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NEW YORK CITY CAMPAIGN FINANCE BOARD

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5

"DOING BUSINESS" HEARING

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42 West 44th Street

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New York, New York

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Tuesday, March 1, 2005, 1:08 p.m.

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15 B E F O R E:

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CHAIRMAN FREDERICK A.O. SCHWARZ, JR.

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Reported by: Marc Russo

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PAUL BECKER, CSR, P.C.

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2 A P P E A R A N C E S:

3 Members of the Board:

4 Dale C. Christensen, Jr.

5 Alan N. Rechtschaffen

6 Joseph Potasnik

7 Katheryn C. Patterson

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9 Staff:

10 Nicole A. Gordon, Executive Director

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12

13 ALSO PRESENT:

14 The public

15 Staff members

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P R O C E E D I N G S

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CHAIRMAN SCHWARZ: First, Mr. City

Clerk, Mr. Robles, thank you very much for being

here and I'll introduce you in a minute. But let

me just make a couple of comments before we start.

I want to thank the board people who put

the hearing together; thank the City Bar which is

always available and cooperative on things that

are important to the City.

Today we're going to be talking -- it's

our second hearing on what, if anything, should be

done in connection with people who do business

with the City, making contributions to candidates

running for City office.

At our first hearing, we looked at the

broad subject of pay-to-play, with witnesses

providing testimony on the scope of the problem

and the potential for, and types of potential for

future regulation.

Today's hearing will concentrate on the

subject of lobbyists and that's why the City Clerk

is the lead witness.

The subject of lobbyists and whether

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2 their role in making - and I would think we should
3 also consider all bundling contributions - may
4 further add an appearance of influence meddling in
5 City Government, where on the topic of today's
6 hearing is more narrowly focused on the subject of
7 players within City politics, particular players
8 and we welcome additional comments more broadly on
9 the general subject of doing business.

10 And I'd like to make two other opening
11 comments.

12 And we're about to look at the subject
13 of lobbyists, and just without being terribly
14 informed on the subject, it seems to be that's
15 likely one where regulation is appropriate, but we
16 really want to hear, not just the case in favor of
17 regulation, which was the case made by all of the
18 witnesses who appeared before us the last time,
19 but we want know the case against regulation.

20 And in my own experience from doing the
21 City Charter in 1989, was that public decisions
22 are much better when the decision-makers have been
23 -- have been provided with conflicting positions.

24 So, you know, the time will come if we
25 issue -- if we issue possible proposed

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2 regulations, when surely people are going to come
3 forward and make arguments against any regulation.
4 But I'm just saying this because my remarks will
5 be put on the web site eventually, because it
6 would be good if naysayers or people with dubiety
7 come forward earlier rather than later so that we
8 can understand what they're thinking.

9 It's healthy to get opposing views.

10 The second point is to reemphasize that
11 there is work going on with the administration on
12 creating databases and that's -- that was a good
13 start with respect to contracts. But that work
14 is not going to be as useful as it should be until
15 the databases are more complete and are compatible
16 with and communicate with our database so one can
17 automatically have available for -- from our
18 disclosure system, information about
19 contributions; information about who does business
20 with the City which would come from city
21 databases. And then that can be matched with our
22 database which says who are making contributions.

23 This all being said, Mr. City Clerk,
24 which is a fancy title, it's good to see you
25 again. And you've been a long-time servant and

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2 helper and responsible person to the City and so
3 we welcome you here.

4
5 (Whereupon, the City Clerk Victor Robles
6 and Patrick Synmoie gave the following testimony):

7 MR. ROBLES: Thank you, Mr. Chairman.

8 CHAIRMAN SCHWARZ: Can I just say one
9 other thing? We received a letter from former
10 Speaker Peter Vallone which is in the record, or
11 will be in the record on the subject of, the
12 general subject of doing business with the City.

13 MR. ROBLES: Particularly because it was
14 he who shepherded this bill and that this law we
15 thought about, and I was privileged of serving in
16 that body while he was then the Speaker.

17 Mr. Chairman, it's really good because
18 you and I go back many years, you know, we've been
19 in public life for a long time. And before I get
20 into the text of my remarks, let me say, just so
21 you understand, one item.

22 A former of member of the New York State
23 Assembly for six years that I was elected to City
24 Council, I served there for 17 years and I was the
25 majority Whip of the council before term limits.

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2 I was appointed to the by Council,
3 elected by the Council to become the City Clerk.
4 Actually, the Clerk of the Council who, under the
5 charter, is, also assumes responsibility of the
6 City Clerk and the City of New York, so I wear two
7 hats.

8 That appointment came in October of
9 2001. I've only been in office for about three
10 years so, and I inherited an institution of
11 important City Clerks like David Dinkins who then
12 later on became the Mayor of the City, which I
13 have no intentions of becoming the mayor.

14 CHAIRMAN SCHWARZ: You're not making a
15 Shermanesque renunciation of that, are you?

16 MR. ROBLES: No, I'm just simply saying
17 that the office is an office that has
18 distinguished people who came before I did.

19 And I want to again thank you Mr.
20 Chairman, Chairman Schwarz and my colleagues,
21 Commissioners of the New York City Campaign
22 Finance Board.

23 I am Victor Robles, and I'm the City
24 Clerk with the City of New York and the Clerk of
25 the Council. And today I'm accompanied by

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2 counsel to the City Clerk, Patrick Synmoie.

3 And as you know, the City Clerk wears
4 many hats, not at least of my duties as a City
5 Clerk is to administer and enforce the provisions
6 of the New York City Lobbying Law, Title 3,
7 Subchapter 2, Administrative Code of the City of
8 New York.

9 By way of background information, the
10 New York City Lobby Law was enacted in 1986 as you
11 pointed out, as Speaker Vallone was one of those
12 who really shepherded this bill.

13 Local Law 14 of 1986 and codified as the
14 -- codified as the Chapter 3 of Subdivision 2 of
15 the Administrative Code of the City New York and
16 became effective on December 1, 1986.

17 Under that law, all lobbyists must
18 register annually and submit four quarterly
19 reports. Clients must submit an annual report.

20 What is a lobbyist? And the answer
21 appears to be simple enough.

22 Someone who is engaged in lobbying.
23 The New York City Administrative Code, Section
24 3-211(a) defines a lobbyist as every person or
25 organization retained, employed or designated by

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2 any client to engage in lobbying. And of course,
3 certain governmental officials are excluded. And
4 the law provides that the term lobbyist shall not
5 include any officer or employee of the City of New
6 York, the State of New York, any political
7 subdivisions of the State or any public
8 corporation, agency or commission of the United
9 States when discharged with his or her officials
10 duties.

11 Now, how do you define lobbying?

12 Lobbying or lobbying activity is an
13 attempt to influence any specific action - that I
14 will list shortly - other than a determination in
15 the judiciary proceedings. And the specific
16 actions are as follows:

17 The passage or defeat of a local law or
18 resolution by the City Council.

19 The approval or disapproval of a local
20 law or resolution by the Mayor.

21 Any determination made by an elected
22 City official or an officer or employee of the
23 City with respect to the procurement of goods,
24 services or construction, including the
25 preparation of contract specifications or the

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2 solicitation, award or administration of a
3 contract, or with respect to the solicitation,
4 award or administration of a grant, loan, or
5 agreement involving the disbursement of public
6 monies.

7 Any determination by the Mayor, City
8 Council, City Planning Commission, the Borough
9 President, the Borough Board, or the community
10 board, concerning zoning or the use of development
11 improvement of real property subject to city
12 regulations.

13 Any determinations made by an elected
14 City official or an officer or employee of the
15 City with respect to the terms of the acquisition
16 or disposition by the city of any interest in real
17 property, with respect to a license or permit for
18 the use of real property, of or by the city, or
19 with respect to a finance concession or revocable
20 consent.

21 The adoption, amendment or rejection by
22 an agency of any rules having the effect of law.

23 The outcome of a rate-making proceeding
24 before an agency.

25 And any determination of a board or

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2 commission.

3 These are various exceptions to the
4 lobbying law. Examples of these exceptions
5 include person who advise other persons who
6 perform lobbying;

7 Newspapers and other types of media;

8 Witnesses to legislative or executive
9 agencies, hearings or adjudication proceedings.

10 And contractors or prospective
11 contractors who interact with any City official as
12 part of a normal procurement process.

13 Let me summarize the mechanism of
14 lobbyist registration and operating.

15 The first step is to determine if one
16 meets the \$2000 threshold. A person needs to
17 expend, incur or receive an amount in excess of
18 2000 of reportable compensation and expenses in
19 order to be considered a lobbyist.

20 The next step is to register.

21 Lobbyists who have been retained or
22 employed by December 15th and reasonably expect to
23 meet the threshold amount, needs to register by
24 January 1 for the next year.

25 Lobbyist who have been retained or

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2 employed after December 15 and reasonably expect
3 to meet the threshold amount, needs to register 15
4 days after retention or employment and in no case
5 later than ten days after actually incurring or
6 receiving such compensation for expenses.

7 The registration process is rather
8 straightforward.

9 Obtain a registration form from the
10 offices of the City Clerk. Typically we mail
11 registration statements to all lobbyists who
12 register in the past calendar year.

13 Complete the registration form, one for
14 each client and file together with the retainer
15 agreement or designation letter with a check in
16 the appropriate amount of \$150 for the first
17 client, and \$50 for each additional client.

18 Registration must be done on an annual
19 basis. If the period of representation exceeds
20 one year, a registration is required at the
21 beginning of the next calendar year.

22 Each lobbyist must file quarterly report
23 for each client. The reporting periods are
24 January 1 to March 31; April 1 to May 31; June 1
25 to September 30, and October 1 to December 31st.

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2 Periodic reports are due by the 15th day
3 after the end of the reporting period. In other
4 words, on April 15th, June 15th, October 15th and
5 January 15th.

6 Separate annual reports must be filed by
7 both the lobbyist and client. They are due by
8 January 15th.

9 In the lobbyist's case, the fourth
10 quarter, the period reports double as the
11 lobbyist's annual report. Clients with multiple
12 lobbyists must list each lobbyist and report the
13 compensation paid to each lobbyist.

14 There was a tradition that we have
15 inherited and that is carried on to this day,
16 which is the annual publication of the lobbyist
17 report.

18 Now, let me point out that that's not
19 mandated, but when I became City Clerk, that was
20 part of tradition in my office where we would, at
21 the end of the calendar year, will put out an
22 annual report.

23 That document lists all of the lobbyist
24 and the client that registered with us and
25 detailed the total sums received by lobbyists in a

1
2 given calendar year.

3 Each year we strive to produce this
4 document by early May.

5 There is an obstacle which we face as we
6 work to meet our self-imposed early May deadline.
7 The obstacle is the lack of teeth the law gives us
8 in dealing with late filers.

9 Currently there is no provision in the
10 Lobby Law to penalize a lobbyist that does not
11 meet any of the following deadlines:

12 The only enforcement measure we have is
13 to be tenacious in calling the later filers to
14 harass them into submitting their reports.

15 That's quite an undertaking when you
16 consider there were over 200 lobbyists registered
17 last year.

18 To combat late filing, we have
19 established an internal policy that after a
20 certain deadline, the lobbyists who have not
21 submitted all of their reports will have reported
22 only the information we have as of that date.

23 We realize this is not the optimum
24 situation since the report will not be a true
25 reflection of the ultimate facts.

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2 Without this policy, we would never be
3 able to get our annual report published. Matter
4 of fact, my first experience was, my first year
5 was that that report did not get out for over a
6 year. That's why I decided to put a policy in
7 place and as I continue, you will see why I did
8 that.

9 Without this policy, we would never be
10 able to publish our annual report as I mentioned.
11 Even last year, we published an amended report
12 when a lobbyist complained that numbers were not
13 correct. It turned out that simply they forgot to
14 file all their reports.

15 Clearly, the enactment of an enforcement
16 provision would improve our ability to publish our
17 report on time and give lobbyists an incentive to
18 file on time.

19 CHAIRMAN SCHWARZ: Can I ask you just to
20 comment on this?

21 MR. ROBLES: Sure.

22 CHAIRMAN SCHWARZ: Have bills been
23 proposed to provide an enforcement mechanism?

24 MR. ROBLES: Mr. Chairman, as you say
25 that, I have, my counsel brought this to my

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2 attention and I have had discussions with both the
3 administration and with the Speaker's Office, IE,
4 the legislative, are there any bills being
5 proposed? I'm not aware of it and that was at
6 this juncture.

