12-1988

Restoring the Public Trust: A Blueprint for Government Integrity Volume I

New York State Commission on Government Integrity

Follow this and additional works at: http://ir.lawnet.fordham.edu/feerick_integrity_commission_reports

Part of the Law Commons

Recommended Citation
http://ir.lawnet.fordham.edu/feerick_integrity_commission_reports/16

This Book is brought to you for free and open access by the State of New York Commission on Government Integrity at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Reports by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.
Restoring the Public Trust:

A Blueprint for Government Integrity

Volume I
RESTORING THE PUBLIC TRUST:

A Blueprint for Government Integrity

State of New York
Commission on Government Integrity
Two World Trade Center
Suite 21-08
New York, New York 10047
(212) 321-1350

Made Possible Through a Grant From the
FORDHAM-STEIN INSTITUTE ON LAW AND ETHICS

Additional copies of this report are available from the
Commission's office.

December 1988
This report brings together the Commission's wide-ranging investigations and recommendations thus far, and seeks to forge them into a cohesive and concise blueprint for reform. This blueprint will be completed in a second volume which will contain recommendations in other areas the Commission is investigating. The Commission hopes that the agenda laid out in this document will spark a focused and informed debate essential to solving the complex problems that beset our democratic system, and will stimulate legislative action which will lead to a new era of reform.

Dated: New York, New York
December 1988

STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

John D. Feerick
Chairman

Richard D. Emery
Patricia M. Hynes
James L. Magavern
Bernard S. Meyer
Bishop Emerson J. Moore
Cyrus R. Vance
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. Campaign Finance</td>
<td>5</td>
</tr>
<tr>
<td>A. Introduction</td>
<td>5</td>
</tr>
<tr>
<td>B. Contribution Limits</td>
<td>6</td>
</tr>
<tr>
<td>C. Disclosure</td>
<td>8</td>
</tr>
<tr>
<td>D. Public Funding</td>
<td>9</td>
</tr>
<tr>
<td>E. Enforcement</td>
<td>10</td>
</tr>
<tr>
<td>III. Judicial Selection</td>
<td>13</td>
</tr>
<tr>
<td>IV. The Ethics in Government Act</td>
<td>18</td>
</tr>
<tr>
<td>V. Ballot Access</td>
<td>21</td>
</tr>
<tr>
<td>VI. Pension Forfeiture</td>
<td>24</td>
</tr>
<tr>
<td>VII. Open Meetings Law</td>
<td>26</td>
</tr>
<tr>
<td>VIII. Conclusion</td>
<td>29</td>
</tr>
<tr>
<td>Appendix A</td>
<td>31</td>
</tr>
<tr>
<td>Appendix B</td>
<td>35</td>
</tr>
</tbody>
</table>
RESTORING THE PUBLIC TRUST:

A Blueprint for Government Integrity

I believe that a continued commitment to improvement by our Legislature, a persistent, undeviating emphasis on reform by the executive -- together with your help -- can make this the beginning of the most exciting reform era in this State's history.

It will take foresight, tough advocacy, intelligence and courage, but this great State has proven over and over for 210 years that it is capable of that kind of strength when needed. And this surely is a moment of need...and a moment of great opportunity.

Governor Mario M. Cuomo
Remarks to New York State Commission on Government Integrity
September 9, 1987

The public is entitled to expect from its servants a set of standards far above the morals of the marketplace. Those who exercise public and political power are trustees of the hopes and aspirations of all mankind. They are the trustees of a system of government in which the people must be able to place their absolute trust; for the preservation of their welfare, their safety and all they hold dear depends upon it.

Governor Thomas E. Dewey, Public Papers 1954, p. 10

Instances of corruption are commonplace in practically every segment of American society. From Wall Street to government, the failures of those who wield great power and influence and in whom we place great trust is chronic in modern life.

The last few years have been a particularly bad time for government integrity in New York. Since 1985, New York City has been rocked by a series of highly publicized scandals, arguably the worst since the days of Tammany Hall. One borough president was convicted of felonies; another committed suicide while under investigation; a congressman was recently convicted of bribery and extortion; former party chairman in two boroughs
were convicted of serious crimes; and a number of agency heads, judges, and lesser
officials have either been convicted or forced to resign under a cloud of suspicion. And the
City does not have a monopoly on malfeasance. Scandals have also plagued the New
York State Legislature and governments elsewhere in the State.

Although certainly the vast majority of public officials are dedicated and honest,
these cases are representative of others in New York in the last few years. And probably,
there are more corrupt public officials who have not been -- and may never be -- caught
and punished. Our democratic system is in crisis.

Although the scope of recent scandals is dishearteningly large, many of our greatest
institutions and reforms have come about in the course of courageous struggles against
corruption. The terrible disruption created when a public servant violates the public trust
eventually awakens the citizenry and opens a possibility for change. It arouses us from
cynicism and complacency and alerts us to our common responsibility not only to halt but
also to reverse ethical decline.

Consider the chaos of the 1780’s which, like every other age, had corrupt elements.
The Framers of our Constitution did not throw up their hands in despair or become cynical
about government and the political process. Instead, they gave us one of the greatest
examples of political leadership in history. They scrapped an unworkable system for an
entirely new one, viewing morality, virtue, and religion as insufficient deterrents to the
tendency of people who possess power to abuse it. The Framers recognized the ineludible
temptations of power, and consequently that controls and precautions are necessary if
democratic government is to survive. The Constitution they wrote grants power and
simultaneously limits it in every possible manner. As Madison noted in the Federalist
Papers: “Ambition must be made to counteract ambition...It may be a reflection on human
nature that such devices should be necessary to control the abuses of government. But
what is government itself, but the greatest of all reflections on human nature?”

References to the Framers may seem distant from the challenges of the present.
They are not. The success of the Framers suggests that if we are to convert this period
into one of renewal and reform, we must do as they did: take a hard look at ourselves
and adopt substantial changes in the way we conduct our affairs. And we must do so
soon if we want to avert widespread political apathy and public mistrust.
Obviously, as a society we must concentrate great resources on enforcing the law. Wrongdoers must be uncovered and punished. And if this requires additional resources, then we must be serious about honest government and commit whatever time and monies are necessary to do the job properly.

Investigations and prosecutions are not enough, however, to meet the challenges we face. Honest government officials labor under burdens unparalleled by those imposed upon the rest of us. When those burdens become too great, and there is no clear moral support from the community, they can easily fall prey to the pressures they confront. Private citizens have an obligation to make their ethical expectations clear by communicating with their representatives, voting and participating in political party activities. Most important, we need sweeping reforms of our laws to safeguard the public sector from the pressures brought to bear by private sector special interests and to reduce the temptation of officials to abuse their trust.

