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COMMISSION MEETING

before

AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

"Discussion of some of the problems raised by the  
current system of legislative ethics and campaign finance"

May 2, 1990  
Room 368  
State House Annex  
Trenton, New Jersey

COMMISSION MEMBERS:

Alan Rosenthal, Chairman  
Albert Burstein  
Michael Cole  
Patricia Sheehan  
Thomas Stanton, Jr.  
Senator Carmen A. Orechio, Jr.  
Senator Donald T. DiFrancesco  
Assemblyman Thomas J. Deverin  
Assemblyman Garabed "Chuck" Haytaian

ALSO PRESENT:

Marci Levin Hochman  
Assistant Counsel  
Office of Legislative Services

Frank J. Parisi  
Office of Legislative Services  
Aide, Ad Hoc Commission on Legislative Ethics and  
Campaign Finance

\* \* \* \* \*

Meeting Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625

New Jersey State Library



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New Jersey State Legislature  
AD HOC COMMISSION ON LEGISLATIVE ETHICS  
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Assemblyman

John A. Lynch  
President of the Senate  
Joseph V. Doria, Jr.  
Speaker of the  
General Assembly

State House Annex, CN-068  
Trenton, New Jersey 08625-0068  
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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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Greg Nagy, Esq. Legal Director New Jersey Election Law Enforcement Commission	35
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(MEETING OPENS AT 9:45 a.m.)

DR. ALAN ROSENTHAL (Chairman): All right. We can get started ladies and gentlemen. This is our second meeting, and it has been suggested that we call the roll to see who is here, and to have a formal record of it. Right now we have very good attendance, but later on that roll will make a lot of difference. Frank, would you call the roll? (referring to Committee Aide)

MR. PARISI: Assemblyman Haytaian? (not present; entered meeting later) Assemblyman Deverin.

ASSEMBLYMAN DEVERIN: Yes.

MR. PARISI: Senator DiFrancesco.

SENATOR DiFRANCESCO: Here.

MR. PARISI: Senator Orechio.

SENATOR ORECHIO: Here.

MR. PARISI: Thomas Stanton.

MR. STANTON: Here.

MR. PARISI: Patricia Sheehan.

MS. SHEEHAN: Here.

MR. PARISI: Michael Cole.

MR. COLE: Here.

MR. PARISI: Al Burstein.

MR. BURSTEIN: Here.

MR. PARISI: Chairman Rosenthal.

DR. ROSENTHAL: Here. You've all gotten several notices. The-- Essentially the minutes of the last meeting, as well as a schedule of future meetings, and basically an agenda of, you know, the procedure we'll be following. Are there any questions about any of those matters that have been circulated to you by mail between this meeting and the last meeting?

SENATOR ORECHIO: Mr. Chairman.

DR. ROSENTHAL: Yes, Senator.

SENATOR ORECHIO: I just have a reservation about what we did at the last meeting. I thought about it, and I just wanted to take a little position different than Al Burstein's in comingleing testimony. I think the two subjects are complex enough to be handled individually rather than comingle them. And I'll just throw that out for discussion. And I recognize that there may be some overlapping testimony, but I think ethics is one thing; campaign financing is another matter.

DR. ROSENTHAL: Discussion of that subject that Senator Orechio brought up? I mean, we'll have to resolve that pretty quickly because we're about to send out letters and invitations to members of the Legislature to ask them to testify.

Now, let me just say: The one problem, I think-- I agreed, you know, in principal with Senator Orechio's position, because that was my position before--

MR. BURSTEIN: Thanks.

DR. ROSENTHAL: --before Burstein beat me down. But the problem really is a time problem in terms of scheduling. We now have three meetings scheduled for hearings. The first meeting will be for the legislators who want to testify. The second meeting that we decided on would be for representatives of organizations. And we're talking about not only, you know, Common Cause and the likely suspects, but anybody with an association or, you know, with an executive agency ss an organization. So, we have no idea of how many people will want to testify as representatives of organizations.

And then the third meeting was for individuals and others, and maybe some people we didn't get to in the second series of hearings. Yes, Pat.

MS. SHEEHAN: In a way would it be possible to almost combine the two positions? By that I mean, when people come to testify, they've made the trip, they're not all going to be local to Trenton, I'm sure, and, in effect, I think they could



have the opportunity to say their piece whether it's on both subjects or just one. And we would have that for the record and the benefit of their comments and whatever questions we want to do and so on.

And then in our own meeting -- by that I mean workshop discussion -- we could at that point make the break, and on Tuesday discuss the one, and on Thursday discuss the other, because I think there's a natural division. I agree with the Senator in that regard. But I also can't see dragging people down twice to basically make the same point.

MR. STANTON: That's really my point. I think almost anybody that would have a viewpoint on either subject, would have one on the other. And that if they spoke about financing, they'd also speak about ethics.

DR. ROSENTHAL: Would that--

MR. STANTON: Somehow or other it will have to be sorted out in the minutes, or--

DR. ROSENTHAL: Would that be okay, Senator, if we asked them explicitly in our invitation to make a distinction between their discussions, and then if in our discussions we make that distinction? (Senator Orechio nods affirmatively) Okay, that issue is resolved.

MR. BURSTEIN: I know we can compromise. (laughter)

DR. ROSENTHAL: At this session we will be talking about the problems facing the State and the Legislature with regard to both issues; issues of ethics and conflicts of interest, disclosure, and issues of campaigns and campaign finance. This will be a general discussion among Commission members; legislators and citizen members. And we have asked the various representatives of staffs to participate in the discussion because they have experience and legislative history to relate to us on various matters.

So, consequently, Marci and Frank will be participating, as will Fred Herrmann on behalf of ELEC, and

representatives of the Assembly and Senate, Majority and Minority staffs. We will call on them for, you know, matters of fact and matters of opinion, both. So this will be a discussion among Commission members.

Let me begin the discussion by recounting that we at Eagleton just held a conference, or a symposium in Williamsburg, Virginia on Friday, Saturday and Sunday. And the topic that we discussed was the Legislature in the 21st Century. And attending this symposium were about 100 participants from about 30 different states, including 65 or so legislators, and another 15 or 20 former legislators -- legislative leaders from around the country.

And the discussion, you know, revolved around leadership, the citizen legislature versus the full time legislature, the initiative and referendum, and other such matters.

It seems to me, though, on the basis of the workshop discussions and the final plenary discussion, that the major concern of many of these people in many of these states was the concern of money and politics; elections and campaign finance. It seemed to be an urgent issue to the extent that some members were saying that if this issue isn't addressed, and isn't resolved, they saw no hope for the Legislature.

Al Burstein and Wayne Bryant from New Jersey were both attending this conference, and I guess Al could comment if I'm misreporting about what seemed to be a consensus on the urgency of the problem. Let me say, that there was no specific consensus on what the solution should be, but it seemed that members -- legislators there were willing to experiment in the states, to use the states as laboratories of democracy to experiment with different ways of controlling campaign finance and changing the system.

Do you have anything to add to just that introductory?



MR. BURSTEIN: I'm not going to act as a one man truth squad following your-- No, I think that that pretty well capsulizes it. And the workshops I attended, certainly the concern was with the use of money with campaigns and the unsolved problem, which I guess is probably insoluble, is how to handle soft money -- you can deal with -- what is now known as soft money, anyway. You can deal with certain restrictions on campaign expenditures, and the funding of legislative as well as gubernatorial races. But just as water seeks its own level, money will seek its own source and objective.

SENATOR DiFRANCESCO: Al, what is soft money?

MR. BURSTEIN: Don, you've got to be kidding?

SENATOR DiFRANCESCO: No.

MR. BURSTEIN: Oh, serious?

SENATOR DiFRANCESCO: Yeah, really, what's--

MR. BURSTEIN: Well, essentially, that's the money that is funneled through outside organizations that are not sent directly to a candidate -- not given directly to a candidate.

SENATOR DiFRANCESCO: Okay.

MR. BURSTEIN: I'm sorry, I thought that that was a commonly known expression.

SENATOR DiFRANCESCO: Well, probably on the Democratic side, but on the Republican--

MR. BURSTEIN: Yeah, I guess that it's a Democratically developed phrase. (laughter)

DR. ROSENTHAL: It's also been called sewer money.

MR. STANTON: Soft money sounds a little better.

MR. BURSTEIN: But in any event, that's the problem I think all of us will (word inaudible) as time goes on.

DR. ROSENTHAL: The things that these people mentioned, from a variety of states -- and I don't think New Jersey is, by any means, unique -- as problems of the campaign financing business today is, number one, raising money. This

business of constantly raising money tends to distract legislators from other matters; from legislating, from constituency matters, from whatever. It is distracting, and for many legislators it tends to be demeaning. And a number of legislators and other candidates have just resigned, left public office because they don't want to put up with it.

I think another thing that was mentioned was that money is influential. Money-- It's a very subtle process, but money either buys access or helps to gain access, or influences at the margins maybe when other things don't count. That is to say, the more important the issue, the less important campaign finance. But the less important the issue, the more important campaign finance may be. That was what a number of members at that conference suggested.

A third item is that many people -- and this goes to the associations and the lobbyists and others -- feel that they are intimidated by legislators. That when legislators try to raise money, sell tickets to fund-raisers, there is a subtle form of intimidation that takes place.

Another point that was mentioned is that-- And certainly with the contemporary press, as it exists throughout the nation, that the appearance -- even the appearance of there being a kind of a buying access or buying legislation, even the appearance has very negative affects. And that it helps to engender even further cynicism among people about their political system and about the people who serve in political office.

And then finally, and as, I think, a result of all of this, that -- and again, in an unmeasurable way there is a corrosion of the political system taking place because of the increasing importance of money in political campaigns, and maybe because of other factors. And those effects, you know, are insidious. They're not sudden but they are insidious; but they are occurring.



So, I mean, I lead off with problems that I picked up by listening to the discussion, and, you know, just throw it out for-- Hey Gregg, do you want to come up and sit at the table, because we would like to involve the representatives of the legislative party staffs in the discussion later on? (referring to member of Assembly Minority staff)

MR. STANTON: Did this conference come to any conclusion, or is it going to come to a conclusion at later date?

DR. ROSENTHAL: Well, I think there were some general directions that there was some consensus on. It was not a voting conclusion, but I think the general directions were that there had to be limitations on contributions; that it really was worth exploring public financing systems, and that states had to address the issue. Now, each state will address the issue -- if it does -- in a different way. I mean, what is appropriate in California is not appropriate in Vermont. But I was surprised that there seemed to be a willingness to kind of think about, you know, public financing, maybe out of desperation. Did you get that sense, Al?

MR. BURSTEIN: Oh, yeah. I don't think there was anybody that didn't think that public financing was the right way to go for legislative races, as well as, gubernatorial. There was also-- And one thing that hadn't been mentioned -- discussion that I heard, anyway -- that related to the use of money by legislators. That is to say primarily those in safe districts, who really didn't need large amounts of money for other purposes. In other words, funneling that money to other uses, whether it be for leadership purposes or other kinds of things that were generic to the local situation. But again, there was some feeling that there ought to be restrictions on the use of that kind of money. So, there are a variety of problems that arise from the accumulation of funds.

ASSEMBLYMAN HAYTAIAN: Alan?

DR. ROSENTHAL: Yes.

ASSEMBLYMAN HAYTAIAN: I'm sorry.

DR. ROSENTHAL: Assemblyman Haytaian.

ASSEMBLYMAN HAYTAIAN: You know, it's difficult when we start talking about money and campaigns. It seems that it's always focused in on the legislator or the person who is running, and how much they raise, but there's no talk about the cost of campaigns. Now, I'd like to just give you an example: I ran for the first time in 1974, and I ran in a primary. That primary for freeholder cost a little more than \$6000 of my own money. I ran for the Assembly in a primary last year. Someone up in my area decided -- two people decided to run against Bob Littell and I. It cost me \$60,000, and I'm an incumbent.

Now that's reflective on the cost of a campaign advertise-- I don't hear any limitations on newspapers for advertising. I don't hear any limitation on radio stations for advertising. I don't see any limitation on a 25 cent stamp, where we have to pay -- if we go bulk rate we can pay a little less, but we still have to pay. And if you advertise too early, you can't get the lowest rate on the radio station.

I don't hear any of that. I mean, doesn't that come into all of what we're going to talk about?

DR. ROSENTHAL: Sure.

ASSEMBLYMAN HAYTAIAN: I mean, are we going to make recommendations that newspapers should lower their advertising rate for politicians, or for political people running? I mean, I would hope that we would focus in over there also, because that's the reason those of us who run have to raise money. I mean, we have to advertise. We have to get our word out, because if you go to a campaign or a political function, if you get 20 people out that are really interested -- other than being partisans of yourself or the people running against you -- that's a lot.

How do we get the word out? How do we campaign? Those questions never seem to come up, it's never focused in on. All the focusing is the fact that people raise money and what do they do with the money? Check the reporting forms to see what they do with the money. I'll bet you 90% of it goes for advertising, in one form or another.

I think we've got to focus in on that also, because if we want to lower the expectation of what people who are running for office go out and raise, then we have to lower the cost. I don't know if we're able to do that. I don't know if other people would really like to focus in on that. I don't think they even want to talk about it, because they're here to make a profit also. And that's where the problem is as I see it.

DR. ROSENTHAL: Well, campaigns cost, and certainly nobody -- I don't believe -- would want to limit campaigning. In fact getting-- A candidate has to get his or her message to the public, and you have to use the media to do that. And it's not only the free media, but it's a paid for media. So, I think you're perfectly right, that will be part of our discussion. We're not going to talk about the corrosive quality effects of money without talking about the need for campaigns, you know, in a democratic society. Someone-- Pat, yes.

MS. SHEEHAN: I really kind of agree with the Assemblyman, in terms of the cost of campaigning, the whole cadre of professional-- I mean, it's a growth industry; people who manage campaigns and polling, and do media advertising, and all that. I mean, that didn't exist 10, 15 years ago.

The question I was going to ask is with regard-- It seems to me that a new -- and I'm not sure that I support it either -- but a new solution to some of this problem, purported by many, seems to be the reduction in terms, or a fixed terms, or a limitation on service. And I wondered if that were part of the discussion in Williamsburg?



DR. ROSENTHAL: That was part of the discussion that came up. That seems to be a new issue. I mean, I'm not sure it really applies to our work here as a Commission. But that is a new issue, particularly since it's on the ballot, or will be on the ballot in California. There will be two initiatives with a limitation of terms on the ballot. The Democratic candidate in the primary for governor, John Van Den Camp has a 12-year term limitation for legislators. And another group, GANN offshoot has a 12-year limitation. And nobody-- I mean, everyone expects that those propositions will pass. And when California becomes the first state with limited terms, it's likely to be discussed in other places as well, and particularly--

SENATOR DiFRANCESCO: Well, what's the average life of a legislator?

DR. ROSENTHAL: --in those states where they have an initiative. Pardon me?

SENATOR DiFRANCESCO: You must know what the average life of a legislator is. What is it? You used to have statistics in your book that were very low.

DR. ROSENTHAL: It's increasing. Yeah, it's increasing because incumbents want to run again. But, it's--

SENATOR ORECHIO: Eighty-five now, isn't that the age.  
(laughter)

DR. ROSENTHAL: No, their tenure is increasing.

SENATOR DiFRANCESCO: No, I mean how much-- The years of-- The average years of service of Assemblymen?

DR. ROSENTHAL: There aren't many people who will serve over 12 years.

ASSEMBLYMAN DEVERIN: I wish you'd change the subject.

SENATOR DiFRANCESCO: Three or four, maybe.

ASSEMBLYMAN DEVERIN: I wish you'd change the subject.

DR. ROSENTHAL: There aren't many who will serve over 12 years.

MR. BURSTEIN: Yeah, Tom is very sensitive.

ASSEMBLYMAN DEVERIN: I've been here 22 years, Doctor. Please, change the subject. (laughter)

DR. ROSENTHAL: How many members of the Assembly have served over 12 years? Not that many. And how many--

ASSEMBLYMAN DEVERIN: Probably eight, or ten.

ASSEMBLYMAN HAYTAIAN: On the Republican side--

ASSEMBLYMAN DEVERIN: We'll get rid of you when we have a-- (laughter)

ASSEMBLYMAN HAYTAIAN: Eight years and three months, and I think I am the fifth highest in seniority now in the Assembly.

DR. ROSENTHAL: Even though it may not be a real problem, the fact is that there is a perception out there -- or people are using that term "limitation," and it's going to be discussed.

Now, at our conference it was discussed, but there was virtually no support for it. One gentleman, a representative from Louisiana did support it, but I don't think anyone else supported it.

MR. BURSTEIN: The guy from California who was the journalist supported it.

DR. ROSENTHAL: Oh, he did. Rich Zeiger (phonetic spelling) supported.

MR. BURSTEIN: Yeah, Zeiger.

DR. ROSENTHAL: Well, as someone with tenure and an unlimited term, I can't in good conscience support a limitation on terms.

