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P U B L I C H E A R I N G

before

AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

"Testimony from organizations on the issues of legislative ethics and campaign finance"

June 6, 1990
State House Annex
Room 334
Trenton, New Jersey

COMMISSION MEMBERS PRESENT:

Dr. Alan Rosenthal, Chairman
Albert Burstein
Michael Cole
Patricia Sheehan
Senator Carmen Orechio
Assemblyman Thomas J. Deverin
Assemblyman Garabed "Chuck" Haytaian

ALSO PRESENT:

Marci Levin Hochman
Office of Legislative Services
Assistant Legislative Counsel

* * * * * *

Hearing Recorded and Transcribed by
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AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

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Speaker of the
General Assembly

MEMORANDUM

TO: MEMBERS OF THE AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

FROM: FRANK J. PARISI, AIDE TO THE COMMISSION

DATE: APRIL 24, 1990

SUBJECT: OPERATING PROCEDURES AGREED TO BY THE MEMBERS OF THE COMMISSION AT THE MEETING OF APRIL 23, 1990

The following is a summary of the operating procedures for the Ad Hoc Commission on Legislative Ethics and Campaign Finance agreed to by the members of the commission on April 23, 1990:

1) The commission shall meet on the following days from 9:30 a.m. to 12:30 p.m. at the State House Annex in Trenton, unless a different time, date or site is decided upon by the members:

May 2	Room 368
May 16	Room 334
June 6	Room 341
June 20	Room 334
July 11	Room 334
July 25	Room 334
August 8	Room 334
August 22	Room 334.

2) Approximately half of the meetings will be public hearings at which testimony will be taken from legislators, organizations or persons interested in the issues of legislative ethics and campaign finance and half of the meetings will be working sessions of the commission.

3) The issues of legislative ethics and campaign finance may be discussed concurrently, rather than separately, at each of the public hearings and working sessions of the commission.

4) The May 2 meeting shall focus on a discussion of some of the problems raised by the current system of legislative ethics and campaign finance. Dr. Frederick M. Herrmann, Executive Director of the New Jersey Election Law Enforcement Commission, will attend that meeting as a resource person and be available to answer any questions raised by the members of the commission regarding campaign finance.

5) The May 16 meeting shall be a public hearing devoted to taking testimony from members of the New Jersey Legislature interested in speaking on the issues of legislative ethics and campaign finance. All members of the Legislature will be invited to attend the meeting.

6) The June 6 meeting shall be a public hearing devoted to taking testimony from organizations, such as Common Cause or the League of Women Voters, interested in speaking on the issues of legislative ethics and campaign finance.

7) Invitations will be sent at the earliest possible date to organizations and persons, including out-of-State experts and legislators, asking them to testify before the commission. The invitations will include a request that the witness' testimony be made available to the commission in advance of the public hearing.

8) Any person accepting an invitation or wishing to testify shall be notified that their attendance at a public hearing must be registered with commission staff prior to the hearings so that they can be organized to permit the maximum number of persons to testify.

9) Written testimony will be accepted at any time from members of the public interested in providing information or opinions on the issues of legislative ethics and campaign finance. A public hearing devoted to taking testimony from such persons may be scheduled for the June 20 meeting.

10) At the conclusion of each public hearing, at least 30 minutes shall be set aside for the members to discuss the issues raised by witnesses testifying before the commission.

11) All meetings shall be open to the public, and recorded and transcribed by the Hearing Reporter Unit of the Office of Legislative Services.

12) The commission shall endeavor to produce a report containing its findings and recommendations by September 30, 1990. A minority report may be drafted if there is not unanimous consent on the findings and recommendations contained in the official final report of the commission.

c. Marci L. Hochman
Fred Butler

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(HEARING OPENS AT 9:55 a.m.)

DR. ALAN ROSENTHAL (Chairman): The Ad Hoc Commission will come to order. We will begin. Marci-- Let me say, Frank Parisi is not here today; who normally takes the roll and keeps the minutes, and distributes the minutes. Frank's wife had a baby, and he has taken this day off. I expect that he will be back for the next meeting.

MR. BURSTEIN: Since when did we have a parental leave policy on this Commission? (laughter)

DR. ROSENTHAL: Marci will take the roll.

MS. HOCHMAN: Chairman Rosenthal?

DR. ROSENTHAL: Here.

MS. HOCHMAN: Mr. Burstein?

MR. BURSTEIN: Here.

MS. HOCHMAN: Mr. Cole?

MR. COLE: Here.

MS. HOCHMAN: Ms. Sheehan?

MS. SHEEHAN: Here.

MS. HOCHMAN: Mr. Stanton? (no response) Senator Orechio?

SENATOR ORECHIO: Here.

MS. HOCHMAN: Senator DiFrancesco? (no response) Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: Here.

MS. HOCHMAN: Assemblyman Haytaian. (Assemblyman Haytaian enters after roll call) Mr. Chairman, you have a quorum.

DR. ROSENTHAL: At this meeting we will be hearing testimony from six individuals, and you've got the list of witnesses. At the next meeting, June 20th, we will continue and conclude hearing testimony from individuals and some representatives of organizations. At the July 11th meeting, as we've mentioned, we will be bringing in several experts in the

field of campaign finance who have looked at some of the campaign finance issues in other states: Ruth Jones, from Arizona State University; Herb Alexander, from the Citizens Foundation at the University of Southern California; Larry Sabato, from the University of Virginia; and Steve Salmore, from Eagleton at Rutgers University.

So, they will be here to discuss with members of the Commission different possibilities and different proposals, and things that they have observed that seem to have worked in states around the country.

I would suggest that at the next scheduled meeting -- after the July 11th meeting -- at the July 25th meeting that the Commission should meet to try to reach agreements, or begin to reach agreements on some of the campaign finance ideas, since that will be in our minds, I think, before we lose it all. Maybe I'm speaking for myself. We ought to try to see where we can reach any agreements, and then in subsequent meetings, go on to look at the matter of ethics, conflicts of interest, and what have you.

Any questions, or any issues from any members of the Commission? (no response) Well, then I would like to welcome Senator Leanna Brown who will be offering some observations and some suggestions. Senator Brown, we are delighted that you could be here.

S E N A T O R L E A N N A B R O W N: Thank you, Mr. Chairman. I really appreciate the flexibility of the Commission. When you had elected officials before you at your last meeting, unfortunately, I was down in Washington with the National Advisory Committee for the Small Business Administration.

So, I have loved politics all my life. And riding down here today I remember that my first campaign was in fifth grade. And Dewey was running against Roosevelt, and I've got to tell you that the fifth grade teacher hauled me in and said,

"Leanna, you are doing some unfair campaign practices," because I had a particular poster up on the bulletin board that talked about some of President Roosevelt's faults. So, this was long before we had public financing and other things, and so on.

I think one of the reasons I bring this up is that I have real concerns about getting taxpayers' dollars into State legislative races. I think there is a very different dynamic between government, and the role of government and the campaign itself. I happen to think that it is very good for people who want to run for elective office, in this day and age, to go out and see neighbors. You know, if your relatives won't, you know, write you a check, you really probably have some problems, because for any of us to get anywhere in elective office, it is terribly important that we have the support, for example, of our family, of our friends, of our neighborhoods.

And as we know in the elective process, involvement is absolutely key. And I'm very glad, in a way, that I get an opportunity to speak before some of the groups here today, because having been involved in the campaign for the President two years ago, the campaign for Governor last year, in which there was public money involved in those campaigns, I think there is a dynamic that nobody has been talking about. And that is, that I really feel that when you have taxpayers' dollars involved in campaigns, it has a very chilling effect on the volunteer effort. And I happen to believe so strongly in our democratic -- democratic with a small "d" -- democratic system. And what makes this nation great is when you get that neighbor to vote for you, rather than to stay home and garden.

And the only reason -- bottom line way -- you get some of these people to the polls, is when they've been involved. And you can say, "Oh, Senator Brown, you're crazy. Why does having government money chill volunteer effort?" And let me tell you, in every campaign there is the tension between the people that are paid to run the campaign and the candidates,

and the volunteers, obviously. If you are really having the respect for taxpayers' dollars, which you must have, it means if I'm the campaign manager for Senator Orechio, I've got to be extremely careful that we don't go over limits on how every dollar is spent, and so on. So, I want to contract out for services. It makes a tendency that's already out there, i.e, the professionalization of campaigns; getting that phone operation working out Cincinnati rather than New Brunswick because I know what my costs are going to be. I know I'm not going to have overruns.

If you're going to have limits on a campaign -- that you don't want more than half a million dollars spent, because that's what's legislated -- from the standpoint of the campaign manager, it's very understandable that you don't want surprise vouchers being submitted by volunteers who have paid for the pizza, or who have paid for a party, and so on. It gets it very much, of the idea that the control should be on the part of the person responsible for the campaign, which I just suggest to you, from a political science point of view, is diametrically opposite to the idea of--

For heaven's sake there's nothing wrong with inefficiencies in campaigns. It really makes a great deal of sense to get everything out of from a mail house. On the other hand, when you have these wonderful sessions with everybody spilling the coffee over the envelopes and so on-- There is an involvement in a campaign which, I maintain, is just very, very essential to the system.

So please, we've got lots of, you know, needs for our public dollar here in the State of New Jersey. Let us, who love the system, who believe in it; make me hustle, make me go find out who the darn new business is in Chatham Borough. And since I like to think maybe I'm giving a little bit of good government to Chatham Borough, say to that new business in

town, for heaven's sakes, "Will you buy a couple of tickets to my fund-raiser?" I think that's a very healthy thing to expect an elected official to do.

When we talk about limits on campaigns, I say, good luck. I mean, philosophically, I suppose none of us have any problems. I'll tell you, it can't work. And therefore, all of the problems that you get involved in-- I come from a relatively strong one party district. If you're going to set me a limit because you're setting limits for other legislators that come from contested districts, I'm going to be spending more money rather than less money, and I think it gives a tremendous effect for incumbents.

When I took care of defeating an incumbent in the primary, I had to spend $85,000 to Jim Vreeland's $30,000. I mean, there was just no way I was going to defeat an incumbent with spending less money. So, the whole idea of caps on campaigns-- Again, you're spending your time, your money, trying to have another sort of unlevel playing field, because I maintain it can't be done.

On the other hand, I strongly, am a strong, strong supporter of ELEC, and a strong supporter of good campaign financing. If somebody in my district wants to give me 20,000, which I would not accept -- but say I did -- I think everybody should know, who is interested, that Senator Brown has received a heck of a lot of money from a single source. Therefore, I would suggest that not only are the reports filed down in Trenton, but it's essential, if I'm running in Warren County, that my reports be filed in the courthouse of every county in which I'm running. So this gives more accessibility to the press, so that they don't-- Not all of the newspapers are set up to be revolving around Trenton.

I suggest to you, possibly, and I don't know if whether or not this works, it just came to me yesterday: There is a problem in these people that do make contributions in the

last six days after the cutoff. And I would, you know, just throw out as a relatively new thought whether or not there's any possibility that there could be a cutoff, whereby no money could be contributed to a campaign after the final report before a campaign, because, as you know, some people wait the 48 hours or so to contribute to an election so that their contribution will not show up. So, I strongly, strongly advocate anything that you do to strengthen disclosure.

Let me just say, as far as legislative ethics are concerned, this is sort of a technical matter which, again, maybe some of the people that come before you have not dwelt so much. I feel it's extremely important to nail down what is done with leftover campaign funds. I say I am not for limits on how much money I can raise. I jolly well want to make it crystal clear what can be done with leftover campaign funds. There is a formal agreement which I was told centuries ago when I ran for Freeholder, and it is not really in legislative form, that: A) the money can be spent for political reasons to, you know, help with my development as an elected official; secondly, I can contribute to the Republican party and to other candidates; and thirdly -- which is a growing, and a very interesting area that candidates and elected people get involved in -- is charity. And I think that's perfectly legitimate in this day and age.

I just say to you, if you are going to allow legislators to have their funds go in for running legislative offices, you are in a real, real can of worms, because, again, you are putting the pressure on me. Now I don't have the pressure to run against a Democrat in November very, very strongly, but I got pressure then if you're going to allow me to use funds to run a bigger, better legislative office. I jolly well am going to put pressure on my contributors to help increase my pot, so that after November I can send out more newsletters, I can do all sorts-- I can, maybe, bring in a new

piece of equipment which may or may not be legal -- which would not be legal. But, again, it's got to be clear-cut that the money cannot go for running legislative offices. The other thing behind that is-- And I'm a strong supporter of legislative offices. I think it is a real change that's come in the last 20 years.

I remember when legislators ran out of their houses, out of their businesses, and this is certainly much more professional. But there needs to be the control out of the State, and if you are allowing us to run our offices with money that we raise ourselves, I'll tell you, it's going to get much tougher to have central control and use of those funds. They'd say, you know, when do you expect us -- what hours do you expect us to be open, and that sort of thing. I also maintain that that heavily favors the incumbent, or the people that run, from safer districts because then I can give better service because I don't have to spend as much money on the campaign. I can spend more of it on my constituents which gives my constituents better service than somebody else.

So, Mr. Chairman, thank you very much. Those are the things that I felt very strongly, from the heart, about: One, is the importance of keeping taxpayers' dollars out of campaigns at the State level, because I don't think it has the desired -- and run. And secondly, do keep very close tabs on what we do with leftover campaign funds.

DR. ROSENTHAL: Would you take questions from members of the Commission? Any questions?

ASSEMBLYMAN HAYTAIAN: I do.

DR. ROSENTHAL: Yeah.

ASSEMBLYMAN HAYTAIAN: Leanna and I are former Freeholders and very good friends. I have some questions, Leanna, and I think they are important: One, when it comes to leftover funds, if you are advocating that it not be spent in district offices, what is your thoughts on a very wealthy

person, who is a legislator, who spends his own money or her own money in getting out information from that legislative office, which, I believe, they're eligible to do? I mean, if someone wants to put money into a campaign fund, their own, and then use that to get word out to constituents, I believe they can do that. Now, what would happen here-- And again, forgive me, I'm not certain whether that can be done because I'm not wealthy, and I don't put my own money into campaign funds. So, I'm not sure. Maybe Freddie (referring to Frederick Herrmann, Executive Director of ELEC) can help us here. But what would your thoughts be there? Isn't this-- Doesn't this become an unlevel playing field then?

ASSEMBLYMAN DEVERIN: Well, I think she said that.

SENATOR BROWN: I think the answer is yes. I'm not sure that I can see a system that's going to prevent me from using my own money for how I want to use my own money, Chuck. It would have to-- To be perfectly blunt, what happened in my case of use: Before the State was allowing us to have computers I felt that that was a very important piece of equipment to have in my office, so I spent my legislative payroll check to put my computer in my office. I'm not quite sure how you would ever, or if you would want to-- And there is some injustice in that. I suppose if somebody else did not-- But that's part of what my total commitment to the job is -- to spend that particular money for that particular thing, rather than something else I would have done with those funds.

ASSEMBLYMAN HAYTAIAN: Well, I believe in total commitment and time and effort, because I can match you on that, but I cannot match a wealthy person, because I can't afford to spend money on a computer. So therefore, I cannot do that as a legislator. And so, therefore, now it's an unlevel playing field because someone has more wealth than another legislator.

SENATOR BROWN: Chuck, here again, I just think we have to be realistic about how we can level things, and I'm not sure that this is something that we can do by rules and regs. I'm just very concerned, if say, I have a pot that's left over-- And we've been very good in recent years in making it crystal clear that the priority of putting money into offices is to run the office. If you start allowing me to, you know, buy--

I do wish, by the way, a small thing, is if we could have postage meters in our offices rather than stamps. I really do think that that would be, you know, coming into, you know, the 21st century.

But, I guess, Chuck, I have no really good answer to that that will satisfy you. I just think it probably makes things worse rather than better, with the problem that you're concerned with to allow campaign funds into offices.

ASSEMBLYMAN HAYTAIAN: Well, I think the reason I bring it up is, in my own particular case-- I'm not a wealthy person, and I know a lot of legislators who are not wealthy. Therefore, if I have to start out-- The playing field is not level, and was not level when I ran for the first time, unless I could go out and ask for contributions and solicit contributions so that I can run. And so, therefore, when you then talk about leftover campaign funds not being eligible, but yet a person can put their wealth into it being eligible, that's unlevel. And so, therefore, I am now not equal to the wealthy legislator, and I don't believe only wealthy legislators should be legislators or elected officials.

SENATOR BROWN: Well, I think, Chuck, if we're going to be very precise, if the rules of the game now, which I strongly support, is that the only money that's in legislative offices comes from the State of New Jersey, which by definition limits it.

ASSEMBLYMAN HAYTAIAN: That's fine.

SENATOR BROWN: Which means that the money from my computer is an example, came out of my paycheck.

ASSEMBLYMAN HAYTAIAN: It doesn't matter.

SENATOR BROWN: And there's a limit-- No, it does. It does, according to the rules as they now stand. That the only money in the legislative offices comes from government. And my check comes from the taxpayers.

ASSEMBLYMAN HAYTAIAN: Well, I think the rules, if we really check on it -- I think it's an important point -- is that staff and equipment-- We have $15,000 that we can use for equipment. We have $60,000 for staff. And I don't really believe we can use our own money for our legislative offices. I think maybe Albert can tell us that.

DR. ROSENTHAL: Yeah.

ASSEMBLYMAN HAYTAIAN: Because it does not become an ELEC question, it becomes a question of ethics in the Legislature. So, maybe, if -- with your due consideration -- that maybe Albert can answer that?

DR. ROSENTHAL: Albert, can you answer that?

UNIDENTIFIED MEMBER OF AUDIENCE: Are you under oath?

A L B E R T P O R R O N I, E S Q.: (speaking from audience) Pardon me?

UNIDENTIFIED MEMBER OF AUDIENCE: Are you under oath?

MR. PORRONI: No, I'm not, so you have to take this under advisement. The rules right now provide for the essentials of running a district office through legislative accounts for equipment and through member's staff services; the $60,000 figure that the Assemblyman was talking about.

However, the Ethics Committee, which interprets the Conflicts of Interest Law, and specifically the provision that says that legislators are not to receive anything from any source other than the State of New Jersey for the purpose of legislative duties, that's not really taking the position that

members may not use their own personal funds to assist in their district office activities. When I say that, I mean that that issue has not been presented to the Committee specifically.

SENATOR BROWN: Well, let me just say, I--

MR. PORRONI: We're looking for as much guidance as is--

ASSEMBLYMAN DEVERIN: You know, I have a combined office; a Senator and two Assemblyman. And I don't know what else we could put in that office, except maybe a color television. It has everything you possibly could need to run an office: computers and fax machines. We're up to our knees in telephones. We have everything we possibly need to run the office. And I don't ever remember being allowed to use personal money. I don't have it to do it, but if I did, I wouldn't do it anyway. And you can't use campaign funds.

SENATOR BROWN: Right.

ASSEMBLYMAN DEVERIN: That's been-- Definitely. So, I think that the-- That's not one of our problems, I don't think. I don't hear many complaints about our local offices, but I agree with Leanna, that they should strictly be run, the way they are; by the funding, and the money that's allotted to run our offices. We should keep our campaign money out there, and our private money, simply. But if you wanted to, you could take a suite, or open three or four offices, and be way ahead of the next guy, and the guy before you. And I don't know of anything that should come out of-- That's political. So, I agree that we should just leave it as it is, and not have any campaign money or any personal money allowed to be spent on any equipment, or the location, or the decorations in the office.

DR. ROSENTHAL: Senator, can I ask you a question? You spoke about opposing any kind of expenditure limits as not being workable and not being advisable. What about contribution limits; do you see any need for limits on contributions?

SENATOR BROWN: I'm more flexible on this. You know, I see what happens at the Federal level, and I think you see what happens down here, that they're generally acceptable limits. I think the lobbying community is getting a bit smarter; That they get in trouble when they do, you know, huge amounts that really stand out. And again, that this gets into a lot of discussion. I've never understood why, if you feel-- And I guess this is my question, in turn, back to you: It seems to me that you can have some limits without, again, feeling under -- a responsibility to get public funds to support a campaign.

DR. ROSENTHAL: Oh, sure.

SENATOR BROWN: So, I would have no strong feelings. The problem is-- Say you took figure of 2500. That's far above what my average contribution is. So what that does, interestingly enough, is put more pressure on some of my people to give more, rather than less. But I don't feel as strongly about this as I do some other parts of the--

DR. ROSENTHAL: Al.

MR. BURSTEIN: Senator, I think you come to us from the perspective of one who is in a relatively safe district, and you said that yourself from the testimony. Look at it from the perspective of the so-called marginal districts in the State, where you do have contests, or where there are swings back and forth between the parties. Is there not a public perception that the reliance -- the overreliance, perhaps -- on heavy campaign contributions, whether they're directly to the candidate or derivatively through a State committee from lobbying groups, does not cast a cloud upon the candidacy itself, and, in effect, call for some measure of legislative public funding?