With the approval of the State Legislature, Governor Cuomo created the Commission on April 21, 1987 through executive order 1 under the Moreland Act. In doing so, he stated his hope "that we move as soon as possible to make tangible reform, real reform, to begin the process of converting this period of castigation, accusation, and scandal into a period of enlightenment..." The Commission’s mandate is very broad: to investigate laws and practices in the state and municipal governments in New York that foster corruption and the appearance of improper behavior. The Commission has no law enforcement functions, and is charged with a vastly different task than prosecutors or other investigatory bodies. Although the Commission has subpoena power and examines specific cases, it does so in order to suggest system-wide reforms necessary to restore our public life.

This report summarizes the most important recommendations to date, but the Commission’s work is far from complete. We have ongoing investigations in several critical areas, on which we hope to issue recommendations soon. Although ethical issues in local government are no less thorny than in state government, existing laws governing local

---

1. See appendix for text of executive order.

2. The Commission’s mandate does not extend to “the affairs or management of the Legislature,” but to “the management and affairs of any department, board, bureau, commission (including any public benefit corporation) or political subdivision of the State.” (Executive Order No. 88.1, Section I).

3. See appendix B for a list of reports and other information available from the Commission.
ethics are often contradictory, inadequate, and in some cases, overly restrictive and excessive. The Commission has prepared a draft Municipal Ethics Act that sets uniform minimum ethical standards for public servants in communities throughout the state. We are also in the early stages of looking into the way various government agencies, municipalities, and authorities and other quasi-governmental organizations award lucrative contracts and purchase goods and services. These bodies spend vast sums of taxpayers' money, yet the mechanisms to monitor their actions are almost nonexistent. If not properly regulated, this area can be a fertile breeding ground for conflicts of interest and other abuses.

Another ongoing investigation involves government hiring and patronage practices. Although patronage has a legitimate role in government hiring, it also poses special problems. Hard working public servants are demoralized when they see appointments made mainly for political reasons, and in fact, the professionalism of the government's work force is debased. Even the appearance of hiring decisions based on factors other than merit shakes the public's confidence in the integrity of government and the competence of government employees.
CAMPAIGN FINANCE

The idea is to prevent...the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the Legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government.4

Elihu Root, 1894

In a democracy, holding elective office is one of the highest forms of public service. We entrust to our office-holders not only the business of government, but the ultimate protection of our liberty and community. And as a result, impropriety in the way candidates campaign strikes at the heart of our democratic system.

To compete successfully, candidates must have public relations advisors and media consultants and, for the highest offices, they must raise and spend millions of dollars. Although we complain about the expense of elections and the superficiality of campaigns based on 30-second television spots, for many these expensive advertisements provide the only information on which to base their votes. The result is contradictory demands on candidates. We expect them to wage effective campaigns for public office, yet we are suspicious when they raise the money they need to do it. There is only one way out of this dilemma, and that is campaign finance reform.

4Elihu Root served as U.S. Senator from New York, U.S. Secretary of War, U.S. Secretary of State, and won the 1912 Nobel Peace Prize. The passage is from a speech he gave urging a constitutional convention in New York to pass campaign finance reform.
Campaign finance laws in New York are a disgrace. They impose minimal limitations and are not vigorously enforced resulting in not only corruption and the appearance of impropriety, but voter skepticism about the electoral process itself.

Good campaign finance regulations must satisfy a number of objectives: limiting the undue influence of wealthy special interests, insuring that the public is informed about the sources and amounts of a candidate’s support, providing for adequate enforcement, encouraging democratic competition for office and promoting confidence in government. New York’s regulations fail these tests miserably.

**CONTRIBUTION LIMITS:** Currently, the ceiling on contributions for political purposes by individuals is so high it can hardly be termed a limit: $150,000 per year. Large contributors dominate New York political campaigns. For example, among the three New York Citywide officeholders -- Mayor Edward Koch, Comptroller Harrison Goldin, and City Council President Andrew Stein -- no more than 4% of their total contributions in the last five years came from gifts of less than 100 dollars. More than 80% of the total in each case came from gifts of $1,000 and above, and between 43% and 65% came from gifts of $5,000 or more.

The contribution pattern of the four statewide officeholders -- Governor Mario Cuomo, Lieutenant Governor Stan Lundine, Comptroller Edward Regan and Attorney General Robert Abrams -- is similar. No more than 5% of their totals in the last five years came from gifts of less than $100, roughly 80% from gifts over $1,000 and between 24% and 55% from gifts of $5,000 and more. And less than 0.3% of the voters in New York State even make political contributions, further strengthening the power of the wealthy elite that give huge amounts. The current law’s outrageously high limits render the gift of the average person insignificant, while insuring that the gifts of the wealthy remain the cornerstone of every campaign.

Our study of legislative campaign funding practices reveals a similarly disturbing pattern. Corporations, unions and their political action committees (PACs) accounted for roughly 60% of the $11 million raised during a five year period by the Democratic and Republican Senate and Assembly legislative committees. PAC contributions to these committees are virtually unlimited by the law. Contributions as high as $10,000 and $20,000 from PACs are commonplace, with single donations swelling to a staggering $100,000. Top legislative leaders control the committees’ coffers, funneling large sums to
hotly contested races and transferring lesser amounts to the campaigns of incumbents seeking reelection to "safe" seats. This creates a climate of indebtedness, with some candidates owing their success to party leaders who are in turn dangerously dependent on special interests.

Corporate contributions are similarly unrestrained. Technically, of course, they are limited ($5,000 per year) but there is a huge loophole: the gifts of subsidiary and affiliated corporations are not included in the parent company's total. A real estate developer testified to the Commission that in a single month he used 21 subsidiary corporations as vehicles for giving $100,000 to City Comptroller Harrison Goldin. "My friend needed help, so I helped him," he said. The federal government has banned corporate contributions since 1907; 19 other states have followed. It is long past time that New York did the same.

More pernicious still, the current law allows those doing business with the government to contribute directly to the very people deciding who gets the government's business. As an example, more than 90% of State Comptroller Regan's campaign contributions between January 1983 and January 1988 came from the financial, legal and real estate communities; three groups that benefit directly from his office's decisions as sole manager of the state's $38 billion pension fund. On August 29, 1985, another real estate developer gave $30,000 to City Council President Andrew Stein through 17 corporations he controlled. Such contributors' profits are directly affected by discretionary actions by Stein and the other members of the Board of Estimate, who in turn rely on such large contributions to get elected.