7 I think like everybody else, this law
8 when enacted, has been moving forward and I'm
9 assuming it's time for us to start analyzing and
10 looking at, and I think the commitment that I, as
11 a City Clerk, for whatever length of time I remain
12 as City Clerk, whether I get re-appointed or not,
13 the fact is that I want to set the tone to leave -
14 if I'm not the one - of what are some of the
15 loopholes that I see in this law. And currently
16 right now, as I said, the only reason why this
17 lobbyist reached out to us was because when we
18 published it, and now we don't look good, we get
19 embarrassed.

20 CHAIRMAN SCHWARZ: He or she wanted to
21 show that you were doing more.

22 MR. ROBLES: Right, and so in fairness
23 to the spirit of the art of compromise, I allowed
24 the amendment to that and I would tell you that I
25 have intentions of doing that henceforth.

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2 I just wanted to say that there is that
3 part that I believe that needs to be addressed and
4 I will continue to work in that respect.

5 In closing, we thank you for the
6 opportunity to provide testimony concerning the
7 administration of the New York City Lobbying Law
8 and the role of lobbyists in public elections.

9 We appreciate the efforts of the
10 Campaign Finance Board to shape the manner in
11 which campaigns for public office are conducted
12 for the benefit of all New Yorkers.

13 There are handouts for the board members
14 that I brought to you, have not only my testimony,
15 but also the annual report and also other
16 documents that I have included in my testimony.

17 And I will be more than happy to take
18 any questions that you may have for me.

19 CHAIRMAN SCHWARZ: Let me start with one
20 and then my colleagues should jump in.

21 Based on your long experience in
22 government, do you have a view on whether it would
23 be a good thing in terms of public confidence in
24 government, if there were limits placed on
25 political contributions from people who do

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2 business with the City, which lobbyists do in
3 their own way?

4 MR. ROBLES: You know, when I took this
5 position, and again, I want to be clear, because
6 as the City Clerk of the City of New York, I'm
7 also a clerk of the Council and I wear several
8 hats.

9 One of the things that I tried to do is
10 be fair and carry out that which is mandated of me
11 with the responsibility that I have.

12 I've always believed, now mind you,
13 that's what I believe.

14 CHAIRMAN SCHWARZ: Yes, that is --

15 MR. ROBLES: That government is of the
16 people, by the people and for the people and so
17 that whatever a government does is reflective of
18 the masses who helps them get elected.

19 And so in that respect with my political
20 career as an elected official, and now as an
21 appointment, we'll use the word bureaucrat, I have
22 always tried to conduct myself to the highest so
23 that people look at you and respect you for what
24 you are.

25 I gotta be honest with you, Mr.

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2 Chairman, I have not really studied, all I know is
3 I've been trying to deal with all the various
4 responsibilities I have, and the lobbyist effort
5 is one of the things that I am now beginning to
6 deal with in the last three years.

7 I point out to you that there is a
8 loophole, and the loophole is - while I'm not
9 mandated to put out an annual report - I believe
10 that the public are expecting what in essence, if
11 what you're saying is to have government show them
12 who's who and what they've done and so I have
13 continued to carry that out in terms of the annual
14 report.

15 My frustration has been three years that
16 I've been City Clerk is that one year I could not
17 get that report out for almost a year; that will
18 never happen again. And so the only way
19 currently, unless there is an amendment to the
20 law, and you put into a law enforcement, I do not
21 have the enforcement power or, to impose penalties
22 against them. I just need to right now and guess
23 I view two things, one is embarrassing, and
24 second, moving forward and publishing the report.

25 I guess I was successful because

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2 somebody reached out to me and I hope this year
3 they know that I'm not playing games and they -- I
4 don't believe that they will do that. That is the
5 only mechanism that I have right now. But
6 honestly I have not really looked into that
7 technical part of it that you pointed out.

8 CHAIRMAN SCHWARZ: I've got some other
9 questions but I want turn to all the other members
10 first.

11 MR. CHRISTENSEN: Thank you very much
12 for coming here, Mr. Robles.

13 One question reviewing the lobby law,
14 and I think this testimony is very helpful because
15 I think the more perspective, at least should I
16 support my own, this was not an area that I was
17 aware of that the City already had some disclosure
18 activity going on.

19 If I understand the regulatory scheme
20 correctly, you only reach people who have
21 retained, been retained by a client to lobby on
22 their own behalf. You do not register
23 corporations or individuals who lobby directly on
24 their own behalf; is that correct?

25 MR. SYNMOIE: Let me try to -- let me

1
2 try to clear that up for you.

3 Basically, there is a threshold so any
4 person, corporation, entity, once you reach that
5 threshold you're then determined to be a lobbyist.
6 And the threshold is that you either have the
7 expectation of or you earn or you expend over
8 \$2000. And so once that happens you become a
9 lobbyist.

10 Now, some of the lobbyists are obviously
11 corporations and tend to be, although some are just a
12 one-man shop. And so once you reach that
13 threshold you then have to register.

14 MR. CHRISTENSEN: So, if, for example,
15 Con Edison is appearing before the City Council on
16 its own, doesn't retain any, you know, any of the
17 leading lobbyist here, they have to register?

18 MR. SYNMOIE: Presumably because they're
19 employees, they have to pay them a salary which
20 more than likely would exceed the \$2000 threshold.

21 So it pretty much captures most people.

22 MR. ROBLES: Let me point out they are
23 reaching out to the City Council and the law is
24 clear, whether it's the Borough President's,
25 whether it's City agencies, the fact is if they're

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2 reaching out and there's a threshold and they
3 trying to - want to be careful with the word - but
4 bringing their points, bring their point forward,
5 they're lobbying and even Con Edison, whoever that
6 person is which my experience is, correct me if
7 I'm wrong, for the most part, you have a
8 governmental person that's really paid by Con
9 Edison or anyone one who does corporation. And
10 they will have to register to the City Clerk's
11 Office as a lobbyist.

12 MS. PATTERSON: I'd like to follow that
13 through a little bit.

14 You said there was an exception for
15 contractors or prospective contractors who
16 interact as part of the normal procurement
17 process.

18 So if an entity or person has a business
19 and is seeking and bidding for City business and
20 submits the necessary proposals and connection
21 with the bidding process, or any other part of the
22 procurement process, that entity itself would not
23 be a lobbyist, but when hired, one of the
24 organizations in here that's the organization
25 that's hired would be treated as a lobbyist; is

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2 that right?

3 MR. SYNMOIE: Well, I think you have to
4 step back a little and just look at the whole
5 spirit of the law. And part of what the
6 exceptions are doing is that if, let's say for
7 instance, you may have influenced someone to get
8 the contract, and at that point maybe you were a
9 lobbyist. But once you've gotten the contract,
10 what is really happening is really administrative.
11 You're working out of the various things going
12 back and forth.

13 If you think about the spirit of the law
14 and you look at the way it's laid out, anyone who
15 sort of routine, lawyers, newspapers, you know,
16 people who are just not really looking to exert
17 influence, because that's the whole point, you're
18 trying to because people are exerting influence.

19 So once you get past the point of
20 exerting your influence, then typically that's
21 where the exceptions fall in.

22 MS. PATTERSON: And the other exception
23 that I was curious about is when the City Council
24 has to hold hearings in anticipation of
25 determining whether it should adopt new

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2 legislation, someone who actually appears at those
3 hearings is not necessarily a lobbyist just by
4 virtue of his appearance; is that right?

5 MR. SYNMOIE: Because they're called,
6 because it's very much like you called us here to
7 come and testify. They've been called to testify
8 and the accountability would not be lobbying.

9 MS. PATTERSON: Okay, and one last
10 question, how readily accessible to citizens would
11 this annual report be? Is it available on-line,
12 or does someone have to know it exists in order to
13 request it?

14 MR. ROBLES: Currently it is not on line
15 because when I first became City Clerk, we didn't
16 have a web site. And I can tell you that under my
17 administration three years, not only do we have a
18 web site, it's bilingual, particularly since I
19 happen to be one of those that fought so hard in
20 saying that you need New York City is the not
21 melting pot, but that beautiful salad of people
22 that makes New York City what it is.

23 And so that is my goal and that's why I
24 also, when I -- when the New York Executive
25 Director reached out to me to meet with your staff

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2 and in how we work together with, do it in putting
3 in -- it into a web site, whether it's my web site
4 or the City's web site, that is public
5 information.

6 See, that's the many hats; if you were
7 telling me, talking to me about my marriage
8 bureau, State law prohibits me because marriage
9 records are confidential up to 50 years. But the
10 City Lobby Law is a public record.

11 And so everyday for example, people come
12 to my office, whether it's newspapers or
13 individual groups, and they have the right to look
14 over these records so long as we make sure that we
15 oversee that -- those records stay where they're
16 supposed to be.

17 But they're public records. So if the
18 question is, do I have a problem with working
19 towards doing it or someone to make it public,
20 easily accessible to the public? No, that's what
21 the law is, it's a public document, it's public
22 record.

23 CHAIRMAN SCHWARZ: Alan.

24 MR. RECHTSCHAFFEN: I'm sorry, I may
25 have missed this. What is the current

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2 repercussions of not filing if you're a client or
3 a lobbyist?

4 MR. ROBLES: I just -- well, let me just
5 go back.

6 There was none.

7 MR. RECHTSCHAFFEN: There still is none?

8 MR. ROBLES: There is none, there is
9 none.

10 So what I did when I came, my
11 frustration is, and sometimes when, you know, you
12 look, I'm a believer that you -- when you see
13 something, you move towards trying to correct it,
14 but do it in a way where you don't become enemies
15 and people don't get threatened by you.

16 What I'm saying here is not to threaten
17 anybody. The fact is that right now there's a law
18 I have to implement, but you give me a law that
19 says that I have to make sure that certain reports
20 are filed at a certain time, quarterly reports.
21 And at the end of the calendar year you're
22 supposed to have an annual report which is
23 supposed to be public.

24 The problem with that is that it looks
25 good, sounds good, but I just told you, my

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2 frustration was - and when I just came in - I had
3 to wait a whole year. And so what I decided to do
4 myself, I have the right as a Commissioner to make
5 my own policies, was that I said well, I'm not
6 going to hold up a public document just because of
7 a handful. And unbeknown to me, when I did that,
8 guess what happened? Because people became
9 embarrassed like you said, they love to see where
10 their status is. It's about capital and money.
11 And so I know the person because that person used
12 to lobby me when I was the City Council and the
13 State Assembly.

14 I moved forward reminding that person
15 that this will be an exception of the rule where I
16 will allow an amendment, but clearly I also went
17 on record telling them, all of them, that that is
18 an exception to the rule, that I will not do it
19 again; that they're supposed to file when they're
20 supposed to and if they don't, I will move forward
21 to publish this report.

22 If this year comes May, I have every
23 intentions of putting out this report when it's
24 supposed to be, in May, not in December.

25 Whoever's in there is based upon the

1
2 information that you provided my office with,
3 these quarterly reports and the annual report.

4 MR. RECHTSCHAFFEN: But the premise that
5 you're going on is that people want to read these
6 reports, right?

7 You're going under the premise that
8 people want to be included in the reports. But
9 what happens if somebody wants to be involved and
10 doesn't want to let anybody know about it?

11 MR. ROBLES: Well, let me just be frank
12 and I'm not a lawyer but a simple guy from
13 Brooklyn, became a big shot in New York City,
14 that's why I got him.

15 The fact is the law says you will report
16 -- you will file reports, it's not a question
17 whether you want to or not, you have to do it.

18 MR. RECHTSCHAFFEN: And if you don't?

19 MR. ROBLES: Well, that's my point, my
20 point is that right, okay --

21 CHAIRMAN SCHWARZ: But it's a clearly
22 serious problem that ought to be addressed just to
23 make the lobby law and do it.

24 MR. SYNMOIE: Let me jump here in with a
25 lawyer kind of comment.

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2 The law does give the City Clerk some
3 sort of punitive powers, but it is so unwieldy.

4 What we're saying is that there's no
5 specific thing that says if you file late you can
6 be punished. But certainly if you don't file at
7 all we can certainly take action. But I --

8 MR. RECHTSCHAFFEN: What kind of action
9 can you take?

10 MR. SYNMOIE: The law says you can --
11 the City Clerk has the sanction to -- has a power
12 to sanction them up to, I think ten, you know,
13 thousands of dollars. But first you have to go
14 through some sort of process.

15 We have to drive over to AOR and it
16 would be a rather time consuming process.

17 MR. RECHTSCHAFFEN: So this never
18 happened?

19 MR. SYNMOIE: The point is it's never --
20 I don't think it's ever been tried out and no one
21 even knows that it exists. Maybe I do, but nobody
22 knows it exists. So there's no practical way of
23 really putting any teeth in the law.