SENATOR BROWN: No. I really feel strongly about that. And let me just say that, although I come from a safe district, I would just say that I've been in some close races,

as anybody else down in this particular State House, winning some votes, albeit in the spring rather than in the fall. I think we have to-- When we go around, unless we're willing to be up-front, that part of being a citizen in a democracy is not only do you get registered, not only do you vote in the fall, then you vote in the spring, then you volunteer your efforts, and then you write checks. And that money is part of the system, and that there are some very good things. Think of all the people we employ: All the printers out there that are much happier because there was a contest in District 12.

I think it's very important to know where that money comes from. And if my constituents think that I am a captive of one particular interest group, with or without money, that's a very important factor. But I don't think you get rid of that by, you know, getting public money into it.

I think it gets worse, because I happen to think that public money is very, very special; with what you do with it, you really have to be extremely careful. And there again, have these homogeneous-- There are already people out there, Alan, who think that parties are irrelevant and all you need to do is buy that much money of television time. You buy, you know, a certain number of mailing lists and mailing houses, and that's what politics is all about. It's a very legitimate school of thought out there now which I happen to disagree with totally.

And with all the problems that we have with, you know, needs for money, I'm sorry, I would rather be helping out with more money for the schools than give it to the-- You know, let the politicians take care of raising their own money.

ASSEMBLYMAN DEVERIN: Don't you find, though, that most of their complaints, even if it just appears to be, that so much money is spent on an election with 187,000 votes-- Some elections, they spend near half a million dollars. Don't you think there should be a limit for the amount of money that you would be allowed to spend, particularly when it's some

districts like yours? You can spend $5000 and win. I could spend $624 and win. And the next guy has to-- Nobody has to spend a half a million dollars to get elected to the Assembly, or no two parties have to spend that kind of money to get elected.

SENATOR BROWN: This gets in--

ASSEMBLYMAN DEVERIN: There should be some kind of limit as to what kind of money you can spend. Don't you think so?

SENATOR BROWN: You know, maybe ideally I would think so, but then you are really putting a whole new dynamic into the campaign. And you are really throwing a softball--

ASSEMBLYMAN DEVERIN: It works for the governor's--

SENATOR BROWN: --to certain people--

ASSEMBLYMAN DEVERIN: It works for the--

SENATOR BROWN: to hit that home run out of the field.

ASSEMBLYMAN DEVERIN: It works with the governor's though.

SENATOR BROWN: I would maintain it doesn't. I mean, I would come here and make the same speech. I'm opposed to public financing for the gubernatorial.

ASSEMBLYMAN HAYTAIAN: Mr. Chairman?

DR. ROSENTHAL: Yes.

ASSEMBLYMAN HAYTAIAN: Leanna, what about the issue where-- This may come as a surprise to some people, but I believe in campaign financing, public campaign financing. And I also believe in limits. Since we don't have it, I will work within the law that we have, so therefore, some people will criticize that. The question that I have though, is what happens if you do receive dollars from outside sources, as we all do, and then legislation that could either be a benefit or a detriment to the people in that industry, and you vote one way or the other, and then are criticized publicly for that vote because, for instance, you received dollars?

And that was done, by the way, last session that we had. I mean, Bill Schluter came up and he had all of the listing. I mean, what do you do with that? How do you answer those things?

SENATOR BROWN: I think you have to explain it. That's part of the business we're in; explaining any of our votes. And I think dollars, in a way, are a way of expressing intensity of interest. And in a democratic system there's nothing wrong with intensity of interest. Some people do it by getting out there and really picketing. That's a very legitimate way to express your strong, strong feelings, and other people, you know, really want to feel strongly about getting some money together. I think these are all of the dynamics that make this a very interesting system to work in.

One small thing: Don't allow any of our funds to be able to be used-- Whereas I want to be able to contribute to other people's campaigns, don't allow me to be able to loan money. We should not-- We don't need to be bankers, okay? So, if I want to write a check for somebody else's campaign, or to, you know, whatever, but we should stay out of the banking business. That gets into another whole can of worms, and I think that ought to be clear.

DR. ROSENTHAL: Assemblyman?

ASSEMBLYMAN DEVERIN: How about a limit on fund-raisers? Should there be a limit of the number of-- You know, some have fund-raisers every three weeks, some will have it twice a year, some will have it once in an election. Should there be a limit on the amount of them?

SENATOR BROWN: We're trying to do that in Morris. I think that's a very fair thing to request. But I think, here again, that comes within the county or whatever political system that you're involved with. We're trying in Morris to get some sort of ground rules that everybody plays with. But let me just say, you can't homogenize politics. It's a--

People get in it-- I had one campaign manager who married the campaign manager of Ralph Loveys. I mean, it's fun, it's exciting, it's everybody in there. It's reaching out for people.

ASSEMBLYMAN DEVERIN: We just trying to pasteurize it. (laughter)

SENATOR BROWN: Thank you very much.

DR. ROSENTHAL: Thank you, Senator Brown. Is Ed McCool here? (no response) Ed McCool isn't here. Is Ray Pacino here? (no response) Chip Stapleton isn't here. Is Barbara Trought here?

B A R B A R A H. T R O U G H T: Yes.

DR. ROSENTHAL: Why don't we just sort of go out of order.

MS. TROUGHT: Okay. Members of the Commission, we are grateful for this opportunity to talk with you today. I have prepared written testimony and am circulating it. May I introduce myself as Barbara Trought, the Government Director for the League of Women Voters of New Jersey.

The League, a nonpartisan political organization, encourages the informed and active participation of citizens in government. The League acts on selected governmental issues. The State League in concert with its local units influences public policy through education and advocacy. In these way we hope to build trust and confidence in government.

We commend you who work here in the Ad Hoc Committee for your efforts toward good government as well. I respectfully request that you consider our organization's contributions toward realizing goals legislators and constituents alike share. The goals are good government, worthy of the electorate's trust; fairness and justice in laws enacted and executed; and accountability.

The League has worked for laws which would reduce the potential for abuse of the public trust. We continue to lobby

for these kinds of reform. We have lobbied for public financing of elections, together with limitations on the amount any individual or interest group may contribute to a candidate. We have advocated laws requiring elected and appointed officials and their families to disclose all outside sources of income. We have urged the Legislature to adopt meaningful codes of ethics and a system of enforcement free of the risks of self-policing. We maintain that such legislation is still needed.

In New Jersey public financing for gubernatorial elections is in place. We supported this in order to eliminate the undue influence of -- and I have large contributors there (referring to statement) and I really do mean large contributions -- or the uneven playing field given to exceptionally wealthy office seekers. However the proliferation of PACs and the absence of caps on spending now call for corrections in that law. We seek to, in the proliferation of PACs, the whole field that has been opened up, I think, in an earlier meeting of this group, where the question of the names of PACs has been brought before you, and how it's not possible for citizens to follow who it is that these people really are.

The reforming of the current campaign finance system is crucial if we are to reverse the dismal voter turnouts for elections at every level of government. I suppose that there's one area that the League of Women Voters is known most well for among the citizens. It has to do with our election work: Candidates meetings, our efforts to alert people to elections as they come up-- We know from the citizens, that it's not just that they're not registered, although we do work very hard on those laws as well. It's more than registration that's an issue here.

The League of Women Voters of New Jersey believes that meaningful reform should: restore the integrity of the

electoral process, restore the power of individual participation in democracy by diminishing the influence of large contributions and PACs, and restore the attention and energy of our public officials to the jobs we elect them to, rather than to campaign fund-raising.

We urge this Commission to recommend to the Legislature certain key elements to ensure effective campaign finance reform. We support public benefits, including media access for candidates who agree to spending limits, tax credits for political contributions by individuals, and most important, strict limits and full disclosure of "soft money" and other practices designed to circumvent existing campaign finance requirements.

Women and minority candidates are unfairly handicapped by the present system. The status quo is unwisely protected by the present system. The voter is disenfranchised and turned off by that present system.

In addition to campaign finance reform and its relevancy to the ethic of legislators, the League of Women Voters asks your attention to dual office holding. Our position is that it should not be permitted. Conflicts between an officeholder's several constituencies can be as damaging to representing each fairly, as the conflicts between the official's personal and business interests and the trust inherent in representing constituents.

Ethics codes, establishing strict standards of professional conduct for all government employees and appointees, are needed. Such codes reduce the potential for conflicts of interest. Public officials should not serve in positions that affect their personal or business interests, or should be prohibited from voting on measures that conflict with personal or business interests.

We support the inclusion of citizen members on boards of ethics. Governor Florio's administrative ethics code is

watched over by a peer review board, the Executive Commission on Ethical Standards. The Legislature has an ethics board made up of members of the Senate and General Assembly. Such self-policing is not appropriate.

The League of Women Voters believes that ethics laws will protect the honest public officer, as clearly as they will protect the public and its right to know. While no set of laws can guarantee good government, they can establish standards of conduct for government officials. Their very existence discourages some who might be tempted into corruption, threatens those who cross the line from public service to private gain, and protects honest and dedicated public employees. Such laws are essential if we all intend to build public confidence in the integrity of government. Thank you.

DR. ROSENTHAL: Thank you. Questions from members of the Commission? Al?

MR. BURSTEIN: Ms. Trought, with respect to the latter part of your presentation and the peer review system that exists today with ethical matters both executive and legislative, is it your view that the peer reviews, or the reviews of ethical problems I should say, should be conducted by a Commission that is composed solely of outside members; that is to say, non legislative on that side, non executive on their side?

MS. TROUGHT: I don't think that it needs to be solely non executive or non legislative. What we see as the exclusive use of executive members, or legislative members, in no way gives the public confidence that there is really a review.

There have been instances, just this spring, where the legislators looked at themselves and they found everyone who had been brought to their attention was exemplary. And it's just not believable when it works that way.

MR. BURSTEIN: Then the next level question is: Would you seek a predominance of public members as opposed to the in-house members?

MS. TROUGHT: We're really not in a position to detail a law like that. It probably needs to be some kind of balance. But whether it's predominance, I'm not sure.

DR. ROSENTHAL: Pat?

MS. SHEEHAN: I have a couple of questions. Where you say at the end here, public officials should not serve in positions that effect their personal or business interest, or should be prohibited on voting. I can understand the prohibition in voting, I mean that's a tradition I think that we've kind of lived with and come to expect. But if you say should not serve in positions that affect their personal or business interests, at either the legislative or the local level, that sounds to me like advocating full-time legislators or full-time Mayors, and does away with the citizen concept of serving in public office. That concerns me.

MS. TROUGHT: Yes, that particular sentence was labored over, because there are those in the organization who feel that, in fact, those who are elected should be totally free from that which could be gained from being elected. There are others who want the citizen involvement that you're speaking of. So, the hope is that through the ethics codes that are developed, there will be realistic ways for votes to be taken that would call out the legislator exempting himself from a vote, or being precluded by some kind of review group from voting.

MS. SHEEHAN: Disclosure: w Wuld that help satisfy that?

MS. TROUGHT: Yeah.

MS. SHEEHAN: I mean--

MS. TROUGHT: To speak to the first question you raised, we are not in a position to advocate full-time legislators, no.

MS. SHEEHAN: And secondly, up on the beginning of that same page, you suggest that the proliferation of PACs as

well as the absence of caps on spending, call for corrections on the public financing law. Wouldn't an increase in the number of PACs -- given the notion that PACs supposedly represent special interests-- Wouldn't an increase in that number increase the variety of both citizens and special interests that were represented, and, in fact, call for more competition, as opposed to less?

MS. TROUGHT: Yeah, that--

MS. SHEEHAN: I mean, I don't see why that's a bad thing.

MS. TROUGHT: Yeah, I would be interested to see if we could get some research that would show that. What some assessments of this seems to disclose, is that those who form PACs succeed in forming more and more-- The same people form more and more PACs rather than 20 new organizations forming PACs. You know, they can come up with new names, and new ways--

MS. SHEEHAN: Same people.

MS. TROUGHT: --but it's the same people.

MS. SHEEHAN: So then we're really looking at disclosure here.

MS. TROUGHT: But we need more research on that to-- And maybe that's available from the experts that you'll be getting in.

MS. SHEEHAN: Thank you.

DR. ROSENTHAL: Michael?

MR. COLE: Going back for a moment, I think you indicated that in terms of potential conflicts between elected officials personally or business enterprise, you thought disclosure, and maybe some disqualification from voting on certain matters, would be appropriate. But you seem to draw a hard line in terms of dual office holding, and the conflicts potentially presented there.

MS. TROUGHT: Right.

MR. COLE: And I guess my question is: Why wouldn't disclosure similarly cure that, and again, maybe some prohibitions on certain bills?

MS. TROUGHT: It seems to us, when a legislator is both, say a Mayor and a State legislator, that there is, by definition, conflict in his ability to serve both constituencies. Even if the public knows that he holds these two offices, if he is attempting to be faithful to both of those constituencies, he is, we think, inevitably in conflict.

MR. COLE: Only on certain matters.

MS. TROUGHT: Well, that may be.

DR. ROSENTHAL: Senator Orechio?

SENATOR ORECHIO: Yes, Ms. Trought you made some reference to suggesting that a whitewash in the spring with some investigation by the Ethics Commission--

MS. TROUGHT: Did I say whitewash? I thought--

SENATOR ORECHIO: Well, you inferred that. You said nothing happened. I take exception to that, and I'm certain the other members of the Committee do. Anybody who makes an allegation about a legislator, whether it be another legislator or a citizen, is afforded a very comprehensive investigation by the staff. And I don't know of any instance where the allegation you made really is accurate. I think our staff, headed by Al Porroni, ably assisted by Marci Hochman, have done an excellent job.

If it involves subpoenaing witnesses, that's done. It's done in a very comprehensive manner. And you, still in this democracy, in this society -- you're still innocent until proven guilty, and there are the rules and regs and laws that have to be conformed with. These investigations are very extensive, and unless the allegations are proved to be true and accurate, then action is taken.

Second thing about the dual office holding, and I happen to be a dual office holder: I'm a Commissioner of

community -- I get $2000, $2200 -- for 22 years. But I'd like to allude to men like the late Senator Graves, Senate President Lynch, for example, who, from their perspective as Mayor of those cities-- In fact, Senator Graves has-- He's known; he's a legend with legislation that has been enacted through his initiatives. And I think because of his experience as Mayor of Paterson, with crime and other things that take place in that city, he's been able to serve his constituency better.

I also think, if we're representing, for example, the constituency within a district -- and there are 40 in the State, as you know -- you may say we have conflict then representing the State at large, or the district. I personally think, from my own experiences, that I understand the collective bargaining process better, and fair final offer option with public safety employees, to me is an experience that I had myself, that I think all goes well for New Jersey in those deliberations.

So, I wouldn't have had that experience to best represent my constituency -- and I represent seven suburban towns -- if I didn't have the experience in my own community which is a suburban town. So, I think there's a lot to say for dual office holding. There's two sides to the issue. I mean, you have a number-- I have not seen any public official who served on a municipal level, as well as in the State, where there have been any conflicts of interest that have really, in a sense, had a negative effect on the process.

DR. ROSENTHAL: Assemblyman?

ASSEMBLYMAN DEVERIN: Yeah, I'm not sure I understand, especially the League of Women Voters-- If I know what your thrust is, it's always to get out the vote, and believe very strongly in democracy. I'm not a dual office holder. I didn't want to be one. I don't think I have the ambition or the effort to be, but I've never found why you should make a law to stop that? It's really the people, the people in the district

who elect you Assemblyman, or Senator, or Freeholder, are the same people who are either going to elect you Mayor or something else. If they don't want you in those two offices, they'll make that decision. And that's what--

MS. TROUGHT: Right. I respect that--

ASSEMBLYMAN DEVERIN: Don't you think that's a little more democratic?

MS. TROUGHT: --then to have a legislative act--

ASSEMBLYMAN DEVERIN: Right.

MS. TROUGHT: --to preclude it.

ASSEMBLYMAN DEVERIN: And I agree, you know, that anybody can make a complaint to the Ethics Committee. A guy can come in and say, so and so, so and so. You can look and say, "No way." That doesn't say we judge everybody wrong. I believe that we should have some public members too. But it's unfair to say that everybody is clean, and everybody-- It's impossible to say we whitewashed everyone.

MS. TROUGHT: Perhaps I overstated it. I'm speaking, not from being inside on that, but reflecting more of a public comment -- you know, small "p" public comment there.

DR. ROSENTHAL: Yes, Assemblyman?

ASSEMBLYMAN HAYTAIAN: Mr. Chairman. I agree with a lot that's in your statement. I have one problem, and that's in your statement about public officials should not serve in positions that affect their personal business interests.

MS. TROUGHT: Right.

ASSEMBLYMAN HAYTAIAN: Or should be prohibited from voting on measures that conflict with personal or business interest. I assume what you mean is that if I have a-- If I think I have a personal conflict with business, that I would abstain from voting, so I couldn't vote "yes." But the flip side of that, and most people, even the press, doesn't talk about this: What happens if a legislator and his or her business interest would benefit from a "no" vote, thereby

abstains? And as you know, we still need 41 votes in the Assembly, and 21 in the Senate. And so, there is only 40 votes for that measure. And because that person abstained now, it benefits-- No one ever talks about that. It's always voting "yes." But by abstaining, you also help a cause if that cause is meant to be a "no."

Now, I think most people don't realize that and never talk about that, because I question all these people that abstain from voting, whether that vote being "no" is to the benefit of the business they represent. And I think more people should look into those people who abstain all the time to check to see, in fact, which way it benefits.

MS. TROUGHT: Well, I suppose whether it's the newspapers, or whether it's organizations like the League, when we publish voting records, should be more aware of the point you're making. Thank you.

ASSEMBLYMAN HAYTAIAN: Thank you.

DR. ROSENTHAL: Thank you, Ms. Trought.

MS. TROUGHT: Thank you very much.

DR. ROSENTHAL: Is Ray Pacino here? (no response) Oh, Ed McCool is. Ed?

E D W A R D M c C O O L: Yeah.

DR. ROSENTHAL: Do you want to come on now?

MR. McCOOL: Sure. Thank you. Sorry I was late.

DR. ROSENTHAL: That's okay.

MR. McCOOL: Does everybody have a copy? (referring to statement) I want to thank the members of the Committee for the opportunity to address them and to discuss some of the needed reforms that New Jersey Common Cause feels have to be made in the areas of campaign finance reform, legislative ethics, and lobby disclosure. I have to note at the beginning that it's a handicap to have to address all three areas in one sitting. I feel, personally, that the Committee's very difficult assignment would have been made easier by taking testimony and

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discussion on each of the three areas; not as a statement that they represent separate and distinct problems, but rather as complex problems, each with their own particular needs for reform, and time to thoroughly explore them coherently. However, you've made the decision you've made, so I will address them in one sitting.

One of the things I found as I was preparing my statement was that I started off with campaign finance reform, and as you'll notice of the three pages, it takes up the bulk of it. That hardly reflects the seriousness with which I view both lobby disclosure, and particularly, legislative ethics. It's just a reflection of what I've just said, that it, in itself, is a very complex and involved area in which there's lots of aspects that we can talk about and really make some constructive changes.

The problem in the area of campaign finance reform is quite simple: We need to finish the reforms that were started with the improvement of the gubernatorial races, in which we instituted contribution limits and spending limits. The degree to which, or rather, the pace with which we accomplished that is a variable. I think at the very minimum, I would hope that this Commission will recommend contribution limits.

I recognize that spending limits are a bit more complicated to evolve. And while that may be a bill that, if we put the whole thing together, politically we could both get spending limits and contribution limits, I would not want to see contribution limits held up because of the complexity of trying to evolve a spending limit program. I think, at the very minimum, we need a spending limit -- a contribution limit rather, of $500 per individual, and $1500 for any PAC.

We need to require the disclosure of the name and the address, and employer and job title, of all contributors of over $100. I think it's important to bear in mind that the threshold for disclosing that information, the threshold, in

fact, for any disclosure, not be subject to inflation. Inflation is a legitimate concern when we're talking about spending limits or contribution limits. But when it comes to the public's right to know, inflation has no bearing on it whatsoever.

And so, it doesn't-- The logic that we'd say, well, a $500 contribution is now what a $100 contribution used to mean a dozen years ago, means nothing in terms of the public's right to know who the employer is of the contributor. It certainly has bearing in terms of setting a limit on how much can be given.

This disclosure requirement needs to be extended to all races in the State, quite specifically, the governor's race, as well as, legislative races. And it should include all contributions received or raised by the elected official, whether they're campaign related or not. There's a present loophole which allows testimonials to be held by elected officials, which are not campaign related contributions. However, they're also not personal contributions. They fall into a limbo. And the disclosure of those contributions and the employer's source, or the employer of the contributor, should be included in the same rules that apply to campaign contributions.

