what they considered a conflict of interest involving

County Official J's votes in the Suffolk County Legislature on a particular matter. County Official K worked in the County Executive's Office. County Official J was a Suffolk County Legislator,

County Official I testified that County Official E and County Official K provided her with written information regarding the alleged conflict. County Official I testified that she then typed a complaint in the name of County Official K against County Official J for submission to the very same Ethics Commission that County Official I represented. County Official I testified that although documents prepared by attorneys are routinely typed by secretaries whose initials appear on correspondence, in this instance no such initials appear because County Official I typed it on her personal office computer. County Official K also testified that County Official I prepared the complaint that he signed.

When asked how County Official I could take such action on behalf of a party appearing before the same body that County Official I represented, County Official I stated that the County Attorney's Office was "conflicted out" and did "not represent the Ethics Commission on it."

The Special Grand Jury heard testimony from a private attorney who was retained to determine whether there was a conflict of interest presented by the County Attorney representing the Ethics Commission in the complaint against County Official J. He testified that he found no conflict whatsoever and that the complaint against County Official J was, in fact, properly handled by the County Attorney's Office. The Special Grand Jury received documentary evidence that showed that the County Attorney's staff represented the Ethics Commission on the matter for nearly two years, despite the fact

that County Official I had personally prepared the complaint against County Official J for the County Executive's Office.

County Official K testified that shortly after the complaint seeking action by the Ethics Commission against County Official J, County Official E contacted County Official K. County Official E wanted to know what was holding up action by the Ethics Commission. County Official E directed County Official K to speak to County Official L, who was an Ethics Commissioner saying, "he's our guy, find out where it stands." County Official K called County Official L and inquired as directed. County Official K testified County Official L was "curt" and told County Official K that he could not discuss the matter.

Weeks later, County Official E told County Official K to send a letter to the Ethics Commission demanding action. He also told County Official K to call County Official H to urge action. County Official K testified he did so.

The day after the letter was sent to the Ethics Commission, County Official K ran into County Official I and advised that County Official E was upset at the slow pace of the complaint. County Official I told him that County Official J was being served with a formal Notice of Violation, "as we speak". Shortly thereafter, County Official K spoke to County Official E to advise him of the service of process in the action, County Official E stated "I already know."

County Official J testified and the Special Grand Jury received the Receipt of Service upon County Official J indicating that he was served with a Notice of Violation on that day.

Once the Notice of Violation was filed the investigation into County Official J stalled for nearly two years until County Official K sent a letter on his own initiative asking that the matter be closed. When County Official E learned that County Official K had sent such a letter he was angry. County Official I testified that County Official E wanted the investigation into County Official J to be held over his head for public political purposes. The Special Grand Jury finds the gross manipulation of the Ethics Commission by County Official E for political purposes to be totally unacceptable and deplorable.

2. Disclosure of confidential

Ethics Complaint against County Official B

The Special Grand Jury heard testimony about the circumstances under which the complaint against County Official B was filed and made public in 2008.

County Official K testified that he was approached by County Official E and was asked to file a complaint against County Official B. A letter setting forth the complaint was prepared by County Official I in the name of County Official K and two other employees of the County Executive's Office.

County Official I testified that County Official K typed the complaint letter.

County Official K further testified that the substance of the letter was provided by County Official E. County Official E provided newspaper articles and other documents which formed the factual basis for the complaint. County Official K framed the legal and ethical points to support the complaint.

Once again County Official I prepared a complaint for review by the Commission that County Official I represented.

County Official B testified that he was unaware of a complaint against him until he received a call from a Newsday reporter seeking his comment on the matter. Stunned by being notified of such a matter by a reporter and not the Ethics Commission or the complainant he pressed the reporter for details.

County Official B testified that the Newsday reporter had in his possession a complaint signed by three County Executive employees. The reporter advised County Official B of five charges made against him in the letter.

County Official B sent a letter to the Ethics Commission seeking information about the complaint against him. Although a story had run in Newsday reporting the complaint, County Official B still had no other information about the complaint from the Ethics Commission.

County Official B again spoke to the Newsday reporter seeking more information. The reporter stated that he had received confirmation of the complaint from the Ethics Commission. Specifically, the reporter indicated that he had called County Official G seeking confirmation. The reporter told County Official B that County Official G had left a message on the reporter's answering machine in response to the reporter's calls. The reporter e-mailed County Official B a transcript of the message left by County Official G. The Special Grand Jury received the e-mail of the message into evidence. The question that had been asked by the reporter was whether the Ethics Commission had received a complaint about County Official B and whether he was under investigation.

The message from County Official G was as follows:

“To answer your question, yes, the Commission actually had a meeting this afternoon and into this evening. Obviously we are addressing the letter you referred to and the subject is under consideration.”

County Official G testified before the Special Grand Jury. County Official G confirmed he had received calls from the Newsday reporter seeking confirmation of the complaint and investigation into County Official B. He also confirmed that he had left the message set forth in the above mentioned transcript. County Official G felt that the reporter was in possession of the complaint and therefore was committing no wrong by confirming the complaint.

The Special Grand Jury finds that public confirmation by an Ethics Commission of a complaint against an individual under these circumstances to be deplorable and in violation of the spirit and letter of Suffolk County's Ethics Code.

Ethics Opinion for County Official E

The Special Grand Jury heard testimony from County Official B about a conversation he had with County Official E regarding his wife's business. The conversation took place in June of 2005.

County Official B testified that County Official E pulled him out of his office and spoke to him in a hallway. County Official E spoke to County Official B in a whisper. He told County Official B that his wife was interested in getting contracts with hospitals that do business with Suffolk County. He asked County Official B if he thought there was a "problem" with her doing business in such a manner. County Official B testified that he told County Official E it was a problem. County Official E then said that County Official I didn't agree with County Official B's position. County Official B then urged County Official E to have the Ethics Commission consider the matter and give him an opinion.

The Special Grand Jury heard testimony from County Official I about this matter. County Official I testified that County Official E asked County Official I to draft a request for an opinion from the Ethics Commission to determine if his wife could do business with entities that also did business with and received funds from Suffolk County. County Official I testified that she conferred with the wife of County Official E who was “incredulous” that anyone would think there was something wrong with such a business arrangement.

