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## Reflections on Chairing the New York State Commission on Government Integrity

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# Reflections on Chairing the New York State Commission on Government Integrity

## **Cover Page Footnote**

Chairman, New York State Commission on Government Integrity; Dean, Fordham University School of Law. BA 1958, J.D. 1961, Fordham University; member of the 1963 American Bar Association conference on Presidential Inability and Vice Presidential Vacancy, the recommendations from which culminated in the 25th Amendment to the United States Constitution.

# REFLECTIONS ON CHAIRING THE NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY

*John D. Feerick\**

We will never bring disgrace to this our city  
by any act of dishonesty or cowardice,  
nor ever desert our suffering comrades in the ranks;  
We fight for the ideals and the sacred things of the city,  
both alone and with many;  
We will revere and obey the city's laws and  
do our best to incite to a like respect and reverence  
those who are prone to annul or set them at naught;  
We will strive unceasingly to quicken  
the public sense of public duty;  
That thus, in all these ways, we will transmit this city  
not only not less, but greater, better and more beautiful  
than it was transmitted to us.<sup>1</sup>

The New York State Commission on Government Integrity (Commission) was born from a sense of crisis. A series of corruption scandals in New York State, involving officials at all levels of government, produced widespread cynicism and distrust of government and created a perception that unethical, if not illegal, practices were rampant throughout the State. The scandals implicated borough presidents of New York City, political party chairmen, municipal officials, members of the State Legislature, judges and a host of other officials.

As the law enforcement community responded to the allegations of political corruption, Governor Mario Cuomo and Mayor Edward Koch appointed a sixteen-member State-City Commission on Integrity in Government, otherwise known as the Sovern Commission. The Commission was asked to make recommendations for improving laws relating to the prevention of corruption, favoritism, undue influence and abuse of official position in government. While the Sovern

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\* Chairman, New York State Commission on Government Integrity; Dean, Fordham University School of Law. B.A. 1958, J.D. 1961, Fordham University; member of the 1963 American Bar Association conference on Presidential Inability and Vice Presidential Vacancy, the recommendations from which culminated in the 25th Amendment to the United States Constitution.

1. *The Athenian Oath*, reprinted in INTERNATIONAL CITY MANAGEMENT ASSOCIATION, THE ETHICS FACTOR HANDBOOK (May, 1988).

Commission made a number of concrete proposals of its own, it also suggested that a non-partisan commission be formed with subpoena power to delve into government impropriety, to provide the fullest possible disclosure of the inner workings of government in light of the then current "crisis in confidence," and to address both the reality and appearance of government corruption. Consistent with these recommendations, the New York State Commission on Government Integrity was created and granted subpoena power and a sweeping statewide mandate.

The Executive Order creating the Commission<sup>2</sup> directed it to investigate weaknesses in existing laws, regulations and procedures relating to such areas as campaign financing, judicial selection, conflicts of interest, the solicitation of government business and approvals, and the use of public and political party positions for personal enrichment. The Commission's charter directed it to recommend to the Governor action to remedy any inadequacies in existing laws that permit corruption to exist. The Executive Order also required the Commission to avoid jeopardizing on-going investigations and prosecutions and to communicate to law enforcement authorities any evidence which it obtained of criminal wrongdoing. In the main, the Commission was asked to bridge the gap between the work of district attorneys and the need for system-wide reforms that go beyond single cases of official misconduct.

When Governor Cuomo created the Commission in January, 1987, under authority given to him by the Moreland Act,<sup>3</sup> legislators balked, indicating that they would not fund the Commission. The Governor responded by threatening to raise funds from private sources in order to enable the Commission to perform its work. The resulting controversy continued over many weeks until it was resolved in April by agreement between the Governor and State Legislature.

The Legislature agreed to provide funding for the Commission in the amount of \$5 million, specifying that none of the funds could be used for the investigation of the management or affairs of the Legislature. This limitation, unfortunately, itself damaged confidence in government, since it was subject to the interpretation that members of the Legislature had something to hide. It also was unnecessary because the Commission's Executive Order did not reach the affairs of legisla-

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2. Exec. Order No. 88.1, N.Y. COMP. CODES R. & REGS. tit. 9, § 4.88 (1987). See NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, RESTORING THE PUBLIC TRUST: A BLUEPRINT FOR GOVERNMENT INTEGRITY Appendix A (September 1990) [hereinafter BLUEPRINT], reproduced *infra* at 246 (executive order reprinted).