And, of course, I'm not thinking of an elected official who goes out and raises funds for the American Cancer Society. But, quite frankly, those checks would be made out to the American Cancer Society. I'm talking about checks that are not campaign related, but are made out as a contribution to the individual who is holding an elected office.

I would ask that all non-party, and non-individual contributions be made through PACs. Basically, that we eliminate direct corporate, direct association, direct union giving. And by forcing all non-party, or non-individual

contributions through PACs, we then also increase the registration and reporting requirements of the PACs.

I'm proposing a specific, basic consumer protection package for people who use PACs. First of all, being truth in labeling, so that the PAC's title and/or its registry statement disclose its specific purpose, its officers, its primary contributing membership and composition, so that there is some connection. The contributor has the ability to find out, somehow, what the PAC is really about, as opposed to its title.

Also, that on-the-job solicitation be prohibited. All solicitations disclose the ratio of campaign dollars contributed as opposed to the amount that actually winds up being given to candidates. The situation with PACs is basically a scam waiting to be implemented. There are no regulations, short of registering your title and your treasurer. So, any person could go out and form a PAC -- the New Jersey for a Good and Wonderful World -- raise a substantial amount of money, and conduct get out the vote training sessions in Maui, and never do a damned thing for any candidate. Spend all the money on the officers' salaries, and on training which would basically be a smoke screen for junkets, and there isn't a single law on the books that that group could be prosecuted under. We have no requirement, that because you set up a PAC you have to give that money to an elected official -- an elected official's campaign, or spend it on behalf of the election or an issue. And we need to close that loophole before a major scandal happens.

And one of the best ways to do that is the way we would like to see-- A lot of charitable organizations, that go out and raise money; and you would like to know of the dollar you give, how much actually winds up going to the needy cause that they're soliciting on behalf of. I think it's a totally fair request for PACs, to ask how much of that dollar contributed goes to the candidates or to an issue or to a campaign related expense. Those figures are already available.

When PACs file their quarterly reports, they have to disclose their operating costs, and then they have to disclose the money contributed to candidates and money spent on behalf of candidates. I computed some of those ratios, and in -- for 1987 elections, and you know, in some cases it was over 100%, because the forms were misfiled. Some PACs use the same checking account to make contributions that they used for their operating account. So, under "operations" they reported all their contributions, and what you came out statistically with was the PAC had 110% operating expenditures over the amount that they had collected. When I found that I went and investigated it, and it was obviously a mistake.

PACs are going to need to be trained on how to fill them out properly, but what I'm saying is it's not asking them for any more data than they're presently filing, once they understand how to file it correctly. The use of PAC funds should be restricted to campaign contributions, either directly to, or on behalf of, candidates or political parties, or questions on the ballot. And as I said, or operating costs that, you know within a range. There are no such restrictions right now.

The problem of leftover campaign funds: There's usually more than $1 million in leftover campaign funds when you add it all up, and we need to restrict the use of those campaign funds to campaign related expenses, either of the candidate or transferred to another candidate. We are firmly opposed to the use of those monies for the operation of legislative district offices. The operation of the district office and the provision of constituent services is a public function and should be paid for out of public funds. If those budgets are not adequate-- And I think a case could made, that given the burden on legislators that there's an increase needed in some areas, then it should it come out of the public. We do

not want contributions paying for a staff person. It's entirely too easy for one source to be the-- Even if it's multiple sources, it's improper.

It's okay for a campaign aide. That's the nature of a campaign, but not an official of the Legislature, or someone who works for them.

One of the problems that will come up when you try and regulate campaign spending, as well as, campaign contributions, would be the existence of the independent expenditure committee as a way of getting around it. I would like to suggest to the Committee, that they explore having specific and very stringent contribution limits to independent expenditure groups. Perhaps no more that $50 could be contributed by a single in-State source to an independent expenditure group, and $25 by any out-of-state source. This would prevent out-of-state organizations with large amounts of money from coming into New Jersey and setting up their own independent expenditure operation, as a way of circumventing whatever contribution limits New Jersey institutes.

We would also, of course, urge the adoption of realistic spending limits. There are lots of ways of doing this. The court has ruled, as you know, that public financing is required and it must be a voluntary system. So the problem becomes: A) where do you get the money, and, B) how do you make it voluntary, but certainly conducive for people to participate so that it means something? You need only offer partial public financing. I don't believe the amount has to be that significant, particularly when you build in incentives or disincentives for people not to participate. Such things as-- Let's say you provide $5000 per election in free postage to individuals who agreed to abide by a spending limit. You would then get your opponents share if your opponent refused to participate. You now have basically a free second mailing,

courtesy of your opponent who refuses to abide by spending limits. It now becomes a campaign issue.

You also have situations where, if the opponent goes over the spending limit, you can relieve the person participating in the public financing system from the spending limit, as well, or if the Treasury would allow, provide additional match. One of the ways that has been proposed to curb independent expenditure groups on the national level has been, that if an independent expenditure group comes in and starts spending doing negative advertising against the candidate who's under spending limits, the argument is, well, "I'm going to spend all my money trying to counter this negative advertising, and my opponent is going to have all his still left." What you do is you implement a rule which says, well, for every dollar spent by the independent expenditure group in negative advertising, the target gets two public dollars to counter it over and above the spending limit program. What this does, is basically set up a very negative situation for the negative campaign group, because what they're basically doing is generating additional public monies for the opponent that they're trying to defeat. So, it basically would stop it.

Finally, as far as this aspect of the problem -- meaning campaign finance reform; how we raise money to elect legislators -- I respectfully remind the Committee of Attorney General Del Tufo's offer in his three page report regarding the allegations made by Ms. Kotvas. The Attorney General stated on page three of that report, "We welcome and commend this initiative (the establishment of you, the Commission) with the conviction that the Commission will review and address the type of conduct involved in the present matter. To assist the Commission in its work, we stand ready to share with it information developed during our inquiry..." I respectfully ask the Commission to ask the Attorney General to share with it

the information developed during his Department's inquiry into the Kotvas allegations, as well as any other insights and suggestions he may have regarding fund-raising and lobbying in the New Jersey Legislature.

Under the issue of lobby disclosure, I will echo what's been said before, and this is it's essential, that we close the lobby disclosure loophole, the expressly clause, and that reporting of money spent take on some meaning, rather than just a mere indication of what is actually spent. There are plenty of existing reports that have yet to be implemented. The Kimmleman report made some very significant recommendations; putting it all under one agency -- instead of having the AG and ELEC -- closing the loophole, etc. I recommend that to the Committee. "The Sunshine Boys," by Neil Upmeyer, which is a very colorful history of how that clause came to be placed in the law, and some very solid suggestions on how to improve the law, and how to improve the reporting of the information, once it starts getting filed. There's no need to repeat that if it's already available.

One of the things, of course, that must be done is to include the executive branch under the lobby disclosure requirements. As you know, lobbying departments is presently exempt from the lobby disclosure requirements. This could be closed immediately by the Governor by Executive Order requiring all department heads to report any lobbying contact, the nature of the contact, and the issue discussed. But he has chosen not to do that.

It is a growing and hidden industry that we, the public, rarely gets a glimpse of. But one of the glimpses was in the New Jersey Law Journal, and I refer you to an ad taken out by the firm of Cooper, Perskie, April, Niedelman, Wangenheim, and Levenson, I quote: "announces the expansion of our State Government Affairs Department. The Department will be headed by James Cooper and Lloyd Levenson. The firm will

provide services in matters involving all State regulatory agencies, departments, and commissions." The ad ran not once, but at least twice in the New Jersey Law Journal. As you know, Chief of Staff Perskie has had no affiliation with this firm, but it is his uncle.

We need to close that and we need to discourage that. And at least, the best way to do that is, again, to shine public light on it.

Under legislative ethics, the best case for the drastic overhaul of what I consider the so-called legislative ethics system, is the present handling of the break-in and theft of over 1000 documents that were used by the Democratic legislative staff. The process is characterized by secrecy and appears to operate in the personal interest rather than in the public interest. Legislative ethics must be tightened and forced, and the whole process must be opened to public scrutiny in the same fashion as the executive branch. And I would add to that, that the inclusion of public members in that process would go a long way. As to the question as to whether they should be a predominant percentage of the Committee or not, I don't think that is as important as the inclusion certainly, of more than just a couple. I would think that legislators would want to feel that they have the majority of their peers in this Committee.

Let me back up in a very constructive way. Ethics is a very scary subject. I mean, I know that from my dealings on the municipal and county level, as well as, on the State level. There's a general feeling that ethics is an insinuation that everyone who holds public office is a crook. And that's, I think, a function of the fact that it is an issue that is not dealt with until there is a problem, and then it's always discussed in a negative context. It's you did this, you shouldn't have done that; well I didn't know; and well here we need ethics. And it creates this public impression in the

political mind that it's always an accusatory subject. It isn't. Why anyone would want to operate in a veritable ethical vacuum in politics is beyond me, but only one in four municipalities have any code of ethics whatsoever, and a substantial percentage of our counties have no codes of ethics.

We all know that in politics, you're subject to get whacked from anybody; from people in your own party, from your opposition, and you have to make very, very difficult decisions. To want to do that with a minimum amount of guidance, and without the guidance of a formal process which has the public confidence, to me, strikes me as insane. And it is not saying that everyone who holds an elected office is a crook, to push very strongly for ethics. In fact, what it's saying is we're all humans, and what we need is some type of guideline.

The best guidelines are the ones that the people who are covered by them have a role in developing. The least effective ones, and the most resented ones, are the ones that are laid on us like some yoke from the outside of the environment that we have to live with.

I would like to-- I want to suggest to this Commission that they recommend-- There are consultants -- there are significant consultant firms in the area of ethics that go into corporations that have problems with basically stealing, taking home the products. They go into organizations and governments to raise ethical sensitivity, not as an accusatory; that the place they go into everybody is a Neanderthal ethically, not that, but on the belief that we all have different values and we have varying degrees of what we consider the most serious offense, and so, you know, what's the big deal? That's just life. And we get nowhere by saying my moral standards are better than your moral standards. The only way we get anywhere is by consciously working that we have to

come to an accommodation, and we have to raise our consciousness about what are ethical concerns. That's what these operations specialize in.

I think one of the most productive things that could come out of this whole effort, in addition to campaign finance reform, would be for the Legislature, on its own, to hold a series of seminars with -- involving you, the legislators themselves, in which you discuss in a very practical, down-to-earth manner, the ethical concerns that each person has, and then the difficulty they have with living under an ethics code with the intention of once having surfaced that, once having explored it, adopting a very meaningful and a very operative code, quite frankly, and a process for implementing, that has the public confidence. That's a much healthier way of going about it than an accusatory way.

The system that exists is totally legal. That's the unfortunate part of it. It's legal, and it excludes the public on a presumption that it couldn't operate if it involves it, yet, the executive branch does exactly that, and operates very well. So, it's based on some false assumptions, but its operating processes are legal, and that, from a public interest perspective, is one of the most frustrating things from my end.

But we can come up with bad examples, we can come up with good examples. We can defend them. The really important thing that has to happen is that the code that's adopted, the Legislature -- key legislators and basically everyone who has to live under it -- has to feel like they had a hand in writing it more than just in a Committee. I think this kind of stuff, because it comes from personal values -- and what we're doing now is making them social values -- has to evolve. And we just can't say, okay, State Government Committee come up with a code of ethics. Okay, Joint Committee on Legislative Ethics come up with a code. It's going to be the code of a few people, and

then it's going to get criticized in the legislative process, and basically, it will still feel distant to people.

People have to come together, accept that there are some problems, agree what they are, and then agree to work on a code that would address those problems. And other legislatures have done it, other firms have done it, corporations have done it, and I think we can do it.

I have some specific things in terms of reporting that I think, needed to be added. I don't see any reason why any legislator should take any gift whatsoever. There may be some difficulty in defining what is a gift. If somebody gives you tickets to go to the dinner of the county Freeholders do you have to put that as a gift, or what have you? I think we can work out a definition that allows for political function tickets to be covered. But anything else-- A legislator is in a public trust, and I think to operate under a standard that's higher than a person may feel is actually required, only instills more confidence in the Legislature itself.

I mean, to add to your already tough assignment, I'll refer you to two other aspects of ethics, quite frankly. One is the article that's in today's Trentonian that has to do with the lack of -- or the difference in the accounting procedures with respect to the legislative money for the operation of the Legislature, and apparently, the very limited reporting requirements of how that money is spent. I don't think this Committee wants to set up what those reporting requirements should be, but clearly, it touches on ethics, because legislators have to operate-- Again, there is a vacuum. There is money sitting there which anybody spending, with all good intentions, is liable to be criticized for, for having spent it from a malicious point of view or from a maleficence point of view, and in the absence of any clear rules, in the absence of any clear guidelines, it's just a problem waiting to happen. So the best and the healthiest way to do it, is to take care of it before it happens, if it hasn't already.

The same is true with the use of partisan staff that are paid for by State budget. In the absence of any guidelines, in the absence of any restrictions in terms of prohibiting direct campaign involvement on the books, it's a problem waiting to happen, if it hasn't already. And again, I think it touches on ethics, because it touches on the confidence of the public in the Legislature to not misuse its trust and misuse its public monies. So, again, I would hope the Commission recommend that the Legislature adopt meaningful guidelines in both of those areas, and make those guidelines public.

And lastly, I've heard discussion repeatedly about should we have a full-time Legislature or a part-time Legislature. It's my own feeling that that's not the question; that's not why this Commission was formed. You can have a full-time Legislature and have problems in all these three areas. You can have a part-time Legislature and have significant improvement in all these three areas. Full-time or part-time really doesn't touch on it, and if you have any doubts about that, take a look at the U.S. Congress. While they may be better than us in some areas, they're certainly worse than us in other areas. They're full-time, and we're paying for it, so all that really means is full-time/part-time is a whole separate issue. I really don't see the bearing that it has on campaign finance reform, on ethics, or on lobby disclosure, to the degree that warrants the expense that would be involved, and the complications involved, with trying to get that adopted. And with that, I thank you for the opportunity to discuss this with you.

DR. ROSENTHAL: Thank you. I have a question to lead off. It's on campaign finance and public finance. They have public financing of legislative campaigns in Wisconsin and Minnesota, and one of the problems with such systems is that in the relatively safe districts both candidates accept public

financing. In the competitive districts, where there are open seats or real party competition, which may be one out of five or one out of four districts, neither party accepts public financing. So, then, the tendency is for the races to be fought with private money, as in the past, in the competitive districts, and for the public to fund elections that aren't really competitive anyway. How do you address that kind of problem in operating a public system?

MR. McCOOL: Do you know if they have carrots and sticks for the candidates? I mean--

DR. ROSENTHAL: Yeah, they have carrots and sticks, and they give this-- But where party control is an issue, and where these races will determine whether the Republicans or Democrats control the Senate or the House, or State government--

MR. McCOOL: Right.

DR. ROSENTHAL: --and a lot of, you know, different values are at stake, each party, understandably, wants to win. So, it is not in their interest, as they define their interest, to limit themselves, because reaching the voters through the media, and direct mail, or whatever, you know, takes money. So they, not with any, you know -- not by conspiracy--

MR. McCOOL: No.

DR. ROSENTHAL: --but because both of the interests are alike--

MR. McCOOL: Right.

DR. ROSENTHAL: --they refuse public finance.

MR. McCOOL: Right.

DR. ROSENTHAL: In other words, what I'm saying is that the incentives that you develop, you know, this candidate can have that candidates share--

MR. McCOOL: Right.

DR. ROSENTHAL: --don't work in those really contested districts. So, I'm--

MR. McCOOL: I mean, that's the weakness of the system, given the Supreme Court ruling. I mean, that it has to be voluntary. And, I mean, I don't have an answer for it.

DR. ROSENTHAL: You don't have an answer. I--

MR. McCOOL: I don't have an answer for that, and that-- And just, quite frankly, there's a deeper problem, that is, agreeing on what the limits should be do so that you don't have an incumbency protection act, but at the same time you don't have a limit that's so high as to be meaningless. Those two difficulties alone are why I'm concerned that the whole issue of contribution limits and these reporting requirement improvements and the like, not be held up while those very difficult things be wrestled with legislatively. I think we need to move straight ahead. We needed to do this years ago, and put a meaningful contribution limit in place and tougher reporting, and quite frankly, change how we--

DR. ROSENTHAL: So, you don't see improvement, depending upon public financing?

MR. McCOOL: Oh, it is-- Public financing will result in some improvement. I think the Governor's race is the best example of that.

DR. ROSENTHAL: But you can have improvement without public finance?

MR. McCOOL: Yeah. How often that will occur, and how much of that will be a political liability, the examples you presented, is up for grabs. I mean, the same fears were expressed with the Governor's race, and, well, gosh, who's going to really abide by the limit for the only statewide office; and what if heavy money comes in? And the interesting thing is, that the two times it's happened, those candidates have lost. In fact, it's a political issue now in New Jersey. And to me, that's the major accomplishment of public financing, which I'd rather call spending limits, because public financing in a tight budget, people don't like, but everyone is in favor of spending limits.

That it's part of now-- It's part of the political landscape. Candidates for Governor in New Jersey seriously have to weigh the political effects of turning down spending limits and how they're going to justify that, and whether their opponent will continue to hit them over the head with the fact that they're trying to buy the election. And that's the best accomplishment you can make, given the freedom of somebody to turn the system down. How much of a deterrence that would be on the district by district level-- Yeah, I mean would the same ten contested districts always be? Then we're basically paying for something that normally we didn't have to pay for before. It's a problem, and that's why I don't think it should be tied to contribution limits.

DR. ROSENTHAL: Michael?

MR. COLE: Following up the Chairman's question, I wonder, assuming you could develop criteria that you could objectively define a competitive district, I guess 10, I guess sometimes as many as 15. Do you think there would be any constitutional problem with having different limits for different districts--

MR. McCOOL: Yeah, I think there would be.

MR. COLE: -- pouring more money into a competitive district?

MR. McCOOL: I think there would be. And also there's the function of are you locking in the competitive districts with the criteria, and how do you make a district competitive if you haven't been grandfathered into that definition. And, I mean--

MR. COLE: The definition could be such that it would then -- it moves with each election. It could be--

MR. McCOOL: But then how do you break it? That's what I'm-- Yeah, I know. A district that has a pattern of the victor never winning by more than 3% of the vote, or something, etc. But the problem is, if you're in a predominantly D

district, and you're building to make it an R, and it takes you 10 years, and then you want to crack that spending limit so you can flip it, but you haven't qualified. So, I'd have a problem that way.

But also, I think constitutionally, I don't think you could have different standards for people.

MR. BURSTEIN: What do you do every 10 years (words inaudible)? The lines change.

ASSEMBLYMAN HAYTAIAN: Yeah, that's right.

ASSEMBLYMAN DEVERIN: What do you do with the primaries?

ASSEMBLYMAN HAYTAIAN: In noncompetitive districts, primaries are the election. I mean, what do you do then?

MR. COLE: Following that, what do you think about public financing for primaries?

MR. McCOOL: Well, I think if we adopt spending limits, we need to adopt them for both the primary and the general. It's a mistake to look at them as only spending limits for the general election. We're missing the boat. That's where you can front-load the whole system in the primary then. Whether the same problem that Alan has brought up about contested districts within the primary context would exist, and whether we basically have people turning it down, but paying for safe primaries, is a real problem as well, you know.

DR. ROSENTHAL: Al? I'm sorry.

MR. BURSTEIN: That's okay.

DR. ROSENTHAL: Mike?

MR. COLE: And lastly, I think one of the carrots and sticks you talked about was negative advertising--

MR. McCOOL: Yeah.

MR. COLE: --and people who engaged in it, some kind of penalty attached, and either more money to the other party-- I'm wondering, do you think it's possible to really legislatively define negative advertising?

MR. McCOOL: Well, I think it's-- I think you can. I think you can-- Negative advertising tends to follow the pattern where you play up an issue in a historical fashion, and then you talk about someone who did what this issue says you shouldn't do. It doesn't say vote for the other guy. It simply says, toxic waste in our water is a terrible thing. Our water is becoming impossible to drink, etc. Ed McCool owns a firm that dumped toxic waste in the water; period. It doesn't say vote for Alan Rosenthal, it just says a fact. That's negative advertising, when the candidate is specifically identified in a negative way with that issue. And--

MR. COLE: Suppose there's a legend on that that says "Vote for Alan."

MR. McCOOL: Well, then it's--

MR. COLE: The voice is saying--

MR. McCOOL: Then the law is, it has to be affiliated with his campaign, because you can't urge people to vote for a candidate. I mean, somewhere he has to accept responsibility for having had that ad put in, or ask that his name be removed from it.