MR. BURSTEIN: I can understand that. You'll be barred from the discussion, also. (laughter)

SENATOR ORECHIO: Mr. Chairman?

DR. ROSENTHAL: Senator.

SENATOR ORECHIO: Was there much reference to public financing of legislative campaigns in other states? Have any states initiated that?

DR. ROSENTHAL: There is public financing of legislative campaigns in several states. It only works in two states; Wisconsin and Minnesota. They have authorized or enacted legislation for public financing in Florida, but they've never funded it. In fact, I think they enacted it because they knew they wouldn't fund it. Sometimes that happens that way. (laughter)

But in Minnesota and in Wisconsin, that's the way it's-- They have public financing of legislative campaigns, and it seems, according to legislative leaders out there, to work pretty well, but it's by no means solved all the problems. What generally happens in those financing systems is that people in relatively safe districts take public financing, but in the competitive districts -- in the targeted districts -- you know, usually one-quarter or one-fifth of all of the districts, they don't take public financing. And both parties and both candidates go all out to raise--

SENATOR ORECHIO: As much as they can.

DR. ROSENTHAL: --as much money as they can in order to win the seat.

So, the system, you know, works on the edges, or on the peripheries, but really at the core, it doesn't work. And that may not be a big problem. But--

ASSEMBLYMAN DEVERIN: Do they limit the contributions and the expenditures under the bill?

DR. ROSENTHAL: Yeah, yeah, the expenditures and the contributions.

MR. BURSTEIN: Alan.

DR. ROSENTHAL: Senator. I mean, Al.

MR. BURSTEIN: I recall one of the gentlemen, I think from Wisconsin, who indicated that where a candidate does not take public financing, his opponent gets dollar for dollar that which is raised by the nonparticipant.

DR. ROSENTHAL: I think that's in Minnesota.



MR. BURSTEIN: Is that Minnesota?

ASSEMBLYMAN HAYTAIAN: He gets his share?

MR. BURSTEIN: Yes.

DR. ROSENTHAL: There are ways to encourage public finance-- Well, if both don't take-- If both refuse it, then it doesn't come into play.

MR. BURSTEIN: Well, that neutralizes, yeah.

DR. ROSENTHAL: But it encourages both to take it if one takes it, because the one who takes it will get the other guys share. So, that can be built into a system, too.

ASSEMBLYMAN HAYTAIAN: How much is budgeted in the two states that presently have legislative public financing?

DR. ROSENTHAL: I think it's relatively low. Fred, do you know the answer to that?

D R. F R E D E R I C K M. H E R R M A N N: Not off hand, no I don't.

ASSEMBLYMAN HAYTAIAN: Is it done by a checkoff, Doctor?

DR. ROSENTHAL: I think it's done by a check-- I've got to look into that. And I can get you that information pretty quickly. I'm not sure whether it comes out of the general fund, or done by a checkoff, or what have you.

ASSEMBLYMAN HAYTAIAN: Is it less than--

SENATOR DiFRANCESCO: Does it matter how many legislators there are, you know?

ASSEMBLYMAN HAYTAIAN: Yeah, less than 10,000 per legislator; more than?

DR. ROSENTHAL: I'll get you information.

ASSEMBLYMAN HAYTAIAN: Okay.

DR. ROSENTHAL: I'll get you the specifics.

DR. HERRMANN: I think there can be a lot of apples and oranges, too, because Minnesota and Wisconsin are different from New Jersey in many different ways. It will give you some sense.

DR. ROSENTHAL: Yeah.

DR. HERRMANN: But you really have to look at your own state's statistics to get a sense of what the threshold should be here.

DR. ROSENTHAL: Discussion of the problems of campaign finance or conflicts of interest ethics?

ASSEMBLYMAN DEVERIN: Doctor, did anything come up at that conference where they would limit the fund-raising only to the election year, and not all -- or not all of the time? Has that been discussed at all? For instance, if the election year is '91, you can't have fund-raisers in '90 and '92, you have to have it only in that calendar year of '91. Was that discussed at all?

DR. ROSENTHAL: There was some discussion of that, but no agreement. And in a number of states they do not permit fund-raising during a legislative session. Well, that couldn't apply to New Jersey very well because the session goes on practically year round. But in those states with limited sessions, they occasionally do that. But then, of course, they have, you know, got to make sure that the opponents don't raise funds, too. Al, do you recall any of that discussion?

MR. BURSTEIN: Yeah, there was very brief discussion, but again, no conclusion about it. But that's one of the types of things where you might experiment.

ASSEMBLYMAN DEVERIN: Yeah, that's one of the things--

MR. BURSTEIN: I don't know whether it would work.

ASSEMBLYMAN DEVERIN: That's one of the things--

MR. BURSTEIN: You may run into, again, the free speech problems that give rise to the--

SENATOR DiFRANCESCO: Well, maybe you shouldn't have contributions during election years.

MR. BURSTEIN: Yeah, that would be the best of all.

SENATOR DiFRANCESCO: Maybe do it the other way around.

MR. BURSTEIN: That's right. That would be a real quirky approach.

MS. SHEEHAN: Well, don't they do that in Florida; you're not allowed to make contributions while the Legislature is in session?

SENATOR DiFRANCESCO: There's some proposals--

DR. ROSENTHAL: Not anymore.

SENATOR DiFRANCESCO: --to prohibit PACs from making contributions in election years; PACs only, to avoid many of the things Alan's--

MR. BURSTEIN: If you can get around the First Amendment on that, you're a better man than I am.

ASSEMBLYMAN HAYTAIAN: Was there any discussion on increasing the term of the legislators in the discussion on legislators?

DR. ROSENTHAL: That came up. There was, I think, some agreement, particularly by members of houses, that the term should be lengthened to four years.

MR. BURSTEIN: There was a lot of discussion in our workshop about that, because included in our workshop was Senator Paul Sarbaines of Maryland. And Maryland is a state where they have increased the lower houses' term to four years, coincident with the Senate's. And the Governor, and the Senators, and the Assemblyman all run at the same time. And they have found that system to work very well.

We discussed also the matter of staggered terms, and Sarbaines pointed out that the staggering really doesn't help very much in the way of addressing some of those electoral needs, in the sense that-- In the United States Senate, just to take the one example, he said that the one-third who are in an election year, in effect, determine the agenda for the entire body, because they say, "Look don't hurt me with this, or that, or the other thing, it's an election year for me."

And as a result, every time around the staggering doesn't really help as far as sanitizing the process from the political aura.

ASSEMBLYMAN HAYTAIAN: We found that out with automobile insurance, the last few years. You're right.

MR. BURSTEIN: Yeah, same thing.

DR. ROSENTHAL: In Maryland everyone runs at the same time; statewide officials, both the House of Delegates and the Senate. They all run at the same time and they're all up this year. And what that does is it makes for some greater continuity. They look forward to four year terms. They think in terms of four years instead of in terms of two years. So, that system works very well in Maryland, but Maryland is peculiar in another way: It's essentially a one-party state.

MR. BURSTEIN: Yeah.

DR. ROSENTHAL: They don't have to deal with Republicans in Maryland. So it makes it much calmer.

ASSEMBLYMAN HAYTAIAN: Similar to New Jersey.  
(laughter)

DR. ROSENTHAL: No, it's much different than New Jersey.

ASSEMBLYMAN HAYTAIAN: Tell me when I'm on the floor. Convince me when I'm on the floor. (laughter)

DR. ROSENTHAL: In New Jersey they persecute Republicans, but in Maryland they don't have to.

ASSEMBLYMAN HAYTAIAN: Oh, I see. That's the difference.

DR. ROSENTHAL: There are so few of them. There are so few of them, they--

ASSEMBLYMAN HAYTAIAN: They just ignore them.  
(laughter)

DR. ROSENTHAL: There are so few that they treat them like Democrats.



ASSEMBLYMAN HAYTAIAN: That's the way Phillipsburg used to be in my area at one time.

DR. ROSENTHAL: Any further discussion of problems that you see? What about you gentlemen who are in the Legislature, do you see problems in the money and fund-raising? I mean, you've got the experience.

ASSEMBLYMAN DEVERIN: Doctor, it's really a nuisance. It's a nuisance, I guess, for both sides; those who raise and those who give it. And there has to be some kind of a limit. This business of the targeted districts spending hundreds of thousands of dollars. And a safe district like I'm in-- I have one fund-raiser every two years. I don't even need a fund-raiser really, you know. If I get by the primary, I get elected. So, there has to be some kind of limitation to the money. And if public finance is the way to do it, that's what we have to do.

There also has to be some limitation to other people raising money, for other purposes besides their campaign. That to me is a serious problem. They're the two things I think we ought to address, but it's a--

SENATOR DiFRANCESCO: Should we have contribution limits?

ASSEMBLYMAN DEVERIN: Yes, we should have contribution limits and expenditure limits.

SENATOR DiFRANCESCO: Fred is here, why don't we-- Should we have contribution limits?

ASSEMBLYMAN HAYTAIAN: Well, I think we should. Let me give you an example of what occurred last year in the Assembly race. I think it's apropos to the discussion. I was in charge of ARM '89, as a major fund-raiser and also as a strategist along with other people, and we were up against a machine that was raising \$10 million. We could only raise 1.4 million. Now someone said, "1.4 million," years ago, like that took care of not only last year, but years past. Well, it

didn't-- It truly didn't add up when we had to compete against the other side. I think we have to have limitations. I think we have to-- I took a look at some of the campaign donations to the -- Democrats in this case -- State Committee; \$100,000 from one person, private donation, 50,000, 150,000 from labor unions.

Everybody always talks about PACs. I don't ever hear any discussion about labor unions. I mean, they not only donate dollars, they also donate personnel, time, people that work. And yet, it's always the PACs. I think we should have limitations on contributions by PACs, by labor unions, by personnel that are--

SENATOR DiFRANCESCO: Well, let's take it one at a time. Fred's here, and that's the way this thing is broken down. So, if we can try to focus on that, I think, that Chuck has said, the time has come for a limitation on contributions.

ASSEMBLYMAN HAYTAIAN: Absolutely.

SENATOR DiFRANCESCO: Now, I know most people look at that as a monetary contribution, and I know you're talking about in-kind services.

ASSEMBLYMAN HAYTAIAN: In-kind, also. Very definitely, in-kind. It's got to be in-kind.

SENATOR DiFRANCESCO: You get the big bucks, Steve. (referring to member of Senate Majority staff) Do you want to have a limit on contributions? (laughter)

SENATOR ORECHIO: All you guys, you all can go on safaris and come back after the election. But I agree, there ought to be limitation -- limitation on PACs; of course, the State Committee.

SENATOR DiFRANCESCO: But maybe we shouldn't have PACs. But we'll come to-- We should maybe come to that to talk about PACs, generally -- a much longer discussion. How about a limit on contributions, period?

SENATOR ORECHIO: I'll tell you, if I had my way, I'd have public financing, period. I mean, if they want to run for office; public finance. Everybody has a level playing field.

ASSEMBLYMAN DEVERIN: You know, it's very difficult to explain, Doctor. And the lobbyists are guilty of this; why they would give one candidate "X" amount of money, and say, that's because you're in a safe district, and another candidate who they decide is in a target district, get 15 times as much money. The public doesn't understand that, as well as a lot of people not understanding it. There has to be some kind of a -- and Carmen's right -- some kind of level where there's a limit on contributions to all of the candidates, everybody starts out fair.

Plus, you know, being an incumbent makes it very easy today. And I'll be perfectly honest with you, once you establish your incumbency, you're in pretty good shape. So, you know-- And the lobbyists are prone to give you more money than they are some guy they never heard of because they figure you're going to come back again. So, there has to be some kind of-- I think public financing is the only way we're going to do it.

ASSEMBLYMAN HAYTAIAN: Well, I think-- Oh, I'm sorry.

DR. ROSENTHAL: No, go ahead.

MR. BURSTEIN: Go ahead, Chuck.

DR. ROSENTHAL: Go ahead.

ASSEMBLYMAN HAYTAIAN: Gregg just brought up a good point: He said the playing field can never really be level when we have targeted districts and safe districts. I mean, from the start, we don't have a level playing field. So, the safe district -- so-called district -- is that safe district safe for both the primary and the general? Usually, it's not too safe for the primary in those districts, but, yet, in the general it is.

So, we start out with unlevel playing fields. It's very difficult to talk-- Are we going to say a level playing field across the board. I don't know if we can achieve that. I really don't know if we can.

DR. ROSENTHAL: Al, you, and then Pat.

MR. BURSTEIN: Yeah, well, I don't think the-- That probably is right, Chuck. There's no possible way you can get perfect fairness, simply because of the fact of incumbency gives some people an edge unless they do something outrageous.

SENATOR DiFRANCESCO: We can't be perfect here -- we, you know -- that's not the system.

MR. BURSTEIN: But, I think we ought to hear something from Fred with regard to what the problems are in creating limitations on contributions, and expenditures for non-public funded situations--

SENATOR DiFRANCESCO: Right.

MR. BURSTEIN: --because that's where the real difficulty rises. And he's been living with that problem, and perhaps, can enlighten us.

SENATOR DiFRANCESCO: So Al, the question is: Assuming that there's no public funding-- Let's not get into that.

MR. BURSTEIN: Assuming no-- Correct.

SENATOR DiFRANCESCO: And you want to have a limit on contributions, what are the pitfalls to that?

MR. BURSTEIN: And suppose, contributions to a State Committee, as an example, which seem to be the focus of some attention as a result of the last campaign. Contributions to PACs themselves, I mean, that subject--

DR. ROSENTHAL: I want to bring up another issue that's connected with this, but-- Pat?

MS. SHEEHAN: I would agree that I would like to hear about the concerns with regard to the level and the limitation -- if there should be -- on contributions, and the various



categories of contributions: contributions to a candidate, contributions to the so-called soft money, contributions to the party, leadership, and so on. But, in response to Senator Orechio, and the public financing totally, I have to say that I have some real problems with the thought of paying people to run, and using my money to support candidates that I would, not only not want to support, but, perhaps, want to oppose. And if there were only public financing, I'd want some kinds of limits, restrictions, thresholds, that they had to meet or something, because it's unconscionable to me, personally, with the needs that we have, to go out and pay people to run. And that's what--

DR. ROSENTHAL: But in a public financing system you'd have matching, so the candidate to--

MS. SHEEHAN: Some-- Yeah, it would have to be something.

DR. ROSENTHAL: --would certainly have to raise money that would be matched by the public. And I just want to add a thing: In a way we already have a public financing system, because the people who give, will, you know, obviously pass on the cost of giving to consumers in one way or another.

So, in a murky way the public is paying for political campaigns. We don't know exactly who in the public, but we're paying. They're not paying.

ASSEMBLYMAN DEVERIN: Maybe Fred can--

DR. ROSENTHAL: Sure.

ASSEMBLYMAN DEVERIN: --address the question about whether you can limit contributions -- and especially contributions -- and expenditures without some kind of problem.

DR. ROSENTHAL: Let's assume, Fred, we don't have public financing; what are the, you know, suggestions that have been made by the Commission -- by ELEC or otherwise -- that would seem to make a difference and help the campaign finance system, assuming no public financing, for a moment?

DR. HERRMANN: Before we come to that, I just wanted to thank the Committee for involving the Election Law Enforcement Commission with this. And I think, as you know, we've been making recommendations over the years. But we were very happy this Commission was formed. The experience of this Commission, I think, will be a great help in framing a lot of these questions, and the Commission -- although we'll be testifying, we do have a point of view -- we also want to learn from what you do. And I would not be surprised, at the end of the process, the Commission even changes some of its positions based on what your findings are.

So, I just wanted to enter this in that spirit. Not to say that, "Hey, you know, we've been doing this for five years." We have a very open mind to this, and we think that with the outside experts you're going to have in, from the discussions you're going amongst yourselves, we can all learn.

You can have -- to get to the particular -- you may have contribution limits without public financing. It's expenditure limits that you have to have public financing for. So, we could put into place in New Jersey across the board contribution limits without a public financing program. The downside, and I think Senator DiFrancesco's talking about this, and Assemblyman Haytaian, to address it -- and Ms. Sheehan -- is that it costs a lot of money to run a campaign. And if you set your contribution limits too low, you could choke off the campaigns from being able to get their message to the voters, which is the whole purpose for having a campaign in the first place.

So, when you craft the solutions you have to be very careful that you don't create worse problems; the old thing about the cure being worse than the disease.

So, I think that contribution limits are feasible. Half the states in the country do have them. But I think that when you design them, and you come up with your proposals, you

want to set them high enough so that campaigns can function. But you want them low enough to keep out the undue influence of special interest, which is the main purpose for having them.

So, you can have them. You just have to be careful at what level you set them.

DR. ROSENTHAL: So, it's conceivable that if you set them too low, the candidate will be spending even more time raising money in order to run the kind of campaign that has to be run.

DR. HERRMANN: Yes, or maybe not even get enough money to run the kind of campaign that he or she wants to run.