3. N.Y. EXEC. LAW § 6 (McKinney 1982).

tors as legislators, as opposed to their private activities. Nor did the Executive Order reach the affairs of the Judiciary.<sup>4</sup>

In addition, the Legislature insisted that Commission members be residents of New York State, which resulted in the displacement of Joseph A. Califano, Jr., as Chairman, and Howard Simons, as a member, of the Commission. This initial dismantling of the Commission was exceedingly harmful. It not only removed two outstanding individuals from the Commission but it generated concerns that the reconstituted Commission might not be effective in pursuing its mandate. It also raised questions regarding the Legislature's intentions for the Commission.

As finally constituted in April, 1987, the Commission consisted of me as chair and Richard D. Emery, Patricia M. Hynes, Judge Bernard S. Meyer, Bishop Emerson J. Moore, James L. Magavern, and Cyrus R. Vance as members.<sup>5</sup> In turn, the Commission assembled an outstanding staff of lawyers, investigators and others to perform the essential day-to-day work of investigating state and local government.<sup>6</sup> The Commission drew into its work on a pro-bono basis as its special counsel Thomas J. Schwarz, head of the litigation department at Skadden, Arps, Slate, Meagher & Flom and a national authority on campaign finance reform.

The Commission, as noted, received its authority from the Moreland Act and the powers set forth in Sections 6 and 63 (subsection 8)

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4. See BLUEPRINT, *supra* note 2, at Appendix A, reproduced *infra* at 246. The Moreland Act authorizes the Governor, by establishing a Commission, to investigate the management and affairs of any department, board, bureau or commission of the state — not other branches of government, however. N.Y. EXEC. LAW § 6 (McKinney 1982). Under section 63, subsection 8 of the Executive Law, the governor may direct the attorney-general to inquire into matters concerning the public peace, public safety and public justice and to appoint deputies to do so. N.Y. EXEC. LAW § 63(8) (McKinney 1982). The powers granted under section 63 have been used to authorize investigations at the local level. Moreland Act Commissions, such as the Commission on Government Integrity, have been granted powers at times under both sections.

5. The six Commissioners with whom I served all enjoyed outstanding reputations for exceptional distinction in their respective fields: Richard Emery, as a prominent civil libertarian; Patricia Hynes, as a former executive assistant and chief of the official corruption and special prosecution unit for the United States Attorney's Office for the Southern District of New York; Judge Bernard Meyer, as a former member of the New York State Court of Appeals; Bishop Emerson Moore, as a prominent member of the Roman Catholic Church in the Archdiocese of New York; James Magavern, as a lawyer and leader in ethics reform in upstate New York; and Cyrus Vance, as a former Secretary of State in the administration of President Jimmy Carter.

6. See NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, INTEGRITY AND ETHICAL STANDARDS IN NEW YORK STATE GOVERNMENT: FINAL REPORT TO THE GOVERNOR at Appendix C [hereinafter FINAL REPORT], reproduced *infra* at 279.

of the New York State Executive Law.<sup>7</sup> These powers authorized the Commission to investigate not only departments of state government but also political subdivisions of the State. Predecessor Moreland Act Commissions had investigated, exposed and improved the functioning of New York State government since 1907.<sup>8</sup> For the most part, they focused on specific areas of inquiry or specific departments of government. It does not appear that any Commission was given as broad a mandate as the Commission on Government Integrity.

At the time the Commission was created and in testimony before the Commission in September, 1987, Governor Cuomo urged that it help convert a scandal-ridden period into one of enlightenment and reform. He said: "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."<sup>9</sup>

In an effort to provide such assistance, the Commission conducted, during its forty-month existence, a large number of investigations and public hearings across the State and laid out in twenty reports its findings of what is wrong and recommendations for reform.<sup>10</sup> In seven reports, the Commission presented a complete picture of campaign financing in New York State, finding current laws and procedures to be so inadequate and outmoded that they undermined public confidence and integrity in government. The Commission also made a series of recommendations in these reports which would provide an enlightened government with a blueprint for campaign finance reform.

