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New York State Commission on Government Integrity

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PUBLIC HEARING ON STATE BOARD OF ELECTIONS' INVESTIGATION INTO THE 1985 POUGHKEEPSIE TOWN ELECTIONS [OCTOBER 25, 1988]

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STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

Public Hearing

on

STATE BOARD OF ELECTIONS' INVESTIGATION INTO
THE 1985 POUGHKEEPSIE TOWN BOARD ELECTIONS

New York County Lawyers Association
14 Vesey Street
New York, New York
Tuesday, October 25, 1988
10:20 o'clock a.m.

BEFORE:
JOHN D. FEERICK, Chairman
RICHARD D. EMERY
PATRICIA HYNES
CYRUS VANCE, Commissioners

APPEARANCES:
FOR THE COMMISSION: PETER BIENSTOCK, ESQ.,
Executive Director
KEVIN J. O'BRIEN, ESQ.,
Chief Counsel
JAMES M. McGUIRE, ESQ.,
Assistant Counsel
LAURIE LINTON, ESQ.,
Staff Counsel

WITNESSES:
ANTHONY CARPINELLO, Deputy Chief Investigator,
Commission on Government Integrity
RICHARD TENENINI, Former Audit Supervisor, New York State
Board of Elections
JOSEPH DADDARIO, Chief Investigator, New York State Board
of Elections
DONALD McCARTHY, JR., ESQ., Former Enforcement Counsel
New York State Board of Elections
DONALD A. RETTALIATA, Commissioner, NYS Board of Elections

STEWART NISSENBAUM and
STEVEN KLEIN,
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THE CHAIRMAN: Good morning.

The mandate of the New York State Commission on Government Integrity charges us with investigating not only the weaknesses in existing laws relating to campaign contributions and expenditures, but also the weaknesses in the existing enforcement machinery for such laws. The connection between campaign financing reform and enforcement is obvious. Without an independent and vigorous agency with the demonstrated ability to investigate and expose election law violations, New Yorkers will not realize the benefits of other campaign financing reforms.

This Commission has recommended far-reaching changes in the financing of election campaigns and the contribution limits and disclosure limits that apply to them and has in its hearing dramatized the abuses that make such reforms essential, but without an effective enforcement agency, these reforms will come to nothing and the public's hopes will turn to cynicism.

Therefore, our Commission recommended, in an earlier report on campaign financing, that a new and independent New York State campaign financing enforcement agency be created to administer and
enforce the campaign financing laws.

Today's hearing offers a striking illustration of the need for a vigorous new enforcement agency.

We focus on the investigation by the current enforcement agency, the State Board of Elections, of the 1985 Town Board elections in Poughkeepsie. As revealed at our first hearing in January, in 1985, the Pyramid Companies, a Syracuse based development group, sought a zoning change in order to build a shopping mall in Poughkeepsie. Individuals connected with Pyramid contributed $301,000 to various political committees which, in turn, spent over $276,000 on behalf of Poughkeepsie Town Board candidates sympathetic to the mall. Pyramid-related companies spent an additional amount in Poughkeepsie, nearly $475,000, in a public relations drive, and a portion of these expenditures was also election-related.

The result was, that pro-mall candidates were elected in sufficient numbers to approve the zoning change, enabling the mall to be built. This massive spending campaign addresses two troublesome implications for this State's electoral process. First, by funnelling money to Poughkeepsie by means
of contributors to political committees, the Pyramid contributors avoided the low limits that govern direct contributions to local candidates.

In this case, those limits would have restricted direct contributions to Town Board candidates to $1,000 per contributor per candidate. Pyramid, thus, accomplished indirectly what it could not have accomplished directly.

As a result, ten to twenty times more money was spent on behalf of the pro-mall candidates than was spent on behalf of their opponents.

Second, Pyramid and the participating committees were able to carry out their actions in secrecy.

As testimony at our January hearing showed, Pyramid was concerned that its role in the elections not itself become a campaign issue and, as a result, that role was not disclosed even to the candidates themselves.

Indeed, prior to the elections, no Pyramid-related contributions and expenditures were disclosed in filings with the Dutchess County Board of Elections where interested members of the public or press could conveniently examine the information.
Thus, outside investors were able to influence a local election without the knowledge of the voters themselves.

The State Board of Elections initiated its investigation in early 1976, after receiving a complaint that the laws regarding contributions limits and disclosure filings had been violated. The Board's investigation, which lasted over a year, was one of the largest campaign financing investigations ever undertaken by the Board. In the end, the Board concluded that there were no violations warranting prosecution and directed that the matter be closed.

Our Commission is not a law enforcement agency. Our responsibility under our mandate is to examine the effectiveness of existing enforcement machinery, in this case, the State Board of Elections. We do so today by assessing the adequacy of the Board's investigation of the allegations raised in connection with the Poughkeepsie elections in 1985.

Today's hearing has been delayed for over nine months by litigation initiated by Thomas Spargo, who played a role in both the Poughkeepsie elections and the Board's investigation. The courts have recently
vindicated our position, that the public is entitled to learn how the Board conducted its investigation.

Other Poughkeepsie-related litigation remains, however, including lawsuits brought by Pyramid partners and by Mr. Spargo that seek to quash Commission subpoenas served upon them. This litigation does not affect today's hearing, and we are confident that our position will be vindicated there, as well, enabling us to complete our investigation of the Poughkeepsie elections.

The Commission calls as the first witness today, Anthony Carpiniello.

Would you raise your right hand?

ANTHONY CARPINIETLO, called as a witness, having been first duly sworn by the Chairman, testified as follows:

THE CHAIRMAN: Please be seated.

I recognize Chief Counsel Kevin O'Brien.

MR. O'BRIEN: Thank you, Dean Feerick.

EXAMINATION BY

MR. O'BRIEN:

Q Investigator Carpiniello, you're currently the Deputy Chief Investigator for the Commission; is that correct?
And I believe, as you testified back in January, you headed the Poughkeepsie investigation --

I did.

-- on behalf of the Commission; is that right?

Yes, sir.

Let me ask you, by way of background, some questions about aspects of your testimony last time.

It is fair to say, I believe, that your investigation focused on the role of Pyramid in obtaining a zoning change in order to be able to construct a shopping mall in the Town of Poughkeepsie; is that correct?

That's correct.

And, in particular, you focused on the Pyramid Company's role in financing those local elections in November of 1985, is that also fair?

Yes.

Could you tell us, very briefly, why was Pyramid interested in financing those elections and getting involved in that election at all?

Yes. On January 1st, 1985, the Pyramid/Galleria Company was formed for the purpose of constructing a mall on 109 acres of land located on Route 9 in the Town of Poughkeepsie. The land was zoned residential
and partially for highway use, and such zoning required a zoning change. In accordance with Town Law, zoning changes must first be referred to the Dutchess County Planning Commission for an initial opinion. On October 14, '85, the Dutchess County Planning Commission voted against granting the zoning change. This action necessitated a super majority vote by the Town of Poughkeepsie Council.

Now, the Town of Poughkeepsie Council consists of six wards and one supervisor, each with one vote. A super majority requires five of the seven votes. Prior to the November election, all seats were up for election. The seats in the Third and Fifth Ward were unopposed. Incumbent Republicans in both wards had expressed publicly that they favored the mall. The Fourth Ward, although contested, both candidates publicly claimed to be pro-mall.

Therefore, prior to the election, the '85 election in the Town of Poughkeepsie, three of the five necessary votes were virtually assured.

Q That would mean, if I understand you correctly, that Pyramid needed a super majority of five votes, and that would require an additional two beyond the three assured votes that they had for the mall; is that correct?

A That's correct. A decision was made by the campaign strategists in this election that the Supervisor
race, a Miss Anna Buchholz, the incumbent Democrat, who was
being contested by a Mr. John Dwan, that Anna Buchholz was a
very strong candidate, and the chances of defeating her were
next to impossible. Therefore, this election hinged on
obtaining two of the three remaining wards.

Q Which wards were those?
A Wards One, Two and Six.

Q Let me direct your attention to Exhibit 2,
which is both the chart directly in front of our table here
and the same chart off to the side for the benefit of the
Commission. This same chart, I believe, has been reproduced
as Commission Exhibit No. 2.

You referred to this chart in your testimony in
January, Mr. Carpiniello, but I would like to ask you to
clarify certain aspects. Could you please summarize the
flow of money beginning with the left-hand side of the
chart?

A Yes. Well, that center figure of $776,967,
that's a combination of two figures. It represents
contributions by the Pyramid people in the amount of
$301,000, and it also includes expenditures by
Pyramid-related companies of, possibly, $475,967.

There were $301,000, total contributions, by 18
Pyramid-related individuals. As shown on the chart, this
money flowed from two sources -- three sources. $126,000 was contributed to the New York Republican State Committee; $100,000 to the New York Republican Federal Campaign Committee; and, to the right, $75,000 to Building a Better New York Committee, a political action committee formed in October of 1985.

Q Mr. Carpiniello, what is the Republican Federal Campaign Committee?

A That is a political subcommittee of the New York Republican State Committee; it was formed in 1978, its Treasurer is Thomas Spargo, its purpose is to support candidates in both local and national elections.

Q So these two entities, between the two of them, received a total of $226,000; is that correct?

A Yes.

Q In addition, as you said, the PAC, Building a Better New York Committee, received an additional $75,000; is that right?

A Yes.

Q At some point, a transfer was made from the Republican State Committee to the Town of Poughkeepsie Republican Committee; is that correct?

A Yes, in late October, '85, $31,500 was transferred from the New York Republican State Committee to
the Town of Poughkeepsie Republican Committee.

Q Again, with the aid of our chart, if you could just summarize what these committees did with this money.

A Yes. The chart, taking it down to the bottom left, you see that $166,000 from the Republican State Committee and Republican Federal Committee was funnelled down to various vendors, Campaign Strategies, Inc., the primary strategist in this election, and the money from the Town of Poughkeepsie, $31,500, was funnelled to that source, as well as the $69,700 of the $75,000 that was contributed to Building a Better New York Committee.

In total, Mr. O'Brien, $267,245 was expended on Campaign Strategies, Inc., various vendors that were engaged in consulting, polling, research, mailing, printing, and other election-related work.

COMMISSIONER VANCE: Can I ask a question?

THE CHAIRMAN: You may.

COMMISSIONER VANCE: Mr. Carpiniello, did the $31,500 go from the Republican State Committee or from the New York Republican Federal Campaign Committee to the Town of Poughkeepsie Republican Committee?

THE WITNESS: Republican State Committee, Mr. Vance.
COMMISSIONER VANCE: Thank you.

Q All of these expenditures were election-related, was that the result of your investigation?

A Yes.

Q Were you also able to determine which wards in the Town of Poughkeepsie -- which wards races were the objective of this attention in the form of these expenditures?

A Yes. Our investigation disclosed that, as I stated at the outset, it was 1, 2 and 6 and, to a lesser degree, 4.

Q So, to the extent that 1, 2 and 6 received the bulk of these expenditures, that would correspond with what you testified earlier, namely, that Pyramid had to concentrate on those wards in particular in order to achieve the super majority?

A Those were the key wards, Mr. O'Brien.

Q I want to return to this question of allocation of expenditures in somewhat more detail a little bit later, but for now, let me move to the right-hand side of the chart. Would you please explain what that activity represents?

A The right-hand portion of the chart reflects
$475,967 of expenditures by Pyramid-related companies. $386,892 was to Campaign Strategies; $49,000 for attorneys' fees; and $40,000 for tolling and research fees. These expenditures, Mr. O'Brien, as best we could determine, were both election-related and image building.

Q Were you able to segregate out which amount was used for which purpose?

A No.

Q Will you explain briefly which were not?

A Well, without the testimony of the Pyramid -- of the officials of the Pyramid-related company, I just could not make that determination, and there was an overlap. For example, the polling -- there would be questions asked relative to how do they like the Town of Poughkeepsie; and, another question might be, how much do you support the current Supervisor. So, it was an overlap, both image building and election-related, and I guess the answer to the question is no, we couldn't make that determination.

Q If I understand your testimony correctly, based on your investigation, you reached the determination that some amount of this money was spent for each purpose, image building, as you call it, and election-related expenses, but you are unable, as you sit here today, to quantify exactly how much was spent for each purpose; is that correct?
A: That's correct.

Q: Could you explain a little more what you mean by image building, Mr. Carpiniello?

A: Well, I think image building would be a means by which the company would attempt to gain acceptance in the Town of Poughkeepsie. This was a -- the polling showed it was a controversial issue, as to whether the Galleria was wanted in the community, and image building would relate to those type of expenditures to cause a climate of acceptance.

Q: We are talking about the acceptance of the mall now; is that correct?

A: No -- speaking about the acceptance of the mall in Poughkeepsie.

Q: Just to place this in context, there was a vote on the question of zoning change for the mall after the Town Board elections; is that correct?

A: Yes, March 5th, to be exact.

Q: March 5th, '86?

A: '86.

Q: Approximately four months after the elections?

A: Exactly.

Q: And it is your testimony that part of the money on the right-hand side of the chart was expended towards that and improving the image of the mall?
A Yes, that's true. It's corroborated by the

testimony of Mr. Friedman, the President of Campaign
Strategies, who testified to that effect back in January.

Q Mr. Carpiniello, the Board of Elections, in
this case, conducted its own investigation of the
Poughkeepsie elections; is that correct?

A Yes, they did.

Q Over what period of time did the conduct their
investigation?

A January, '86 through April 13, '87.

Q How, very briefly, did that investigation
begin?

A The investigation resulted from a complaint
filed by Miss Anna Buchholz, the Supervisor in the Town of
Poughkeepsie, and in the complaint, Ms. Buchholz alleged
that contributions limits were exceeded by Pyramid-related
people. She further alleged that there was a conspiracy to
exceed these contributions limits, and she also alleged a
number of violations involving the filing of disclosure
forms.

Q Did any of those complaints mention specific
persons or entities?

A Yes, they did. The focus of the complaints
were Thomas Spargo, the Republican State Committee, and the
Building a Better New York Committee, a political action committee.

Q Before we go further, perhaps you could explain Mr. Spargo's role in the events reflected in our chart. Did he have a connection with the Pyramid Companies?

A Yes. That expenditure of $49,000 on the right side of the chart represents a payment to Mr. Spargo in connection with legal services performed on behalf of the Pyramid Company.

Q So for some period of time, then, he was counsel to Pyramid; is that correct?

A That's correct.

Q Did he also have any relationship with any of the political committees that you've described?

A Yes, he did. Mr. Spargo was counsel to the New York Republican Committee; he is Treasurer of the New York Republican Federal Campaign Committee; he is the organizer and Secretary of Building a Better New York Committee.

Q Did he have any other role in that, relevant to the probe conducted by the Board of Elections?

A At the time, he was also counsel to the -- to the New York State Senate Election Committee and the New York State Assembly Election Committee.

Q Now, let me ask you, in a summary way, Mr.
Carpiniello, what were the conclusions of the Board at the conclusion of its investigation?

A In a final report dated April 13, '87, Mr. Donald McCarthy concluded that, the contribution limits were not exceeded, therefore, a conspiracy did not exist, and although there were violations involving the disclosure of the filings, they were of a technical nature, which would not warrant criminal prosecution.

Q So the bottom line here was, the Board concluded that there were no violations warranting criminal prosecution; is that correct?

A That's the bottom line.

Q And it directed that the case be closed?

A Yes, sir.

Q Now, in the course of your investigation, Mr. Carpiniello, did you become familiar with the Board's own probe?

A Yes, I did.

Q Were you able to examine its investigative files and speak with various members of the Board?

A I did.

Q Including staff?

A Yes.

Q Could you just summarize, as an overview for
us, what was the nature of the Board's investigation?

THE CHAIRMAN: Could you raise your voice when you speak?

THE WITNESS: Sure, Dean.

As an overview, the Board's plan of action was to identify the total expenditures that could be related to the Pyramid individuals. They then attempted to allocate these expenditures among each of the candidates. They then attempted to determine the amount of contributions made by the Pyramid individuals. By applying the individual contribution percentage to each of the expenditures, a determination could then be made if, in fact, contribution limits were exceeded.

Q Let me ask you about a few of those items, Mr. Carpiniello.

I take it the Board made an attempt to calculate the total Pyramid-related contributions relevant to the Poughkeepsie situation; is that correct?

A Yes, they did.

Q What figure did they come up with?

A $181,000.

Q Now, that, if my arithmetic is right, is $120,000 short of what you came up with in your investigation; is that correct?
A Yes, sir.

Q What explains the difference, what elements did the Board overlook, that you were able to find?

A The Board did not uncover the contributions made by Pyramid-related persons to the New York Republican Federal Campaign Committee in the amount of $100,000, nor did they uncover $20,000 in contributions made, again by Pyramid-related individuals, to the New York Republican State Committee. These monies were deposited to the housekeeping account of the New York Republican State Committee.

Q $20,000 that was overlooked went into the Republican State Committee housekeeping account; is that correct?

A Yes.

Q So, of the $126,000 contributed to the Republican State Committee, that you uncovered, as reflected in our chart, the Board missed $20,000; is that correct?

A Yes.

Q And of the $100,000 which was contributed to the Federal Campaign Committee, as reflected on our chart, the Board missed the entire amount; is that right?

A Yes.

Q Let me ask you a few questions about the latter
dealing with the Federal Committee. How were you able to uncover the $100,000 in contributions?

A We examined the records, the investigative file of the Board of Elections, and included in that file were three checks drawn by Pyramid people, each in the amount of $5,000, payable to the New York Republican Federal Campaign Committee.

Q These were in the Board's own files?

A Yes, sir. On discovering those checks, we contacted the Federal Election Campaign Unit in Washington, and we asked for the filings by the Committee. At that time, naturally, they said they would furnish us with that, and they also informed us that such filings would be available in Albany. We then contacted the Board of Elections to obtain for us the filings by the New York Republican Federal Campaign Committee in Albany and send those filings to us. That gave us the $100,000, and we corroborated the amount through counsel for the Pyramid people by getting copies of the checks that were issued.

Q Now, could the Board of Elections have gone directly to these same contributors and gotten copies of the cancelled checks themselves?

A Certainly.

Q Did they do that?
A No.

Q Do you know why not?

A Well, a decision was made not to interview the contributors.

COMMISSIONER VANCE: Who made that decision?

A Well, the decision was made by Frank Polsinello, Chief-Enforcement Bureau, Board of Elections. That's on February 28th, '86. There was a sequence of events that led to that, and I think that's an area where can get into.

Q Why don't you place that decision in context for us by getting us the sequence, as you learned it?

A It late February, '86 -- this is the result of my examining the correspondence, the office correspondence in the Board of Elections, and there was a series of memos from Frank Polsinello -- again, he's head of the Enforcement Unit -- to Mr. Donald McCarthy, who is Counsel-Enforcement, and from Mr. Joseph Daddario, who is the Chief Investigator.

Now, in February, '86, a plan of action was submitted to Mr. McCarthy by Mr. Polsinello. In that plan of action, they set forth the preliminary steps that already had been taken in the investigation, and a plan to interview the contributors as well as to interview, Spargo, Lewis Bart Stone, and Ruth Swan, who is the Treasurer of Building a
Better New York Committee.

In early March of 1986, Chief Investigator Daddario furnished Mr. Polsinello with a listing of the names and home addresses of Pyramid-related individuals, together with that of Thomas Spargo, Lewis Bart Stone and Ruth Swan.

On March 10th, '86, there is a memorandum from Mr. Daddario to Mr. Polsinello that's responding to his request for Mr. Daddario's views on what should be done on this investigation. In that memorandum, Mr. Daddario states that it is necessary to determine if contribution limits were exceeded. He said they should combine contributions mailed to the New York Republican Federal Committee as well as Building a Better New York. He asked -- or, he suggested that affidavits be obtained from the contributors and, perhaps most important, to determine the motives for contributing, were the contributions an exchange for favorable votes on a zoning change, and what was their involvement, a Pyramid involvement with Spargo, with Paroli, with Build a Better New York and the Republican State Committee.

Mr. Carpiniello, what happened to this request to interview or depose or to take affidavits from the Pyramid contributors?
Well, on April 28th, '86, Mr. Polsinello instructed Mr. Daddario to send letters to the contributors rather than conduct the interviews. At some point in time between this time frame, Mr. Polsinello told Mr. Daddario that it would be illegal to interview contributors. As far as the Spargo interview goes, their appears to be a Board of Elections policy that interviewing targets of the investigation requires approval from higher levels.

Let's leave that. Focusing on the contributors?

Did there come a time when letters were sent to contributors asking for all checks to any New York State political committee or candidate?

Yes, there did. On May 7th, '86, such a letter was mailed.

This was in lieu of interviews or depositions or receiving sworn affidavits from the Pyramid contributors; is that correct?

That's correct. I might add, that the period of time requested was during the period of July 15th, '85 through January 15th, '86. So, the letter stated, to furnish copies of checks drawn to political -- New York political candidates and committees during the period of
Carpiniello

July 5th, '85 through January 15th, '86.

Q What happened in response to that letter?

A On May 9th, '86, two days later, Mr. Tom Spargo appeared at the Board of Elections office and he met with Mr. Daddario and offered to furnish the checks from the contributors if such act would satisfy the request set forth in the letter.

Q And was that offer agreed to?

A Yes, it was. Mr. Daddario states in the memorandum that he feels that such -- that he could corroborate this since he had already subpoenaed the records from the Republican State Committee and the Building a Better New York Committee. So, his opinion was the acceptance of that.

Q Which checks did Mr. Spargo ultimately supply to the Board?

A On January 26th, '87, Mr. Spargo furnished 34 checks totalling $100,000, and on April 6th, '87, he furnished two checks totalling $1,000.

Q The total number of checks in dollar amount that he supplied was what?

A $171,000.

Q Did the Board ever depose Mr. Spargo or interview him?
A No, they did not.

Q Did it ever take any independent steps to verify that Mr. Spargo had provided all the checks responsive to the Board's letter?

A My opinion on that, Mr. O'Brien, would be limited to analyzing the records obtained by subpoenas of the Republican State Committee and the Building a Better New York Committee.

Q Let me ask you now about the right side of the chart, Mr. Carpiniello.

COMMISSIONER VANCE: Just a second, Mr. O'Brien.

Before you get there, did Polsinello ever say why it would be illegal?

THE WITNESS: No. My understanding is no. That information I'm relating from an interview with Mr. Daddario where he stated that this is what he was told and without being offered an explanation as to the -- why it would be illegal. That's as to the contributors? Did I hear your question right?

COMMISSIONER VANCE: Yes.

THE WITNESS: There were other reasons for Spargo -- the answer to your question, Mr. Vance, is
COMMISSIONER EMERY: Is it clear that it was illegal or was it just not policy or was it just not something they were going to do, I mean, was there some legal bar upon them?

THE WITNESS: I can't answer that question, Commissioner Emery. I'm relating to what Mr. Daddario told us.

COMMISSIONER EMERY: Did he tell you it was illegal?

THE WITNESS: He said he was told by Mr. Polsinello that it was illegal and there was no further explanation given as to why.

MR. O'BRIEN: I suggest we could explore this matter further when Mr. Daddario testifies.

Q Let me move on to the right-hand side of the chart, Mr. Carpiniello.

Did the Board uncover any of the direct expenditures in the amount of $475,967?

A No, sir.

Q How were you able to discover that?

A Well, we subpoenaed the records of Campaign Strategies, Inc., and we analyzed those records, and we saw various receipts from Pyramid-related companies. There was
Carpiniello

a Pyramid/Galleria Company, and a Pyramid Company No. 3.

Q Based on these documents, did you interview the principal of Campaign Strategies, Mr. Friedman?

A Yes, we did.

Q Did he lead you, through your discussions with him, to these amounts?

A Yes, after we spoke to him, sure.

Q Did the Board of Elections ever depose or interview Mr. Friedman?

A No.

Q Did they ever depose or interview any of the vendors whose payments are reflected in the chart we have been talking about?

A No. To my knowledge, they did not know of such expenditures.

Q For the record, they did issue document subpoenas to Campaign Strategies and Campaign Technologies; is that correct?

A Yes. Notice on the chart, Campaign Strategies appears on both sides of the chart. Their subpoena was directed towards the Campaign Strategies, Inc., on my left side of the chart.

Q In sum, then, the Board did not uncover nearly $600,000 of the $776,967 reflected in our chart; is that
correct?

A Yes.

Q Let me ask you about the allocation of expenditures which is the subject you touched upon earlier. Now, I want to direct your attention to the expenditure side of the chart, the $267,245.

A Yes.

Q You testified earlier, I believe, that these expenditures were intended for races in four town wards and, particularly, the First, Second and Sixth Ward; is that correct?

A First, second, sixth and, to a lesser degree, in four.

Q Could you describe, briefly, just summarize, how you made that determination, using the type of expenditure?

A Yes. We uncover that there is direct evidence of sophisticated polling in only 1, 2 and 6, market research, 1, 2, and 6, door to door assistance, where a person will walk with the candidate door to door, that's only in 1 and 6. The mass mailings was in 1, 2 and 6 and, to a lesser degree, in 4. Mailgrams were sent to 1, 2 and 6, only. And the telephone banks operated for the benefit of Wards 1, 2 and 6, and those telephone banks involved a
series of phone calls as the election got closer. I believe
there were three calls and a final one to get out the vote.

Q I take it from your testimony that you
uncovered no such target assistance for any other ward in
the Poughkeepsie elections; is that correct?

A No.

Q Could there have been a spill-over effect that
could have benefitted Republican candidates in other wards?

A Yes. The campaign was centered on so-called
Republican issues of planning and taxes. That went out in
mailings. There could be some generic over-spill, however,
I would like to point out to the Commission that Mr.
Friedman testified that even the generic over-spill was
gearied for the 1, 2 and 6 Ward. That was just to get out
the Republican vote with those Republican issues.

Q But it could have inadvertently benefitted
Republican candidates in other wards; is that correct?

A Yes, surely.

Q Did Mr. Friedman testify as to whether or not
it was the intention of the vendors being subsidized by the
committees to do that, to help candidates in other than the
four targeted wards?

Q Mr. Friedman said that the sole purpose of all
the expenditures was to assist the pro-mall candidates in 1,
2, 6 and, to a lesser degree, in 4.