The testimony received at our public hearing from various business leaders suggests that it would be naive to think that these gifts are always a pure expression of democratic support. One witness said he contributed "more to avoid a negative impact, than trying to incur a positive result." Commission staff members were told by some business people that "it would be bad business judgment to stop contributing to campaigns." Some of those testifying had no idea how much they had given; others, playing it safe, gave to different candidates vying for the same office and, not surprisingly, saw no necessity to vote in the election in which they had contributed. What is clear is that many business people see their contributions as a cost of doing business, a payment for benefits they might not otherwise receive.
It is not the Commission's function to prove a direct link between a big contribution and a lucrative contract. That is a job for prosecutors. Yet it is undeniable that large contributions by those doing business with government provide access that average citizens do not enjoy, and create an appearance of impropriety that damages the voters' confidence that our democratic process is fair.\(^5\)

**DISCLOSURE:** Democracy depends on a well-informed electorate. As Justice Brandeis stated, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."\(^6\) Unfortunately, the current disclosure requirements involving contributors are so inadequate they seem designed to hide a candidate's sources of support. The Commission's investigation has uncovered several examples: Candidates do not have to reveal their contributors' employers, allowing the executives of a single company to make large individual contributions that add up to what is in effect a huge secret corporate contribution. Insuring that a candidate is aware of the extent of a company's support is easy: the executives' checks simply are delivered in a single bundle, and the public is none the wiser. Political advertisements do not have to state their sponsors, keeping the public in the dark about who is behind the slick and persuasive political messages that bombard them before many elections.\(^7\)

The State Board of Elections, which is supposed to correct these problems, instead compounds them. It does not even insist that the current disclosure forms -- which are inadequate to begin with -- be typed, resulting often in completely illegible and useless filings. It has also failed to computerize and publicize the vital data it does receive.

---

\(^5\)The Commission proposes limiting individual contributions to the following ranges: Governor, Lieutenant Governor, and Comptroller of the State of New York: $2,500 to $4,000; State Legislators: $1,500 to $2,000; Mayor, City Council President, and Comptroller of New York City: $2,500 to $4,000; All other city and County offices: $1,000 to $2,000; Town, village and other local offices: $500 to $1,000. The Commission also recommends that PAC contributions be limited to similar ranges in their contributions to candidates, and to $5,000 in their contributions to state, legislative and local party committees.


\(^7\)Contrast this with the law governing federal elections that requires that all political advertisements that "expressly advocate[e] the election or defeat of a clearly identified candidate," or ask for contributions, clearly state their sponsors and whether the advertisement has been authorized by the candidate. See 2 U.S.C. §441d(a).
Without computerization and enhanced disclosure requirements, the public cannot know who has paid the fare to bring their leaders to office.\(^8\)

**PUBLIC FUNDING:** In the 1986 election cycle, the winners of the four state-wide races together spent more than $20 million on their campaigns. In the 1985 election cycle, New York City Mayor Edward Koch, Council President Andrew Stein, and Comptroller Harrison Goldin, spent a total of more than 10 million dollars to win their races. When running for public office requires enormous expenditures of privately raised funds, challenges to incumbents are all but limited to the most wealthy and well-connected. Moreover, huge campaign costs pressure candidates to maintain political views that do not offend big money interests.

To address these problems, several states -- and the federal government for presidential campaigns -- have adopted public funding. And on November 8, 1988, New York City’s voters approved public funding for city-wide races by an overwhelming 79% margin.

If properly formulated, public funding can have several salutary effects on the political process. First, it provides a constitutional way to limit campaign expenditures. Second, public funding encourages more vigorous competition by insuring that challengers have sufficient resources to get their message across to the electorate. Third, it helps keep the focus of campaigns on political issues rather than on fund-raising.

Finally, public financing lessens the influence of particularly generous individual donors. Public funding gives candidates a source of income that will not demand access or favors at some later date. It gives elected officials an independence from vested community interests and as a result, the freedom to challenge those interests for the public good. And, if properly designed, public funding strengthens the relationship between

---

\(^8\)In an effort to investigate the campaign finance issue thoroughly, the Commission undertook a massive project to computerize the records of the Board of Election. That effort is well under way, and as a result, for the first time, it is possible for the public and the press to determine the amount of campaign support public officials have received from specific individuals and corporations. Printouts of the data base may be borrowed for copying from the Commission’s offices, and the entire data base is available on computer diskette free of charge.
candidates and the public they represent, and will allay the cynical belief that current campaign fund-raising practices are a form of "legalized bribery." 

ENFORCEMENT: Since its creation in 1974, the State Board of Elections has been an ineffectual watchdog. It has done little more than collect candidates' campaign contribution and expenditure filings, let them sit undisturbed for five years, and then destroy them. The State Board does not computerize, analyze or disclose the important information it receives in any meaningful way. Without computerization and analysis, the Board cannot enforce the basic features of the Election Law.

New York's Board of Elections lags behind other states. The Assistant Staff Director of the U.S. Federal Election Commission testified before the Commission:

If you want to be a leader...you have got to be out front, you have got to be thinking of new ideas, you have to have a budget, you have to have the staff to do it, you have to have the support of the Legislature to do it. I don't think that New York has done very much at all. I would probably put New York where New Jersey was about fifteen years ago...

New York has a long, long way to go. I don't think it is anywhere near being a leader. You are not even in consideration in that regard.

The testimony of a former Board of Elections investigator gives a clue about why we have fallen short,

It seemed like the [State Board of Elections] Commissioners didn't want anything new happening, or anything innovative happening within the Board. They just wanted to keep things nice and quiet and not distribute that type of information that could lead to questions, and potential problems...

Commissioners of the Board of Elections are appointed under a system that all but guarantees complacency by the Board toward its campaign financing responsibilities. The budget as well as the appointments to the Board are controlled by the most powerful people the Board is supposed to police. Under the current practice, the Governor must appoint one of the people recommended by the chairperson of the State Democratic Committee, one of the people recommended by the chairperson of the State Republican 

9The Commission supports public funding for state-wide offices, and believes other municipalities should be permitted to institute such programs if they wish. However, after careful study, the Commission has declined at this time to recommend public funding for legislative races. The Commission feels that the vast majority of legislative candidates do not currently spend excessive amounts on their general election campaigns and, accordingly, that these elections do not present the various evils attendant to excessively costly campaigns. The Commission also believes that the effect of the other reforms we have proposed should be studied carefully before public funds are committed to legislative races.
Committee, the person jointly recommended by the Democratic Party's two legislative leaders and the person jointly recommended by the Republican Party's two legislative leaders.¹⁰

The resulting potential for conflict of interest is obvious even to the Board's Executive Director, who testified before the Commission that,

*I think another thing we have to recognize is that in effect, the Legislature is our clientele. We are asking them for more auditors, more investigators, so that we can do a better job reviewing the reports of legislators, and so forth. I think there is a reluctance there.*

The solution is clear: a new, independent agency must be formed with sole responsibility for enforcing the campaign finance laws. This new agency should be charged only with campaign financing responsibilities. Ballot administration and voter registration should be the responsibility of a separate body. Campaign financing experts consulted by the Commission were unanimous in their view that these areas should be separated. As the former chairman of both the New Jersey and federal campaign financing agencies testified,

*My feeling and conclusion is that it would be best to have a single agency charged with campaign finance disclosure responsibility, simply because of the nature of the work involved.*

*Contrast it, if you will, with what the State Board of Elections does. They do extremely important work but of an entirely different sort. They are involved in insuring that everything goes well on Election Day, that we all vote, and if that ever becomes tarnished, we are all in trouble and we know it.*

*But what you're talking about in terms of campaign financing is very sophisticated investigation, and I think that's best left to one specific agency, if we are talking about the financing of elections.*

If both responsibilities are given to a single agency, that agency will inevitably devote more of its resources and attention to issues it must resolve -- such as which candidates are to appear on the ballot -- than to issues such as post-election review of the adequacy of a candidate's financial disclosure statements.