MR. BURSTEIN: I wouldn't put it above him either.

MR. McCOOL: Yeah, I know.

DR. ROSENTHAL: Any other questions before I recognize Al? (laughter)

MR. BURSTEIN: Let me pose a hypothetical to you, to see if we can't work our way through some of the problems on the ethics side that have afflicted us. Lawyer "X" is a legislator; he represents a developer. Land use problems have been a major component of a whole variety of legislative efforts over the last several decades. Now that developer and his interests collide with a bill that is coming on to be heard. I mean, it's predictable that it would come on because it had to do with certain environmental factors that would have taken the land owned by the developer out of his scope of

operation. What's the responsibility in those circumstances of the lawyer legislator? Not to represent the developer at all, A), or B) simply when the vote comes, divulge to the body that he is representing that developer and will not vote on this bill because it has a direct impact upon him?

MR. McCOOL: And his relationship with the developer is a client--

MR. BURSTEIN: An ongoing attorney/client relationship, yes.

MR. McCOOL: I feel Talmudic here. (laughter) And then what if--

MR. BURSTEIN: I don't care which text you rely on.

MR. McCOOL: I think-- I mean, I think the principle -- the operating principle, is disclosure. We don't have it now, so we don't know when the relationship exists and when it doesn't.

MR. BURSTEIN: Well, don't the legislative rules, as I recall them anyway, require that where there is a conflict -- obviously, it is a self-created rule -- where there is a conflict, a legislator should abstain from a vote, and so advise the presiding officer of the house?

MR. McCOOL: Right, and the conflict would be defined--

ASSEMBLYMAN DEVERIN: Or he could file that he can vote without any problem.

MR. McCOOL: Yeah.

ASSEMBLYMAN DEVERIN: Either way.

ASSEMBLYMAN HAYTAIAN: Yeah, but what is the definition of the conflict? If it benefits that legislator, and only that legislator--

MR. McCOOL: And more than any--

ASSEMBLYMAN HAYTAIAN: --more than any other legislator?

MR. McCOOL: And more than-- Yeah, exactly.

MR. BURSTEIN: Well, that's what we're getting to.

MR. McCOOL: So, all I'm saying is, I mean, there's a problem with that. I know the concept of a part-time Legislature-- Everybody works in another avenue. And so if we asked everyone who had the slightest relationship with the issue to get up and leave, you'd have trouble getting a quorum, let alone-- I think it's the surfacing of the relationship, is a major first step.

MR. BURSTEIN: Disclosure, in other words.

MR. McCOOL: Right. And not as the incident presents itself, but as a matter of normal filing -- a normal disclosure statement for legislators, period; that they disclose their clients.

ASSEMBLYMAN HAYTAIAN: But we have that.

MR. McCOOL: No, you don't disclose who your clients are, you disclose your law firm.

ASSEMBLYMAN HAYTAIAN: Well, wait a minute, that's for attorneys.

MR. McCOOL: Right.

ASSEMBLYMAN HAYTAIAN: For others that work for a living, (laughter) meaning they work for someone else, and don't own their own business--

MR. BURSTEIN: You weren't implying that lawyers-- (laughter)

ASSEMBLYMAN HAYTAIAN: No, I wasn't.

MR. BURSTEIN: All right.

ASSEMBLYMAN HAYTAIAN: But what happens then, when we disclose, as we do -- I mean those of us who work for someone else -- disclose that we are an employee of that firm? We do that every-- When is it Marci, May 15th or April 15th?

MS. HOCHMAN: Disclosure is required May 15th every year.

ASSEMBLYMAN DEVERIN: Every time you run.

ASSEMBLYMAN HAYTAIAN: Every year. No, every year we do it, and when we run, we do it with ELEC. So, we do it. We have to do it.

MR. BURSTEIN: Yeah, but the question then becomes: Does your concern -- or do you, as an employee of your business, have to disclose every client or every person that your company is doing business with, and if you're with a major corporation, what does that imply with respect to disclosure?

ASSEMBLYMAN DEVERIN: Right.

MR. BURSTEIN: What does that accomplish? Is it effective?

MR. McCOOL: The disclosure?

MR. BURSTEIN: Yeah, in those circumstances, as I hypothesized for you.

MR. McCOOL: I think in-- Yeah. What we're looking at is whether to err on the side of more information than is actually needed, or less information than is actually required. And I think the safest course to take is to err -- as much as it's annoying -- on the side of more information than may actually be needed, because the other is a situation that is fraught with danger, and that is that there is less than the minimum.

The difficulty--

MR. BURSTEIN: Wouldn't that be cured if by, prior to a vote, saying I represent John Jones Developer and this is our relationship, and at that point say whether or not you think you ought to participate in the vote, as a legislator?

MR. McCOOL: It would be cured by that. The problem is, how often that happens, and the fact that it is self-initiated. And there needs to be an outside check. There needs to be an independent avenue for that relationship to be surfaced and explored and a challenge, possibly, to be made.

MR. BURSTEIN: Suppose a client in the attorney/client relationship says, "I don't want my name disclosed here by you, as my attorney," and if you do it, bye-bye attorney. And the same thing with a business relationship? We don't want to have the fact that we're doing business with this company disclosed on a public record.

MR. McCOOL: Right.

MR. BURSTEIN: What happens then?

MR. McCOOL: You have a--

MR. BURSTEIN: Isn't that an inhibiting or chilling factor with respect to the participation of an individual in the public life?

MR. McCOOL: It is. It is. And it's hard choice time. A person has to decide whether they wish to continue in public life, or that that's too high a price to pay. It's the same kind of choice people who work for the casinos have to get, as to their own political involvement. The State in licensing or granting operation, is notorious for saying you have to make a hard choice here, and if you do this you can't do the other thing.

In this case the legislator is not being told they can't do it. But they're-- It's a situation where the client says, "I frankly don't want a public relationship with you."

MR. BURSTEIN: They can do it under sacrifice, in other words.

MR. McCOOL: That's exactly right.

MR. BURSTEIN: Yeah.

MR. McCOOL: I mean, because it's an office freely held. The person sought it, so it's not something that's imposed on them, and therefore, it's an unfair limitation. If the community says, "This is a standard that we want the Legislature, at any level, at the municipal or county level as well, to abide by," then that's the price. I mean, the community decides that because it's not a private corporation, it's public.

MR. BURSTEIN: Is that a purity that is really beyond what is really necessary for participation in public life? I realize it's a very subjective opinion.

MR. McCOOL: Well, I mean, yeah, some people will think it is. Other people wouldn't understand why a client

wouldn't want to disclose any -- would then have to assess what percentage of their business this client is, would then have to assess, you know, so who needs him, or, looks like I have to go because there goes the biggest account that's paying for all the rent. I mean, that happens all the time.

It happens in terms of time. Legislators find they're putting more time in Trenton than they are in able to work up their law practice, and to be a good criminal lawyer, and they have to make a choice. That happens as well. So, I reckon--

ASSEMBLYMAN DEVERIN: Ed?

MR. McCOOL: Yeah, go ahead. I'm sorry.

ASSEMBLYMAN DEVERIN: If a legislator was on a committee that dealt with laundry service, with laundries, or bakeries--

MR. BURSTEIN: It's clean.

ASSEMBLYMAN DEVERIN: Clean. (laughter) And, you know, all of the sudden the laundries realize this guy is doing a good job, and all the laundries decide that they're going to go to him as clients. And I'm not a lawyer, so I don't know how clients come to you.

MR. McCOOL: Right, okay.

ASSEMBLYMAN DEVERIN: All of the clients come to you.

MR. McCOOL: Right.

ASSEMBLYMAN DEVERIN: All of the sudden, he's representing all the laundries.

MR. McCOOL: Right.

ASSEMBLYMAN DEVERIN: Now, does he have an obligation to say to those laundries, "I can't represent you, my Committee handles--" Or does he just have to disclose that he now has all the laundries to represent?

MR. McCOOL: Well, I think, first of all, it would be helpful for him or her to disclose it. The second thing would be to-- You're basically asking me--

ASSEMBLYMAN DEVERIN: Because that's a very difficult thing.

MR. McCOOL: I know that. And you're basically asking me to do what I -- in a couple of minutes -- what I suggested we bring in consultants to do, and sit and not lecture, but work in a dynamic that they're quite used to and have dealt with in other areas, to evolve these kinds of very practical -- answer these very practical questions.

For example, there's the whole standard of avoiding the appearance of a conflict. We've limited the discussion to actual conflict, but in politics, and particularly with the Legislature at any level, the appearance of conflict is just as important. And so, we need to provide an avenue for the individual to express and protect themselves from being accused of: No, you're not in actual conflict, because, quite frankly, if you were, there might be some other legal action open, but it surely creates the appearance.

And that has to do with us collectively raising our sensitivities to it, of wanting to protect the institution, of seeing the institution as something we want to hold up to that kind of standard. That's not easily done, and it's not quickly done; and quite frankly, if it was done simply by putting a sentence in a code or in a law, we'd have a perfect society. It's something we have to buy into and struggle to keep, and that's why I really suggested the initiation of a process, so that the Legislature can evolve this thing, and presume that the people participating would be committed to it.

But, I don't have-- I mean, what I'm saying is I don't have an answer for that.

ASSEMBLYMAN DEVERIN: When you talked about public members on the Ethic Committee--

MR. McCOOL: Right.

ASSEMBLYMAN DEVERIN: --have you ever given any thought about how they would be appointed, or who would appoint

them? Would they be appointed by the Speaker and the President? Would they be appointed by the Governor? Would they be appointed--

MR. McCOOL: There's a lot-- I mean, any of-- There's no one way to do it.

ASSEMBLYMAN DEVERIN: But either way, would you--

MR. McCOOL: Yeah, I don't know if the Legislature would welcome the executive branch having a finger in its point. But if it was a point--

ASSEMBLYMAN DEVERIN: So, if they were appointed--

MR. McCOOL: I mean, I think you could have leadership, both Majority and Minority. You could have the court, maybe. It depends on how open they are to letting--

ASSEMBLYMAN DEVERIN: Or if it were done by the Speaker and by the President, with some -- the fact that they could have never been former members of the--

MR. McCOOL: That's exactly right. And maybe not even registered in the party; technically independents.

ASSEMBLYMAN DEVERIN: Not members of either party.

MR. McCOOL: Again, we're not going to create a foolproof system. And if there's nine members, five are legislators, and we wind up getting four public flunkies on there. That's the way it works sometimes. But the odds of that happening -- getting four -- is pretty high.

ASSEMBLYMAN DEVERIN: Three out of four. (laughter)

MR. McCOOL: Yeah, you'll get three. There's always going to be one. The main thing is that structurally and institutionally, it says we're not afraid of the public participating in helping us work through ethical concerns that are part of the public's institution. It's the same-- The Executive branch has indicated its willingness to put public members on. We're waiting for the legislation.

DR. ROSENTHAL: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Alan, thank you. I think the answer to your dilemma on some of those answers is that if we have a full-time Legislature we can handle some of those problems, but you said you didn't believe that was the answer.

MR. McCOOL: Right.

ASSEMBLYMAN HAYTAIAN: I've got a question on page two of your statement. You talk about restrictive use of leftover campaign funds for each election cycle. I guess my question is, when does a campaign start and when does it -- when does it begin and when does it end? I give you as an example: I was elected in November of last year. I took office, I guess, on the 16th of January, and four weeks later some fellow up in my district is now running for the Assembly in 1991. Are we now in an election cycle?

MR. McCOOL: You don't have to go to your district.

ASSEMBLYMAN HAYTAIAN: I am.

MR. McCOOL: You've got guys in your own chamber who are presently running for the Assembly, but, yeah.

ASSEMBLYMAN HAYTAIAN: Well, the point is we are now in an election cycle, because he's running around saying, "Scott Garrett for the Assembly"?

MR. McCOOL: Right.

ASSEMBLYMAN HAYTAIAN: So, I am now in an election cycle, correct?

MR. McCOOL: Yes.

ASSEMBLYMAN HAYTAIAN: Okay.

MR. McCOOL: But what I'm-- My problem--

ASSEMBLYMAN HAYTAIAN: So therefore, there is no restrictions on leftover campaign funds, because if I have money left over, I'm campaigning again.

MR. McCOOL: Even in the restrictions that I'm suggesting, that would be an allowable use of the campaign leftover money.

ASSEMBLYMAN HAYTAIAN: All right, so I disclose every quarter, but it's not an election cycle. And then when we do get into the primary of next year, we have a 29-day reporting, so I now have an election fund, and so we start. The point is--

MR. McCOOL: I don't have a problem with that.

ASSEMBLYMAN HAYTAIAN: Okay.

MR. McCOOL: The problem is when it's used--

ASSEMBLYMAN HAYTAIAN: Why isn't he disclosing? Why isn't my opponent who is running around now, why isn't he disclosing?

MR. McCOOL: Because he has--

ASSEMBLYMAN HAYTAIAN: That's okay. But I'm an incumbent, he's a challenger.

MR. McCOOL: He will have to disclose-- He will have to disclose as soon as he formally declares as a candidate.

ASSEMBLYMAN HAYTAIAN: And all the money he is now using--

MR. McCOOL: He will then have to report it. He will have to report it.

ASSEMBLYMAN DEVERIN: As soon as he takes money he has to--

ASSEMBLYMAN HAYTAIAN: As soon as he takes money, how about if he's spending his own money?

MR. McCOOL: That's not concerning leftover money, and I don't have a problem with leftover money being used for a reelection. What my concern is is that it not be used for non-campaign related expenses.

ASSEMBLYMAN HAYTAIAN: Except that what I'm saying is there is no election cycle, for say, Assembly people. Maybe Senators because it's a four-year term. You don't have people starting four years down the road.

MR. McCOOL: That's an interesting observation because that's exactly what members of Congress are now saying--

ASSEMBLYMAN HAYTAIAN: Well, we don't--

MR. McCOOL: --that as soon at they get there they have to start going and fund-raising for the election that's two years away.

ASSEMBLYMAN HAYTAIAN: Well, I gave you the example. It's not that we're using that as an excuse. Here is an example of a person running around in my district running for the Assembly in 1991, a month after I was sworn into office. So, that means he's running around for two years.

MR. BURSTEIN: He doesn't like your performance. (laughter)

ASSEMBLYMAN HAYTAIAN: What can I tell you?

ASSEMBLYMAN DEVERIN: Instead of getting 80%, he'll only get 75% of the vote.

DR. ROSENTHAL: Assemblyman Deverin.

ASSEMBLYMAN DEVERIN: What do you think about limiting fund-raising to just an election year? Without considering a cycle, an election year is January '91 until November of '91, rather than having fund-raising on a constant basis like they do in Congress, and beginning to do here, too?

MR. McCOOL: I think it would be a good idea, but I don't know if you can do it constitutionally. I'm not sure-- Can you?

DR. ROSENTHAL: In other states they do limit fund-raising.

MR. McCOOL: Well, they limit it-- I know that you can't do--

DR. ROSENTHAL: Not in session, not--

MR. McCOOL: --it while it's in session, but we're always in session.

DR. ROSENTHAL: Always in session.

MR. McCOOL: Yeah.

ASSEMBLYMAN DEVERIN: Because that's--

MR. McCOOL: Maybe we'd be better off limiting the session. (laughter)

ASSEMBLYMAN DEVERIN: That gives a wrong perception to the public.

MR. McCOOL: Who said that?

ASSEMBLYMAN DEVERIN: Some people wish we could (words inaudible due to coughing) just get on. When they're raising money that makes a--

MR. McCOOL: Oh, sure it does. And it's less time that you have to be an effective legislator because you have to out and fund raise all the time.

DR. ROSENTHAL: Pat?

MS. SHEEHAN: I have a couple of specific questions here. The maximum campaign contribution for all races; $500 per individual. Is that per individual for all political races; local, State, Federal, da, da, da, da?

MR. McCOOL: Not Federal, but it would be municipal, county, and legislative.

MS. SHEEHAN: I, as an individual, would be limited to a total of $500?

MR. McCOOL: No, per candidate.

MS. SHEEHAN: Per candidate?

MR. McCOOL: Oh, sure.

MS. SHEEHAN: Okay.

MR. McCOOL: Oh, yeah. No, that's not an aggregate amount.

MS. SHEEHAN: Okay.

MR. McCOOL: That's the most that you can give to a candidate.

MS. SHEEHAN: Per candidate, per election; 500 in the primary and 500 in the--

MR. McCOOL: Right.

ASSEMBLYMAN DEVERIN: Per family?

MR. McCOOL: No.

MS. SHEEHAN: I'm sorry?

MR. McCOOL: I didn't mean--

ASSEMBLYMAN DEVERIN: Per family, I'm sorry. Husband and wife.

MR. McCOOL: I meant it as an individual.

MS. SHEEHAN: It says individual. (referring to statement)

MR. McCOOL: Yeah.

MS. SHEEHAN: And secondly, the disclosure is extended to all elected offices in the State, to include all contributions, campaign or noncampaign related. When you say all elected offices, is that local, county, and Federal?

MR. McCOOL: Yes, yes.

MS. SHEEHAN: And when you say campaign--

MR. McCOOL: Not Federal.

MS. SHEEHAN: Sorry, yes.

MR. McCOOL: Local, State, and municipal. Municipal, county, and State.

MS. SHEEHAN: I was thinking local, county, and State. We'll get it straight yet.

MR. McCOOL: All three levels, right.

MS. SHEEHAN: And when you say campaign or noncampaign related, wouldn't that catch up with gifts?

MR. McCOOL: Yes, that's what was my intention. Well, it depends on how you mean gifts. I mean--

MS. SHEEHAN: All contributions -- campaign or noncampaign.

MR. McCOOL: Well, okay. Under the ethics I would hope that there would be a recommendation that the Legislature adopt a code that says no gifts, and never mind anything under 400, or whatever it is, but none at all. What I'm concerned about is testimonial special funds that are being -- that have been established to help, at the discretion of the officeholder, people who need it. And then they're not spent on campaigns. But there's no public accounting for them. The contributors represent people who wind up doing business with

that governmental entity. You know, so they're the kinds of things that should be covered. It's a loophole.

MS. SHEEHAN: And then lastly, on the next page, I'm not sure I clearly understand what an independent expenditure committee is. Is that like a ideological PAC?

MR. McCOOL: It can--

MS. SHEEHAN: Or are-- I mean--

MR. McCOOL: It can be. In its most (word inaudible) form it can be the creation of the candidate, surreptitiously, you know, "Don't tell me we're doing this." But a group of friends break off, and Ed McCool is subject to a spending limit. But if we go and form Citizens for Good Government and conduct our own non-related effort to get this guy elected, we won't be subject to that under the Supreme Court ruling, and controlling the growth of that, and the event of that is very difficult. But I don't know that there is any prohibition against controlling, at a different standard, how much can be contributed at any one time to these noncandidate related committees. And, in that case, I would say make it a severe restriction which then, if you can go out and raise 100,000 $10 contributions, then I guess there's a lot of popular support for the independent committee more than the party.

MS. SHEEHAN: So, that would refer to any committee that is not directly controlled by a candidate. That's really what we're getting to.

MR. McCOOL: That's right.

DR. ROSENTHAL: Or a party.

MR. McCOOL: Or a party.

MS. SHEEHAN: Or a party.

MR. McCOOL: That's correct. And one of the other things it would cover, for example, is a possibility of a group like the NRA would come in with out-of-state money and set up an independent anti-gun prohibition campaign that -- with candidates being subject to either spending limits, or quite

frankly, contribution limits. You wouldn't be able to raise money fast enough to counter the negative advertising that might be done in their district. But, if a limited-- If only $25 of out-of-state money can be contributed to the campaign, then outfits that have large treasuries would be -- would make it quite difficult for them to come in and dump their money into the advertising market in negative campaigning.

MS. SHEEHAN: The $50 and the $25 limit would be per person, per contributor to these non connected--

MR. McCOOL: That's right. To those campaigns.

MS. SHEEHAN: Thank you.

DR. ROSENTHAL: Okay, well thank you very much, Ed.

MR. McCOOL: Thank you very much.

DR. ROSENTHAL: Chip Stapleton.

MR. BURSTEIN: No, it's Charles. Charles Stapleton.

DR. ROSENTHAL: Charles Stapleton, I'm sorry.

C H A R L E S E. S T A P L E T O N: I got to be Charles from (inaudible) Thank you very much for allowing me to testify today. Just by the way of background for--

ASSEMBLYMAN DEVERIN: From the former Chip Stapleton.