Q Now, the Board, in its investigation, did its own allocation of campaign expenditures; is that correct?
A Yes, sir.
Q In general, how did it allocate those expenditures?
A In general, the Board allocated the expenditures across the board. There were -- as I stated at the outset, there were eleven races. In addition to the six town -- six wards and supervisor, there were four other races, and I would like to point out that those four races were also uncontested races. That included the Receiver of Taxes, a Town Clerk, the Highway Supervisor and a Town Justice. They were all uncontested.
Q Would it be fair to say that in many cases, the Board divided these expenditures equally upon eleven races in the Town; is that correct?
A Yes.
Q Now, out of the eleven, how many of these races were even contested races?
A There were five of the eleven that were contested. There were six uncontested races.
Q Was the Board aware of this at the time?
A Sure. Absolutely.
Let me ask you about a couple --
Let me say, "absolutely". Pursuant to a memorandum that they had received from the Election Commission that was included in their files.

Let me ask you about one or two examples of how the Board made its allocation.

Mr. Pheiffer, Fred Pheiffer, was a vendor who performed services in connection with the Poughkeepsie election; is that correct?

Mr. Pheiffer, you said?
Yes.
Yes, sir.
And he received payment for those services from one or more of the Republican committees; is that also correct?
Yes.
How much did he receive?
He received $4,387 from the Republican State Committee.
Now, based on your investigation, for which candidates in Poughkeepsie did Mr. Pheiffer perform those services?
Mr. Pheiffer performed the services for Mr. Darrow; he was the candidate in the First Ward, the
Republican candidate in the First Ward. During an interview, Mr. Pheiffer stated that the concentration of his efforts were on walking door to door with Mr. Darrow, the candidate for the First Ward.

Q How many candidates did Mr. Pheiffer work for, was it just Mr. Darrow or mainly Mr. Darrow?
A I would categorize it as mainly Mr. Darrow, if not all.

Q How did the Board allocate the payments made to him, Mr. Carpiniello?
A The Board allocated that payment among all eleven candidates.

Q Equally?
A Equally.

Q And on what basis did the Board do that?
A On the representation of Mr. Thomas Spargo, both in producing the invoices and telling the investigator that these particular expenses are to be allocated among eleven candidates.

Q Did the Board ever attempt to confirm Mr. Spargo's information, independently?
A He was not interviewed.

Q Did the Board ever talk to Mr. Pheiffer himself?
A No.

Q Now, in addition, did both the Building a Better New York Committee and the Republican State Committee represent to the Board of Elections in general how their expenditures should be allocated?

A Yes, they did.

Q Let me direct your attention, if I could, to Commission Exhibit 3, which is a Building a Better New York disclosure statement filed with the Board of Elections, I believe on January 27th, 1987.

Is that correct?

A Yes.

Q And it's signed by Ruth Swan and verified by her as the Treasurer of Building a Better New York; is that correct?

A Yes, sir.

Q Now, appended to the back of this document is an allocation of campaign expenditures; is that correct?

A Yes, sir.

Q Could you summarize what that appendix says about the allocation of expenditures?

A Yes. The appendix says that the expenditures are to be allocated evenly among all eleven candidates, 9.09 percent, which is evenly distributed among the eleven, and
it's referring to total expenditures of $69,742.

Q Now, were you able to contact Miss Swan about this document?

A Yes, sir.

Q Was she asked about the allocations section of the document that you have just summarized?

A She was.

Q What was she asked?

A She was asked on what basis did she prepare the allocation document.

Q And what was her response?

A She stated that the allocation campaign costs were furnished to her by Thomas Spargo. She further stated that, at Spargo's instruction, she made this attachment part of her periodic filing, signed a form, and filed accordingly.

Q Let me direct your attention to another Commission Exhibit now, Mr. Carpiniello, and that's Exhibit 4. This is a letter dated March 23rd, 1987, to the Board of Elections from Lewis Bart Stone, Treasurer of the Republican State Committee; is that correct?

A Yes, sir.

Q This letter also includes an allocation of expenditures; is that correct?
A    Yes, it does.

Q    And that is included on the last two page of
the exhibit; is that fair to say?

A    Yes, sir.

Q    Could you summarize what this representation as

to allocation says?

A    It's the same as the one I testified to as to
Building a Better New York in that the allocation is being
made to eleven candidates, 9.09 percent each.

Q    And, among the vendors whose payments are
allocated is Mr. Pheiffer; is that correct, he's listed in
the schedule on the next to last page?

A    Yes, he is.

Q    Now, were you able to interview Mr. Stone about
this document?

A    Yes, we did.

Q    Who else was present during this interview
besides Commission staff?

A    Mr. Thomas Spargo.

Q    In what capacity?

A    As counsel to the Republican State Committee.

Q    Was Mr. Stone asked about the allocation
represented on this document?

A    Yes, specifically.

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Q  What was he asked?
A  He was asked the basis for making the allocation among the eleven candidates.

Q  And what did Mr. Stone say in response?
A  When asked, he simply pointed to Mr. Spargo, stating that the letter was written on advice of counsel.

Q  What did Mr. Spargo say at that point?
A  He remained silent.

Q  Let me ask you about the contribution limits, about which the Board reached certain conclusions.

I believe you testified, Mr. Carpiniello, that the Board concluded that the contribution ceilings applicable to Poughkeepsie were not exceeded by the Pyramid contributions; is that correct?

A  Only in small amounts was it a conclusion.

Q  Let me break this down. Is it fair to say that the Board of Elections reached two different conclusions about the question of whether the limits applicable to Poughkeepsie had been exceeded?

A  Yes.

Q  Would it be fair to say that the first conclusion was, after an allocation was performed by the staff, that the contribution limits were exceeded in some cases but only by a slight amount?
A: Yes, sir.

Q: Would it also be accurate to say that the Board then reached a second conclusion, which was that the limits had not been exceeded because no allocation had been made to the individual candidates in the Poughkeepsie races; is that fair?

A: Yes.

Q: Let me ask you just about the first conclusion for the present purposes, and we will save the second conclusion for Board witnesses to come later.

The Board reached a conclusion that, in some cases, the applicable contributions limit had been exceeded by a slight amount, as you just testified. Was that conclusion based in any way on the Board's determination that $181,000 in total contributions had been made by Pyramid individuals?

A: Yes, the contribution figure would be an important aspect in drawing that conclusion.

Q: Was it also based in part on the Board's belief that the money coming into the Poughkeepsie elections had in some cases to be divided eleven ways equally among the eleven candidates running that year?

A: Yes, that would be an equally important factor in the computation.
Would it be fair to say that, due to this arithmetic, the amounts were generally lower than if the figure had been $301,000 for total contributions and then that figure had been divided among three or four target candidates?

Yes, sir.

Did the Board rely on any other assumption or make any other decision in reaching its conclusion about whether or not the limits had been exceeded?

Yes, they did.

Could you explain that very briefly?

Yes. There was an assumption made that the contributions made to the New York Republican State Committee were not being earmarked dollar for dollar for the Poughkeepsie election. By so doing, in making their computation, they divided -- the denominator of the equation was $787,000 which was the total money available in the Republican treasury at the time. That had the effect of markedly reducing the percentages that were then applied to the expense allocation.

My math isn't very good, and I don't propose to get into it, but would it be fair to say, Mr. Carpiniello, that the bottom line here is, that the Board's procedure had the effect of diluting the amount of money that would be
passed through the committees and allocated to any particular candidate?

A Yes, sir.

Q So that only a smaller percentage of each Pyramid dollar was attributed to any particular candidate in the Town of Poughkeepsie?

A Yes, sir.

Q Now, Mr. Friedman of Campaign Strategies testified at our last hearing, and you also interviewed him; is that correct?

A Yes.

Q Did he tell you anything that was relevant to this question of whether dollar for dollar the amount should be earmarked to the Poughkeepsie candidates or whether or not, instead, there should be kind of a dilution of the contribution made by Pyramid?

A Mr. Friedman was very, very clear that the money contributed by the Pyramid people was related to support, wholly, pro-mall candidates in the Town of Poughkeepsie.

Q And that was its sole purpose; isn't that his testimony?

A Its only purpose, yes.

Q But the Board never spoke to Mr. Friedman; is
that right?

A That's correct.

Q Let me ask you to do just some basic arithmetic based on your own investigation.

You've testified that the total contributions here are $301,000; is that correct?

A Yes, sir.

Q And these contributions came, as our chart says, from 18 Pyramid-related individuals, is that also right?

A Yes, sir.

Q You've also testified that, based on your investigation, this money was used to subsidize expenditures in four targeted races; is that fair?

A Yes, sir.

Q Although there might have been a spill-over effect which could have benefitted candidates in other areas?

A Well, yes. But I would just like to qualify that, Mr. O'Brien -- I think it is essential to what I'm testifying to -- and that has a bearing on the intent of the contributions. Now, what Mr. Friedman testified to, the intent, even of the generic over-spill, was on three and on, conservatively, four.
Q I understand. Based on these facts, how much of that $301,000 in contributions could the Pyramid contributors have given if they had contributed directly to the Town Board candidates instead of giving to the committees which, in turn, passed along certain expenditures to the candidates?

A Well, the elections limits for the Council races were $1,000, so you have to multiply the thousand times the four, the four targeted races, and multiply that times the 18 Pyramid contributors, and that would be a total of $72,000.

Q So, the $72,000 is the aggregate maximum that the 18 contributors could have given directly to the targeted candidates, is that your testimony?

A Yes.

Q As you also testified, the Board's staff concluded that the Republican State Committee and the Building a Better New York Committee had violated certain disclosure laws in certain respects; is that correct?

A Yes.

Q Could you just give us two or three illustrations of what the staff found in that regard?

A As far as the disclosure violations?

Q Yes.
A They found that neither the Republican State Committee or Building a Better New York disclosed the contributions received from the Pyramid people in Dutchess County. That was number one.

They found that the Republican State Committee received $30,000 in contributions from the Pyramid people that were subject to the disclosure filings, the twenty-four hour limit disclosure filings. They found that that was not done.

Q That was not done either in Albany or in Dutchess County --

A Yes.

Q -- prior to the election; is that right?

A Yes.

THE CHAIRMAN: Could you give us some additional information? What were the other violations?

THE WITNESS: Other violations are that Building a Better New York failed to file any campaign material with the New York State Board of Elections or in Albany, or at the Dutchess County Board of Elections.

Q Was the same true also, for the Republican State Committee?
I'm not certain of that, Mr. O'Brien. I believe so, but I don't want to hedge on that. I'm not certain. Building a Better New York failed to file a Statement of Authorization or Non-Authorization listing specific candidates it was supporting. That was a violation.

And another was, that Building a Better New York listed $59,000 in expenditures on its filings for consulting fees when, in fact, these expenses were sub-contracted to vendors. So, there was a discrepancy in that filing.

Q Were there other violations found by the staff, as well?

A There were a series of them. I think those were the highlights.

Q What did the Board conclude regarding all these apparent violations of the disclosure law?

A The conclusion was, that they all represent technical violations, none of which weren't criminal prosecution.

Q Let me ask you, just briefly -- and we are almost near the end here -- about the first violation you mentioned, the failure to file locally concerning contributions, and by locally, I mean, failure to file in
Dutchess County.

Q You've testified, I believe, that the Board concluded that this omission did not warrant criminal prosecution. Did Mr. McCarthy, the Board's lawyer, explain why he reached that conclusion?

A Yes. In a memorandum, Mr. McCarthy concluded that the Dutchess County Board of Elections did not inform these committees of the requirement to fail the disclosure forms in Dutchess County, and if that is the case, therefore, there is no violation by the committees.

Q No intentional violation?

A No intentional violation by the committees.

Q In other words, he found that the local Board had not put the committees on notice that they had to file these contributions; is that correct?

A Yes.

COMMISSIONER VANCE: Aren't there regulations that require that they inform, if they know? It wasn't the problem here that they simply didn't know. I'm talking about Dutchess County.

THE WITNESS: Exactly. They had no way of knowing.

Q Just to clarify that. You reviewed the Dutchess County Board's files in this matter?
A Yes.

Q Was there anything in those files that would have alerted the Dutchess County Board to the fact that these committees were making expenditures in connection with the election and were receiving contributions from the Pyramid contributors?

A Not an item.

THE CHAIRMAN: Mr. Carpiniello, I'm aware that you know the lawyers, so if you don't know the answer, say you don't know the answer.

Am I correct that New York State Election Law requires political committees to file in localities like this, there's a legal requirement that there be a filing?

THE WITNESS: It is my understanding that such a requirement does exist, Dean.

Q Let me just take you back and ask you a few last questions about this question of disclosure, Mr. Carpiniello.

Based on your investigation, did the Pyramid representatives in Poughkeepsie have a concern about publicity regarding the role of Pyramid in financing the election?

A Yes.
Q    What was that concern, based on what you
learned in your probe?

A    Based upon our investigation, Mr. O'Brien, the
mall, the construction of the mall, was a controversial
issue in the Town of Poughkeepsie. This came through the
polls and through the marketing research that was done.
There was a decision made -- and, I get this from
interviewing a number of people -- that there was a decision
made to not highlight the fact that candidates were for or-
against the mall, so all of the literature was centered on,
as I referred to before, so-called Republican issues,
planning and taxes.

   In addition to that, there was a feeling that
there would be a backlash effect if it were known that the
Pyramid people were pumping money into this election.

Q    Indeed, didn't Mr. Friedman testify to that at
our last hearing?

A    Mr. Friedman testified to that. And, to take
it to another degree, Mr. O'Brien, the candidates didn't
know that Pyramid was supporting them, that the Pyramid
money was behind them. That's through sworn affidavits, as
well as testimony at our January hearing.

Q    Nor did any of the campaign literature mention
the role of Pyramid or even the issue of the mall; is that
correct?

A    That's correct.

Q    Now, to your knowledge, did the Board ever take this concern for secrecy on the part of Pyramid into account in determining whether or not the disclosure omissions which it found were technical or not?

A    Mr. O'Brien, I'll answer it this way: The Board was not aware of the intent of the contributions through its failure to interview the persons who would have told them that. So, in answer to your question, the answer no, they did not take that into consideration. The reason why is, they didn't know of it, in my opinion.

MR. O'BRIEN: I have no further questions, Dean.

THE CHAIRMAN: I have just two questions.

THE WITNESS: Yes, sir.

THE CHAIRMAN: Do I understand your testimony to be that, of that figure, $776,967 that related to the Poughkeepsie election and the mall, the State Board of Elections only discovered $181,000 of that $767,000 figure?

THE WITNESS: Yes. Let me just do a quick computation in my head, if I might, Dean. None of the right side at all. The 475 can be omitted,
without question. And they found 181 of the 301. I think what you said is correct.

THE CHAIRMAN: So what I said, again, is:

That of the $776,000 that your investigation on behalf of our Commission found with respect to the mall, the election and the mall, the Board only discovered 181,000 of that figure?

THE WITNESS: That's correct.

THE CHAIRMAN: Now, you also gave a lot of testimony with respect to the subject of allocation, and if I can adequately summarize what I heard you say, the Board had initially made a judgment to allocate the money coming into the committees among more candidates than the candidates who benefitted from that money, okay.

And, as I understood your testimony, if that amount was allocated among all the candidates, rather than just a few, it would be some violation of the contribution limits, but not significant, however, the Board was only working with the 181,000 figure, not the larger figure; correct?

THE WITNESS: Yes.

THE CHAIRMAN: But then I heard you say that there was a second determination by the Board which,
I gather, was a later determination, to disregard it altogether, the subject of allocation, finding that there was no requirement to allocate?

THE WITNESS: That was Mr. McCarthy's conclusion, that there was no requirement, so the allocations need not have been made, which would make moot the entire --

THE CHAIRMAN: We will discuss that later, but for purposes of the record, at this point, I thought you should say that.

THE WITNESS: That's correct, sir.

COMMISSIONER VANCE: Mr. Chairman, for the purposes of the record, I would simply like to note that, at our prior hearing, I asked Mr. Friedman: "Was there a deliberate position taken to cover up the fact that Pyramid people, Mr. Ungerer and the others, had been involved in supporting the candidates in this election?"

And the answer was: "Yes. I believe it was the wish of the Pyramid representatives, Mr. Ungerer and Mr. Kenan and Mr. Congel, that their participation not only in the election but actually in some of the research elements including the focus groups, not be acknowledged."
THE CHAIRMAN: Thank you.

Commissioner Emery.

COMMISSIONER EMERY: In that regard, your last response to Mr. O'Brien with respect to your conclusion that the Board did not know of Pyramid's role in reaching its conclusion, is that what you were saying in response to Mr. --

THE WITNESS: My answer was, in response, that the Board did not know of the intent of the Pyramid contributions.

COMMISSIONER EMERY: Is your conclusion the same with respect to the staff who was investigating this matter?

THE WITNESS: I believe that they were unaware of the intent.

COMMISSIONER EMERY: Look at Exhibit 10.

THE WITNESS: Which is what?

COMMISSIONER EMERY: The letter of March 10th, I believe, that you mentioned earlier and that I think you paraphrased -- excuse me. I have it here. It's the March 10th letter, it is the third -- No. 3 paragraph concerning recommendations by Daddario to Polsinello.

So, at least Mr. Daddario, who is one of the
Pyramid-related companies?

THE WITNESS: Yes.

COMMISSIONER EMERY: That was in relation to the Poughkeepsie matter; is that correct?

THE WITNESS: It falls into that category, Mr. Emery, of both. The invoice would read, "Legal and research fees." Mr. Friedman's testimony would be:

It was both, he cannot tell how much was for the Poughkeepsie election, how much was for his work on the image building aspects. That entire area there, we just could not determine how much. If we could, we would have another line going over the expenditures.

COMMISSIONER EMERY: But the image building aspects were also related to the project in Poughkeepsie?

THE WITNESS: Yes.

COMMISSIONER EMERY: Okay. And do you have any evidence, or has the Commission been able to determine whether Mr. Spargo has any other financial interest in Pyramid-related companies?

THE WITNESS: There were no indications that he did.

COMMISSIONER EMERY: But, in fact, have we not
subpoenaed a bunch of documents which, if we could obtain them, notwithstanding the litigation, may very well reveal material in that respect?

THE WITNESS: Very possibly.

COMMISSIONER EMERY: So, in other words, that material, that aspect of this investigation, is still in litigation?

THE WITNESS: Yes.

COMMISSIONER EMERY: All right.

THE CHAIRMAN: Thank you very much.

THE WITNESS: Thank you, Dean.

(Witness excused.)


Would you raise your right hand?

RICHARD TENENINI, called as a witness, having been first duly sworn by the Chairman, testified as follows:

THE CHAIRMAN: I acknowledge Laurie Linton of the Commission's staff.

EXAMINATION BY

MS. LINTON:

Q Good morning, Mr. Tenenini.

A Good morning.
Q Can you tell us, by whom are you currently employed, sir?
A The Office of General Services.
Q How long have you been with OGS?
A I have been with OGS since June, '87.
Q Prior to OGS, where did you work?
A State Board of Elections.
Q How long were you with the Board?
A From February of '84 to June of '87.
Q Can you tell us, sir, what was your position at the State Board?
A My title was Associate Accountant.
Q And could you, briefly, describe for us what your responsibilities and duties were as an Accountant at the Board?
A As an Accountant at the State Board of Elections, I was responsible for ensuring compliance with Article 14 of the Election Law, which dealt with campaign receipts and expenditures.
Q And can you tell us, in your position as an Accountant at the Board, did you ever get involved in any sort of auditing activities that were carried on in connection with investigations of compliance?
A Yes, I did.
Q And, specifically, did there ever come a time when you were involved in activities concerning a complaint filed by Miss Anna Buchholz concerning the 1985 Poughkeepsie Town Council Elections?

A Yes.

Q Approximately, when did you first get involved in that case?

A I believe I became involved in it in either February or March of '86.

Q And what was your first involvement with that case, for example, was there any sort of a meeting?

A Yes. I was called into Mr. Polsinello's office. At such time, he explained to me that a complaint was filed by Anna Buchholz involving the Poughkeepsie elections, 1985 Poughkeepsie Town election, and he provided me with specific instructions about what he wanted me to do right away.

Q May I ask you two questions up front? This meeting, I take it, was some time back in March; is that right?

A Yes, in either February or March of '86.

Q Aside from Mr. Polsinello, was anyone else at this meeting?

A Investigator Daddario, and there may have been
Tenenini

other investigators at the meeting. I'm not certain.

Q And were you told anything about the specifics of the complaint at that meeting?

A He did provide us with an overview of the complaint and then specifically told each of us what he wanted us to do immediately.

Q Briefly, describe what he told you in terms of the overview of the complaint.

A That there had been a complaint levied by Anna Buchholz regarding the Town of Poughkeepsie elections, it had to do with the Poughkeepsie -- proposed Galleria that was -- mall that was to be, possibly, built in Poughkeepsie, and that, possibly -- the specific allegations that I got from Mr. Polsinello was, that an unauthorized committee, in other words, Building a Better New York, was set up to circumvent -- that was the allegation -- to circumvent the contributions limitations detailed in Article 14.

Q As a result of this meeting, at some point shortly thereafter, did you or anyone else sit down to to review various election filings?

A Yes. I did.

Q You reviewed which disclosure reports?

A What I was instructed to do was: There were, I believe, fifteen contributors to the Building a Better New

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York Committee. My instructions were to determine if those contributors contributed to any other of the major campaign committees that file with the New York State Board of Elections.

Q Specifically, which committee reports did you review?

A The New York Republican State Committee, the New York State Democratic Committee, Governor Cuomo's Committee, the Attorney General Robert Abrams' Committee, Ned Regan's Committee, the four party committees; the Assembly Democrats, the Assembly Republicans, the Senate Democrats and the Senate Republicans.

Q What I would like to do is ask you a few questions about how you conducted this review both in terms of how you chose these reports to review and the contributions you were looking for.

First of all, how did you decide which committees to look at?

A I was instructed.

COMMISSIONER VANCE: Who instructed you?

You've used that word several times.

THE WITNESS: Mr. Polsinello, the Chief of the Bureau of Election Law Enforcement, State Board of Elections.
At the time that you did this review, were you aware of a committee known as the New York Republican Federal Campaign Committee?

No, I was not aware there was such a committee. Obviously, that was not one of the committees you reviewed?

It was not.

There's a folder in front of you. If you look at Exhibits 5 and 6 in the folder, you'll see two filings from the Republican Federal Campaign Committee that lists -- I can give you a couple of seconds.

Exhibit 5 and 6?

Yes.

Okay.

If you look at them, there are $100,000 worth of contributions for Pyramid-related individuals in those two listings.

Yes, I see the names now.

If you look at the filings, can you tell us what is the date stamp on those two filings, as to when they were received by the State Board?


So, in any event, at this point, had you completed your review of the financial disclosure.
Tenenini

1 statements?

A Yes, yes.

Q So, these would have escaped review?

A These would have escaped me, had I known of the existence of this committee.

Q I think you've also stated -- I'm sorry -- I think you might have stated that they came in in April, '88. I think it's April, '86. Is that right?

A Received -- is this -- '86. I'm sorry.

Q Okay. Thank you.

Mr. Tenenini, I think you've also stated that you reviewed the filings of Building a Better New York Committee; is that right?

A Yes.

Q The Election Law, in addition to the financial disclosure statements that are required to be filed, the Election Law requires that all political committees file certain statements on which they list certain candidates they propose to support; is that right?

A That's correct.

Q Specifically, there is something known as a Statement of Authorization or Non-Authorization of candidates and a Statement of Designation of Treasurer and Depository?
A That's correct.

The Chairman: Can I ask the witness to speak into the microphone, please?

The Witness: Sorry.

Q Mr. Tenenini, in your review of the filings of Building a Better New York, did you review these two statements of that committee?

A Yes, I did.

Q And, to refresh your recollection, if you need, there are copies of those two statements in Exhibits 21 and 22 of your packet.

Either based on your memory or you can look at the statements under the heading of which candidates Building a Better New York planned to support, what did the committee state?

A Through memory, they stated various State-wide candidates in various counties I believe they mentioned.

Q And, in fact, did Building a Better New York spend money on -- I think the actual language is -- various State-wide and legislative candidates in various committees?

A Could you repeat the question?

Q Sure. And, in fact, did Building a Better New York spend money on various candidates in various counties?

A Direct expenditures as opposed to contributions
Q Expenditures.
A Only one county, Dutchess County.
Q Those were the Poughkeepsie Town Council?
A Those were the Poughkeepsie expenditures.
Q How about contributions?
A I believe there were two contributions made by Building a Better New York, one to the Committee to Elect Mayor Whelan, and the other, Committee to Elect Judge Duran, $250, I believe. They were made after the election.
Q There were two small contributions of $250 each?
A Nominal.
Q Aside from those, its entire monies was spent on the candidates for election to the Poughkeepsie Town Council?
A Yes.
Q I have a couple of questions about your initial review. I think you stated that what you were looking for was to isolate contributions from individuals related to the Pyramid companies.
A Yes, I was.
Q My question for you is: How did you know who to look for? There's a whole universe of contributors out
there. How did you know who was and who wasn't a Pyramid-related person?

A Because I was told to look for fifteen individuals that were on the Building a Better New York financial disclosure statements as having contributed $5,000 each. I was looking for those specific individuals.

Q Had someone determined that those fifteen individuals were related to Pyramid?

A Yes, and I'm not sure of exactly how I was told that, but -- whether it was in the complaint or I was informed of that prior to my doing this analysis, but I did know that.

Q In any event, my question, to some degree, goes to the form itself. The financial disclosure statement of the State Board does not require that an individual list his or her business affiliation?

A No, it does not. The FEC does, but not the States.

Q By looking at the State form alone, could you not tell who was or who was not related?

A No.

Q Mr. Tenenini, before we get into the real nuts and bolts of your investigation, I would like to talk a bit about the staffing of the investigation.
Q On a day to day basis, who was really involved in this case?

A Joseph Daddario and myself, and I believe certain of the other investigators were deployed at various times during the investigation to acquire certain information.

Q Could you just, briefly, summarize what Mr. Daddario's responsibilities were and what your responsibilities were?

A Yes. Mr. Daddario's responsibilities were to subpoena all records necessary to accomplish this investigation. He was also to interview all of the Poughkeepsie candidates or to see that they were, in fact, interviewed in this investigation. He was also to apportion the various expenditures made on behalf of Poughkeepsie candidates to those candidates, and he was to prepare a report which answered the specific -- didn't answer the allegations, but provided the information regarding each allegation in the complaint filed by Anna Buchholz.