DR. ROSENTHAL: Or not get enough--

DR. HERRMANN: I had talked to Frank Parisi a little bit last week, and I had some general comments that I could make, perhaps, to help frame the issues, if that's possible, to zero in on things?

DR. ROSENTHAL: That would be, I think, very useful.

DR. HERRMANN: Yeah, because, I guess, before we get the solutions, we ought to say, "Well, what are the problems?"

DR. ROSENTHAL: Yes.

DR. HERRMANN: And one of the things in this field that I hear often is that, we not only can't agree on the solutions, we often can't agree on what the problems are. So, I just wanted to throw out, perhaps, some of the possible problems that you might want to look at, and there might even be disagreement whether these are problems or not.

The first thing is: One of the problems in the system that probably that lead us to campaign finance reform after Watergate, across the country and New Jersey, was the fact that many people felt the public had an absolute right to know where campaigns were getting their money and how they were spending it. So, it was a disclosure question. The citizens going to the voting booth wanted to have some sense of where their candidates were getting their money and how they were spending

it, not only because of the concern, perhaps, about undue influence, but just to have a sense of who these candidates are. Essentially, playing with Goethe, "You are what you eat," maybe, you are who contributes to your campaign. So, it gives the public some very important information having disclosure.

A second broad concern is the undue influence concern. Is there undue influence by special interests on our campaigns? One way to get that information to the public, and have the public make that decision, is to have an adequate disclosure system that allows the public to see where the money is coming from, and then the public decides whether there's been undue influence.

The Commission, of course, our role has never been to make that kind of Solomon-like decision: That's a good contribution, that's a bad contribution. But our role has been to get that information to the public so the public can decide.

And, of course, when you talk about undue influence, one of the things that then would come up as a possible solution would be contribution limits, which is a very simple way of cutting it off. If you can only give so much money, you're only going to have, perhaps, so much influence.

Also, and to pick up very much on what Assemblyman Haytaian had said earlier, is that you have to look at the need for adequate resources to run a campaign. If we design a system that is so restrictive and so complex that you can't run a campaign, you've defeated your purpose.

It's extremely important that the public knows where the money is coming from, but it's also extremely important that our candidates have enough money to communicate their message so the public has some sense of what the issues are, and who the candidates are. So, you want to be careful when you design a system, just to make sure that there's enough money available, it's easy enough to raise, so that you can run

a campaign. And, of course, one of the solutions in that vein is the public funding solution; to get candidates enough money so at least they can get a campaign started.

Two subsidiary issues that I don't know if you're going to look into or not, are the fair campaign practices issue, which has become an issue across the nation; a concern about negative campaigning and what we can do about that. There is a lot of concern in the public about uncontrolled spending, that somehow we're spending too much money. Now, there are a lot of political scientists that argue we're not spending enough, and that's something you're going to have to wrestle with too. Is the uncontrolled spending a problem, and if it is, what do we do about it?

Another less obvious one, and I guess I approach this as an administrator, and a former legislative staff person, is making sure that the rules of the game are clear. And I think in New Jersey today they're not clear. And that's something you have to address, specifically, the surplus funds issue. Our current statute doesn't even discuss surplus funds. They don't even exist according to the statute. And we have to have some sense, if you're a candidate, of what do you do with that left over money? You can't even begin to be ethical if you don't know what the rules are.

So, one thing that we called for for a long time; the surplus funds reform, just to get a clear picture for the candidate, let alone the Commission and the public, of what do you do with that left over money, what in the judgment of the Governor and the Legislature through a statute, would be an appropriate use of that money? So, that's very important.

And then finally -- and this is, of course, one of our big concerns at the Commission -- is just adequate resources for enforcement, because no matter how tough you get with reform, if the Commission does not have the resources to enforce the law, what have we done? And currently, because of

the-- Well, the current budget crisis, of course, is a problem for everybody, but also we've had our problems ongoing because of the uncontrolled spending. We do not have the staff currently to really do the kind of job we want to, in terms of disclosing to the public where that money is coming from, and enforcing the law.

So, we would feel that a very important part of any package of reform is just to make sure that the Commission has enough money so that we can enforce the law.

DR. ROSENTHAL: Let me just-- I'm sorry.

DR. HERRMANN: Well, that was it. That was just in very broad strokes.

DR. ROSENTHAL: It seems to me that one of the things that we've tried to do in New Jersey and elsewhere is to provide for disclosure; disclosure of lobbyist registration, disclosure of, you know, income, disclosure of campaign finance. And I wanted to ask you: Does disclosure work in the campaign finance field? And by work I mean, is that information used, made public? How can it work better? Because I think whatever we're doing, a lot depends on disclosure; on getting it out, rather than on regulating. But, you know, letting the press have it, letting the people know about it, letting opposition candidates use it, and then, you know, letting the people ultimately decide as they cast their votes.

DR. HERRMANN: Well, I would agree. Disclosure, I think, is the most important part of the whole system. You've got to have adequate disclosure. I think the Commission's sense, at this point in time, is that in New Jersey currently we don't have adequate disclosure, for a whole host of reasons. But, to summarize them into two: One is loopholes in the current law, and secondly is inadequate funding to get the information to the media and the public. And this is something, definitely, I would hope that the Commission would concentrate on.



DR. ROSENTHAL: Go ahead.

SENATOR DiFRANCESCO: Disclosure: What kind of disclosure are you talking about, legislator finance disclosure or lobbyist disclosure?

DR. HERRMANN: That's an excellent question, Senator, because there are all sorts of different disclosure.

SENATOR DiFRANCESCO: Yeah.

DR. HERRMANN: And I think in some areas we're doing a better job than other areas. I think in the area, say, of the gubernatorial campaigns, we're doing a terrific job with disclosure. And the reason is, is that the laws are tougher than the other laws that we have in New Jersey, and secondly, that we have been given adequate staffing to do the job. So, the gubernatorial election-- And part of it is because of the public funding program and the nature of that, we're matching money that comes in, and therefore, we know well in advance of election day, on a rolling basis, where the money is coming from because the candidates want it matched. And that gives us the ability to put it immediately in our computer.

So, that before election day for gubernatorial election, the press, and the public, and the opponents of candidates have had ample opportunity to get computerized printouts of where the money is coming from and where it's going. And again, that's because of the way the law is structured, and it's also because of the fact that we do have adequate staff to get that data into the computer in a timely fashion.

ASSEMBLYMAN HAYTAIAN: But, Fred, that's only on the gubernatorial campaign disclosure forms, that's not on the State Committee and what the State Committees give.

DR. HERRMANN: That's correct.

ASSEMBLYMAN HAYTAIAN: So, therefore, there are many loopholes there. So, when you say you're doing a great job there; only on those specific two candidates' campaign

disclosure forms. Anything other than that, I'm sorry, I know what goes on in both campaigns.

SENATOR DiFRANCESCO: Well, legislators-- When a legislator runs for an office, you get -- you know where the money comes from.

ASSEMBLYMAN HAYTAIAN: You have pretty good disclosure on a legislator.

DR. HERRMANN: Well, yes and no. First of all, let me respond to what Assemblyman Haytaian said. We're doing a better job in the gubernatorial area, but I would completely agree with what you said. There's a lot more that has to be done because there are other players besides the gubernatorial candidates; State Committees, there are other independent committees out there, there are connected committees.

ASSEMBLYMAN HAYTAIAN: Private interest groups that go out and campaign and put people in the street, no one ever knows that they're campaigning for a gubernatorial candidate.

DR. HERRMANN: No. So--

ASSEMBLYMAN HAYTAIAN: No one discloses that.

DR. HERRMANN: No. So, there's more need there. There's no question about that. But, looking at lobbying, looking at legislative campaigns, looking at personal financial disclosure by candidates for the governor and the Legislature, our strongest area is the gubernatorial election. Which is not to say that that doesn't need work, and I think, again--

SENATOR DiFRANCESCO: Well, I don't know what you mean by that, Fred.

DR. HERRMANN: Okay.

SENATOR DiFRANCESCO: If I run for office as a legislator, I file reports on where all my money comes from and where it goes.

DR. HERRMANN: Right.

SENATOR DiFRANCESCO: Okay, where's the weakness? Where's the problem?

DR. HERRMANN: The problem is not getting that information into the computer as quickly as we should because we don't have the staff do it.

SENATOR DiFRANCESCO: Well, my report's on file with you, and if my opponent wants to see it he can come down and look at it; is that correct?

DR. HERRMANN: Yeah, that's correct, Senator. But if anybody wants to do comparative work, it's very difficult. If somebody say, for example, wants to know, well, who did Fred Herrmann give to? I'm going to have to go through every legislative report in order to get that kind of information, or who did some hula hoop company give to. We've got to have a way of getting that information more quickly to the public.

SENATOR DiFRANCESCO: But practically speaking, you're talking about PACs.

ASSEMBLYMAN HAYTAIAN: Or your office-- Or his office, not us.

SENATOR DiFRANCESCO: No, no, what's he talking about-- He's talking about figuring out who Tom Stanton -- how many legislators Tom Stanton has given a contribution to.

MR. STANTON: Too many. (laughter)

SENATOR DiFRANCESCO: There aren't that many-- Probably, right.

DR. ROSENTHAL: We'll take care of that.

SENATOR DiFRANCESCO: How many individuals give contributions beyond three or four people? I don't-- The concern would be with how many individuals -- legislator or candidates a PAC, or an organization, or a corporation gives to a-- That's what you mean, collating that stuff?

DR. HERRMANN: Well, there's more--

ASSEMBLYMAN DEVERIN: It's not the reporting you're talking about?

ASSEMBLYMAN HAYTAIAN: That's right.

ASSEMBLYMAN DEVERIN: It's from the inner office work?

DR. HERRMANN: Well, actually both, Assemblyman. First of all, there are also issues, too, of not enough staff to get that information, even hard copy, to the press to get photo copies made to people who want--

SENATOR DiFRANCESCO: What information?

DR. HERRMANN: Oh, who gave to you. For example, if we have 30 reporters come in--

SENATOR DiFRANCESCO: The press can go down and look at your files, right?

DR. HERRMANN: Well, they can, but again, we've got this -- we've got a room smaller than this one for the press to come in and look at things, which creates a problem. If they want copies to take with them -- which they have every right to do, the public does -- we don't have the staff to generate enough copies in a quick time.

But there's more because I want to address what Assemblyman--

ASSEMBLYMAN HAYTAIAN: Fred, let me interrupt. When the press calls me back home, I give them my disclosure forms. I don't have any problem with that. You have it on file, they have it, I have it. I don't care who has it. I don't care if my opponent takes it. The problem you're talking about is your problem in your office; you don't have enough staff, you don't have enough room, you don't have the computer time. That's not disclosure on the part of legislators that you're complaining about.

DR. HERRMANN: Well, it's actually-- It's related to that, because if you don't have the data in the computer, you can't make the kind of analyses that you want to make in terms of how much money is being spent, what certain special interest have given across the board to certain groups.

DR. ROSENTHAL: Well, what data don't you get from legislators? What should they disclose that they don't now disclose?

DR. HERRMANN: Well, I'm going to hit that because it's not just-- I mean, that was one part of the issue that I addressed. The other part of the issue -- and we've addressed this and various recommendations over the years, too -- is what's being disclosed? And that's inadequate. For example, a lot of states will require, not only getting the name and the home address of the contributor, but who that person works for. And that's crucial, to have that.

Political Action Committees today in New Jersey don't really have -- they do not reveal, in many instances, who they are. They can pick any name they choose, and we get quarterly reports of where they get their money and how they spent it, but you really don't know what interests they represent.

Now, this hurts the public because they don't know what's going on, and it also hurts the candidates. I had a legislator call me a couple of years ago who said he was very upset because the local paper had done a story about how he had been bought by the insurance industry. He said, "I had no idea that, you know, this had happened. I mean, where was that coming from." And I said, "Well, possibly what happened is that the reporter was a little sharper than you, or in terms of looking at your report, he knew that a lot of your contributors worked for, perhaps, the insurance industry, and he also knew that "Big PAC," or whoever gave you that money was actually the insurance industry." The legislator didn't even know.

So, there are many times when you're getting contributions from--

SENATOR DiFRANCESCO: Fred, he must have raised a lot of money to not know where the people were coming from. (laughter)

DR. HERRMANN: Well, if you get-- Well, perhaps, but we--

MR. STANTON: You know, most PAC checks are delivered. They just don't come in anonymously.

SENATOR DiFRANCESCO: He's talking about individuals, individual contributions.

DR. HERRMANN: Yeah.

MR. BURSTEIN: Yeah, but I think the point that Fred is making is that there's a big hole with respect to the reporting requirement, as it relates to the employer identification, because when you don't have employer identification you could spread it through dozens upon dozens of employees, individual contributions, you would never know where the source was.

ASSEMBLYMAN HAYTAIAN: Yeah, but, Al, isn't that the responsibility of Election Law Enforcement?

MR. BURSTEIN: No, that's the law.

ASSEMBLYMAN HAYTAIAN: Well, wait a minute, the law--

MR. BURSTEIN: No, the law doesn't require it.

ASSEMBLYMAN HAYTAIAN: But they-- By regulations they put--

MR. BURSTEIN: I don't think you have the right to do that.

ASSEMBLYMAN HAYTAIAN: Well, now, wait a minute, the form that you follow is per the law, or you have just put on that, for instance, a name and address and a reason? Or-- I don't believe-- That's by the law, Al.

MR. BURSTEIN: No, it is. I think it is, Chuck. When the law was originally adopted there was an exclusion of any requirement for occupational information. And I think that that's one of the almost basic things that ought to be addressed, eventually, by the Legislature.

ASSEMBLYMAN HAYTAIAN: Well, it should be addressed.

SENATOR DiFRANCESCO: Especially if you're going to have limits.

MR. BURSTEIN: I'm sorry?

SENATOR DiFRANCESCO: Especially if you're going to have limits.



MR. BURSTEIN: Oh, absolutely, that would be essential, otherwise it would be a--

ASSEMBLYMAN DEVERIN: Yeah, I watched this program the other night about-- I watched a program about a congressional election and it showed what you're talking about. The PAC would give so much money and there would be a bunch of individuals who were part of a corporation that nobody knew about, and that's what you're talking about.

DR. HERRMANN: Yes, exactly, Assemblyman.

ASSEMBLYMAN DEVERIN: And I agree with that. You can get so much money from "XYZ" company or "XYZ" PAC and then -- say 2000 -- then you get 25 guys in that PAC give you a check for another \$100, you're really getting more than two, you're getting a lot of that industry, but it doesn't show up because they could -- one guy could live in Old Bridge, one guy could live in Perth Amboy, one guy in--

DR. HERRMANN: Yes, exactly,

ASSEMBLYMAN DEVERIN: I agree with you, you're right.

DR. HERRMANN: And it's not that much more. I mean, it doesn't become overly bureaucratic. I mean, actually all we're asking for is another line on the form, which statutorily we don't have the authority to ask for now.

ASSEMBLYMAN DEVERIN: Occupation.

DR. HERRMANN: Yeah, occupation. And for the PAC--

ASSEMBLYMAN DEVERIN: Which is fine.

DR. HERRMANN: Yes. And for PAC registration we're not talking about a 50 page form there, as well. We're talking about what might be a two or three page form at the most, which would merely require the PAC to tell us what kind of a PAC they are; corporation, a union, ideological, an office holder PAC, and then some basic information about his making decisions which would be name, home address, and occupation. Basically, that's all we'd be asking for.

MR. COLE: Fred, does anybody require disclosure of employer from political contributors in any state?

DR. HERRMANN: In other jurisdictions? The Federal government does, and numerous other states do, Michael.

DR. ROSENTHAL: Pat, you had a--

MS. SHEEHAN: I was just going to say the same thing. It's relatively easy, it would seem to me -- and my understanding is that many other states require it -- that in the case of PACs their sponsorship be identified in their name. I mean, everybody's Good Government, Great Government, Better Government, whatever, (laughter) and, you know, you add to that Local 236, or Johnson & Johnson, or St. Mary's PTA, whatever it is. And, I mean, that just seems too simple and basic that I don't think it's--

MR. STANTON: Aren't more PACs identified by name than not?

DR. HERRMANN: I would say--

MR. STANTON: I mean, isn't our bank PAC, for instance, was Bank PAC. I mean, it's just a very simple thing.

DR. HERRMANN: The majority, I think, you're correct. But there is a substantial minority that do have names like Concerned Citizens and Good Government PAC. One of the things that we found in our research was-- We had initially been thinking about requiring PACs to use the name of whoever they represent, and we found out that that might have some First Amendment problems. And we think we can get virtually the same result by just requiring a checkoff of the type of PAC and who the board of directors or the decision makers work for. Because if you have an entity called Fun PAC, for example, and the board of directors all work for the hula hoop industry, and the contributors -- 80% of which work for the hula hoop industry -- you can pretty readily conclude, by gosh, Fun PAC is the hula hoop industry.