The Special Grand Jury also heard testimony from County Official C who testified that he was called to County Official E’s office in the H. Lee Dennison Building. Upon arrival County Official E asked County Official C to join him in the elevator so they could speak outside of the office. Once downstairs they stopped in the breezeway on the eastern side of the H. Lee Dennison Building. County Official E told County Official C that his wife was going to be requesting an opinion from the Ethics Commission. County Official E minimized his marital status in an attempt to demonstrate the absence of a potential conflict of interest. County Official C testified that County Official E stated that the requested opinion shouldn’t be deemed one that would benefit County Official E because of the true nature of their relationship.

County Official C testified that although he recused himself on other matters relating to County Official E he did vote on a permissive opinion in favor of this business relationship. He testified that “in retrospect... [he] should have [recused himself]” from the matter entirely.

County Official M, who later became an Ethics Commissioner, testified about the legitimacy of the opinion that there was no conflict. He was not on the commission at the

time the opinion was rendered. He testified that the business relationship in question was improper and that any review of the conflict was a “no brainer” and that it should have been prohibited because those entities doing business with Suffolk County would have felt pressure to give business to County Official E’s wife.

The Special Grand Jury heard testimony that yet a second ethics opinion was given by the Ethics Commission in favor of the conduct of the wife of County Official E. That opinion permitted County Official E’s wife to serve on the board of a not-for-profit entity that received funds from Suffolk County.

County Official G who voted favorably on the opinion, was also long standing personal friends with County Official E and his wife. At the time he voted favorably on the second opinion indeed County Official G had an ongoing business relationship with the wife of County Official E. Notwithstanding this glaring conflict he voted on the matter in favor of permitting her to engage in the conduct in question. He testified under oath before the Special Grand Jury that he should not have voted on the matter.

The Filing of New York State Financial Disclosure Forms
Instead of Suffolk County Disclosure Forms

The Special Grand Jury heard testimony from County Official B about the filing of financial disclosure forms by County Official E. County Official B testified that County Official E approached him with a blank Suffolk County Financial Disclosure Form. He testified that County Official E “wanted to know if his wife had to fill out the column on the right hand side which says “spouse.” County Official B told him that the portion about his wife’s finances had to be filled out. County Official E then asked “what if she doesn’t?” to which County Official B answered “you have to file a complete form.” They had no further discussion of the matter.

County Official H, whose independence was impaired by the improper financial benefit he received from the executive branch of government, also testified about County Official E's filing of Financial Disclosure Forms.

County Official H testified that he was approached by County Official I who asked if County Official E could file a New York State Financial Disclosure Form instead of the Suffolk County Financial Disclosure Form. County Official E had been filing the Suffolk County Form through 2005. However, County Official I told County Official H that because County Official E served on a New York State Board, he "would like to file" the State Form.

New York State Law permits individuals who work for New York State to file the New York State Financial Disclosure Form with local municipalities. Suffolk County Law clearly mandates that the Suffolk County Financial Disclosure Form be filed.

County Official H testified that he authorized County Official E to file only the New York State Form. Despite his obligation to file the more comprehensive Suffolk County form, County Official H did not ask the Ethics Commissioners to consider, opine or vote on the question of which form should be filed.

County Official H did not conduct any legal research to determine which form was legally required to be filed.

The Special Grand Jury heard testimony that New York State courts have considered whether Suffolk County Law requiring the filing of Suffolk County Disclosure Forms was pre-empted by New York State Law. Specifically, in Suffolk County Ethics Commission v Neppell 307 AD 2d 961, 762 NYS 2d 915 the Grand Jury learned that the court held:

“Accordingly, it is found that Suffolk County Code Section A30-8(c) and Suffolk County Code Section A30-10A(1) are not preempted by and are not inconsistent with General Municipal Law Section 810(b) (c), 811(1) (a), (b) or (812) (1) (a).”

Clearly the existence of this decisional law supports a finding by this Grand Jury that County Official H should have sought the advice of both the Ethics Commission and its attorneys on this important matter.

Instead, County Official H testified that he relied only on comments made by County Official C at a seminar where he purportedly opined that it was lawful to file the New York State Form in lieu of the County Form. Since County Official C testified that he had no specialized training or experience in the area of Ethics Law it is clear County Official H should not have relied on County Official C’s speculative opinion. County Official C is also the individual who communicated to County Official E that he would be County Official E’s “good boy.”

Equally disturbing is testimony that the New York State Form requires significantly less information than the County form especially with respect to disclosing a spouse’s financial information.

The Special Grand Jury finds that County Official E’s request to file the New York State Form was not properly authorized by County Official H.¹

Ethics Commission in 2010

The Special Grand Jury heard testimony from several members of the Suffolk County Legislature with different political party affiliations. County Official N, a

¹ While finding that the process used to approve the filing of the New York State Form was unsound in this instance, the Special Grand Jury heard testimony that other officials had been permitted to file the New York State Form over time. Subsequent to Official E filing New York State Forms the Ethics Commission issued a report finding that the practice was authorized. Furthermore, Official E refiled Suffolk County Forms in light of the controversy.

Suffolk County Legislator, testified that by the spring of 2010 the Legislature had received many complaints about the conduct of the Ethics Commission. There were repeated allegations that the actions of the Commission were politically motivated and influenced by County Official E. Furthermore, there was public confusion as to why one or more county officials were filing the New York State Financial Disclosure Forms instead of the Suffolk County Forms.

The Suffolk County Legislature decided that it should create a special bipartisan Legislative Ethics Committee to review the conduct of the Ethics Commission. The special committee was charged with reviewing whether the Ethics Laws should be updated as it had been many years since the law had been revisited.

In order for the special legislative committee to function effectively it had to be empowered with certain commonly assigned functions such as the issuing of oaths, the assigning of counsel and subpoena power. The Legislature had to meet and vote to consider granting the special committee each of those powers. On August 3 and August 17, 2010, the Legislature met to consider assigning the committee the power to issue oaths on the 3rd and appoint counsel on the 17th.