24 So if you file late, what we do, we
25 continue to call you until you file.

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2 CHAIRMAN SCHWARZ: So you clearly don't
3 have, you got a hypothetical or theoretical
4 fine --

5 MR. SYNMOIE: Correct.

6 CHAIRMAN SCHWARZ: -- but you have no
7 right to delist, for example --

8 MR. SYNMOIE: No.

9 CHAIRMAN SCHWARZ: -- or bar from.

10 MR. SYNMOIE: Not unless we acknowledge
11 we have some sort of official hearing.

12 MR. RECHTSCHAFFEN: And you in no way
13 have identified lobbyists who you have no contact
14 with, who've never filed, who you're not familiar
15 with through your previous public service?

16 MR. ROBLES: Well, let me just say this,
17 and again, I now separate what I was and what I
18 am.

19 The fact is that what I am now, I go by
20 what is before me. What's before me is a law that
21 says and it spells out what meets -- what criteria
22 you have to meet.

23 The fact is that if someone who is not
24 -- someone who's lobbying and doesn't meet the
25 criterias, don't have to register.

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2 MR. RECHTSCHAFFEN: Right, it's a very
3 low threshold though.

4 MR. ROBLES: I understand that. I guess
5 the answer to your question is, that's my
6 frustration. I mean, I would love to but I'm
7 limited to what I have. And when I have
8 something, the process takes so long sometimes, I
9 mean, I -- in the three years I've been the City
10 Clerk, for example, I'm not aware that before
11 that, a letter was ever sent to them.

12 MR. RECHTSCHAFFEN: I mean, my
13 frustration is greater than yours, I think if it's
14 frustration is that it sounds like that you have
15 people engaging in lobbying activities and there's
16 nobody who can tell or nobody checking to see if
17 those activities are going on. So people can be
18 getting a, you know, working in this profession
19 and not comply with the law and that's not on your
20 radar screen because you're so busy dealing with
21 the people who are filing because you know about
22 them.

23 MR. SYNMOIE: Right, I believe -- that's
24 the point you're making is that it is definitely a
25 voluntary thing, it isn't like filing your income

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2 taxes. We don't have sort of police and power and
3 go around the City and see who actually is doing
4 lobbying if -- they have to come forward, yes.

5 MS. GORDON: I want to partially report
6 to the Board and also address a little bit this
7 issue that Mr. Robles has raised.

8 Mr. Robles and his staff and our staff
9 and Gino Manchini the Commissioner of and his --
10 and representatives from his staff met last week
11 to talk about computerizing the lobbyist data
12 which is computerized, but not in a
13 state-of-the-art way, not in on -- not in a way
14 that I think everybody in the room agrees is
15 required.

16 And it strikes me that since I think
17 everybody's goal is at minimum, that this
18 information should be easily accessible,
19 searchable and at some point compatible with the
20 Campaign Finance Board system, the Board might
21 consider that it has independent interest in how
22 the lobbyist law, whether or not it has internal
23 teeth to it, because presumably we want the
24 disclosure to be meaningful to be public. Our
25 data is audited and we have serious penalties that

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2 the Board can asses. And again, it strikes me
3 that the Board might help in this effort simply
4 because it has an interest that when the public
5 compares the lobbyist data and the Campaign
6 Finance data, they should be equally reliable and
7 up to date.

8 So maybe it's something that the Board
9 can work with the City Clerk's office on as
10 legislative proposals are developed.

11 CHAIRMAN SCHWARZ: I think the, just
12 speaking for one member of the board, we strongly
13 support that it would be good for us and it would
14 be go for the public interest and it would be good
15 for your office.

16 You know, this -- I think you provided
17 the, I guess this is the law or --

18 MS. GORDON: I gave to the Board the
19 copies of the summary that your office prepared
20 and you gave last week.

21 CHAIRMAN SCHWARZ: And there was an
22 interesting provision in it in paragraph F, little
23 A, that while I doubt that it makes contributions
24 from lobbyists illegal, it has a flavor that says
25 watch out for illegal contributions from lobbyists

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2 and so I'd just like to read it and then get
3 whether particularly the counsel agrees with me
4 that even if it doesn't make contributions
5 illegally from lobbyists, it at least suggests
6 that there is something to watch out for.

7 And there's under the heading lobbyist
8 obligations: "A, to abstain from doing any act,
9 blah, blah, blah, on a matter or a proposal to
10 create to place a member of the City Council, the
11 Mayor or any other officer charged by law making a
12 decision, under personal obligation to him or her.
13 And the contribution while it may not -- may not
14 legally fit those words, the flavor of the
15 contribution is that they tend to have an effect
16 on the public official; you got the contribution
17 and counselor, I wonder if you've thought about
18 the implications of that language?

19 MR. SYNMOIE: I guess I should watch my
20 language here. But certainly I guess it depends
21 on the view you take of contributions.

22 Certainly, we hear a lot of politicians
23 who say, you know, I took the money but it didn't
24 matter to me. But I guess the whole point of the
25 law is that you don't want to create the, any sort

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2 of appearance of impropriety.

3 So anything that's given that could
4 influence that person's thinking is arguably
5 barred. So one could argue that, but I don't
6 think anyone has ever taken that interpretation as
7 far as I know.

8 CHAIRMAN SCHWARZ: Certainly the spirit
9 of it is --

10 MR. SYNMOIE: The spirit of it.

11 CHAIRMAN SCHWARZ: -- you expressed it
12 much more than the Clerk did or I did.

13 Mr. Robles, based on your experience or
14 counsel, based on yours, we have here a list, a
15 long list, it's a very helpful list. They're
16 mostly firms, law firms, lobbying firms and
17 individuals who lobby; I only happen to see one
18 corporation like the Con Ed that Dale mentioned.

19 But do you have a sense -- and you have
20 elsewhere in the report how much -- who's the
21 highest ten earner and so forth.

22 Do you have a sense about rough
23 proportions of how much of lobbying is directed
24 toward the City Council as opposed to the Mayor?
25 That would be one question.

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2 Another would be, and I know you may --
3 I'm just asking for a rough judgment.

4 Another would be, how much lobbying
5 affects laws, how much of it might affect land use
6 decisions and what else would be on the, high on
7 the list of lobbying?

8 MR. ROBLES: Well, I'll turn to Patrick
9 because he actually carries out this for me again,
10 City Clerk has a lot of hats, a lot of
11 responsibility.

12 As far as in the three years since I've
13 been City Clerk, to be honest with you I've been
14 so busy trying to get them to do what they're
15 supposed to do and get the report out that I -- and
16 also try to make my whole operation more
17 consumer-friendly, more professional, that unless
18 things are brought to my attention I, you know,
19 I'm assuming that I inherit something that this
20 has been in place before I came, I tried to, where
21 possible, try to make it better and move towards
22 trying to change it. But I don't expect it to
23 happen in, at least in my term since my terms ends
24 next year, 2006.

25 All I can do is perhaps give the

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2 direction and leave what I believe we need to look
3 at, that's how I'd like to answer that. Because I
4 have really had the time to look at that in
5 particular, because when I came in, it was about
6 getting them to submit their quarterly report and
7 their annual report, which I saw that when Patrick
8 used to come to me, that was not happening.

9 Second, the annual report, my first
10 year, my first embarrassment was that - I don't
11 how they did it before - whether they got the
12 report out, I know that my first year took me
13 almost a year before I got the report out. I had
14 no intentions of keeping that legacy going.

15 And so at this point, Mr. Chairman, I
16 really have not -- I cannot answer that, I really
17 have not focused on that, I focused on the
18 implementation, unless Patrick can.

19 MR. SYNMOIE: Yeah, I wish I could give
20 you a better answer but that's not the point what
21 we focus. Although the -- this statement that
22 asks that you list who the person you tend to
23 lobby, on the quarterly reports, also asks that
24 you list the various person that you lobby.

25 It is data that we have in the record

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2 but it's nothing that we focused on. So anything
3 I give you would be based on empirical, not really
4 on empiric evidence but we do not really focus on
5 that one point, so I'd rather not comment.

6 CHAIRMAN SCHWARZ: Let me see if there's
7 another question that I could ask that would
8 elicit something that I think's important for our
9 record.

10 You know, the most of these pay-for-play
11 laws deal with contracts, and at our last hearing,
12 a number of commissions and a number of witnesses
13 said well, land use is also a subject that's
14 really important where a lot's at stake. And
15 without your being able to break down the
16 percentage of lobbying that goes into land use
17 questions, is it fair to say that there is
18 lobbying that is directed towards land use
19 questions?

20 MR. ROBLES: And again, I mean, I can
21 only tell you what when I was in the Council and
22 when we finally got land use in the Council and
23 prior to that I was also at the Council when the
24 cliché of the rubber stamp council and the Board
25 of Estimate.

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2 Are there lobbyists who register with us
3 that perhaps do have, or pursue in terms of land
4 use items? Yes. But again, I can simply say
5 that honestly I have not focused on that simply
6 because my priority is to make that office what I
7 believe it should be, which is one, to be very
8 professional in what it does and be
9 consumer-orientated or consumer-friendly.

10 One of the things that I did notice when
11 I became City Clerk is a lot of people who live in
12 New York City, especially in the Bronx, would go
13 to Westchester to get their license and do other
14 things then come to the city.

15 People living in Brooklyn and Queens
16 would rather go to Nassau. My focus was what were
17 we doing that New Yorkers, New York City residents
18 are going outside of New York.

19 I will tell you that when I first became
20 City Clerk, my busiest days in my office was
21 Monday and Friday, that is not the case today.

22 Now, I say this because it's not just
23 about lobbying, I have a whole host of other
24 things that I have to deal with.

25 In my capacity as the overseer of the

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2 Commissioner of Marriage Bureau, we give out
3 80,000 licenses a year. Of that 40,000, we
4 perform the ceremonies. And so I just wanted to
5 let you know that while lobbyist is a mandate that
6 I have that I have to make sure it gets
7 implemented the way it's supposed to, I have not
8 really focused on those things about other than
9 making sure that they do register, that they do do
10 their reports.

11 Do we look at where they go to lobby? I
12 would think we don't have the manpower of the
13 staff, as I said.

14 Our agency, when I became the City
15 Clerk, had 56 staff people. They brought me down
16 to 43. I'm now back to 54. And so the resources
17 and the manpower is not there to really
18 effectively do the kinds of things like audit and
19 what have you.

20 We rely upon when those things happen,
21 which is what I've done with my Marriage Bureau
22 for example, and Career Branch. When I notice
23 that I'm the only one that's supposed to be giving
24 out licenses in the City of New York and yet I
25 used to listen to the press talk about people

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2 getting six licenses which I caught one, we make
3 27 of them, I will tell you that you can get two
4 of them a month now, that's a lot. I used to get
5 27 to 30.

6 And so, if I don't have the resources to
7 really focus on the things that perhaps the
8 Campaign Finance Board and what its mandate does,
9 I'm not saying that you would have more staff than
10 I do, I just, it's limited to the resource that I
11 have in order to implement things I think should
12 be done.

13 CHAIRMAN SCHWARZ: Of course I was, as
14 you were talking, I was glancing through your help
15 line or report. And one can see a number of real
16 estate firms listed as the client in, for a number
17 of lobbyist.

18 MS. PATTERSON: There's a lot of land
19 use real estate development firms there and I
20 think there are institutions that by virtue of
21 being large hospitals or not-for-profit and the
22 like, like they have land use issues for which
23 they would need lobbyist assistance.

24 MS. GORDON: No, I just wanted to suggest
25 that as we go forward with the database project,

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2 this may be an area where the work of the three
3 agencies together could yield some very
4 interesting results.

5 And I'd also like to say that, you know,
6 it's not so terribly long ago that the Campaign
7 Finance Board had to enter data manually, who
8 knows what we're still doing now.

9 And, you know, this is a very impressive
10 document because it's got a lot detail in it and
11 it's been done in very, you know, time consuming
12 way of necessity. But maybe that's another area
13 in which the job as City Clerk can be made more,
14 made easier as times goes forward.

15 MR. ROBLES: I think one thing, Mr.
16 Chairman that we all agree, such as those that
17 have been in government, that the more that the
18 public looks at - as I go back to my old cliché -
19 government is of the people, by the people and for
20 the people, that the people who then pressured or
21 assuming the wheel gets the oil. And so I for
22 one, past and present, especially when you're not
23 restricted, and clearly the lobbying law locally
24 is not -- is not like a marriage to the domestic
25 relations law where it is confidential. The

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2 lobby law is a public document, there's nothing
3 that we want to hide or keep away from the public.

4 So anything that helps to put that where
5 people look at, I believe that in the long run it
6 only makes a better place for city and its
7 government.