The Commissioners of this new campaign finance enforcement agency should be appointed by the Governor from choices provided by an independent nominating

¹⁰The potential effects of the Board's ties to the political establishment are further exacerbated by the fact that Commissioners serve two-year terms, making it easy to replace them quickly if the Board's actions are unpopular.
commission. Such a nominating commission, patterned after the successful independent commission which nominates judges for the Court of Appeals, should include members of civic groups, business and religious leaders, as well as people more directly involved in politics. The new agency must be adequately funded, and its budget must be insulated from reprisal by public officials.

We must guarantee that the taxpayers’ money for campaign financing will be spent carefully, that contribution limits will mean something, and that they will have easy access to matters of public record. But without an effective, independent enforcement agency these reforms will be as meaningless as criminal laws without police.

* * *

New Yorkers are well aware of the problems with our current campaign finance system. According to a poll conducted for the Commission, 77% of voters support campaign finance reform, 78% believe that individuals have far too little influence over state government, and approximately 60% think that corporations, labor unions and political parties give in order to "influence or control" a candidate.

We find these statistics shocking. When 60% of the registered voters in our state believe that corporate, union and party contributions are a form of legal bribery rather than an expression of support, our system is in a state of crisis. The extent of voter cynicism in New York is alarming. Our leaders must take the steps necessary to restore public confidence. The Commission has not worked on any issue more important than campaign finance reform.
JUDICIAL SELECTION

I'm against elected judges because the way you get elected judges is the way they do it in the Bronx. You get three political leaders together, boom, they pick a guy and he's the judge, he's elected.

Governor Mario Cuomo, 1988

It is very difficult to take people who are successful in practice and say to them, become a judge in our State system, work well, work diligently, and then if everything is all right you can go back to the political leader and perhaps seek renomination to run again.

New York State Chief Judge Sol Wachtler

...it is hard indeed to face, in middle or later age and with your practice and clients gone, the prospect of being turned out of office because you have made an honest but unpopular decision. Indeed, I am continually gratified and amazed at the frequency with which my colleagues on the state bench do just that; but it is a test to which they should not be put, over and over and day by day.

Thomas Gibbs Gee, Circuit Judge,
U.S. Court of Appeals, Houston

Unlike the other branches of government which are primarily concerned with the wishes of majorities, the judicial branch is charged with protecting the basic rights of individuals. In doing so, the judiciary necessarily must focus on the facts of particular cases, blocking out personal or political prejudice, bias, and self-interest. At their best, our courts serve as an institutional refuge for the oppressed, the powerless and the mistreated; a place where any citizen can turn for a just and fair hearing.

Even the appearance of partiality in the judiciary is dangerous. Without public confidence in the independence of our judges, the moral foundation of the rule of law is
threatened. As Chief Judge Wachtler stated, "the whole justice system is balanced very delicately on what we call the public trust."

Most judges in New York are chosen by elections that are almost totally controlled by political party leaders, a system which clashes with the ideal of an independent and nonpartisan judiciary. By promoting political favoritism and rewarding party loyalty, judicial elections enhance political leaders' undue influence over judges, discourage lawyers without political connections from seeking judgeships, and threaten public confidence in the integrity of the judicial system. Partly for these reasons the Framers of the Federal Constitution mandated an appointive system for Federal judges and Justices of the United States Supreme Court, and the voters of New York State chose this method for their highest court.

In virtually every county in New York, a few political party leaders effectively control judgeships by making the crucial decisions: who will be designated or nominated, and who will receive the support of the party organization critical to election. As one political leader testified before the Commission,

I don't recall a judicial convention in twenty years that the candidates recommended by the County Leader were not designated. There were conventions where other names were put in but they never were successful in getting enough votes to be the designees of the Convention...

I'm talking about Queens, because I reside there. I know for a fact this is true in Manhattan and other counties in the City and the State, where the Judicial Convention really operated as a rubber stamp of the County Leader and it has done so for many years, probably continues to do so.

The overriding concern of these party leaders is quite naturally political: advancing the party organization, cementing party loyalty, and consolidating their power. But what is natural for political leaders is not necessarily healthy for the judiciary. Choosing judges based on party service demeans the bench by drastically narrowing the pool of potential judges, by introducing a standard other than judicial excellence, and by creating criteria for reelection which are at best irrelevant and at worst dangerous. The testimony of another political leader about the selection process is particularly revealing:

Well it's based on friendships, relationships built up over the years. For example, there's a young man that goes to my church who has been -- I've known him since he was a Little Leaguer, so now he's a lawyer, and he also belongs to my political club, and I sort of look to the day when I will be able to nominate him for a judgeship, you know.
So that's a particular personal relationship. If you run out of friends, then you look to see other considerations. You don't hardly run out of friends before somebody else comes up with a friend, and rather than take another opportunity, you may have to step aside and let somebody else put forth their candidate.

Obviously, the only requirements that I know of for being a judge, and I may be wrong, is having been admitted [to the bar] for ten years, and I don't even know of any other objective test besides that...So if you have been admitted to practice and you are without experiences of a negative nature, I assume that on the face of it, that qualifies you to become a judge.

New York can and must do better. Our State and its citizens deserve to have the finest people that will serve. We expect much from our judges: independence, courage, honesty, ability, knowledge, understanding and compassion. Political connections should not be the overriding consideration in their selection.

Obviously, the fact that judges owe their positions to party leaders, and depend on them for renomination when their terms expire, directly threatens judicial independence. When asked if he would feel pressure in deciding a case where one of the lawyers was a political leader who could affect his judicial career, one judge testified,

Yes I'm human. I'll think about it, and I shouldn't have to think about it. I shouldn't have to have my energies dissipated in wondering what the reaction is going to be or how I'm going to kill myself for the next election...but that's the system. It should be changed.

The appeal of elections is clear. Allowing the voters to choose who will judge them sounds like the fulfillment of a democratic ideal. However, the rosy picture of the informed voter carefully choosing the candidate he or she believes can best be fair, impartial and judicious has nothing to do with the election of judges in New York.

Currently, judgeships in the Supreme, Surrogate’s, County, City, District, Civil, and Family Courts outside of New York City are elective positions, more than 800 in total. Yet, very few people even know the name of any of the judges in their districts, much less the names or backgrounds of the range of candidates.

Judicial races simply do not attract voter interest. Judges must make decisions based strictly on the specific facts of an individual case, and it is therefore obviously improper for them to make campaign promises about how they would rule on particular
issues.\textsuperscript{11} For them to do so would institutionalize bias and debase the ideal of nonpartisanship. Widespread public cynicism would be the certain outcome. As a result, judicial elections are intrinsically "issueless," and it is hopelessly unrealistic to imagine they will ever attract the interest of very many voters.