The formation of the committee was met with virulent resistance from certain county employees.

Public statements made in the name of the Ethics Commission

The Special Grand Jury heard testimony from County Official M. He testified that he was one of the newest appointees to the commission and that unlike other Commissioners, he had not been inappropriately approached by anyone prior to his appointment. He was unaware of improper conduct by other commissioners or staff. He

was a true believer in the purpose of the Ethics Commission. County Official M described the politically charged atmosphere in August of 2010 regarding a review of the Ethics Commission.

County Official M testified before the Legislature on August 3, 2010 for the purpose of defending the honor of the Ethics Commission. Before testifying on that date, County Official M was met by County Official I in the lobby of the Suffolk County Legislature in Hauppauge. There, County Official I gave him a letter he had not prepared or reviewed to read to the Legislature. County Official M testified, although he was told to read the letter as if prepared by County Official M, “I had nothing to do with writing that letter...”

The letter he read contained the following statements:

1. “...the members of the commission are compelled to make a statement regarding the unsubstantiated and spurious changes being leveled against them.”
2. “All members of the commission are outraged that our ... integrity ... has been questioned.”
3. “The commission has *never, ever* on any occasion been pressured by anyone from the County Attorney’s Office or the County Executive’s Office ... regarding the matters before us and, quite frankly, we resent the implication that we would permit that to happen under any circumstances or that we would be swayed from such pressure.”

County Official M was then questioned by the Legislature which he answered in a reserved manner. County Official M testified before the Grand Jury that, “the executive branch of the county was not necessarily pleased with how I presented myself.”

County Official I testified that County Official E “wanted him [County Official M] to say more [in defense of the Ethics Commission].” County Official I explained how County Official E began preparing statements in defense of his filing the New York State Disclosure Form and attacking the Legislature for conducting its review. County Official I testified that County Official E was communicating with the Ethics Commission through her and others to support him and the manner in which he filed his financial disclosure forms. He ultimately prepared another letter to be read to the Legislature by another Ethics Commissioner.

On August 17, 2010 County Official M testified that he was met by County Official O, an Ethics Attorney, who provided him with a letter to read to the Legislature. County Official I confirmed that the letter given to County Official M by County Official O was drafted entirely by County Official E. County Official M testifying before the Legislature stated on the record, “I’d like to read a brief letter into the record which the three commissioners wrote.”

“1. Finally, we remain at a loss as to why this body feels such a pressing need to conduct an investigation ...”

2. “The mere fact that certain members of the Legislature disagree with the Commission’s opinion regarding a narrow – one narrow issue relative to the filing of ... financial disclosure forms should not result in a full-blown investigation of the commission’s actions.”

The Special Grand Jury finds the drafting of documents in the name of the Ethics Commission by county employees in the name of the commission and/or commissioners to be improper. The use of these documents by one or more Ethics Commissioners completely undermines the independence and legitimacy of the Ethics Commission.

Use of the Ethics Commission to Improperly Pressure Public Officials

A. Freedom of Information Requests.

The Special Grand Jury heard testimony from county employees that County Official E obtained the financial disclosure filings of Suffolk County Legislators through the Freedom of Information Law or, FOIL process.

County Official P testified that County Official E had received the financial disclosure filings from another person who had foiled the documents on County Official E's behalf. The content of the financial disclosure statements were then used both publicly and to communicate with legislators in an attempt to pressure them to halt their investigation of the Ethics Commission.

County Official Q, an Ethics Official, testified that part of her official duties was to respond to FOIL requests. County Official Q testified that County Official E told County Official Q to quickly respond to any FOIL request made by the person that County Official E had asked to make the request.

County Official R testified that County Official E asked him to contact a third party to publish a county official's financial disclosure forms to attack that county official's credibility. He testified that County Official E "wanted to get back at [the county official] and get it out there in the media." County Official E asked County Official R to

reach out to a political blogger who in turn posted the county official's Financial Disclosure Form on the internet.

The Special Grand Jury finds the use of Financial Disclosure Forms and Ethics Commission Staff to further political attacks to be alarming and not in the best interest of Suffolk County employees, elected officials or citizens.

Use of Financial Disclosure Forms to Affect the Vote of the Legislature

The Special Grand Jury heard testimony from County Official S about the use of his Financial Disclosure Forms. County Official S was a Suffolk County Legislator.

County Official S testified that members of the Legislature were aware that County Official E had used a third party to FOIL their Suffolk County Financial Disclosure Forms. On the Sunday before August 17, 2010 County Official E called County Official S. County Official E urged County Official S to vote against appointing counsel for the Legislature's Special Committee investigating the Ethics Commission.

County Official S told County Official E that he could see no harm in the Legislature conducting a review of the Ethics Commission. After this, the tone of the conversation changed significantly. County Official E told County Official S "that if we move forward and pass the bill, he was going to go public and he was going to release the information he had on a number of legislators, related to financial disclosure." County Official S pressed County Official E for the negative information County Official E believed he had on him. County Official E said that County Official S's Financial Disclosure Forms failed to report County Official S's spouse's volunteer work for a family service not-for-profit organization and that County Official E was going to go public with this information if County Official S voted for the aforementioned bill.

County Official S testified that he was not threatened by County Official E's statement and told him to go public with it. He later voted in favor of the bill appointing counsel to the special legislative committee.

Indeed, County Official S testified that he and his spouse had sought an ethics opinion seeking guidance from the Ethics Commission on the impact of his spouse's role with a not-for-profit organization. In 2009 County Official S's spouse was on the Board of Trustees of the not-for-profit entity. The entity received funds from Suffolk County. County Official S asked for an ethics opinion and received one. The Ethics Commission opined that there was a conflict of interest under the circumstances and County Official S would have to recuse himself from any votes relating to the entity. As a result, the spouse resigned and thereafter worked at the agency as a volunteer.

Noteworthy is the fact that the ethics opinion which determine a conflict to exist in this situation was approved by County Official G who had voted on an opinion that found no conflict of interest for County Official E's wife who served on the board of a not-for-profit entity that also received funds from Suffolk County.