So, we can get at the same thing, I think, constitutionally, and that's, again, something that the Commission might want to look into. I don't think we can definitively say it would be unconstitutional, but it would be something we should be concerned about if you approach the PAC registration problem in that way.

G R E G N A G Y, E S Q.: Let me just--

DR. HERRMANN: Sure.

MR. NAGY: May I just add, at the Federal level, to demonstrate how serious this problem can be; they're concerned with PACs that are using the names of candidates without their permission, giving contributors the impression that the candidate or the office holder somehow has a relationship to that PAC that does not exist. And under our State law, and under Federal law, as well, there currently is no prohibition against that. It's just wide open in terms of what names PACs can adopt.

DR. ROSENTHAL: But that is not a problem in New Jersey at this time?

MR. NAGY: It is not at this time, but it has become a problem at the Federal level.

DR. ROSENTHAL: Right.

MR. NAGY: And it's one we can anticipate that could become a problem here.

DR. ROSENTHAL: Here.

ASSEMBLYMAN DEVERIN: For instance, if someone put-- If you got a report from a PAC for Tom Deverin, you would want to know, from Tom Deverin, whether he had authorized that PAC one way or another.

MR. NAGY: That's correct. And currently we don't. I mean, it could be anybody. It could be anybody. It could be any group of people. It could have--

ASSEMBLYMAN DEVERIN: I mean, there's nothing you can do about it.

MR. NAGY: --no relationship to the candidate.

ASSEMBLYMAN HAYTAIAN: Wait a minute, on your--

MS. SHEEHAN: There's nothing you could do about it, either, which would be worse.

MR. NAGY: Yeah.

ASSEMBLYMAN HAYTAIAN: On your D-3 form, that's the name of Treasurer.

MR. NAGY: Yes.

ASSEMBLYMAN HAYTAIAN: You also have the name of candidate. And I believe you have on both-- Do you have your D-3s with you?

DR. HERRMANN: Yes.

MR. NAGY: Yeah.

ASSEMBLYMAN HAYTAIAN: Why don't you take a look at them.

DR. HERRMANN: Don't go anywhere without them, right.  
(laughter)

ASSEMBLYMAN HAYTAIAN: I think you have on your forms that--

MR. NAGY: It would just give the name of a committee of the PAC. It would just give the name of the PAC.

DR. HERRMANN: It gives the name of the Chairperson.

ASSEMBLYMAN HAYTAIAN: It gives the name of the Chairperson?

DR. HERRMANN: Yeah, that's it. It says the Treasurer's name and Chairperson's name.

MR. STANTON: No other identification, no occupation?

DR. HERRMANN: No, so we could-- Yeah, it could perhaps say, "Friends of Assemblyman Haytaian", Treasurer's name, Fred Herrmann, Chairperson's name, John Doe, and we could be running against you, theoretically.

ASSEMBLYMAN HAYTAIAN: Nice to know. (laughter)

DR. HERRMANN: I shouldn't have brought it up.

SENATOR DiFRANCESCO: Tomorrow they'll file.  
Tomorrow, Chuck.

DR. HERRMANN: But this is a bad thing.

DR. ROSENTHAL: Al?

MR. BURSTEIN: On a broader scale, Fred, what is your opinion about the effectiveness of disclosure? Let's assume that we make the most widespread disclosure system imaginable, within constitutional limits; the newspaper people look at it, maybe your opponent comes during election time to look at it, what kind of an impact does it have? Is it effective from a good government standpoint? That's really what I'm getting at.

DR. HERRMANN: I think in a democracy it just appears to be a basic right of the citizenry to have information about who their candidates are and where they stand on the issues, and where they're getting their money. And to the extent that we don't have a disclosure system that provides that to the citizens, I think we have a major problem.

I mean, it's very hard, obviously, Mr. Burstein, to try and measure, how does it -- in a broad sense or philosophical sense --how this has affected the quality of campaigns. I don't know if we could ever answer that. But I think just more basically, it is a basic right of the citizen when they go in to vote that they have as much information as they can about who they're voting for. And that is one of the big purposes of disclosure. And then, of course, the decision whether some of the money was inappropriate -- which only, again, the citizens can make -- the Commission would make that. But the citizens might; you took too much money from this industry, that sort of decision.

MR. BURSTEIN: Obviously, I'm not arguing against disclosure.

DR. HERRMANN: Oh, I understand that.

MR. BURSTEIN: What I'm trying to shoot for really is the mechanism by which the disclosed material gets to the voter

to make an informed judgment. And that is, what I think -- what I believe to be a rather large gap. I don't think that the press uses it in a way that makes any comprehensible sense to the general public. They bulk together bunches of items, and I'm sure that a reader looking at it fogs over as he goes through those paragraphs and discards it. They're really -- doesn't have the kind of impact that we're talking about.

DR. HERRMANN: I think -- and some of the reporters, I'm sure, could speak for themselves on this, but, of course, I talk with them all the time -- that I'm sure they would tell you that a major problem they have is the disclosure system that we have. A better system would be to -- and we could do this if we had the money; I don't even think it would be exorbitantly expensive to do -- is to have outside access to ELEC's computer so that a reporter could merely sit in his or her office and access our computer about where contributions were coming from.

Remember, we've got 567 municipalities with all sorts of local races, and we talk about the 60 odd members of the State House press core, they just have to walk about the street, basically. But for a lot of local papers that are interested in school board races, mayoral races, and county races, it's a pretty big shlep to come all the way to Trenton to get this information.

So, we would like to, perhaps, set up something like a remote access project which the FEC has which various states -- or one of them -- have terminals that tap into the FEC computer. We could put it in to the different county clerk offices computers that would tap into ELEC's computer. We could have personal access into ELEC's computer by reporters.

Also, you've got to remember that just having the data in the raw reports really limits what you can do with that data. I agree, a lot of the stories are just, you know, here's Mayor Jones and here's a list of who gave to him, end of the



story. But I think the problem is that the press, they're starved for time, they're on short deadlines and that information has to be conveniently packaged for them, and a computer is the perfect tool for them to do it. They could write more interesting stories, have much better analysis, if the information were in the computer in a more timely fashion, and also in there. Because one of the problems we have today is that the legislative data, the contributors do go in, but we still don't have that data available for the '89 election at this point because we only have two data entry operators to put it in, which is the same number of data entry operators we had in 1977, although there's a lot more data today than there was in 1977.

G R E G G E D W A R D S: Alan, I was going to say, this is a point where you may have actually too much disclosure, because right now we require all contributions to be reported; \$100 and above. I don't know too many people who will argue these days that anyone who contributes \$100 to a campaign is really buying much influence or access. Because we don't in any way index that stuff, we require an awful lot of reporting of information that really isn't that important.

So, a report that really should be maybe 20 pages in length, is now 50 and 60 pages in length, all of which Fred would have to put on to the computer. So, the Commission might look at the fact that maybe the reported contribution level is, in fact, too low, and what we're really doing is we're throwing so much noise into the system. That it's hard to focus on what's really important, not to mention all the record keeping that can (word inaudible) treasury.

DR. ROSENTHAL: Yeah, Fred, do you want to respond to that?

DR. HERRMANN: Well, Assemblyman Haytaian--

ASSEMBLYMAN HAYTAIAN: I'd like to just jump on and piggyback on that.

DR. ROSENTHAL: Sure.

ASSEMBLYMAN HAYTAIAN: My own fund-raising; I have a picnic in the summertime, it's \$75. People think \$75, my God, how can you have a fund-raiser so low. Well, it's a picnic. Most of the people that come are people--

MR. BURSTEIN: You don't give them anything? (laughter)

ASSEMBLYMAN HAYTAIAN: I give them a good meal. In fact, the people that come can't believe what they get. The point is, most of them are people from my area, my constituents, my friends, and so if a person writes a check for \$150 that's reportable. It if was \$75 that's not. And I think that's true. I mean, we have bundles of pieces of paper, whereas reporting of over \$1000 donation, or over \$500, I can understand that. And I think that's worthwhile getting.

DR. ROSENTHAL: What do you think, if the reporting applied to contributions of over \$500, would that clear the system a little bit?

DR. HERRMANN: Well, there's no question about that. And, you know, I think Mr. Edwards had a very viable point. The Commission has actually suggested that for about the past five years: That the \$100 threshold be raised to 200. If you think about it a little bit, just because of inflation alone, the public purpose of the law in terms of what was unduly influential contribution has been changed by inflation. A hundred dollars in 1990 dollars as compared as compared to \$100 in 1973 dollars, I think, might be \$33, or something like that. So, inflation alone has eroded this, and certainly the point is well taken, and it's one that we've been concerned about, that if that level were raised, it would be less data that we would have to enter into the computer.

SENATOR DiFRANCESCO: Well, why do you have to enter it into the computer? I like the idea of disclosing every single contribution. Why does all of this-- Why does full disclosure create problems?

DR. HERRMANN: Well--

SENATOR DiFRANCESCO: Why does it have to create a problem?

DR. HERRMANN: Senator, it's sort of a-- I have a historical background. It's sort of as if I were doing a research paper in history, and somebody pointed me to a 40 volume history of the world that didn't have an index, I'd go crazy. And I think that the computer is the perfect tool for asking questions of the data.

DR. ROSENTHAL: I think the Senator is suggesting that you only enter the--

SENATOR DiFRANCESCO: Right.

DR. ROSENTHAL: --other, the over 200 or over \$500 contributions in the computer.

DR. HERRMANN: Oh, today.

DR. ROSENTHAL: But that all contributions are on file and disclosed, or all over 100.

DR. HERRMANN: That's always a possibly, and we've considered that before.

SENATOR DiFRANCESCO: Well-- Through you, Al, somebody collects a hundred \$199 checks from different people, I want to know who's giving \$199 and not just 200 and above. I mean, that happens. That happens with \$99 checks.

MR. BURSTEIN: Yeah, I think that that, that would be a feasible thing to do.

SENATOR DiFRANCESCO: If I'm running against somebody--

MR. BURSTEIN: The burden would be upon the candidate.

SENATOR DiFRANCESCO: --I want to check his report, just like he wants to check mine.

MR. BURSTEIN: Sure, sure.

SENATOR DiFRANCESCO: I didn't realize we had to go to these lengths to record information. I mean, I honestly thought we just -- they're in a file; you want to look at it, it's there. People don't read those articles.

DR. ROSENTHAL: Let me-- Let me-- Yeah.

DR. HERRMANN: We have a technical response, because I had actually brought that point up, Senator, at one of our staff meetings a few months ago, and I was just asking Mr. Nagy exactly what the staff -- get my hand on that, and I was just trying to recall why. And the reason was, is that you still really have to enter that because you have to aggregate it. The problem would be that if somebody gave \$100 one day, and \$100 a month later, we'd still have to get it into the--

SENATOR DiFRANCESCO: That's common. You have two fund-raisers in one year.

DR. HERRMANN: Yeah.

ASSEMBLYMAN DEVERIN: Yeah, but he's telling you the problems.

DR. HERRMANN: Yeah.

SENATOR DiFRANCESCO: What do you mean the problem? What's the problem?

DR. HERRMANN: Well, see, to computerize it.

SENATOR DiFRANCESCO: I don't care about that. I don't really care about that. I care about what's being reported.

DR. ROSENTHAL: Well, why don't we move on. I think we're bogging down into some details. I wanted to see if--

ASSEMBLYMAN DEVERIN: Except I think he's got a very good-- If we keep recording every \$100, there's no way it's ever going to get -- even if we put it into a computer or don't put it in a computer, it's not going to get out to anybody.

SENATOR DiFRANCESCO: That's right.

ASSEMBLYMAN DEVERIN: What he's talking about is getting something to the -- disclosing something that has some value to it. If my brother gives me \$199 or \$100 what the hell does it mean to anybody? But if I get \$2000 from "XYZ" company, it's going to mean something. I mean, that's what he's talking about. That we get out-- That the guy doesn't

have to write that Deverin got \$5000 from PACs and \$300 from individuals. He could write who the PACs were and what they represent. I think that's what he's talking about; if they can do it out of a computer.

ASSEMBLYMAN HAYTAIAN: Well, we have to-- Just so that everyone realizes, we have to make sure that we know every donation whether it's \$1 or more. I mean, I have copies of every check that's ever been written to me in all the years that I've been running. So, that if ELEC wants to -- or, in fact, gets a complaint and they want to check, I want to make sure I know that I received this check from this person and I want them to know that. I think what Fred's saying is he wants to make it easier so that the public understands what's going on. And the public, really, is represented by the press. So, the press doesn't want to take the time of going through everything, and he's saying, have them tapped into computers. I don't see any problem with that. I say fine to that.

That means we should give ELEC more money in the budget so that they can operate. That's really number one.

DR. ROSENTHAL: I think that's what Fred was--

ASSEMBLYMAN HAYTAIAN: That's what Fred is getting to.

DR. ROSENTHAL: --getting to all the time. (laughter)

ASSEMBLYMAN HAYTAIAN: Of course he is. We know what he's getting to, and I think we, as legislators, understand that.

MR. BURSTEIN: Since when did we become the Joint Appropriations? What would the cost be, Fred? Do you have any idea?

DR. HERRMANN: Well, it depends on what kind of--

MR. BURSTEIN: To do to the counties that you were describing before?

DR. HERRMANN: It's something we could work up. I mean, there's so many different ways you could do it.

SENATOR DiFRANCESCO: He doesn't want to say. He doesn't want to say.

DR. HERRMANN: Well, I don't. But I think-- In talking to directors across the country, I mean, a lot of states aren't computerized at all, and that's a disaster. I testified in New York State a couple of years ago. They had a similar panel there. And they hadn't computerized, and they got blasted in the media. And the Commission that was set up actually blasted the New York Board of Elections for not being computerized.

You know, in this day and age, when you're dealing with the kind of volume that we're dealing with, and we're dealing with 17,000 reports a year, 5000 to 6000 candidates, hundreds of thousands of contributions, to try and make any sense out of that material, you've got to have a computer. And I think you'll see, in framing suggestions-- For example, simple question: What level should we set the contribution limits? Well, if we don't have the data for-- If I have to hand you 17,000 reports and say, "Well, you know, figure out for yourselves, you know, what the average contribution is, what the mean contribution is," you'll go crazy.

So, the collection of vital statistics here is crucial. I mean, why do we take a census in this country every 10 years? You've got to have the data, and you've got to have it in a manageable form if you're going to make any sense out of what's going on.

ASSEMBLYMAN HAYTAIAN: And you have to-- I'm sorry.

DR. ROSENTHAL: Go ahead.

ASSEMBLYMAN HAYTAIAN: You have to also realize what toll does it take on candidates. I mean, do we hire a treasurer? Do we pay a treasurer? And a treasurer generally becomes an accountant, because that's what you need.

Now, I do my own-- I save that so that I know where things are going and how they're coming in, so that if a

reporter wants to check, I have to answer to it. So, if I make a mistake, I made the mistake, and I say, "Yes, I made the mistake." The problem is, this is a very costly proposition. Accountants are making \$300 and \$400 a month for the ongoing committees. And so, you know, you're out -- going out and you're campaigning and you're trying to get a campaign fund-raiser, and you're paying accountants to do that job, so that-- And even they make mistakes. I'm sure you realize that.

DR. HERRMANN: Oh, sure.

ASSEMBLYMAN HAYTAIAN: Because the law is not as clear as it could be, and should be. That's one of the major problems we have, I think, as legislators.

DR. ROSENTHAL: So, if we can relieve any burdens for candidates--

ASSEMBLYMAN HAYTAIAN: Absolutely.

DR. ROSENTHAL: --that would be a good thing, certainly.

ASSEMBLYMAN HAYTAIAN: Absolutely. I'd say "Amen" to that.

DR. HERRMANN: Very important. Also--

DR. ROSENTHAL: I just want to say about disclosure: You know, I believe in disclosure, obviously, and it's sort of a basic kind of right. But I think you can take it too far. I think there are a lot of other things that have to be done. And I think the major expectation in disclosure is that the information is available. How available or how you spoon feed it is, you know, really fine tuning the system. And I'm not against your getting more money in your budget, Fred, obviously.

DR. HERRMANN: No, I--

DR. ROSENTHAL: But it is up to the, you know, candidate or the candidate's opponent to make use of that, and to interpret it as part of a campaign. And any good candidate will do that, and may even apply a little spin to it. And then it's up to the press, insofar as the press thinks that the



information is useful and would serve the public. And I think that's-- And it's up to other organizations such-- And some organizations such as Common Cause do use this kind of information. And I think disclosure is used now, and it could be used better. But I think, you know, we can only improve that system, you know, a certain amount. We're going to have the basic system that we have now.

DR. HERRMANN: We do have-- And I won't go into detail now because I'll be testifying later, but we do have a proposal that you're probably all aware of, for alternate funding for the Commission. And in a nutshell, what we're talking about is filing fees; getting the fine scales up, because as the contribution limit levels haven't changed, either have the fine scales over the past 17 years. And we think we could be, probably, be self-sustaining at a higher funded level than we are today.