MR. STAPLETON: The former "never-was-er," that's right. Just by way of background, I am Chip Stapleton. I came on to-- I am a lobbyist by trade and profession, avocation, and desire and hobby, and everything else, and I have been for some period of time. I started in 1970 in Trenton as a newspaper reporter/correspondent for the Gannett newspapers, and then became Vice President of the New Jersey Savings League in a statewide organization. Then I became the Republican Executive Director of the Senate, New Jersey Senate. And then left that job to form a lobbying group with others, and that's the profession that I'm in today, which really spans a 20-year period where I've really been working in or about this building.

I am currently a member of the New Jersey Building Authority, having been appointed by the Senate President,

watching over the next door, and soon to be this door, reconstruction of the State House. And I have been, in accordance with that, disclosed everything that I'm supposed to disclose, which is an enormous amount under the new executive branch ethics rules, which I find to be very fair, even for those unpaid-- There's a separation between unpaid and paid State employees. So, that is done.

I have a couple of missions here today, and I appreciate you allowing me to be here again. But I don't have anything in writing because of the lobbyist tendency not to put it into writing, but also because what I wish to achieve with this august body is twofold: One, is to give you or remind you -- some of you -- of the historical perspective into which we are now intruding with this Commission, based upon recent events which was the result of the creation of this Commission, first thing. The second thing is to perhaps be a countervailing force to the Common Cause style philosophy of what we're supposed to be doing in this building, who is supposed to be doing it, why we're here doing it, and what remuneration we get from doing it, or what pleasure we get from doing it.

There is a substantive difference in philosophy, and I don't think that mine, when I pronounce it, will be much worse or better than anybody else's. But you ought to hear it.

The third thing is to give you, at the end then, a way to eliminate the hypocrisy, because it is the hypocrisy that is the problem. It isn't the disclosure or the lack of disclosure of information. It is the way that information, once disclosed, is presented to the public. It is the impression that the public receives from the information, which there is plenty of, that leads the public often to believe that something is going on, or leaves the public very much in doubt as to what is going on.

So that, more disclosure is always a good idea, but more importantly -- or at least as importantly -- the way that information, and the rapidity, particularly, with which that information is disclosed to the public, the fairness with which it is disclosed to the public, will give the public the information it really needs; not in a controlled fashion, but will give the public the information it really needs to make informed decisions as to whether the people in these chambers are behaving ethically or not -- whether the people who wear the red badges, and more importantly those who don't, are behaving ethically or not -- whether the Governor and his staff and huge, yawing bureaucracy out there is behaving as it should.

The public deserves to know those things, and I, as a lobbyist, have fought for those things in my 20-year career, and I will continue to. The public is not being given that information, although that information is provided already by lobbyists and legislators. So that the mode of translation, between what is on file in Dr. Herrmann's office and in the Attorney General's office, be it from there -- and in the Executive branch's office, to the public is where the difference in translation comes and hurts the body which we are here to serve; by giving the public the wrong impression of what is going on.

First, the very brief historical perspective: Bill Dickey was the Speaker of the Assembly. It was 1970, '71, '72, in there somewhere; pre-'73 Democrat take over. Bill Dickey, Republican, Camden County, was the Speaker, and before him, at the urging of Common Cause, at that time lead by Nancy Becker, and others, was a bill to create the Election Law Enforcement Commission, and, in fact, to have a really good, thriving, and very important, which had been missing for a long time, election law.

The election law was controversial for its time in that it required disclosures, etc., and as you know it's still

on the books. So, you know what it really does. I won't go into that. But it was very controversial for its time, and it was the impression that some of us had-- I was in the newspaper mode at that point. It was the impression that some people had that Speaker Dickey and others didn't really want this, but that Governor Cahill did, and that it was, as usual, the Speaker's obligation to put up things whether he particularly agrees with them or not, so he did. Except the Speaker accepted, and I think was largely responsible for, creating a major amendment to the election law.

That amendment, as you will see if you read an old or original copy of it, with all the underlinings and the legislative history -- and I was going to try to bring some today, because it is illuminating -- interlineated within the election law, became the lobbyist law. And so, that we were a come out, totally irrationally brought in to an election law, which was a very good idea for its time, and still is a very good idea. But lobbying, and election, and fund-raising, and PACs, and behavioral things were all brought in and put under the Election Law Enforcement Commission.

It was my impression as a reporter at the time-- And I think I'm allowed to say this, it has been a long time ago. My apologies if I'm incorrect. My perception was, at the time, that the amendments were put in so that the lobbying community would rise up, as a leviathan, and defeat the entire bill, and then Speaker Dickey and others would be very happy, and there wouldn't be that kind of a form.

In fact, the lobbying community at that time, and I would suspect at this time as well, was such that it did not really involve itself in political lobbying for or against its own livelihood. I think there was a great deal of integrity. I think one of the people still on the scene, Joe Katz, was more or less the senior lobbyist then and was adamant at meetings that were held, that lobbyists not be involved in

pursuing legislation about -- where they are being regulated. So that, if it was a ploy, it failed, and the law passed and was signed, and the rest is, as we say, history.

It was in 1980-81 when under the direction the of the Election Law Enforcement Commission, that substantial regulatory reform, without I hasten to add, much legislative nuance, but merely taking the old ELEC law/lobbyist law and breathing new regulatory life in, came about. And that was brought about, and significant new regulations were put out which were going to regulate lobbying, etc., etc.

One of the tenets of that regulatory scheme was to require lobbyists -- out of the blue; without any particular legal background I don't think -- to report their expenditures and the dinners, and all the things that we all know about. That requirement was there, and it was in the proposed regulatory scheme of things, and nobody really cared much about it. I don't think they do today. I think it's much overwritten.

But there was one problem with the way that it was done at the time, and that is that there was a two-year retroactivity to it, so that, while I don't think that the press or the public really understood why the lobbying community may have risen up a little bit in defense of its own, at that point, it was because that not only did you have to report going to dinner with somebody which you never had to do before, you had to go back two years to do it.

All of our attempts at trying to convince the regulatory body to back off -- and we'll be more than happy to do it on a going forward basis -- failed, because there was an adamant attempt by that time, at that time, to-- Retroactivity will take the lid off the box and all the sins will fall out in the dirt, and it will be really wonderful.

In response to that, a few of us worked very diligently, and won overwhelming legislative approval in record

speed of the expressly law that was mentioned by Mr. McCool. That was, I think, since we are really not related to having great PR in the lobbying business, it was kind of taken as a cynical way for we nasty lobbyists to avoid reporting what we should be reporting. Nevertheless, the Governor signed it into law. It was the last bill, I think, Governor Byrne did sign into law. He signed it, I think, because it was an absolutely unfair regulation, and this bill stopped that unfair regulation.

There may have been other ways to do it. Lobbyists didn't know other ways to do it other than to get laws passed with the overwhelming support of the Legislature. So, they didn't pass the bill by themselves, nor did we use a great deal of force. There were really three of us working on the bill at the time who felt very, very strongly as a government -- in a sense, a good government reason-- We weren't afraid of disclosing. It made no sense to go back two years.

So, the expressly law was passed, signed into law, and that meant that you only had to disclose the expenditures that you made as a lobbyist on legislators, and the Governor and his staff -- which is a murky area over there, when you were discussing legislation -- which, you know, we felt that could be defined. If you were at a picnic or some family outing, remembering that legislators are people too, have relationships with people, and you happen to dine with them or take somebody out for dinner, in those days it was, I think, considered more or less acceptable that if you weren't discussing legislation, and you weren't lobbying the guy, why couldn't you go out and have a bite to eat?

No one that I know of, to be very clear now, is defending the expressly law on its merits. I would only defend what we did for the reason we did it. I would still defend it, and I would daresay that we could still get a law passed to pass it again if we had to, if someone were going to ask us to

go back a couple of years, and to report things that we had no way of knowing we would have to report, and the paperwork nightmare alone, would be significant.

That's where the-- I hope that points out that the present law is an absurdity because it combines two completely different things; that it was known to be an absurdity at the time; it was cynically signed as an absurdity; and it continues to be an absurdity. It continues to be an absurdity, and by existing, it creates one of the most significant problems that this body faces. The law is an ass, and it is. And it should be changed, and I'll hope you'll change it.

You can change it by making a -- by citing a differentiation between lobbyists and candidates. That would be a good start, have a lobbying law. No one that I know, again, is going to oppose -- however restrictive it may be -- a lobbying law. There ought to be lobbying laws. Lobbyists, such as myself, look forward to working with anybody on such a law, and I'll give you some ideas about it.

So, we have this law, and now people are ready to take another look at the situation, and I say that there's two ways for this group, and in fact, the Legislature and the Governor to go. There's the easy way, which is let's do it for PR reason and just regulate everybody. Ed McCool was up here: Let's regulate what you get, who you get it from, where you can go. Limits: Let's have campaign limits; let's have expenditure limits; let's limit when you can talk; let's limit when you can say, what you can-- Let's disclose all our clients now. Let's disclose, disclose, and do that. That's a way that's going to make the public happy, people think, because they think the public is all up in arms about the ethical behavior of the Legislature, which I don't think is true.

That's the hypocritical, easy way: To simply regulate everything. That solves the public relations problem. That

solves the problem when legislators are misperceived as behaving badly. That solves the PR problem. What we all want is the public to like us better as a Legislature, so let's pass a law that isn't going to do anything, but it's going to make us look better. That's one way to go. I think it's a hypocritical way to go, and I hope you don't go that way.

The other way to go is to take look at what we do now, and to provide recommendations to the Legislature, which will give the public, ultimately, a clear, above all fair and firm idea of who their legislators are, and separately who their lobbyists are, what they do, etc., etc., and who influences whom. Right now we have two laws. We have a lobbying law, and I'll take it as opposed to the election part of that law, and we have an Attorney General red badge law. We have two.

For practical purposes, both regulators have throw up their hands, in a way. I don't want to cast dispersions, but basically it's not well regulated because there is dual regulation. Lobbyists are defined as people who take a certain amount of money to do a certain things in one law, and they're defined in another way in another law. They have to wear red badges, and when they do, then they have to report certain things, and all that material, for years, and years, and years has been gathering space in the attics of State buildings somewhere. And once in a while, astute press people will go over and try to make some sense out of it. And they do, very often, fairly cogent stories about what's going on. That's what has to happen, though, for the information to get to the public. The information has to go be deciphered by newspaper reporters and other interested parties.

And if you really think about it -- I'm not sure how familiar you are with what we have to do by reporting -- you have to go to three places, and basically, the reporters usually only know two of them. You go to ELEC to find out who the lobbyists work for and how much they get paid; how much

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they get paid, particularly, how much they spend on the legislators, etc., etc. That also includes what bills we support and what we don't support; key pieces of information. The heat, and the light, and the carpet wear, and the secretaries, and all that, which is all in the Enforcement Act is absurd -- absurd. But it serves to build up the amount in the public eyes of how much lobbyists spend, so that it was perceived to be really a great idea to make it look like we spend a lot more, to make it look like we're worse people than we really are.

I mean, there's no question that the key pieces of information in those documents are: How much do I get paid for lobbying for whom, and what bill? That's the key piece of information; and what do I spend in order to do that, on people, or on things, or whatever?

Between the two documents, if you look at both, that information is readily available. You've got to do a lot of homework, a lot of paperwork. To find it is one thing, over at the AG's office, and dust it off, and what have you, but that information is there. What isn't there? Very important piece of information, if you don't have reporters: What happened to the bill? I mean, do we have any influence for all that money or do we not?

Stapleton gets paid $5000 to support A-101. He spends $300 bucks on dinners cumulatively, and that's the end of the information? Simple curiosity would want me to say, "What happened to Stapleton's bill? Is he any good or is he not? Does he have influence?" Isn't the public entitled to know what happened?

Well, the public does know. You know how? Because in the unlikely event they get to a library, and in the unlikely event that the copy readily available of the Legislative Index, that public can take that newspaper story, which may or may not have a bill number in it, and take that bill number, and look

up that bill for three of four years ago, and see whether that bill passed or not. Then they'll know whether the people in the article really have any influence or not.

Now, people really don't do that, and the reporters don't look at the Legislative Index to find out whether the bill passed or not. They simply write the story as the agencies present them with the information. The net result is that the public gets the wrong impression. The story says, "Stapleton spent" -- because they take all the clients -- "Stapleton spent $1500 dollars on dinners and he earned $35 million on fees."

That's the story that the public gets. The public says, "Gee, that's really either: A) a great business, or what have you. That's really something." So that, I don't think that that's-- Although the public is certainly entitled to that information, I don't think that's the story. I don't think that's what the public-- I don't think the public gets to know everything that way at all. And I think it's wrong that the public doesn't get to know the truth, even those all these reporting requirements, and all the diligent press efforts go on, the public doesn't know the truth, and th epublic not knowing the truth is the problem, ladies and gentlemen. That's the problem.

The second most onerous thing about the existing set up is that while Stapleton reports-- I love to report, are you kidding? The reports are made for people like us. The bigger we look, when people are looking for lobbyists, they hire us based usually upon, in a sense, how much -- the only judge is how much we earn or how many clients we have. There's nothing-- You'll never find a lobbyist who doesn't want to report. You'll see we report with glee. We send copies of our reports to the press. So, it's good for us to report. Don't think you're going to get us mad by asking us to report more. You're not.

The fact is, that the reports aren't meaningful, and we know it, I guess, and we report what we have to report. The real problem, I find, having been in government and out, is that the people who have the most influence on legislation in New Jersey don't have to report at all. They are not required to report because, although they're exceptionally influential, they usually don't take money directly for using that influence.

They could be major directors and CEOs of major corporations. They don't get paid for lobbying, and therefore they're not taking money for lobbying, but they pick up the phone and call Governors, and Senate Presidents, and Speakers any time they want. And when they do, those phone calls are answered because of the prowess and the influence that these people have.

They don't have red badges. They don't report. It's the guys in the trenches, you know, make $8. They're the guys that have to disclose all $8, and in the meantime the people who wheeled influence in New Jersey go unreported unilaterally always. And it's wrong. It's wrong.

I don't know how you fix it. I mean, I'm going to tell you, I think I know how to fix it, but you aren't going to like it.

The other thing that's wrong is -- and Ed McCool mentioned it, and he's absolutely correct -- is that the great mass of lobbying that now takes place, and should, because of the bureaucracy that's in virtually every State out of control-- I'm not going to criticize this Governor, or the last one, or any other Governor. The fact is, that the bureaucracy needs prodding. And the fact is, that those who need to prod it don't know how. And the third fact is, that people like me get hired because we do. And all we're doing is keeping them awake over there. Getting them to put out the paper that the client wants, the permit, whatever it is.

And if you think it's influence, have a good time. It isn't. It's making phones calls; it's knowing the process of how the Health Department or how Community Affairs, or DEP works so that you can call the right person at the right time to say, "Is it done yet?" That's all you say. And they say, "Gee, this guy is bugging me. I might as well do it." And then, I get mine, and you don't get yours, because you didn't hire me, and my client did. And it has nothing to do with who I know, or-- It has to do with what I know, but not whether I used to be anybody, or still am, or ever was. The fact is, that I'm on the phone and they ain't, and that's why I get my permits and you don't.

Now, there's no disclosure of that by me to anybody. There's no disclosure of that contact that is received by the employee at any time, nor is there, by the way, any need to report for the Legislature when I take them out to dinner. I've got to tell but they don't, see. So we'll get into maybe how to fix that little loophole.

So, there's a whole vast area that Ed McCool mentioned is going unregulated, and I would love to participate, as I hope that you would allow participants, to fix that. It's not right. I don't mind, in the least, disclosing it, and it should be--

It points out a couple of things. That a lot of lobbying is going on in the agencies of the State of New Jersey now, which may point to their either effectiveness or ineffectiveness. It says something to the public, does it not? The public doesn't know. The public doesn't know because the powers that be have not decided to let them know. That's all it is. We're not getting the information to the public.

So, the hard way-- We gave you the easy, hypocritical way. Let's solve the PR problem by regulating everything and paying for all the campaigns. Let's do that, and then restrict lobbyists, because they've got to take it. They have no voice, and they have no choice.

That's the easy way. The story gets written on September 3rd: Commission fixes everything. Eighty-six bills are signed into law restricting everybody. We'll walk around like the atoma-tons (phonetic spelling): Wonderful, yeah, way to go.

The problem is that those who have influence will still peddle it, unregulated. That the public will still have no idea about how government works or how those lobbyists who are perceived, at least, to be good, or those few of us, maybe, who do some good things by providing information to legislators, actually do some good stuff. The public doesn't understand that.

The public doesn't understand that legislators work very, very hard, and it's part-time. They give up a lot and they sacrifice a lot, and they should not be overregulated in a society that is really created out of a little more colorful stuff than the lifeless, kind of, regulatory atmosphere that you can end up with if you're not careful.

So, the hard way is to require everybody who contacts anybody to report it. If a president or a CEO of a major corporation calls the Governor and talks about the corporate tax, that ought to be reported somehow. Ladies and gentlemen, I don't know how you do that, but unless you do it, you're not telling the public the truth, and if you're not telling the public the truth, you're a hypocrite. That's the problem. That's the problem.

You ought to have, in turn, those people receiving those contacts report those contacts, because unless you have a two-way check system, you're never going to have anything but chaos in the system. If I called the Senate President, he ought to tell them that I called, and if I don't have a red badge, or whether I'm getting paid for calling the Senate President or not, should make no difference.

If I'm wielding influence by virtue of contacting government officials at any level, and if you think the public deserves to know that, then that's what you should do.

Now, what I'm obviously asking is for you to consider what, in fact, is the level of public information here? Where do we stop; not what is the public entitled to know. The public is entitled to know everything. But is it the responsibility of State government to send -- virtually send a letter to every citizen of this State saying what's going on? Or is it, in fact, the rights and the responsibilities of the citizen to come and find out? And does not the existing system at least give them 90% of that information right now?

So, let's not kid anybody that there's a problem, and that the public is up in arms about a problem. The problem is the public isn't getting the truth, because it is not being disseminated properly, A); B), the problem is that those who are the most influential people in New Jersey for decades, and decades, and decades do not report anything, ever. And that's wrong, as long as other people are.

I don't think it's wrong at all. I don't think we should have to report. It's a Legislature. It's a living body. But as long as you're going to make the people with the red badges who work for a living, report, let's make the other people report too, or you're getting nowhere. There is no question about how influence works in the State of New Jersey.

It does not work through lobbying. It does not work through campaign contributions. It doesn't. It works through who knows whom for a long time, and is a friend of whom, and who stands to gain politically or economically over long, long periods of time after creating long-standing relationships. That's how it's done in New Jersey. It isn't done at the box at the football game. It isn't done at Lorenzos at dinner. If you're going to tell the public that now we're telling you that you're getting bought dinner at Lorenzos, and you're going to

go home and say, "I have done my job because the public now knows what's going on in Trenton," then you are kidding yourselves.

Now, you're also solving your problem, and you're allowed to do that, and if that's what you do, have a good time, because I know it's a very difficult issue. This is only the lobbying issue.

At the very least, get the lobbying disclosures combined with what happens to the bills, combined with how much the people get paid, combined with how much gets spent-- Wipe out the expressly. It never made any sense, except don't do it retroactively please, or you know, we'll have to get angry and do whatever we have to do. It's wrong. Do it, and then the public, and the press, at least, will be able to read on a single sheet of paper what's going on, at least by legislative agents, however you choose to define them.

I would also hope that you would point out, somehow, that legislative agents, etc., are the tip of the iceberg, and that that's not all that goes on in New Jersey. I can't really expect anybody to take on corporate New Jersey, labor New Jersey, or any other significant interest group that is basically going unregulated at the present time.

If you wish to do that, you have the competency to do that at this table, there's no question about that.

So, therefore, the information, if it's presented properly will help a lot. How do you present the information properly? When Freddie Herrmann takes -- not because he's lazy -- takes two years to get a report out about who gave what to whom, or a year-and-a-half, or whatever it is-- Give the guy some computers. Give the guy some people to take the papers that we work so hard over and make something out of them, please.

It isn't right for reporters to have to go over and route through handwritten reports in order to get at what the

government has decided should be disclosed. You're not helping lobbyists or legislators by saying, "We have an open system, but you can't get into the drawer." Or once you're there you can't read it because it's in Greek. You're not helping anybody.

Give the guy the money to make ELEC, and take lobbying away from him -- I don't think he's going to disagree, I hope not -- take lobbying out through passage of a new lobbying statute. Keep ELEC there; it works great. It's worked through various administrations; all kinds of -- Cahill, and Byrne, and Kean, and Florio. It seems to work as an organization and a structure.

He needs money so that when I report three days before an election that I gave some 50 grand, the least he can do is tell the electorate, before that elections occurs. The electorate now finds out the next April that I gave $50,000 three days before the election. Well, that's very interesting, but it doesn't really-- It is not a timely reporting to the public mechanism.