Moreover, even if genuinely democratic, an elective system would still threaten judicial independence. Public officials are concerned with the majority's will. The dispensing of justice turns on very different factors; that is why we do not have trial and punishment by popular opinion.

Politics cannot be banished altogether from judicial selection, whether under an elective or appointive system. If properly designed, however, an appointive system will foster judicial independence and guarantee that qualified candidates without political connections have a fair chance to become judges.

Nominating commissions should be created to send only a limited number of the very best candidates to an executive -- such as a Governor or Mayor -- who would then make the appointments. By limiting the executive's latitude, we limit the possible influence of politics on the choice. To insure that the commissions remain independent, they should be composed of a broad range of individuals of various professions and political backgrounds, and should be officially charged with making their selections purely on the basis of judicial merit.

A properly designed appointive system will take power out of the hands of unaccountable party bosses and give it to elected public officials accountable to the voters for their decisions. Appointive systems have been endorsed by every major civic group that has studied the issue, including the Citizens Union, Common Cause, the League of Women Voters, the Fund for Modern Courts, and the New York City and New York State Bar Associations. Nationally, 34 states use appointment to select at least some of their judges, and since 1950, every state that has made a change has moved toward appointment.

We must stop perpetuating the myth that judicial elections have anything to do with democratic choice. They do not and they cannot. The right kind of appointive system will

\textsuperscript{11} This potential impropriety is recognized by the American and New York Bar Associations. Canon 7 of the Code of Judicial Conduct prohibits candidates from expressing their views on "disputed legal or political issues."
hold judicial ability -- not political party service -- paramount, and will give New Yorkers the finest judiciary possible.
THE ETHICS IN GOVERNMENT ACT

Let us raise a standard to which the wise and the honest can repair.

George Washington

Morality can't be legislated, but behavior can be regulated.

Reverend Martin Luther King, Jr.

But the great pity about virtue being its own reward is that the reward always seems so small. It's the appearance, not the fact, of conflict that is so often troubling. Appearances do count. And most especially when it affects public officials. The appearance of conflict counts almost as much as reality. A great gray area exists called unseemliness. It ain't illegal. But it just ain't right.

William Safire

Government both influences and reflects the ethical tenor of our society. As bearers of the public trust, our officials must be held to the highest standards of behavior. When they falter, they not only betray their responsibilities to the citizens of our State, but they encourage us to do the same to each other. As Justice Brandeis wrote, "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." Ethics-in-government legislation is, therefore, doubly important. Not only does it deter abuse, it articulates a moral standard for the entire community.

New York's current Ethics Law falls short in many areas. When the State Legislature passed the Ethics Act in 1987, regulating the actions of executive and legislative branch officials and employees, it was called an historic advance. Without question it was an important step and represents a real improvement over the laws that existed at the time. But the Act still has huge loopholes, and some of its enforcement provisions actually tie prosecutors' hands.

The Act paralyzes district attorneys by barring them from prosecuting violations without an official referral from one of the oversight commissions the Act created. Unlike every other situation in which a crime is committed, a district attorney with evidence that a government official has broken the law cannot do anything if the oversight commission has not officially transferred the case.

This referral requirement sends the wrong message to New Yorkers. It teaches that while private citizens are subject to the inquiries of an independent prosecutor, those who hold government office are not. It suggests that public officials have something to hide, and intend to hide it. The referral requirement is clearly a double standard, and it is probably unconstitutional as well.13

In fact, the oversight commission may have good reason for not referring the case: the Act forbids the commission from imposing civil fines once it has referred a case to a prosecutor, even if the criminal prosecution is unsuccessful. Faced with the choice of an inadequate but assured civil penalty, and the possibility of no penalty at all, the oversight commission may hesitate to refer even the most egregious examples of official misconduct.

The Act's preferential treatment of public officials goes beyond inhibiting investigation. Under some interpretations, the law gives an official who intentionally files false disclosure information 15 days after he or she is caught to revise their filings secretly and without penalty, an opportunity not afforded any other person accused of breaking a law. Our public leaders must be held to the highest possible ethical standards. Yet the Ethics Act gives them a legal loophole unavailable to the average citizen. As District Attorney Morgenthau wrote, "No other law permits a violator such an opportunity to undo his crime with full confidentiality. The result is that serious misconduct will go unpunished."14

13The New York Constitution provides:

The power of the grand juries to inquire into the willful misconduct in office of public officers, and to find indictments or to direct the filing of information in connection with such inquiries, shall never be suspended or impaired by law.

N. Y. Const. art. I, § 6. See also Letter from Elizabeth Holtzman, District Attorney of Kings County, to Governor Mario M. Cuomo (July 24, 1987); Memorandum from Robert Abrams, Attorney General of New York to Governor Cuomo at 6 (July 7, 1987). Both contained in Governor's Bill Jacket for S.6441.

14New York County District Attorney Robert M. Morgenthau, writing on behalf of the District Attorneys Association of New York. Letter to Governor Mario M. Cuomo (July 15, 1987).
The Act also permits state officials to represent private clients before all municipal agencies for any purpose, and before state agencies in a number of crucial areas including certain tax and criminal matters. This creates obvious problems. Because budget appropriations and other decisions made in Albany affect municipalities and state agencies, local and state officials may be subjected to excessive pressure, even if not intended. Government officials’ appearances before those agencies are inevitably intimidating, and may taint the eventual decision in the public eye. They should be forbidden.

There is one area where the Act goes too far, and in fact overburdens public officials. The Act mandates absurdly excessive financial disclosure requirements for all government employees making more than $30,000 per year (roughly 70,000 in all, not counting employees of Public Authorities), unless they appear before the appropriate commission and demonstrate that their job duties do not necessitate disclosure. The disclosure form the Act requires is 7 pages long and correspondingly detailed. In other words, the enforcement commissions throughout the State will be burdened with more than 490,000 pages of financial disclosure information, a mountain of paper that will effectively block enforcement of the law when it matters, and impose an onerous burden on tens of thousands of employees covered for no good reason.

It is difficult enough to attract talented people into government service. Many more will be discouraged if they are required to reveal publicly the particulars of their personal finances. Certainly, broad financial disclosure is important for people in policy-making positions. But those positions should be defined by the responsibilities that accompany them, not by salary level.15

Although most public officials are dedicated and honest, the faith of many people in the government has been weakened. Our system depends on public confidence in the basic integrity of the government and its elected officials. In a democracy, distrust can be as damaging as corruption itself. A reformed Ethics Act would not only deter wrongdoing, it would also be the best demonstration that the political leadership of New York is committed to fundamental change.