So, I think the money is there. It doesn't have to come from the taxpayers. But again, I don't think I could emphasize too much, the need for computerization. I think almost my first day on the job I got a call, I think, from the Secretary of State from Missouri, and we were talking about disclosure, and he said to me, he say, "You know, having 17,000 reports in your office is not disclosing 17,000 reports." Again, the point being that, I mean, a task that Hercules probably would have walked away from in terms of going through thousands of reports, or even hundreds of reports in trying to put together any kind of a meaningful picture of what's going on. I would contend that you really can't have disclosure without a sophisticated computer system.

DR. ROSENTHAL: Pat.

MS. SHEEHAN: I understand the question of management of the data, if you will, and we could debate or argue how much disclosure is real disclosure, and whether it's piled in a closet or piled in a computer. What I would like to ask Fred

is, in terms of disclosure: Are there areas now -- perhaps back to his point about loopholes -- but are there areas where there is not sufficient disclosure, whether disclosure means lying in your closet or file cabinet, or computer? Put that aside for a moment, and let me ask you, with regard to loopholes: Is there information now not being disclosed that represents a problem? Maybe that's back to the soft money, maybe there's other areas, I don't know.

DR. HERRMANN: Well, there's disclosure, and there's disclosure, of course. And I think you can make a good argument that without having computerized, you haven't really disclosed. Let me give you an example, and there are a lot of them: In New Jersey a candidate can have as many campaign committees as he or she wants. We went through one election recently where we had one legislator who had seven different entities funding his campaign efforts. You're allowed to have office holder PACs in New Jersey, which is a separate entity, and you could have various committees.

So, it isn't really as simple, say, for a reporter or a member of the public to go to ELEC and, say, "Okay, let me see Assemblyman Fred Herrmann's report," because Fred Herrmann might have seven different reports. And that's where, again, the computer comes in. If somebody wants to know, well, did "XYZ" chemical industry give to Assemblyman Herrmann, you're going to have to go through a lot of reports, and especially if you want to project back over the six terms I had in, because I've been very successful -- which sometimes people want to do -- you could be faced with maybe looking at 30, 40, 50 reports just to get at that issue. If you have the computer, and all the data were in the computer, you just ask the computer, did "XYZ" ever give to Fred Herrmann.

MS. SHEEHAN: That really isn't my question.

DR. HERRMANN: Okay.

MS. SHEEHAN: I mean, I understand that there's information there that perhaps is not being managed well, or studied appropriately, or whatever. What I'm asking is are there other areas where the information just isn't there, whether it's in the closet or waiting to get on the computer, or what. Are there questions not now being asked--

DR. HERRMANN: Being reported.

MS. SHEEHAN: --regardless of the form.

DR. HERRMANN: Yeah, okay, I understand now. Well, I think I've hit most of them. The fact that you don't have to give who your employer is is a major loophole for contributors. The lack of PAC registration is the other, I think, major loophole when not disclosing what's going on, in terms of building up the data base, if you will.

Of course, I guess you'll be looking at lobbying, and just a brief comment on that: There we have, probably, the largest loophole of all, which is the so-called expressly loophole, which essentially says that you can pass all sorts of benefits to a public official, just as long as you don't talk about a particular piece of legislation. And so, there's a lot of reporting that's not even being done in that area.

Also, the Personal Financial Disclosure Law, which covers candidates for the governor and the Legislature; you have to report gifts, and honoraria, and reimbursements, but you only report them over a certain threshold, which in the case of gifts is \$250. But then when you report, what you report is the name and the address of who gave you the gift. What you don't report is who that person works for, and even probably more importantly, what that gift was. So, you really can't tell the public-- The press cannot tell the difference between say the gift of a Rolex wrist watch and a Rolls Royce automobile, because the value of the gift--

DR. ROSENTHAL: They're both over 250.

DR. HERRMANN: Yeah, they're both over 250. So that, even if you had a computer, I think what you're saying is, what kind of data aren't you getting at all, before you even get to the question of how you put it into the computer. So, I think those are some of the gaping loopholes that we've indicated and found over the years.

DR. ROSENTHAL: Senator Orechio.

SENATOR ORECHIO: Mr. Chairman, I'd like to ask Fred: Number one, what is your current budget, and secondly, what's the number of your staff?

DR. HERRMANN: Our current budget is \$1.1 million, which of course, as all State agencies, has been going down the past couple of years. And the Commission is aware that there's a budget crisis going on, and you know, we see what has happened to our budget as a reflection of the budget crisis, not a reflection of any comment about our need to do the job. Our projections-- And this is under the current law. And we've worked out many times what we think we need and what we want to ask for. We think that to do an optimum job under the current law, today we'd need about \$2 million.

Currently, I am allowed to have 35 staff. But again, because of the cuts, in reality we can only pay about 28 or 29. So, with even the amount of staff we're allowed to have, we're about 20% under where we'd like to be. And as recently as, I believe, last year, we targeted that we really felt we needed another 15 positions. So, we feel that to do an optimum job today we should have about 50 people. For example, we only have one field investigator, who's not even full-time, to do the whole State.

Currently, we're down to one desk auditor, which with 17,000 reports is not a good situation. Also, the desk auditors are important because they have to code the data that goes into the computer. Not only are we short of the fingers to type the data in, we actually need professionals to look at

the contributions to determine is this a union PAC, is this a corporate PAC, is this an individual, or, you know, what is this entity, to give it a code number. Because if you don't code it and you put it into the computer, then you can't get it out.

So, we need a lot more staff for the disclosure end of what we do, and we also need a little bit more help in enforcement, as well, to enforce the law. We're not only dealing with more and more spending each year -- and the figures are startling -- but it's a much more sophisticated system. We're dealing with attorneys out there who are now expert in election law that-- And I know this is a nightmare for Greg, but the kinds of advisory opinion requests we get, and sort of defenses that we get in a case, are much more sophisticated than they were just a few years ago, because people know this law inside out, and they're looking for loopholes and ways to beat it. So, we definitely need a beefed up legal staff just to keep up with that.

DR. ROSENTHAL: I'd like to sort of open this up to the other members of the staff who are here, and have experience in the area of campaign finance; Steve, Michelle, and Gregg, on behalf of the Senate Democrats, and the Assembly Democrats, and the Assembly Republicans. Steve, do you have some comments and observations?

S T E P H E N D e M I C C O: Steve DeMicco, Director of Research for the Senate Majority. I sort of come at this stuff from a slightly different sphere of experience. I served in my capacity as a Majority Staff person as the chief negotiator for Senator Russo in the amendments to the Gubernatorial Financing Law, which took the better part of, I think, 13 months from start to finish. And, in fact, the committee time that we devoted to all of the detailed issues related to that -- such that we could get a bipartisan agreement, really, right in the

nick of time, before we started that primary last year -- were immense. And we never really anticipated, in terms of their complexity, let alone their partisan implications.

There are some things we learned from that. But I should just point out from that experience that there are two things that we did, as a result of the negotiations, which made the law better than it was previously. And there may have been others, Fred. But one was that -- at the urging of several legislators -- we for the first time included a provision to require publicly financed gubernatorial candidates to participate in interactive debates.

Now, the significance of that proposal in terms of its difficulty, Fred could speak to, but the fact of the matter is there was, really for the first time, in the context of all of those discussions an interest in trying to change, in whatever marginal way we could, the character of the campaign, such that, at least at some point the candidates were on a level playing field, in terms of how they interacted with each other and in what forum.

The second thing that we did, and I think we're going to see, probably, a pretty positive impact, is we directed the Election Law Enforcement Commission to create what we designated a campaign cost index, knowing, as we did, that it was so difficult, given the political implications, to try to reform a law of that sensitivity. That, in the event that four years hence, we were unable to recreate a forum and try to update the spending limits, contribution limits, etc., qualifying thresholds, we would at least have a fall back in the Election Law Enforcement Commission where they could, on an annualized basis, measure the cost of campaigns. And that goes to Assemblyman Haytaian's concern, which, I think, is a very good one.

The other perspective that I have -- and I'll try to get myself away from striking distance here -- is that I served

as Director of Campaign '89 for the Democrats on a leave of absence. I was the guy who was in charge of spending the 9 million bucks that was raised last year. So, I can speak to the experience of working in the practical world with a set of candidates, and what that meant, and what that may mean with respect to spending limits. The only other thing that I can draw on is the experience.

At the same time that we were trying to move the gubernatorial finance reforms -- of trying to move reforms in legislative elections -- we did, in fact, both in the Assembly and the Senate last session, have committee deliberations on a set of bills that were identical. Bill Schluter, in the Assembly, sponsored four bills. Senator Lynch, on the Senate side, was sponsoring identical bills to impose spending limits, contribution limits, qualifying thresholds, etc. And a lot of that testimony would probably be instructive to this Commission.

There are just a few things that I'd like to touch on to supplement some of the issues that Fred has raised. And some of them are really philosophical questions, and most of what we probably come to in resolution in this Commission, is going to be subjective in nature, relative to the issues in campaign finance. The issue of how much time devoted to fund-raising is too much time diverted from legislative business? It's a tough question. And I heard a perspective yesterday from a lobbyist who suggested that their business is now being interrupted too much by having to raise money for legislators. What they're in the business to do is no longer to try to be really constructive participants in the legislative process. They're raising money, just like legislators are. It's a spiral.

The second issue is what role leadership PACs should be playing, and whether or not leadership PACs create, within the houses of the Legislature, inequities among legislators. Thirdly, to what extent a legislator should--

DR. ROSENTHAL: Well, would you address that?

MR. DeMICCO: Well, I don't have an opinion one way or another, but the concern as to whether or not there is a point at which leaders, or aspiring leaders in either house should be contributing, and it goes to the issue of transferring funds among candidates, which is another point that Assemblyman Haytaian has raised. To what extent do you allow that, and how does that make the spiral continue? At what point do contributions buy access or influence on the legislative process? It's a subjective judgment and a very difficult one to come to a conclusion on.

DR. ROSENTHAL: Pardon me?

SENATOR DiFRANCESCO: Do you want to wait until he's finished, because I have--

DR. ROSENTHAL: Yeah, let's wait until he's finished and then get into it, yeah.

SENATOR DiFRANCESCO: I have a lot of questions on that point.

MR. DeMICCO: Are spending limits more important to public perception than contribution limits? That's a difficult question to answer, too. And I think we went back and forth on that because the Election Law Enforcement Commission has always taken a position that spending limits are counterproductive. And the Legislature, at least with respect to gubernatorial elections, has disagreed.

Do lobbyist contributions, by definition, constitute a conflict of interest? Should political parties receive special treatment or treatment separate and apart? I think one of the nuances of the reform we did with gubernatorial elections was, in fact, to promote the political parties. We didn't expect it was going to be promoted at the level it was last year. (laughter) But, there was, I think, a concerted effort on the part of the legislators, and I think, even the Commission



agreed, that political parties should have a special role and be promoted as agents of the process.

With respect to spending limits: At what point are spending limits just another word for incumbent protection? That's a tough question to answer. What amount of spending is reasonable or unreasonable in a State like New Jersey. As somebody who was directly, or very much engaged in targeted districts last year, I think I could probably engage in a conversation with Gregg and Cliff Pintak on the Republican side about at what point spending reached a point of diminishing returns? How do you control--

ASSEMBLYMAN HAYTAIAN: More so on your side than ours.  
(laughter)

MR. DeMICCO: Right, right. How do you control the ripple effect of the limits at one level and not at another? It seems that what has happened over the last four years, especially, is that because of the limits at the gubernatorial level, the Legislature has become the focal point for profligate spending in campaigns. But it isn't the only one. And I don't think we should delude ourselves into thinking it is.

Some local elections have become pretty expensive; suburban and urban. You have mayoral candidates out there raising and spending 150, 250, (thousand) a half a million dollars. And then the question of retaining elasticity in any limits we place on legislative elections. Do we need a campaign cost index for legislative elections? Are we going to impose limits on party spending? What amount of public financing will draw a candidate into the program? And then the balancing issue; if we are trying to cure the public perception that there is too much money being raised and spent -- in this case on legislative elections -- aren't we really talking about too much money being raised and spent on 10 or 14 of 40 districts? And are you going to try to cure a problem in 12

districts by creating an expensive public financing program at the State level for a lot of candidates in non-targeted districts who really don't need the program, unless there's a primary?

What kind of match sustains the campaign? We were trying very hard in the gubernatorial deliberations to go back to a one to one match. And in the end, going two to one was the only way to reach a resolution. And what other inducements can you create to voluntary limits on campaign spending? At the Federal level, for instance, there has been a proposal, I think, by both Democrats and Republicans, that we look at changes to permit candidates to have broadcast time. And not 30 second spots, but five minute spots, as a way to force public dialogue on issues.

And lastly on contribution limits: What amount is the right amount? If you're going to impose contribution limits as a first step, or impose them as part of a spending limit scenario, and you're trying, as a goal, to limit the influence of individuals, or PACs, etc., then what amount of contribution constitutes undue influence in a spending limit scenario? Are you going to aggregate limits for one contributor to all candidates or public questions as a way of limiting the influence of a PAC, for instance? Should these limits be annual or cyclical to each election? And lastly, who are you going to prohibit from contributing; PACs, corporations, unions, out of state, etc.?

These are questions that if we're going to talk about this in the legislative context, as a realistic and a practical matter, you're not going to cure the problem of undue influence -- if that's the goal here -- by dealing with legislative elections in a vacuum. I shudder to think of what's going to happen if we open up the debate on gubernatorial elections again. But, you can't do one without the other. And we're biting off a pretty big set of issues.

DR. ROSENTHAL: Senator, you wanted to get in earlier.

SENATOR DiFRANCESCO: I have a lot of questions for Fred and for Steve. I just don't know how much time you want to-- I mean, I have a lot of questions.

DR. ROSENTHAL: Well, go ahead. We'll take them one at a time.

SENATOR DiFRANCESCO: Fred, on the question of disclosure, a lobbyist disclosure: Now your office handles that?

DR. HERRMANN: Yes.

SENATOR DiFRANCESCO: Do you see any problem with -- I think you mentioned this -- with the idea of disclosing -- a lobbyist disclosing every single gift, contribution, whatever you want to call it; every single dollar spent on lobby activity?

DR. HERRMANN: Do we have a problem with that?

SENATOR DiFRANCESCO: Do you have a problem with that?

DR. HERRMANN: I think looking at what other states do, I think you would probably want to look at some reasonable thresholds. I think some--

SENATOR DiFRANCESCO: Well, you didn't like the threshold on the disclosure form, why do you like the threshold here.

DR. HERRMANN: Oh, I didn't have any problem with the threshold. On the--

SENATOR DiFRANCESCO: I thought you said the \$250 threshold lends itself to--

DR. HERRMANN: No, the-- Well, no, Senator, let me clarify that. The bigger problem was, once you cross the threshold, you're not really disclosing. We didn't have a tremendous problem with the threshold itself, but once you crossed the 250--

SENATOR DiFRANCESCO: A lobbyist buys me lunch.

DR. HERRMANN: Yes.

SENATOR DiFRANCESCO: Shouldn't he have to disclose it? That's really what I'm saying.

DR. HERRMANN: I think that you can set the minimum standards in the law. If somebody buys a-- For example, California -- I believe I've seen printouts -- if somebody bought you a Coca-cola they'd have to report it. And--

SENATOR DiFRANCESCO: What's wrong with that?

DR. HERRMANN: Well, I think you maybe get into what Dr. Rosenthal is talking about. Maybe you get to the point of too much disclosure, at that point.

SENATOR DiFRANCESCO: Well, a lobbyist buys me lunch every time I come to Trenton.

DR. HERRMANN: Oh, well, in that case, you're going to cross a certain threshold.

UNIDENTIFIED MEMBER OF COMMISSION: There is no free lunch.

DR. HERRMANN: Yes. There should be maybe no unreportable lunch, perhaps.

SENATOR DiFRANCESCO: Exactly.

ASSEMBLYMAN HAYTAIAN: There's no unreported--

DR. HERRMANN: I think at some point you cross a threshold, which we would set in a dollar amount. Perhaps for a quarter--

SENATOR DiFRANCESCO: Doesn't the fact that you have to disclose the Coca-cola gift have a chilling effect on making the Coca-cola gift?

DR. HERRMANN: Oh, I think that that's a good argument. And that's one of the reasons that we even have \$100 threshold in the law, because there is a chilling effect. If we required people to report contributions of \$10 to somebody, that would certainly have a chilling effect. But the idea is that once you cross a threshold, you get into a situation where the public's right to know about it, and the possibility of undue influence would outweigh that right to privacy. So there is a balancing act. There's no question about that.

DR. ROSENTHAL: Well, yeah, I mean, you can go as far as you want. In Wisconsin no legislator can accept a meal, or a Coke, or anything. If a legislator goes to a reception, you know, given by NRA, the legislator is there, and then will later pay at the reception for the meal.

SENATOR DiFRANCESCO: Nineteen people were fined there for violations of that.

DR. ROSENTHAL: Yeah.