I have to report no later than midnight or some dire things happen to me on those days, by the way. This guy enforces the law. There's no question about it. I've got to be in there and stamped, and I'm all stamped up. The problem is that the information goes into a file, and the public doesn't get the information. What good is it if the public doesn't get the fact that last minute campaign money flowed in, and it could mean a change in direction?

Let him have the dollars to get the equipment: To get the information to where it is supposed to be, not a false impression in the minds of the public a month, or six months, or a year later, but before the election, if possible, or at the election, or during the election. Otherwise they're sitting there with tons of files. It makes no sense.

So that I would hope that you would then, as your cleanup process, get the thing out of the Attorney General's Office, or put it in, or do something. But have a uniform regulatory framework. It doesn't matter what it is.

The reporting requirements now are pretty good. If you put in the dinners and all the baseball games that people seem to want in there, fine. But-- And if you include, you know, whether people-- That's the tough part.

I'm concerned too about the law now that requires a kind of a gross amount of an expenditure which leads people to believe that more money is really being spent on lobbying than it is. My philosophy with respect to that expressly thing was, I don't think I really should have to report when I'm not lobbying. Now granted, that's a difficult area to decide whether I am or whether I'm not. But just for the sake of argument, let's say that I'm having dinner with Assemblyman Haytaian and we're talking about all kinds of things: where we've been together, and when I was in government, and there's all kinds of things to talk about. Okay, I'll report that. I don't mind that. That's not the end of the world.

ASSEMBLYMAN HAYTAIAN: I paid for my own share.

MR. STAPLETON: And he pays for his own anyway. But in any event, that's fine. But, I'm not sure that the gasoline I used in my car to get to the dinner, that the light in my office, that .001% of that light bill that I used in preparing a document, let's say, for direct lobbying purpose, that the secretarial one hour of whatever it is, of secretarial work has to be all added up, to give -- what is intended to give the public a full accounting. What it gives the public is a raw gross number impression. That's all they get. So that, you're adding up all these numbers, and I think it was done so that it would look as if lobbyists spend a lot more money.

Not to say that the money is not being expended. I'm not saying that, but I'm not certain-- I am certain that if

you look closely into trying to define expenditures more closely and more carefully, you will come up with the ones that ought to be, and you can ignore the ones that shouldn't be, Because it just doesn't make sense to build this thing up to some enormous number where hundreds of thousands of dollars appear to be spent on legislators, when, in fact, it's related to the work that we have to with legislators. But the impression is that they're getting the money, so it's the false impression.

A good law, or a semi good law -- a good idea -- turns into the false information to the public. The public is being mislead. And so the public has all kinds of dire ideas about how the Legislature's worked and how lobbying worked. They're getting the wrong impression.

So, you can make everybody who makes any kind of contact with a legislator, the Governor, the staff, or the bureaucracy report it, and make that staff person report it, as well. That's doable. That's probably constitutional. You keep telephone logs and that's it. You report every disclosure, and those disclosures are filed. That is an answer to the problem: If you make everybody do it, whether they make money at it or not.

You will be getting information that will revolutionize this system, I'll tell you that. Or it will put a chilling effect, and the influence that people have now will stop; one or the other. That is a way to do it. I don't think that I could even recommend it, but it's a way.

Or you can more or less leave things alone, which takes more courage, probably, than changing them. You can leave them more or less alone by having a good election law, a good lobbying law, a fair mechanism for getting the information to the public, and taking any heat from anybody who says, "This Commission didn't go far enough." You say, "Listen, we know

what's going on, and as soon as our implementation of our program gets out, you, the public, will know what we did here at this group."

I thank you for letting me talk. I tried to limit it to the lobbying end of things, and I will do that. If anybody has any questions, comments, I'll be glad to answer them.

DR. ROSENTHAL: Questions?

ASSEMBLYMAN HAYTAIAN: Alan, not a question but a comment: I agree with Chip on the follow-through on bills, and the disclosure. And I'd like to give an example of why I agree with that: A statement was made in one of the daily newspapers and it was about me; Chuck Haytaian's engineering firm -- well, I don't own an engineering firm, but that's what was put in -- profited from a bill that exempted developers from wetlands regulations. Well, to the reporter's credit, after prodding from my attorney whom I had to hire -- Alan Karcher was my attorney -- and a letter sent to his editor, he said I was wrong. The bill never passed, and as we all know, those of us who were legislators, you can't profit from a bill that never becomes law.

And, you know, the public-- Only if the public saw just the initial column, then Chuck is condemned because now he profited, or his engineering firm profited from something that we all -- those of us involved in the political system -- that could never have occurred. And I agree with him: There's got to be follow-up. How does the public get that follow-up from the press? Can we induce the press to do that? The answer as we all know is, no. We have to possibly do something, and I don't know how that's done. I really don't, because there is the integrity of legislators at stake. And I value my integrity and was quite upset by that.

MR. STAPLETON: Just let me comment: That a form that shows all the information that is inescapable to anyone who looks at the form, goes a long way toward preventing

misapprehensions like that. A good reporter is not going to falsify stories and overwrite them when it is the clear evidence that this was done, this was done, this was done, and this was done. That form does not exist. And the information to put on that form does.

So, I mean, this does not take a lot of heavy lifting to get that form done this afternoon and get it out. The information is there.

DR. ROSENTHAL: Questions? Yeah, Pat.

MS. SHEEHAN: Several times over the course of the hearings so far we've talked, or had people talk to us, about a full-time legislator as opposed to a part-time, and also public financing, to some degree, for campaigns, as opposed to private, individual fund-raising. Do you have any comments on either of those?

MR. STAPLETON: I do. Full-time Legislature in a state like New Jersey is wrong. It is not needed. We have one of the most thriving, vibrant Legislature because of the geographical size of our State, permits legislators from virtually anywhere they live, to get here and get back in a timely fashion. It isn't a great big state like Texas where you want to go and stay over and have a full-time thing. Or even, by -- as many states do, have a six month at a clip type of a Legislature. The public benefits from this Legislature being part-time and being year-round. The public benefits by having continual access to the Legislature. It never goes home. I mean, some people might criticize that. I think they would-- I would hope they would only do that in jest.

The fact is, the Legislature never sleeps in New Jersey, and it's a wonderful. It's better than full-time. Full-time means changing the nature of the Legislature. Those people who would run for office would be different from those who run for office now.

I made a statement about taking the color and the life out of American society by regulating it. Certainly, if you wish to have nobody who earns any money ever, and want to be a full-time legislator for "X" bucks a year, that's what they would be, and I think that the public would get just-- They'd get workaday people who wanted to be legislators for a living.

I don't think that's what we have now. We have colorful people from all walks of life. We have insurance people, and lawyers, and working women, and housewives, and every conceivable thing. Maybe one time or another we have too many of this or too many of that, but let's not take the color out of the Legislature.

With respect to public financing, it is an absurdity on its face in all elections. It makes no sense at all. Let me however hasten to add, that in a gubernatorial, general election, because it imposes spending limits, which, in themselves, as you know, are a joke-- Even the newspapers say, "Joe Schwartz who was nominated to this today, actually gave $32,000 to the 'XYZ' campaign," the gubernatorial campaign. Even the newspapers don't even question the fact that that guy is not allowed to give more than 1500. The newspapers stop looking at the campaign limits. It's a joke, okay.

The spending limit, the overall spending limit, is a joke because you have the generic thing that they're allowed to do all kinds of ads that Ed McCool spoke about. So, that's public financing in a general election. Maybe-- Okay, not much I can do about it. It's a fait accompli.

Public financing in a primary election is, to me, an immorality. A primary election is an election in a club. It has nothing to do with State government whatsoever. The Republicans have a club, you see, and the Democrats have a club. These are clubs that have members, and you become a member by signing a piece of paper; but you're a member of a club. Only those members are allowed to participate in that club on a day like yesterday.

If you have Carmen Orechio's club, I am not allowed to play in his club, nor is he allowed to play in mine, because on that day you go to different clubhouses. But it is a club. It a primary election inner family struggle between club members, not State candidates. It's wrong to spend public money on the Boy Scouts' election, and it's wrong to spend money on any election that is a private clubhouse election. That's what a primary election is. Public money is wasted, and is wrong to be spent in any primary elections.

Public financing for legislative campaigns is a license for the Legislature to go awry. It is not good. It is not healthy. It is not needed. The disclosure requirements of the type that you will probably recommend, and in fact, already exist in Dr. Herrmann's office, are more than ample, if they are coupled with a computerization and the financial backing that the guy needs to get the information to the public. Disclosure is the answer.

You talked before about the conflict of interest. The public doesn't understand the Conflict of Interest Law because the Legislature, and the press, in a sense, has not bothered to tell the people how that law works. You are allowed-- You must disclose a conflict where you as a legislator benefit to a larger extent than other people who are not legislators in that same position. There is nothing wrong with that conflict law whatsoever, except it is not generally understood.

You don't have to abstain or vote "No." You have to, have to, stand up and say, "I have a conflict. I'm voting for it because I want a few bucks," or, "I'm not going to vote for it because I'm afraid to," or, "I'm going to abstain because I'm really a chicken," but you have to stand up and disclose that.

There isn't enough attention being placed on those who have them and don't disclose. And if there is a bad apple in

the Legislature once in awhile, I'm frankly not surprised, since there's a lot of bad apples in society in general.

But the fact is, the disclosure law is now-- The conflict law is on the books. The press misperceives it. The Legislature is afraid to defend it, although it is absolutely defensible by the type of people who are at this table. You people, because of the backgrounds and the experience that you have, could get away with saying things are okay with respect to conflicts of interest in the Legislature the way they are, if the public properly understands what's being done, and they don't. It's a misapprehension.

DR. ROSENTHAL: Thank you, Chip.

MR. STAPLETON: You're quite welcome.

DR. ROSENTHAL: We will move on now. Thanks very much. Rita Strmensky.

R I T A L. S T R M E N S K Y: Good morning. When I first read about the formation of your Commission I didn't expect to ever be talking to you. The Executive Commission on Ethical Standards is very cognizant of, and sensitive to, the constitutional separation of conflicts of interest laws that applies to the executive branch, and as it applies to the legislative branch. But I was asked, I think maybe, for your own educational purposes to give you a brief overview which I have provided to you in writing in advance of areas that are problematic to the Executive Commission with regard to the administration and enforcement of the conflicts law in the Executive branch.

I've confined myself to four areas: two of which probably reflect some concerns of the Joint Committee, and the other two are more likely than not, very specifically limited to the Executive Commission.

The first is the Commission's concern with jurisdiction over some people the Commission has considered since 1972 to be State employees. Those are the people who

work for State colleges and universities. Probably since 1972 the employees of State colleges and universities take issue with that position. And as recently as a few months ago, when the staff of the Commission opened an investigation based on a complaint about an employee of Rutgers University, we heard what the Commission has heard since the beginning of the enforcement of the law, and that is that Rutgers would cooperate as a matter of courtesy, but they're certainly not subject to the law, and they can take care of their own conflict problems.

It's a definitional situation that is of concern, and if you are going to deal with that in any way, it would be something that would be worthwhile to look into.

The other area -- and that touches a little bit on some of the discussions I've heard this morning about disclosure -- is we would like to see a requirement for disclosure of outside employment and outside interests with regard to executive branch employees. The Commission finds frequently that there are conflict situations that arise based on outside employment.

Typically middle level managers who are not subject to Executive Order disclosure will form consulting companies. They will then cheerfully engage in having clients for whom they will consult who happen to do business with the agency that they work for. No one, of course, sees conflict in that except the Executive Commission. And frequently, the Executive Commission doesn't find out about it until it has been ongoing for a number of years. It has been our experience that with those departments that do require disclosure, if we can find out about these things very early on, at the minimum we can provide some guidelines and some constraints for the executive branch employee so that conflicts are avoided, or if they're already in process, they can be eliminated.

The third issue which probably has some concern to the Joint Legislative Committee is the post employment problem. Members of the Legislature being persons under the Casino Amendment are subject to the casino post employment restriction. The executive branch employees who are persons are subject to that restriction, and also subject to the substantially and directly involved prohibition as it's called, and the problem arises because while the Legislature in the conflicts law gave the jurisdiction over conflicts law question to the Executive Commission, the post employment sections carry a disorderly persons penalty. I'm sure there were very good reasons for that, but administratively it creates a tremendous problem in that the Commission's position right now is that -- and has been since about 1976 -- the Commission can provide prospective advice for people who are about to leave State service and are concerned about potential problems.

We also freely give advice to former employees who call and ask for it, although that's not as common as one would hope. But for those individuals who get into problems, and then are the subject of a complaint, the Commission's position is just to conduct a preliminary investigation to find out if there's any factual substance to the complaint, and then turn the matter over to the Division of Criminal Justice.

The Division of Criminal Justice is never very thrilled to see these complaints come over because they have other priorities and limited resources, and this is not the kind of thing that endears the Executive Commission to the DAGs over there.

The other problem that I pointed out to you, there have been many proposals, many pieces of legislation, and there's at least one active now, to increase the penalties. One hundred to five hundred dollar penalties are certainly not a deterrent. And they're really not very significant in terms of post employment problems where we find people are

consultants. In the outside employment we find someone maybe earning 50, 60, 70,000 dollarsa year in outside employment fees. The Commission fines that person $500; that's not a bad deal. And we actually see that attitude. They'll sit there and say, "What's the worst that can happen to me, 500 bucks, no big deal."

If the penalties, as has been suggested in a current proposal, went up to 1000 to 5000, it might provide a little bit more of a deterrent, and it would certainly create a better public image that someone who has made $60,000 last year in a blatant conflict of interest, might at least be forced to pay 5000 of it back to the State.

If I can provide any information to you as to the perspective of the Executive Commission, I'd be glad to do that.

DR. ROSENTHAL: Questions?

SENATOR ORECHIO: I have a question.

DR. ROSENTHAL: Yeah, Senator.

SENATOR ORECHIO: Should there be a limitation on a State employee's outside activity, with respect to earnings?

MS. STRMENSKY: A dollar limitation, you mean?

SENATOR ORECHIO: Yes.

MS. STRMENSKY: I don't know that that would be necessarily effective because you see so much variety of outside employment. It ranges from someone who will clerk at K-Mart, or a candy store, or something, for a holiday season, up to someone who runs an outside consultant business, but might have a perfectly legitimate set-up. There are people, for instance, who have -- in the Executive branch -- have tremendous expertise, who might be providing that expertise.

From the DEP, for instance, we just recently had a case like this, where they provided that expertise to clients who don't do business in the State of New Jersey, and don't deal in any way, shape, or form with the DEP. Their clients might be in Pennsylvania or in New York.

To put a dollar limit on that--

ASSEMBLYMAN DEVERIN: They get paid for this?

MS. STRMENSKY: --would not solve the problem.

ASSEMBLYMAN DEVERIN: They get paid for--

MS. STRMENSKY: They get paid for weekend and evening work. And where you can control the situation by disclosure, where you know what they're doing, and you can say to someone in that situation, you can't have a client that has any interaction with DEP because of the appearance it creates. Then it's not necessarily significant if they make $20,000 over the year in consulting, or if they make $800 for the Christmas season being a clerk of a cash register.

We've never found much correlation between the amount of money. Sometimes the conflict situations, particularly with regard to outside employment, people are operating at a loss. They haven't-- They've been in business for two or three years, they haven't had an opportunity to start making a profit to have an income, but they're in an outrageous conflict situation when we find out about it. So, the money is not necessarily an effective control.

SENATOR ORECHIO: If you have a bureaucrat who has directed business to a vendor in a specific area, and that vendor is sort of unique, and his expertise is sort of limited with respect to others who might be in the same field. And that vendor engages that bureaucrat on his own time to consult that estate. Is that a blatant conflict, in your opinion?

MS. STRMENSKY: It's a violation of Executive Order 189 which was issued by Governor Kean in 1988 and is still in effect. The Commission does, to an extent, enforce that Executive Order where vendors to a State agency are prohibited from having certain kinds of relationships with State employees. That kind of situation, as you described, would be a prohibited one. So that there is a mechanism through the Executive Order to get at that situation.

There's not necessarily a mechanism within the conflicts law, unless one would read into that situation that the employee was receiving a benefit that affected his objectivity and the performance of his job as a State employee.

The conflicts law is framed in those terms that you can't accept a thing of value from an outside supplier, for instance, on the conditions where your performance is presumed to be affected. So, that you have to have both prongs. You have to have the person taking the benefit, and the benefit is related to attempting to influence his official action, or somehow influencing his objectivity.

The one good thing about Executive order 189 is it doesn't carry the motivational aspect with it. It just flatly prohibits that relationship. The conflicts law doesn't, and that can be a problem area.

SENATOR ORECHIO: Was that the Executive order that Eddie Moore allegedly violated, or one of them?

MS. STRMENSKY: He may have, yeah. He also ran afoul, I believe, of the disclosure order because he was of a high enough level where he had to engage in financial disclosure. Many of the problems that we encounter in terms of conflicts of interest we uncover through the financial disclosure forms that are filed by public employees, and now by a large number of public officers.

But, for the secondary employment problem, for the kind of vendor dealing problem that you're envisioning, you don't see that on the financial disclosure forms. You really need disclosure of outside interests in employment to get that. And mainly, that kind of activity we see engaged in by middle level management and lower, and those people are not generally subject to the Executive Order financial disclosure.

SENATOR ORECHIO: Thank you.

DR. ROSENTHAL: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Thank you. Do you think-- Chip Stapleton -- and I'm not sure if you heard all of his testimony--

MS. STRMENSKY: Yes, I did.

ASSEMBLYMAN HAYTAIAN: --brought up, I think, a very important point about CEOs calling Executive branch officials, governors, commissioners. Do you, one, feel that that should be disclosed, and the discussions associated with that. And secondarily, I mean, an example of some of that: And I'm not picking on the Governor or Donald Trump, I mean they met, and yet, I'm sure if a State employee met with casino officials, they would be reprimanded. Now, should those types of discussions be disclosed because they do take into effect the economic condition of this State? I mean, we have viable industry here, and so that discussion, I think, is warranted, and necessary. But should those types of discussions be disclosed?

MS. STRMENSKY: Probably those kinds of discussions should be disclosed. In terms of the conflicts law, if an executive branch officer or employee receives something of value in connection with such a discussion, and the discussion can be inferred to be intended to effect the persons discharge of duties, then that would be a violation, a flat out violation. If the person-- If the State employee went to dinner, had such a discussion, and paid his or her own bill, then that payment of the tab by the State employee removes the entire situation from the conflicts law as it is now written.

Would we be interested in seeing those kinds of contacts, or a report on them? Probably, because that's one way that we would find the vendor connection. The vendor connection is probably the most troublesome in terms of the Executive branch, and also the hardest to nail down, because people on the State vendor list for discretionary decision purchases -- computers, copy machines -- have a vested interest

in influencing a particular agency to buy their copy machines, as opposed to buying somebody else's copy machines off a vendor list. Those kinds of things can be problematic.

ASSEMBLYMAN HAYTAIAN: I'm sorry, I remember the dinner or the lunch the Governor and Donald Trump had, and from what I read Donald Trump paid by credit card. Should that have been disclosed?

MS. STRMENSKY: We looked into that, as a matter of fact, based on the newspaper report. And the payment of that meal took it out of the conflicts area. The meal was not paid by Mr. Trump.

ASSEMBLYMAN HAYTAIAN: You see, and I was reported falsely.

MS. STRMENSKY: The newspaper gave it that very clear impression, which is why the Executive Commission staff inquired into it. We do tend to follow up on newspaper articles. It's one of our only sources of information.

DR. ROSENTHAL: Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: You were talking about vendors, someone trying to sell something to the State talks to someone to buy something for the State. I think, really, if someone, for instance, some big developer, some big manufacturer in California wanted to build something in New Jersey, and he came to see that -- had a meeting with the DEP, you want that disclosed? Is there a conflict, if the developers are bringing New Jersey millions of dollars of ratables, and taxes, and jobs, and so forth.

MS. STRMENSKY: Under the law, as it's written now, if that person came into New Jersey and through very--

ASSEMBLYMAN DEVERIN: The only information you're seeking are the laws--

MS. STRMENSKY: If it's just a business meeting.

ASSEMBLYMAN DEVERIN: Yeah, that's all it amounts to.

New Jersey State Library

MS. STRMENSKY: If it's just a business meeting I think there's a real question there. I'm not sure that the Executive Commission could even handle that kind of information. I did hear Mr. Stapleton pitch to give Fred Herrmann computers and people. If you're in the mood to give out money and people, (laughter) I have a staff--

DR. ROSENTHAL: Chip Stapleton is lobbying for ELEC. He is registered--

ASSEMBLYMAN DEVERIN: He's going to get them computers, he's got a whole yard full of them.

DR. ROSENTHAL: You have to hire Stapleton if you--

MS. STRMENSKY: I'll have to lobby for the Commission by myself.