15 Commissioners James L. Magavern and Richard D. Emery support a different approach to disclosure, which they believe would prove both less intrusive upon the personal lives of state employees and more effective in protecting the public interest. Instead of annual, uniform disclosure for all covered employees, regardless of relevance to their particular jobs, the Act should require disclosure on a transactional basis. Before taking action in a particular matter in which the employee (or a party related to the employee by family or business) has an interest, the employee should be required to file a transactional disclosure statement identifying that interest and relationship in reasonable detail.
BALLOT ACCESS

The problem of ballot access has eliminated or completely crippled many candidacies, for many years. They have been almost exclusively insurgent candidacies in less well-publicized races, and many had legitimate popular support for a place on the ballot. The ballot access problem has -- for too many years -- impeded or eliminated valid candidacies, deprived voters of a choice, and damaged our political system.¹⁶

Vance Benguiat, Executive Director, Citizens Union of the City of New York

The heart of our democratic ideal is the right of the people to choose whom they want to represent and lead them. This maxim has guided our country and state for more than 200 years. Our commitment to it has been tested in struggles over voting rights, the infamous "Jim Crow" laws, and redistricting. Today in our state, the test of our commitment comes in a less dramatic, but no less important, form. New York's ballot access laws are supposed to protect the political process from frivolous candidates, and insure that qualified voters decide who gets on the ballot. In reality, they throw serious candidates off the ballot for frivolous reasons, and frustrate democratic choice through meaningless litigation.

Unlike most other states, getting on the primary ballot in New York requires a candidate to collect a substantial number of signatures of party members on a nominating petition.¹⁷ And unlike other states, the rules governing the validity of the petitions are unbelievably complex and rigid.

Technical defects can nullify entire petitions. A petition may be thrown out simply because the person carrying it for the candidate is registered to vote in a district other than the one in which the signatures must be obtained, or because the pages of the petition are not consecutively numbered. In Erie County in 1984, for example, a candidate for county

¹⁶Statement to Joint Public Hearing of the State Senate and Assembly Election Law Committees on Ballot Access, (October 15, 1985).

¹⁷Most states permit a candidate to get on the primary ballot by paying a filing fee, or alternatively through a simpler petition process.
A committeeman was denied a place on the ballot because his two-page designating petition was not consecutively numbered.\(^\text{18}\)

Similarly, if the person actually carrying the petition fails to date it, or misstates or omits various information, such as his or her address or assembly and election districts, the entire petition is invalid. For example, in 1979 in Erie County, a candidate for town councilman filed a petition with almost twice as many signatures as the law required. Unfortunately for the candidate and his many supporters, the people that carried the petition failed to list their assembly districts. Because of this the candidate was dropped from the ballot, even though listing the assembly district was listing the obvious: the town had only one assembly district and all the people carrying the petition lived in the town.\(^\text{19}\)

A petition may also be thrown out if its pages are not correctly bound together. In Albany County, a candidate for county legislator was denied a place on the ballot in part because his petitions were held together with a spring clip, and the court upheld the ruling of the Albany County Board of Elections that the spring clip did not constitute a binding.\(^\text{20}\) Likewise, if a petition is not filed during the precise period of time specified by the law, the candidate may be barred from the ballot. In one instance in 1987, candidates for local office filed their designating petitions at 8:30 a.m., shortly after the Village Clerk arrived at work, rather than between the hours of 9:00 a.m. and 5:00 p.m., as the law instructs. The candidates were thrown off the ballot.\(^\text{21}\)

These examples are not isolated instances. Last year, New York accounted for *one half* of all the election law litigation in the country.\(^\text{22}\) In 1986 alone, 200 New York candidates in primary elections were denied places on the ballot because of technical errors on their petitions, even though they had significant public support and had

\(^{18}\text{Braxton v. Mahoney, 63 N.Y.2d 691, 468 N.E.2d 1111, 479 N.Y.S.2d 974 (1984).}\)

\(^{19}\text{Higby v. Mahoney, 48 N.Y.2d 15, 396 N.E.2d 183, 421 N.Y.S.2d 35 (1979).}\)

\(^{20}\text{Bouldin v. Scaringe, 133 A.D.2d 287, 519 N.Y.S.2d 72 (3d Dep't 1987).}\)

\(^{21}\text{128 A.D.2d 978, 512 N.Y.S.2d 934 (3d Dep't 1987).}\)

\(^{22}\text{see, e.g., New York Newsday May 17, 1988, at p. 20 quoting Angelo T. Cometa, chairman of the New York State Bar Association's Special Committee on Election Law.}\)
substantially complied with the Election Law's procedural requirements. These technicalities effectively disenfranchise tens of thousands of voters every year.

Worse still, the ballot access laws overwhelmingly favor incumbents and candidates with the support of the party organization. These candidates have access to large numbers of highly experienced party volunteers who can get two or three times the number of signatures necessary to survive challenges to their petitions, and are able through the party organization to hire experts and lawyers to review their opponents' petitions and to engage in the protracted ballot litigation chronic to New York elections.

The State Legislature and Governor should appoint a blue-ribbon, multipartisan panel to recommend fundamental reformation of the law. And in the interim, the Legislature should pass a bill providing that candidates will not be penalized for insubstantial deviations from the requirements of the current law. As with campaign finance reform, the incumbents who benefit from the ballot access laws are the same officials who hold the power to reform them. The public must make it clear to their representatives that they want these laws changed.
PENSION FORFEITURE

Government is more than the sum of all the interests; it is the paramount interest, the public interest. It must be the efficient, effective agent of a responsible citizenry, not the shelter of the incompetent and corrupt.

Adlai Stevenson

No one believes that crime should pay. Unfortunately, in New York, public officials who betray the public trust and are convicted of crimes relating to their position, still receive huge sums of the taxpayers' money in the form of pension benefits.

The case of convicted former Syracuse Mayor Lee Alexander dramatically illustrates the problem. Alexander pleaded guilty in January 1988 to federal charges that he turned the Mayor's office into a racketeering enterprise and extorted at least $1.2 million from contractors doing business with the City during his 16 years as Mayor. He was sentenced in March 1986 to ten years in prison. He draws an annual state pension of $18,716.

The pensions of corrupt judges are likewise insulated. Former State Supreme Court Justice William C. Brennen was convicted in December 1985 of accepting almost $50,000 in bribes to fix four criminal cases. Released after serving 26 months in prison, he receives $41,236 per year. The former Supreme Court Justice and Administrative Judge of Queens County, Francis X. Smith, who was convicted of perjury in 1987 in a Queens cable television scandal, receives $47,877 annually.

Convicted New York City employees are similarly treated. John Cassiliano, a former superintendent of the City Sanitation Department's Bureau of Waste Management, pleaded guilty to federal racketeering charges. Over an eight-year period, Cassiliano permitted millions of gallons of hazardous chemical waste to be dumped in New York City's solid

24
waste landfills, collecting more than $660,000 in bribes and payoffs in return. While New York City still struggles, at a cost of millions of dollars, to clean up the environmental damage Cassiliano left behind, taxpayers are footing a second bill: in the six years since Cassiliano retired, he has collected almost $125,000 in pension benefits, and the checks totalling more than $20,000 keep rolling in every year.