SENATOR DiFRANCESCO: Exactly. So, full disclosure you don't have a problem with, you just think there might be room for a threshold?

DR. HERRMANN: I think that-- I think in anything like this you want to apply some common sense to what you're doing. If somebody buys you a Coca-cola, I think it would be pretty hard for somebody to argue that somehow you were unduly influenced by that.

And also, you've created an administrative nightmare, because if you have to start reporting all the nickel and dime stuff, pretty soon you lose the forest for the trees.

SENATOR DiFRANCESCO: So, maybe there's a reasonable threshold.

DR. HERRMANN: I think so. And that's something, again, getting back to the need for statistics and the computer. In order to frame laws that make sense, we should have enough data into the computer, and have it accessible enough that we can answer questions like that.

SENATOR DiFRANCESCO: Not to try to jump from one extreme to the other, and really Steve probably would have more experience with this, but what about the absolute prohibition on the lobbyist for making any kind of gift, contribution, buying a dinner, whatever, a cup of coffee, anything? Prohibiting: Taking the pressure off raising money and giving money?

DR. HERRMANN: Well, I think that's a--

SENATOR DiFRANCESCO: You can't do it.

DR. HERRMANN: I think that's a possibility because I think there are two different things we're looking at here. Campaign contributions: Obviously you need them for a very good purpose; to run a campaign. I think a strong argument could be made that you don't need a trip, you don't a Coke, you don't need a sandwich, and that it's a different kind of animal. So, I think that many -- well many -- some states do prohibit that. I believe in New Jersey, and you probably could talk to the Executive Commission on Ethical--

SENATOR DiFRANCESCO: No, I'm talking about contributions, too. A lobbyist can't contribute, and they cannot--

DR. HERRMANN: Oh, just a lobbyist not contributing. That has been done in some states, and that's something you might consider, as well.

SENATOR DiFRANCESCO: Wisconsin is one? Is that what he said?

DR. ROSENTHAL: I don't know about the lobbyist contribution.

DR. HERRMANN: There are many, many ways of doing this. I-- And it's a balancing act and--

MR. BURSTEIN: But that really doesn't help any, does it? I mean, if the lobbyist can't--

SENATOR DiFRANCESCO: It takes the pressure off.

MR. BURSTEIN: If the lobbyist can't contribute, so a lobbying PAC can contribute. Unless you're going to go across the board, it would seem--

SENATOR DiFRANCESCO: Well, you have to go across the board, sure.

MR. BURSTEIN: Well, I'm talking about a far wider prohibition than just the lobbyist prohibition.

DR. HERRMANN: I think it--

MR. BURSTEIN: And defining that becomes a problem too.

DR. HERRMANN: I would tend to agree with you, Mr. Burstein. I think that-- I've seen a lot of model laws in the field, and in other states, and you get so overly specific that it becomes extremely complex, and nobody knows what to do.

DR. ROSENTHAL: But I think the lobbyists would support such a law, a prohibition. (laughter)

SENATOR DiFRANCESCO: The pressure is off.

DR. HERRMANN: Well, if you have across the board contribution limits that would affect lobbyists, like everybody else, and we establish a level which we consider de minimis, you've probably taken the harm out of getting a contribution from a lobbyist, as long as the lobbyist would be restricted the same way any individual would be. So, you probably, with just a general contribution limit, would eliminate a lot of problems that you don't have to get very specific about. I've seen a lot of legislation that says, we'll ban lobbyists, we'll ban people that have contracts with the government, we'll ban this group, we'll ban that group. And they're all banned at different thresholds, and you get a big mishmash.

I think, essentially, you'd achieve the same result by just having one good, across the board contribution limit. And if it's sound to give, let's say, a legislative candidate \$1000 in New Jersey, and that's not going to be considered unduly influential, so let lobbyists give up to 1000.

MR. BURSTEIN: But the basic problem right now is that you have, in the law, the expressly lobbying phraseology, and that allows for a wide gap.

DR. HERRMANN: Well, it gets a little confusing because we're really talking about two different laws. Lobbyists, of course, can contribute, under the Campaign Act, political contributions. But the lobbying law doesn't deal with political contributions, it deals with the passing of benefits--

MR. BURSTEIN: That's right.

DR. HERRMANN: --gifts, and reimbursements, and honoraria.

MR. BURSTEIN: Yeah.

DR. ROSENTHAL: Which are, again, a different kind of animal. I think Professor Larry Sabata (phonetic spelling) of the University of Virginia wrote an excellent little piece on this, in which he said that he felt that the lobbying benefit passing had a much higher potential for corruption than political contributions.

MR. BURSTEIN: Sure.

DR. HERRMANN: And his reasoning was, hey, political contribution, I mean, one of the big bans that we have is no personal use without money. However, the wining and dining, if you will, the passing of those kinds of benefits, are personal use.

ASSEMBLYMAN HAYTAIAN: Well, Alan?

DR. ROSENTHAL: Yes.

ASSEMBLYMAN HAYTAIAN: I think if we want to get real facetious here, let's talk about why does a candidate or a incumbent raise money? He raises money for a number of purposes: One, to run a campaign. Secondarily, if they're in leadership, and this -- to help other candidates on their side of the aisle. Those are primarily the two major reasons that we raise money.

Now, if-- I want to be facetious, and I know it will never go much further than this meeting. Then I would say that if a person wants to run there will be no cost for advertising, there will be no cost for mailing, there will be no cost for radio, than there's no reason to raise money. And therefore then, if you can't raise money, you sure as hell can't give it to any other candidate.

Now, is that the bottom line? I think it is, because there are costs involved to running. If we take those costs and provide them free of cost, there are no costs. And



therefore you don't need a PAC. You don't need a campaign finance committee, you don't need any monies to be raised by anyone running. That won't happen, so therefore, we understand-- I think we understand, and I think we have to come to a conclusion as to what will be viable, what do we have to do, so we're no longer in a fishbowl on a continual basis, because we are. I think we all realize that.

Those of us who run have to understand that we're always in a fishbowl, we're always questioned. If we make a legitimate, honest mistake, it is blown out of proportion by our opponents or the press. And we don't have any warnings. You know, even the State troopers; you're going to fast. They allow you, at times, with a warning -- they'll give you a warning. We don't have a warning. We should have a warning, because we're not know-alls on the campaign financing. I mean, we have to worry about legislation most of the time, I would hope. And that doesn't happen. And we have to worry about reporting, and we have to worry about who is looking at our reports, who is wondering what we're doing with the dollars. And therefore, I think, quite frankly, that this committee has a major task. And that task is to hopefully find solutions to the problems that we and others have. And I'd like to truly focus in on those solutions.

I think we know what the problems are. Maybe I'm naive. I think I know what the problems are. I think other candidates and legislators know what the problems are. I think the public knows what the problem is. I think we ought to be looking for solutions.

If we need new laws, then let's get those new laws into effect. If we have to limit campaign financing, let's do it. If we have to disclose all, as Senator DiFrancesco said, let's do it.

If those are the solutions that make it, quite frankly, easier for candidates to run, than let's do it.

DR. ROSENTHAL: Well, I agree. But let's make sure that when we do something it doesn't effect or impact negatively on the system.

MR. STANTON: It's has to be economic reality.

DR. ROSENTHAL: Right.

MR. STANTON: The newspapers, that's in their cash flow; the elections, and so forth. It's just there. And if you have, sort of, equal time and everything you're going to have a mess, like they do on television and radio.

ASSEMBLYMAN HAYTAIAN: Yeah, but they're the first ones to come after us.

MR. STANTON: Oh, I know they are. I mean, hey, it's not just you guys, they're after everybody. That's one of the things they do. (laughter)

ASSEMBLYMAN HAYTAIAN: Maybe we ought to have disclosure where they get their money from.

MR. STANTON: Yeah, I'd like to see that sometime. But I mean, there are certain things there that are a Utopia, and I think they just could not enter into the discussion.

DR. ROSENTHAL: Senator Orechio.

SENATOR ORECHIO: Yeah, we've been addressing the potential influence that special interest groups have on us. On the other hand, we haven't looked at the other side of the coin. Another reason why you have to raise money for those special interest groups that you haven't been accepted with, because of the fact that you voted against legislation they wanted. Another reason why you have to raise money, Chuck, as you know.

DR. ROSENTHAL: I wanted to sort of get back to something that Steve brought up, that I think has become a big thing in New Jersey and in other states, and that's leadership PACs. And I think that probably leadership PACs or party caucus leadership PACs are operating now in about three-quarters of the states, and chambers both parties. And

there are a number of good arguments for leadership PACs, and they are emerging some arguments against leadership PACs. There's a reaction taking place in which there are efforts to do away with leadership PACs. And this happened in California in an initiative proposition -- and it was voted on in '88, I believe -- in which there can't be any transfer of funds. And that had an impact on the way Willie Brown, the Speaker of the Assembly, raised money and allocated to members of the Democratic party there.

Also in Florida they enacted legislation abolishing leadership PACs. There's a loophole so that the money can go to the party and then can get back to a leadership PAC. But, in any case, I think it's a very important issue. I see some of the advantages in leadership PACs. And one advantage is that leadership really is elected by the membership, and does take then responsibility for helping win a majority, or maintain a majority, in the particular house. Leadership has that responsibility.

Secondly, leadership then can allocate in a reasonable fashion the monies to go to candidates who have tough races. So, that the people in need, presumably, get the money, and the people who don't need it get less of it.

The problems with leadership PACs, as they've emerged -- or one problem is that individual leaders will use these PACs to maintain control, to maintain their leadership positions, and that obviously happens. It is a way for leaders to keep power, and that may not be bad.

But, a second problem is that it does really put leaders right in the center of the fund-raising business. And it puts them in a precarious position. They've got to raise not only \$70,000 or \$80,000 or \$100,000, but they now have to raise in the millions. And that is a big task. And it's the people, really, who have all of the other responsibility of

holding the show together, and trying to organize the work of a legislative chamber, who now are really distracted because they've got the heavy burden of raising funds.

So, you get these conflicting strains with leadership PACs, and I think we're going to have to address that as a committee. Steve, what are your observations there, because you mentioned that as an issue we would have to deal with?

MR. DeMICCO: I'll be very careful because I'm employed by a leader. (laughter) I think that the more fundamental issue is what level of spending in campaigns is reasonable, because I think the place of leadership PACs somewhat emanates from the answer to that question. Also, the question of spending limits: It seems as though those who are most able to raise and transfer funds-- And this doesn't only go on among elected leaders. It's legislators who tend to be in nontargeted, safer districts who have the ability to do that, and to transfer funds to other candidates who are less able to do it.

I think that if you were to engage in sort of a logical progression of one set of issues to the next, that resolving the question of contribution limits probably makes the most sense, and is the easiest to come to some consensus on. Resolving the question of whether spending limits make sense is probably the next question that makes some sense to discuss, because it goes to the next question in terms of degree of difficulty, which is what a public financing program would look like to implement a spending limit.

And then the fourth question in terms of degree of difficulty, is deciding what other groups out there, what other entities out there, have a place in the campaign process which is legitimate? Party committees, PACs, and leadership PACs, and how should they relate to one and other? One could argue that leadership PACs are really a refined -- to put a good face on it -- version of a party PAC, and that they serve a function in that regard.

What you had last year was a combination, I think, on both sides of leadership PACs and party PACs, working in a coordinated way under the direction of, at least, the Election Law Enforcement Commission in terms of regulating how coordinated they could be. But I think that in order to come to some conclusion about what place they should have in the electoral process, the other question should probably precede.

DR. ROSENTHAL: Yes, Senator?

SENATOR DiFRANCESCO: Why is a contribution limit -- why is that so important in resolving some of the problems?

MR. DeMICCO: Well, Senator, I'm proceeding from an assumption that maybe I shouldn't, which is that there is some concern here about public confidence in the electoral process. And in my review and experience, in terms of how fund-raising seems to be taking place, you don't get to the fundamental problem, the really fundamental problem, until you discuss contribution limits. Because we've reached a point, especially last year, where contributions are out of proportion to what they used to be.

SENATOR DiFRANCESCO: I didn't realize that-- With regard to leadership PACs, I think most legislators have PACs. Am I correct, Fred?

DR. HERRMANN: Well, I have some figures for you.

SENATOR DiFRANCESCO: I have one. It's a PAC because you require an ongoing committee that contributes money, or anything like that, to file as a PAC. So, most legislators have PACs.

I would think most legislators could raise a decent, substantial amount of money with a \$1000 contribution limit, certainly. If you have 17 Republicans in my caucus, I'm sure they could all raise a substantial amount of money with a \$1000 contribution limit. Now, if a \$1000 contribution limit is a reasonable limitation, then you could still raise a ton of money for a leadership PAC or a pool of PACs with that limit.

MR. DeMICCO: Senator, I'd argue that it would be far less than it is right now; far, far less.

SENATOR DiFRANCESCO: See, I'm not privy to-- I've never looked at the reports from either Hardwick's or Russo's or anybody else's--

DR. ROSENTHAL: You would be able to raise far less money in a leadership PAC with a contribution limit.

MR. DeMICCO: No question about it. In fact, the bills that we had before the Senate and Assembly last year treated PACs differently than individuals, and suggested that individuals should have a contribution limit of \$500 to \$2500 -- depending on what bill you're talking about -- and PACs; 5000 to 10,000.

ASSEMBLYMAN DEVERIN: Even the appearance-- If we go away with nothing else we have to come away with some kind of limit on contributions. Even the appearance of somebody giving \$5000 or \$6000 or \$10,000 for a legislator, even for the leadership PAC, there's something wrong with it. It doesn't smell right. It doesn't sound right.

SENATOR DiFRANCESCO: There is a lot of that.

ASSEMBLYMAN DEVERIN: So, there ought to be, at least, some kind of-- Even if nothing else, if you could raise ten times ten, or \$1000, okay. But there ought to be some kind of limit to contributions.

DR. ROSENTHAL: Al.

MR. BURSTEIN: Steve, when you talk in terms of contribution limits, I gather -- at least the implication I have, is that you're talking about the contributions into the PAC.

MR. COLE: Out of the PAC.

MR. BURSTEIN: Is that basically--

MR. DeMICCO: Generally, to candidates individually and to the PACs.

MR. BURSTEIN: Okay. Now, when there is a PAC created, whether it be a leadership PAC or another kind, are you further expressing the opinion that there ought to be an individual contribution limit for the PAC in distributing its money?

MR. DeMICCO: I'm not proposing it. I'm suggesting it should be an area of study for this group, because the transfer of funds from one entity to another is -- it's a vital question in the whole--

MR. BURSTEIN: Okay, that's all I need to know. Thank you.

DR. ROSENTHAL: How many members in New Jersey other than leadership, have PACs in which they transfer funds to other members?

DR. HERRMANN: Funny you should ask. (laughter) In 1983 there were three, in 1987 there were 78.

DR. ROSENTHAL: Seventy-eight members of the Legislature transferred funds to other--

DR. HERRMANN: Some of these were local, but these were primarily legislative PACs.

MR. STANTON: Can a legislator distribute the entire proceeds of the PAC to another campaign?

DR. HERRMANN: Yeah, sure.

MR. STANTON: He can? He does not have any kind of limitation?

DR. HERRMANN: No.

DR. ROSENTHAL: I'm not sure I-- Seventy-eight members distributed funds to other candidates.

DR. HERRMANN: Well, no.

DR. ROSENTHAL: But not necessarily to other candidates in the Legislature.

DR. HERRMANN: Well, we had-- First of all, I just want to-- In '87 there were 78 officeholder PACs, today there are 160. So, in a three year period it more than doubled.

Now, what are these officeholder PACs? Most of them are legislators PACs, however, a few of them are congressional. Congressmen have these PACs, and some of them are mayors. But the bulk of them, I think, they're legislators.

Now, the Commission's position has been: We want to see across the board contribution limits, and we would include in that these kinds of officeholder PACs. And our reasoning is this; that if you're a legislator representing -- and I'll be real careful here -- District 41, and the legislator from District 54 gives you \$50,000, that raises, I think, some questions for the public, because if I'm in District 41, I want my District 41 Senator to be representing my interest, not the interest of District 54 which might be pumping in half the campaign account.

So, we think that the office holder PACs, as with lobbyists and all the other groups-- I don't know if we need, you know, special things for each group. We just need an across the board contribution limit that would cover all this. And the transfer problem that we often hear about is really solved by the contribution limit, if they apply to, not only the officeholder PACs, but candidates committees. If I've finished an election say in New Jersey and I've got \$50,000 left, that campaign committee should be limited to whatever the contribution limit is in terms of giving to some mayor the next year, or some freeholder.

DR. ROSENTHAL: And leadership should be limited?

DR. HERRMANN: Yes.

DR. ROSENTHAL: Leadership PACs in the same way as individual member PACs.

DR. HERRMANN: Now, the one exception which--

ASSEMBLYMAN DEVERIN: But not limited in numbers, right. He can give it to every single--

DR. HERRMANN: Oh, yeah, yeah. Sure. Absolutely, Assemblyman.