The Special Grand Jury finds that the Ethics Commission's expedited release of Financial Disclosure Forms to County Official E, which were then improperly used by County Official E, seriously undermined public confidence in the Ethics Commission.

Attempted Use of Ethics Commission Investigations to Influence the Vote of the Legislature

As previously noted in "Abuse of the Ethics Commission Process," a complaint had been lodged against County Official J with the Ethics Commission. By the summer of 2010 nearly two years after the initial complaint, no opinion had been rendered by the Ethics

Commission in the matter. As previously stated, County Official E was upset at the slow pace of the complaint and had County Official K call County Official H to urge action.

In May of 2010, County Official K realized that for two years County Official J had refrained from voting in the matter that formed the basis of the complaint. Furthermore, County Official J had suffered significant personal tragedy during the two year period. County Official K took it upon himself to e-mail a letter to the Ethics Commission requesting the withdrawal of the complaint submitted in his name.

County Official K testified that he was visited by County Official H who told him that the Ethics Commission did not accept e-mail communication and that he would have to send a letter by other means seeking withdrawal of the complaint.

County Official K told County Official E that he was withdrawing his complaint against County Official J. County Official K testified that County Official E “was not happy” and told him “don’t send [the letter] right now. Don’t withdraw the complaint.” County Official E said, “we could use it [the ethics complaint] as leverage against [County Official J].”

County Official K disregarded the admonishment by County Official E and on July 25, 2010 typed a letter on his home computer addressed to the Ethics Commission seeking withdrawal of his complaint. The complaint was not withdrawn by the Ethics Commission at that time. The Special Grand Jury heard testimony that in late July the Ethics Commission met and voted on the complaint. Its decision was not communicated until August 18th.

August 2, 2010 was the day before the Suffolk County Legislative vote to further empower their Special Ethics Committee. The Special Grand Jury received into evidence

an e-mail from County Official E's secretary summoning County Official K to his office. County Official K testified that he responded to County Official E's office. Once there, County Official E asked to speak to County Official K outside of the office in a hallway. County Official K testified that County Official E said, "I want you to talk to [County Official J] and tell him that we don't want him to vote in favor of this investigation of the Ethics Commission...and you can tell him that if he does, we are going to reinstitute the ethics charges against him." Official E mistakenly believed that the ethics complaint had been withdrawn by the Ethics Commission.

County Official K objected, saying to County Official E "you want me to threaten him?" and asked what would they say when County Official J complained that he was threatened by staff from the County Executive's Office if he voted in favor of the bill? County Official E responded "he won't do that."

County Official K met with County Official J, but he did not deliver the message from County Official E because he thought it was "extortion" and "immoral". This discussion and the competing states of mind of the officials involved did not bring the potential commission of a crime dangerously close to completion.

On the evening of August 2, 2010 County Official E called County Official K at home and left the following voice message on County Official K's answering machine inquiring about how the meeting with County Official J had transpired. The recording of the message was received into evidence by the Special Grand Jury. The message was as follows:

"Hey, ah, [County Official K] it's [County Official E] ah, just curious if ah, ah the guy you talked to wound up getting the grade of an "A" ah, an "F" or an incomplete, ah if ya

just ah, you could just ah, leave that grade on, on my tape if you don't get me, or just leave a message and I'll call ya back and will chat, ok thanks a lot bye, bye."

Troubled by County Official E's approach, County Official K e-mailed former County Official T who was no longer in the employ of Suffolk County. County Official T had worked in the office of the County Executive. The Special Grand Jury received the e-mail into evidence, which reads in relevant part:

"Hey [County Official T] let me run this by you...the [County Official E] yesterday asked me if I had dropped my ethics complaint against [County Official J]...I reminded him that I had told him I was going to do it and he had asked me to wait a few weeks to see if [County Official J] was less antagonistic to the administration...I did wait a few weeks only because the Ethics Commission wanted a letter in addition to an e-mail I had sent them...anyway, [County Official E] said I should have told him first...then he told me in the vestibule not in his office that I should tell [County Official J] that he should vote against funding the attorney hired by the Legislature to advise their ethics investigation because we could always reinstitute the ethics charges if he didn't vote against the funding...I said ok and left...NFW will I have that conversation with [County Official J]...this is crazy...this is on top of him telling me to call Ethics Commission members to check on the [County Official B's] ethics complaint...he told me to call one guy because he was a friend...in addition to all this...[County Official I] told me when they were serving [County Official J] with the ethics complaint...the day of the 911 Memorial Dedication...when I saw [County Official E] I was going to pass on [County Official I's] comments...he told me he already knew...so much for confidentiality...any advice."

The Special Grand Jury received another e-mail dated August 4, 2010 from County Official E's secretary to County Official K summoning him to speak to County Official E. County Official E wanted to know what happened with County Official J. County Official K did not tell County Official E that he had not delivered the message to County Official J about the ethics investigation. He simply reported that County Official J intended to support all legislation in support of the investigation.

On August 16, 2010 at 9:56 A.M. County Official E's secretary again e-mailed County Official K asking him to see County Official E. This e-mail was received into evidence. County Official E wanted to speak to County Official K outside the office so they agreed to meet at a pizza restaurant in Commack not far from the H. Lee Dennison Building. The Legislature was going to vote the next day to appoint counsel for the Special Legislative Committee. County Official K testified that County Official E "asked me to go out and see [County Official J] again and have this conversation with him, and tell him that we would bring ethics charges against him if he voted in favor of selecting counsel for the investigation." County Official K objected and said it was wrong to do. County Official E insisted, he said "it's not wrong, he won't say anything, go do it."

County Official K left the pizza restaurant and began to drive to Riverhead to meet with County Official J. County Official K did not intend to deliver the message he had been asked to send.

During the drive to Riverhead, County Official K was sent an e-mail by his secretary at 12:20 P.M. This e-mail was also received into evidence. Under the "subject" portion it stated:

"PHONE MSG – [County Official H] needs to speak to you."

Under the “sensitivity” portion it read:

“CONFIDENTIAL”.

County Official K turned his car around and drove back to the H. Lee Dennison Building.