8 CHAIRMAN SCHWARZ: I got one more
9 question which is about law firms.

10 I mean, there's some large law firms
11 here listed as a lobbyist. So if we were to, or
12 the Council were to pass a law, either one, we
13 were to regulate or the Council would pass a law
14 effecting political contributions from law firms,
15 I wonder if it would be a risk of over breadth in
16 that it may be just four people in a given law
17 firm that are actually lobbying, and yet the firm
18 has to register because it's a real entity. And
19 that's, I don't know that you're expected to have
20 the answer to that.

21 But saying it is something that I think
22 we should all be thinking about.

23 MR. ROBLES: Let me just say this
24 clearly and I do know what my role is and my
25 responsibility. And for the most part I get

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2 whatever mandate I get to carry out, comes from
3 two places, if it's the marriage side, Marriage
4 Bureau side, clearly it's the Domestic Relations
5 Law. And whatever the State Legislature passes,
6 whether it's the legislature or a lawful court
7 mandate, I have no choice but carry it out.

8 Same thing with the lobbying, that is a
9 local ordinance, the Council in working with the
10 administration, or the Council has passed
11 legislation without the administration - not this
12 administration even when it was in the Council
13 they have passed - including, if there is a local
14 lawful court mandate, my job is to carry out.

15 I'm here to carry out what's right,
16 what's lawfully and what's mandated to me by law
17 so that if the Council passes or amends the law of
18 which either adds to or whatever, I don't, I don't
19 have now, I have no -- no hesitation to carry it
20 out, that's my role, that's what I'm the City
21 Clerk for.

22 CHAIRMAN SCHWARZ: So, you know, on the
23 subject of giving you some teeth, some stronger
24 sanctions and helping you to get the information
25 on time, I mean, I would suggest you might talk to

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2 the people immediately to your right who are, one
3 of them is the new President of the oldest group,
4 government group in New York City, Citizens Union
5 and frankly I think they would be interested in
6 what you said about the absence of teeth to make
7 people who are lobbyists report the and same for
8 Common Cause. I think they're both interested in
9 that.

10 So, you know, you might just have a
11 short visit with them. And while you do, I'm
12 going to take, request a personal privilege just
13 having a chance to get a one-minute recess here.

14 MS. GORDON: I have one question that I
15 wanted to say. The question was, do you read your
16 law as saying that if somebody does lobbying on a
17 pro bono basis there's no requirement to register?

18 MR. SYNMOIE: Well, how do you define
19 pro bono? If pro bono means there's absolutely no
20 money at all. But if the person expends over
21 \$2000, then they automatically --

22 MS. GORDON: In salaries, for example,
23 okay.

24 MR. SYNMOIE: Yes.

25 MS. GORDON: And the other thing is I

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2 just wanted to say in case this group of
3 witnesses, I want to make a personal comment about
4 the fact that I know I put a lot of pressure on
5 Mr. Robles and staff to be here today
6 notwithstanding the fact that they're very
7 short-staffed and today particularly had a lot of
8 absences and so on.

9 And I wanted to thank them very much, I
10 think it was extremely important for the Board to
11 hear directly from the people who are in charge of
12 this area. So I do appreciate very much that you
13 responded.

14 CHAIRMAN SCHWARZ: Also, Joe Potasnik
15 walked in.

16 MR. POTASNIK: Well, I just want to say
17 hello to a good friend for many years and I've
18 officiated many weddings to which your name is
19 affixed to the license. And many of those couples
20 have not forgiven you for bringing their
21 relationships to a conclusion.

22 Thank you, you're always regarded as a
23 gentleman.

24 MR. ROBLES: Thank you very much, I
25 appreciate it.

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2 CHAIRMAN SCHWARZ: Joe, any other
3 questions?

4 MR. POTASNIK: No.

5 CHAIRMAN SCHWARZ: Any other questions?
6 Thank you very much.

7 (Recess taken.)

8 CHAIRMAN SCHWARZ: All right, let's see
9 where are we now?

10 Megan Quattelbaum.

11

12 (Whereupon, Ms. Megan Quattlebaum gave
13 the following testimony):

14 MS. QUATTLEBAUM: Good afternoon.

15 Common Cause/NY is a citizen's lobby
16 whose goal is open and accountable government. We
17 appreciate the opportunity to offer testimony to
18 you today.

19 We are very pleased to be participating
20 in this series of discussions of the important
21 issue of pay-to-play regulations. It is
22 appropriate and commendable that the focus of
23 today's discussion is political contributions from
24 lobbyists.

25 As we have stated in previous testimony

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2 before the Board, Common Cause/NY believes that
3 the definition of entities doing business with the
4 City should include lobbyists hired by contractors
5 wishing do to business with the City; legal firms
6 hired by a contractor to develop their proposal or
7 represent them before city agencies; and lobbyists
8 seeking budgetary, administrative or regulatory or
9 legislation action from the city government.

10 As of June 15, 2001 the Los Angeles City
11 Ethics Commission Office Report stated, "By
12 gaining access to an elected official and to his
13 or staff by virtue of financing relationships -
14 including contributions made or arranged through
15 fundraising activities - lobbyists and the
16 interests they represent can unduly influence and
17 distort the City's political and decision-making
18 process.

19 This occurs when registered lobbyists
20 gain access to decision-makers for their clients
21 that is not readily available to the ordinary
22 citizens the official represents as a result of
23 financial support for the officeholder."

24 And I just want to make a note here that
25 the use of a registered lobbyist, I believe,

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2 although I should check on this, that in the
3 instance that the Chairman pointed out in which
4 there was a large lobbying firm, where they owned
5 part of the firm, are, actually employ lobbyists,
6 I believe that if the provision were written
7 properly to apply only to registered lobbyists,
8 only those individuals within the firm could
9 register as lobbyists or be covered.

10 So I believe there's a way to address
11 that problem and I think we would support applying
12 this provision specifically to registered
13 lobbyists.

14 Already, the amount that some interests
15 pay to hire well-connected lobbyists to advocate
16 for their interest gives rise to the public
17 perception that some people have insider access to
18 elected -- to our elected officials, while others
19 struggle to be heard.

20 This disproportionate influence violates
21 the very spirit of democracy in which each
22 citizen's individual concerns are equal in the
23 eyes of those who represent them.

24 When these well-connected lobbyists
25 additionally make political contributions far

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2 beyond the means of many New Yorkers, this feeling
3 of imbalance grows.

4 CHAIRMAN SCHWARZ: Do you have, I mean,
5 we've all read, you know, this favorite story
6 about lobbyists making contributions and
7 particularly about bundling; I'm reading a
8 biography by Jonathan Hipperstowen, 18th century
9 Columbia, New England and the word had a different
10 name, but the bundling we've certainly seen a lot
11 of.

12 But have you collected information about
13 the extent to which lobbyists are directly or by
14 bundling, making contributions?

15 MS. QUATTLEBAUM: Well, the research
16 Common Cause had conducted that would be relevant
17 is unfortunately a bit more piecemeal than that.

18 There are connect-the-dot series with
19 more particular issues that's in the City, say
20 lead poisoning legislation and a host of other
21 things. Most recently the West Side Stadium
22 debate.

23 And we documented lobbying expenditures
24 and campaign contributions by individuals with,
25 you know, stating those issue so.

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2 CHAIRMAN SCHWARZ: Whatever you've got
3 by way of putting in documentation and saying to
4 you, we would love to be furnished that, we want
5 to have a record that we're taking action,
6 supporting that action.

7 MS. QUATTLEBAUM: Certainly, we can
8 absolutely send that to you.

9 And I would like to, in addition to the
10 importance of limiting or banning campaign
11 contributions from lobbyists generally, I think
12 it's also important to point out the value of
13 limiting contributions from lobbyists whose
14 clients seeking or doing business with City
15 particularly.

16 When the Supreme Court upheld the
17 McCain/Feingold Bipartisan Campaign Reform Act,
18 they noted that, "money, like water, will always
19 find an outlet."

20 This political truism I think applies
21 nowhere better than in the case of pay-to-play
22 regulation. From our perspective it makes little
23 sense to regulate contributions from those who do
24 or seek business with the City, without also
25 regulating contributions from the lobby and/or

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2 legal firms hired to represent these entities.

3 Lobbyists and legal firms clearly
4 represent outlets through which otherwise
5 restricted contributions might flow. And we
6 believe that pay-to-play regulation will be
7 strongest if we anticipate and address these
8 additional channels for contractor contributions.

9 There is a precedent for this type of
10 regulation. Massachusetts limits lobbyists to a
11 \$200 individual contributions to candidates
12 compared to the \$500 contribution limit for
13 non-lobbyists.

14 CHAIRMAN SCHWARZ: Is that a statute in
15 Massachusetts?

16 MS. QUATTELBAUM: Yes.

17 This restriction applies to all
18 registered lobbyists, but I should note that one
19 weakness in the Massachusetts law is really
20 because of the lobbyist reporting requirement in
21 that you're only required to register as a
22 lobbyist if you log 100 or more hours of lobbying
23 time per year, which is a fairly high mark
24 compared to most cases.

25 MR. RECHTSCHAFFEN: Can I ask, I'm

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2 sorry, do you know what the repercussions of not
3 registering are in Massachusetts?

4 MS. QUATTLEBAUM: I don't have the
5 answer to that question for Massachusetts, but I
6 can certainly find out for you, get that.

7 MR. RECHTSCHAFFEN: You know, you heard
8 the testimony from the prior witness and they're
9 saying that in New York at least, there's no
10 provision for forcing somebody to actually comply
11 with the law, to actually register at all.

12 MS. QUATTLEBAUM: I believe we spoke to
13 Mr. Robles as well, but I know that -- I know that
14 at least on the state level now, in fact every --
15 every lobbyist whether they lobby on the city
16 level or the state level is now required to
17 register with the New York City Temporary
18 Commission On Lobbying and the State Lobbyist
19 Commission certainly has the authority to penalize
20 those who fail to register or fail to report.

21 CHAIRMAN SCHWARZ: And when they
22 register with the state, is it broken down as to
23 where geographically, in other words, could one
24 look at that and find out which persons are
25 lobbying with the city?

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2 MS. QUATTELBAUM: Yes, although it'd be
3 hard, it's a bit hard to determine what percentage
4 of their time goes where. But they do have to
5 indicate whether they're doing state or local
6 lobbying or both. And technically you are
7 supposed to indicate what persons or offices are
8 lobbying.

9 MR. RECHTSCHAFFEN: Is that on the
10 Department of State?

11 MS. QUATTELBAUM: That's -- the Temporary
12 Lobbyist Commission has its own individual entity
13 and they have, if fact in, you know, been
14 aggressive I think at least at times being an
15 enforcer of their regulations. I mean, they have
16 been known to fine people for missed filings and
17 late filings. And they are -- I do know that the
18 City is not particularly aggressive with the
19 penalties, but the state has been I think in
20 recent months so I think generally they are.

21 I should also note that in
22 Massachusetts, and I will get you that information
23 about the penalty for not complying there, there's
24 a strict get-back in place in the State Bar of
25 Registered Lobbyists for paying for anything for

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2 elected officials, including a cup of coffee.

3 I would just like to say again, as we
4 said in our last testimony, that Common Cause very
5 strongly believes any limitation or ban on
6 contributions from lobbyists and those who do
7 business with the city must apply to all
8 candidates, not only those who participate in the
9 City's voluntary Public Financing Program.

10 Furthermore, Common Cause/NY also has
11 concerns that contributions solicited by
12 candidates or elected officials for purposes
13 besides their campaigns, would be outside of the
14 purview of the regulations currently being
15 considered.

16 As an example, I'd just like to take, a
17 great deal of public attention has recently been
18 paid to the administration's solicitation of
19 contributions for NYC 2012, which is the City's
20 Olympic Committee and a 501(c)3 tax-exempt
21 organization that, according to its own web site
22 has pledged to bring the Olympics games to New
23 York City without relying on public funds.

24 The site goes on to say that New York's
25 bid is being entirely financed by private

1
2 contributions from corporations, unions,
3 individuals and foundations."

4 Just a cursory look on the web site of
5 NYC 2012 reveals eight lobby firms, and I won't
6 list them because you have them here, all of whom
7 Common Cause research shows have represented
8 clients between 2003 and today before the city and
9 state.

10 Between them, these lobbyists have
11 represented clients on issues ranging from zoning
12 and land use to the proposed West Side Stadium,
13 lobbying the Mayor's Office, the City Council, The
14 Department of City Planning, the Manhattan Borough
15 President, the Queens Borough President, community
16 boards, the Governor's office and the New York
17 State Legislature.