Q And your responsibilities, sir?

A My responsibilities were, initially, to identify any other committees that may have been contributed to by the Pyramid candidates and to do an audit of the bank records of the Republican State Committee, Town of...
Poughkeepsie Republican Committee and Building a Better New York, and then to allocate those contributions from the Pyramid individuals to the candidates.

Q  In terms of your allocation of contributions, it's a complex area, so I want to try and go through it very slowly. Is it true that the Election Law limits the amount of money that a contributor can give to a candidate or a political committee supporting that candidate?

A  Yes.

Q  As pertaining to the candidates for Poughkeepsie Town Council, what was that limit?

A  That limit was $1,000, with the exception of the office that Ann Buchholz and John Dwan were running against each other in, and that was slightly over $1,000.

Q  But for Town Council, it was $1,000?

A  It was $1,000 for all other offices.

Q  That limit is easy to apply if I make a contribution directly to the candidate or to a committee that supports only one candidate?

A  Yes.

Q  The problem, though, stems from the fact that some committees support more than one candidate; is that right?

A  Yes.
Tenenini

Q And, indeed, that can be further complicated, because I can give a contribution to a committee that supports any number of candidates, and those candidates may have different contributions limits applicable to them; is that right?

A Yes, it is.

Q Now, correct me if I'm wrong. The Election Law -- and I think it seems to deal with this -- requires that a part of any individual's contribution to a committee that supports more than one candidate be deemed a contribution to each of the candidates supported by that committee; is that right?

A Yes.

Q The only way to make that allocation is to look at how the committee that receives the money spends its money; is that right?

A Yes.

Q So, for example, if I were to make a $5,000 contribution to a committee that supports five candidates, I can't automatically deem myself to have contributed $1,000 to each of those candidates because, for example, the committee might have spent most of its money on two candidates?

A That's correct.
Q So you would want to take that into account; is that right?

A That's correct.

Q So, Mr. Tenenini, you came with a formula whereby you could determine how much of each contribution by a Pyramid person is to be deemed a contribution to each of the candidates supported by the Republican State Committee or Building a Better New York?

A Yes.

Q Had anyone ever figured out that method before?

A Not to the best of my knowledge.

Q The purpose of that was to determine whether or not the $1,000 limit had been exceeded; is that right?

A Yes.

Q Okay. Let me ask you something about the steps that were taken before you performed your allocation. Is the first thing that the Board did was to look at the expenditures made by the Republican State Committee and Building a Better New York Committee?

A Yes.

Q And to separately analyze each of those expenditures and determine which candidates in Poughkeepsie were benefitted by each of those expenditures?

A That's correct.
Q Did you perform that function?

A No, I did not.

Q Who performed that?

A Joseph Daddario.

Q So what you did, then, was to figure out how much each Pyramid contribution could be deemed a contribution to each of the candidates based on what Mr. Daddario did?

A Yes.

Q Correct me if I'm wrong, but I take it, if Mr. Daddario determined that Building a Better New York and the Republican State Committee spent most of its money on, let's say, four candidates in Poughkeepsie, that would have resulted in your deeming a greater percentage of each Pyramid contribution, a contribution to each of those four candidates?

A That's correct.

Q Conversely, if Mr. Daddario had determined that they had spent the money essentially equally amongst eleven candidates, that would have decreased the amount attributed to each candidate; is that right?

A Yes, it is.

Q So, obviously, it was important to know how much each expenditure benefitted each candidate; is that
right?

A Yes.

Q Let's recount just for one minute.

You attended a meeting, you reviewed each of these financial statements. At some point after that, did you and Mr. Daddario ever sit down or discuss what you thought the important investigative steps were that should be carried out here?

A Yes, Joe and I discussed it.

Q And, in fact, I think you wrote a series of memoranda to this effect.

A Yes.

Q Could you just briefly summarize for us the various steps that you thought should be taken in connection with this?

A I'm going to repeat much of which Mr. Carpiniello had already stated, and that was, the motive. I thought that we should interview the Poughkeepsie candidates to determine the motive. I thought we really had to explore the relationship between the Pyramid associates, the Poughkeepsie candidates, Campaign Strategies, Building a Better New York, the Republican State Committee, the Town of Poughkeepsie Republican Committee and the candidates themselves in order to determine what the motives were in
the contributions, for the contributions.

Q Let me maybe summarize just more -- what I'm looking at right now were the specific steps, in addition to, I think you've just mentioned, talking to the candidates.

Am I correct to say that other steps that you proposed be done were that: Number one, the Board subpoena the books and the records of the Republican State Committee, the Building a Better New York Committee and the Town of Poughkeepsie Republican Committee?

A That was decided right up front that that was to be done, and it was, in fact, done right up front.

Q In addition to the contributors you also speak of Mr. Spargo and the treasurers of the other committees; is that correct?

A Yes, that is correct.

Q And, finally, I think you both recommended that various expenditures made with respect to Poughkeepsie be confirmed by virtue of subpoenas; is that right?

A Yes.

Q What I would like to do is just look at each of these steps in some detail. You've just mentioned that, in fact, the books and records of the three political committees, the bank records, were subpoenaed?
Yes, they were.

Were all the records actually received?

We received the -- I believe we subpoenaed Town of Poughkeepsie Republican Committee and Building a Better New York's records right up front. There was a gap of a few months before we subpoenaed the Republican State Committee's records. We did receive all the records from the Town of Poughkeepsie Republican Committee and Building a Better New York. The New York Republican State Committee, we gradually got all of the records. It seemed to come piecemeal.

Okay. In the course of your review of the audit -- you actually did the audit of these bank records; is that correct?

Yes, I did.

In the course of reviewing the bank records of the Republican State Committee, did you, in fact, learn that certain contributions received by the Republican State Committee had not been properly reported on their disclosure statements?

Yes.

Did you ever receive an explanation?

No. I did not receive an explanation of why they were not properly reported. Somebody might have said something about sloppy bookkeeping, but, other than that, I
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didn't receive any information.

Q In particular, what I'm referring to is, I think there were three checks that apparently were erroneously deposited into the operating account which should have been deposited to the housekeeping account. Do you remember learning about that?

A Yes. There were three checks from individuals associated with the Pyramid mall, totalling $15,000 -- I believe they were in January of '86 -- were deposited into the reporting account, I believe it is called, and then transferred -- I was told they were transferred immediately to the operating account, which is also known as the housekeeping account.

Q Actually, I think -- were they transferred to the housekeeping account? Is that right?

A The housekeeping account.

Q Based upon your learning that three checks which were meant to go to the housekeeping account had, in fact, gone into the reporting account, did you make any recommendations?

A I recommended that -- I wanted to know how that $15,000 was spent in the housekeeping account, and what I was told was, housekeeping accounts do not have to file with the State Board of Elections, and, therefore, we have no
authority to look at the housekeeping account to determine
how the funds were, in fact, spent.

Q Can I just clarify something? Those three
checks that were erroneously put into the reporting account,
those were Pyramid-related checks; is that correct?

A Yes, they were.

Q One of the other steps that we've already
discussed to some extent and that you recommended be done up
front was, that the Board interview and/or depose the
contributors who were related to Pyramid; is that right?

A That's correct.

Q You mentioned it a little bit, but could you
elaborate on what you thought should be asked of the Pyramid
contributors?

A Whether those were, in fact, all contributions
or expenditures made by the Pyramid contributors or their
related companies. When we received Building a Better New
York's -- and I'm going to deviate a little bit here -- when
we received Building a Better New York's literature and
campaign expenses to see support for the $59,000 in checks
that were written to Campaign Strategies, what I instead
found was over $198,000, I believe, in bills, in those
fifteen invoices, and as an auditor, that threw a flag up
right away, and I believe I went into Mr. Polsinello and
expressed my concern about the fact that the $59,000 in payments in no way reconciled to the $209,000 in bills and, possibly, we should look at Campaign Strategies' books and records.

Q We will discuss that in a few minutes.

THE CHAIRMAN: When you made reference to $59,000, did you mean $69,000?

THE WITNESS: No. I believe 59 to Campaign Strategies and $10,700 to Campaign Technology.

Q Did the Board, in fact, ever interview the contributors?

A The Board never interviewed the contributors, to the best of my knowledge.

Q Mr. Tenenini, in addition to the proposing that interviews be conducted, you made this proposal in a memorandum. Did you ever speak directly with Chief Polsinello about your review, that you should interview the contributors?

A Yes, I did.

Q What did Chief Polsinello tell you about this?

A It's sketchy, but I think the bottom line -- my understanding from it was, that we had no legal right to ask them why they were contributing to this committee and it constitutes harassment.
So the Board didn't interview the Pyramid contributors but, in fact, in May of 1986, they did send a letter request; is that correct?

That's correct.

And the letter requested what?

It requested, I believe, all contributions to New York State candidates and committees.

Could you, briefly, summarize what the purpose of sending a letter was?

To verify, in fact, that we had -- my main concern was, I wanted to insure that we had all of the contributions relative to the Poughkeepsie campaign from the Pyramid individuals and all of the expenditures on the expenditure side.

On the contributions side, since we couldn't interview or depose the contributors, we sent a letter requesting all contributions to New York State candidates and committees.

Mr. Tenenini, do you know whether the Board ever received a response to these letters from the Pyramid contributors?

I believe, my understanding, while I was involved in the investigation, was that, no, we had not, but Mr. Spargo had come in and said he would take care of it.
Q Rather than getting a response directly, the Board accepted information from Mr. Spargo?

A Yes.

Q And let me go back to the various investigative steps that you had recommended. You also suggested that the Board speak with the treasurers of Building a Better New York, the Republican State Committee and the Town Committee; is that right?

A Yes.

Q Why did you make that recommendation?

A Just to investigate, if we could possibly determine a motive, through interviews with treasurers, why were contributions made specifically from these individuals, why were they in $5,000 increments. There were a whole series of questions we could have asked these treasurers in order to determine the relationship between the contributors, Mr. Spargo, the treasurers of the committees, the candidates and Campaign Strategies, who basically coordinated the whole campaign.

Q I take it from the tenor of your response, the Board did not, in fact, speak with or interview the treasurers. Do you know why they didn't do this?

A I don't know why. I always had thought it was going to be done at some time during the investigation.
In a related vein, you suggested that the Board interview, and, by this, I mean take testimony under oath --

Sworn testimony, yes.

-- from Thomas Spargo; is that right?

Yes.

The Board did not do that?

The Board did not do that.

Do you know why the Board did not depose Mr. Spargo?

I do not know why. All along, throughout the entire investigation, we were discussing the fact that eventually we were going to have to interview Mr. Spargo, but then the investigation ended, and it just never happened, and I'm not quite aware of the specific reasons as to why we didn't interview Mr. Spargo.

I heard reference from Mr. McCarthy that we have a policy at the State Board that we don't interview the target of the investigation unless it is blessed by the Commissioners.

Have you been familiar with that policy?

I heard it when I was there, yes.

I assume, however, that even if, in general, that is a policy, that if an investigator cannot decide on his own or her own to just go out and interview the target,
one could get permission to do that?

A Absolutely.

Q But permission was never requested here?

A To the best of my knowledge, it never was.

Q Can you tell us, why did you think it was important to take testimony from Mr. Spargo?

A I believe that I read testimony from Miss Swan that said that he was the principal individual involved in setting up Building a Better New York. There were a whole series of questions that could be asked of him as to his motives in setting up that committee, why only Pyramid individuals contributed $5,000 amounts each to that committee, why didn't they contribute to the New York Republican State Committee, why was this committee specifically set up, seemingly, for this express purpose, to support Poughkeepsie candidates, and if I was given enough time, I'm sure I could think of various other questions, but those are the initial questions that come to mind.

COMMISSIONER VANCE: Didn't it seem strange that Hydra-Headed Mr. Spargo was speaking for so many different people and that you didn't urge your superior at that point that, therefore, he should be called in and deposed?

THE WITNESS: Did I think it was unusual that
he wasn't, Mr. Vance?

COMMISSIONER VANCE: That he was speaking for so many different people and that, therefore, he was especially important as an individual to call in and be deposed as to what all of these relationships were and what was being done with respect to them?

THE WITNESS: Mr. Spargo had -- was involved in many committees; I was aware of that. I wasn't aware of the New York Republican Federal Committee, but I was aware that he was also involved in a committee called Victory -- he has his hand in many Republican hats, I guess you would say. I don't know if I have answered your question or not, Commissioner.

I didn't find it unusual that he was heavily involved in this, no.

COMMISSIONER VANCE: What I'm sort of baffled by is the fact that, here is a man that is representing all of the different players in this thing, yet the Board is unwilling to call him in and depose him with respect to what took place.

THE WITNESS: That was my concern, as well, and, for the life of me, I have no idea why we didn't interview Mr. Spargo to explore that very thing, the
relationship between him and the Pyramid associates
and as counsel to the Victory -- Building a Better New York, to the Republican State Committee,
Republican Federal Committee, from what I understand,
that these were questions that, in my mind, had to be answered, that were intricate to the investigation.

This, again, is my opinion. Before any judgment could be made as to violations, this had to be done, because it was very important to establish whether that section of the law, 14 126.4, was violated. Why it was done, why it wasn't done? I don't know.

Q Let me clarify it. You were really responsible for auditing activities, you made suggestions?

A That's as far as I can take it, yes.

Q Let me understand one thing. One of the central issues, I take it, here, was to determine whether or not Building a Better New York was set up as an unauthorized committee to evade Chapter 14?

A To me, that was the crux of the complaint.

Q Accordingly, one of the things you would have wanted to ask Mr. Spargo was, why was Building a Better New York formed?

A That would have been my first question.
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Q Yet, another of the steps that you proposed be taken is, that the Board confirm all of the expenditures made with respect to Poughkeepsie; is that right?

A Yes.

Q And that you do this by subpoenaing the various vendors?

A Yes.

Q Did the Board, in fact, subpoena all of the vendors who had performed services in connection with the Poughkeepsie election?

A No, they did not.

Q Did the Board subpoena any of the vendors?

A It was done through written letter of correspondence, not the subpoena process.

Q I think, however, -- correct me if I'm wrong -- that two of the vendors, Campaign Strategies and Campaign Technology, were actually subpoenaed.

A I'm sorry. Yes, you're right, they were.

Q And the subpoena to Campaign Strategies, can you tell us what that subpoena called for?

A I believe it called for them to produce all campaign material that they produced relative to this election and all invoices or all bills associated with the election.
Q It did not, however, call for production of all of the financial books and records of Campaign Strategies?
A No, it did not.
Q Can you describe for us what response the Board received from Campaign Strategies?
A We received campaign material and fifteen invoices, I believe.
Q And if I understand correctly, those invoices indicated that Campaign Strategies had billed Building a Better New York $198,000?
A Yes.
Q But Campaign Strategies only received $59,000 in payments; is that correct?
A That's correct.
Q After you were made aware of that discrepancy, did you make any recommendations which represented any sort of investigative activity?
A When I became aware of it, especially when I saw a $125,000 bill for consulting services which, obviously, could not have been part of the $59,000 in payments, that threw up a flag immediately, in my mind, and I went into Mr. Polsinello and said, "Something is very wrong here and this is something we should look into much more deeply with Campaign Strategies."
Q How did you propose to look into that further?
A The logical alternative is to subpoena all the books and records of Campaign Strategies during that period so we could determine if, in fact, -- what expenditures were, in fact, made on behalf of candidates, Building a Better New York notwithstanding.

Q What was Mr. Polsinello's response to your suggestion?
A I don't specifically remember the response, but I do specifically remember we never did it.

Q Aside from Campaign Strategies and the Campaign Technology, I think you said other vendors, rather than subpoenaes, received letter requests; is that right?
A Yes, for the Republican State Committee expenditures and the Town of Poughkeepsie Republican Committee expenditures, they were sent letters of correspondence.

Q And those letters asked that the vendors both provide the Board with copies of invoices and also with an allocation of expenditures per candidate; is that right?
A That's correct.

Q And I take it that the purpose of that request was to aid the Board, and, specifically, Mr. Daddario in performing his allocation of expenditures?
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Q And, eventually, Mr. Daddario authored three reports?
A Yes.

Q Mr. Tenenini, did the Board ever receive responses from all of the vendors?
A You would be better asking Joe that, but, my understanding is, that we did receive various responses from the vendors, and Joe allocated the expenditures based on those responses.

Q In each of the cases, did the vendors actually provide an allocation of expenditures per candidate?
A When they provided that allocation, it was done that way. When they didn't provide it, in talking to Joe, I believe it was his determination, it was a determination to spread -- you could say our determination to spread those expenditures, in order to be fair, among all the candidates supported, in the absence of the specific allocation. That was the way it was decided to be done.

Q Mr. Tenenini, once Mr. Daddario performed the allocation of expenditures, you then performed an allocation of contributions; is that right?
A Yes, I did.

Q And, again, the purpose was to determine
whether or not the $1,000 limit had been exceeded?

A Yes.

Q I know it is complicated, but could you just, briefly, explain to us what your methodology was in doing the allocation of expenditures?

A I'll try. The first step, as you mentioned, Laurie, was to allocate all expenditures to each candidate. I worked on it from the contributions side, and what I had to do was, apportion each individual's, from Pyramid contributions; that was the enumerator. The denominator was all funds available for use. I did discuss with Mr. McCarthy how he wanted me to go about it.

There were three alternatives. One, we could indicate all funds were available for us. Two, we could indicate that we would pull out the funds that were earmarked and were to be spent for other than Poughkeepsie candidates as the contributions came in. And, three, our denominator would only be total contributions by Poughkeepsie candidates.

I took that percentage and, basically, what I did was, I multiplied that by the amount of expense allocated to each candidate, and that's how we came up with the contribution from each Pyramid individual to each candidate.
Can you tell us what the results of your allocations were?

Each way?

In general.

There were cases where the $1,000 limit was exceeded.

Just to recap, I think you've just testified that in some instances your allocation determined that the $1,000 limit had been exceeded?

Yes.

In any event, at some point, there was a legal determination made that contributions to unauthorized committees need not be allocated; is that correct?

That's correct.

And, similarly, with contributions to constitute a committee such as the State Committee; is that right?

Correct.

Does that mean, therefore, that the contribution limits in Article 14 can legally be avoided by making large contributions to either unauthorized committees, such as Building a Better New York or constituted committees such as the State Committee?

Yes, with a qualification. To unauthorized
committees where the expenditures are deemed to be independent, yes, the contributions can be unlimited. To constituted committees, in my opinion, it is a different issue, because there is a section of the law which deals with how much of an individual's contribution can be spent during, I think, a year, from election year to election year.

Q I know there are provisions referring to that. I'm not asking whether or not contributions can be unlimited, but whether or not the contribution limits that are generally applicable in Chapter 14 can be avoided by making large contributions, not unlimited contributions?

A Yes, without the qualification.

Q Is that, therefore, a loophole in the Election Law?

A In my opinion, yes.

Q Mr. Tenenini, in addition to the allocation reports that both Mr. Daddario and you wrote, Mr. Daddario wrote the final investigative report; is that right?

A Yes. That's correct.

Q Do you know who this report was submitted to?

A I believe it was initially submitted to Mr. Polsinello and then immediately submitted from Mr. Polsinello to Mr. McCarthy.
Q I don't want to go through all the specifics. It's a long and detailed report. I would like to ask you questions, just, about one of the investigative findings. That finding shows that, although the Republican State Committee paid for various polling activities and campaign literature, these expenditures were never disclosed on any of the State Committee's pre-election disclosure reports or were not disclosed until after the election and, indeed, many of these election-related activities were performed before the election, and, therefore, Mr. Daddario expressed his opinion that these expenditures should have been disclosed prior to the election.

Are you familiar with that?

A Yes.

Q First, I would like to ask you a question about the form of the financial disclosure statement itself. Does the form have a space on it which asks that committees disclose their liabilities?

A Yes. It's called unpaid bills in the statement, but, yes, that's synonymous with liabilities.

Q If it says unpaid bills -- I think it's actually unpaid bills during this period.

A I think we can glean that.
As Chief Auditor, does that mean that committees report liabilities when the liability is incurred or when a bill is received?

What they should do or what's actually being done in the statements?

Both.

What they should do is report it as it is incurred. In other words, as the service or good is provided, that is when the liability is incurred. On the accrual basis of accounting, that is when it becomes an expenditure. In actuality, what I believe is happening is, they are waiting for the bill and then reporting the liability.

So I take that if the liability is incurred, but the bill is delayed, under the present form, you don't have to report the liability until you receive the bill?

It should be reported, but in reality, I don't believe, in most cases, it would be reported.

Do you consider that a major shortcoming of the New York law at this time?

The definition of liability as defined in the Election Law, the accounting methods
should be included in the Official Compilation of Codes, Rules and Regulations, because we have the ability in the Election Law to set the accounting methods and the rules and regulations, but there is no definition in the rules and regulations of a liability or an expenditure.

Q Mr. Tenenini, I have just one more question for you.

In your three odd years at the Board, was this the largest campaign finance investigation that you had seen them undertake?

A Yes.

MS. LINTON: Thank you.

THE CHAIRMAN: If I could follow up on that question.

How would you assess the adequacy of the investigation that was done in this case?

THE WITNESS: As I stated earlier, I would have carried it further than we did, in other words, subpoenaing the contributors, the Pyramid contributors, subpoenaing Mr. Spargo, Mrs. Swan, Mr. Stone, subpoenaing Campaign Strategies' books and records.

In order for us to rely on whether we had all
the contributions made by Pyramid individuals and all expenditures expended on behalf of the Poughkeepsie candidates, these steps had to be done in order for us to do an accurate allocation. I didn't necessarily agree with the Board not finding any violations, even though it's not my place to question it or not.

I was told my duty was to only report the facts. They seem to base it on the fact that because it was an unauthorized committee, because they deemed that, through interviews with the candidates, they had no knowledge of Building a Better New York and the fact that they were being supported by that committee, the expenditures were, in fact, independent and it didn't matter whether the contribution limit was exceeded or not, and there was no contribution because the expenses were independent. I wasn't convinced of that, because in 14-126.4 --

THE CHAIRMAN: My question has to do not so much with the final result. You listed a whole number of matters that you felt should have been done that were not done.

THE WITNESS: Correct.
THE CHAIRMAN: In view of the fact that they were not done, what is your opinion of the adequacy of the investigation that was done here?

THE WITNESS: I think the investigation had to be classified as incomplete without performing the necessary tests that I have identified and that Mr. Carpiniello identified prior to me that were done.

THE CHAIRMAN: Thank you.

COMMISSIONER VANCE: Let me ask you a couple of questions, if I might, Mr. Tenenini.

But, first let me thank you for the candor that you have demonstrated in answering the questions that were put to you this morning.

THE WITNESS: You're welcome.

COMMISSIONER VANCE: First, coming back to this question of the accounting procedures which should be applied, you indicated that there was no requirement in the statute with respect to the matter of handling the issue raised by our questioner here.

Is it within the powers of the Board to go ahead and make the accounting change that you said that you believe ought to be done?

THE WITNESS: I believe the Board has the ability to promulgate accounting regulations.
COMMISSIONER VANCE: That would have taken
care of that?

THE WITNESS: Yes.

COMMISSIONER VANCE: And that has not been
done?

THE WITNESS: No.

COMMISSIONER VANCE: Why did you leave the
Board?

THE WITNESS: I basically left the Board
because I saw my opportunities for advancement at the
Board to be non-existent and I didn't really
appreciate what I consider to be the Board's
stand-pat conservative attitude and not moving ahead.
I made several recommendations on how I thought
loopholes within Article 14 could be closed or
eliminated, and they seemed to fall upon deaf ears.

In the three and a half years I was at the
Board, I prided myself on my knowledge of the
Election Law and on my accounting ability, and based
on my expertise in both areas, I came up with various
things that I thought we could do to really refine
the Election Law and tighten it up, Article 14,
specifically, on campaign receipts and expenditures,
and I made various recommendations in writing that
certain sections, in my opinion, should be amended, and nothing was ever changed.

I was never made aware of any legislation that was proposed, if, in fact, any was, and I never got any feedback on my recommendations.

COMMISSIONER VANCE: Thank you.

THE CHAIRMAN: Commissioner Emery.

COMMISSIONER EMERY: To your observations and to your knowledge, during the period you were with the Board, what relationship did Mr. Spargo have with Board members?

THE WITNESS: From my observations, he was on friendly terms with various members of the State Board of Elections. He was constantly -- I won't say constantly -- but he was frequently at the State Board of Elections either filing financial disclosure statements -- I believe he was involved in the petition process, and I had understood he was friendly with Mr. Wallace, so he would come in there frequently to talk to Mr. Wallace.

COMMISSIONER EMERY: Did you see him come in and out of the office?

THE WITNESS: I saw him come in fairly frequently. Of the people that came to the Board, he
was one of the most frequent visitors.

COMMISSIONER EMERY: Other than Mr. Wallace, what was his connection, to your knowledge, with other staff members?

THE WITNESS: He was a Commissioner for Servicemen's Voting prior to his position as counsel to the Senate Republican Committee. Obviously, there was probably a relationship established at that time with various members of the Board.

COMMISSIONER EMERY: Did you reach any conclusions in your own mind with respect to the lack of completeness of this investigation and Mr. Spargo's relationship with the Board?

THE WITNESS: Yes. Because he was the target of the investigation, I was never comfortable with obtaining documents, any of the documents from him, and because of the close relationship with the Board, I thought it might be perceived as tainting the objectivity of the investigation if it became known that we obtained information relative to the investigation from Mr. Spargo himself acting in his capacity, as Mr. Vance stated earlier, wearing so many hats with the Republican State Committee, Building a Better New York, the Pyramid associates.
COMMISSIONER EMERY: Do you know, from your own knowledge, whether other staff members felt hesitant to be aggressive about this investigation in any way because of Mr. Spargo's role?

THE WITNESS: I don't think Joe Daddario was ever comfortable with having to go to Mr. Spargo to obtain the information that we obtained in this investigation.

MR. BIENSTOCK: Let me ask you this: During the three and a half years you were at the Board, was the Board understaffed?

THE WITNESS: I believe, yes, that the Board was, in fact, understaffed.

MR. BIENSTOCK: Do you have any involvement at all in outside requests for information, for example, Freedom of Information Act, were you ever involved with a request for information from outside?

THE WITNESS: The audit unit provided information, whether over the phone or in our public viewing area, to individuals who requested financial filings.