He met County Official H. County Official K testified that County Official H told him:

“You’ve got to talk to [County Official J]. We are trying to help him with respect to the issue that is before the Ethics Commission, but we can’t help him if he votes in favor of an ethics investigation of the Commission.”

County Official K told County Official H that he was on his way to speak to County Official J at the direction of County Official E and left. County Official K did not intend to send County Official J the message County Official H asked him to send. In fact, County Official J was unavailable and did not meet County Official K on August 16, 2010 at all.

County Official H testified before the Grand Jury about his meeting with County Official K on August 16, 2010. He was asked if anyone urged him or told him to send a message to County Official J. His answer was “I don’t think so, but I don’t know for sure, okay.” When asked to explain what he meant when he spoke to County Official K regarding County Official J he testified,

“Simply, obviously, my thought was that here is a guy who is under investigation and why would he want to do something like that, to vote for a guy who is going to investigate the Commission, when he knew he was also being investigated. It strikes me that was a pretty silly thing for anybody to do, okay...Silly because it could have, not that it did, but it could have some effect upon how the people feel, how the Commission itself felt.”

County Official H was asked before the Special Grand Jury:

“So his political action might have impacted the conduct of the Commission?”

to which he answered:

“Might have, but that was really my assessment and not the Commission’s assessment.”

Ultimately, County Official K never sent any of the messages to County Official J that he was asked to send. County Official J testified that County Official K never threatened him with reinstatement of the ethics charges.

Unfortunately attempts to send messages to County Official J did not end on the afternoon of August 16, 2010.

Several county employees testified that between the evening of August 16th and the time of the vote on August 17th, a desperate effort was made to make County Official J believe that the Ethics Commission would drop the ethics charges against him depending on his vote.

County Official K testified that he received an e-mail on the evening of August 16, 2010 at 6:01 P.M. from County Official U. County Official U was then a high ranking member of the County Executive’s Office. The Special Grand Jury received the e-mail into evidence which read in relevant part “can you call me on cell, ASAP, Thanks.” County Official K testified that he called County Official U who asked him for a copy of the letter to the Ethics Commission seeking withdrawal of the ethics charges against County Official J.

County Official U testified before the Special Grand Jury that County Official E asked him that evening to get the letter from County Official K. He confirmed sending the e-

mail and asking County Official K for the letter. He testified that he believed County Official J would support them by voting against the bill on the 17th if he had proof the complaint against him was withdrawn.

Sometime between the evening of August 16th and August 17th County Official U reviewed County Official K's letter to withdraw the complaint. The May e-mail and the July letter from County Official K to the Commission were received into evidence. The letters were similar in content and included statements sympathetic to County Official J. Specifically, they stated that he had stopped the conduct complained of and referenced the personal tragedy he had endured.

County Official U said County Official E thought the letter was "far too detailed and in some ways exculpatory of County Official J." He testified that County Official E was concerned that the letter indicated County Official J had stopped the conduct and that it was too sympathetic towards him. Instead, he wanted a new letter with plain language to give to County Official J before the vote on August 17, 2010.

County Official U was given a letter by County Official E addressed to the Editor of Newsday penned in the name of County Official H. County Official E told County Official U to speak to County Official H and tell him to send the letter to Newsday as if he had written it defending the independence of the Ethics Commission and stating that there had been no attempt by County Official E to influence the Commission. County Official U refused to contact County Official H with the letter as requested.

August 17, 2010

The Legislative meeting on August 17, 2010 took place in Riverhead. Present that day were County Official K, County Official R and County Official P. County Official E was

in the H. Lee Dennison Building in Hauppauge that day. County Official P and County Official R worked in the office of the County Executive.

County Official R testified that prior to the vote by the Legislature, County Official E called him and told him that a memo was being prepared stating that the charges before the Ethics Commission would be dropped against County Official J and that County Official R should give it to County Official J.

County Official P testified that on the morning of the 17th County Official E directed County Official P to draft a one sentence letter in the name of County Official K seeking to withdraw the complaint against County Official J. County Official P telephoned a clerk in the County Executive's Office in Hauppauge to type it. The letter was e-mailed to County Official P in Riverhead. The Special Grand Jury received the e-mail of the letter into evidence.

County Official P testified that he brought the letter to County Official K to sign. County Official K testified that he signed the letter. County Official R testified that he took the letter and handed it to County Official J as he walked into the Legislative room containing the "horseshoe" where legislators sit for public hearings. County Official R testified that he said to County Official J in sum and substance, "I was told you were looking for this letter."

County Official J testified that he received the letter from County Official R as he walked into the legislative auditorium. County Official J testified that County Official R said to him in sum and substance, "Now you have the letter, we really would appreciate you not voting for counsel for this Committee."

County Official J testified that despite the attempt to influence his vote, he then voted to appoint counsel for the Special Legislative Committee.

August 18, 2010

The Special Grand Jury heard testimony that late in July, 2010 the Ethics Commission met to consider the fate of County Official J. In July they determined that the votes he had taken years before constituted a conflict of interest. Yet they recognized that he had ceased voting on the matter in question for the prior two years.

On August 18, 2010, exactly one day after County Official J voted to appoint counsel for the Special Committee before the Legislature, the Ethics Commission confirmed its July decision in uniting a conflict of interest by County Official J. The latter opinion contained bold letters stating “NOTICE OF VIOLATION – Suffolk county Code Section C30-4(c).” The Commission found that his “actions were affected by kinship.” The decision found that by voting under the circumstances that “you are pursuing a course of conduct which would cause a reasonable person to believe that you are engaged in acts that create a substantial conflict between your public duty and your private interests.” The Commission further found that County Official J’s “potential conflict of interest violations...have been rectified and that no further inquiry is justified at this time.”

None of the Ethics Commissioners or the Ethics Officials that testified before the Special Grand Jury could recall why their findings were embodied in a letter dated August 18, 2010, just one day after County Official J voted.

March of 2011

County Official R testified that in March of 2011 County Official E asked County Official R if he was available to meet on a weekend. According to County Official R this request was unusual, he had not met County Official E before on a weekend. On the following Saturday, County Official E called County Official R and asked him to come to his residence.