18 One of these firms was also the number
19 two lobbyist in the State in 2003 according to the
20 New York City Temporary State Commission 2003
21 annual report.

22 CHAIRMAN SCHWARZ: Let me see if I'm
23 sure I understand the thrust of that paragraph in
24 your testimony, which lists a number of law firms
25 I guess they all are.

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2 And what is the thrust of what you're
3 saying here, does it fit with what you just said
4 in the prior paragraph about the Olympic games or
5 is it --

6 MS. QUATTELBAUM: Right, well, our
7 concern in this case is that it's been fairly
8 publicly noted that the Mayor and the Deputy Mayor
9 have solicited contributions for NYC 2012, the
10 City's Olympic Committee and while, you know, and
11 the Mayor stated it and the Deputy Mayor said
12 there's in fact truth to this, that that is
13 different from soliciting contributions for your
14 own campaign.

15 However, we are concerned that the same
16 sort of pay-to-play issues that arise from the
17 solicited contributions for your own campaign,
18 could be seen to rise when you have a list of
19 donors between the 12, obviously their interest of
20 the Mayor and the Deputy Mayors and the charitable
21 organization. But one that the Mayor and Deputy
22 Mayor have been active in soliciting for, usually
23 it's for when you have registered lobbyists, you
24 have business before us and you were on that list.
25 And in fact you can do it as others have looked,

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2 as some reporters have, including a report in the
3 Village Voice documenting those who have business
4 with the City and their contributions to NYC 2012.

5 MR. RECHTSCHAFFEN: How could you ever
6 address that issue?

7 MS. QUATTELBAUM: It's been considered in
8 Los Angeles, it hasn't passed and I think there
9 would, of course, you know, would have to be
10 careful to draw the law carefully, but they -- the
11 Mayor there proposed a clause on their proposal,
12 their pay-to-play proposal that would of
13 restricted contributions made at the request of
14 city officials to charitable organizations,
15 political parties, et cetera, so that it wouldn't
16 restrict the contribution, it would in fact
17 restrict the contribution made at the request of a
18 candidate or elected official. I think "at the
19 request of" being the key language in that
20 sentence.

21 It's not -- it's something that Common
22 Cause would like the board and potentially the
23 City Council to look into. I think that's our
24 suggestion at this point. I recognize fully and
25 we recognize that it's a complex issue but I think

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2 it's one that L.A. has looked into. And I think
3 it would be worthwhile in order hear, especially
4 with the press that's been generated recently on
5 this issue, I think public wants to know that
6 they're not obviously going to have a pay-to-play
7 violation.

8 CHAIRMAN SCHWARZ: Without having, you
9 know, a view on the specifics, you certainly need
10 some limit principle, because people give money
11 for -- to candidates for all kinds of reasons. It
12 might be because they like the tax policy or it
13 might be because they like a smoking or nonsmoking
14 policy, but that's done sort of after the event.
15 And one couldn't possibly say that kind of
16 self-interest bans contribution. You're limiting
17 characteristic would be if it's done at the
18 request of a city official?

19 MS. QUATTELBAUM: Right, that was the --
20 that's the one that we've seen an example of in
21 the past. And again, you know, I think there are
22 clearly, this raises a whole host of issues but I
23 think that it's a worthwhile set of issues for the
24 Board to raise in its discussion.

25 MR. POTASNIK: The phrase upon request,

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2 that's a very ambiguous kind of standard. I mean,
3 it very easy for someone to know the particular
4 interest or the favorite interest of a candidate
5 without the request being made.

6 I have to -- if someone knows that I'm
7 involved in a host of things or a preferred
8 certain number of things, I don't have to make a
9 request, that person can automatically know, so
10 how do you -- how do you focus on this group?

11 MS. QUATTLEBAUM: Well, I mean, I agree
12 that probably no matter how well you regulate
13 there are going to be cases like that that you
14 ultimately can't regulate. But the City's Ethics
15 Commission has actually looked at this issue,
16 actually specifically with respect to 2012. And I
17 think it might be useful to look to them for
18 guidance because they have -- I'm sorry, not L.A.,
19 the Conference and Intersport in the city has
20 looked into this with respect to 2012 and other
21 issues in terms of a potential conflict of
22 interest in having, in this case, the Mayor or
23 Deputy Mayor solicit contributions for 2012 from
24 those with business pending before the city.

25 So I think it would be instructive to

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2 look at what they have already discussed and
3 decide it with respect to this issue and how
4 they've defined a request.

5 Again, I think this is something that we
6 need a great deal of further exploration.

7 CHAIRMAN SCHWARZ: You could imagine,
8 Joe something where it's the city official whose
9 got the obligation not to ask for money from
10 someone who he or she knows has a pending matter
11 in front of that city official. I mean, I think
12 these are difficult questions but it forces us to
13 think about them.

14 MR. POTASNIK: Yeah, I just think it may
15 be a very difficult standard to enforce because I
16 see a number of ways of getting around it. If
17 someone wants to get around it, they can easily
18 get around it at the request. I don't think that's
19 such a, you know, difficult thing to avoid.

20 MS. QUATTLEBAUM: It's possible that
21 that's true and nevertheless, I think, I do think
22 it would be valuable in this case to talk to the
23 Conflicts of Interest Board since this is an issue
24 that they dealt with. But I also think that in
25 some ways it simply needs to be clear to the

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2 public that there are, you know, in a case that's
3 been so public recently, at least in principle and
4 in the most obvious ways, candidates can't simply
5 bypass an otherwise strong pay-to-play regulation
6 by soliciting contributions for, you know, another
7 entity of choice.

8 So I think it's -- I agree with you that
9 it's a sticky issue but I think it's one that we
10 like to see explored especially because of
11 the fact --

12 MR. POTASNIK: How do you avoid the
13 taint? In other words, a person is giving because
14 he or she wants to give and there's seems to be
15 this presumption of that something is going on
16 here, this is obviously giving for some ulterior
17 motive.

18 MS. QUATTLEBAUM: Well, I think it's
19 hard to -- I mean, except in cases of an
20 absolutely quid pro quo, which even with
21 pay-to-play regulation is often difficult to
22 prove.

23 I think what this spirit of pay-to-play
24 regulation generally, I think says that it's
25 important to limit the appearance of some sort of,

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2 you know, pay-to-play or contributor feeling like
3 they need to make a contribution in order to raise
4 the profile or chances are there, bid with the
5 City.

6 I think your -- I think it's true that
7 it's rare that you're going to prove a quid pro
8 quo, but I think the public perception of, you
9 know, some individuals being favored because they
10 make campaign contributions is very real. I think
11 it's something that's been well documented in some
12 of Common Cause's research and in places across
13 the country.

14 MR. RECHTSCHAFFEN: Can I ask you a
15 question that has been bothering me since we
16 started and what the pay-to-play was in the
17 beginning.

18 How do you balance the interest of not
19 wanting to create legislation which addresses a
20 problem but has a chilling effect on contributions
21 that are legitimate contributions against, you
22 know, the actual problem which exists. You know,
23 whatever the scope of that problem really is?

24 MS. QUATTLEBAUM: Well, again, this is
25 something that we discussed in our last testimony.

1
2 Common Cause in New York has actually got to
3 decide what our position is with respect to
4 banning or limiting contribution. But I can tell
5 you however helpful this is, that I think we're
6 leaning towards a limit of being our preferred
7 method rather than an outright ban.

8 And I think that, you know, it -- I
9 understand the issue and I think that in that
10 case, especially in the case of a limit, let's say
11 with Massachusetts law, where lobbyists are
12 limited to a, you know, have a smaller
13 contribution limit than other people there,
14 they're still permitted to support their candidate
15 of choice.

16 But it, I think, keeps the contributions
17 to the level that is more in keeping with what
18 most people who support their candidates of choice
19 are able to do.

20 I mean, I've always been struck by the
21 figure that may not be entirely up to date, but
22 that only one-third of one percent of people give
23 \$200 or more to federal candidates for office.
24 We're not even talking about state or local
25 candidates where the amounts go way down.

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2 So \$200 doesn't seem like a lot when
3 you're talking, you know, big entities like
4 lobbyists and law firms and things. But I think
5 it's also important to keep it in perspective with
6 what average people are giving to elected
7 officials, which is frankly not very much at all
8 or nothing.

9 But I mean, I kept that one-third of one
10 percent figure because I think it's very striking
11 and I think it gives you a sense of actually how
12 little of the contribution it takes to be far
13 outside of the norm of what most people are able
14 or willing or are interested in giving to
15 candidates.

16 So when we were talking about at the
17 state level there are people who given hundreds of
18 thousands of dollars, and I think that gives you a
19 sense of how far they are outside of any sort of
20 contributing norm I guess I'll say.

21 MR. CHRISTENSEN: Are you aware of any
22 sort of serious research or serious scholarship
23 that has analyzed what influences will take the
24 place of pay-to-play and if that is successfully
25 prohibited?

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2 The reason I ask that is because one of
3 the things I'm concerned about here is, that I
4 don't know what the full impact of such
5 legislation would be on the policy making process.

6 And secondly, who benefits from such
7 legislation? Are certain other groups or
8 individuals who, let's say don't have to make
9 contributions, the Roman tested, quid bono, I
10 mean, what is going to be the impact in a post
11 pay-to-play policy making scenario?

12 Has anyone looked at those issues, to
13 your knowledge? Has Common Cause given any
14 thought whether we could be -- that there could be
15 some negative consequences of that?

16 MS. QUATTLEBAUM: I'm certainly not aware
17 of any Common Cause research, although admittedly
18 there are 37 of our offices, so it would be a
19 little bit of a taking to find out, that has
20 looked at a post pay-to-play situation. And I'm
21 not aware of any research about that.

22 I think that with respect to policy
23 making actually, that the pay-to-play regulation
24 if tightly drawn, has a fairly limited effect. I
25 mean, ideally I think what you're trying to effect

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2 is the contracting process and that the process of
3 awarding contracts.

4 CHAIRMAN SCHWARZ: Also land use, would
5 you agree?

6 MS. QUATTLEBAUM: Right. And we do, we
7 do support including land use and zoning barriers
8 as in that definition.

9 But, so I think on sort of larger
10 legislative issues let's say, before the City that
11 impact of pay-to-play specifically is probably
12 fairly small, but I'm not even sure that that's
13 valid.

14 CHAIRMAN SCHWARZ: Let's make clear what
15 you said there: Would you say if there were a
16 limitation or a ban on lobbyist contributions and
17 there was a lobbyist whose only job was to lobby
18 on whether a certain law should be passed, you
19 might come out excluding that from the -- from the
20 regulation or legislation?

21 MS. QUATTLEBAUM: Well, I think that --
22 I mean, in the case of the lobbyist, I think
23 that's where you do have some impact on the
24 decision-making process in the City and I would
25 think a positive one.

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2 From a Common Cause perspective,
3 lobbyists already have a level of influence that
4 is not within the proportion of your average city
5 citizen.

6 CHAIRMAN SCHWARZ: But I'm not sure, I
7 mean, probably my question was inarticulate and
8 that's probably because I didn't have lunch today.

9 But would you say on the one hand there
10 are lobbyists who are trying to support a land use
11 decision in favor of their client or a contracting
12 favor of their client, and they should be
13 regulated.

14 And then does Common Cause take the
15 position that lobbyists who are only trying to
16 persuade City Council members with respect to a
17 piece of legislation, ought not to be limited?

18 MS. QUATTLEBAUM: No, we would -- we
19 consider lobbyists generally to fall within the
20 definition.

21 CHAIRMAN SCHWARZ: But you brought up
22 that distinction I thought for some reason.

23 MS. QUATTLEBAUM: I brought up the
24 distinction merely to suggest that I think it's
25 not only important generally, but in the context

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2 of looking at pay-to-play, I think it's important
3 specifically because we can perhaps imagine a
4 situation where a bidder that has a contract
5 pending before the city, is represented by a
6 lobbyist and that lobbyist is known to be tied to
7 that client and makes a contribution, that is
8 difficult to trace perhaps or frankly made on
9 behalf of that client.

10 So I only make the distinction to say
11 that it's particularly when we're talking about
12 pay-to-play, that we include lobbyists because I
13 think that's another outlet through which
14 contractor contributions might be as well. But I
15 also know that Common Cause supports it generally,
16 limited contributions from contractors.

17 MR. CHRISTENSEN: Is it the lobbyist
18 though or that the object that's being served by
19 their lobbyist? Because it seems to me what
20 you're really saying is that it's okay if they're
21 lobbying for an issue such as choice and free
22 production freedom or something like that, but not
23 if they're trying to lobby for a zoning variance
24 on 42nd Street and 5th Avenue.