MR. BIENSTOCK: Were there ever requests under the Freedom of Information Law for documents other than disclosure of filings?
THE WITNESS: If there were, I wasn't aware of it. Those types of requests wouldn't have come to me. Those usually go to counsel, I believe.

MR. BIENSTOCK: Were you aware of the deadlines under the Freedom of Information Law?

THE WITNESS: I can't say that I was.

MR. BIENSTOCK: I have no other questions.

BY MR. O'BRIEN:

Q Mr. Tenenini, you mentioned in some detail your method for allocating contributions and/or expenditures. I just want to ask a question that grows out of Mr. Carpiniello's testimony.

Was there ever any discussion on the part of staff about the possibility that the contributions made to the various committees by Pyramid individuals should simply be dropped down dollar for dollar and allocated -- or, virtually, dollar for dollar -- and allocated to the candidates that way, on the basis of some evidence or suspicion of evidence that these funds had been earmarked for specific candidates in the Poughkeepsie races?

A There was -- that discussion did take place, and I believe I initiated it.

Q What happened to those suggestions, what was the result of that discussion?
As I explained to Laurie earlier, when I was dealing with Mr. McCarthy regarding the allocation, I explained that it could be done any one of three ways.

Way number one was to not delete any earmarked contributions from the base.

Number two was to delete all contributions that we were positive were earmarked for expenditure from the base.

And the third method was to only include as the denominator, all contributions from Pyramid associates and, if you will, assume that they were earmarked for expenditure to the Poughkeepsie candidates. We might have been to find out how, in fact, they went through, taking the additional steps that I had alluded to earlier.

Q Mr. McCarthy didn't carry that any further?

A No. He only wanted me to do it the two ways.

THE CHAIRMAN: Thank you very much.

THE WITNESS: Thank you.

THE CHAIRMAN: Before calling the next witness, I would like to recognize Kevin O'Brien, who has a statement.

MR. O'BRIEN: Just for the record, Mr. Polsinello's name has been mentioned in the testimony and in connection with this hearing for a number of
months.

By letter dated October 19th of this year, written by counsel, Mr. Polsinello has asserted the Fifth Amendment privilege against self-incrimination in connection with this hearing and, therefore, will not be appearing before us today.

THE CHAIRMAN: The next witness is Joseph Daddario.

J O S E P H D A D D A R I O, called as a witness, having been first duly sworn by the Chairman, testified as follows:

THE CHAIRMAN: I recognize James McGuire.

EXAMINATION BY

MR. McGuire:

Q  Good afternoon, Mr. Daddario. If you can, try to lean over a little bit or move your chair. I know it is uncomfortable, but get a little closer to the microphone.

A  Can you hear me?

Q  Yes, that's fine, or shout. You're currently employed by the New York State Board of Elections; is that right?

A  Yes.

Q  What's your title, please?

A  Chief Investigator.

NATIONAL REPORTING INC.  (212) 732-3120
Q How long have you been employed by the Board of Elections?

A Fourteen years.

Q Have you been with the Board since its inception?

A Yes, just about.

Q How long have you been Chief Investigator?

A Since approximately 1981.

Q Now, you are, of course, familiar with the Board's Poughkeepsie investigation. I would like to ask you what your first actions were, investigative actions were in connection with that investigation.

A Well, my first actions were to -- after the letter of complaint was received from Anna Buchholz -- was to go down with Chief Polsinello to interview her. We went down to Poughkeepsie, interviewed her, and after discussing the items in the complaint, she made reference to many of the allegations and the information that was contained in the letter from Walt Jablonski, the Commissioner of Dutchess County.

So, after interviewing her, we went over and visited Mr. Jablonski and we discussed the complaint with him.

Q And that was in early February some time?
Would you take a look at Exhibit 7? It should be before you and it should be chronologically or sequentially numbered.

Have you seen this before?

Yes, I did.

This is a memo from Mr. Polsinello to Donald McCarthy?

Yes, it is.

Yes, Mr. Polsinello prepare this or did you assist him?

I think the entire staff had something to do with completing this memo.

Now, on the first page of Exhibit 10 (sic), it lists a number of investigative steps already taken by the Board as of February 24th; is that right?

Yes. Exhibit 7, you mean.

Excuse me.

Exhibit 7.

Yes, Exhibit 7. I'm sorry.

So, as of this date, the Board's investigation was already underway?

Yes, it was.

Among the actions taken were subpoenas for the
bank records of Building a Better New York and the Town of Poughkeepsie Republican Committee; is that right?

A Yes.

Q And it was one of the purposes of those subpoenas to identify all the Poughkeepsie-related expenditures by these committees?

A Yes, and confirm the entire filing of those committees, everything they reported, in preparation for Mr. Tenenini's audit.

Q I note that the records of the Republican State Committee is not one of these fifteen proposed steps, but those records were, in fact, subpoenaed, weren't they?

A Yes, they were.

Q Now, the exhibit also indicates subpoenas have been issued to Campaign Strategies and Campaign Technology. Could you just, briefly, tell us who those entities are?

A Campaign Strategies was subpoenaed. I wasn't involved in this initial step. Mr. Polsinello did this. And the expenditures listed on Building a Better New York Committee was to Friedman & Morris, and we had to determine who Friedman & Morris was, who turned out to be Campaign Strategies.

So, in an attempt to verify the expenditures, the $59,000 listed on the committee's filings, we subpoenaed
that corporation or company or consulting firm.

Q Campaign Strategies or Campaign Technology are the only two vendors that appeared on Building a Better New York disclosure statements; is that correct?

A Correct.

Q If you will note, the second page of Exhibit 7 lists a number of proposed investigative steps. Given the matters that had already been done and things proposed, in your opinion, was this the biggest campaign financing investigation that the Board had ever undertaken?

A As it turned out, it was one of the biggest, yes.

Q Now, if you look at items -- on the second page of Exhibit 7 -- Items 7 through 11, proposals, interviews with various people and then it says, in handwriting, "By subpoena," whose handwriting is that?

A Chief Polsinello's.

Q Was it your understanding that these interviews were to be obtained under oath by subpoena?

A Yes, normally they would be.

Q Now, Item No. 7 indicates an interview with Mr. Spargo by subpoena.

Was Mr. Spargo issued a subpoena?

A No, he was not.
Q    Was he interviewed under oath?
A    No, he was not.
Q    Was he interviewed at all?
A    He was never interviewed in the sense I think
you are referring to. He was spoken to, and I personally
did it, in the capacity of a treasurer in obtaining records
pertaining to the committees that we needed to get.
Q    We will get to that subject a little later.
A    Did you have authority on your own to pursue or
subpeona Mr. Spargo?
A    No, I did not.
Q    Why is that?
A    Particularly on this case, I had -- no one had
any authority to interview anyone unless permission was
granted by Frank Polsinello.
Q    Could you also take a look at Exhibit 10?
A    That's a memo that you wrote to Mr. Polsinello, is that
right, at his request?
A    Yes, it is.
Q    And in this memo, you recorded the items that
you thought should be done in the investigation?
A    Yes.
Q    If you look at Paragraph 3(a), you wrote that
the Board, "Should obtain positive confirmation from the
sixteen contributors in question verifying their amounts contributed."

Who were these sixteen contributors?

A They were Pyramid associates.

Q And they had contributed in the form of $5,000 checks to Building a Better New York and the Republican State Committee?

A Yes, they did.

Q And I take it that you wanted to find out from these individuals whether they had made any other contributions to any other committees; is that right?

A I wanted to find out everything about it, yes.

Q If you look at Paragraph 3(b) on the second page of this -- I'm sorry, it's also on the first page -- this Paragraph 3(b), have you had a chance to look at it?

A Yes.

Q You state some of the things that you wanted to find out from these contributors?

A Yes.

Q I would like to save some time and summarize. One of the things you wanted to find out was their motives --

A Right.

Q -- in contributing; is that right?
A: Yes, it was.

Q: I'm sorry. Their dealings with Poughkeepsie candidates, Mr. Spargo, Mr. Paroli and Building a Better New York?

A: Yes.

Q: And whether they gave the money to Building a Better New York and the State Committee specifically for Poughkeepsie candidates; is that right?

A: Yes.

Q: Are you familiar with the term "earmarking"?

A: Yes.

Q: This last thing that you wanted to find out, whether the contributions were specifically for the Poughkeepsie candidates, is that what you were trying to find out, if the contributions were earmarked?

A: Yes.

Q: Did you or the Board ever reach a determination as to whether these contributions had, in fact, been earmarked for Poughkeepsie candidates?

A: No.

Q: Were contributors ever interviewed by subpoena or otherwise?

A: No, they were not.

Q: Were you here for Mr. Tenenini's testimony
earlier about a meeting where Mr. Polsinello was asked if
the contributors could be interviewed?

A Yes, I heard his testimony.

Q Do you recall that incident?

A I don't specifically recall that incident, but
I may have had a similar one myself.

Q To your knowledge, was Mr. Polsinello ever
asked for permission to interview the contributors?

A Yes, it was asked in this memo and I believe it
was verbally asked.

Q What was his answer?

A That we do not have a legal right to ask a
contributor -- I think what he meant was -- the reason why
he made a contribution.

Q Now, if you could turn over to the second page
of this exhibit, Exhibit 10 and, in particular, Paragraph 4,
you indicate that, "Testimony of treasurers, candidates, and
other involved individuals will possibly confirm or deny any
type of scheme between contributors and any direct support
of the Poughkeepsie election campaigns."

My question is: Did the Board obtain
affidavits from any of the Poughkeepsie candidates?

A All candidates.

Q You were personally involved in that?
Yes, I was.

Rather than have you go through it in detail, is it fair to say that you learned from candidates that they had no knowledge at all of support from Pyramid persons and they had no knowledge of Building a Better New York; is that correct?

That's correct.

Did the Board, as proposed on Exhibit 10, take testimony from the treasurer of Building a Better New York or the State Committee?

No.

Would you now turn, please, to Exhibit 11?

COMMISSIONER VANCE: Could I ask one question here?

MR. McGUIRE: Certainly.

COMMISSIONER VANCE: With respect to Paragraph 3, am I correctly understanding that Mr. Polsinello told you that it is not within your legal authority to obtain positive confirmation from the contributors, verifying the amounts contributed, and did he also say that affidavits and sworn testimony could not be taken, with respect to Paragraph 3(b); did he again say that with respect to all of the things you recommended there, that you had no legal
authority to do that?

THE WITNESS: No. I think what he said was, we don't have legal authority to ask the contributor the reason why he gave a contribution.

COMMISSIONER VANCE: What about (a), why wasn't that --

THE WITNESS: Well, that would be asking them why they gave the money.

COMMISSIONER VANCE: It says, "Verifying the amounts contributed."

THE WITNESS: No, it never says we couldn't verify the amounts, because we did end up sending letters to do that or attempting to do that.

COMMISSIONER VANCE: Did he explain to you why you didn't have legal authority?

THE WITNESS: No.

COMMISSIONER VANCE: That's all.

COMMISSIONER EMERY: Mr. Daddario, what was in your mind when you recommended this course of action in 3(b), especially with respect to mentioning zoning and mentioning the names of Spargo, Paroli and Build a Better New York, did you have in your mind, at that point, at that stage, March 10th of '86, some feeling or suspicion or hunch that what was going on here,
that the allegations made may have been related to
the mall issue?

THE WITNESS: It was written in the complaint.
I mean, that was my initial knowledge of -- this
possibly could have occurred. Other than that, I
have no other evidence to support it, only that it's
been suggested, it was alleged, and, as every other
allegation, we ought to look into it.

COMMISSIONER EMERY: Did you discuss it at the
staff level?

THE WITNESS: I believe so, probably with Rick
Tenenini, or any of the investigators, from time to
time involved in these meetings and discussions.

COMMISSIONER EMERY: How about with your
Chief?

THE WITNESS: The memo did go to him.

COMMISSIONER EMERY: I mean prior to that, did
you discuss the possibilities -- did you discuss
these allegations?

THE WITNESS: Well, in the letter of complaint
that was later -- the second letter of complaint
drawn by Mr. Jablonski, it was a letter of
approximately four or five pages, it had fifteen
points that it addressed in depth, one of them being
this particular thing.

So, at that point, it was discussed with Mr. Polsinello, of course, and everyone else.

EXAMINATION CONTINUING

BY MR. McGUIRE:

Q Could you take a look, please, at Exhibit 11? Do you have that in front of you?

A Yes.

Q Could you tell the Commissioners what it is and how this letter came about?

COMMISSIONER VANCE: Which letter are we referring to?

MR. McGUIRE: I'm sorry. Exhibit 11, Commissioner Vance.

A This letter is the letter that was written to the contributors, the Pyramid contributors and their associates requesting the checks from them to support the contributions made.

Q And these letters were sent on or about May 7th of 1986?

A Yes, they were.

Q Is it your understanding that a letter identical to Exhibit 11 was sent to each of the other contributors?
A Yes, they were.

Q Now, I take it that no response was received because shortly after the letters were sent, Mr. Spargo offered to supply the checks; is that fair to say?

A Well, they were eventually complied to, but Mr. Spargo fulfilled the request.

Q Well, what I have in mind is, if you take a look at Exhibit 12, that's a memo to Mr. Polsinello from yourself indicating that on May 9th, Mr. Spargo came to the office and offered to provide copies of the checks of Building a Better New York Committee and the New York Republican State Committee; is that right?

A Yes, it is.

Q It indicates in the second paragraph, "He wants to know if this would satisfy our request to obtain these checks," do you see that?

A Yes.

Q So do I take it from that second paragraph that Mr. Spargo, on May 9th, knew that the Board had requested the checks from the contributors?

A He, obviously, had.

Q Do you know how he knew, since the letters were dated May 7th and he appeared on May 9th?

A No, I don't.
Q Did you tell Mr. Spargo on May 9th, or any other time, that the Board wanted copies of checks, front and back, to New York State candidates and committees, like this letter says?

A I think I did. I'm not totally clear on this, but that's what the letter said, so I would assume I --

Q You assume you followed the terms of the request in the letter?

A Yes. Uh-huh.

Q And, eventually, the Board did, in fact, receive checks from Mr. Spargo in response to this request; is that right?

A Yes, yes.

Q I skipped ahead of myself. On Exhibit 12, on the bottom, there's some handwriting. Is that Mr. Polsinello's handwriting?

A Yes, it is.

Q And he, in effect, approved of Mr. Spargo providing these checks instead of getting them directly from the contributors; is that right?

A Yes. Everything had to be approved by him.

Q When Mr. Spargo, on May 9th, offered to provide the checks, did he indicate where or how he had copies of them or that he had copies of them?
A I don't specifically recall, but if -- I think what he said was, they kept copies of the contributions -- when the checks were sent into the various committees, the committees photocopied the contributors' checks, therefore, he had available those checks.

Q Now, when you received the checks from Mr. Spargo -- do you recall the date?

A I think they weren't until the following January.

Q Of '87?

A Of '87, yes.

Q Now, when you received them, did you receive the front and back of the checks? It doesn't matter if you're not sure.

A I don't remember.

Q Were twenty checks for $5,000 each from persons affiliated with Pyramid among the checks from Mr. Spargo supplied in 1987?

A Again, I can't remember the exact amount, but all the checks that were listed on the financial statements were --

Q My question, however, is -- well, I'm sorry. Were twenty checks for $5,000 each made payable to the New York Republican Federal Campaign Committee among the checks
Mr. Spargo gave you?

A No, they were not.

Q Now, you're aware, I take it, that when the Commission received the Board's comments and the Board's file, there were three checks, each for $5,000, from Pyramid persons made payable to the New York Republican Federal Campaign Committee, were you aware of that?

A Yes. I think we provided them to you.

Q Were those checks overlooked by the Board; do you have any recollection of those three checks?

A I really can't recall.

Q Was one of your primary duties in connection with this investigation to examine all the Poughkeepsie-related expenditures by Building a Better New York and the State Committee?

A Yes, and in addition to the Town of Poughkeepsie Republican Committee, the three committees.

Q Now, the Commission has already heard testimony today from Mr. Tenenini on this score, so I'm going to try to summarize this.

One of the reasons you were examining each of the expenditures was to determine which candidates were benefitted by each of the three committees; is that right?

A Yes.
Q That was for the overall purpose of trying to determine what part of a contribution from a Pyramid person should be deemed a contribution to the local Poughkeepsie candidates?

A Yes.

Q If you just refer again to Exhibit 10 on page -- the second page, Paragraph 4(a), you proposed that subpoenas should be issued to the vendors to obtain positive confirmation of all the expenditures, and my question is: I take it you wanted to be sure that the vendors had not received money from any other persons or committees, was that one of your reasons?

A Or whatever else you can find.

Q But the only two vendors that were subpoenaed were Campaign Strategies and Campaign Technologies?

A Yes.

Q The vendors listed on the State Committee's disclosure forms, they were not subpoenaed?

A No, they were not.

Q Did anyone ever deny you permission or authority to subpoena those vendors?

A Yes.

Q Who was that?

A Frank Polsinello. He chose to send letters to
each vendor and to verify the expenses.

Q Did he say why he chose to send letters rather than subpoenas?

A No, he did not.

Q With respect to the subpoena for Campaign Strategies, we've heard testimony on that already. Let me try to summarize. That subpoena asked for campaign literature and invoices; is that right?

A I think it read: All books and records pertaining to all the expenses listed and recorded on Building a Better New York Committee in addition to campaign literature and everything else.

Q Regardless of what the specific terms of the subpoena were, what did you receive in response to the subpoena?

A I think the initial response was a brief cover letter with fifteen invoices totalling $198,000 and change, copies of the three checks that amount to $59,000 that showed were paid by Building a Better New York Committee, and a thick folder of glossy type campaign literature that they said they had produced as a result of this $59,000 expenditure paid to them.

Q With respect to this literature that you received from Campaign Strategies, it was all concerning the
Poughkeepsie elections; is that right?

A All the candidates shown on the literature were from Poughkeepsie.

Q Just to jump ahead for a second, am I correct -- I assume that Building a Better New York did not file any campaign literature with any Board of Elections in the State; is that right?

A I think that is correct.

Q Now, with respect to the invoices you received from Campaign Strategies, I'll try to summarize that as well.

You got back invoices made out by Campaign Strategies to Building a Better New York which totalled $198,000; is that right?

A Yes.

Q According to disclosure forms, Building a Better New York had paid Campaign Strategies $59,000?

A That's correct.

Q What did you do or propose when you noticed this discrepancy between the $59,000 that was reportedly received and the invoices totalling $198,000?

A Well, we proposed writing an additional letter for clarification.

Q Now, did you discuss with Mr. Polsinello
whether, given the discrepancy, that the financial books and
records of Campaign Strategies should be subpoenaed or
testimony should be taken from Campaign Strategies?

A I believe that was Mr. Tenenini's request. I
was aware of it happening, so I didn't repeat it. He was
more involved in this aspect at this point. In fact, he was
analyzing materials that came back as a result of the
subpoena. I really didn't have too much to do with the case
at this point, at least this part.

So, he recognized the discrepancy, and I
believe he mentioned that to Mr. Polsinello.

Q In any event, the financial books and records
and testimony from Campaign Strategies wasn't obtained by
the Board?

A No.

Q Could you look at Exhibit 13? Is that the
letter that was thereafter sent to Campaign Strategies?

A Yes.

Q Is it fair to say it asks a number of questions
designed to find out if Campaign Strategies got any other
monies from any other persons or committees?

A That was our intention.

Q I take it you considered the possibility that
some other committee might have paid Campaign Strategies and
that would account for the big discrepancy in the invoices?

Q Now, if you take a look at Exhibit 14, that's a response that you received from an attorney from Campaign Strategies?

A Yes.

Q In several places, it states that Campaign Strategies received no other payments "on this account," is that right?

A Yes.

Q And at the bottom of the first page of the letter, it states, "The $139,450.61 figure referred to in your letter reflects a billing error made by CSI. The only amount due CSI above the $59,000 already received is the amount shown in Invoice 15," in explanation for the discrepancy that the $139,000 reflected a billing error; is that right?

A Yes, that's what it states.

Q Did you accept the explanation of this $139,450.61 discrepancy as a billing error?

A No. We still questioned it, but --

Q And you did that by a follow-up letter?

A There was no other correspondence regarding the $125,000 with Campaign Strategies or Jesse Masyr, who was
the attorney, covering the $125,000.

Q All right. I take it, though, that some time after you received this response, I think it was in March, 1987, you sent another letter to Campaign Strategies requesting confirmation of payment to subcontractors; is that right?

A Yes. I believe at this point, two questions were raised. Number one, the billing error and, two, the 59,000, because at this point, we still hadn't had an itemization of what the 59,000 represented, only that 59,000 was paid by Building a Better New York to a campaign consulting firm, 59,000, but we didn't know what it represented.

So, in that letter you're referring to of March 5, 1987, we asked for an itemization of the 59,000. Now, what we were going to do -- and it as discussed and, again, it wasn't done -- was, when this letter was replied to --

Q When you say, "this letter" could you just give us a number so everyone can follow?

A The March 5, 1987 letter -- I don't know if it's one of your exhibits.

Q It's not among the exhibits.

A -- which was an itemization of the 59,000, and it was discussed with Mr. McCarthy, and I believe Mr.
Polsinello at that point said we would look into the $125,000 discrepancy or billing error, if needed, if necessary.

Q And did someone make a determination that it wasn't necessary to look into that further?
A It just wasn't done. I don't know why.
Q Now, did the Board receive a response to this March, '87 letter?
A No.
Q Now, just let me try to save some time and summarize something. You eventually learned, however, that although the 59,000 was paid to Campaign Strategies, it didn't get to keep all of it; is that right?
A I'm sorry?
Q Well, $59,000 was reportedly paid to Campaign Strategies in the disclosure form by Building a Better New York?
A Yes.
Q But it turned out that not all of the money was for consulting purposes, as reported?
A Yes. I know what you mean.
Q Would you just explain that, briefly?
A Well, off the top of my head, approximately 47,000 of the 59,000 were for outside subcontractors who
produced campaign literature, developed it, designed it, whatever it takes to produce a piece of campaign literature, but I think they are audited at 59,000, and it was $12,000 that was solely for consulting.

Q So, in effect, Campaign Strategies paid for the services of other vendors that provided Poughkeepsie-related services with money it received from Building a Better New York?

A Other vendors, yes, or subcontractors.

Q Now, if you turn back to Exhibits 13 and 14, you also asked Campaign Strategies to allocate the monies it received among all the candidates; is that right?

A Yes.

Q What was the response from the attorney for Campaign Strategies with respect to that question?

A That they were unable to do it -- the question is answered in the Exhibit 14.

Q It indicates there that: "The effort by Campaign Strategies was not directed toward any one or two particular individuals, but rather was an all inclusive undertaking to elect a Republican ticket."

A Yes, that's what they said.

Q Did you accept that contention or that position?
Q You determined that the expenditures should be allocated to a lesser number of candidates than eleven or fifteen?

A I wanted to see the invoices in order to do that.

Q Did you ever receive the invoices?

A Yes, we did.

Q Subcontractor invoices?

A Yes.

Q When was that?

A Late March, '87, I believe, just off the top of my head.

Q From whom did the Board receive those invoices?

A I obtained them from Tom Spargo.

Q How did that come about, that you got them from Mr. Spargo?

A Well, in the course of the investigation, or in obtaining bank records, many monthly statements and checks were unable to be copied by the bank due to microfilm problems, or they lost it, or whatever the problems were, so the bank records were incomplete in many areas.

So, in order to provide Mr. Tenenini the records so he could finish his audit, I went to Tom Spargo,
after receiving permission from Frank Polsinello to do so,
in an attempt to get from the treasurer who, in this case,
Mr. Spargo acted in the capacity as treasurer for Lewis Bart
Stone, for copies of statements and checks that we were
unable to get from the bank. So, at that point, we were
talking to Mr. Spargo.

Now, coming down towards the end, when we were
told they want the investigation completed, we had had this
letter outstanding from Jesse Masyr, the attorney for
Campaign Strategies, for a request to obtain these invoices
for the 59,000, and everything they have done or provided
just took all kinds of time.

So, in the process of obtaining the other
records from Mr. Spargo, I don't know whose idea it was, but
I simply asked if he could provide these invoices, which he
did.

Q And he agreed to provide them?
A Yes, he did.

Q Now, could you just take a look at Exhibit 4?
I'll ask you more about that a little later, but just back
up to Exhibit 4, which I believe is in front of you. Do you
have that in front of you?
A Yes.

Q Now, this is a letter from -- to you from Mr.
Stone, and correct me if I'm wrong, this was in response to a letter from you seeking to confirm the identities of Poughkeepsie-related vendors paid for by the State Committee?

A  Yes.

Q  And Mr. Stone did, in this letter, detail all the vendors who provided services for the State Committee, is that right, on the third page?

A  Oh, yes, yes, he did.

Q  And in addition to listing all the vendors, did Mr. Stone also provide an allocation or explanation of the candidates benefitted by these $159,000 in expenditures?

A  Yes, he did, but not on my request.

Q  That was at someone else's request?

A  He just added it to the -- the request was only to Page 3.

Q  The last page, though, of this letter from Mr. Stone, provides the allocation and states that a proper and reasonable allocation of the $159,000 spent would be just allocated among all eleven candidates, is that right --

A  That's what it says.

Q  -- equally? And, did you or the Board accept this allocation?

A  No.
Could you just take a look at Exhibits 15, 16 and 17? I think they are three reports that you prepared and those three reports have to do with your analysis of each of the expenditures by the State Committee and Building a Better New York. Is that right?

Yes.

And it allocates each expenditure in terms of candidates benefitted by the expenditure; is that right?

Yes, it does.

And Exhibit 17 is the Building a Better New York report, and it analyzes the Poughkeepsie-related expenses of Building a Better New York?

Yes.

And, in particular, it analyzes the Poughkeepsie-related expenses by the subcontractors who weren't reported on Building a Better New York's disclosure form; is that right?

Yes, it does.

Now, let me just ask you a couple of questions about those subcontractors, or a general question. The State Commission disclosure forms did not report Poughkeepsie-related vendor services by any of the two vendors reported by Building a Better New York, Campaign
Strategies and Campaign Technology; is that right?

A I don't believe so.

Q In other words, you don't believe that it did report?

A That it did report. No. I believe they did not report.

Q Building a Better New York did not report Poughkeepsie-related services by any of the Republican State Committee vendors; is that right?