County Official R drove to County Official E's home. County Official R parked across the street from County Official E's house and walked up the driveway of the house. County Official E came out of his house and asked "can we talk?" County Official R answered "yes" whereupon County Official E said "let's get in your car."

County Official E told County Official R that there were "ethics issues out there." County Official R testified that County Official E then told him "look, you know one day you may get phone calls or subpoenaed on issues regarding ethics...if you do, just so you know, you know you should tell the truth, but I didn't do anything wrong...I just want to make sure you are clear on that."

Ethics Legislation in 2010 and 2011

In 2010 a discussion of the appropriate Financial Disclosure Form to be filed was part of the Suffolk County Legislature's ethics review. Those who defended the filing of the New York State Form elicited comprehensive position papers from ethics experts outside Suffolk County. Those written opinions were not put into the record of the legislature at public hearings. The Special Grand Jury received these position papers and statements from those experts into evidence. Those experts strenuously argue that the New York State General Municipal Law preempts Suffolk County Law and that the filing of State

Forms with Suffolk County under the circumstances permitted under State Law is required.

As such, the matter of which form should be filed remains an open question with advocates on both sides publicly arguing their positions.

In an effort to eliminate any confusion in the matter, the Suffolk County Legislature enacted a law in 2010 entitled “A Local Law Mandating Compliance with Financial Disclosure Law.” The Legislative intent is as follows:

“This Legislature hereby finds and determines that the County of Suffolk enacted its Financial Disclosure Law to ensure to the citizens of Suffolk County a government free from conflicts of interest, to discourage and detect corruption and to strengthen public confidence in the integrity of its public servants.

This Legislature also finds and determines that in accordance with the Financial Disclosure Law, hundreds of Suffolk County employees file a Financial Disclosure Statement each year.

This Legislature also determines that the form and content of Suffolk County’s Financial Disclosure Statement is set forth in great detail and clarity in Chapter 61 of the SUFFOLK COUNTY CODE.

This Legislature finds that local media outlets have reported that the Suffolk County Ethics Commission has allowed two County Officials to file a different disclosure statement, one which contains far less information than the County’s Statement.

This Legislature further finds that it is manifestly unfair to allow certain County Officials to shield financial information while hundreds of other employees fully comply with the law’s disclosure requirements.

The Legislature also finds that the failure to enforce financial disclosure requirements evenly and uniformly will only cause further erosion of confidence in public institutions. Therefore, the purpose of this local law is to require any county officer or employee, who has failed to file the county's Approved Financial Disclosure Statement in the past five years, to file the correct statement or statements with the Ethics Commission within thirty days.

Further, this law will reinforce and reiterate, on a prospective basis, that all county officers and employees subject to financial disclosure requirements must file the county's approved disclosure statement in order to comply with local law."

The law clearly mandated and as stated in the legislative intent, "reiterated" the requirement to file the county's approved disclosure statement in order to comply with local law.

By 2011 public confidence in the Suffolk County Ethics Commission had completely eroded. In 2011 the Suffolk County Legislature voted to abolish the Ethics Commission and establish a new Board of Ethics. The law was entitled "A Charter Law Establishing a New Board of Ethics." The legislative intent was as follows:

This Legislature hereby finds and determines that an ethics law cannot succeed without an effective board to oversee and enforce conflict of interest rules and financial disclosure requirements.

This Legislature also finds that in order to be effective an ethics board must at all times maintain, in perception and reality, its independence and impartiality.

The Legislature determines that in the past several years, the Suffolk County Ethics Commission has been embroiled in controversy. Initially, questions were raised in the

media and elsewhere about the Commission's application of the County's Financial Disclosure Law. Later, the commission frustrated the Legislature's oversight function when they failed to provide records the Legislature had requested and then initiated a court proceeding to quash subpoenas issued by a special legislative oversight committee.

This Legislature further finds that legislation has been introduced in the County Legislature that would update the County's Ethics and Financial Disclosure Laws.

This Legislature also determines that it would be appropriate and prudent to constitute a new board to implement the revised conflict of interest rules and financial disclosure requirements.

This Legislature recognizes that ethics boards, in general, must necessarily conduct their business in a way that protects confidential information from public disclosure. Nevertheless, the new ethics board created by this law must operate in the most transparent manner possible.

Therefore, the purpose of this law is to abolish the existing Ethics Commission and to establish a new independent Board of Ethics that will be responsible for enforcing the County's revised Ethics and Disclosure Laws.

The Lack of Enforcement Provisions in Suffolk County Ethics Legislation

All of Suffolk County's Ethics Laws were received into evidence. The Special Grand Jury also heard extensive testimony about what amounted to statutorily prohibited conduct and about the penalties for the prohibited conduct as defined by the existing Suffolk County Ethics Laws. Yet, for all of the legislative considerations described in this report, no legislative body in the County ever predicted or imagined efforts by County Officials to abuse the Ethics Commission in the manner they did. As such, the

Suffolk County Ethics Laws contain neither prohibitions against nor penalties for the types of conduct that the occurred over the last ten years.

The Ethics Laws of Suffolk County are outlined in different sections of the County laws. Article 30 of the Suffolk County Charter during the time period examined here was entitled “Ethics Commission.” Section

C30-4 of the Charter is called “Review of Conflicts and Financial Disclosure Statements.” It describes the role of the Commission in reviewing financial disclosure filings and determining

conflicts of interest. Section C30-4(C) entitled “Notice of Violation” states in sub section C30-4(C) (1):

“(1) If a reporting person has filed a statement which reveals a possible violation of any duly adopted code of ethics, local law, ordinance, resolution or this article or the Commission receives a sworn complaint alleging such a violation, then the Commission shall notify the reporting person in writing, describe the possible or alleged violation of such code of ethics, local law, ordinance, resolution or of this article and provide the person with a fifteen-day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law. If the commission thereafter makes a determination that further inquiry is justified, it shall give the reporting person an opportunity to be heard. The Commission shall also inform the reporting individual of its rules regarding the conduct of adjudicatory proceedings and appeals and the due process procedural mechanisms available to such individual. If the Commission determines, at any stage of the proceeding, that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the reporting person and the complainant, if any. All of the foregoing proceedings shall be confidential.”