25 MS. QUATTLEBAUM: If I did imply that I

1
2 wasn't intending to. We would -- I think that
3 there are particular reasons to be concerned about
4 the latter, but we would include both of those
5 scenarios that you mentioned.

6 MR. CHRISTENSEN: Why the former?

7 MS. MEGAN QUATTLEBAUM: Well, I --
8 again, I think that, you know, Common Cause agrees
9 with others who have suggested that lobbyists are
10 in fact entities that are doing business with the
11 City; they clearly have interest at stake before
12 the City and they are directly lobbying who will
13 get to decide on those issue.

14 MR. CHRISTENSEN: So you take issue not
15 only with the sort of subject matter that is being
16 dealt with, but also the fact that a lobbyist is
17 being used regardless of the subject matter?

18 MS. QUATTLEBAUM: Yes.

19 MR. CHRISTENSEN: Okay.

20 CHAIRMAN SCHWARZ: So I just read ahead
21 and in the balance of your prepared statement
22 deals with gift rules which are different than
23 contribution rules and it seems to me that they're
24 not irrelevant, but I since I know we're holding
25 some people up, I'll ask my colleagues if they

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2 have more questions of you. We really appreciate
3 your thoughtful testimony.

4 MS. QUATTLEBAUM: No, absolutely.

5 Thank you. And we will definitely send
6 you the research information.

7 CHAIRMAN SCHWARZ: Okay, Bill Docent,
8 no, you're not next, we're running a little behind
9 which is not unusual.

10 Okay, Marty Begun just walked in, and
11 you're the next scheduled witness.

12 MR. BEGUN: I'll joyfully defer it to
13 someone else.

14 CHAIRMAN SCHWARZ: If you want to the
15 Citizens Union people -- I mean, if you want to
16 let us go in the order --

17 MR. BEGUN: I'll be very brief.

18 CHAIRMAN SCHWARZ: Okay.

19

20 (Whereupon, Mr. Martin Begun gave the
21 following testimony:)

22 MR. BEGUN: I wanted to thank you and I
23 really came at the -- when I got the letter from
24 the Chair and the Executive Director, it kind of,
25 the logo on the letterhead brought me back to life

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2 and made me very nostalgic about the issue. And I
3 want to congratulate the Chair because he's had a
4 formidable introduction to this process and he's
5 exhibited great tolerance and ability as his
6 reputation precedes him.

7 And the very distinguished Executive
8 Director, who I think deserves special
9 commendation for leading the country's foremost
10 Campaign Finance Board, oh, during these very
11 interesting years.

12 And I have a feeling Nicole that the
13 years are going to get even more interesting as we
14 march along for all of you.

15 I --

16 MR. POTASNIK: Nothing about the other
17 board members? No other eulogies you brought with
18 you?

19 MR. BEGUN: Well, the other Board members
20 I know are researching, especially you Rabbi
21 Margadu (phonetic), and Katheryn and Dale, I don't
22 know Katheryn personally but I do remember Dale
23 Christensen and you and I see each other on
24 different subjects many times during the year.

25 I -- this whole issue of pay-to-play

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2 which is now got a new slogan going, "pay-to-
3 pray," I, you know, one has to take this with, I
4 think a grain of salt.

5 And I just wanted to make some points
6 here, you may have heard them I'm sure from
7 others, on the issue of whether the Campaign
8 Finance Board ought to expand its authority to
9 control doing business with the City and making
10 contributions to candidates.

11 This Board has a brilliant history of
12 promoting the concept very successfully of
13 campaign finance. New York City is certainly is
14 in the lead in this respect.

15 The role of the Board has intensified
16 with the introduction of term limits. I think all
17 of us were very nervous when term limits came into
18 being, that the work of the Board would be
19 intensified. I know it has. We seem to be having
20 City-wide or city elections every other year.

21 It was never an easy chore to do. All of
22 the processing and auditing and reporting, and now
23 it's become quite a chore for not only the members
24 who deserve special commendation, but for the very
25 excellent staff that's been assembled.

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2 And to expand this authority now to be
3 the police agent for those individuals doing
4 business with the City, I think is adding a
5 dimension to the Board's activity which can be
6 very difficult to assume without adding
7 substantially to the staff, without increasing the
8 efforts of the volunteers who are essentially the
9 Board members, and leadership of the board.

10 And I'm not so sure it's warranted quite
11 frankly.

12 CHAIRMAN SCHWARZ: Can I just jump on
13 the, on your first point before you get to the not
14 warranted.

15 You know, I think it's our view that we
16 would prefer to see legislation, because under --
17 if there's legislation it gets at the donors
18 instead of getting at the candidates and it also
19 happens to relieve the Board of the enforcement
20 role.

21 If there isn't legislation, there is a
22 fact of the charter bill that the charter
23 provision that passed in '98 that orders us to do
24 this. And in prior years we concluded, the Board
25 concluded that the lack of data made it too

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2 difficult.

3 But would you agree that if there was
4 legislation which affected the donors and not the
5 candidates, it would then no longer be something
6 that you would be worried about as overburdening
7 the Board?

8 MR. BEGUN: Well, yes, in large measure
9 in answer to your question.

10 I mean, I -- we already have outlawed
11 corporate giving; if I were thinking more about
12 this than I have in a sense, I will add to
13 corporate bar, corporations being barred from
14 giving LLPs and LLCs frankly.

15 You know, one of the missions of
16 finance, of the Campaign Finance Program has been
17 to increase citizen participation in the electoral
18 process.

19 We know that big money plays a role in
20 national and local politics, it always does. We
21 limit it to \$4500 I believe. Well, anyone who can
22 give you \$4500 can give you ten times that in many
23 cases. And they're prevented from doing so.

24 Big givers, we see on the national
25 stage, are not limited to in essence to -- they do

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2 it through all kinds of charter routes and they
3 make gifts, but \$4500 to a -- is a major gift
4 under this system, most donors who give 4500 could
5 give more.

6 If we don't watch out, more candidates
7 for public office in the City will do the very
8 thing we don't want them to do, and that is avoid
9 participation in the Campaign Financing Board,
10 that's the thing that has to be watched.

11 You want as many people as possible,
12 both candidates and the electorate, to participate
13 in the program.

14 \$250, multiply, what is it four times
15 now? Makes an individual donor at the lower end
16 of the economic group or the social group feel
17 important.

18 \$4500 to the wealthier donor is probably
19 not missed, it's martini money to them.

20 MR. CHRISTENSEN: Or humbling.

21 MR. BEGUN: It's not, it's more
22 humbling. They wonder why they're being limited.

23 And frankly, those people with great
24 wealth, and we're seeing them enter the political
25 system now more than ever before. It's almost

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2 disingenuous, person with great wealth to come
3 forward and say, be careful, I'm not going
4 participate in the program, but I don't want any
5 of you to get too accustomed to public
6 participation and public financing.

7 I think there's something wrong with
8 that concept. I think basically, I believe very
9 strongly that we still have to prove the efficacy
10 of campaign finance reform; you've done a
11 marvelous job over the years, you've made the
12 point, it's the model in the country. But it
13 isn't secure by a long shot, not secure at all.

14 CHAIRMAN SCHWARZ: So just to follow
15 through on the last point there.

16 You see the potential, it's not just the
17 candidate of great wealth, it's the candidate of
18 great wealth who decides to self-finance, but you
19 see the potential, if - this is a subject that
20 Commissioner Christensen has been asking people
21 about - if changes in the rules substantially
22 reduced the aggregate amount that goes to
23 candidates in the program, you see the potential
24 for even greater distortion of our political
25 process arising from candidates of great wealth

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2 who self-finance?

3 MR. BEGUN: I do.

4 CHAIRMAN SCHWARZ: But there is a

5 factual premise there that if there were bans on

6 pay-to-play, that it would substantially alter the

7 amount of money that's made available to people in

8 the program. And I for one don't know if that's

9 true or not true, but you're -- the thrust of your

10 point, I just wanted to make sure we understood.

11 MR. BEGUN: Well, that's true, Mr.

12 Chairman. If a person of great wealth opts into

13 the program, all the better. But there are people

14 not necessarily of great wealth that enter

15 politics but who might very easily figure out they

16 can do better in raising money outside of a

17 program by virtue of the fact that people with

18 great wealth are able to give and give generously.

19 And rather than devote their energies to

20 the small donor, you better -- you're better off

21 dealing with a handful of people who are major

22 contributors to political campaigns in the staff

23 and can give great wealth and maximize your

24 campaign committee much easier.

25 MR. POTASNIK: What is -- is there any

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2 pressure on people to register as lobbyists? I
3 mean, why even register?

4 MR. BEGUN: Well, it's the law, that
5 helps.

6 MR. JOSEPH POTASNIK: Fine, assuming the
7 consequences of nonregistration are minimal.

8 MR. BEGUN: Joe, let me answer the
9 question. I've given some thought to it and I've
10 discussed this with some of my friends and
11 colleagues, some of whom are lobbyists, some of
12 which are registered as lobbyists, some of whom
13 are consultants of which I'm one.

14 You know what I found out since I left
15 the academia, the university, and it revolves
16 around the who issue of pay-to-play, there's so
17 much transparency in getting a contract out of the
18 City of New York, that it's really untrue that a
19 lobbyists who spills a lot of money towards a
20 number of Council Members for example, if we're
21 talking about local government, has any greater
22 influence than the consultant or the lobbyist who
23 doesn't give generously to campaigns. That's a
24 fallacy.

25 The influence of a lobbyist or a

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2 consultant, interestingly enough, is not how much
3 money they give to a campaign, is their whole
4 social history. They've either been in
5 government, they've been in political campaigns,
6 they've been in political clubs, they've -- their
7 friendships; they've served on commissions.

8 It's a network of relationships, so that
9 if I pick up the phone and talk to someone, they
10 don't know me as a donor, that I can prove. They
11 know me because they've been involved with me on
12 several governmental commissions and, "Yes Martin,
13 what can we do for you?" "Well, so and so would
14 like to meet with you."

15 The only influence that I may be able to
16 do for a client is to get to the meeting a littler
17 earlier than they normally would if they picked up
18 the phone and had no relationship.

19 But if you can't prove to me, and I know
20 the distinguished Chair knows this from his years
21 of service in the government, that if you were
22 negotiating and were bidding on a city contract
23 with all the transparency, which is very heavily
24 controlled and processed, that a lobbyist has
25 influence over that process, absolutely untrue.

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2 Get a meeting with somebody, yes, and I
3 guarantee you that meeting could be had without a
4 lobbyist.

5 CHAIRMAN SCHWARZ: Just to push you a
6 little beyond that.

7 People say it's only access, you said,
8 wouldn't you agree, particularly where a lobbyist
9 comes and bundles and bundles a lot of
10 contributions together so you come up with a
11 number, you know, \$20,000 or more, that there's an
12 appearance that the public legitimately would have
13 a concern that contributions of that size
14 influence the Legislator or the Executive Branch
15 Judicial.

16 I mean, proving corruption is a
17 difficult thing and in fact, I doubt that many
18 public officials who take contributions are
19 corrupt. But are they influenced, A? And B, does
20 it appear to the public that they're influenced.
21 And, you know, the case is enough to justify a
22 regulation if the public believes that there is a
23 problem and that causes cynicism and less desire
24 to vote and so and forth.

25 So I'd just like your reaction to those

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2 points.

3 MR. BEGUN: The issue of appearance and
4 I think that's hard to dispute. Effectiveness, I
5 might dispute it if it's an effective mechanism
6 for getting attention.

7 If were a candidate and I think it's
8 easier to control bundling. I think you could
9 legislate that fairly.

10 I mean, in a sense that there are always
11 people that are willing to trip the system,
12 unfortunately that's the nature of mankind. There
13 are always people that are willing to cheat the
14 system, to use influence beyond measure. Whether
15 it's effective or not, I would debate that point.

16 If you're in an RFP process that, the
17 City of New York has managed that extremely well,
18 that's a very transparent process. And I've
19 advised the clients, don't try to influence
20 anything in the RFP process nor matter how you do
21 it, do go to political dinners, don't get the
22 political candidates.

23 If you have -- if you're bidding on a
24 City contract, you have to be squeaky clean, and
25 you've got to let your submission stand on the

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2 merits.

3 And I know that if you try to influence
4 it in the City of New York, you're asking for real
5 difficulties and real problems. And I think
6 there, you know, we have conflict of interest
7 boards, we have the District Attorney, we have the
8 Department of Investigation, and we have the
9 transparency of the bidding process in the City,
10 which is very secure.

11 CHAIRMAN SCHWARZ: You know when I
12 worked on behalf of Senator McCain and Senator
13 Feingold in the litigation defending their
14 statute, some of the best evidence we had in
15 defense of the statute was from business men who
16 said, "We don't like being asked to give so much
17 money," it's a game that revolts the donors.