DR. ROSENTHAL: But limited in amounts.

ASSEMBLYMAN HAYTAIAN: What are we classifying as a leadership PAC versus a members PAC? I mean, I'm a leader, but I'm also a member. I have one PAC. Is that a leadership PAC or is that a member PAC?

MR. BURSTEIN: It wouldn't make any difference.

SENATOR DiFRANCESCO: Well, he's--

ASSEMBLYMAN HAYTAIAN: Well, that's right. But we do have-- We do have, for instance, ARM, A-R-M.

DR. ROSENTHAL: Right.

ASSEMBLYMAN HAYTAIAN: But that's an Assembly PAC.

MR. BURSTEIN: That's from put the arm on you.

ASSEMBLYMAN HAYTAIAN: That's an Assembly Republican Majority PAC. We're always vying to be a majority. All right. And that's a PAC. Now, is that considered a leadership PAC?

MR. STANTON: There's no legal definition, right?

ASSEMBLYMAN HAYTAIAN: No, there isn't.

MR. STANTON: It just depends on how you use it.

ASSEMBLYMAN HAYTAIAN: Well, I think we have to clarify what we're talking about.

DR. ROSENTHAL: By leadership, I mean-- Yeah, party; the legislative party. That's the leadership and the party caucus, that's right.

SENATOR DiFRANCESCO: Chuck Hardwick had a dinner, John Russo had a dinner, that money went into leader-- They're not leaders? They're leadership PACs, by, you know-- Pretty easy to define, no?

ASSEMBLYMAN HAYTAIAN: Well, if we have-- Let me give you an example, we have something that's for ARM, that doesn't come under Chuck Haytaian, that goes into ARM. But when I have a fund-raiser, that's for Chuck Haytaian, that comes to Chuck Haytaian.

SENATOR DiFRANCESCO: That's not leadership.

ASSEMBLYMAN HAYTAIAN: I'm a leadership PAC.

SENATOR DiFRANCESCO: That's legislative--

DR. ROSENTHAL: And does your PAC pass on money to party members?

ASSEMBLYMAN HAYTAIAN: Yes, yes. Well, yes it sure does.

DR. ROSENTHAL: To Chuck Haytaian, and ARM does?

ASSEMBLYMAN HAYTAIAN: I also donate-- In fact, last year -- for the record, and it's on record -- about \$110,000 that I raised went into ARM.

DR. ROSENTHAL: Right.

ASSEMBLYMAN HAYTAIAN: But that's for the full Assembly.

DR. ROSENTHAL: Right.

ASSEMBLYMAN HAYTAIAN: And other members from my caucus did the same. Not to that extent, but they did the same; whatever they could afford, to help other members. For instance, challengers; they have a tough time raising money. They have a tough time getting their message out. Challenging against me, challenging against Tommy, I mean-- There are not challengers against Tommy. We get challengers once in a while. But the point is, it's very difficult for them to raise money.

How do we help them? Well, that's the reason we have ARM, trying to help, not only incumbents who can't raise money to get their message out, but also challengers. So, I think we have to really define and clarify what we're talking about.

SENATOR DiFRANCESCO: Well, we also contribute to local elections; freeholder elections--

ASSEMBLYMAN HAYTAIAN: Sure.

SENATOR DiFRANCESCO: --county parties, local parties, charities.

ASSEMBLYMAN HAYTAIAN: And let's face it, we are sent solicitations for every, every group.

SENATOR DiFRANCESCO: Once you're registered we're friends. And you get everybody's invitations.

ASSEMBLYMAN HAYTAIAN: Yeah, every group that's out there, we will get an invitation to go to.

DR. HERRMANN: That's what the computer does for you.  
(laughs)

ASSEMBLYMAN HAYTAIAN: I mean, where in the world are we supposed to; and how do we get involved? If, in fact, that didn't occur. I don't know. Unless we're going to have all wealthy people run for the Legislature.

SENATOR DiFRANCESCO: But the limits-- What they're talking about the limit; let's say it's \$1000, would apply to every single--

ASSEMBLYMAN HAYTAIAN: Across the board.

SENATOR DiFRANCESCO: --political action you make?

ASSEMBLYMAN DEVERIN: Then you could only give Donny \$1000.

ASSEMBLYMAN HAYTAIAN: That's correct.

SENATOR DiFRANCESCO: Take the pressure off.

ASSEMBLYMAN HAYTAIAN: It would take the pressure off. Absolutely.

DR. ROSENTHAL: Fred?

DR. HERRMANN: One exception that we'd be interested in having the Committee explore, and I'll expand on something Steve DeMicco said about the political parties: The Democratic State Committee, and the Republican State Committee, and the county committees, you might take a look in terms of not having contribution limits applying to what goes in, or higher contribution limits. I think there's got to be some kind of contribution limit to what goes into those parties, so you don't have a laundry operation going on.

But certainly the contribution limit level of money going into the State political parties could be higher than the contribution limit that effects everything else. At the other

end, you might have it even wide open; that the State parties would be limited in the size of contributions that you get, but then they could turn around and give as much as they wanted to individual candidates. The idea, again, being that the political party committees-- We should be strengthening the parties; that they are consensus building institutions. And I don't think there would even be an unhealthy appearance of parties doing that as long as it was regulated so that we knew that they weren't serving a pass through function.

One of the benefits of that, and we talk about this in our White Paper No. 3 on legislative public financing, is we've already talked a little bit about the problem; that you've got some people in targeted districts, and other people in safe districts, and how does this all work in a public financing program. Well, one possibility would be to set an expenditure limit for legislative campaigns; some figure that would allow people to spend money enough to run a campaign under usual circumstances. But then allow, perhaps, the political parties in targeted districts, where more money was needed-- You hit the 200,000 max, but it's a really hot campaign, it's a tough district, and let the party committee's put in the additional monies. It would solve one of the inherent problems of expenditure limits; as cutting off a campaign that still has to communicate. Yet, at the same time, it would take out all of the undue influence because these would be political party committees that would be pumping the additional money in. And my sense is that the party committees would not be putting another \$100,000 into a race where the money wasn't needed.

DR. ROSENTHAL: Al, if you have a--

MR. BURSTEIN: No, no, I had my questions answered, yes.

SENATOR ORECHIO: I just have one question of Fred.

DR. ROSENTHAL: Yes, Senator?

SENATOR ORECHIO: Whether, in your experiences, you've had complaints from individuals or groups regarding the illustration made before, where a candidate was given money in the 41st District, and it was contributed to a colleague in another district, when the intent of the person contributing was for your welfare, and for your benefit, and for your election, and yet, you've now diverted -- you take this position, you've diverted his money to another candidate?

DR. HERRMANN: Senator, I've read newspaper stories about that sort of thing and concern. Political science literature talks about those kinds of issues, but it wouldn't be the kind of thing that a citizen-- I mean, under the current law, it's completely legal.

SENATOR ORECHIO: Yeah.

DR. HERRMANN: So nobody would complain to ELEC that it was done because there wouldn't be anything we could do about it. But there is concern out there in the media, I think in the political science community, to a certain extent, that there's a better way of doing business.

DR. ROSENTHAL: Yes, Senator.

SENATOR DiFRANCESCO: Fred, I have another question about one of the things you mentioned, and that was surplus funds.

DR. HERRMANN: Good issue.

SENATOR DiFRANCESCO: Because I usually have surplus funds after my campaign, because, I guess, I'm supposedly in a safe district.

SENATOR ORECHIO: You know you are, you carved it that way. (laughter)

SENATOR DiFRANCESCO: I asked this question--

MR. STANTON: Now you know why there's a census.

SENATOR DiFRANCESCO: Come on. Come on.

SENATOR ORECHIO: He was on the Commission. He was on the Reapportionment Committee.

SENATOR DiFRANCESCO: I raised this question several years ago, actually before Fred was the Executive Director. And really, I'm not sure I ever, really, got a straight answer as to what you could do with surplus funds. Because at the time there was some question -- of course, this is before our fancy offices -- whether you could use monies for your office or not, for your-- Could you buy a typewriter, could you buy a computer, could you do anything? Could you buy pencils.

In any event, what would you have us do with surplus funds, if we have \$20,000 left.

DR. HERRMANN: Well, that's a good question. I believe Assemblyman Haytaian has a bill in to deal with it because we've talked about it before. That's a major problem, Senator.

SENATOR DiFRANCESCO: Or shouldn't I be asking it that way?

DR. HERRMANN: No. I think you asked it perfectly. The problem is, and it's quite simple: The law is silent. The statute doesn't even mention surplus funds; major loophole in the law. And the Commission has been wrestling for years. We get questions all the time.

SENATOR DiFRANCESCO: Well, do you want me to tell you what I did with it when I couldn't get an answer? And then--

DR. HERRMANN: Well, not in front of the legal director. (laughter)

SENATOR DiFRANCESCO: I take the money and I put it into the fund. I transfer it into the fund so that the quarterly reports will always reflect--

ASSEMBLYMAN HAYTAIAN: That's right.

SENATOR DiFRANCESCO: --where the money -- where that money went.

DR. HERRMANN: And that's a great way of doing it.

SENATOR DiFRANCESCO: Now, that's a mixing of funds. I mean, there's no question about it. It's a mixing of campaign funds with PAC funds, so to speak.

DR. HERRMANN: As long as it's reported and it's your--

SENATOR DiFRANCESCO: But everything gets reported.

DR. HERRMANN: That wouldn't be a problem. And as a matter of fact, one of the things we'd like to see is that that sort of procedure would become the law.

SENATOR DiFRANCESCO: Well, what do you mean by that? You mean, it's not done? You mean that's not, across the board, done, so to speak?

DR. HERRMANN: By everybody? No. Oh, no.

ASSEMBLYMAN HAYTAIAN: Why don't you-- Well, I think that's important.

SENATOR DiFRANCESCO: Go ahead. I'm sorry, go ahead.

ASSEMBLYMAN HAYTAIAN: Why don't you explain what could happen?

DR. HERRMANN: What might happen. Oh, sure.

ASSEMBLYMAN HAYTAIAN: Sure, because both Donny and I, I'm sure, Senator Orechio and Assemblyman Deverin; whatever is left over goes into their "Friends Of" or whatever they call it. What could happen to it?

DR. HERRMANN: Well, what could happen to it, and I think one of the most egregious things that could happen to it, is at the end of your campaign, say for--

ASSEMBLYMAN HAYTAIAN: Campaign '89, last year, say, the Assembly.

DR. HERRMANN: Yes. At the end of last year's campaign you have \$50,000 left, say, and you were running for the Assembly, you put on your 20 day post-election report to the Commission; \$50,000 left, putting it aside for some future campaign. The money "poof," gone. Now if you multiply that over the fact that we've got people that have been in office for a number of years, and--

ASSEMBLYMAN HAYTAIAN: Well, what do you mean "poof" gone.

MR. BURSTEIN: Into your personal checking account.

DR. HERRMANN: Well, that would be--

ASSEMBLYMAN HAYTAIAN: You can't, that's illegal.

DR. HERRMANN: No, that would be illegal, but you could put it in an account for use later. And then when you ran two years later, your 29-day report would show \$50,000 coming into your campaign, to start your campaign.

SENATOR DiFRANCESCO: From whom?

ASSEMBLYMAN HAYTAIAN: Well, suppose that \$50,000 is now 29,000 and you don't have any idea where it is?

DR. HERRMANN: That's the problem, exactly.

ASSEMBLYMAN HAYTAIAN: Well, that's wrong.

DR. HERRMANN: Right.

SENATOR DiFRANCESCO: One thing you could do is save it for the next campaign.

ASSEMBLYMAN HAYTAIAN: I didn't know that was happening.

DR. HERRMANN: Yeah, you could. But I think Assemblyman Haytaian picked up on it that-- Now, remember, we're not just talking about legislative candidates, we're talking about all candidates.

ASSEMBLYMAN HAYTAIAN: Any candidate, that's right.

DR. HERRMANN: So, we've got 6000 people; 6000 perhaps in each election, multiplied by the number of elections, you may have 60,000 out there.

ASSEMBLYMAN HAYTAIAN: Wait a minute, Fred. On your form it says: If you're completed with the campaign and the campaign account is zero, show it as zero. That's what it says, as I remember it.

DR. HERRMANN: Yeah.

ASSEMBLYMAN HAYTAIAN: And so the only way I could make my campaign account zero is by transferring it. In this case I transfer it to my Friends of Chuck Haytaian. So, now you have a stream. You would know where it's going.

DR. HERRMANN: Yeah, if you did that.



ASSEMBLYMAN HAYTAIAN: What can someone else do?

SENATOR DiFRANCESCO: A new campaign account.

DR. HERRMANN: They could transfer it, and just say, I'm putting it aside for the next campaign for office and not put it into any kind of a reporting vehicle; just put it out there in an account, just open up an account in the bank.

ASSEMBLYMAN HAYTAIAN: I thought that was illegal to do.

DR. HERRMANN: No.

SENATOR DiFRANCESCO: No, a new campaign account.

ASSEMBLYMAN DEVERIN: Wouldn't it be just as easy to make-- Wherever there's surplus funds, make a quarterly report?

SENATOR DiFRANCESCO: That's what Fred's probably going to say.

DR. HERRMANN: Yeah, Assemblyman, actually that is exactly what the Commission's thinking had been; that you would keep reporting that money until such time as the money was accounted for. Now, if you want to give it all to charity, great. Or if you wanted to distribute it with a contribution limit to various other candidates, and so it was dissipated and the public knew where it went.

MR. STANTON: Could it go into a Porsche to drive you around your district?

DR. HERRMANN: Well, this is--

MR. STANTON: I mean, something like that.

DR. HERRMANN: That's a great question, Mr. Stanton. The other problem that we have is that the law doesn't talk -- the statute doesn't talk at all about what's appropriate to use the money for. The statute does not even prohibit personal use.

We've done that by regulation, and a couple of years ago the Commission -- basically, I think out of frustration -- put in regulations, which we think don't go beyond the statute, but it's never been tested. Based on the fact that the statute does say you have to make a final accounting to the Commission

of your money, we felt, well, okay, that perhaps gives us the authority to specify how the money could be used. So, we do have regulations that do allow certain sorts of uses for the money, but that should be in the statute. And the kinds of uses that we talk about that you should consider-- And again, I don't think the Commission even cares so much what the uses are, but let's know what the uses are. Let's know what the rules of the game are.

SENATOR DiFRANCESCO: Yeah, as long as you report them, Fred.

ASSEMBLYMAN HAYTAIAN: Well, that's part and parcel of my legislation.

DR. HERRMANN: Yes, yes.

ASSEMBLYMAN HAYTAIAN: You suggested the fact--

MR. STANTON: Didn't you say earlier that it was illegal to put it into a checking account, a personal checking account? I mean, what-- If the loophole is this, and I were to take \$50,000 and I reported it as income on my Federal income tax, and my State tax, and something I pay taxes on, is that illegal?

DR. HERRMANN: If you use the money for-- Under the current law -- or lack thereof I should say -- if you took that money, \$50,000, and you put it into a private account, and, let's say, two years later your run again, and there's only \$29,000 left, the question would arise, "Well, what did you do with the other amount of money?" And if it---

MR. STANTON: The question comes from ELEC?

DR. HERRMANN: Yeah.

ASSEMBLYMAN HAYTAIAN: If they are able to follow through.

DR. HERRMANN: If it got picked up, sure. But let's say, in a more egregious situation, that he didn't take any of that money. It was out there. He ran again and there was money left over, it was out there. I mean, we've had public

officials die in office with a lot of money left and nobody really can tell whose money that is.

ASSEMBLYMAN HAYTAIAN: Well, what happens?

DR. HERRMANN: Well, that's a great question. We have a suggestion, you're going to love it: We think it should escheat to the Commission. (laughter)

MR. BURSTEIN: Yeah, but Fred, that doesn't answer Tom Stanton's question.

ASSEMBLYMAN HAYTAIAN: That's a banker's answer.

DR. HERRMANN: Our Chairman's a banker.

DR. ROSENTHAL: Fred, you have had the opportunity to ask for more budget, to ask for unused funds, and I wonder what you've got, you know, coming.

DR. HERRMANN: Well, I'll tell you, it's--

MR. EDWARDS: He goes to bed praying every night that legislators die.

MS. SHEEHAN: What about buying the cars?

MR. STANTON: How do you create an escheat, you know?

DR. HERRMANN: But, I would just say in terms of the enforcement, if we tightened up, say, on drug enforcement on the New Jersey Turnpike legislatively, and then we cut the number of troopers in half, what would you have done? And the same kind of reasoning applies here.

But back on this issue: The kinds of things that we would like to see in the statute that would help, would be, first of all, putting in the statute, "you can't use the money for personal use." I mean, you can't go on a vacation, you can't paint your house. I mean, that's number one.

SENATOR DiFRANCESCO: Try and define that. Try and define that.

DR. HERRMANN: Pardon me.

SENATOR DiFRANCESCO: Try to define that.