In other reports, the Commission made recommendations on a wide range of subjects: closing loopholes in the State's Ethics in Government Act;<sup>11</sup> abolishing judicial elections for full time trial courts; reforming the laws governing how candidates get on the ballot in state primaries; addressing inadequacies in the State's Open Meetings Law;<sup>12</sup> limiting the influence of political patronage on certain personnel procedures and practices; changing the way New York State gives funds to and monitors private drug treatment providers; and strength-

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7. N.Y. EXEC. LAW §§ 6, 63(8) (McKinney 1982).

8. See generally E. BREUER, MORELAND ACT INVESTIGATIONS IN NEW YORK: 1907-65 (1965); J.E. MISSALL, THE MORELAND ACT (1946).

9. Testimony of Governor Mario M. Cuomo before the New York State Commission on Government Integrity (September 9, 1987).

10. The Commission reports and hearings are listed in FINAL REPORT, *supra* note 6, at Appendix B, reproduced *infra* at 274.

11. Ethics in Government Act, ch. 813, 1987 N.Y. Laws 1404.

12. N.Y. PUB. OFF. LAW §§ 100-111 (McKinney 1988).

ening the Whistleblower Law of the State.<sup>13</sup>

In its final report to Governor Cuomo, dated September, 1990,<sup>14</sup> the Commission made a number of overall findings, two of which were that the laws of New York State fall woefully short in guarding against political abuses in an alarming number of areas; and that New York has not yet demonstrated a real commitment to government ethics reforms. The report concluded with the Commission urging the leaders of the State to act before the emergence of new scandals and to give ethics reforms the emphasis which they deserve.

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Now that the Commission's work is ended, I welcome the opportunity to share some personal reflections on the experience of the past several years. To begin with I found the experience to be the most difficult, challenging, frustrating and rewarding of my life. Let me explain.

The Commission's start-up proved to be exceedingly difficult. This was so for several reasons. First, it was not clear how long the Commission would last, or indeed whether it would be funded again.<sup>15</sup> This presented a challenge in the recruitment of a staff of lawyers who would be expected to leave permanent positions elsewhere to join the Commission. The challenge was compounded by the fact that the Commission had been battered by the circumstances surrounding its creation, and the breadth of its mandate left uncertain just what it would investigate. In his remarks at the time he established the Commission, Governor Cuomo spoke strongly of making this an era of reform. Yet, as the Commission started up, it seemed that many elements of the community wanted it to serve more like a prosecutorial or inquisitorial body. Such a role was neither sanctioned by the Executive Order nor necessary because of the rigorous steps being taken at the time by the United States Attorney's Office for the Southern and Eastern Districts of New York and by the Manhattan District Attorney's Office. A prosecutorial role also was not possible because the

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13. N.Y. CIV. SERV. LAW § 75-b (McKinney 1987).

14. FINAL REPORT, *supra* note 6, reproduced *infra* at 251.

15. There was always a certain tension surrounding this subject. Although the Commission finally received an appropriation of \$5 million in April, 1987, an unsuccessful effort was made in 1988 to deny the Commission refunding. See N.Y.S. 7828, 211th Sess. (1988). In 1989, as the State dealt with its fiscal health, the Commission along with other state entities was encouraged to reduce its budget, which it did, seeking only \$2.5 million at that time. The Commission was able to complete its work after its funds ran out in February, 1990 only because of the pro bono contributions of the Commissioners and special counsel and their firms, and the invaluable support services provided by Fordham University, including making available office space to the Commission.