18 Now, why wouldn't people in the lobbyist
19 profession be pleased to be rid of any implicit
20 pressure to provide contributions?

21 MR. BEGUN: Sir, I'm going to tell you
22 something you've already said, if you succeed in
23 legislation forbidding lobbyists to give, you will
24 become one of the most popular figures in that
25 group of professionals.

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2 It's an -- I'm sure a lot of people in
3 this room, and I'm sure members of this Board, the
4 mail during the political season, it makes you
5 chuckle.

6 You know, what do we have? 52 members of
7 the City Council? And every three months they're
8 up for reelection. And the poor characters, you
9 know, how else do they get movies?

10 So where do they go? They go to their
11 telephone directory of their friends or people
12 they've met. And I doubt if they really list
13 these people by category, they just happened to be
14 listed alphabetically. And you get dozens and
15 dozens --

16 CHAIRMAN SCHWARZ: And the B's get hit
17 hard?

18 MR. MARTIN BEGUN: The B's get harder.
19 Yeah, I'm about to change my name from a B to a Z
20 so maybe I'll see if the system works.

21 But the point is that you would become
22 very popular. I think you're absolutely right.
23 I think it's embarrassing and it's unnerving at
24 times.

25 MR. CHRISTENSEN: It's very good to see

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2 you again.

3 Let me just ask the question I've asked
4 others this, so you might have heard this.

5 As someone who's been, you know,
6 actively involved in the political system on the
7 side of the table, and also representing parties
8 before government, what would you project are the
9 consequences of eliminating the ability, or
10 absolutely eliminating the ability of people who
11 do business with City Government, from making
12 contributions to candidates?

13 What would fill the void?

14 MR. BEGUN: Happiness.

15 No, Dale, I can say this, I think it's a
16 very hard thing to define if one is doing business
17 with the City.

18 I mean, every time you get a traffic
19 offense you're doing business with the City.
20 It's a very difficult determination.

21 The best determination of what's doing
22 business with the City and what is the one that I
23 think most of us are deeply concerned about, is
24 big contracts that the City has to offer. And the
25 City of New York has big contracts to offer.

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2 But that's pretty well protected, as I
3 just went through before, on the transparency of
4 the -- of the bidding process.

5 MR. CHRISTENSEN: So in terms of general
6 legislation, putting aside the bidding process,
7 which I understand that you also feel is well
8 protected now, you don't see any great positive
9 consequence other than, you know, lobbyists and
10 others having more money in their pocket to the
11 policy making process itself? That the same kind
12 of bill would be passed, legislation would go on
13 and request the same kind of constituencies and
14 interests that is before, basically is that it?

15 MR. BEGUN: Yes, I think that, you know,
16 I don't characterize myself as a lobbyist because
17 I absolutely refuse to do it, but in that sense.
18 But am I always -- I've been more amazed than ever
19 before; much of the commercial, economic and
20 social service life of a city, not-for-profit
21 agencies, hospitals, health organizations,
22 corporations, how little they really now about the
23 governmental process and community. It astounds
24 me. Big corporations, not-for-profit agencies,
25 universities, hospitals, health agencies, are

1
2 almost incuriously insensitive to government and
3 the community.

4 And some of us, you know, devote a lot
5 of energy to advising them of how to negotiate,
6 not to get a contract, but how to make their
7 position known to the community and to the
8 governmental agencies that they may have to deal
9 with.

10 MR. POTASNIK: Martin, how do you
11 differentiate between a consultant and a lobbyist?

12 MR. BEGUN: Well, you know, a lobbyist
13 by the way, is very clearly defined in law. It's
14 when you're asking on behalf of someone for
15 government support, money is involved.

16 I don't do that basically and I've made
17 it clear to people. But I will talk to clients,
18 universities and the rest, if they want to build a
19 new building, that you better check with the
20 community; that you have to concern yourself about
21 the Community Planning Board, the Department of
22 Buildings, that there are zoning regulations.

23 It almost shocks me having been in a
24 university environment and doing it for the
25 universities for many years, how little effort or

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2 time is put in on the part of administration, of
3 big not-for-profit agencies, as to what the impact
4 of what they want to do, will have on their
5 environment.

6 And that's not lobbying, by law or by
7 definition, that's not lobbying, it's with a small
8 L I guess, it's advocacy.

9 And you're citing the institution,
10 anguish, time and money; you're saving the
11 community anguish, if they do it properly. Well,
12 were watching it unfold now in the real estate
13 community with respect to the Plaza Hotel.

14 And that, by the way, is poor planning
15 on the part of the developers. That's all that
16 really is, poor planning on the part of the
17 developers.

18 They took a landmark situation,
19 well-grounded in the history, the social
20 traditions of the City of New York and they went
21 willy-nilly off to think that this is because of
22 free enterprise they can do anything they darn
23 please. And they, they're finding it out the hard
24 way.

25 A lot of that could have been prevented

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2 I suspect by some thoughtful planning and
3 discussions with union, the community, with
4 Landmarks, with the people in our society who'd
5 like the protect the very essence of our city.

6 So I think that, coming back to the
7 central point, and I've taken more time than I
8 know I should have, I certainly have the highest
9 regard and respect, tattooed on me, for the
10 Campaign Finance process.

11 MR. CHRISTENSEN: Branded.

12 MR. BEGUN: Branded, thank you.

13 I would not like to see the Board and
14 the staff overwhelmed with an issue like policing
15 what is doing business with the City of New York
16 unless you have very clear legislative definition
17 here.

18 It's good to see you both.

19 CHAIRMAN SCHWARZ: Okay, so are there
20 other questions?

21 Okay, let's see, Dick Dadey and then
22 Bill and your colleague.

23 We're running a little behind and, you
24 know, then that's too bad, but in a way it's good,
25 because the dialogue is very helpful to us.

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3 (Whereupon, Mr. Dick Dadey gave the
4 following testimony):

5 MR. DADEY: Good afternoon. I would
6 like to depart from my prepared remarks for just a
7 few minutes and inform you that I've been a
8 registered lobbyist with both the City and State
9 government probably since the early 1990's '91,
10 and '92, both in the capacity of being the paid
11 employee of a not-for-profit organization, as well
12 as the hired gun for a number of different
13 enterprises in the commercial sector.

14 You know, the -- I found curious some of
15 the remarks made by City Clerk about enforcement.
16 Because as the representative from Common Cause
17 mentioned earlier, I mean, if you are lobbying
18 within -- if you are lobbying with the City of New
19 York, you not only have to register with the City
20 Clerk, but you also have to register with the
21 State Temporary Lobbying Commission. And you have
22 to file very detailed reports about what it is
23 that you're lobbying on and how much you're
24 spending.

25 It's not necessarily separated out from

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2 what you do in terms of state lobbying. But there
3 is a significant enforcement mechanism available
4 to those who lobby the City of New York.

5 It largely rests with the State
6 Temporary Lobbying Commission, but also, you know,
7 there are -- there are -- the City Clerk does have
8 the power to levy fines up to \$15,000 and does the
9 power to restrict one's future lobbying activity
10 for a period of time.

11 Whether or not they have the resources
12 to enforce that, or the will to take on the
13 interest of those who would be subject to this
14 lobbying law, is another question.

15 And let's keep in mind too, that the
16 State Lobby Commission is a somewhat independent
17 body.

18 When the City Clerk is an appointed
19 position by the City Council and the City Council,
20 you know, is, you know, relies upon those who
21 might contribute to their campaign as well.

22 So, you know, it was interesting to hear
23 the City Clerk speak but I think that there are
24 opportunities for enforcement that are not fully
25 taken advantage of.

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2 MR. CHRISTENSEN: You had the State
3 proactive enforcement zone regulation? Is it your
4 experience?

5 MR. DADEY: It is not as much as it
6 should be or could be. It has tried, but as I
7 think you might be aware, the rather forceful
8 current Executive Director of the State Lobbying
9 Commission in trying to enforce the lobbying laws,
10 has been pulled back at times by members of the
11 commission. And I think that they have not been
12 able to focus as much as they would like and there
13 probably has not been the kind of coordination
14 that would make enforcement possible.

15 But I know, you know, given the, you
16 know, the City Clerk's office has in the past,
17 been very forceful in its communication and has
18 made very clear the power that they have available
19 to them. And I think that's been an enforcement
20 mechanism. And the state has as well, I mean, the
21 very strong.

22 Any way, so I'm here today again
23 representing the Citizens Union, a century-old
24 good-government organization has consistently
25 supported provisions to strengthen the City's

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2 Campaign Finance program that seek to reduce the
3 role of money in politics and campaigns.

4 We commend you for being so strongly
5 interested and attentive to the need to
6 incorporate a responsible provision into the
7 Campaign Finance Law that regulates campaign
8 contributions from those who do business with the
9 City, including today's focus, that of gifts from
10 lobbyists.

11 Having once been a paid and registered
12 lobbyist representing several enterprises which
13 were seeking contracts or favorable policies and
14 legislation, it's particularly important from my
15 perspective, that pay-to-play legislation be a
16 draft that addresses the tremendous role that
17 lobbyists play in not only contributing money to
18 candidates' campaigns, but also in raising money
19 for those campaigns.

20 This much is clear to us: Legislation
21 should be proposed, legislation should be proposed
22 and passed into law in which contributions from
23 those who do business with the City or are
24 registered lobbyists should be limited, not an
25 outright ban, but should be limited to \$250 and

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2 not be eligible for matching contribution from the
3 City Campaign Finance Program.

4 In my opinion, these contributions,
5 however should not just be limited to candidates
6 for whom the lobbyist can vote. Lobbyists, as
7 citizens, should be allowed to contribute to those
8 with whom they are friends or colleagues or have a
9 vested interest regardless of where they live.

10 There are two issues that I would
11 suggest that you take a look at as you explore
12 ways in which to restrict the influence of
13 lobbyists and the impact of their contributions.

14 The first is the bundling of
15 contributions or serving as an intermediary.

16 And the second is the solicitation of
17 contribution to campaigns not yet waged, but
18 nonetheless organized for the purpose of
19 soliciting money.

20 The real problem of the role money from
21 lobbyists plays in campaigns is not so much how --
22 is not so how much a lobbyist can give, but how
23 much they can raise.

24 As I understand the constructs of the
25 emerging proposal, nothing would change --

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2 CHAIRMAN SCHWARZ: Dick, can I just ask
3 you a question there?

4 MR. DADEY: Yes.

5 CHAIRMAN SCHWARZ: Do you have data, I
6 asked that of, I guess the witness from Common
7 Cause, do you have data that would help supplement
8 our record on the extent of bundling?

9 MR. DADEY: No, we do not at the moment,
10 but it is something that we're looking into.

11 As we were preparing testimony for
12 today --

13 CHAIRMAN SCHWARZ: Be great if you'd
14 look into it for us?

15 MR. DADEY: It became very apparent, you
16 know, when we were preparing our testimony for
17 today, that, you know, that really was where the
18 influence is.

19 CHAIRMAN SCHWARZ: And you noticed, we
20 brought up the subject of bundling many times.

21 MR. DADEY: Right, yeah.

22 You know, so, you know, lobbyists would
23 still be able to serve as intermediaries by
24 assembling or bundling gifts from a number of
25 sources presenting them all at once in an effort

1
2 to maximize their influence on a particular
3 matter.

4 So even if you restrict a lobbyist's
5 personal giving to a reasonable amount like \$250
6 per candidate, they still can contribute a
7 significant amount to a candidate's campaign by
8 amassing five or ten individual contributions of
9 \$250 each, all of which could conceivably be
10 matched.

11 Ten different gifts of, you know,
12 varying amounts like 150, \$200 or \$250 raised
13 individually, but presented collectively, would
14 amount to a gift, to a candidate's campaign of
15 around \$10,000 if all were to be matched; a
16 significant sum that would certainly catch the
17 attention and interest of any elected official or
18 candidate running for office.

19 If the Campaign Finance Board wishes to
20 reduce the influence of lobbyists in campaigns, it
21 must not only seek to limit the size of their
22 individual contributions, but restrict the ability
23 of lobbyists to raise money through bundling, a
24 tactic that brings them a great deal of
25 consideration and influence in the process of

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2 awarding contracts and making policy decisions.

3 I'm not sure if --

4 CHAIRMAN SCHWARZ: Did you hear the
5 dialogue between us and the prior witness on that
6 issue where he was contesting that any influence
7 is obtained, and do you have, other than just
8 disagreeing with that, do you have any data that
9 would help resolve the difference between what he
10 said and what you just said?