While the section provides, “All of the foregoing proceedings shall be confidential”, the Charter imposes no penalty whatsoever for failure to maintain the required confidentiality.

Ethics was also addressed in Chapter 77 of Suffolk County’s Administrative Code entitled, “Ethics and Confidentiality”. Section 77-11 entitled “Unauthorized disclosure

prohibited; penalty” offers the *only* penalty in Suffolk County Ethics Laws for conduct by an Ethics Commissioner. It states:

“A. It shall be unlawful for a member of the Commission or any other individual to disclose any information contained on a disclosure statement except as authorized by law. Such violation shall be punishable by a fine of not more than \$250 or imprisonment for not more than 10 days, or both.

B. Notwithstanding any provision of Article 6 of the New York Public Officers Law, the information obtained pursuant to this article which shall be available for public inspection is:

- (1) The information set forth in an annual statement of financial disclosure, except that the categories of value shall remain confidential as shall any other item of information authorized by the Board to be deleted from an individual’s disclosure form.”

As prescribed by County law, the only offense an Ethics Commissioner could commit results from unlawful disclosure of information contained in financial disclosure statements. The Administrative Code, like the Charter, provides no offense or penalty for disclosing confidential matters under review relating to complaints of conflict of interest.

The Ethics Laws in effect over the last ten years provided no offense or penalty for:

1. An Ethics Commissioner or another person who revealed the Ethics Commission’s complaints, proceedings, decisions, internal discussions, hearings or internal documents.
2. Attempted improper influence or actions by individuals to affect the vote, opinion, decision, judgment or action by the Commission, a Commissioner or other Ethics Official.
3. Agreement or understanding by the Ethics Commission, Ethics Commissioner or Ethics Official to be influenced by any individual to affect the vote, opinion, decision, judgment or action of the Ethics Commission, Ethics Commissioner or Ethics Official.

4. The improper threat to use or use of the Ethics Commission process to affect the conduct of County Officials or employees or others.
5. The improper expediting of FOIL requests to cause the lawful release of financial disclosure filings for political purposes.
6. The preparation of complaints and other filings by an attorney representing the Ethics Commission on behalf of a county official or employee who seeks to make application to the Ethics Commission occurred.
7. The improper use of Ethics Commissioner or official's authority or color of authority to influence the conduct of county officials, legislators or others.

The Special Grand Jury finds that the conduct of public officials and county employees described in this report to be abhorrent and in violation of the spirit of the many attempts to regulate and reform ethics in Suffolk County.

The Special Grand Jury finds that the conduct outlined herein should be prohibited by ethics laws, but that it is not. Whether by design or by simple inadvertence, Suffolk County ethics legislation failed to include prohibitions, penalties or remedies to cover the described conduct.

The Special Grand Jury finds that where public officials discussed sending threatening messages with other officials, which if sent might constitute criminal conduct, other principled public officials refused thus avoiding criminal liability for themselves and the orchestrators of their schemes.

This alone with the fact that the ethics matter had already been resolved in Official J's favor preclude criminal charges.

Conversely, if the threat to Official J had been communicated to him while the ethics complaint was still pending, criminal charges might lie.

Conclusion

The Special Grand Jury heard extensive testimony about the history of Suffolk County's Ethics Boards and Commissions. Since 1968 Suffolk County has been progressive in New York State attempting to establish a meaningful ethics infrastructure. The Suffolk County Legislature crafted, adjusted and reworked its ethics laws to provide the county with effective ethics bodies to ensure the citizens of Suffolk County a government administered free from conflicts of interest by county officials.

The Special Grand Jury finds that county officials, including some of those holding positions on the Ethics Commission, destroyed the integrity of Suffolk County's Ethics Commission. In less than ten years a small but powerful group of Suffolk County Officials intentionally corrupted and undermined the Ethics Commission to a point so low it had to be disbanded.

The Special Grand Jury finds that one Ethics Commissioner agreed to serve on the Ethics Commission on the condition of his willingness to reveal confidential affairs of the Ethics Commission to county officials. An Ethics Commissioner who agrees to be a "good boy" to certain county officials is no foundation upon which to build an independent ethics body.

The Special Grand Jury finds that another Ethics Commissioner who had an ongoing business relationship with the wife of a county official and personal ties to both failed to recuse himself from voting favorably on an ethics opinion relating specifically to the official and his wife. In another instance that same Ethics Commissioner confirmed to a newspaper the existence of a complaint and investigation into a former county official before that county official had learned of the matter pending against him. The lack of judgment in these matters displayed by this Ethics Commissioner also undermined the integrity of the Ethics Commission.

The Special Grand Jury finds that an Ethics Official received a significant financial benefit from the Executive Branch of Suffolk County Government because he was improperly treated as a management employee with respect to his time and accrual records when he was actually a member of AME. While there is no evidence of a connection between the two, that same Ethics Official acted beyond his authority by authorizing the filing of a New York State Financial Disclosure Form instead of a Suffolk County Form for someone from the Executive Branch of Government. Furthermore, he tried but failed to send a message to a Suffolk County Legislator with a pending ethics complaint, to vote against empowering a legislative committee investigating the Ethics Commission. This official's judgment and conduct seriously undermined the independence and integrity of the Ethics Commission.

An Ethics Attorney who represented the Ethics Commission assisted in the abuse of the Commission by personally preparing complaints on behalf of applicants to the Commission that the Ethics Attorney represented. These complaints were prepared and languished for years while the Ethics Attorney knew that the purpose of filing the

complaints was to hold them over the head of the targets for political purposes. Furthermore, the Ethics Attorney revealed confidential information about the Ethics Commission's work to officials from the Executive Branch. This Ethics Attorney also received permissive ethics opinion from the Commission relating to circumstances involving the Ethics Attorney and the Ethics Attorney's spouse. The Special Grand Jury finds that this Ethics Attorney's judgment and conduct seriously undermined the independence and integrity of the Ethics Commission.

The Ethics Commission permitted the substance, form and timing of its work to be dictated by county officials who displayed a startling lack of moral compass, when it came to the best interest of the Suffolk County Ethics Commission.