Commission was given no power to grant immunity and, as previously noted, it was required by its Executive Order to refer to the law enforcement community any evidence which it obtained of criminal wrongdoing. The Commission essentially was directed to investigate issues calling for sweeping reforms in law by documenting the need for such reforms. A fact-finding role was clearly mandated by the Executive Order, and by the reasons publicly stated by the appointing authority for establishing the Commission.<sup>16</sup>

The Commission expressed this view of its role at press conferences and in other forums but without gaining acceptance for it in some quarters during the early going. Some people were upset that the political leaders had created a Commission instead of dealing directly and immediately with the issues raised by the corruption scandals. The pervasiveness of the scandals and the anger they produced among the people of the State led some to criticize the Commission for not taking bold steps immediately. Little recognition was given to the practical need for the Commission to recruit a staff, develop an agenda, and open and complete investigations before it could responsibly address issues of government ethics in New York State. These criticisms served to harm the Commission because they occurred at a time when it needed to build confidence that it would render an important public service against the backdrop of a poisoned political atmosphere.

Notwithstanding these early set backs and difficulties, the Commission resolved from the outset to do its work fairly and thoroughly, and then to let the chips fall where they may as warranted by its investigations. Sometimes it would not be appropriate to hold a public hearing on a subject because of the uncorroborated nature of the information which it had received.<sup>17</sup> In another investigation, involving the City of Albany, the Commission would hold a public hearing, but not issue a separate report, since the hearing had served to focus necessary public attention on the ethical issues present when public officials serve simultaneously in government and private positions.<sup>18</sup>

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16. At a press conference on April 21, 1987 announcing the Commission, Governor Cuomo repeatedly underscored the need for the Commission to be an instrument toward achieving ethics reform. Among other things, he stated that "we have . . . an unprecedented opportunity to bring about institutional reform, reforms that will protect against abuse in our government, our political system, and our electoral system." He added: "Theirs [the Commission] will be a new, fresh, clean judgment on the issues," and "because now we've awakened a call for reform, we have increased the need for the reform effort to succeed."

17. See Lynn, *Ethics Panel Won't Ask Felon to Be a Witness*, N.Y. Times, Feb. 23, 1988, at B4, col. 5.

18. A separate report on the Albany City investigation also was not issued because



Throughout its existence, there was nothing more important to the Commission than meeting the highest possible professional standards of fairness and thoroughness in the accomplishment of its mandate. I recall many times expressing to members of the staff the Commission's view that we should not conduct ourselves as a "witch hunt" or as a group interested in immediate headlines at the expense of fairness. The need for fairness was emphasized because of the far reaching nature of the Commission's investigative power. It had wide discretion to decide what to investigate and when an investigation had reached a point warranting a public hearing. Moreover, individuals called to testify at hearings did not have the right to cross-examine or present witnesses. In a sense, the Commission served as an investigative body as well as judge and jury. Under such circumstances, the potential to damage the reputations of people and entities, as well as to interfere with elections, was considerable. There were few legal restraints except those the Commission chose to impose on itself.

Looking back at this juncture, I am gratified that the Commission was able to engage a dedicated and highly professional staff,<sup>19</sup> and that the media of the State came to support, strongly so, the recommendations of the Commission through hundreds of articles and editorials.<sup>20</sup>

The basis for the Commission's recommendations are described in the reports which are published in this volume. A few comments here about some of these reports seem appropriate.

### Campaign Financing

In accordance with the direction contained in Executive Order No. 88.1 to investigate the campaign financing laws of New York State, the Commission devoted its greatest effort to this subject. We con-

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the Commission conducted its business from February, 1990 to September, 1990 without any budget, causing it to limit the reports that could be issued during that period. The investigation and issues, however, were treated generally in the Commission's reports, *MUNICIPAL ETHICAL STANDARDS: THE NEED FOR A NEW APPROACH* (December 29, 1988) and *UNDERGROUND GOVERNMENT: PRELIMINARY REPORT ON AUTHORITIES AND OTHER PUBLIC CORPORATIONS* (April 26, 1990).

19. It deserves mention that several members of the Commission's staff subsequently became executive directors of important government agencies dealing with issues of ethics reform, to wit: Nicole Gordon, of the New York City Campaign Finance Board; Constance Cushman, of the New York City Procurement Policy Board; and Mark Davies, of the Temporary State Commission on Local Government Ethics. Thomas McShane was also appointed counsel to the latter Commission and Alexandra Lowe was designated by New York City Comptroller Elizabeth Holtzman as a member of the Procurement Board.