A Not on the form, because they just show it as Freidman & Morris. The face of the form did not contain it, no.

Q So that from the face of the forms, a member of the public examining these forms wouldn't know that the State Committee and Building a Better New York were, in fact, both paying for vendors who provided services in the Town of Poughkeepsie in connection with the November election; is that right?

A Not on the face, no.

Q Did you or anyone at the Board make a determination whether a failure of Building a Better New York, failure to report subcontractors, was intentionally done?

A No. I believe at that time, it was okay to
report that way. I think since then, there's been a change
in the law that provides for an itemization of subcontractor
itemization exactly like this example.

Q Let me just quickly have you look at Exhibit 3, and I just want to ask you the following question.

That's a disclosure statement from Building a Better New York. Look at the last page. It provides an allocation of the money spent by Building a Better New York; is that right?

A Yes.

Q Just like the letter from Mr. Stone, it takes the position that a proper and reasonable allocation was to divide the $69,000 in expenditures equally among all candidates?

A Yes.

Q And you did not accept that allocation, either?

A No.

Q Just let me try to save some time and ask you how you performed the allocation in each of the three reports. I would like to try to summarize that. Tell me if I have it wrong.

With respect to Exhibit 15, the August, '86 report, you confirmed each Poughkeepsie expenditure through a review of the bank records, and you also looked at the
literature received from the vendors and you made a
determination as to which candidates were benefitted; is
that right?

A Yes, but I asked the vendor to make the
determination to allocation.

Q If the vendor couldn't supply any information
in that connection, or, sufficient information, you
allocated it among all eleven; is that right?

A That is what the formula or the rule was, as
approved by Mr. McCarthy and Mr. Polsinello.

Q Relating to Exhibits 16 or 17, you didn't
always have information from the vendors to help you, you
had the invoices from Mr. Spargo, but you didn't necessarily
have the materials from the vendors?

A Yes.

Q In addition to the invoices from Mr. Spargo,
you received explanations of the services from Mr. Spargo?

A Yes.

Q In fact, on the face of each report it
indicates that Mr. Spargo nominally provided invoices and
explanations?

A Yes.

Q Is that explanation in writing?

A It's formulated in my report.
Q He didn't give you a letter explaining each one?
A No.
Q He told you verbally and you made notes afterward?
A Verbally, and made notes after returning.
Q Can you turn to Page 3 of Exhibit 16? Take a look at Item No. 19 at the top. You have that in front of you?
A Yes.
Q It indicates Mr. Spargo provided an invoice from Frederick Pheiffer in the amount of $4,387 for "political consulting and travel and other expenses." What did Mr. Spargo say, in explanation of this expenditure, to Mr. Pheiffer?
A Since I didn't -- I can't specifically recall the conversation, but just in reference to my report, since I didn't specifically say, "Spargo stated," I have to assume by reading this, that he didn't know, therefore, we allocated it among the eleven candidates, as per the formula that was decided on in the beginning.
Q Well, in any event, Mr. Spargo did give you an explanation, and as a result, you allocated it among all eleven; is that fair to say?
I can't tell you exactly whether he said it's -- in other words, the poll was conducted on behalf of the eleven candidates or he said --

When you say poll -- or consulting? Or the consulting. I'm sorry.

Could you just look down to 20 and 21, RJF Communications? It indicates that Mr. Spargo gave you three invoices totalling -- it says $18,229 -- it should be 15,000 -- and he also gave you an explanation of these invoices; is that right?

In this case, he did state that these consulting services were provided in connection with the entire Town of Poughkeepsie.

And as a result of that information from Mr. Spargo, you divided the expenditures among all eleven candidates?

Yes.

You had not consulted with Mr. Frederick Pheiffer of RJF Communications; is that right?

No.

So Mr. Spargo was, in effect, your sole source with respect to this allocation?

Yes. At this time, I would like to make one point on this. This memo contains the added vendors that we
were unaware of until we received confirmation from the
treasurer, Lewis Bart Stone. That was one of the exhibits
prior. We never received that information until March 27th,
I believe the date was, and they wanted this investigation
completed.

At this point, this is all the information I
could obtain on this. In other words, I would have
preferred to go to the vendors by letter, but there would
not have been enough time, and everyone was aware that this
was the sole support to show that this was the only way the
information was obtained.

Q In fact, in the front of each report, you state
that Mr. Spargo had provided explanations?

A Right. But, on the other, Building a Better
New York, in the same situation, we did have another letter
outstanding to Campaign Strategies' attorney.

Q Which was never responded to?

A Which was never responded to.

Q Turn to Exhibit 17, Item No. 5. This has to do
with the allocation of the expenses by Building a Better New
York.

A Yes.

Q It indicates that Mr. Spargo gave you an
invoice from a firm called City Imprint to Building a Better
New York in the amount of $10,000, almost $11,000, for printing, and it indicates here that, according to Mr. Spargo, the printing was done on behalf of all eleven Poughkeepsie Town Candidates; is that right?

A Yes.

Q And that's, in substance, what Mr. Spargo told you?

A That's what he said.

Q And, again, you did not speak with any representatives of City Imprint?

A Again, the time was the reason.

Q So, in effect, then, Mr. Spargo was your sole source with respect to this expenditure in the analysis?

A The report so qualifies that, that that is the only source.

Q Now, finally, a couple of questions on this subject, Mr. Daddario: On the basis of your allocation of expenditures, Mr. Tenenini allocated the contributions; is that right?

A Yes.

Q And you computed how much of each contribution by each Pyramid individual would be deemed a contribution to the specific eleven candidates?

A Yes.
Q But, eventually, Mr. McCarthy, the Board's enforcement counsel, concluded that the Election Law did not require that any part of the contributions of $5,000 or more be considered?

A Correct.

Q Could you take a look at Exhibit 20? This is a final report that you wrote, and I take it that your purpose in doing this was to address each specific allegation of the complaint.

A Yes.

Q And to provide the facts relative to a determination of whether the Board's legal staff might determine that any violations had occurred and whether any of the violations were substantiated?

A Just to clarify one point. The final report consisted of seven different reports. This is just to address the specific allegations in Mr. Jablonski's letter.

Q And the other final reports?

A Were the allocation schedules, Mr. Tenenini's report.

Q Turn to Finding No. 2 on Pages 17 and 18 of Exhibit 20.

Rather than read this entire finding, let me ask you if you recall that it indicates that $35,000 was
received from Pyramid individuals but not reported on the State Committee's financial disclosure statements?

A    What page is that, again?

Q    I believe you'll find it on Pages 17 and 18.

A    Yes. Okay.

Q    Do you recall that in your analysis of the disclosure statements and the bank records you indicated that $35,000 in contributions from individuals affiliated with Pyramid had not been reported by the State Committee?

A    They were not reported.

Q    Now, did you receive any explanation as to any of that $35,000?

A    No explanation why it wasn't reported, but among the 35,000, which we counted as not being reported, were the 15,000 that was erroneously deposited into the reporting account that should have gone into the housekeeping account; that, eventually, was transferred immediately into the housekeeping account.

Q    When I asked you did you receive an explanation, look at the top of Page 18 where you wrote: On February 24, 1987, Spargo provided documentation to show that the $15,000 had been -- 15,000 of this sum had been erroneously deposited into the New York Republican State Committee reporting account and should have gone into the
housekeeping account.

A That's what I'm referring to.

Q How did it come about that Mr. Spargo gave this documentation, did you ask for it?

A I really don't know how he discovered it, but, probably, in the process of obtaining the checks, he realized that certain contributors weren't reported and then he informed me that 15,000 should not have been reported because it should have gone into the housekeeping account, anyway. I immediately requested for documentation as to -- to show me how the transfer was made.

Q When he explained that to you, that it was erroneously deposited in the reporting account, it should have gone into the housekeeping account all along, was that in your office, was that on the telephone?

A I don't recall where it was, but he did provide actual copies of the bank statements and the check drawn on the one account into the other account.

Q And, in substance, he told you that it shouldn't have gone into the reporting account?

A Right. But, needless to say, we still counted it as unreported.

Q This finding indicates a total of $35,000 in unreported contributions. Did you ask Mr. Spargo about the
other $20,000, did he explain that in any way, as he explained the 15,000 that went into the housekeeping account?

A No, only if -- I can't exactly remember what he said, only, maybe it could be bookkeeping errors, or something of that sort. No other explanation.

Q Do you have a recollection that you asked and that's, in substance, what he answered?

A I don't know whether I asked him or he just volunteered to try to give me an answer.

Q Did you ask Mr. Spargo whether any other Pyramid contributions had been deposited into the State Committee housekeeping account other than the three checks totalling 15,000?

A In providing all the checks for all the contributors, he did include one check, I think it was Michael Shanley, if I'm not mistaken, that did go directly into the housekeeping account.

So, we were aware of at least one, but, that, we did not ask for.

Q So you were aware, then, of a total of, I'm not sure, 15,000 or 20,000 in contributions from Pyramid individuals that went into the housekeeping account?

A I was only aware of 5,000, plus the 15 that
Q  For a total of twenty?
A  Right.

Q  My question is: Did you ask Mr. Spargo at any
time whether there were yet other contributions that went
into the housekeeping account?
A  No, I don't believe so.

Q  Now, the subpoenas that you served on the
Republican State Committee for the bank records, that only-
pertained to the reporting account; right?
A  Yes.

Q  The housekeeping account is actually a separate
account?
A  Right.

Q  Now, after you learned that some $20,000 in
contributions had been deposited into the housekeeping
account, was there any discussion about subpoenaing the
housekeeping account to see if there were more checks from
Pyramid people in that account as well?
A  I don't specifically remember, but I know Mr.
Tenenini just mentioned it earlier, and I can't remember the
specific discussions. I'm sure we had it.

Q  In any event, that wasn't done, a subpoena
wasn't issued for that housekeeping account; right?
A No.

Q It was also alleged in the Buchholz complaint that Building a Better New York had not filed a statement disclosing the identities of the candidates it was supporting; is that right?

A I'm sorry. Could you repeat that?

Q Again, I'm making reference to this document, Exhibit 20, your report, and let me ask the question this way.

Did you also consider in this report whether the allegations that Building a Better New York had not filed a statement disclosing the identities of the candidates it was supporting was substantiated?

A I think it did not contain any specific names of candidates. I think it said, "unless specified" and it made reference to six or seven candidates that support will be given to.

Q Look at Page 21. I'm sorry. I must have the wrong page. I'm sorry. It is on Page 7.

Do you recall specifically -- and you can refresh your recollection and look there -- what the Building a Better New York's authorization or non-authorization statement says? The last sentence on Page 7.
A I think I have a copy of it, I can take a minute.

Q We do, too.

A It says, who has and who has not been authorized to do so by the candidate. It says, on the date of election, November 5, 1985, and subsequent years. "Under Section B (Non-authorization) the office and district shows local offices in 1985 in the counties of Albany, Onondaga, Jefferson, Tompkins, Dutchess, Rockland and various State-wide and legislative candidates and committees.

Q It doesn't make any mention of Poughkeepsie candidates?

A No. It says names are "unspecified at this time." No, it does not.

Q Without a statement by Building a Better New York of the names of candidates that it was supporting in Poughkeepsie, is it fair to say that the public could not have learned from the face of disclosure filings by Building a Better New York that it was, in fact, supporting candidates in Poughkeepsie?

A No.

Q The public could not have known that?

A No.

Q Was the treasurer of Building a Better New York?
York, Mr. Spargo, asked about why the disclosure statement didn't specify the candidates?

A No, I think the treasurer was Ruth Swan, and Mr. Spargo was never asked, I don't believe.

Q Neither Mr. Spargo nor Miss Swan was asked?

A No, I don't believe so.

Q Can you turn to Finding No. 7, which is on Page 27. You indicate there that neither Building a Better New York or the State Committee filed any financial statement in Dutchess County.

Is it your understanding that the committees were required to file in Dutchess County?

A Yes, they are.

Q Finding No. 11 indicates Building a Better New York did not file any campaign literature with the State Board or the Dutchess County Board; is that right?

A No, they did not.

Q Turn to Finding No. 8 on Page 28. It indicates seven contributions of $5,000 each were not reported by the State Committee within twenty-four hours of receipt.

Now, what's the significance of that, Mr. Daddario?

A Well, at the close -- at the last day of the eleven day pre-election report to the date of election, any
contribution in excess of $1,000 should be reported to the Board in twenty-four hours and if --

Q So, it is a provision that is designed to give the public a last chance opportunity to find out who is making big contributions?

A Correct.

Q And the State Committee had failed to report, within the twenty-four hours, seven contributions?

A I believe they were filed after the election. I think they were filed, if I remember correctly.

Q Five or seven, in any event, were not disclosed prior to the election?

A No, they were not.

Q Now, if you will, look at Finding No. 14(a). I think it's on Page 34.

It indicates that the State Committee's two pre-election filings did not report any liabilities, and you wrote, the first post-election filing by the State Committee reported liabilities of various services that were provided before the election and, so, therefore, you wrote that the liabilities should have been reported prior to the election on the pre-election disclosure statements; is that right?

A Yes.

Q Was it your understanding that the law required
the liabilities to be reported prior to the election, when
they were incurred?

A  Yes, it is. When they are incurred.

Q  And, finally, I would just like you to take a
look at Pages 18 and 19. You list on those two pages all
the Pyramid contributions to the State Committee and
Building a Better New York?

A  Yes.

Q  And of the fifteen checks of up to $5,000 each
that Building a Better New York received, just five were
dated before the election. Do you see that?

A  Yes, one through five. I have them.

Q  But before the election, Building a Better New
York incurred liabilities to spend a lot of money, isn't
that so?

A  Yes.

Q  And if you take a look at the $106,000 that the
Board was aware of in contributions to the State Committee,
ten of the $5,000 checks were dated before the election and
the rest were dated after the election?

A  Yes.

Q  My question is: Did you consider the
possibility that these post-election contributions, the ones
that weren't received until after the election, had, in
fact, been promised before the election, since these committees made Poughkeepsie-related expenditures or had liabilities before the election?

A No, I didn't look at it that way. I mean, --

Q Do you have an understanding as to whether a promise of a contribution has to be reported when the promise is made, or do you know?

A I really don't know.

MR. McGUIRE: Thank you.

THE CHAIRMAN: I just have a few questions to ask.

Did the number of violations that you discovered in this particular election surprise you, the number of violations?

THE WITNESS: No.

THE CHAIRMAN: Are you used to finding, in your review of elections, the kinds of lists of violations that took place here?

THE WITNESS: Well, in most campaigns, many treasurers are volunteers, and they are not, per se, accountants and don't have a lot of knowledge in accounting at all, so filing violations are common in those type committees.

THE CHAIRMAN: Did you appreciate the effect
of these violations in this election, namely, that
the voters of Poughkeepsie were denied vital
information as to what was going on in the 1985 Town
Election, did you appreciate that fact?

THE WITNESS: Well, they weren't reported when
they should have been, many of them, so, therefore,
no one would know.

THE CHAIRMAN: Do you think that's important,
that the people of the State be provided with that
information?

THE WITNESS: Yes.

THE CHAIRMAN: You were intimately involved
with the handling of the Poughkeepsie investigation,
isn't that so?

THE WITNESS: I had specific tasks in the
overall investigation, yes.

THE CHAIRMAN: At that time, you were the
Chief Investigator for the State Elections Board?

THE WITNESS: I worked under the supervision
of Frank Polsinello, and he assigned me specific
tasks. In addition, Mr. Tenenini had some to do, and
other investigators had certain things to do.

THE CHAIRMAN: I take it that our
investigation that eventuated in a hearing in January
of '88, came to your attention at that time?

THE WITNESS: Yes.

THE CHAIRMAN: And you have been, obviously, aware of the kind of information that is set forth in the exhibits in front of you as a result of our investigation; isn't that so?

THE WITNESS: Yes.

THE CHAIRMAN: Were you surprised by the information that was provided to you by our investigators, having been involved in the Election Board's investigation of the matter?

THE WITNESS: Well, surprised to find other expenses, the ones on the right, but the --

THE CHAIRMAN: What about with reference to the Federal Campaign Committee?

THE WITNESS: That I didn't know about either.

THE CHAIRMAN: Did that surprise you?

THE WITNESS: That they contributed, no, it didn't surprise me, but I was surprised that we were not aware of it.

THE CHAIRMAN: That you were not aware of it?

THE WITNESS: Not aware of it.

THE CHAIRMAN: I believe you testified that you have been associated with the Board since almost
the time of its creation dated back fourteen years?

THE WITNESS: Yes.

THE CHAIRMAN: During that whole period, have you been involved in investigation kind of activity at the Board?

THE WITNESS: My first year there, I was an Assistant Accountant with the Board, a year, fifteen months, I don't recall, and then from that point on, I have been with the Investigative Unit.

THE CHAIRMAN: I take it that in connection with your work as an investigator, that you would have discovered along the way, many loopholes and weaknesses in the New York Election Law; is that correct?

THE WITNESS: I've exposed a few, yes.

THE CHAIRMAN: Have you discussed those violations and loopholes with your superiors?

THE WITNESS: I'm sure they were discussed, you know. I don't specifically recall instances.

THE CHAIRMAN: You are aware, I'm sure, that under the New York State Election Law, the State Elections Board is empowered to conduct both private and public hearings with respect to what it discovers with respect to campaign financing in New York State,
are you aware of that?

THE WITNESS: Yes, I believe so.

THE CHAIRMAN: During the fourteen years that you have been associated with the Elections Board, do you recall the Board holding a public hearing to dramatize weaknesses and loopholes in the New York State Election Law?

THE WITNESS: I don't believe I can recall any public hearing for -- as you're referring to. I can recall one public hearing that they had, it was in regard to an investigation.

THE CHAIRMAN: I take it that it is your best recollection -- at this point, in the entire fourteen years that you have been associated with the Elections Board, you don't recall any public hearings or bringing to the attention of the voters of this State weaknesses in the New York State Election Law; is that so?

THE WITNESS: No, I do not.

THE CHAIRMAN: Thank you.

COMMISSIONER VANCE: Mr. Daddario, I have just one question. As we all know, the Board issued a press release announcing that the investigation had been concluded and did not take any action with
regard to the apparent violation of disclosure, and I look at our file and I see that on January 12th of this year, you were interviewed by lawyers for our Commission, and you stated that there were all kinds of improprieties, violations, whatever you choose, monies not reported, expenses probably improperly reported, there were omissions on disclosure statements, there were all kinds of those things.

I ask you, in light of that, were you disappointed when no action was taken by the State Board of Elections?

THE WITNESS: Well, I think Mr. McCarthy can better answer that question, and he's going to appear here today, but, in my -- what I meant by that was, there were violations, there were filing violations, but it seems as though -- because it's already been completed, that the Board didn't rule for criminal prosecution based on those violations. I mean, every one acknowledged that they did occur, more or less, a technical violation versus a criminal violation. I mean, I think that's what they did.

COMMISSIONER VANCE: You really think these were nothing but technical violations?

THE WITNESS: I didn't say that. I thought
they were violations and I stated so. As to what
they did with them, I can't answer that. I said they
were violations, I acknowledged them, I reported
them, Mr. Tenenini reported them, and that's all we
can do.

COMMISSIONER VANCE: I'll pursue this with
your superiors later on.

THE CHAIRMAN: Commissioner Emery.

COMMISSIONER EMERY: Mr. Daddario, I asked you
before, when I interrupted the questioning before,
what you were thinking when you wrote Exhibit 10,
Paragraph 3(b), and you replied that there were
allegations that connected up the zoning change and
Pyramid's activities with the various campaign
violations which you were investigating.

Now, that was early on. That was in March of
1986. What did you do about investigating those
violations?

I mean, we've talked about a forest, or, I
should say, may trees, specific things that you did
or did not do with respect to all these documents
with respect to Mr. McGuire's questions. Let's look
at the forest for a second and step back.

Let me ask you, there were allegations that
campaign violations had been specifically related to obtaining a zoning change which was, in fact, of great financial benefit to a company behind a great deal of these contributions. What about that allegation, what did you do to investigate that allegation?

THE WITNESS: Well, as I suggested in March of '86, we should interview the various characters in the case. These people would be the only ones, at least at this point, which may have led to others. Once we talk to them, that can answer that question. And if you're unable to do so and not allowed to do so, I mean, what more can be done.

COMMISSIONER EMERY: Specifically, now, on that issue, how were you forbidden to interview the people you needed to interview to investigate the issue I just described?

THE WITNESS: Well, I think we went through the contributors and how we were told we couldn't interview them, and as far as the other people, I can't recall specifically, after writing the memo, saying this is who we should interview, any other times, verbally asking. The requests were just -- I don't want to say denied -- but, just, it was never okay to interview these people.
COMMISSIONER EMERY: Well, you testified, I believe, that Mr. Polsinello forbid you, or precluded you from interviewing the contributors, is that correct?

THE WITNESS: Yes.

COMMISSIONER EMERY: Did you ever question him with respect to his statement that it was illegal to interview contributors?

THE WITNESS: I don't know how far I carried that.

COMMISSIONER EMERY: Did you --

THE WITNESS: It wasn't once that we requested it, it was probably -- I wrote him once, I probably asked twice, and I'm sure Mr. Tenenini asked two or three times. I even asked Mr. McCarthy.

COMMISSIONER EMERY: Did you cite any law, regulation or case which indicated to you authority or support for the proposition that you couldn't interview contributors?

THE WITNESS: No.

COMMISSIONER EMERY: He just said was illegal?

THE WITNESS: Yes.

COMMISSIONER EMERY: You did, however, on a number of occasions, at least informally, interview
Mr. Spargo, is that correct?

THE WITNESS: Only to obtain invoices, or bank records, treasurer type records.

COMMISSIONER EMERY: You sat with him and talked with him about various allocation activities, about how expenses would be allocated, and about the records that he provided to you?

THE WITNESS: Yes.

COMMISSIONER EMERY: Now, at the time you sat with him, what did you know about the hats he was wearing in relation to this controversy?

THE WITNESS: Quite a few of them.

COMMISSIONER EMERY: List them for me so we are specific in the record, the ones that you can say now that you knew that he was wearing.

THE WITNESS: Counsel to the Republican State Committee, he acted as Treasurer, for whatever I needed from him as Treasurer, he acted in the capacity of the Treasurer.

I don't really know any other direct involvement. It is alleged that he was involved with Build a Better New York.

COMMISSIONER EMERY: You knew he was counsel to the Senate State Elections Committee?
THE WITNESS: Yes.

COMMISSIONER EMERY: Did you also know that he was counsel in some form or another, to Pyramid Corporation?

THE WITNESS: No, I did not.

COMMISSIONER EMERY: He never revealed that to you in any way?

THE WITNESS: No.

COMMISSIONER EMERY: Did you ever question him in the course of your interviews with him about the relationship of Pyramid to the zoning change in relation to these allegations that you had heard about right from the beginning of the investigation?

THE WITNESS: I could. My sole reason for -- I don't want to say interviewing him. Obtaining records from him, strictly to get those records. I was not allowed to interview him, per se, in that line of questioning. That would have constituted an interview that I didn't have the authority to do.

I certainly could have asked him on the side, what did you do here? I was very uncomfortable being in the position he was to have to go to him and to get these things.

At that point, he was the only guy that would
give it out.

COMMISSIONER EMERY: Why were you so uncomfortable?

THE WITNESS: He wore so many hats, he possibly was involved in this.

COMMISSIONER EMERY: Who instructed you not to interview him beyond finding the documents?

THE WITNESS: Well, Frank Polsinello was the only one to give the authority for us to interview anybody in this case, and at that point, it was only to see him, after his instructions that I could even see him in this case, is just to obtain records. Naturally, I could, in obtaining the records, ask him what it meant, if it was a piece of paper, an invoice, which I did.

COMMISSIONER EMERY: Sitting here today, you remember at some point getting instructions from Mr. Polsinello not to ask Mr. Spargo any questions beyond those related to the records he was providing to you?

THE WITNESS: No, I don't think you can look at it that way. Only that my only instructions were to get records.

COMMISSIONER EMERY: And you interpreted that to mean that you were not to ask him any other
questions related to this investigation?

THE WITNESS: It had to be, yes.

COMMISSIONER EMERY: Did you know when you were sitting there that when you spoke to him in the course of obtaining those records, and asking him the questions that you did ask, that he, in great likelihood, had a great deal more information about this investigation than he was giving you?

THE WITNESS: Well, all during the investigation, and probably at that point, we all assumed we would interview the guy at the end, and it just never happened. I can't relate the time frame, but most of the times I met him in getting the records towards the end. That eventually, we were going to interview him, and have that opportunity to ask these questions under a formal setting.

COMMISSIONER EMERY: Do you know of any regulations or requirements of people who act on behalf of campaign committees, that receive contributions, or made contributions, that require them to make disclosure of their own roles or interest which might affect that role, such as being counsel to Pyramid, one of the contributors, itself, and one of the beneficiaries of the purposes of the
very campaign committees that he was counsel for?

THE WITNESS: No, I am not aware of any.

COMMISSIONER VANCE: Can I ask a follow-up question? Did it ever occur to you, when you were talking to Spargo, that what he was giving you might not be all that was there?

THE WITNESS: Yes. But, again, it was toward the end, and that is all we had. We would have loved to have said, can we have another --

COMMISSIONER VANCE: Your superiors do that?

THE WITNESS: All my reports were qualified to say this is the source, and they knew letters were outstanding, but they wanted to end the case, finish it up.

COMMISSIONER EMERY: Just one more thing, and that is, I take it -- I haven't reviewed them lately, correct me if I am wrong, I take it that the initial complaints with the allegations in it that stimulated this investigation, and to which you inferred when I interrupted your testimony in response to Mr. McGuire, did contain allegations or information with respect to Pyramid's involvement in, or named Pyramid in seeking a zoning change, at some point the name, Pyramid was part of your --
THE WITNESS: Pyramid individuals and associates is how they referred to those people, not, per se, the corporation. Individuals and associates.

COMMISSIONER EMERY: So, you knew, during the course of this investigation, that there were people who stood to make a lot of money based on the zoning change that arose out of the people that were elected in this election?

THE WITNESS: Yes.

COMMISSIONER EMERY: And you know that during the course of this investigation?

THE WITNESS: I would say so, yes.

COMMISSIONER EMERY: And it was discussed among the staff that was working on this investigation?

THE WITNESS: I would imagine, yes.