DR. ROSENTHAL: That's right.

MS. STRMENSKY: We have five people. We have a budget of less than $300,000. And with this tiny little staff we enforce the conflicts law for some 80,000 people, plus review with the Casino Control Act requirement for financial disclosure and the Executive branch. We review about 2,000 financial disclosures. This is almost a physical impossibility now with just five people, but that's what we do.

ASSEMBLYMAN DEVERIN: Our--

MS. STRMENSKY: So, I'm not sure that we could even evaluate that information.

ASSEMBLYMAN DEVERIN: Our Deputy Commissioner, the middle management; if they make a trip, or they are a guest of someone at a convention, they speak at the convention, are they allowed to take honoraria? Are they all reportable?

MS. STRMENSKY: Well, there's an honoraria section in the conflicts law that allows essentially De minimis honoraria. The Commission has guidelines that have evolved over the years that indicate that a State employee may not accept honoraria, lodging, food, convention registrations, from people that the agency regulates, or that do business with the

agency. While that's not specified, per say, in the statute, the Commission has interpreted the statute to have that meaning, and has issued those kinds of guidelines and enforces them with the full effect of the law. So, that if you're a State employee and you're receiving benefits of that nature from people that you regulate, that's not permitted.

On the other hand, particularly now, we're having this question almost every day with regard to the current budget situation. If deputy commissioners or assistant commissioners wish to go to conventions or national meetings that are sponsored by organizations that they don't regulate, directly or indirectly, and the organization feels that there's a purpose to be served from the organization in having a New Jersey official there, and the State feels that a State purpose would be served by having the official there, and the organization offers to pay the transportation and lodging cost. Since there's no inter connection, and the State official can't really affect that organization within the State, then those kinds of things have been allowed, particularly in the last six or eight months.

ASSEMBLYMAN DEVERIN: If you were a speaker, you could receive an honoraria.

MS. STRMENSKY: De minimis. The Commission looks at $200 as the ceiling. And when people have been offered more than that, the Commission has insisted upon the return of the money.

SENATOR ORECHIO: I've got a question.

DR. ROSENTHAL: Senator?

SENATOR ORECHIO: Let's suppose the main reason for Donald Trump to sit down with the Governor was to discuss his marital affairs and get some advice. And most of that period during lunch was really focused on that conversation. Why is that any of your business to find out about that, only because of what the press reported, and they didn't mention that?

MS. STRMENSKY: Well, we didn't know what the purpose of it was. Our only concern was with the payment. If an individual who is regulated by the State speaks with an official who can have an influence on that person's business in the State, and pays the meal, the Commission's rules say that's not permitted. And that happens a lot. And what we usually advise is that the employee write a check for a fair portion of the total bill and send it to that individual so that you don't have the public appearance problem. Someone said earlier, the public appearance problem which is extremely hard to quantify is the biggest problem that you have to deal with in terms of conflicts of interests questions.

When the public doesn't understand-- The public doesn't understand the law. There's no question about that. The press doesn't understand the law, so it makes it impossible for the public to understand it. And when you have high level officials being wined and dined by people who do business with the State, who can greatly benefit by the State's actions, that creates an appearance problem.

ASSEMBLYMAN HAYTAIAN: But, you know, that false impression was never corrected, because I read it, you read it, a number of us have read it, and it was never corrected. And that's not fair, quite frankly, to the Governor.

MS. STRMENSKY: Absolutely.

ASSEMBLYMAN HAYTAIAN: That's not fair to the legislators. That's not fair to the public.

MS. STRMENSKY: Absolutely.

ASSEMBLYMAN HAYTAIAN: And yet, you know, we read it, and we assumed that's so.

MS. STRMENSKY: And it happens on a daily basis.

SENATOR ORECHIO: See, if he sat down with Tony Parillo (Director, Division of Gaming Enforcement) I could see where something in there might be a blatant conflict. He works for Gaming. Thanks.

DR. ROSENTHAL: Mike?

MR. COLE: You don't take the position, do you, that the Governor is subject to the jurisdiction of the Executive Commission on Ethical Standards?

MS. STRMENSKY: The Commission takes the position that the Office of the Governor is a State office or an employee, and every State officer or employee is subject to the jurisdiction of the Commission.

MR. COLE: So they do take the position.

MS. STRMENSKY: That's the position that the Commission has taken.

ASSEMBLYMAN DEVERIN: Has it always been that way, or is that a new position?

MS. STRMENSKY: Since about 1976.

MR. COLE: Have you asked the DAG about that position?

MS. STRMENSKY: I'm sure the that it's--

ASSEMBLYMAN DEVERIN: Does the Governor ever give you his opinion?

ASSEMBLYMAN HAYTAIAN: But doesn't everybody who has a lawyer go down to the Governor's Council go there to--

MS. STRMENSKY: I'm sure that it has come up. It came up a number of times with Governor Byrne.

MR. COLE: It has come up, let me tell you.

MS. STRMENSKY: Yes.

MR. COLE: And I don't think the AG would agree with that position.

MS. STRMENSKY: Well, that may be. The Commission has also stated periodically that they're subject to the advice but not the ruling of the AG.

MR. COLE: That has come up periodically. (laughter)

MS. STRMENSKY: Every other month.

MR. COLE: You mentioned before that there is a jurisdiction division in terms of post employment, where you have to go to the AG or some county prosecutor if there is a

post employment violation, and they decide, as a matter of prosecutorial discretion, whether to bring that criminal charge. How would you have that changed? Do you have a recommendation of how you would change that?

MS. STRMENSKY: I think if the penalty were a civil penalty so that the Commission could have jurisdiction over the situtation, then the Commission would be able to determine if there was a violation. It would be probably in a position to more freely offer advice.

Right now it's-- And it comes up almost weekly. It's a very difficult situation in terms of-- Even people who want advice who are within a situation where a conflict may occur, they don't have a wild desire to give us a lot of details because we're going to feel obligated to turn it over to Criminal Justice, which involves its own set of apprehensions about a Criminal Justice investigation that aren't there, necessarily, with an Executive Commission inquiry. We would get more information and probably be able to resolve a lot more of the post employment conflicts that exist.

MR. COLE: So, your recommendation would be to eliminate any criminal penalty?

MS. STRMENSKY: To change it to a civil penalty. And it probably should be a fairly hefty civil penalty. If the Legislature wants to deal with what the press calls the revolving door problem.

DR. ROSENTHAL: Any further questions? (no response) Thank you very much.

MS. STRMENSKY: Thank you. Don't forget about the money and the people. (laughter)

DR. ROSENTHAL: There's no further business. The Commission is adjourned, and we will meet June 20th.

(HEARING CONCLUDED AT 12:41 p.m.)

APPENDIX:

THE LEAGUE
OF WOMEN VOTERS
OF NEW JERSEY

June 6, 1990

TESTIMONY

presented
to the

Ad Hoc Commission on
Legislative Ethics and Campaign Finance

Barbara H. Trought
Government Director

The League of Women Voters, a nonpartisan political organization, encourages the informed and active participation of citizens in government. The League acts on selected governmental issues. The State League in concert with its local units influences public policy through education and advocacy. In these ways we build trust and confidence in government.

We commend you who work here in the Ad Hoc Commission for your efforts toward good government. I respectfully request that you consider our organization's contributions toward realizing goals legislators and constituents share. The goals are good government, worthy of the electorate's trust; fairness and justice in laws enacted and executed; and accountability.

The League of Women Voters has worked for laws which would reduce the potential for abuse of the public trust. We continue to lobby for these kinds of reform. We have lobbied for public financing of elections together with limitations on the amount any individual or interest group may contribute to a candidate. We have advocated laws requiring elected and appointed officials and their families to disclose all outside sources of income. We have urged the Legislature to adopt meaningful codes of ethics and a system of enforcement free of the risks of self-policing. Such legislation is still needed.

In New Jersey public financing for gubernatorial elections is in place. We supported this in order to eliminate the undue influence of large contributors or the uneven playing field given to exceptionally wealthy officeseekers. However the proliferation of PACs and the absence of caps on spending now call for corrections in that law.

The reforming of the current campaign finance system is crucial if we are to reverse the dismal voter turnouts for elections at every level of government. The League of Women Voters of New Jersey believes that meaningful reform should: restore the integrity of the electoral process; restore the power of individual participation in democracy by diminishing the influence of large contributions and PACs; restore the attention and energy of our public officials to the jobs we elect them to, rather than to campaign fundraising.

We urge this Commission to recommend to the Legislature certain key elements to ensure effective campaign finance reform. We support public benefits--including media access-for candidates who agree to spending limits; tax credits for political contributions by individuals; and, most important, strict limits and full disclosure of "soft money" and other practices designed to circumvent existing campaign finance requirements.

Women and minority candidates are unfairly handicapped by the present system. The status quo is unwisely protected by the present system. The voter is disenfranchised and turned off by the present system.

In addition to campaign finance reform and its relevancy to the ethics of legislators, the League of Women Voters asks your attention to dual office holding. Our position is that it should not be permitted. Conflicts between an officeholder's several constituencies can be as damaging to representing each fairly as the conflicts between the official's personal and business interests and the trust inherent in representing constituents.

Ethics codes, establishing strict standards of professional conduct for all government employees and appointees, are needed. Such codes reduce the potential for conflicts of interest. Public officials should not serve in positions that affect their personal or business interests or should be prohibited from voting on measures that conflict with personal or business interests.

We support the inclusion of citizen members on boards of ethics. Governor Florio's administrative ethics code is watched over by a peer review board, the Executive Commission on Ethical Standards. The Legislature has en ethics board made up of members of the Senate and the General Assembly. Such self-policing is not appropriate.

The League of Women Voters believes that ethics laws will protect the honest public officer as clearly as they will protect the public and its right to know. While no set of laws can guarantee good government, they can establish standards of conduct for government officials. Their very existence discourages some who might be tempted into corruption, threathens those who cross the line from public service to private gain, and protects honest and dedicated public employees. Such laws are essential if we all intend to build public confidence in the integrity of government.

common cause NEW JERSEY

110 WEST STATE STREET TRENTON, NEW JERSEY 08608 609•396-1150

I wish to thank the members of the committee for this opportunity to discuss some of the needed reforms New Jersey Common Cause believes need to be made in the areas of campaign finance reform, legislative ethics and lobby disclosure. I must note that it is a handicap to have to address all three areas in one sitting. The committee's already difficult assignment would have been made easier by eliciting testimony and discussion in each of the three areas not as separate and distinct problems but as complex problems each with their own particular needs for reform and the time to thoroughly explore them coherently.

In the area of campaign finance reform the needs are clear and simple...New Jersey must finish the job of reform it started when it placed contribution and spending limits on this states gubernatorial races. We ask this commission to recommend that the legislature adopt and the Governor agree to sign into law:

A maximum campaign contribution for all races, other than Governor, of $500 per individual, and $1,500 for PACs.

The disclosure of the name and address of the employer and job title of all contributors over $100. (This threshold must not be raised—inflationary adjustments are appropriate for contribution and spending limits, but are not in the public interest when applied to the public's right to know.) The disclosure requirement is to be extended to all elected offices in the state including Governor and is to include all contributions received or raised by the elected official, campaign or non-campaign related.

All non-party, non-individual contributions need to be made through PAC's, with corresponding regulation and reporting requirements for the PACs, specifically the adoption of a PAC consumer protection package that includes:

Truth in labeling—PAC's title and/or registration for licensing must disclose it's specific purpose,officers and primary contributing membership composition.

Prohibition of on-the-job solicitations.

All solicitations must disclose the ratio of dollars raised to those actually given to candidates campaigns.

Restrict use of PAC funds collected to campaign contributions to or on behalf of candidates or political parties.

Restrict use of the more than $1 million in leftover campaign funds each election cycle to campaign related expenses or certified charities. These funds should not be allowed to be used in the operation of the legislative district offices. The providing of constituent services should not be the result of successful fund-raising or a safe district.

In order to discourage the use of independent expenditure committees to circumvent the law, restrict to $50 the amount that can be contributed by any single in-state source (and $25 by an out-of-state source) to any non-party, non-candidate related committee that expends over a certain threshold amount on behalf of a candidate or party or issue.

The adoption of realistic spending limits. This can be most efficiently accomplished through limited partial public financing with corresponding rewards and disincentives to encourage participation, such as a candidate getting the opponents share of partial financing if that opponent refuses to participate and the participants spending limits being raised to correspond to the non-participating opponents; in the case of independent expenditures a two for one match of public monies for every dollar spent by the independent expenditure group on behalf of the opponent.

Finally as far as this aspect of the problem is concerned, I respectfully remind the committee of Attorney General Del Tufo's offer in his three page report regarding the allegations made by Ms. Karen Kotvas. The Attorney General stated on page three of that report, "We welcome and commend this initiative(the establishment of you, the Commission) with the conviction that the Commission will review and address the type of conduct involved in the present matter. To assist the Commission in its work, we stand ready to share with it information developed during our inquiry..."

I ask the Commission to ask the Attorney General to share with it specifically the information developed during his department's inquiry into the Karen Kotvas allegations as well as any other insights and suggestions he may have regarding fund-raising and lobbying in the New Jersey legislature.

Lobby Disclosure——It's essential the loophole in the lobby disclosure law-the expressly clause be closed, reporting be placed under one agency-either ELEC or AG, that annual financial statements be grouped according to a classification code indicating type,non-profit--Gov't Reform, Environmental etc.For-profit by industry type. In short the recommendations contained in the Kimmelman report and The Sunshine Boys by Neil Upmeyer. Further no real reform can happen without the disclosure regulations being extended to the Executive Branch and State Boards and Commissions. The burden of reporting all lobbying contacts should begin with the Lobbyist, and in case of the non-profit, tax-exempt organization with the Department, Board or

Commission contacted. There's a need for this to be done immediately, and it can be by Executive Order but the Governor has chosen to allow the loophole to continue pending legislation. Lobbying the executive branch is a major industry that is growing, yet remains for the most part out of sight. Indications of it's growth however are found in professional journals where law offices openly advertise the service.

Legislative Ethics——the best case for a drastic overhaul of the so-called legislative ethics system is the present handling of the break-in and theft of over 1,000 documents used by the Democratic Legislative. The process is characterized by secrecy, and appears to operate in the personal interest rather than the public interest. Legislative ethics must be tightened, enforced and the whole process must be opened to public scrutiny in the same fashion as the Executive branch.

The committee would do well to recommend that ethical consultants be brought in to assist in the creation of awareness seminars by and for the legislators to explore the practical aspects of ethical concern and to raise consciousness about ethics in politics.

The ethics process must include meaningful disclosure by the legislators as well as opinions rendered being made available to the public, press.

This committee's recommendations I would hope will include a specific prohibition on the use of state funded partisan staff working on any direct election, campaign matters, and if there is a doubt such individuals should be placed on the party payroll for such questionable activities.

Office of the Attorney General

Attorney General Robert J. Del Tufo

NEWS

FOR IMMEDIATE RELEASE

April 4, 1990

FOR FURTHER INFORMATION CONTACT:
Chuck Davis (609)292-4791

The report of the Attorney General on allegations made by Karen Kotvas is attached.

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REPORT: Allegations made by Karen Kotvas

1.

On or about January 10, 1990, Karen Kotvas, a legislative agent employed by Lawyers Encouraging Government and Law (LEGAL), a lobbyist, made allegations of impropriety concerning the solicitation of campaign contributions for "Democratic Assembly Majority 89" by four New Jersey Assemblymen -- Messrs. Brown, Bryant, Doria and Doyle.

The public significance of the allegations prompted the Division of Criminal Justice on January 12, 1990 to initiate an investigation in order to determine whether the matter warranted State Grand Jury attention. A considerable number of persons were interviewed, including Ms. Kotvas, the Assemblymen in question, certain officers and trustees of LEGAL, and representatives of other lobbyists who were solicited for contributions by the same Assemblymen to the same fund. The investigation was conducted in concert with the United States Attorney's office and the Federal Bureau of Investigation.

Considerations of public significance similar to those which attended initiation of the inquiry prompt this public statement to announce that the investigation has been concluded and that it did not produce sufficient evidence to justify pursuit of criminal remedies before the State Grand Jury. The

financing and in ethics laws. We welcome and commend this initiative with the conviction that the Commission will review and address the type of conduct involved in the present matter. To assist the Commission in its work, we stand ready to share with it information developed during our inquiry as well as various legislative proposals ranging from an outright ban on lobbyist/legislative agent campaign contributions in legislative elections to restoration of rules requiring more coherent pre-election disclosure of campaign contributions.

Robert J. Del Tufo
Attorney General of
the State of New Jersey

Date: April 4, 1990

U.S. Department of Justice

United States Attorney
District of New Jersey

RECEIVED

970 Broad Street, Room 502
Newark, New Jersey

201-621-2700
ROBERT T. WINTER
DIRECTOR

March 9, 1990

The Honorable Robert J. Del Tufo
Attorney General, State of New Jersey
Office of the Attorney General
CN 080
Trenton, New Jersey 08625

Re: Karen Kotvas

Dear Mr. Del Tufo:

During January and February of this year, members of the Federal Bureau of Investigation, the New Jersey State Police and the Division of Criminal Justice of Your Office conducted a joint investigation into allegations by a lobbyist named Karen Kotvas that she was "shaken down" for political contributions by several members of the New Jersey State Assembly in the fall of 1989. The United States Attorney's Office was kept apprised by the Federal Bureau of Investigation of the progress of the investigation.

We have now reviewed the results of the investigation and are satisfied that the matter has been fully and carefully investigated. Based on the results of the investigation, we conclude that no federal criminal prosecution should be initiated. Accordingly, the federal investigation into this matter is being discontinued at this time.

Very truly yours,

Samuel A. Alito

SAMUEL A. ALITO, JR.
United States Attorney

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EXECUTIVE COMMISSION ON ETHICAL STANDARDS
STATE OF NEW JERSEY
CN 082
TRENTON, NEW JERSEY 08625-0082
(609) 292-1892

JACOB C. TOPOREK
CHAIRMAN

RITA L. STRMENSKY
ACTING
EXECUTIVE DIRECTOR

June 6, 1990

COMMENTS TO THE AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

It is an honor to be invited to address you on behalf of the Executive Commission on Ethical Standards and to acquaint you with areas of the Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.) that have been persistently problematic to the Executive Commission. The areas to be addressed are: the application of the Conflicts Law to employees of State colleges and universities, particularly Rutgers; the need for disclosure by State employees of outside employment or service; the problems encountered in administering and enforcing the post-employment prohibitions of the Conflicts Law; and the need to revise the penalties for violations of the Conflicts Law.

Jurisdiction over State College and University Employees

As you know, the Executive Commission on Ethical Standards was created to administer and enforce the Conflicts Law as it applies to State officers and employees and special State officers and employees in the Executive branch. An early area of concern to the Commission was to determine its scope of jurisdiction as to individuals covered by the Conflicts Law. In 1972 the Commission was confronted with the questions of whether Rutgers, The State University, was a State agency and whether Rutgers' hearing officers were State employees. In Advisory Opinion No. 4 (attached), issued in December 1972, the Commission answered both questions affirmatively. And yet, because the Conflicts Law does not specifically include State colleges and universities within the definition of "State agency," N.J.S.A. 52:13D-13a, the question of the status of Rutgers employees as State employees subject to the Conflicts Law persists. In 1989, the New Jersey Supreme Court, in a 4-3 decision, held that the Legislature did not intend that the term "State employee" in the Conflicts Law be applied to a law professor supervising a constitutional law clinic with matters before the Council on Affordable Housing, a situation that the Executive Commission and the Appellate Division determined was prohibited by N.J.S.A. 52:13D-16. In re Executive Commission on Ethical Standards Re: Appearance of Rutgers Attorneys, 116 N.J. 216, 229 (1989).

The Supreme Court decision has created the curious situation wherein the Executive Commission considers Rutgers employees as State employees for the purposes of the Conflicts Law except that professors in teaching clinics are not State employees for the purposes of the Conflicts Law. A legislative resolution of this situation by including State institutions of higher education within the definition of "State agency" would serve the purpose of clarifying their status for the affected employees and ensuring New Jersey residents that college and university employees, who are paid by and expend taxpayers' money, are held to specific standards of conduct. (In connection with this idea, Governor Florio, in Executive Order No. 9, signed April 18, 1990, has required financial disclosure by the presidents of the State colleges and universities.)

Disclosure of Outside Employment

Another area of concern to the Executive Commission is the need for disclosure by State employees of their outside employment or service. N.J.S.A. 52:13D-23(e)(5) provides:

> No State officer or employee or special State officer or employee should undertake any employment or service whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

While there is no explicit requirement for disclosure of outside interests, the Executive Commission has found that a substantial number of State employees do have outside employment and/or financial interests in small businesses that sometimes constitute conflicts under the statute. Since 1972, complaints and questions about outside employment have numerically dominated the Commission's workload. In recent years, the Commission has vigorously encouraged the Departments and major agencies of the Executive branch to require disclosure by employees on conflicts-of-interest questionnaires that can be reviewed by the Department and the Commission to eliminate conflicts. While there has been enthusiastic cooperation by many Departments, disclosure is not uniformly required.