20. These articles and editorials are on file at the Leo T. Kissam Law Library, Fordham University School of Law.

cluded early on that there was no more important area affecting confidence in government. After all, 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 well-being of our citizenry. Impropriety in the way candidates campaign strikes at the heart of our democratic system.

Our investigation of the financing of political campaigns in New York State resulted in widely publicized investigatory hearings in 1988 and 1989. The hearings on campaign financing would not have been possible without the development by the Commission's staff of a computerized data base of the information contained in the campaign finance disclosure filings at the State Board of Elections.<sup>21</sup>

We discovered from this massive project that the contribution limits of New York law have not been and cannot be enforced without a computer system. We also learned of the high correlation in a number of areas between political contributors and the recipients of discretionary government benefits, including contracts. The project also revealed the enormous sums of money being given by corporations, political action committees and certain individuals.

The decision to develop the data base came after visits by staff members to the offices of the New York State Elections Board. They discovered on those occasions that the disclosure reports filed by candidates were stored in a remarkably primitive manner, in boxes, in disarray, and many in a form unintelligible to anyone. This shocking first-hand observation led the Commission to condemn the administration of the State's campaign finance laws and to conclude that the disclosure laws operated in a manner which hid information from the public about who contributes to campaigns in the State.

The Commission's investigation of the campaign practices of New York State Comptroller Ned Regan was initiated after it received from an unknown source documents prepared by a political aide in his office. These documents raised serious questions about the relationship between campaign contributors and the recipients of governmental finance business. This investigation, which extended over a

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21. In an effort to lift the veil of secrecy that surrounds political campaigns in New York, the Commission decided to release to the public campaign contribution and expenditure information for state legislators, state-wide and city-wide office holders, state and legislative party committees, political action committees, the New York City Council, and New York City borough presidents. This marked the first time in the history of New York that this information was made publicly available in a format that allows easy analysis. This work of the Commission has been drawn on by prosecutors and the media in their continuing work.

period of many months, ultimately resulted in the hearings at which the Comptroller was subjected to vigorous questioning based on these documents. While this investigation was in progress, the Commission opened investigations examining the campaign finance practices of the Governor and Attorney General. These investigations did not uncover any documents of the kind produced in the case of the Comptroller, but they did raise issues which the Commission felt should be explored with those officials at public hearings. The differences among the hearings of these respective officials was in keeping with the results of the investigations of their individual campaign practices.<sup>22</sup>

As for the investigation of legislative campaign financing, it was complicated by the issue of separation of powers — specifically, to what extent a Moreland Commission could examine legislative leaders regarding the campaign finance practices of legislative party committees. In order to avoid a long drawn out confrontation on the issue of its power to require testimony from these officials, the Commission worked out with them an arrangement under which they were examined on some subjects. The public hearings which resulted focused attention on the need for campaign finance reform with respect to the Legislature, particularly the importance of limiting the size of contributions to legislative party committees. The earlier report by the Commission, *The Albany Money Machine*,<sup>23</sup> revealed for the first time in the history of the State the enormous dependence by the Democratic and Republican parties in the Legislature on campaign contributions from corporations, unions, and PACs — those with an interest in legislation.

### Poughkeepsie '85

The investigation which culminated in "Poughkeepsie '85"<sup>24</sup> was prompted by a Commission visit to that town in the summer of 1987. An unusually large number of residents of that community informed us of their feeling that something seriously wrong had taken place in their Town Board elections of 1985 and that the State's Elections

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22. The later criticism that the Commission was not as tough on the Governor as it was on the Comptroller did not take account of the results of the different investigations. To have done otherwise, although headline-catching, would have been unjustified — a fact not readily appreciated or understood at the time.

23. NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, *THE ALBANY MONEY MACHINE: CAMPAIGN FINANCING FOR NEW YORK STATE LEGISLATIVE RACES* (August 2, 1988).

24. NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, *POUGHKEEPSIE '85: A CASE STUDY OF ELECTION LAW ABUSES* (June 27, 1990).