Cassiliano is not alone. Alex Liberman, the former Deputy Director of the New York City Department of General Services, pleaded guilty in June 1984 to a federal racketeering charge of extorting over $1 million from building owners seeking to lease space to the City. Liberman got 12 years in jail and a $9,951 annual City pension.

New York’s retirement systems should be explicitly based on the principle that the faithful and honest performance of a public employee’s official duties is as much a precondition to eligibility for a pension as fulfilling the existing statutory age and length of service requirements. In the public sector, pensions are not merely a form of deferred compensation. They are a “reward for faithfulness to duty and honesty of performance.” Pennsylvania, Florida, Georgia, Illinois, and Massachusetts have all enacted pension forfeiture statutes which recognize that loyal, honest public service is a prerequisite to pension eligibility. New York must do the same, although we should leave room for a portion of the convict’s public pension to be paid to his or her spouse, children or other beneficiaries upon demonstration to a judge of severe financial hardship. It is time we put an end to the unjustifiable practice of pensioning corrupt public officials at public expense.

Secrecy and a free, democratic government don't mix.

Harry S. Truman

Liberty cannot be preserved without a general knowledge among the people, who have a right...and a desire to know; but besides this, they have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers.

John Adams
A dissertation on the Canon and Feudal Law, 1765

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain public control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

Legislative Declaration, New York State
Open Meetings Law, 1976

Back room decisions about the public's business breed self-dealing and disregard of the public's interest. Democracy demands public participation in public issues, and when that participation is undermined, apathy, cynicism and an erosion of confidence in the integrity of government are the sure results.

New York's Open Meetings Law, as first enacted in 1976, recognized that openness and honesty in government are fundamentally linked. Summarized simply, it required that "every meeting of a public body shall be open to the public,"24 that these meetings should be announced in advance, and the minutes should be available to anyone who wants to see them.

Obviously, exceptions to this rule are necessary. The law properly exempts discussions about collective bargaining negotiations, litigation, and most judicial and quasi-judicial proceedings. These exemptions reflect a balance between the principle that the public's business must be conducted in a public manner, and the recognition that certain deliberations must be free from the pressures that accompany publicity.

Unfortunately, this balance is upset by another recent exemption, so broad it can be exploited to effectively gut the law. In 1985 the State Legislature passed an amendment to the law allowing private political caucuses,

...without regard to (i) the subject matter under discussion, including discussion of public business, (ii) the majority or minority status of such political committees, conferences and caucuses, or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations...  

Many communities in our state are dominated by one political party. The 1985 amendment means that in these areas, a majority of the legislative body can meet privately as a political party caucus and effectively reach binding decisions on public business. Worse, they can systematically exclude democratically elected representatives from the minority party from any role in the decision-making process.

For example, the sole Republican member of the Rochester City Council testified in hearings before the Commission that the Democratic majority regularly met in closed caucus and received "agenda briefings" by staff and others on various matters, including an industrial expansion in that Republican member’s district; a review of the proposed line item school budget by the superintendent of schools and school board; and a statement by a utility representative on the utility’s stand on a proposed reassessment program. As the council member stated, "My exclusion prevents me from representing my constituents adequately because city policy questions are decided at closed meetings outside my presence."

---

25N.Y. Pub. Off. Law Section 108(2)(b). The amendment was introduced just six weeks after reporters from the New York Post obtained an advisory opinion from the Committee on Open Government that caucuses held by a majority of the members of either house of the New York State Legislature for the purpose of conducting public business are subject to the law. The amendment was passed by both houses a week later, and Governor Cuomo signed it within 24 hours.
The enforcement provisions of the law are feeble. The law allows less-than-quorum meetings to be held secretly, even if the participants in the meeting systematically rotate people in and out for the express purpose of insuring that there is never a quorum present. Such behavior should be expressly prohibited. In addition, after secret deliberations, if the final vote is taken in public, the courts do not have the power to void the decision. Obviously, this law must be given teeth, including fines against public officials who intentionally flout the law's provisions.

Open meetings, like democracy itself, are not always pleasant or convenient. As one witness testified,

Yes, it is uncomfortable to vote yourself a pay raise in public. Yes, it is uncomfortable to talk about a school with asbestos in it in front of anxious parents. Yes, it is uncomfortable to talk about where to locate low income housing when you have people in the audience who might live next to the site, but, whoever said democracy had to be easy or comfortable?

Every time a citizen sees a closed meeting as a blind for misconduct, democracy suffers. We all wonder for good reason what officials have to hide when they wrap themselves in a cloak of secrecy.
CONCLUSION

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

The Federalist, No. 51

When the recent corruption scandals broke in the New York City government and in the State Legislature, officials across the political spectrum declared that they were fully committed to sweeping change, ready to do whatever was necessary to reform the government. And in the last two years, there have been some moves in the right direction. New York City has a new public campaign finance law and a tougher ethics law. The State has a new ethics law, and the housekeeping accounts of the major political parties are finally open to public scrutiny. But, as noted elsewhere in this report, these reforms do not go nearly far enough.

The stakes are high for all New Yorkers in the next state legislative session. It is clear what needs to be done. The Commission's recommendations, and the similar outcry of civic groups, bar associations, concerned citizens, and editorial boards throughout New York, must be heeded. When, according to a poll conducted for the Commission earlier in the year, only 27% of the voters in our state believe that "most people who run for public office are honest," our democracy is in trouble. We cannot afford more of the same.

The recommendations of the Commission follow thorough investigation. If adopted they will change the political climate in our State from one of mistrust and cynicism, to one much closer to the ideal of openness and honesty.

But right now, these are only recommendations. That is all a Moreland Act Commission can provide. The Commission is neither a lobby, nor representative of a
special interest, nor a citizen's advocacy group. Now it is up to our representatives to take action. It is time for our officials to rise above partisanship and self-interest, and enact the tough reforms we must have, reforms that may require that they give up personal advantage for the common good. So be it; that is what it means when we say, "public service is a public trust." And as citizens, we must stay informed about these issues and work actively for change, and we must be willing to pay for such reforms as public campaign financing and adequate enforcement of new laws. None of us can escape the stark choice we face: recurring scandal and ever-deepening apathy if we continue to ignore these problems, or a new era of inspiration and change if we are willing to meet the tasks at hand with determination and conviction.

The battle against lethargy and self-dealing has never been easy. But we must go forward nonetheless.
APPENDIX A - Executive Order 88.1, creating the Commission on Government Integrity.