Jurisdiction Regarding Post-Employment

The administration and enforcement of the post-employment restrictions embodied in sections 17 and 17.2(c) are problematic to the Executive Commission and possibly also to the Joint Legislative Committee on Ethical Standards. Because the penalty for violation of the post-

employment restrictions is a disorderly persons penalty, the Executive Commission, on advice of its counsel, the Attorney General, has taken the position that while the Commission can advise a State employee as to future employment, the Commission cannot determine that a post-employment violation has occurred and cannot prosecute; those functions are within the domain of the Division of Criminal Justice.

This split of jurisdiction between civil and criminal agencies not only causes delay in determinations of whether certain activities are violative of the statutory prohibitions but also limits the application of the acquired expertise of the Executive Commission and the Joint Committee to post-employment problems. While there are numerous factors to evaluate in deciding whether former State employees and former members of the legislature should be subject to the jurisdiction of the Executive Commission and the Joint Committee, respectively, civil jurisdiction and civil penalties for post-employment violations should be considered.

Civil Penalties

Another area of concern with regard to penalties, which also affects the Joint Committee, is the $100.00 to $500.00 range of fines for violations of the Conflicts Law. Although there have been legislative proposals to increase the amounts of possible fines, they have not been changed since the 1971 legislation and are not high enough to have any significant deterrent value. In addition, when the Executive Commission finds a violation of the statute and imposes a sanction, many factors must be weighed and balanced in determining the amount of the fine to be imposed. The factors include the amount of harm caused by the conduct, the degree of violation of the public trust, whether the conduct affected or influenced other employees, whether the violation was deliberate or technical in nature, whether there was any prior disclosure by the actor, the length of time over which the violation occurred, and the number of violations involved. The $100.00 to $500.00 range of fines is too low to allow for these factors to be adequately reflected.

Rita L. Strmensky
Acting Executive Director

RLS/dll

EXECUTIVE COMMISSION
ON ETHICAL STANDARDS

OPINION No. 4

The Executive Commission has been asked to render an advisory opinion as to whether a hearing officer for Rutgers - The State University would be a State officer within the definition of the Conflicts of Interest Law, and, as such, subject to the restrictions contained therein.

Under the Student Disciplinary Hearing Procedure, established by the University, the hearing officer would conduct college hearings on complaints against students for offenses such as cheating, obstruction, theft or other violations of university rules and regulations. The hearing officer would be nominated by the president, appointed by the Board of Governors and assigned to individual cases by the vice president for academic affairs. The hearing officer is to be paid on a per diem basis for his services.

In order to determine if the University hearing officer is a State officer or employee, it is necessary to consider the following definition of same contained in the Conflicts of Interest Law.

A State officer is defined as any person, other than a member of the Legislature, holding an office or employment in a State agency. N.J.S.A. 52:13D-13(b). Excluded from this definition are any special State officers or employees who are defined as:

> "(1) . . . any person holding an office or employment in a State agency for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law and (2) any person not a member of the Legislature, holding a part-time elective or appointive office or employment in the Legislative Branch."

In order to answer the present inquiry, it is also necessary to consider the Conflicts definition of State agency, N.J.S.A. 52:13D-13(a) which provides:

> "'State agency' means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State." (Emphasis added)

The answer to the present inquiry involves, therefore, two basic considerations:

a) Is Rutgers a State agency within the statutory definition of same, and, if so

b) Does the hearing officer hold office or employment in such State agency?

A. With regard to the first question, it is essential to note that in 1956 a major structural change occurred in the relationship between Rutgers and the State by reason of P.L. 1956, c. 61. By voting to reorganize under said act, the private governing board of the University yielded virtually all management, control, administration and policy making functions to a publicly controlled Board of Governors. Rutgers facilities remained impressed with a public trust, their beneficial use being reserved for the higher education of New Jersey residents, and as the instrumentality of the State for the purpose of operating the State University. N.J.S.A. 18A:65-2, Rutgers, the State University v. Kugler, 110 N.J. Super. 424 (Law Div. 1970); Rutgers v. Piluso, 113 N.J. Super. 65 (Law Div. 1971). In Trustees of Rutgers College in N.J. v. Richman, 41 N.J. Super. 259 (Ch. Div. 1956), the University was characterized as "substantially an alter ego of the State." It is also instructive to note that N.J.S.A. 18A:62-1 lists Rutgers as a "public" institution of higher education. Such considerations lead to the determination that for the purpose of this opinion, Rutgers may properly be termed an "independent State instrumentality" and thus within the Conflicts definition of "State agency."

B. It is necessary to next consider whether the hearing officer holds "office or employment" in such State agency.

Characteristic features in every definition of "office" are the manner of appointment and the nature of the duties to be performed. State v. Indelicato, 97 N.J. Super. 566 (Law Div. 1965). In the present situation, the hearing officer would be nominated by the President of Rutgers and appointed by the publicly controlled Board of Governors of Rutgers in accord with its statutory power as provided by N.J.S.A. 18A:65-25(a)(h) and (i). It is assumed that the appointment is for a certain period of time. Such appointment would, therefore, be made by a publicly controlled body, pursuant to statutory authority, to a position of certain duration.

The duties of the hearing officer so appointed would be the adjudication of complaints involving members of the Rutgers student body. Such function would basically relate to the administration of the University and to some degree would facilitate its public work: The higher education of the citizens of the State of New Jersey. The duties of the hearing officer, to that limited extent, would be public in nature.

Both the public nature of the duties involved in the newly created position and the manner of the appointment thereto indicate that the said hearing officer does hold "office" in Rutgers.

Since the said hearing officer would, therefore, hold "office" in a "State agency" he would be a "State officer" within the Conflicts of Interest definition of same. It is also to be noted that the said hearing officer, since he would be compensated on a per diem basis, would not fall within the Conflicts definition of "special" State officer or employee. Only those officers who receive no compensation other than compensation in reimbursement of expenses would be classified as such "special" State officers or employees.

On the basis of the foregoing considerations, the Executive Commission finds that a hearing officer for Rutgers - The State University would be State officer within the meaning of the Conflicts of Interest Law and would, therefore, be subject to the relevant restrictions contained therein.

This advisory opinion has been rendered by the Executive Commission on Ethical Standards on the 15th day of December, 1972.

Chairman
Executive Commission on Ethical Standards

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State of New Jersey

Owen V. McNany, III
Chairman
Stanley G. Bedford
Commissioner
David Linett
Commissioner
S. Elliott Mayo
Commissioner

ELECTION LAW ENFORCEMENT COMMISSION
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FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR
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COUNSEL

TO: AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

FROM: FREDERICK M. HERRMANN, PH.D.

DATE: JUNE 6, 1990

RE: ELEC'S REFORM PROPOSALS

On behalf of the Election Law Enforcement Commission, let me express my appreciation for the opportunity to submit this written testimony based on my participation in your meeting of May 2.

Without a doubt, the Ad Hoc Commission is undertaking a tremendously important task. During the coming weeks, this Commission will develop recommendations that will strengthen New Jersey's disclosure system and in the process contribute to an ethical climate that may well become a model for the nation.

ELEC looks forward to this development and hopes that it can contribute to the process of bringing it about.

As you know, ELEC has already been very much involved in the process of attempting to bring about reform in the field of disclosure. Through the years, it has published a variety of reports and analytical White Papers that, in and of themselves, contain numerous suggestions for tightening the disclosure rules as they pertain to financing campaigns, lobbying, and revealing personal finances. In a word, the list of reform recommendations compiled by ELEC is quite exhaustive and I am pleased to have shared it with you last month.

Let me at the outset reiterate one important comment I made to you at that time. Traditionally, ELEC has been open to new ideas and suggestions, and, as such, is just as enthusiastically looking forward to learning from your findings and recommendations as it is toward contributing to you its own. Campaign financing, lobbying, and, disclosing of personal finances comprise an important and complicated field. It will need all of our collective expertise to reform it.

These comments will focus upon "The Campaign Contributions and Expenditures Reporting Act," "The Legislative Activities Disclosure Act," and "The Personal Financial Disclosure Act." Specifically, each of these

statutes will be discussed from the perspective of their inherent shortcomings and from the perspective of how they should be reformed. In addition, New Jersey's disclosure laws will be discussed from the standpoint of their enforceability under ELEC's current funding level. Hopefully, this review will be helpful to you in your attempts to formulate the much needed reform of the disclosure system in our State.

Campaign Finance Reform

A major shortcoming of the Campaign Act derives from the fact that, except in gubernatorial elections, there are no contribution limits imposed at any electoral level in New Jersey. Indeed, this absence of contribution limits constitutes a serious statutory flaw. Clearly, contribution limits have worked well in gubernatorial elections. They have enhanced the public's trust in the gubernatorial process by eliminating the perception, if not the reality, of undue influence, and by giving the public the assurance that the person who is elected to the State's most powerful office has received financial support from a large base of small contributors rather than a small base of big contributors.

The Commission, through White Paper Number One and its Annual Reports, recommended that contribution limits be imposed at all electoral levels, not just gubernatorial. While these limits should be high enough to permit candidates to raise enough money to run effective campaigns, they should be low enough to root out the appearance, if not the reality, of improper influence.

Contribution limits should constitute a major part of any reform package and the Election Law Enforcement Commission strongly urges the Ad Hoc Commission to adopt such a recommendation as part of its reform proposals.

In a related matter, ELEC has recommended that direct corporate and union contributions to candidates, political parties, political committees, and PACs be prohibited. In the spirit of the United States Supreme Court Decision, in Federal Election Commission v. Massachusetts Citizens for Life, Inc., there is a governmental interest in preventing organizations that can amass great financial resources from acquiring a disproportionate influence over the political process.

Under this recommendation, contributions would be permitted from PACs set up by employees of corporations and members of labor unions. These PACs would be funded not by corporate or union dollars, but by contributions

made voluntarily by corporate employees or union members. PAC activity conducted in compliance with certain guidelines would be permissible. Direct corporate or union contributions, however, would be banned.

A ban on corporate and union financial activity in campaigns would dilute the influence of corporate and union money and simultaneously improve the disclosure of the financial activity on the part of special interests. Because PACs would constitute the sole vehicle for special interest contributions, this activity would be more easily traced. Certainly it is easier to categorize PACs, and determine, in this way, the amount of contributions made by the special interests they represent, than it would be to trace special interest contributions made from corporate and union treasuries and the funds of the various PACs. In short, not only would a ban on corporate and union campaign financial activity offset the influence of these wealthy organizations, but it would also enable the public to better determine the extent of special interest influence over the processes of elections and governance.

Dovetailing quite well with this recommendation for a ban on corporate and union contributions is the Election Law Enforcement Commission's call for: 1) enactment of a PAC registration program; and 2) the enactment of a provision that would require that the employers of contributors to candidates, political committees, PACs and political party committees be identified.

With regard to registering the PACs, such a PAC registration program would play a vital role in campaign finance reform because situations often arise wherein the public is not able to determine "who a PAC is" or "what interest" it represents.

For example, who are "Citizens For Good Government" and what special interest, if any, does this group represent? Such a group could just as easily represent a convicted polluter as an environmental lobby.

A PAC registration program, requiring PACs to submit to ELEC a classification statement and a list of individuals with decision making power, is urgently needed. First, the classification statement would provide the public with information as to whether the PAC is a corporation, a union, a trade association, an ideological group, or an officeholder. And second, a list of decision makers providing employer information would help set forth clearly just what interest is being represented by the political action committee in question. Together, these two parts of the PAC registration program would go far toward providing the public with important information about special interest participation in the political process.

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Regarding employer identification, good government policy also dictates that this information be available in relation to contributions that are made. To insure that contribution limits are being obeyed, and in the interest of an orderly, accessible and efficient disclosure system, an employer identification provision should be included in any reform effort. Such a provision would not only better enable the public to know the true extent of special interest activity, but would also improve the ability of law enforcement officials to determine if any laws have been violated.

In the area of campaign finance reform, perhaps one of the most important issues requiring statutory clarification involves the question of permissible uses of surplus campaign funds. ELEC has long pushed for such clarification. In this regard, it has urged enactment of statutory guidelines that clearly and unequivocally set forth how leftover campaign funds can be used.

First and foremost, ELEC recommends that personal use of campaign funds be prohibited. This ban must be at the core of any set of statutory guidelines established by the Legislature.

Regarding the other side of the question, the permissible uses of surplus funds, ELEC believes that candidates should be allowed to return money on a pro rata basis to contributors; use the money for a future campaign; and, subject to a contribution limit, contribute it to the campaigns of other candidates.

ELEC has always believed that the most difficult surplus funds issue to resolve is the question of whether these funds can be used by officeholders to offset the cost of doing the public's business. The Commission has been unable to address squarely this aspect of the question because it falls outside of its jurisdiction. It has urged, however, that a decision be made by the Legislature as to whether or not excess campaign funds should be allowed to pay for the "ordinary and necessary expenses" of holding public office. As mentioned above, ELEC has not taken a position on this question but believes that it should be decided one way or the other.

Finally, regarding the dispensation of surplus campaign funds, ELEC believes that campaigns should be required to report on a quarterly basis until all funds have been dispersed.

If surplus funds are held by a former candidate who expires, or moves out-of-State, provisions to recapture those funds should be enacted.

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There is no doubt that the question of surplus funds is an important and controversial issue and one that requires attention. Again, the Election Law Enforcement Commission believes that a meaningful reform package should contain guidelines for their usage and urges the Commission to address this issue in its future proposals.

In addition to the above recommendations, ELEC has advanced numerous other proposals for reforming the Campaign Act.

Among these proposals are that the fines for violations be raised to $3,000/6,000, and adjusted every four years by the Consumer Price Index. Moreover, fines up to three times as high as the amount of missing contribution information should be mandated. These reforms are needed in part because the penalties that were originally enacted in 1973 are still in effect today despite inflation. They should be enacted also as a more effective deterrent to those who would seek to thwart the purposes of disclosure and are currently subject to fines that are so low they do not even encourage large campaigns to obtain professional assistance.

Beyond recommending adjustments in its fine scale, ELEC desires that the law be changed to give it civil jurisdiction over the identification of purchasers of political advertising. Moreover, it recommends the elimination of candidate filings in special district elections and an increase in the threshold contribution amount for identifying contributors. This amount should be adjusted for inflation on a periodic basis. ELEC also believes that consideration should be given to banning off-year fundraising.

As much as anything else, ELEC feels that serious consideration should be given to enacting a legislative public financing program. Certainly, the gubernatorial program has worked well for the people of New Jersey, fostering a trust in the gubernatorial electoral process that might be absent if contribution limits were not in place and spending was not kept under control. The establishment of a public financing program for legislative elections would not only increase trust in the electoral process at this level, but would allow for lower contribution limits and a more level playing field. As in the gubernatorial program, it would also help candidates of limited means to run for office and improve the prospects of challengers in races against incumbents.

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Gubernatorial Public Financing Program

At this time, ELEC has not made recommendations for improving the gubernatorial public financing program. It did hold hearings in February and March, however, and will present a report to the Governor and Legislature this fall outlining its recommendations for improvement.

The areas being studied by the Commission include the role of the political parties, specifically with regard to generic advertising; the amount of public dollars being expended; and the serious need to increase the $1 tax check-off.

Also under review is the law's debate provision, which was the first of its kind in the nation. Consideration is being given to the issue of expanding sponsorship eligibility to public organizations such as NJN and Rutgers University, the number of debates that should be held, and the issue of access to the debates by minor party candidates. Certainly these are three very important areas that merit review.

Other topics of interest involving gubernatorial public financing include negative advertising, independent expenditures, and the level of or desirability of expenditure limits.

Lobbying Reform

Recently, ELEC released a 111-page White Paper on lobbying reform in New Jersey, which has been provided to the Ad Hoc Commission's staff. In it, ELEC set forth suggestions for a model lobbying disclosure law.

Most importantly, the Commission recommended that the "expressly" loophole be eliminated and that benefit passing during "goodwill lobbying" be reported. As has been repeatedly asserted by ELEC, "it is the treating as well as the talking that the public has a right to regulate."

Importantly, it also called for "executive branch lobbying" and the lobbying of legislative staff to be reportable. "Executive branch lobbying" involves attempting to influence the outcome of regulatory and rulemaking proceedings as well as proceedings dealing with the procurement of contracts and grants.

Moreover, it recommended that "grassroots lobbying" be reported. A type of lobbying that will surely continue to grow in the future, "grassroots lobbying" activity involves the mobilization of public support for a special interest's position on an issue and can include the use of direct mail, broadcast and print media advertising, and polling.

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The need for lobbying reform in New Jersey cannot be overstated. The State currently has an extremely weak law that is in desperate need of strengthening. Having the current law is tantamount to having no law at all. In short, the only way to regulate this activity, which by the way is perfectly legitimate and in many ways important to the democratic process, is through a functional disclosure law that captures the activities described above.

Personal Financial Disclosure Reform

The final discussion area for statutory reform concerns the Personal Financial Disclosure Act. Again, this law requires strengthening if the public is to obtain the information it needs to make informed voting choices. In addition, this law goes to the very heart of the issue of "conflict of interest." A strong personal financial disclosure law will root out any conflicts of interest that might exist and go far toward warding off ones that may potentially occur.

Specifically, the Financial Disclosure Act should be amended to require the disclosure of the dollar value of honoraria and a description of gifts. It should require more than just reporting that something has been received with a value above a statutory threshold. It should allow the public to distinguish between the gift of a Rolex watch and a Rolls Royce automobile!

Moreover, consideration should be given to requiring better reporting of sources of conflicts of interest.

Finally, the reporting of a benefit passer's employer should help to alert the public about any potential conflicts of interest between a gubernatorial or legislature candidate's present or future official duties and his or her private sources of funding.

Personal Financial Disclosure is a very, very important part of this process. It is essential that the State of New Jersey have in place a meaningful law that in and of itself will play a central role in making sure that conflicts of interest are all but eliminated. No change could make a bigger difference in how New Jersey citizens view their government.

Inadequate Funding

It is very important that comprehensive reform of the disclosure laws take place. But statutory reform without adequate funding to enforce the laws is meaningless. For that reason, it is essential that any reforms be accompanied by funding that is adequate to the task of fulfilling the mandates embodied in the statutory changes.

ELEC's budget is about half of what is needed to do the job under current law. Because of an exploding workload combined with the State's fiscal crisis, the Commission is in a greatly weakened position.

While ELEC's budget now is slightly more than $1 million, ELEC needs about twice as much, about $2 million, to administer and enforce the law adequately.

Presently, ELEC has only one field investigator to cover the entire State. It has only two desk auditors to review 17,000 reports each year and prepare data for entry into the computer, while its data entry staff is comprised of only two operators for tens of thousands of contributions per year. Moreover, it's Compliance staff is comprised of two officers to handle over 10,000 annual requests for information and assistance. Finally, ELEC has no research staff to assist with the important analytical studies it needs to undertake.

There is no question that the State is in a fiscal crisis and ELEC is seeking to work within the limits of that crisis. In every way possible it wants to do its part to help the Governor and the Legislature deal with this real and serious problem. However, it is undeniable that the Election Law Enforcement Commission is dangerously understaffed.

In an effort to address this staffing shortage for the future, ELEC has proposed, in White Paper Number Four, alternate revenue sources.

Quite simply, the beauty of the plan outlined by the Commission is that at the same time that ELEC's budgetary needs could be met, it would be done at little or no cost to the taxpayer.

Money would be raised through fees on PACs, parties and lobbyists. Fine money would also be retained for budgetary purposes. In other words, while ELEC would still receive an appropriation, this appropriation would be offset each year through the imposition of the filing fees and fines. The pmoney would go into an Election Law fund, which would function much like

current gubernatorial election fund. An adequate appropriation would be made each year and it would be paid back to the extent possible with filing fees and fines. Public disclosure would be enhanced at little or no cost to New Jersey's taxpayers. It should be noted that since ELEC's appropriation would be guaranteed through the appropriations' process there would be no undue incentive for ELEC to issue fines.

Conclusion

The campaign finance law, the lobbyist disclosure law, and the personal financial disclosure law are in desperate need of reform to assure open and honest government in New Jersey. And, ELEC is sure that the work of this Ad Hoc Commission will go far in the direction of bringing this much needed change.

Reform, without adequate funding of ELEC, however, will be no reform at all. Let us not place ourselves in the position of the debased Roman Empire described by Juvenal two millennia ago when he wrote: "All wish to know, but none want to pay the price."

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