COMMISSIONER EMERY: Do you know -- did you have any discussions about Pyramid, and its relationship to this election, and its interest in this election, where members of your staff were present, that you can remember?

THE WITNESS: That is a specific allegation, and it goes in some detail in the letter of complaint. I am sure everyone read it, and everyone
was aware, yes.

COMMISSIONER EMERY: From the Board members to Tom Wallace, all the way down to you and Mr. Tenenini?

THE WITNESS: I don't know how far up it went. My level, even, yes.

THE CHAIRMAN: Mr. Bienstock.

EXAMINATION

BY MR. BIENSTOCK:

Q Did you also know, Mr. Daddario, that the Complainant in this case, requested that there be a Special Prosecutor or investigator assigned?

A I didn't know at the time, but just in looking at the file, I think I recall a letter of some sort.

Q You weren't told about that at the time?

A In that stage of the complaint, it hadn't yet been referred to the Investigative Section. I wouldn't have even know a complaint existed when that correspondence was being sent between the attorney and --

Q I interrupted you.

A Between the attorney and the Complainant, Miss Buchholz, at the time.

Q When the complaint was referred, a request for a Special Investigator was not, is that correct?
No, I don't believe so. Again, I don't know what was requested.

Now, let me refer you to a document that you referred to in response to a question from Mr. McGuire.

I believe it comes after Exhibit 14, which is a letter from Jesse Masyr to Frank Polsinello, dated June 20, 1986.

Do you have that?

Yes.

Now, in response to Mr. McGuire's questions, you referred to a document which is not an exhibit, but which followed that. Do you have that?

Yes, I know what you mean, the March 5, 1987 letter.

Now, where did you get the documents you were referring to, the March 5, 1987 letter?

It is just a letter, a second letter to Jesse Masyr, asking him to itemize the $59,000 in subcontractor expenses.

Right.

Where did you get it?

I am sorry?

You brought it here today, is that right?

Yes.
Q Where did you find it?
A I don't know. It was in the file, I guess.
Q Did you bring other documents from the file?
A Other documents?
Q Yes.
A I have some copies, yes.
Q And you were prepared, if asked, to refer to those documents?
A I really didn't know which documents, other than what Mr. McGuire told me, the line of questioning will follow in my testimony I gave to this Commission in January of this year. So, I was aware of certain topics.
Q Were you aware that there were documents in your file that were not in the Commission's file?
A No, I was not, I provided the entire file numerous times when they visited the Board, and, in particular, in January of this year, I made sure I brought the entire thing, and I gave them the entire file and I said, take it. They did, and they copied the entire thing. Now, why this one letter wasn't in there -- I'm sorry, I really don't know.
Q Now, Mr. Tenenini characterized how you felt in terms of dealing with Mr. Spargo. Do you recall that testimony?
I think he said it was uncomfortable.

Is that correct?

I agree with him.

Is that fair?

Yes.

Tell us why you were uncomfortable?

He was involved in the entire setup here, and me going to him in the capacity of a Treasurer, knowing that we will have to, and thinking that we would interview him, it was a thin line between what I can say and what I can't say.

I tried to be very, very careful. I wanted records, just give them to me, and explain them.

You also knew, didn't you, that he had personal relationships with your bosses?

He was there quite frequently, yes.

And you knew he had personal relationship with Tom Wallace, is that right?

I believe they knew each other, yes.

MR. BIENSTOCK: I have no further questions.

THE CHAIRMAN: One final question by Mr. O'Brien.

MR. O'BRIEN: In the course of your fourteen years at the Board, in any other investigation
Daddario

besides the one we are talking about here, had you ever made a request to interview campaign contributors?

THE WITNESS: I must have, yes.

MR. O'BRIEN: Was that request in other cases, granted or denied by your superiors?

THE WITNESS: I think it was -- I am trying to recall one specific case where it turned out to be well, the allegation was that those listed on the financial disclosure statements, did not, in fact, give the contribution. So, I guess what we had to do there was to see if that was true.

Really, we weren't interviewing the contributor, we were interviewing the person they listed as the contributor.

MR. O'BRIEN: Were you allowed to interview those people?

THE WITNESS: Yes.

MR. O'BRIEN: Can you recall any other time that you were allowed to interview a campaign contributor during the course of your investigations?

THE WITNESS: No.

MR. O'BRIEN: Is it possible that you did?

THE WITNESS: Yes.
MR. O'BRIEN: Do you have records that would refresh your recollection whether or not it happened?

THE WITNESS: No.

MR. O'BRIEN: Investigative reports, files?

THE WITNESS: In the vast files, somewhere, maybe.

MR. O'BRIEN: Did you say, can we take this up with a Board member, whether we can have access to those file?

THE WITNESS: Ask them.

MR. O'BRIEN: I have no further questions.

THE CHAIRMAN: Thank you for your participation.

If there is any area that you care to supply us with additional information about, you can inform us after the hearing, and we will be happy to receive it.

THE WITNESS: Thank you.

THE CHAIRMAN: We will recess until 2:15.

(A luncheon recess was taken.)
THE CHAIRMAN: Before calling the next witness, I would like to include in the record of this proceeding today, the letter that the Commission received from Mr. Polsinello, invoking his privilege. That letter will be included as part of the record of this proceeding.

I would also note for the record that the last witness, Mr. Daddario, asked to make an additional statement with respect to his answer to the last question which, I think, was put to him by Mr. O'Brien.

I gave him an opportunity to come back at 2:15 and put it on the record. On the other hand, he is not here, and the time is such that we should go to the next witness. So, I will just note for the record that he will be given an opportunity to supplement, if that is what he chooses to do, his last answer, by letter.

I now call Donald McCarthy.

Donald J. McCarthy, called as a witness, having been first duly sworn, testified as follows:
THE WITNESS: Before we begin, I have a brief statement which I believe is relevant, if I might be permitted to read it.

THE CHAIRMAN: Let me just outline what the procedure has been. We would be more than happy to research your statement at the conclusion of your testimony, and any additional statement that you choose to make at that point. That has been the procedure that we have followed in the earlier hearing in January, and it is one that I would like to continue at this point.

So, we will certainly provide you with an opportunity to read your statement at the conclusion of questioning.

Mr. McGuire.

EXAMINATION

BY MR. MC GUIRE:

Q Good afternoon, Mr. McCarthy.

Can you tell us your current employment?

A I am presently an Administrative Law Judge for the Workmens Compensation Board.

Q And prior to joining the Workmens Compensation Board, were you employed by the New York State Board of Elections?
A: Yes.

Q: In what capacity?

A: I was counsel.

Q: I am sorry?

A: Counsel.

Q: Specifically, were you enforcement counsel?

A: That was the main area of my responsibilities, yes.

Q: Did there come a time in early 1986 when you became familiar with a complaint concerning the November, 1985 elections in the Town of Poughkeepsie?

A: Yes, I did.

Q: And was that complaint from Anna Buchholz?

A: I believe it was.

Q: Rather than go through the allegations of the complaint and details, is it fair to say that it asserted a number of disclosure violations in connection with the Town of Poughkeepsie election by the State Committee, and the committee called Build a Better New York?

A: Well, to make -- I really can't answer your question directly. It had a number of so-called allegations. I might say, however, that in the last analysis, we did open an investigative file, and conduct an investigation.
Q Now, you have heard -- you did hear of Building a Better New York in connection with this investigation, is that right?

A Yes, I did.

Q Did you or the Board learn who created that committee?

A I can't really say who created the committee. I believe there was a Treasurer.

Q Did you learn Mr. Spargo had any connection with that committee?

A Did Mr. Spargo have any connection with it?

Q Yes.

A I believe he did.

Q And Mr. Spargo is also counsel to the Republican State Committee, is that correct?

A Yes, as far as I know.

Q Now, Building a Better New York is what is known as an authorized committee, is that right?

A Yes, sir.

Q Could you briefly explain what an authorized committee is?

A Well, there is -- my recollection is that there is nothing in the statute which specifically describes an authorized committee, but certain committees can be
authorized, and that status gives those committees
certain -- I don't want to use the word, "privileges," but
they have a certain status in the Campaign Finance
Disclosure Law that a committee without such an authorization
might not have.

Q Now, one of the matters that the investigation
inquired into was whether the contributions from persons
affiliated with Pyramid, exceeded the limits set forth by
the Election Laws; is that your recollection?

A That was part of the thrust of the
investigation. It was necessary, because the prime
allegation was that by creating this so-called unauthorized
committee, contribution limitations were exceeded.

Q Do you recall what the limit in the Election
Law on direct contributions to the candidates in
Poughkeepsie was?

A My recollection is quite sparse. It wasn't
very high.

Q About $1,000?

A It depended. If I remember, there were
contributions by contributors, both individual and
otherwise, I believe, which were ascribable to one or more
candidates.

In the scheme of things, the limitation would
not be exceeded unless you exceeded the limitation -- unless that contribution exceeded the limitation applicable to all the candidates to whom it was given.

Q If your recollection permits you to answer this question, what I am seeking to find out is, whether you recall that the limit on the amount of a direct contribution that anyone could have given to the Poughkeepsie campaign, is about $1,000.

A That would be the limit, in any case. You could always give at least $1,000 to any candidate.

Q During the course of the investigation, did you become aware that Mr. Spargo was providing the Board with information relevant to the investigation?

A Yes.

Q Did anyone seek your permission in that regard, in that connection?

A I really don't recall if my permission was sought.

Q Now, Mr. Tenenini and Mr. Carpiniello testified today, and one of the things that they did was kind of complex, and I would like to spit it up and see if it meets with your understanding.

They analyzed the expenditures made by the State Committee for Building a Better New York in connection
with the Town of Poughkeepsie for the purpose of trying to
determine if any of the contributions from Pyramid persons
exceeded the $1,000 limit.

Is that your understanding of what they did?

A I saw they analyzed the -- I missed the word
that you used in the beginning.

Q They analyzed the expenditures made.

A Yes.

Q And that was for the purpose of ultimately
trying to come to a conclusion as to whether the
contributions of persons affiliated with Pyramid exceeded
the $1,000 limit.

A Well, let me put it this way: In order to --
in any event, in order to determine whether or not a
contribution limit was exceeded, you had to know what the
expenditures attributable to particular candidates were,
because in the last analysis, there was no contribution
limits exceeded.

Q Now, did --

A Nor could they be.

Q I would like to get to that issue in a moment,
let me just try to go through it more slowly.

A Sure.

Q Because the contributions were mailed to
Building a Better New York and the Republican Committee, you initially determined that the Election Law required that the expenditures of these committees be analyzed for the purposes of determining what portions of the Pyramid contributions would be deemed contributing to the Poughkeepsie candidates; is that your initial conclusion?

A Yes, we decided to go ahead with the mathematics, at least to see where it led.

Q Is that conclusion memorialized in Exhibit 23, which should be in front of you in the packet of material?

They should be sequential, Mr. McCarthy. I'm referring to a March 4, 1986 memo.

A This one?

Q No, I believe it should be No. 23 in the bottom right-hand corner.

THE CHAIRMAN: It is a memorandum dated March 4, 1986 to the Commission from Donald J. McCarthy, Jr.

A I think the allocation is this one. This is the number.

Q What you are holding is a document prepared by Mr. Tenenini, I believe. But, my question is, simply, whether your conclusion, your initial conclusion, that portions of the contributions by the Republican Committee to
Pyramid would be deemed contributing to the Poughkeepsie candidates, as set forth in Exhibit 23, you have a memo, and it has that analysis?

Q       Now, towards the end of the Board's investigation, you researched Section 14-14.4, I take it, and concluded that the Law did not require that any part of the contributions to Build a Better New York, and the State Committee, be deemed contributions to the candidates of the Committees supported by those contributions?

A       My ultimate conclusion was because of the way the statute was amended in 1976, that where you had a so-called unauthorized committee, no allocation would be made.

Q       And, also, for constituted committees?

A       Yes.

Q       Your ultimate conclusion had the effect of permitting contributions to be made to these committees, in effect, in unlimited amounts; is that right?

A       That is right.

Q       Your ultimate analysis revealed a loophole in the Election Law, is that fair to say?

A       That is true.

As a matter of fact, I prepared amendments and
submitted them to the Legislature and Governor's Office, which go towards changing the situation.

Q Will you take a look at Exhibit 25?
A Yes.

Q Is that the memo; is that what you are referring to, did you send this memorandum to the legislative committees?

A My Board did, it was one prepared by me, yes.

Q Now, the Buchholz, or the complaint in this matter, also alleged a violation of Section 14-126.4, is that correct; are you familiar with that provision?

A Well, I should know it offhand, but it has been a while since I have been dealing with this stuff. Can you refresh my recollection?

Q If you look at Exhibit 24, I think you will actually find you wrote that. Will you take a look at Exhibit 24?

A Yes, I remember this.

Q In the second paragraph, I would like to try to summarize it, if I could, and please take your time and read it if you feel a need to. In substance, it makes it felony for person on behalf of a candidate for a political committee to knowingly and willfully organize and coordinate the activities of an unauthorized committee for the purposes
of evading the contribution laws; is that a fair summary?
A Yes, that is true.
Q Now, at the conclusion of the Board's investigation, did you make a recommendation to the Commissioners of the Board with respect to whether or not they should find reasonable cause to believe that provision had been violated?
A I did.
Q And what was that recommendation?
A I will read it. I might point out that in the case of Section 14.126.4, I don't believe there was any violation at all, there may have been some other situations where a violation might have been existing, but I didn't believe it warranted prosecution.
In that case, my opinion was there was no violation.
Q Was one of your reasons why you concluded that there had been no violation, that, in effect, the limits had not been avoided, because no part of the contributions to Build a Better New York, or the State Committee, could be deemed contributed to the candidates?
A Right. My opinion was, if you don't violate the limits, you don't create committees to do so.
Q Did you consider, in making this determination,
that the felony provisions is violated even if the
contribution limits are not?

A        Say that again.

Q        The felony provision doesn't require that the
limits be evaded, is that correct?

A        That's correct, just for the purpose of.

Q        Did you or the Board reach any determination as
to whether the contributions from the persons associated
with Pyramid had been earmarked for the Town of
Poughkeepsie?

A        I don't recall that we specifically dealt with
that question.

Q        Was that your assumption?

A        My assumption?

Q        That they were earmarked?

A        No, I don't remember making any such
assumption.

Q        One way or the other?

A        Right. My recollection would be that it really
wasn't material.

Q        I take it, then -- well, does the Election Law
forbid making earmarked contributions?

A        This is an issue that was one that we went into
a long time ago, back when the Board was young, and the
question becomes whether or not -- it depends on how it is contributed.

Let me give you a for instance. I remember being in Rochester, way back in the late '70's, and the Chamber of Commerce wanted to collect funds for the purpose of supporting candidates. The question was whether or not they were a political committee if they did so, and who would be given, and how much.

Their modus operandi, if you will, was to get the checks from the individual contributors, put them together, and pass them on, but not deposit them and issue a new check in the name of the Chamber of Commerce.

I believe it was our conclusion at the time, that there was no committee, that you had a bunch of individual contributions, and the mere fact that they put the money together, did not make it political committee.

Your question was with respect to earmarking?

Q Yes, that is correct.

A They might have sent it to a candidate's committee or a candidate.

Since there is no committee involvement, there is really no earmarking.

Q All right.

A If the person who made the contribution, sent
the check in, knew they were going to this particular
candidate, you might say he earmarked it for that candidate,
but he might not have known.

Q  Well, what I'm trying to get at is whether, in
your view as enforcement counsel, you believed that it was
or was not against the Election Law to earmark
contributions.

In other words, give a contribution to a
committee on the understanding that it would be spent for a
particular candidate.

A  I don't think you can do that. I don't think
you can raise a quid pro quo. As soon as the Treasurer of
the committee has the money in his pocket, he can turn
around and say, I am not going to do that, and there is
nothing you can do to force him.

Q  I understand.

A  In any event, as far as I know, the monies were
deposited, in this case, if I am reading you right, in the
account of the Republican State Committee, and went to
support -- once they're in that pot, they are
indistinguishable, you can't trace it.

Q  I take it that the Board did not endeavor to
determine whether the contributions made by the persons
affiliated with Pyramid were made to the State Committee on
the understanding that they would be spent in Poughkeepsie?

A  Well, I don't think we have any evidence, direct or indirect, of that allegation or contention, since, in the last analysis, who would know except maybe the persons, themselves?

Q  During the course of the Board's investigation, the Board did not interview contributors?

A  To my recollection, we did not.

Q  Did you become aware, during the course of the investigation, that some of the persons affiliated with Pyramid, had made contributions to the Republican Committee's Housekeeping Account?

A  During the conduct of the investigation?

Q  Yes.

A  I don't know. I know that it happened, or I believe it happened. I don't know when it was that I learned of it.

Q  You don't recall when you learned of it?

A  Right.

Q  Do you recall any consideration --

A  Wait a minute.

I don't know if there was any housekeeping account, directly.

Q  You don't know whether monies from Pyramid were
deposited into the Housekeeping Account?

A Directly, in the first instance.

I do know that monies were deposited, were not deposited -- monies were deposited into the State Committee's Reporting Account, and then redeposited into the Housekeeping Account.

Q Which is the account that doesn't have to be disclosed?

A Yes.

Q And the monies that you learned about that had been first deposited into the Reporting Account, and then into the Housekeeping Account, were from persons affiliated with Pyramid, is that correct?

A I believe that is the case.

Q Was any consideration given at that time to issuing a subpoena for the bank records of the Republican State Committee's Housekeeping Account?

A Was any consideration given?

I don't remember. I don't think we did.

Q Were you asked to approve any subpoena for those records?

A I don't remember. I don't even know if we -- I know we got a lot of information from the State Committee. I don't know if we got the Housekeeping Account or not.
In any event, it was not relevant to our investigation.

Q. You believe it wasn't relevant whether additional contributions were made by persons affiliated with Pyramid into the Housekeeping Account?

A. But they weren't.

Q. I am sorry, they weren't made?

A. They went to the Reporting Account, to my understanding. I also believe they failed to report them at one point. It might have been a violation, but that didn't -- things have happened at different sequences, and I don't recall exactly when I learned some of this material.

I was in constant communication with my investigators. This case developed over a long period of time. It was one of the many that we were actively pursuing, so I can't tell you exactly when it was that I learned that.

There has been a lot of discussion since we concluded that investigation, primarily because this Committee wanted to look at our investigation.

So, some of these items were -- as a matter of fact, may have become a greater recollection to me, if you will, after we finished, when we met you and Mr. Bienstock in my office. It is hard to remember.
The point is, what the Committee did with their money, in my estimation, was the way -- well, as far as I know, that is the way the State Committee always handled the monies that they put into the Housekeeping Account, they always ran it through the Reporting Account because I have seen them do it. It is a good idea, primarily, for bookeeping purposes.

Q Well, my question is --
A The problem arises when they try to do it the other way, then you are subverting the disclosure requirements.

Q If they are deposited directly into the Housekeeping Account?
A You can even do it directly. Some county committees do it that way. The point I am making is if you put it into the Housekeeping Account, you can't put it in the Reporting Account because, therefore, you are subverting the disclosure account, because no one knows where the money came from.

Q Given the fact that you were aware that some money from persons affiliated with Pyramid had gone into the Housekeeping Account, did it cause you to wonder or be curious as to whether there were other monies from Pyramid persons that were deposited into the Housekeeping Account?
McCarthy

A No. Why?

Would I be suspicious, in any event?

Within the framework of the statute, it was a legal and acceptable method of funding the Housekeeping Account. The fact that these individuals may have contributed to other committees or other candidates, is irrelevant because the only prohibitions, limitations, were on monies used for campaign purposes.

Monies that go into the Housekeeping Account and stay there, at least at initial blush, are not used for campaign committees.

For the State Committee, they are used for housekeeping expenses. It is a perfectly legitimate kind of contribution.

Q Thank you.

A Even if you want to look at it in its most negative way, it allows the Committee to free up other funds for campaign purposes. So be it, that is what the statute provides.

Q I think you have answered my question.

Thank you, Mr. McCarthy.

The Commission has heard testimony today about a political committee called the New York Republican Federal Campaign Committee. Are you familiar with that Committee?
A I heard of its existence, yes.
Q My question is, if a federal committee, in addition to supporting candidates for federal office also supports candidates for State and local offices, is that committee subject to the requirements of Article 14?
A Yes.
Q So, it would have to file pre and post-election disclosure statements, just like any other State committee, is that right?
A Yes, that is true.
Q Now, could you please take a look at Exhibit 20, it should be among the papers you have there. Are you familiar with that document?
A I see it, yes.
Q Did you review that report, Exhibit 20, prior to sending your memorandum to the Commissioners of the Board recommending that the Board find no reasonable cause to believe violations occurred?
A I believe I did.
Q Now, that report by Mr. Daddario found facts that substantiated a number of allegations concerning disclosure violations; is that correct, is that your recollection?
A Yes.
Q And, I take it, let me try to summarize your possible views on this subject, was it your view that these substantiated violations were technical?

A It is pretty hard to answer that question without knowing what they were, precisely.

Q You don't recall what they were?

A No, I don't. It has been -- this is April of 1987, my report is dated April of 1987, as well.

Q If you can take a look at page 5 of Exhibit 24, I think you mention one of these violations in the second paragraph on page 5, and, specifically, you mention the failure of the Republican Committee and Building a Better New York Committee, to file disclosure filings with the Dutchess County Board of Elections, and you write: "As appears from the investigative report, this allegation is substantiated."

Having reviewed that, do you recall that substantiated violation?

A They failed to file, yes.

Q Did you view that violation as a technical violation?

A No.

Q You did, however, recommend that the failure to file in Dutchess County not constitute a violation
warranting prosecution?

You can look at the last sentence of that paragraph on page 5.

A I guess I did.

Q Now, I don't want to go through all the matters substantiated in Exhibit 20. Let me ask you if you recall that there were also failures by the Republican State Committee to report contributions in the final eleven days before the election on a twenty-four hour basis; do you recall that issue coming up?

A I don't remember when it came up, but it is my understanding that that happened.

Q And was it also your understanding that there were unreported contributions from persons affiliated with Pyramid that should have been reported?

A No, I don't remember that.

Q Could you take a look at Exhibit 20. Let me see if I can refresh your recollection. Let me give you a specific reference. Just allow me one moment, please.

Look, please, at page 17 of Exhibit 20, and the last two paragraphs which indicate that the audit of the bank records of the State Committees disclose a conditional $35,000 received from these Pyramid individuals, was not reported on the State Committee's financial statements.
Do you see that reference there, sir?

A Yes.

Q And having had a chance to review that, does that refresh your recollection as to whether Mr. Daddario's report had found facts to substantiate a violation of the provision requiring that contributions be reported?

A Yes, if they didn't report them, it was a violation.

Q And I believe you have already testified, again Exhibit 25, that is the memo that was sent by you to the Legislative Committees, and Assembly Election Law Committees?

A Yes.

Q And is it fair to say that that memorandum sent to the Election Law Committees identified the loophole you talked about, and that you proposed that that loophole be closed?

A The one dealing with the so-called authorized requirement was, as I recall, the main thrust of that mandatory provision.

Q In this exhibit, the memo you went to the Election Law Committees, did it recommend that the Law be changed to require that a part of every contribution to the State Committees and constituted committees be deemed
contributions to the candidates supported by those committees; wasn't that one of your recommendations in that memo?

A Well, if that is what it says, it was on my recommendation. I just don't remember.

Really, I don't know if I said it quite that way. If that is what you want to do, that is the kind of language you would need. That is really a policy question for the Legislature, not for me to say.

It is clear from the present statute that the party committees are not required to allocate.

Q Well, --

A That is an issue that is beyond my --

Q You did, however, recommend that it be considered for revision?

A Of course.

Q Now, so I understand you, what you basically concluded was, under the then law, the law now, that the contribution limits of Section 14-114 could be avoided by contributing to authorized committees, constituted committees, and party committees; is that fair to say?

A Yes, that is right.

Q Now, was there any meetings held with any representatives of the committees, Legislative Committees,
McCarthy

to discuss the proposed amendments in your memo?

A I didn't meet anybody. I didn't hear from

anybody with respect to this.

It wasn't my -- I didn't send it over, it was

the Board's transmission, that was my memo to my

Commissioners. It was forwarded.

Now, whether or not anyone from the Legislature

returned the call, so to speak, I don't know. They didn't
talk to me if they did.

Q The recommendation you made was never, however,

adopted, it is still the law now?

A As far as I know, it was not.

Q That these limits then be aborted?

A Yes.

MR. O'BRIEN: Thank you.

THE CHAIRMAN: Commissioner Vance.

COMMISSIONER VANCE: I think I have several

questions.

You were aware that the Board did not take any

testimony from the treasurer of Building a Better New

York and the Republican State Committee or from Mr.

Spargo?

THE WITNESS: Yes.

COMMISSIONER VANCE: Why didn't you?
THE WITNESS: Why should we?

COMMISSIONER VANCE: They were the people who had the knowledge.

THE WITNESS: As a general rule, sir, we did not investigate -- or, did not interview potential targets.

COMMISSIONER VANCE: Didn't what?

THE WITNESS: We didn't interview potential targets of the investigation.

COMMISSIONER VANCE: Why did you not? Mr. Polsinello said it was illegal to do so. Do you agree with that?

THE WITNESS: No, not illegal to do so, but we would prefer to build whatever case we might be able to outside of the testimony, because we were always wary of the situation where whatever testimony we elicited might be found tainted and would not be available in a prosecution.

In most cases, we found it unnecessary to ever interview a target.

COMMISSIONER VANCE: Were you aware that Mr. Polsinello said that it was illegal to interview these people as witnesses when he was asked to do so by Mr. Daddario?
THE WITNESS: That's not my recollection. I don't remember that.

COMMISSIONER VANCE: Is Mr. Polsinello a lawyer?

THE WITNESS: No, he's not, sir.

COMMISSIONER VANCE: Didn't you have oversite of this matter?

THE WITNESS: Yes, I did.

COMMISSIONER VANCE: You're a lawyer.

THE WITNESS: When you say oversite, what do you mean by that? I mean, I was counsel for enforcement. The reports of the investigators came to me and I made my recommendations to the Board. I did not have day-to-day control over the investigations.