The Ethics Commission was used as a political sword, to attack enemies of county officials, and as a political shield, to authorize questionable conduct by certain county officials.

County officials acted as puppeteers for Ethics Commissioners and officials providing them with letters and statements to make to the public that contained false statements meant to disguise misconduct.

The Ethics Commission's Freedom of Information Law process was improperly influenced to quickly arm county officials with political ammunition in the form of Financial Disclosure Forms.

Financial Disclosure Forms were used by a county official in a failed attempt to threaten a legislator into voting to end the legislature's investigation into the Ethics Commission.

The status of an Ethics Commission investigation was used by a county official in a desperate, but unsuccessful attempt to intimidate a county legislator into voting against the legislature's review of abuses of the Ethics Commission.

By 2011 the systematic, repeated abuse of the Ethics Commission process was a cancer which had metastasized to a point where the Commission was weakened to the extent it had to be abolished.

The Suffolk County Legislature created ethics bodies to protect citizens and government from corruption. They never contemplated that the Commission itself needed to be protected.

Felony offenses and penalties must be established to protect the Ethics Commission/Board from improper influence.

Specific offenses prohibiting individuals from influencing or attempting to influence Ethics Commission/Board members, officials or attorney's decision, vote, judgment or action must be enacted.

Similarly, offenses prohibiting Ethics Commission/Board members, officials or attorneys from entering into an agreement or understanding that their decision, vote, judgment or action might be influenced improperly must be enacted.

Decisions issued by the Ethics Commission in the last decade have no precedential value because of improper influence, an absence of training and the failure of Commissioners to possess a basic understanding of their responsibilities. In order for future ethics

decisions in Suffolk County to have any meaning, ethics officials must be exhaustively trained.

Future ethics boards or commissions must have more than three voting members to inoculate itself from improper influence.

The Commission/Board must meet regularly more than once a month and in the evening as was the practice in the last decade. Voting members should be paid for their time so as to permit meaningful attention to ethics issues. Time guidelines must be imposed on the review process to support both timely review and decisions by the ethics body. Using prolonged ethics complaints to paralyze political opponents must be relegated to the past.

In conclusion, the Special Grand Jury finds that Suffolk County's decades long history of progressive ethics legislation must continue for the sake of Suffolk County Government. New and future Ethics Commissions and Boards must themselves be protected by law from the types of corruption and improper influence they seek to eliminate. In the last decade a small and powerful group of people were able to destroy Suffolk County's ethics infrastructure to the point where it has to be scrapped. The record of these events should serve to encourage Suffolk County Government to strengthen and protect future Ethics Boards and Commissions.

Legislative Recommendations

1. The Suffolk County Legislature must enact a violation of the Suffolk County Code, punishable as a felony prohibiting individuals from improperly influencing

- or attempting to influence Ethics Commission/Board members, officials or attorney's decision, vote, judgment or action.
2. The Suffolk County Legislature must enact a violation of the Suffolk County Code, punishable as a felony prohibiting Ethics Commission/Board members, officials or attorneys from entering into an agreement or understanding that their decision, vote, judgment or action might be influenced improperly.
 3. The Suffolk County Legislature must enact a violation of the Suffolk County Code, punishable as a felony prohibiting the use or threatened use of the Ethics Commission process to affect the conduct of county officials, employees or others.
 4. The Suffolk County Legislature must enact a violation of the Suffolk County Code, punishable as a felony offense prohibiting an Ethics Commissioner/Board member from improperly using their authority or color of authority to improperly influence the conduct of county officials, legislators or others.
 5. The Suffolk County Legislature must require future ethics boards or commissions to have more than three voting members to inoculate itself from improper influence.
 6. The appointment, hiring and calculation of time and accruals of ethics officials and Commissioners/Board members should be conducted in a manner free from providing improper financial benefit to appointees whether management or AME.
 7. The Suffolk County Legislature must enact a violation of the Suffolk County Code, punishable as a felony offense prohibiting an Ethics Commissioner/Board

member from disclosing in any way Ethics Commission complaints, decisions, internal discussions, hearings, matters or documents.

Administrative Recommendations

1. The Ethics Commission/Board must meet more than once a month in the evening as was the practice in the last decade. Meetings should be of a frequency and duration to permit meaningful attention to the matters under review.
2. Some time guidelines or restraints must be imposed on the review process to support timely review and decisions by the ethics body. A general procedural timeline and process should be created and implemented.
3. In order for future ethics decisions in Suffolk County to have any meaning, ethics officials must be trained properly. Training with respect to the history and purpose of the Ethics Commission/Board is essential. Furthermore, training regarding confidentiality, conflicts of interest and other ethical underpinnings must be given to Ethics Commissioners or Board members.
4. Procedural guidelines governing complaints, decisions, hearings and other opportunities to be heard must be established.
5. A review of what information contained in Financial Disclosure Forms can be disclosed pursuant to Freedom of Information Laws must be conducted.
6. Standardization of compliance with disclosure pursuant to Freedom of Information Laws must be implemented to avoid compliance for some requests faster than others for political purposes.
7. Clear and consistent guidelines for statements to the public and press about the status of complaints and investigations must be established.

8. Complaints to the Ethics Commission/Board should not be prepared by ethics officials, commissioners, board members or attorneys on behalf of applicants to the Commission/Board.
9. Statements of the Ethics Commission/Board written or otherwise, should be prepared by ethics officials, commissioners, board members or attorneys not by outside county officials or individuals.
10. The Ethics Commission/Board should conduct its affairs on the merits of the matter under review free from influence from any branch of government.

Executive Recommendations

1. Executive Branch officials should accurately record employee time and accrual information consistent with their classification as management or AME employees.
2. Executive Branch officials must be admonished to remain free from improperly influencing the actions of Ethics Commissioners/Board members or officials.
3. Although recent legislation removed the County Attorney's Office from any role with the Ethics Commission/Board, in the future the County Attorney's Office must remain free from conflicts of interest with the Ethics Commission/Board.
4. Selection of individuals to serve on the Ethics Commission/Board should be made on merit, independence and an ability to assess ethical issues not on political expediency or favor.