Board had not vigorously sought to uncover the facts. This festering wound led the Commission to undertake a time-consuming and, as it turned out, litigation-filled investigation. If there is one case study, however, that established the shocking nature of New York's campaign finance law, and how it can be cynically manipulated, it is "Poughkeepsie '85."

### **Talent Bank**

The investigation which led to the report, "Playing Ball with City Hall,"<sup>25</sup> was initiated as a result of visits by Commission staff members to City Hall in order to collect information on contracting and personnel practices. In the course of the visits, they learned of the Talent Bank and of its former director, Nydia Padilla, who no longer was a City employee. When she came to the Commission's offices for a routine meeting, she informed us for the first time of the important documents which she had that pointed to a pervasive system of political patronage in the City, and the efforts to hide them from the public. The Commission investigation which ensued to determine the accuracy of the information became a protracted one, in part because of roadblocks placed in the Commission's way in obtaining documents and because of the conflicting nature of the information provided by public employees in their testimony at private Commission hearings. In the end, the Commission was satisfied with the thoroughness of its investigation and therefore noticed the public hearings which were held in January and April of 1989. It was unfortunate that the extensive nature of the investigation culminated in an election year, but any effort to delay the hearings at that point would have been wrong. The revelations that occurred at the hearings would not have been possible without the courageous actions of Nydia Padilla, whose testimony underscored the importance of whistleblower protections in New York State.

### **Municipal Ethical Standards**

The Commission's report on municipal ethical standards<sup>26</sup> was considered by a number of Commissioners to be one of its most significant accomplishments, since the area of conflicts of interest in municipal government had received so little legislative attention at the

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25. NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, *PLAYING BALL WITH CITY HALL: A CASE STUDY OF POLITICAL PATRONAGE IN NEW YORK CITY* (August 7, 1989).

26. NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, *MUNICIPAL ETHICS STANDARDS: THE NEED FOR A NEW APPROACH* (December 29, 1988).

State level. The Commission's proposed code was developed after extensive input from local officials throughout the State. Despite intense opposition to the idea of any such code by various interest groups, it was gratifying to learn that several New York municipalities had adopted major parts of it on their own initiative and that the governor had included it in his program bill in the Legislature. The material gathered by the Commission in the course of this investigation was turned over to the Temporary State Commission on Local Government Ethics, which is likely to give strong leadership to reform in this area.

### Ethics Training

The impetus for this report<sup>27</sup> came from a discussion with the Nelson A. Rockefeller College of Affairs and Policy in May, 1987, in which we were informed that New York State had practically no programs on ethics training. The Commission thereafter decided to survey the field by communicating with every state agency and many New York City agencies. The survey consisted of written inquiries as to their guidelines and programs with respect to raising ethics consciousness. The survey itself had the positive effect of encouraging agencies to take steps which they reported in their responses. This was not the only investigation which had the unusual impact of stimulating change while an investigation was in progress.<sup>28</sup>

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Throughout the life of the Commission, many efforts were made to thwart its work. They took various forms. Among them were lawsuits brought to hinder the Commission's investigations.<sup>29</sup> Although the Commission succeeded in defeating these efforts, valuable time was taken away from its substantive work and significant Commission

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27. NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, RAISING OUR SIGHTS: THE NEED FOR ETHICS TRAINING IN GOVERNMENT (March 1, 1990).

28. For example, the City of Rochester changed its Open Meetings Law on the eve of Commission hearings, and in the course of our investigation of the secret housekeeping accounts of the political parties, the Legislature changed the law by opening such accounts to public scrutiny. Rochester, N.Y. City Council Resolution No. 87-35 (October 13, 1987). During the course of the Commission's hearings on campaign financing, state-wide and city-wide office holders placed restrictions on their campaign financing activities. Thus, Mayor Koch announced his commitment not to accept more than \$3,000 from a corporation and its affiliates combined, and City Comptroller Goldin announced that he would not accept contributions at all from either corporations or corporate PACs for his 1989 campaign. Comptroller Regan and Attorney General Abrams also announced voluntary restrictions on their own fund-raising.