COMMISSIONER VANCE: I have a document that we talked about this morning, a memorandum from Mr. Daddario to Mr. Polsinello, and he says, "We should obtain positive confirmation from the sixteen contributors in question verifying their amounts contributed." And it goes on, "Further, questioning must include their reasons, motives for giving contributions. Did they contribute these monies in return for a favorable vote on this zoning change?
What was their involvement with Poughkeepsie candidates and committees, Tom Spargo, William Paroli, Build a Better New York Committee and New York State Republican Committee? Did they give monies to these committees for special Poughkeepsie candidates? Why did they contribute to Build a Better New York Committee?"

Polsinello told Daddario that none of these things could be done because it was illegal.

Now, were you aware of that memorandum?

THE WITNESS: I don't believe I was.

COMMISSIONER VANCE: Didn't it come to you in the ordinary course of business?

THE WITNESS: No.

COMMISSIONER VANCE: It's an important decision for somebody to make, to say you can't interview key witnesses with respect to the subjects of the complaint.

THE WITNESS: I didn't know about it. I couldn't expect to --

COMMISSIONER VANCE: Are you saying you didn't know about it?

THE WITNESS: I don't remember knowing about it.
COMMISSIONER VANCE: It wasn't done, so the Board never found out from the treasurer or Spargo why the disclosure violations had occurred; isn't that right?

THE WITNESS: I don't think there was any disclosure violations, at least not in the magnitude that was the subject of our investigation.

COMMISSIONER VANCE: I think your report finds there were disclosure violations.

THE WITNESS: By the State Committee, yes, but, I mean, as far as -- the initial -- our investigation was based, or was directed toward a potential violation of the section that Mr. McGuire alluded to, 14-126.3, which has to do with --

MR. MC GUIRE: .4.

THE WITNESS: -- .4, which has to do with creation of unauthorized committees to avoid limitation, contribution limits, and during the course of the investigation, it was discovered that certain contributions were not reported by the State Committee.

COMMISSIONER VANCE: Another question was, was there, under the Election Law, disclosure violations or misdemeanors, only, if they are knowingly and
McCarthy

willfully committed.

THE WITNESS: Yes, sir.

COMMISSIONER VANCE: And, the question before you is: Were there any such violations, and you found that there were not. Now --

THE WITNESS: I don't believe that's true. I didn't find that there were not.

COMMISSIONER VANCE: What did you find?

THE WITNESS: I found -- my recommendation -- I didn't find anything. I recommended a termination. There was no warranting of criminal prosecution. I told Mr. McGuire there was no violation of the statute, which was the main thrust of the investigation.

COMMISSIONER VANCE: If there was to be a criminal violation, you had to have a finding with respect to whether disclosure violation did or did not -- did or did not knowingly and willfully take place.

THE WITNESS: That's true.

COMMISSIONER VANCE: Then, if one of the main purposes of the investigation was to determine whether there was a reasonable cause to believe that criminal disclosure violations took place, criminal
prosecution could take place, it seems to me that you have to find out this kind of information.

THE WITNESS: I guess that's true. Let me say this to you, sir. On more than one occasion, on more than one occasion -- first of all, the question of whether or not there's violation warranting criminal prosecution rests within the discretion of the Board, in the first instance.

COMMISSIONER VANCE: I can't hear you.

THE WITNESS: The question of whether or not there is a violation warranting prosecution, in the first instance, rests in the discretion of the Board of Elections. Is that not so?

Secondly, I can relate to you that on more than one occasion I've sat in the District Attorney's office discussing an Election Law violation with him and have him say to me, "I don't think it warrants prosecution."

We've sent cases on to District Attorneys, and that's the response received. In some cases, it turns out to be a rather frivolous exercise.

COMMISSIONER VANCE: How could the Board have decided whether it should make a referral or a determination as to whether or not there was criminal
violation if it didn't know why the violations occurred?

THE WITNESS: You'll have to ask the Board that, sir.

COMMISSIONER VANCE: I find those answers very unsatisfactory.

THE CHAIRMAN: Commissioner Emery.

COMMISSIONER EMERY: Mr. McCarthy, as I understand it, you were counsel to the Board during this period.

THE WITNESS: Right, sir.

COMMISSIONER EMERY: Is that correct?

THE WITNESS: That's right.

COMMISSIONER EMERY: And you prepared a letter to the Board, or a report, did you not, in April or May of '87, April of '87, which was your bringing together of your thoughts with respect to what the Board ought to do on this matter; is that correct?

THE WITNESS: Yes, sir.

COMMISSIONER EMERY: And that was based on an investigation of about a year and a half from an election which took place in November of 1985; is that right?

THE WITNESS: The election took place in '85.
COMMISSIONER EMERY: And the investigation started in January of '86?

THE WITNESS: If you say so. I don't remember.

COMMISSIONER EMERY: Early '86.

THE WITNESS: It was '86, I believe, before we got the complaint.

COMMISSIONER EMERY: One of the things that your mission was to do was to investigate whether misdemeanors had been committed in the nature of either exceeding campaign expenditure limitations or conspiring to do so or violating certain disclosure requirements; is that correct?

THE WITNESS: Yes, sir.

COMMISSIONER EMERY: And you knew -- you're an attorney who, presumably, has an expertise in election law?

THE WITNESS: Right.

COMMISSIONER EMERY: And you knew, did you not, that these misdemeanors had a statute of limitations of two years?

THE WITNESS: Right.

COMMISSIONER EMERY: And this was a November, '85 election which, presumably, then would have a
statute of limitations in November of 1987, and your
report came down in April of '87, and you recommended
to do nothing, to the Election Board, to your
Elections Board?

THE WITNESS: That's right.

COMMISSIONER EMERY: And at no time during the
course of this, or thereafter, was there a referral
to any prosecutor to make an independent analysis of
this material; is that correct?

THE WITNESS: No, there was not.

COMMISSIONER EMERY: Now, were you responsible
for this investigation, in the chain of command?

THE WITNESS: Well, let me say, my
responsibility was to insure, at least for myself,
that I had the pertinent facts to determine -- in
order to make a recommendation to the Board.

COMMISSIONER EMERY: In other words, if you
had not been satisfied with the investigation that
was being done, you could go to those people,
Mr. Daddario, Mr. Tenenini, Mr. Polsinello, and say,
don't you think we ought to do this, don't you think
we ought to do that to get this done, answer these
questions?

THE WITNESS: Yes, sir.
COMMISSIONER EMERY: That was part of your role, was it not?

THE WITNESS: That's right.

COMMISSIONER EMERY: And somewhere in that period between early '86 and April of '87, you, in fact, were even more directly in contact with Mr. Tenenini and Mr. Daddario because Mr. Polsinello was out of the loop, wasn't he?

THE WITNESS: I believe so.

COMMISSIONER EMERY: He was being investigated for unrelated matters, so he was out of the loop?

THE WITNESS: Yes, sir.

COMMISSIONER EMERY: So you were working pretty much directly on this matter with Mr. Tenenini and Mr. Daddario?

THE WITNESS: Mostly in coming up with the formula that we used to make the allocations.

COMMISSIONER EMERY: Now, I believe you also just testified, in response to Commissioner Vance's questions, that you found it -- in your experience at the Board and in this investigation, in particular, you found it unnecessary to interview the targets; is that correct?

THE WITNESS: Yes, that's true. If it had
been necessary, we would have done it.

COMMISSIONER EMERY: Had you done it in other investigations?

THE WITNESS: On a limited basis, very limited basis.

COMMISSIONER EMERY: Are you testifying here today that Mr. Daddario and Mr. Tenenini never said to you, as being a person who was directly in this chain, of how this investigation was going to be conducted, never said to you that they wanted -- or, that we should, in fact, interview the targets of this investigation?

THE WITNESS: I don't remember either of them ever saying that to me.

COMMISSIONER EMERY: Now, Mr. Spargo was a potential target of this investigation, wasn't he?

THE WITNESS: He was the main target.

COMMISSIONER EMERY: And he was in and out of your office or the office of the State Board of Elections on many, many occasions during the period between January, '86 and April of '87, wasn't he?

THE WITNESS: Yes, sir.

COMMISSIONER EMERY: And, in fact, he even sat down with one of your investigators and turned over
documents and discussed those documents and the
appropriate allocations for the contributions that
those documents represented; isn't that correct?

THE WITNESS: I believe he provided us with
documentary information which we saw from the State
Committee.

COMMISSIONER EMERY: In the case of Mr.
Daddario's conversations with Mr. Spargo, in fact,
there was an interview of some nature of one of the-
targets of the investigation, was there not?

THE WITNESS: I don't know. You know what
kind of discussions they had.

COMMISSIONER EMERY: You never briefed anybody
in advance of that?

THE WITNESS: Briefed anybody?

COMMISSIONER EMERY: Well, discussed how that
interview should take place?

THE WITNESS: No.

COMMISSIONER EMERY: And did you debrief them
afterwards and determine what had occurred during
that interview?

THE WITNESS: My recollection is that we had
sought the State Committee financial disclosure
records, their books, and that Mr. Spargo had
consented to turn them over, and that was the extent of the contact with him in the context of this investigation.

COMMISSIONER EMERY: What I want to ask you is: As of the beginning of this investigation, did you see the original complaint by Ms. Buchholz and Mr. Jablonski?

THE WITNESS: Well, the original letter, I believe, came to the Board when I was in the hospital.

COMMISSIONER EMERY: But at some subsequent time, did you see them when you got involved in this?

THE WITNESS: Yes, I did.

COMMISSIONER EMERY: Both of them?

THE WITNESS: Yes.

COMMISSIONER EMERY: And you saw in them that there were allegations that Mr. Spargo was involved and that there was a company named Pyramid that stood to make a lot of money if there was a zoning change which people who were elected in that town election in Poughkeepsie favored; is that correct?

THE WITNESS: Well, I know that now. I don't recall whether I knew that then, you know, at what stage I knew that.
COMMISSIONER EMERY: It was in the original letters of the allegations, was it not, that that was one of the reasons these people were calling for the State Board to investigate?

THE WITNESS: If it was, they will speak for themselves. I don't remember.

COMMISSIONER EMERY: Is it your testimony that during the course of this investigation, it was not part of your thinking or your recommendations to the Board or your discussions to the staff with respect to this investigation, that there was a company in here making large contributions, presumably, or, allegedly, in order to get a zoning change which would benefit them enormously in a financial way, that that wasn't part of the considerations of the State Board of Elections in determining whose motivations were what or why this was occurring or why that person was contributing or how to allocate to this person or as a whole overriding motivating factor in what had occurred in Poughkeepsie?

THE WITNESS: Nothing happens in a vacuum, sir, and, of course, those elements were present in the discussions with the Board. As a matter of fact, in this particular case, since it appeared to be one
of such magnitude, I made all the Commissioners aware early in '86 of what was going on, because, as I said, it was a large investigation, a large case, and discussions were had at various stages and Commissioners were kept apprised of where we stood.

THE CHAIRMAN: Can I just interpose a question at this point?

You made reference to bringing information to the attention of the Board in early 1986, you just said that in response to the question.

Do you remember -- and I'll be happy to show it to you -- a memorandum that you sent to Frank Polsinello, dated March 10, 1986 -- and I'll read it and I'll show you the document. The memo reads as follows: "In regards to SC868-2, here's a five-page memo from Chief Investigator Daddario to me. The content pertains to the probably cause and content of the investigation. In order to prevent possible expiration of misdemeanors and, as our current work load has to be maintained, I am requesting permission to use the New York State Police Organized Crime and Task Force to assist in this investigation."

Do you remember that memorandum?

THE WITNESS: I don't remember it. If my name
is on it, it's probably mine.

THE CHAIRMAN: Let me ask Mr. Carpiniello if he would show you the memorandum.

I do have another question I would like to put to you after you've examined it.

After looking at the memorandum, does that refresh your recollection of your sending that memorandum to Mr. Polsinello?

THE WITNESS: I didn't send it to him. He sent it to me.

THE CHAIRMAN: Do you remember whether permission was obtained from the State Police?

THE WITNESS: I don't think we got it.

THE CHAIRMAN: Did you ask for it?

THE WITNESS: I don't remember. I don't think we did. I don't remember.

THE CHAIRMAN: What's your best recollection, that you did ask and didn't get it?

THE WITNESS: Yes. No. My best recollection is that we did not ask.

COMMISSIONER VANCE: Why not?

THE WITNESS: Well, primarily, because -- I'm surmising this. I don't really remember. I don't remember this memorandum, specifically. It, no

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doubt, came to me. But, if we did not, the most likely reason was -- is, we were involved in a statute of which the nature is rather obtrusive and the New York State BCI are not those kind of investigators, to my experience. They are good cops, but we were dealing with, as I say, the financial disclosure provisions of the Election Law. I don't remember if that was the reason or not.

But, my recollection is, we did not ask for their assistance and, in all likelihood, that was the reason, but I can't say that it was.

THE CHAIRMAN: I take it that that assistance is available to the Board without charge against your budget.

THE WITNESS: The statute provides for it. They like it because then they ask for an increase in their budget. They have assisted us on more than one case.

THE CHAIRMAN: Does the discussion we've just had, the question and answers, refresh your recollection as to any discussions that you had with members of the Board or your staff concerning misdemeanors possibly having been committed here?

THE WITNESS: I don't have any specific
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recollection, but I'm almost sure we must have
discussed it. It would have been done at a meeting
of the Board at which the other members of the staff
would have been present, but I don't have any
specific recollection of any particular violations.

THE CHAIRMAN: I take it, then, it was your
conclusion, your conclusion in terms of your report
to the Board, that there wasn't any violation,
misdemeanor violation here?

THE WITNESS: In regard to?

THE CHAIRMAN: Anything.

THE WITNESS: Oh, I think we already agreed
that there was some apparent prima facie violations
of the disclosure provisions. I say apparent prima
facie and, to go back to what Mr. Vance was talking
about, you go the provision that requires you to show
a knowing and willful violation. That's a pretty
tough burden, especially when there's no definition
anyplace in the Election Law or in the Criminal
Procedure Law or the Penal Law with respect to what
is a knowing and willful violation.

THE CHAIRMAN: Are you saying that it was your
judgment that there was some probably cause to
believe that there was a criminal law violation, was
that your view at that time?

THE WITNESS: In discussing it today, it's apparent to me now, and I can't tell you exactly when it was that this came to my attention or to my ken, if you will, that the State Committee had failed to disclose on its Reporting Account that some money eventually found its way into the Housekeeping Account.

On its face, there's a violation, but, at least, an apparent violation, because there was a failure to report. In order for there to be a conviction, you got to find "knowingly willful." That's a pretty strong burden.

Let me say this to you, sir, that, in my experience at the Board of Elections, going back to 1974, I've seen financial disclosure statements which had the name of a candidate on it and, virtually, nothing else. Now, that's a violation, plain and simple, but, does it warrant a prosecution? Here you had a situation where the State Committee was filing reports that thick, and they left some contributions out. There probably was more than just the ones from the Poughkeepsie people. I don't remember. I don't know.
But, it's not hard to drop when you're talking about contributions to the extent of 500,000 or so, to leave some out.

THE CHAIRMAN: Let me just go through a few steps. I take it that it's not the function of the Election Board, when you were at the Board, to actually determine whether or not there has been actual violation, but that's a function for the District Attorney; isn't that so?

THE WITNESS: No. Ask your question again, please.

THE CHAIRMAN: If the Election Board were to make a judgment that there was probably cause to believe that there was a violation of criminal law, wouldn't it then be incumbent upon the Board to refer that matter to the appropriate District Attorney's Office?

THE WITNESS: Yes.

THE CHAIRMAN: That being the case, your testimony is not clear to me because I understood your testimony to be that you believe that there was cause to believe that there was a criminal law violation, although you couldn't make the ultimate judgment on that question.

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Wasn't it enough, then, to require you to refer it to a District Attorney's Office?

THE WITNESS: No. The statute says, the State Board of Elections, if, after investigation, it finds reasonable cause to believe that a violation warranting criminal prosecution has taken place, it shall refer the matter to the District Attorney.

I said to Mr. Vance, in my opinion, in the first instance, it was at the discretion of the Board to determine whether or not prosecution is warranted.

In this case, obviously, I did not.

There are cases, many cases -- there are some cases where the Board was of a mind where they did not find it warranted, but sent it to the District Attorney, anyway, because he might differ.

THE CHAIRMAN: It is your view of the role of the Board that even where it finds there is sufficient cause to believe that there was a criminal law violation, it still has the discretion to decide whether or not that matter should be forwarded to the law enforcement community for its consideration?

THE WITNESS: That is what the words mean to me, sir.

COMMISSIONER EMERY: Just a couple more
questions.

Now, I believe you testified that sometime in March or so --

THE WITNESS: Can we go back to the point you were at before?

COMMISSIONER EMERY: That is what I am going to do.

THE WITNESS: You were asking about the whys.

COMMISSIONER EMERY: I was asking about your conversations, as far as I remember, I was asking about your conversations with the State Election Board with respect to the allegations in the complaint having to do with Pyramid and Spargo.

THE WITNESS: You are saying, didn't we --

COMMISSIONER EMERY: You discussed it?

THE WITNESS: One of the things we did do in that area was to interview the candidates for the Town Board to ask them if they were aware of what was going on. Uniformly, their testimony, as I recall, or their depositions or affidavits, was that they didn't.

COMMISSIONER EMERY: That is a very interesting point, isn't it, they told you in their affidavits that they didn't know what was going on
with respect to Build a Better New York; isn't that
correct?

THE WITNESS: Right.

COMMISSIONER EMERY: They didn't even know
about Build a Better New York, according to them?

THE WITNESS: Yes.

COMMISSIONER EMERY: They had sat down and
they had met with Mr. Spargo, had they not, prior to
the election?

THE WITNESS: Some of them might have. I
recall that they did attend a meeting with the
Republican Town Chairman.

COMMISSIONER EMERY: And you were aware, were
you not, in March of 1986, that Mr. Spargo was very
much behind Build a Better New York, being its
Treasurer, I believe, and its main organizer?

THE WITNESS: He was not the Treasurer, sir.

COMMISSIONER EMERY: He was its main
organizer, was he not?

THE WITNESS: That was one of the original
allegations. I don't know when we confirmed that.

COMMISSIONER EMERY: Was the Secretary of
Build a Better New York, isn't that correct?

THE WITNESS: I don't know. He was involved,
I will give you that.

COMMISSIONER EMERY: And you knew that at the same time that you heard that the candidates had ever heard of Build a Better New York, and that they had had a meeting with Mr. Spargo prior to the election; you knew all three things, didn't you?

THE WITNESS: At one point, I must have, yes.

COMMISSIONER EMERY: Doesn't that trigger something in your mind about deceptiveness on Mr. Spargo's part, that he is the Secretary and chief participant, or one of the main participants in a committee that is funneling huge amounts of money into a local campaign, he is meeting with the people and he is not telling them what he is doing?

Doesn't that make you, as an investigator of the State Elections Board, perk up your ears and say, what the heck is going on here?

THE WITNESS: Deception of a crime.

COMMISSIONER EMERY: It is the beginning of a crime, isn't it?

THE WITNESS: I believe we found out what was going on.

COMMISSIONER EMERY: Let me ask that.

THE WITNESS: Incidentally, the candidates,
the ironic thing about this whole situation is that the Pyramid money was not well-spent because these candidates told us that they were going to vote to change the zoning law, anyway, the winners. Even some of the losers were going to.

COMMISSIONER EMERY: What I am asking you is, when you filed your report to the Board that you served as counsel for in April of 1987, you go through a long analysis, do you not, of the allocation contributions, Build a Better New York Committee is analyzed in some detail here, including this reference to affidavits by the candidates, you talk about the New York State Republican Committee, you talk about the application of Election Law Section 14-126.4; you talk about failure to file a disclosure requirement; you talk about fraudulent certificate of nomination, you basically whitewash the whole thing except agreeing that there are a couple of technical violations, and nowhere in there, to your own Committee, do you say one word about Pyramid and Spargo's role in this entire matter, which was the basis, the crux, the core of the original allegations.

How does that happen a year and a half later,
after the biggest investigation in the State Board of Elections' history, how does it happen that the core of that investigation disappears into a bunch of hypothetical matters that turn out to be a whitewash?

THE WITNESS: Wait a minute. You think it is the core. I didn't think it was. The core of my investigation was an Election Law situation. We weren't conducting any public hearings. I had an allegation, a primary -- the most significant allegation was the one dealing with the allocation provisions. We got the pertinent facts, determined that there was no violation.

COMMISSIONER EMERY: Isn't it a serious Election Law violation when a company comes into a small town for its own financial purposes and contributes huge amounts of money, through several committees, into that election and, potentially, it secretly does so without evading the disclosure requirements, and having the same counsel, its own same counsel, Mr. Spargo, acting on behalf the various committees that it is contributing to, hiding all the financial matters from the public, benefiting financially, itself, from the public; isn't that what the Election Law disclosure requirements and campaign

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contribution limitations are all about?

Isn't that the whole purpose of having these laws, isn't that why the Legislature passed these laws?

THE WITNESS: You asked me six different questions.

COMMISSIONER EMERY: Give me an answer to one of them.

THE WITNESS: Which one?

COMMISSIONER EMERY: Any one.

THE WITNESS: All the fact developed in this case, as applied to the Election Law, did not disclose a violation of the allocation provisions.

COMMISSIONER EMERY: Thank you. That is all I have.

THE WITNESS: No one, to this day, has come to me and said they disagree.

COMMISSIONER EMERY: I have no further questions.

THE CHAIRMAN: Commissioner Hynes.

COMMISSIONER HYNES: I just have a couple of questions so I am sure that I understand your testimony.

Did you ever find out whether or not the
campaign contributions from Pyramid were earmarked for the Poughkeepsie election?

THE WITNESS: No.

COMMISSIONER HYNES: You didn't?

THE WITNESS: No.

COMMISSIONER HYNES: Why not?

THE WITNESS: It was unnecessary, immaterial.

COMMISSIONER HYNES: But you made no effort to find out whether it was for Poughkeepsie?

THE WITNESS: We did not interview the individual contributors.

COMMISSIONER HYNES: The reason you didn't interview these contributors was what?

THE WITNESS: As soon as the money went into the Committee's account, primarily the committee you are talking about in this situation is the Republican State Committee, as soon as that went in there, it was indistinguishable from every other nickle, dime or penny they got.

COMMISSIONER HYNES: That was your view?

THE WITNESS: Mine was the one that counted in that case.

COMMISSIONER HYNES: I didn't hear you.

THE WITNESS: In coming to a conclusion as to
whether or not we felt it was a violation, my opinion was the opinion that counted, at least, my Commissioners felt that way.

COMMISSIONER HYNES: Was it your policy not to interview key witnesses in all the investigations that you did for the Commission?

THE WITNESS: That was our basic -- that was the bottom line, in most cases. If we did interview a target, it was more than likely we felt that there was not a violation, but we needed his testimony to decide whether or not there was.

In the case where there was a potential violation, I would say in ninety-nine percent of the cases, we never interviewed the target.

COMMISSIONER HYNES: There were instances, I take it, that you did interview the target when you thought it was necessary to determine there was a violation?

THE WITNESS: We more than likely determined that there was not a violation.

COMMISSIONER HYNES: If you didn't interview the key witnesses, how could you ever make a responsible recommendation to your Commission as to whether or not there was a violation?
THE WITNESS: That is a conclusion on your part, that I don't think is warranted.

COMMISSIONER HYNES: I am asking you.

THE WITNESS: You tell me who are the witnesses.

COMMISSIONER HYNES: You are telling me that your general rule is, you don't interview witnesses, and you don't interview targets.

THE WITNESS: I decline to accept the characterization of the witnesses as a key witness. That presumes that the case rises or falls on their testimony, and I don't think that is true.

COMMISSIONER HYNES: What you are doing is, you are making the conclusions without interviewing witnesses as to what is relevant to this investigation, is that right?

THE WITNESS: We did not interview in every case, everyone that we might have. We interviewed as many people and collected as much documentation as we felt was necessary to come to a determination.

COMMISSIONER HYNES: You knew that there was a big stink being made about the contributions by Pyramid, though, didn't you?

THE WITNESS: Well, there was a lot of press.
COMMISSIONER HYNES: Well, that was part of the matter that was referred to, right?

THE WITNESS: So far as I was concerned, it was irrelevant to our investigation. We had a committee to deal with, not the press.

COMMISSIONER HYNES: If you are alerted to the fact that people are concerned, in Poughkeepsie, that Pyramid contributions were earmarked for Poughkeepsie, that was an allegation that you were aware of during your investigation, was it not?

THE WITNESS: No, I can't say it was. I can't say that I remember that that allegation was earmarked, being one of public record.

COMMISSIONER HYNES: In any information that you received in your investigation, whether it is public record or not, did you receive any information concerning a concern that contributions made by Pyramid had been earmarked for the Poughkeepsie election?

THE WITNESS: Did I receive any information that people were concerned because it was earmarked contributions, is that what you are asking me?

COMMISSIONER HYNES: Yes.

THE WITNESS: I don't recall that.
COMMISSIONER HYNES: I still don't think I have an answer.

THE WITNESS: It wasn't relevant. It had nothing to do with whether or not there was an Election Law violation, and that was my only concern. I wasn't going to start answering newspapers. As a matter of fact, if we had started issuing press releases back in 1974 when we started, we probably wouldn't be here today. We have a heck of a record in the State Board of Elections, at least we did when I was there.

COMMISSIONER HYNES: Do you have any guidelines as to before you make a recommendation and close out an investigation, what types of witnesses you do insist on having interviewed?

THE WITNESS: Well, almost universally, you would interview the complainant, unless the information was sufficient. From there, it could be almost anyone, anyone with probably knowledge of the facts.

COMMISSIONER HYNES: In your own mind, did you think that Spargo should have been interviewed?

THE WITNESS: I didn't think it was necessary.

COMMISSIONER HYNES: And you thought you had
sufficient information without interviewing him, to
go forward and make a recommendation to your
Commission as to what should be done with this
complaint?

THE WITNESS: Yes. You got the reports in
this investigation, and I think that my conclusion
is supported. We have got the figures, we got the
dollars.

When you apply the dollars to the statutory -
formula, you come up with a conclusion. What was
deficient was not the investigation, but the statute.

THE CHAIRMAN: Commissioner Vance.

COMMISSIONER VANCE: Did you talk to Mr.
Spargo at any time after January?

THE WITNESS: Sure.

COMMISSIONER VANCE: Did you talk to him about
this matter?

THE WITNESS: About this matter?

COMMISSIONER VANCE: Yes.