STATE OF NEW YORK
Executive Chamber

No. 88.1

EXECUTIVE ORDER

APPOINTING SPECIAL COMMISSIONERS TO INVESTIGATE INSTANCES OF CORRUPTION IN THE ADMINISTRATION OF GOVERNMENT AND TO DETERMINE THE ADEQUACY OF LAWS, REGULATIONS AND PROCEDURES RELATING TO GOVERNMENT INTEGRITY

WHEREAS, in March 1986, I, acting jointly with the Mayor of the City of New York, appointed the State-City Commission on Integrity in Government to make recommendations for improving laws, regulations and procedures relating to the prevention of corruption, favoritism, undue influence and abuse of official position in government;

WHEREAS, such Commission has issued reports identifying serious flaws in certain existing laws, regulations and procedures within the subject matter of its inquiry;

WHEREAS, such Commission has issued a final report in which it recommends the appointment of a new Commission with investigative powers, including the authority to compel the attendance and testimony of witnesses and the production of records;

WHEREAS, since the appointment of such Commission last March, events bearing on public confidence in the integrity of government have continued to unfold;

WHEREAS, certain completed and ongoing criminal prosecutions raise issues relating to integrity in government which are more appropriately explored in a parallel investigation than in the course of such prosecutions; and

WHEREAS, it is my judgment that it is of compelling public importance that weaknesses in existing laws, regulations and procedures relating to government integrity be further investigated and addressed;
NOW, THEREFORE, pursuant to section six and subdivision eight of section sixty-three of the Executive Law, I, MARIO M. CUOMO, Governor of the State of New York, do hereby:

I. Appoint a Commission to be known as the Commission on Government Integrity with seven members, who shall be John D. Feerick, Richard D. Emery, Patricia M. Hynes, James L. Magavern, Bernard S. Meyer, Bishop Emerson J. Moore and Cyrus R. Vance, as special commissioners, to investigate the management and affairs of any department, board, bureau, commission (including any public benefit corporation) or political subdivision of the State in respect to the adequacy of laws, regulations and procedures relating to maintaining ethical practices and standards in government, assuring that public servants are duly accountable for the faithful discharge of the public trust reposed in them, and preventing favoritism, conflicts of interest, undue influence and abuse of official position and to make recommendations for action to strengthen and improve such laws, regulations and procedures.

II. The Commission shall, subject to Paragraph I of this order:

1. Investigate weaknesses in existing laws, regulations and procedures intended to prevent the use of public or political party position for personal enrichment and determine whether such weaknesses create an undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

2. Investigate weaknesses in existing laws, regulations and procedures intended to prohibit conflicts of interest or bring about the disclosure of potential conflicts of interest and determine whether such weaknesses create an undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

3. Investigate weaknesses in existing enforcement machinery for laws, regulations and procedures relating to unethical practices and determine whether such weaknesses create undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

4. Investigate weaknesses in existing laws, regulations and procedures regarding the sale or leasing of real property by or to governments, public authorities or public benefit corporations, the sponsorship of publicly assisted housing or other development projects, the solicitation of government business, permits, franchises, and the like and determine whether such weaknesses create an undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

5. Investigate weaknesses in existing laws, regulations and procedures relating to campaign contributions and campaign expenditures and determine whether such weaknesses create an undue potential for corruption, favoritism, undue
influence or abuse of official position or otherwise impair public confidence in the integrity of government.

6. Investigate weaknesses in existing laws, regulations and procedures regarding the representation of private parties by public or political party officials before public agencies and determine whether such weaknesses create an undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

7. Investigate weaknesses in existing laws, regulations and procedures regarding the selection of judges and to determine whether such weaknesses create an undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

III. John D. Feerick is hereby designated Chairman of the Commission. I hereby give and grant to the Commissioners all the powers and authorities that may be given or granted to persons appointed by me under authority of section six of the Executive Law, provided, however, that (1) the issuance of subpoenas shall require the prior approval of the Chairman and at least three other Commissioners and (2) the Commissioners may adopt such procedures as they believe necessary governing the exercise of the powers and authorities given or granted to the Commissioners pursuant to such section six.

IV. Pursuant to subdivision eight of section sixty-three of the Executive Law, and subject to Paragraph I of this Order, I hereby direct the Attorney General to inquire into the matters set forth in Paragraph I of this Order which I find involve public peace, public safety and public justice, and request that the Attorney General do so by appointing one or more of the above named Commissioners or their counsels or deputies as Deputy Attorneys General and delegating to such Deputy Attorneys General authority to exercise the investigative powers that are provided for in an investigation pursuant to such section sixty-three upon a majority vote of the Commission and with the approval of the Chairman.

V. The Chairman shall have the power to employ such counsel, deputies, officers and other persons as the Commission may require to accomplish the purposes of this order and to fix their compensation.

VI. The Commission in its inquiry shall comply with section seventy-three of the Civil Rights Law and with such other regulations and procedures as the Commission may adopt to protect the rights of those affected by its inquiry and the integrity of its proceedings.

VII. If in the course of its inquiry the Commission obtains evidence of the violation of existing law, such evidence shall promptly be communicated to the appropriate law enforcement authorities. The Commission shall cooperate with prosecutorial agencies to avoid jeopardizing ongoing investigations and prosecutions.

VIII. Every department, board, bureau, commission (including any public benefit corporation) or political subdivision of the State shall provide to the Commission every
assistance and cooperation, including use of State facilities, which may be necessary or
desirable for the accomplishment of the duties or purposes of this Order.

IX. Executive Order Number 88, dated January 15, 1987, is superseded by this
Executive Order.

G I V E N under my hand and the Privy
Seal of the State in the City of
New York this 21st day of April in
the year one thousand nine hundred
eighty-seven.

BY THE GOVERNOR /s/ Mario M. Cuomo

/s/ Gerald C. Crotty
Secretary to the Governor
Appendix B – Reports and materials available from the Commission

The Commission has issued several reports in the course of its work that provide more detailed information on the subjects explored here. These reports are:


7. **Campaign Finance Reform**: The Public Perspective, issued July 1988. (Results of a poll conducted for the Commission by Dresner, Sykes, Jordan & Townsend, Inc.)


Also, as mentioned earlier in the report, the Commission has computerized the records of the State Board of Elections. Printouts of the data base are available for copying, and the Commission will provide the entire database on computer diskette free of charge to interested parties. The available printouts include:

1. **Statewide Officeholders New York State**: 1/83-1/88. Sorted alphabetically by contributor or alphabetically by contributor address.

2. **Citywide Officeholders New York City**: 1/83-1/88. Sorted alphabetically by contributor or alphabetically by contributor address.

4. **State Party Committees** (Republican) New York State: 12/7/81-1/1/87. Sorted alphabetically by contributor.


11. **Legislative Leaders** – **First Run**: 86 New York State Senators and Assemblymen: 1/85-7/88. Individual reports on each, sorted alphabetically by contributor.

The Commission has also held a number of public hearings in the course of our investigations. Transcripts are available for the following:

1. October 21-23, 1987 in New York City and Buffalo. Forums on campaign financing with expert witnesses, including Dr. Herbert Alexander.


5. March 14-15, in New York City. Campaign Financing: Focusing on fund-raising practices of statewide and New York Citywide officeholders; received testimony from their fund-raisers and from large contributors.