29. See FINAL REPORT, *supra* note 6, at Appendix D, reproduced *infra* at 281.

funds were expended in the process of handling these cases. Fortunately, some of the lawsuits established new legal precedents that will be helpful to future investigative commissions.<sup>30</sup>

Another form of resistance to the Commission was reflected in press statements by public officials and others seeking to attack the Commission's credibility. It was accused of being partisan, notwithstanding that as many Democrats as Republicans were the subjects of Commission investigations. The Commission's recommendations were condemned as being costly to implement, even though many of its proposed reforms had no fiscal implications and would actually save taxpayer dollars. Some officials said that there was no public outcry for reform, suggesting that there was no reason for change in advance of scandal and abuse. It also was said that the constituency in New York State for ethics reform was a small one. Therefore, why expend time and effort in areas which involved so little political return?

In addition, the Commission was criticized for not having done enough to bring about change. I found these criticisms painful because of the enormous efforts by the Commissioners and staff over a period of 40 months to achieve, in the face of intense resistance, a more ethical government in New York State. It seemed that some critics were more interested in the Commission creating headlines than substance. The Commission, however, viewed its role as one of careful investigation before issuing pronouncements, and it was aware of and sensitive to its potential to damage unfairly the careers and lives of people in and out of government. The criticisms also did not take account of the fact that many of the Commission's recommendations affected those who had the exclusive power to make change, taking away from incumbent officeholders unfair advantages enjoyed by them under the present electoral system. In a sense, the Commission's only real power, through hearings and reports, was to inform and to raise the consciousness of people. How well it did so, of course, is for others to judge. The lack of response to important Com-

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30. See, e.g., *Riker v. New York State Commission on Government Integrity*, 153 A.D.2d 158, 550 N.Y.S.2d 459 (3d Dep't 1990) (holding that the strictures of Civil Rights Law § 73(9) are inapplicable to a Moreland Commission); *Spargo v. New York State Commission on Government Integrity*, 140 A.D.2d 26, 531 N.Y.S.2d 417 (3d Dep't 1988) (finding that the Personal Privacy Protection Law did not ban public disclosure of the contents of an investigative file of the New York State Board of Elections); *New York State Commission on Government Integrity v. Congel*, 156 A.D.2d 274, 548 N.Y.S.2d 663 (1st Dep't 1989) (holding that the fourth amendment did not restrict the Commission's subpoenas duces tecum notwithstanding that the information which was sought might be probative of criminal wrongdoing), *appeal dismissed*, 75 N.Y.2d 836, 552 N.E.2d 170, 552 N.Y.S.2d 922 (1990).

mission recommendations may well be because of the absence of an authentic desire for reform by powerful special interests in New York State.<sup>31</sup>

Having dealt, perhaps too much, with criticisms, fairness to the Commission requires me to note, happily, that a large number of its recommendations have been incorporated into the New York City Campaign Finance Law, as amended;<sup>32</sup> the uniform guidelines issued by the New York City Procurement Policy Board; and, as already noted, the ethics laws passed by various municipalities in the State. In addition, the Commission's campaign financing work offers the most in-depth treatment to date of the inner workings of this area in New York State. But more than specific enactments or work, the Commission has helped keep alive the cause of ethical reform in New York State — a not inconsiderable accomplishment given the enormous resistance to any such reform that manifested itself during the life of the Commission. The remarks of Elihu Root in 1926 continue to be instructive:

There are no worse enemies of all attempts at improving the machinery of government, in any field, state, municipal, national, international, than the people who are always in a hurry, who are dissatisfied if results are not reached today or tomorrow, who think that if they cannot on the instant see a result accomplished, nothing has been done. The process of civilization is always a process of building up brick by brick, stone by stone, a structure which is unnoted for years but finally, in the fruition of time, is the basis for greater progress. I think it makes but little difference what part of that process a man contributes his life to. I think it makes but little difference whether a man gives his life and his service to laying the foundation and building up the structure, or whether he is the man that floats a flag on the battlements and cries, Victory!<sup>33</sup>

Can it be seriously doubted that ethics reforms are vital to the health of our democracy? Ethics leadership sends a message throughout the community served by government which is powerful and beneficial. As Justice Brandeis stated: "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole

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31. Another perspective was provided me by one prominent member of the New York State Legislature in the fall of 1989. He said in substance that some members of the Legislature were still angry by the controversies of 1987 and what they consider as the unfair attacks on their integrity. Therefore, they were not anxious to reopen "old wounds" by engaging in debate on ethics reforms.