DR. HERRMANN: Well, Senator, that's a good question. And if you have it in the statute, over the years, with

advisory opinions and cases, it would get refined through the regulations. But certainly, in those states that have it, yeah, you build up a lot of regulations in case law around what's personal use and what's not.

SENATOR DiFRANCESCO: Carphone.

DR. HERRMANN: Yeah, there are all sorts--

SENATOR DiFRANCESCO: Three calls home, and three calls business, three calls legislative.

MR. BURSTEIN: Borderline, borderline. But that would be refined as you had--

DR. HERRMANN: Yeah, we're not even to square one, because today, you could go to Hawaii and it would be statutorily appropriate. Pro rata return of the money to contributors.

UNIDENTIFIED MEMBER OF COMMISSION: Let's do it quick.

DR. HERRMANN: Pro rata return of money to contributors.

UNIDENTIFIED MEMBER OF COMMISSION: How often is that done, Fred?

DR. HERRMANN: Probably fairly rare, but--

MR. STANTON: You're accountant would probably charge you \$10 to figure out why the hell do you report every \$5 you got back.

DR. HERRMANN: Giving the money to charity, now, that's commonly done, and I could see that happening. And I think the fact that maybe a lot of money wouldn't be returned to contributors is not still a good reason not to permit it though. Giving the money to other candidates, restricted by a contribution limit should be permissible. And then, probably a-- I think Senator DiFrancesco alluded to this one, and this is probably one of the biggest stumbling blocks in the whole area, and maybe the reason that we don't have surplus funds language in the statute, is the issue of the ordinary and necessary expenses of holding public office, which is Federal

language. If you were a Congressman, you may take that money and you could buy a carphone as long as you could show that it was related to doing public business or campaign business.

My understanding has been, that over the years in the Legislature itself, there is a division of opinion, which I think is across the aisle. I think you'll find equal numbers of Republicans and Democrats--

SENATOR DiFRANCESCO: Right, there's a big division of opinion.

DR. HERRMANN: Yeah, okay.

SENATOR DiFRANCESCO: We get one answer from you and we get another answer from her. (referring to Ms. Hochman)

DR. HERRMANN: I'll address that in a second, because you're right. But the division in the Legislature is whether it's appropriate or not. Should the statute clearly say, "No, you can't use it for your district office," or should the statute say, "Yes, you can"? And so far the statute is silent.

Now, the reason that Marci's office and our office gives you a different answer is because there's nothing in the statute. And I think Marci could probably explain a little bit better where they're coming from. Our point of view is that the district office use would not be a problem from ELEC's point of view because it's not personal use. We could, again, develop that. But from the point of view of the Legislative Ethics Commission there's problems because of, I believe, constitutional language, and at least statutory language in Title 52.

MS. HOCHMAN: Yeah, there's a provision in the Conflicts of Interest Law and in our Code of Ethics 52:13D-24. And basically what that provision states is that no member of the Legislature can accept anything of value, from a source other than the State, for matters related to their official duty. It's basically that simple.

And when we were asked by a legislator in 1984 -- this was before we had computerized the district offices--

SENATOR DiFRANCESCO: Was this me? Was it me?

MS. HOCHMAN: No, it wasn't you. (laughter) When we were asked the question -- the Joint Committee was asked the question -- as to whether or not surplus campaign funds could be used for the computerization of the district office, we looked at this section, and the answer of the Joint Committee at that particular time was, this particular section may act to prohibit that. And we said that because it's unclear, we would welcome statutory provisions that would clarify precisely what surplus campaign funds could be used for.

And I think that back in '84 there were several legislative proposals that were introduced. And I remember going to one of the hearings where a couple of these bills were discussed in standing committee, and there was a great disparity of viewpoint among legislators as to the propriety of doing this.

SENATOR DiFRANCESCO: But that's kind of a moot point now because of where we've come with offices as opposed to where we were when Al was in a district office, which was a brand new concept--

MR. BURSTEIN: It was, yeah.

SENATOR DiFRANCESCO: --in your regime. Today, we all need to spend surplus funds on our office.

DR. ROSENTHAL: Let me just interject here and ask if Michelle Sobolewski or Gregg Edwards have anything to add to the general discussion.

M I C H E L L E S O B O L E W S K I: Well, I would just echo Steve's points. And also one of the things that I think that-- In expanding not only to the PACs, I think that the review has also got to be considered into the interest groups that also affect the elections of the legislators. Particularly, not only interest groups that are related to in-state groups, but that are Federal. Case in point is obviously the NRA which is a Federal group, but which is

obviously having an impact, not only on the way that current legislators are sitting, that that impacts on their ability to perform (word inaudible) election. Firstly--

SENATOR DiFRANCESCO: What do you mean by that?

MS. SOBOLEWSKI: I mean, that it is a group that is going to be diverting a lot of money and running a campaign against certain legislators.

SENATOR DiFRANCESCO: But in terms of the distinction between -- excuse me -- I'm sorry--

ASSEMBLYMAN DEVERIN: Yeah, the NRA--

SENATOR DiFRANCESCO: Between out-of-state PACs and in-state PACs, the NRA has a tremendous membership in the State of New Jersey as opposed to-- I know what was trying to be addressed in the refining of that gubernatorial financing law, the idea of getting money in Indiana for a gubernatorial race in New Jersey. But-- I'm sorry, go ahead.

MS. SOBOLEWSKI: No, but my point, basically, is that it's more related to campaigns this -- on your running your legislative offices. The issue becomes that these interest groups, during the campaign, will send out campaign literature and attribute that to individual candidates. That's obviously going to up the cost, and those hard-line costs the Assemblyman has raised, which I concur with. There are things that you are locked into. The postal rate raises the rate, and as they're proposing doing, or has. And you don't raise putting limitations on the contributions of PACs by putting those restrictions on, are going to take certain things into consideration; if the Feds increase the postal rate, if, in fact, newspaper rates raise. If the cost of inflation has gone up, and the restrictions are put in at this year's rate, what type of compensation is going to be put into place two years down the road so we're not in the same place or you're not having a level playing field, again.

So, you're basically-- My point, basically, is to get to a point that everyone is on a level playing field, and to take into consideration that there are other factors, other than just the legislators here, who have to be under scrutiny. That-- I think, that there are other people who are involved in this process that have just as much interest, and have just as much to gain, and that it should not necessarily just be ELEC who looks at the disclosure forms of the legislators. But there's got to be some sort of other direction.

ASSEMBLYMAN DEVERIN: Well, you do that now. You look at PACs and the lobbyists, they disclose where they spend the money.

DR. HERRMANN: They do. But, again, because of lack of resources we should be getting all that data into the computer, and we just can't.

SENATOR DiFRANCESCO: I'm not sure that raising the limits on the last--

MR. STANTON: Fred, at the risk of a whole other question: Surplus funds. A number of our congressmen are former legislators, if someone has a surplus in their legislative campaign, would they be allowed to use that--

DR. HERRMANN: At the Federal level?

MR. STANTON: Campaign for Congress?

ASSEMBLYMAN HAYTAIAN: No, not unless it's pure. And what is considered pure--

MR. STANTON: I mean, they know the PACs are separate. You have to have a Federal PAC and a State PAC, and so forth.

ASSEMBLYMAN HAYTAIAN: If it's from individuals, then they could. For instance, we have some people running for Congress now that have PACs on the State level. And some of them were intelligent enough to--

MR. STANTON: Set up a Federal PAC?



ASSEMBLYMAN HAYTAIAN: Yeah, to make it corporate and noncorporate.

SENATOR DiFRANCESCO: They thought Courter was going to win the election.

MR. STANTON: Yeah, right.

ASSEMBLYMAN HAYTAIAN: They can use a noncorporate. They can't use a corporate.

MR. STANTON: Okay. I was just curious, because obviously, that question has got to arise.

ASSEMBLYMAN HAYTAIAN: I think a more important issue, though, is those congressmen who have hundreds of thousands of dollars who, by next year can still -- I believe it's next year or the year after -- can still take it home with them and pay income tax on it, and it's now their personal income.

ASSEMBLYMAN DEVERIN: But they have to have that before 1980.

MR. STANTON: Yeah, there's only seven or eight. Also, all the money-- You know, The New York Times had one of the major articles on all the money that was raised around the country. That was pretty eye opening.

MR. BURSTEIN: Fred, on another subject: Administratively, does it make much difference that lobbyist register with the Attorney Generals Office, and yet, report to you? Does it make a difference?

DR. HERRMANN: That's an excellent question, Mr. Burstein. The Commission, since 1982, when we did a joint report with the Attorney General, has had a position, and I believe -- and the Attorney General has consistently had the same position, that it should all be at the Election Law Enforcement Commission. To file at two different places, and slightly different information, becomes extremely difficult for somebody to figure out what's going by running back and forth between two offices. And it should be consolidated, we feel, at the Commission.

DR. ROSENTHAL: Gregg, did you have anything to add?

MR. EDWARDS: Steve and I have similar backgrounds; we're both party hacks. It should come as no surprise, but I thought his description was pretty neat and well done. I guess I would just raise two points: One, is a question of research, to get back to what we talked to earlier. We have now, I think, a lot of documentation understanding about contributions; where they're coming from, how much, levels, etc. It's my opinion -- and I'd like to be corrected if it's not true -- that we really don't know much at all about expenditures. We know total dollars, but we know little about how money is being spent in campaigns.

I tend to be involved in competitive races, and I think that candidates -- certainly ARM last year -- I think, were pretty miserly about how they spent funds. I don't think that money was-- That more business decisions, in a sense, were being made. I'm not sure the same can be said about every candidate who runs for office, especially in areas that are safe in a political sense.

I would be very reticent to look at any question of spending limitations without having a much better idea about how money is being spent today in campaigns, because that might give us some idea about how a reasonable spending limit could be imposed, if any at all. Or maybe we'll look more at restricting the kinds of things you can spend money on.

ELEC, you know, is aware of that problem, and has recently promulgated -- or is in the process of promulgating -- regs on money being spent on family members of candidates and treasurers. And I don't really know to what extent how great that is going on. But I have a sense there may be some things we want to take a look at.

So, I would strongly encourage the Commission to try to get a better handle on-- And I think it could be done if we took a look at-- Steve, I'm sure, and I could sit down and

pick out, you know, five competitive races and an equal number of "safe" races, and, you know, blindly, sort of, look at how the money is being spent. The only difficulty is, that if we don't think we collect enough information about contributions, we surely don't collect much on expenditures. Because if you look at an expenditure report, you can't really tell how that money is being spent. I mean, unless someone is really being -- for his or her own purposes -- explanatory for future use, boy, you look at a report, you really can't tell.

The other thing I would raise is that I've heard a lot of suggestions today about how to prevent certain activities. I would just caution you that people like Steve and myself spend an awful lot of time looking at laws and regulations and seeing ways around them. And I've heard a number of suggestions today that just invite candidates and political opportunists to do that very thing. I think we have to accept some realities about elections: One, is that money has to be spent. And let's not create regulations that force people to, in a sense, violate them.

And one suggestion was that leadership PACs only give a fixed amount of money to candidates. Well, fine, but let me tell you the first thing I would probably suggest is that we get the leadership PAC to give the fixed amount to everybody, every candidate on the ballot that year, and somehow strike a deal so all those guys who didn't need the money would then turn around and give it to the safe districts.

DR. ROSENTHAL: To the competitive districts.

MR. EDWARDS: That all costs money, by the way. There's money in the whole process of trying to transfer money which all dries up cost.

MR. DeMICCO: Let the record show you thought of that.

MR. EDWARDS: Fine. I mean, I don't care. You know, it's not an ethics committee on staff. (laughter)

DR. ROSENTHAL: We'll get there.

MR. EDWARDS: As long as we do faculty members next.

DR. ROSENTHAL: We've got to warm up first before we get to that.

MR. EDWARDS: So, think about that, because sometimes our reforms just don't -- just really don't get to the issues we think they're going to do. And we'll be back here in another couple of years saying, "I didn't think that was going to happen. I thought we stopped that." Well, many times you don't.

MR. BURSTEIN: That's the theory of unintended consequences.

DR. ROSENTHAL: Gregg, what you're suggesting is that you don't think that too much money is spent on the campaigns that you were involved in, in the targeted, competitive districts.

MR. EDWARDS: We would have loved to have more money. I really think that the resources were marshalled very well. I mean, these are business decisions. They really are. We're not in the business to spend money unwisely. But that's from my perspective, which I said, is from looking at competitive races and being involved--

DR. ROSENTHAL: And trying to win.

MR. EDWARDS: --in a statewide campaign. It's not from-- You know, I've never had the pleasure or whatever you want to say, of working for a candidate who was in a noncompetitive race and could really spend money in ways that I don't think would be-- I always look at it from a contributors point of view. I don't want to give money to a guy who I think is spending it on himself.

DR. ROSENTHAL: And, Steve, you didn't think too much money was spent, but maybe a little bit at the margins? Wasn't that your comment?

MR. DeMICCO: Yeah, I think that there is a point at which the race--

DR. ROSENTHAL: Diminishing returns.

MR. DeMICO: The fact of the matter is that-- I came away from the 1989 experience believing that we're making competitive districts a self-fulfilling prophecy, because what you do, I believe, is as you escalate the level of spending in a district, you encourage ticket splitting, because you focus the attention of voters below the top of the ticket. And as the result, and I think it is one of the reasons why the net result of the tremendously increased expenditure in 1989, in real terms, was negligible. And when it really comes right down to it, the Democrats took control of the Assembly right by the skin of their teeth. And those three non-- And three of those seats came to us in non-targeted districts.

ASSEMBLYMAN HAYTAIAN: Political issues.

MR. DeMICCO: I don't think we should-- There are other factors--

ASSEMBLYMAN DEVERIN: More than three, probably four came in--

MR. DeMICCO: That's right, it may be more than three. But the point of the matter is, these districts are competitive, and at what level of spending really-- The costs of these campaigns in those 11 or 12 districts ranged anywhere from \$400-600,000. Now that seems like a lot of money when you're looking at a couple of candidates. But there's probably-- The cost of communication in this State is very high, and we rely basically on mail for campaigns in these districts, and it's a very high cost item.

It bears some examination, but I think Gregg is right; we're not going to come to any magic determination that a certain level of spending is optimal. I mean, the decision to limit spending in the gubernatorial election was a subjective and political decision. It wasn't based on what was the right spending level.

DR. ROSENTHAL: I'm going to ask: There are a number of subjects we haven't covered. We've gone very heavily into the campaign finance business, but we really haven't covered ethics and conflicts of interest. And I think it's too late in the day to bring that up. I think it would-- I don't want to rush through it. So, I -- with your permission -- we will schedule that discussion for some later point and get into those issues, and we've gotten into these issues. And you know, maybe finish our meeting in a little while; taking any last questions, and then adjourning, and coming back in two weeks to listen to testimony from legislators who have proposals on either campaign finance or on ethics and that area. Tom.

MR. STANTON: I'd just like to ask Fred a question. Is there any state, in your opinion, that has the best law, or one of the better ones?

DR. HERRMANN: I think, probably, the State that is the best probably would be California. They've done something very original in California for their Commission. They have initiative and referendum. And a few years ago a voter initiative went through which established a base budget for that agency which automatically goes up every year, based on inflation. They also have tough laws.

MR. STANTON: I'm against that, myself. (laughter) But, you do think that they have a law that operates well?

DR. HERRMANN: I think it's one of the better ones. Connecticut, I think, does a very good job. They have an inadequate budget, but their statute's pretty good. I don't think, though, Mr. Stanton, that there's any state in the nation that's doing an--

MR. STANTON: That jumps out.

DR. HERRMANN: --optimal job. And the Federal Election Commission, I think, is a good organization. But

they're grossly under funded, and they have some structural problems, which I have to say, our Commission doesn't. But it causes problems.

MR. STANTON: Thank you. I'm just trying to find ways not to reinvent the wheel if there's something going there.

DR. ROSENTHAL: We will later on bring in some experts--

MR. STANTON: I know you're going to do that. I just--

DR. ROSENTHAL: --and have a discussion. And we will, as we go on, get into what other states are doing to a greater extent. I think California has done a lot, and it's still in the worse shape. So there is not a direct relationship to what you enact into legislation and how things work out in practice.

MR. STANTON: It's a little different than New Jersey. We don't have quite as many nuts.

DR. ROSENTHAL: I'm not suggesting that we do nothing. But I am saying that California is really in desperate shape. If there are not further questions, or no further business, let me just mention that we'll be meeting two weeks from now. We'll be meeting in the room that we met in last time which is--

MR. PARISI: 334.

DR. ROSENTHAL: --334. The parking will be arranged. Every meeting we will have parking space reserved and we'll be able to get it at the second guard house. And in addition, at the next meeting we will have coffee and sweet roles.

MR. BURSTEIN: I was going to mention, but I didn't have the crass to bring it up.

DR. ROSENTHAL: That's right. The meeting is adjourned.

(COMMISSION MEETING CONCLUDED AT 12:10 p.m.)