THE WITNESS: I don't have any specific
recollection. I probably mentioned it, I might have
said, we are after you now.

He is an election lawyer, for one thing, he
was in our office a lot, if for no other reason than
hearings on petitions.

If you remember, in 1976, we had -- 1986, we had State-wide elections going on, and he had petitions for State-wide candidates, judicial candidates, Congressional candidates and Legislative candidates, whose petitions are filed with the State Board of Elections. Mr. Spargo would be in our office on many occasions, either for this campaign, to file petitions, or for something else. He is around a lot.

COMMISSIONER VANCE: Did you talk to him about the substance of this investigation while it was underway?

THE WITNESS: Not to my recollection. And I say, sir, I would not have.

COMMISSIONER VANCE: You would not what?

THE WITNESS: Not have talked to him about this investigation.

He knew we were investigating, because we told him we needed -- we needed the information, the books and records of the Republican State Committee, and he, obviously, had access to them as the counsel to the Committee. It was a question of issuing a subpoena or saying, Spargo, will you bring them over?
He did.

COMMISSIONER VANCE: That is all the conversation that you had with him?

THE WITNESS: I did have that. I might have said something more to him. We weren't strangers. As a matter of fact, in my estimation, Mr. Spargo is a stand-up guy, a class act. A good lawyer, too.

COMMISSIONER VANCE: You were not concerned that he was wearing five different hats in this particular transaction?

THE WITNESS: Well, what do you mean not concerned?

I knew he was. Obviously, he had something to do with the investigation, since he was counsel to the State Committee, he was Treasurer. At least, he was involved in the Building of a Better New York, and he didn't make any bones about that, he acknowledged that, too.

Everyone wore more than one hat. You do, too, especially you, sir.

COMMISSIONER VANCE: Are you surprised that he did not turn over all the information that you asked for when it was asked for?

THE WITNESS: Did he not?
I don't know that he didn't.

COMMISSIONER VANCE: I believe that is correct.

THE WITNESS: I don't know that he didn't. I still don't know that he didn't turn over everything that was asked for.

I didn't ask for anything from him, personally. I knew, and I discussed it with Mr. Daddario, because he was our prime guy in putting the numbers together in the beginning, in allocating all the expenditures, which is a heck of a job, he was the one who said, Spargo, I need the State Committee's books. I know he was asking him about that.

When he came over, there were certain things missing. I assume Mr. Daddario said, this is missing, this is missing. I also assume that Spargo made some effort to provide him with what he sought. I don't know anything, specifically, that he needed.

THE CHAIRMAN: Commissioner Emery.

COMMISSIONER EMERY: Following up on Commissioner Vance's point, you just said that, I believe, that you think he is a heck of a lawyer and a stand-up guy, sir.
THE WITNESS: Yes.

COMMISSIONER EMERY: Now, did you know at the time that he was being investigated by your Commission, that he had received $49,000 from Pyramid for work that he was doing in the Poughkeepsie election?

THE WITNESS: No.

COMMISSIONER EMERY: Well, do you still think that he is a stand-up guy, that he was talking with you on a daily basis about other things and he never told you about that hat that he was wearing, and now you discover it?

THE WITNESS: He got a fee. What has that got to do with it? All lawyers work for fees. He made no bones, my recollection is, and you can well understand certain things came to my knowledge at different times, and what I knew about Tom Spargo's relationship to -- I knew he was Chairman of the Council to the State Committee, I knew he was counsel to the Election Committee, and I immediately discovered that he was involved with the Building of a Better New York, because Ruth Swan, who was the Treasurer, said he was.

COMMISSIONER EMERY: When did you find out he
McCarthy

got a $49,000?

THE WITNESS: After the investigation was all
over.

COMMISSIONER EMERY: Did that cause you to
think twice about maybe you thought about the wrong
things in this investigation, that you might be set
off on a wild goose chase?

THE WITNESS: What did he do wrong?

COMMISSIONER EMERY: The Commission will
decide what he did wrong.

THE WITNESS: Deception is not a crime, he
didn't swear falsely.

THE CHAIRMAN: We have one final questioner,

Peter Beinstock.

EXAMINATION

BY MR. BIENSTOCK:

Q In the interests of expedition, I am going to
shorten up my questions to you.

You were counsel to the Board for how many
years?

A It worked out to be fourteen.

Q In that capacity, did you deal with requests
for information from the public under the Freedom of
Information Law?
No. We had a Freedom of Information officer, public access officer, it was not me. It was the Assistant Executive Director, Mr. Palmer, who is now deceased.

Q Let me ask you one other subject. Let me give you two quick scenarios. I am Pyramid. I want to buy an election, I got $100,000, I got six or seven employees. I go into Poughkeepsie, and I ask my six or seven employees to write checks, $15,000 each, and I give them to the three or four candidates who are critical to the election.

Is that a violation, or is it not a violation?

A You solicit checks from others, and you give them to a candidate, is that what you are saying?

Q My employees give $15,000 each to Town Board candidates.

A It is in their checks?

Q Their checks.

A $15,000 each to the candidates?

Q Correct.

A They probably would have exceeded the limitations?

Q That is right.

A Each individual contribution?
Each individual contribution. Is that a serious violation?

It probably is, at that rate.

Q I am smarter, Scenario 1 is finished. Scenario 2, I am smarter, I consult an Election Law expert, an upstanding guy, a good lawyer, an election lawyer, and he says, don't do that, that is a violation of the law, give it to me, give it to my committee, the committee that I form, we will call it the New York Republican Federal Campaign Committee.

The six employees give checks totaling $1,000. The New York Republican Federal Campaign Committee makes those contributions, one way or another, gets them to Poughkeepsie. It was their intent to get them to Poughkeepsie.

Violation or no violation?

A It might be a violation of the Federal Election Law, but I don't think there is any violation of the State Election Law.

Q That is not a scheme to violate the campaign contribution laws?

A You have to have a statutory provision that it is violated, sir. I don't know of any here.

Q There is no statutory provision that makes it a
felony to get together to violate the campaign contribution limits?

A Not, specifically, not the way you phrased it, not to my knowledge.

Q So, that would be the --

A Would you mind repeating it? You threw it out right out of the blue.

Q Take the New York Republican Federal Campaign Committee, which, by the way, your investigations did not uncover, correct?

A As far as I understand, sir.

Q Now, that $100,000 found its way to Poughkeepsie, according to our investigation.

A I know of no provision in the New York State Election Law which was violated.

Q Even if you knew about the $100,000, you would still say that?

A Yes.

Q To the Federal Campaign Committee?

A Yes. The only one that is even close is the one that was the thrust of our investigation, the one that talks about -- let me go back to it for a second. It talks about the formation of unauthorized committees, isn't that right?
What exhibit is it?

Do you remember what page that is on?

MR. MC GUIRE: The first page of your memo which should be Exhibit 24, Mr. McCarthy.

MR. BIENSTOCK: What is the exhibit number, Mr. McGuire?

MR. MC GUIRE: I believe it is 24.

A The first question that arises in my mind is, there is no definition of unauthorized committees, and then the next question was, would this statutory provision, which is part of the New York State Election Law, bring within its scope contributions -- financial transactions which are specifically covered by the Federal Election Campaign Act. I don't know the answer to that question without significant research.

Q I believe you answered in response to Mr. McGuire's question that if a Federal Campaign Committee also makes contributions to a state candidate, it becomes for Election Law purposes, the State Committee, is that correct?

A You are right, sir.

Q If that State Committee was an unauthorized committee, and it made contributions, for the purpose of evading the contribution limits of this Article, that would make it guilty of a Class E felony, wouldn't it?
A Well, except for the fact that it would fall in the same guise, if you will, as the Building a Better New York Committee.

There is no allocation, right?

Q So, you --

A I haven't considered the question you are asking me, it is not, at first blush, an easy one.

It would seem to me the Federal Committee would fall in the same category as the Building a Better New York Committee, and you would wind up with the same result.

Q If Spargo worked with the Pyramid company and they all got together, hypothetically, and they said, we want to get the $100,000 to Poughkeepsie, we can't do it because Mr. McCarthy said that's a violation of the law, but we will do it by creating a committee, call it the Build a Better New York Committee, take the Federal out of the question, would that be okay, if they did it through the Build a Better New York Committee, the same dollar amount, the same intent, only the intermediate committee in the picture?

A I think they used more than just one committee, didn't they, with the $100,000?

It is pretty difficult to do it all through the Build a Better New York.
Yes, it would, because of the statutory problem.

They took care of $75,000.

Nothing was applicable. You saw the dollars, but in the last analysis, because of the statutory limp, if you will, there was no allegation.

EXAMINATION

BY MR. MC GUIRE:

I want to clarify something. You determined that Building a Better New York was an unauthorized committee, is that right?

Yes, we did.

Now, can we agree that the felony position you are citing in Exhibit 24, makes it a crime to organize the activities of an unauthorized committee for the purpose of evading the contribution limits; isn't that correct?

Yes.

It doesn't require that the limits, in fact, be evaded, just an unauthorized committee?

That wasn't the initial question, sir.

Correct me if I am wrong, it does not require, in its text, that the limits actually be evaded, just that an unauthorized committee be set up for the purposes of evading?
A That is true.

Q Did the Board ever determine why Build a Better New York was set up?

A I make specific reference to that question, I believe, in my memorandum, since that was the first question that came to my mind.

Q My question is, did the Board ever make a determination as to why Build a Better New York was set up?

A I think that is self-evident.

Q Was it for the purposes of avoiding the contribution limits?

A No, I think the self-evident part of it is, it was set up to aid the election of the Republican candidates in the Town of Poughkeepsie in 1985. I don't think we, specifically, -- the Board, specifically, answered that question, because I didn't pose it, nor did anybody else, that I recall.

MR. MC GUIRE: Thank you.

THE WITNESS: One of the question was, could you organize a committee to evade the contribution limitation if, in fact, there were none?

My answer to that question, to myself, and the Board ultimately agreed, was in the negative.

THE CHAIRMAN: Mr. McCarthy, I indicated at
the outset of your testimony, that we would be happy
to receive your statement at this point.

THE WITNESS: It will be quite brief, sir.

I prepared this back in January, since I
thought I was going to be testifying here. It is
rather lengthy, but I am not going to read it all.

THE CHAIRMAN: We expected you, at that time, too.

THE WITNESS: Most of it has to do with a lot
that has been discussed, the nuts and bolts of the
application, the application of the Poughkeepsie
matter to the statute. I did want to get this on the
record.

The State Board of Elections has three main
areas of responsibility. First, it administers
elections on a State-wide basis, and in those
jurisdictions outside the City of New York which
cross county lines.

Second, it is the office with which State-wide
and legislative candidates and their committees file
financial disclosure statements.

Finally, as provided in Election Law Section
3-102, it has the authority and responsibility to
investigate alleged violations of the Election Law.
If, after investigation, it finds there is reasonable cause to believe that a violation warranting criminal prosecution has taken place, it shall refer the matter to the District Attorney of the appropriate county.

In that capacity, the Board, with a staff of one attorney and six investigators, has investigated some 400 complaints since its creation in 1974. Approximately 100 have been referred to the District Attorney. Of those, where prosecution ensued, seventy percent resulted in convictions. Those convictions include thirty felonies, thirty-two misdemeanors and six violations.

I believe these figures represent a record of investigative success which cannot be matched by all other State agencies with like authority combined.

In connection with those investigations, Board investigators have been assisted by deputy sheriffs, New York City Police and the State Police, pursuant to Election Law Section 3-104. On one occasion, they traveled to Canada at the request of a District Attorney, where they were assisted by and worked closely with the Royal Canadian Mounted Police. That case resulted in five felony convictions for forgery.
and illegal voting.

During the period in which the Poughkeepsie matter was investigated, thirty-eight other investigations were closed, thirteen of which were referred to the District Attorney. This, despite the fact that all investigators were off the road for almost a month, since they, like all Board employees, were working on petition challenges.

In 1986, in addition to all the other challenges it normally gets, the Board did a line by line check of the 80,000 signatures on the Hirschfeld petition for Lt. Governor, as well as other State-wide petitions. During the same period, fiscal 1987, the total investigative budget was approximately $450,000.

Let me conclude by stating -- I am skipping all the stuff in the middle -- that the members of the State Board of Elections agreed with this analysis that there had been no violation of the Election Law. I note that three of the Commissioners, at that time, were attorneys. I note also that my analysis is supported by our Special Counsel, Thomas Zolezzi.

No one has taken issue with me, personally,
not has anyone communicated to the Board any
disagreement with its determination.

Thank you.

THE CHAIRMAN: Could you file that with the
reporter. It will be helpful.

THE WITNESS: I only brought one copy, but you
can have it, sure.

THE CHAIRMAN: Thank you.

I call as the final witness today, Donald

Retta\textit{ia}ta.

\textbf{D O N A L D A. R E T T A L I A T A}, called

as a witness, having been first duly sworn, testified

as follows:

THE CHAIRMAN: Please be seated.

I don't know if this would be good or bad news
for you, but staff counsel says that many of the
matters have already been covered with previous
witnesses, so he has no further questions for you,

and he has referred any further questions to the

Commissioners.

THE WITNESS: Fine.

THE CHAIRMAN: Let me look at my fellow

Commissioners.

Let me start by asking you about the
recommendations of the Legislature. As I understand the decision here, you recommended an amendment to the New York State law that would, essentially, say that in the future, with respect to constituted committees, that contributions shall be allocated -- contributions the committee receives shall be allocated to all candidates supported by that committee. That seems to be part of the thrust, the major thrust of the legislative recommendation.

Would you agree with me on that?

THE WITNESS: Yes.

THE CHAIRMAN: Doesn't that still leave open a very large loophole, and the loophole is that a constituted committee receives a large amount of money from a particular group of contributors who request that the money be channeled into a particular election.

Let's, for the sake of the discussion, assume that that money does find its way to the particular election. The allocation amendment that is being proposed by the Elections Board would still leave open what is a major circumvention of the contribution limits by virtue of the earmarking by those contributors.
Will you comment on that?

THE WITNESS: First of all, in terms of earmarking, itself, there is nothing in the Election Law, or any rules or regulations, that prohibits it, or allows it, or discussed it.

The problem with a committee, a large committee, such as the State Committee, or probably a New York City-wide Committee, is that the amount of contributions going in is so great that when you allocate, I will call it a reasonably small amount of that going in one direction, the percentage of the total is going to be quite small. Therefore, when you do the arithmetic, and I think that is what you are asking me, when you do the arithmetic, you still come out to a point where you may not have exceeded the contribution limitation.

THE CHAIRMAN: I am thinking of a further amendment that should be offered, an amendment that basically says that where there is -- where, in a sense, we have a set of circumstances that amounts to earmarking, that under those circumstances, you don't treat the contributions to the constituted committees as real contributions, but you subject that money to the limits that would be applicable to individual
candidates in an election.

Do you have any comment on that?

THE WITNESS: When you say earmarking, there are different types of earmarking, I think, that have to be considered. For instance, my understanding is that the State Committees, both parties, under federal provisions, US Post Office provisions, whatever, are able to get a more favorable bulk or regular mailing rate so that there are earmarking of, I will call them contributions, transfers that come in from different counties so that they are then spent back in that county for postage purposes.

That is, perhaps, different, it is a little bit the same, but not entirely different. Just off the top of my head, I wouldn't have any problem with that further amendment.

THE CHAIRMAN: Are you a member of the Bar?

THE WITNESS: Yes.

THE CHAIRMAN: And, obviously, you are a member of the Elections Board at this time, and you were at the time of the Poughkeepsie investigation?

THE WITNESS: Yes.

THE CHAIRMAN: And you certainly heard a lot of testimony in the hearing today, and to the extent
that you were here, and I am sure that you heard of
the testimony last January at the hearing that took
place at that time, -- isn't that so?

saw the sheet in front of me, or the display in front
of me, and some other information.

THE CHAIRMAN: The question to you is: Are
you proud of the Election Board's investigation in
this matter?

THE WITNESS: I don't know that the word
"proud" -- I can't use that word one way or the
other, I'm not not proud of it, I don't want to say
that.

I feel that the investigation that was done
and the conclusion that was reached, is legally
correct.

There are always, in type of investigations,
especially those that get a lot of publicity,
additional steps that could have been taken.

In terms of the result, I believe it was the
correct result.

THE CHAIRMAN: According to the testimony
today, a major target of the investigation was one
Thomas Spargo, who was not interviewed. According to
the testimony by subordinates of yours this afternoon, they assumed that they would be interviewed because of the role they did play.

THE WITNESS: They assumed or did not assume?
THE CHAIRMAN: They assumed.
THE WITNESS: I don't know who you are talking about. I only heard Mr. McCarthy's testimony.

THE CHAIRMAN: Mr. Daddario, he was in the morning.
THE WITNESS: All right.
THE CHAIRMAN: Maybe bringing together Mr. Daddario's and Mr. Tenenini's testimony in the aggregate.

I think it is a fair summary of their testimony to relate to you that the testimony of those witnesses was to the effect that they had assumed that Mr. Spargo would be formally deposed, interviewed, given the many hats he wore with respect to the Poughkeepsie election. They had proposed that the contributors be interviewed, as well. None of that happened.

It would seem that at least that would happen in terms of a complete investigation, and that didn't take place.
I appreciate any comments you have on that.

THE WITNESS: It was my understanding, and I don't know at what point it became an understanding, that a decision as to interviewing, specifically, the pertinent contributors, was put off until after, number one, the relevant backgrounds, all the documentation, so to speak, to the extent that it could be obtained.

Number two, the allocation question was more-thoroughly researched and, I guess, exhaustively researched, so that a conclusion could be made as to the allocation legality, so to speak.

That once that allocation legal issue was decided as it was, and I believe correctly, it was then determined that there was no point in interviewing the Pyramid witnesses, potential witnesses, or contributors, because they could not have all that contributed.

THE CHAIRMAN: What about on the issue of a knowing disclosure violation, you have another provision which says where there are disclosure violations that have knowingly occurred, that that brings into play the possibility of a misdemeanor.

THE WITNESS: I don't see how any of those
Pyramid people could have been held to be violators of the disclosure parts. Basically, we have always held the treasurers of committees to be --

THE CHAIRMAN: My question wasn't directed at the Pyramid contributors, it was directed at the total situation that was presented to you involving the committees, and all the participants in this election.

Given that the Board did find disclosure violations and one possible treatment of disclosure violations, knowing disclosure violations is a criminal law violation in terms of a misdemeanor, there appears there were no interviews of important people that would have given information that would have been relevant to a knowing violation.

THE WITNESS: I can't speak in depth on that. It was my understanding, and, of course, he just testified, that Mr. McCarthy had determined that there was no purpose to be served by interviewing those people.

It never came to us as an issue, I would say that. It was never brought up that should we, as a group, or individually, should we or should we not interview these people. Nor are we normally, in any
case.

THE CHAIRMAN: Commissioner Vance.

COMMISSIONER VANCE: The thing that still disturbs me is that your chief investigator asked for permission to interview the contributors, to find out what their reasons were for giving contributions.

Then he goes on to explain, in a memorandum that he sent, why he needs that information to determine whether or not there has been a violation which would constitute a misdemeanor, and must give rise to a criminal violation which would require a referral, and this was refused.

I just don't understand that.

THE WITNESS: I didn't have any knowledge until earlier today of this memorandum.

I would say that the way we have operated, and I have been a member since 1974, when the Board of Elections was formed, has been that the complaint, or allegations are received by Mr. McCarthy up until recently, as enforcement counsel, they would be reviewed by him as to legal sufficiency so that -- I am not talking now probably cause or anything else, not even necessarily a prima facie case, but if these allegations, in effect, have merit, that they warrant
an investigation.

If, in his opinion, they do, they are then sent over to the Investigative Unit with some comments, I would say in writing, but I don’t see them, so I don’t know for sure, from Mr. McCarthy, as to what potential statute violations there might be.

Then, from that point, it is the function of the Investigative Unit to develop facts. It is Mr. McCarthy’s function to develop law, or interpret law, and maybe develop it. Interpret the law and apply it to the case and ask them for more information, or to interview additional people if he feels it necessary.

This memo seems to go, to some extent, a little bit beyond that in that Daddario seems to be saying what he needs -- what the elements are of the criminal violation.

I really think that was Mr. McCarthy’s function.

As to this memo, I have no knowledge, and I have no real specific knowledge of why they were never interviewed.

COMMISSIONER VANCE: I don’t guess there is much more I can say about it. Whether it is a lawyer or not, I would think, under these circumstances, one
would want to know what the facts are, whether or not these people were making contributions in order to circumvent the Election Law if that was the complaint that had been made, and was before you, and I don't understand why you didn't pursue it.

THE WITNESS: I think, frankly, that you get to an extent where they are more into an ethical question than you eye into a violation of the Election Law. I think that was the problem. The huge loophole that was there, and when we came to a point where we all agreed in terms of the Commissioners, virtually every member of the staff, I will call it the higher staff that was involved, as to these loopholes, and the magnitude of them, and what, in effect, they allowed these contributors to do in this case, there was nothing, really, else left.

COMMISSIONER VANCE: I just don't know how you can refer to these kinds of facts as involving a technical violation. It seems to me that they go the very heart of the Election Laws as Mr. Emery was saying.

THE WITNESS: I don't know which facts, exactly. They don't, I think, indicate a violation.
I am not talking about the main one, 114, 126.4, in terms of exceeding contribution limitations. Because of the loopholes that apply to both committees involved here, we felt we could find no violation.

THE CHAIRMAN: Thank you.

Mr. McGuire.

EXAMINATION

BY MR. McGUIRE:

Q Commissioner Rettaliata, you mentioned that the investigation showed these huge loopholes that allowed the limits to be aborted. My question is: Did the Board consider holding a public hearing to identify this loophole and show its consequences?

A We didn't feel a need for a public hearing to identify them, we felt we had identified them. We, therefore, felt what was our responsibility in the situation was to refer the matters to the appropriate committees of the State Legislature for their action to close them.

MR. McGUIRE: I have nothing further.

THE CHAIRMAN: Thank you.

THE WITNESS: I would like, if I might, to submit a statement.

THE CHAIRMAN: We will be happy to receive it.

We will include in the records of the

NATIONAL REPORTING INC. (212) 732-3120

"Criticisms of the way in which the State Board of Elections handled an investigation pertaining to a 1985 election in the Town of Poughkeepsie were contained in newspaper articles both during and after the completion of the investigation.

"We are confident that a thorough and professional investigation was conducted by the State Board in this matter and that the determination by the Board was the only conclusion that could be reached based on the facts and on the law. I should like to note that both Democratic and Republican Commissioners joined in this unanimous determination.

"Given these circumstances, we should be welcoming this opportunity to set the record straight. We do not, however, come here in such a frame of mind. We believe that it is inappropriate, if not illegal, to open the files of a criminal investigation to discussion in a public forum.
"By conducting such a hearing, you are establishing a precedent whereby anybody with subpoena power will be able to bring before it law enforcement agencies to detail in public their findings and investigative techniques. It does not require much imagination to see how this process could be used either for personal or political gain or to impede law enforcement efforts.

"By taking this position, we are in no way challenging the right of the Commission to review the Poughkeepsie matter. I would emphasize that the State Board of Elections has not challenged your subpoenas in Court despite some strong legal precedent in our favor.

"On the contrary, we feel that as an agency established for the purpose of bringing about disclosure in election financing, it would be inappropriate for us not to fully disclose to you as to this specific investigation.

"Therefore, we have cooperated with the Commission staff in every possible way. Our complete investigatory file has been made available for what we were led to believe would be a confidential review by Commission representatives. Agency personnel,
including myself, have responded to questions at
length. We have demonstrated through this process
that we have nothing to hide and are willing to
continue to assist the Commission.

"While I, personally, have no reservations
about appearing here today, I feel that the
Commission's failure to also question former
Commissioner Thomas Sullivan, a Democrat, creates a
political overtone to this hearing even though
unintentional.

"My understanding is that Commissioner
Sullivan met with complainants or others in Dutchess
County during the initial stages of our
investigation. I am not suggesting that there was
any impropriety in his doing so, but it does evidence
an initial interest in the case and his subsequent
finding of no violation becomes that much more
binding as to its correctness.

"There is no question that the Poughkeepsie
investigation revealed inadequacies in our Election
Law. These inadequacies, or loopholes, if you will,
were legally taken advantage of. I would point out
that these inadequacies have existed in the Election
Law since at least 1977 when the Legislature amended
the law to one of contribution limits from one of expenditure limits following the United States Supreme Court decision in *Buckley v. Valeo*. Until this 1985 election, I am not aware of any instance where these inadequacies were taken advantage of.

These inadequacies have been identified by our Board and the recommendations for corrective action were forwarded to the Legislature immediately following the conclusion of the investigation pursuant to our determination. A public hearing such as this provides an opportunity to discuss these and other possible changes to the financing of elections.

"While it is probably true that the State-wide and New York City limits are excessive, I would advise that the obvious, and perhaps only real solution to many abuses, the enactment of very drastically reduced contribution limits must be balanced somewhat by the need to allow candidates and their committees the ability to raise funds to run effective campaigns to bring their messages to the voters and to increase citizen participation in the elective process.

"I would further point out that the mandate to the State Board of Elections is to find, after an
investigation, if there is reasonable cause to believe that a violation warranting criminal prosecution has taken place.

"During the course of an investigation, it has been the Board's consistent practice of the years both not to interview potential targets of the investigation or obtain evidence of a cumulative nature once it has been established that there is or is not reasonable cause to believe a violation warranting prosecution has occurred. Consequently, the Pyramid contributors were not initially interviewed, and it was subsequently determined by our staff, after the contributions and expenses were allocated and based upon a review of the law, that there was no longer any purpose in interviewing them.

"I thank you for the opportunity to make this statement and am prepared to continue to cooperate with your Commission as to this matter."

THE CHAIRMAN: Thank you very much, Mr. Rettaliata.

Mr. Daddario would like to return for a brief statement.

MR. DADDARIO: The last question I was asked was if we had ever interviewed any contributors
before, and I answered yes. But, I think to clarify
this, I think what the question meant, what I
understood it to be, was, did we ever interview
contributors before to ask them why they contributed
the monies. In that case, we never have, we just
never had an incident that required us asking that
particular question. That is all I wanted to
clarify.

Thank you.

THE CHAIRMAN: Thank you.

Today's hearing is concluded.

(Time noted: 4:05 o'clock p.m.)