32. Local Law 8 of 1988 (codified as NEW YORK, N.Y. ADMIN. CODE §§ 3-701-3-714 (1988)).

33. See T. SCHICK, *THE NEW YORK STATE CONSTITUTION CONVENTION OF 1915 AND THE MODERN STATE GOVERNOR* 133 (1978).

people by its example."<sup>34</sup> A government committed to ethics reform is more open, more competitive, and less subject to corrupting influences, and it gains the confidence of the public it serves.

Tragically, the citizens of New York State witnessed during the 1980s the degradation of public service by the wrongdoing of public servants and party leaders. It would be a mistake to label such malfeasance as unique to our times, and it must be acknowledged that most officials are hard working and honest. But the recent spectacle of public figures in the 'prisoners' dock inspires sober reflection on what behavior we as citizens will accept and what we can do to alter the state of affairs. When public officials violate the public trust, much more is at stake than the breaking of the law, for such violations strike at the very foundations of government.

What should we therefore expect of our public officials? If there is one answer which resounds over and over again, it is that they act in the interest of the people, and not in their own self-interest. To be sure, it is not easy in the present day world of American politics to convince an incumbent to embrace changes and raise ethical standards which may limit his or her present power or advantages. Yet, we are at a point in time when New York's political system demands such change. It has neglected ethics reform in a large number of areas for too long.<sup>35</sup> It is clear what needs to be done. The Commission has laid out in painstaking detail a blueprint for reform. Its recommendations as a whole form a guide to a more healthy, honest and democratic political climate in New York State. We cannot hope to maintain a democratic system with any integrity if we fail to attack with vigor and courage the problems that beset us.

Leadership from elected officials alone will not be sufficient to move New York in the direction it ought to go. Critical to the shaping of that leadership is the engagement of the people of the State in areas of government ethics. Legislators need to hear from their constituents

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34. *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

35. Since the Commission's creation, there have been some positive changes. The New York City Campaign Finance Law adopted in 1988 under Mayor Koch's leadership represented pioneering legislation, and the New York City Procurement Policy Board did good work in laying out for the first time uniform guidelines to govern the expenditure of public money. Local Law 8 of 1988 (codified as NEW YORK, N.Y. ADMIN. CODE §§ 3-701-3-714 (1988)). At the State level, there also was the start of a period of ethics reform in 1987 under Governor Cuomo's leadership with the passage of the Ethics in Government Act and the Government Accountability Act. Ethics in Government Act, ch. 813, 1987 N.Y. Law 1404; New York Governmental Accountability Audit and Internal Control Act of 1987, ch. 814, 1987 N.Y. Laws 1456. In the following years the Governor placed before the Legislature bills incorporating many of the recommendations of the Commission, although none was adopted.



on these issues. Existing citizen groups need to increase their commendable efforts to communicate to state-wide officials the importance of ethics reforms. New groups need to be formed. Only if widespread interest is manifested can we realistically expect elected officials to change the status quo from which they reap so many practical advantages.

The Commission has pointed the way, now others must find the will. It would be a sad commentary on the history of these times if New York State, after commissioning a wide-ranging, non-partisan examination of government ethical standards, were to squander the opportunity for meaningful reform.

In closing, I wish to express my eternal gratitude to my fellow Commissioners for their help and friendship, to the Commission's special counsel and staff for helping shape an important agenda for restoring the public trust.

To my parents, both of whom died during the tenure of my chairmanship, I dedicate my work for the Commission, hoping it will contribute in some meaningful way to a better New York. They emigrated from County Mayo, Ireland, to the United States as teenagers in the 1920s and spent their adult years in New York, helping and serving others with devotion and integrity.