11 MR. DADEY: I don't have hard and fast
12 evidence, but just anecdotal evidence from
13 personal experiences and, you know, conversations
14 with people that they -- that they feel that they
15 would want to be left out or forgotten about if
16 they didn't participate. And, you know, it's, I
17 mean, people want to grab your attention and
18 whether it's access or influence, it certainly
19 buys you something, makes you feel good about
20 being provide, and forced to be provide in a way.

21 You know, also, you know, lobbyists and
22 individual advocates may have their friends that
23 they would like to see, you know, remain in power
24 or further strengthen by the amassing of more
25 power by running for another office or for Speaker

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2 or for a committee chair and so it's, you know,
3 sometimes voluntarily given and often to be
4 helpful to the very people that they know would be
5 helpful to their cause.

6 MR. POTASNIK: I understand why you're
7 concerned with bundling, but you extended that to
8 the individual contribution, why? Is that such a
9 problem?

10 MR. DADEY: I'm sorry?

11 MR. POTASNIK: For the lobbyist making
12 individual contribution, you want to limit it to
13 -- you want to limit it to a certain point?

14 MR. DADEY: To \$250.

15 MR. JOSEPH POTASNIK: But if bundling is
16 the big issue --

17 MR. DADEY: Right.

18 MR. POTASNIK: -- why do you want to
19 limit that contribution?

20 MR. DADEY: Well, I still think, you
21 know, contribution in the amount of, what is it?
22 \$4950 to the Mayor and to the City Council member
23 of 2750 is still a, you know, it's ten times the
24 size of, ten to twenty times the size of this \$250
25 contribution.

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2 You know, still has, you know, that
3 means there are, you know, ten fewer phone calls
4 that that City Council member may have to make.

5 You know, you also should consider
6 restricting lobbyists gifts to the Campaign
7 Committee for the office for which the person is
8 currently running and not some future office.

9 There were a number of times in 2003
10 when I found out that incumbents running for
11 reelection in 2003 we're not just raising money
12 for the reelection efforts for 2003, but also for
13 their anticipated reelection campaign of 2005.

14 Since candidates could raise money for
15 their 2003 and 2005 reelection efforts during a
16 single campaign season, this technically allowed
17 lobbyists or others with business before the city
18 to double their influence at a time when the
19 voters had not yet voted on whether to return the
20 incumbent to office in November of 2003.

21 So even if a law is passed limiting
22 lobbyists' contributions to \$250 per campaign,
23 candidates could conceivably raise twice that from
24 lobbyists if they have established a Campaign
25 Committee for future reelection, for a future

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2 election campaign.

3 This practice should also end and who
4 further aid in limiting the influence of lobbyists
5 support during a particular campaign season.

6 You know, I also knew some candidates
7 who, you know, were done at the end of 2003 for
8 their 2005 campaign.

9 The issue -- this issue of contributions
10 from lobbyists also begs the question about how
11 candidates for City Council Speaker raise money to
12 strengthen their influence with their colleagues
13 and candidates hoping to be elected to the City
14 Council.

15 Candidates for Speaker often create
16 other accounts for which they can raise money,
17 that they then can use in helping to spread around
18 their wealth and influence as they build support
19 for their campaign for Speaker.

20 This is another unchecked opportunity
21 for lobbyists to wield their influence by being
22 able to make contributions to a Campaign Committee
23 or PAC, other than the one from which the
24 incumbent is running his or her reelection
25 campaign.

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2 Limiting the size of contributions from
3 lobbyists and others who do business with the City
4 is a very good first step, but it doesn't address
5 the more significant way in which lobbyists are
6 able to support and influence the actions of
7 elected officials; that of raising money and
8 bundling those contributions.

9 Any meaningful strengthening of the
10 Campaign Finance Law in this area of lobbyist
11 influence must address this issue of bundling.

12 Thank you again for inviting Citizens
13 Union to testify.

14 CHAIRMAN SCHWARZ: So, questions of the
15 witness?

16 MR. CHRISTENSEN: I think that's of
17 light, and I've been asking if there's anyone who
18 has any literature on what a post pay-to-play
19 environment might yield; if you're aware of any,
20 that would be good.

21 And from my perspective, it seems that
22 we've got the wrong system of protocol of defining
23 elections with an outright prohibition on any
24 contributions, and anything that involves, you
25 know, in the way that we're talking about, I think

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2 has other opportunities for corruption and that
3 kind of thing. So I'm not sure we get to advance
4 the ball that much, I mean.

5 MR. DADEY: Well, I mean, one can
6 envision us going to that path eventually. But I
7 think what might fill that void that you're
8 talking about in the interim, would be a need for
9 candidates to raise money from their neighbors and
10 friends in their district, instead of relying on
11 the more easily available money from lobbyists or
12 organizations.

13 You know, I had the opportunity a week
14 ago to attend a dinner party where there was not
15 outright fundraising, but this was a current
16 member of the City Council who was running for
17 re-election and who also has on his eyes on other
18 significant responsibilities within the City
19 Council.

20 And he was meeting with a group of
21 interested people wishing to effect a particular
22 decision that the City Council is in process of
23 considering or could be in a position to even be
24 more helpful. And there were no lobbyists, but
25 there were, you know, 20 interested neighbors and

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2 citizens being brought together around an issue
3 that they strongly support and would like to see
4 greater support in the City Council, listening to
5 where the City Council person is and. You know,
6 probably being asked to make a contribution down
7 the road.

8 So, I mean, I think we force them to
9 more kind of low down to earth, you know,
10 gatherings of neighbors and friends talking
11 about issues and, you know, coming together as
12 opposed to having it go as easy money.

13 MR. CHRISTENSEN: Is the elimination
14 though, tend to effect on, you know, broader
15 city-wide raises for example, economically
16 disadvantaged candidates disproportionately, I
17 mean, they're not going able to maybe raise as
18 much money in those kinds of events as someone who
19 would be, and is that a negative consequence?
20 That's just one.

21 I mean, some of the outreach to the
22 lobbyists comes from the need to develop parity
23 with other candidates. And I'm just wondering,
24 you know, what some of the negative consequences
25 are. And I don't know if people thought about

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2 these.

3 MR. DADEY: I mean, clearly, you know,
4 having easy access to money raised again by
5 lobbyists for incumbents who may not necessarily
6 represent districts that have those kinds of
7 citizens who are capable to give that much money,
8 clearly helps to level the playing field.

9 But I also know that there are
10 candidates who represent less wealthy neighbors
11 would have figured how to make connections to
12 issues and in neighboring districts where they can
13 have access to that kind of money and have in fact
14 done that, outside of the lobbyists.

15 CHAIRMAN SCHWARZ: I wanted to make two
16 comments, Dale Christensen's comments and then
17 turn them into a question to you.

18 Just my gut would be that challenger
19 candidates would be benefited by lessening the
20 role of contributions from people doing business
21 with the City, which are more likely to go
22 incumbent candidates, that would be one
23 observation turned into a question to you.

24 And the other on the fill-the-void
25 issue, I wonder whether the Board doesn't have

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2 some data that's relevant to that in, if we
3 studied the effect of the change from a one-to-one
4 match on a thousand dollars, to a four-to-one
5 match on \$250, and whether that, that change,
6 different kind of change, didn't have, didn't have
7 the kind of effect you've talked about, about
8 pushing candidates into trying to get more
9 citizens involved with lower contributions because
10 of the multi-layer effect.

11 So those are, you know, just things that
12 occurred to me now while listening to you that I'd
13 like the witness to comment on.

14 MR. DADEY: I mean, clearly, the, many
15 of the necessarily challenger, but people running
16 for City Council the first time in 2001, had to
17 raise money with the community, and were
18 fortunate, their campaign benefited tremendously
19 by having to do that and not rely upon, you know,
20 the easy money of lobbyists or well-connected
21 lobbyists and their circles.

22 So I think that it does, you have a very
23 -- it would be interesting to take a look at, that
24 is it has a very beneficial impact or effect on
25 having forced, you know, people running for open

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2 seats or challengers.

3 And what was the first question?

4 CHAIRMAN SCHWARZ: The first question

5 was whether, if one had a limitation upon

6 political contributions from people doing business

7 with the City, wouldn't that relatively favor the

8 challenger candidate over the incumbent candidate,

9 because incumbents, it seems logical to say, are

10 the ones who are likely to be getting

11 contributions from people doing business with the

12 city?

13 MR. DADEY: I would think so, most

14 certainly.

15 MS. GORDON: Some of these comments and

16 perhaps some of the comments of the other

17 witnesses also, perhaps been consistent, although

18 on a different direction, with the Board's

19 longstanding recommendations that contribution

20 limits generally should be lower and the

21 expenditure limits generally should be lower, and

22 that maybe the availability to have public funds

23 that's available could be lowered and still

24 maintain the vigorous campaign atmosphere that

25 puts the City Council campaign or some who would

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2 say more money than is really necessary has been
3 seen and, you know, maybe there would be no net
4 less.

5 MR. DADEY: Can I ask a question of
6 Commissioner -- the public board, excuse me.

7 Have you looked at trying to restrict
8 the bundling of contributions? Is it something
9 that is legally possible or enforceable?

10 I know that you do a very good job of
11 reporting on it.

12 CHAIRMAN SCHWARZ: Well, you know, let's
13 leave that -- I'm not going -- I don't think we
14 should opine on these questions. We've got a very
15 good lawyer coming up to talk with us about
16 interesting legal questions.

17 MR. DADEY: All right. Thank you.

18 CHAIRMAN SCHWARZ: Thank you.

19 Okay, Bill Josephson and Peter Kiernan,
20 did I pronounce your name right?

21 You know during the spare time I've read
22 your paper and what's nice about it is that it
23 forces us to think about a lot of questions and
24 that's been very useful, very useful.

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2 (Whereupon, Mr. Bill Josephson and Mr.
3 Peter Kiernan gave the following testimony):

4 MR. JOSEPHSON: Both Peter and I were,
5 along with Michael Cardozo, leaders in the City
6 Bar Association's effort to get the, to persuade
7 the American Bar Association and the New York
8 State Bar Association, and the Office of Court
9 Administration, to take positions that effect,
10 prohibited lawyers making political contributions
11 in return for government engagements.

12 And that's the experience that we bring
13 to the table as we indicate in the first paragraph
14 of our statement.

15 Peter, you want to give a point?

16 MR. KIERNAN: No, why don't you just say
17 it.

18 MR. JOSEPHSON: Well, in general we
19 think that issues that relate to pay-to-play are
20 handled by prohibitions; that's certainly true in
21 the longstanding prohibition on National Bank
22 contributions to campaigns for federal office.
23 Now incorporated in the Federal Election Campaign
24 Act, that's true in the federal contract
25 provisions.

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2 It's true in what was passed with
3 respect to pay-to-play. I haven't seen the New
4 Jersey legislation that's reported this past, this
5 morning Times but it sounds as if it's very much a
6 regulatory statement. And we think that that's
7 really the appropriate way to deal with an issue
8 which, choosing my words as carefully as I can,
9 behavior that is akin to bribery.

10 CHAIRMAN SCHWARZ: Bill, you're pushing
11 on an open door on this subject because the Board,
12 I believe, while we may have some differences on
13 how we handle the subject, all believes that
14 legislation is far better than regulation by us.

15 Now, unfortunately we are under a
16 mandate to look at it in terms of regulation. My
17 own hope is if we do that, the people responsible
18 for passing laws would say they'd rather pass a
19 law than have our regulation, so that's looking
20 down the road.

21 MR. JOSEPHSON: But it's my understanding
22 Mr. Chair, is that you haven't actually tried to
23 discharge that mandate in a responsible way. You
24 come to the position that, for whatever reason, it
25 is now not dischargeable and in a sense, it's a

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2 fair point too.

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I had an experience as point two describes, when I took over the Attorney General's Charities Bureau in 1999, of trying to effect some very simple procedures at both the state level and the city level, to ensure that neither the state or the city make grants or contractors -- grants or contracts with vendors that should have been registered with the Charities Bureau, but were not. Or have registered with the Charities Bureau but were out of date or with the City there was a complaint or an inquiry or even an investigation.

14

And while we were able to establish those procedures through with respect to the state, despite elaborate contacts with OMB and the City Comptroller, we were unable on successive endeavors to establish them with the city, because of the inadequacies of the City's procedures.

20

CHAIRMAN SCHWARZ: Did they say they were unable to do the computer tasks or did they say we're not willing to go through the exercise?

23

MR. JOSEPHSON: They all expressed, agreed in principle that this was a desirable thing to try to do. They were unable, not

1
2 unwilling. And indeed, you know, I'm sure that
3 you have, you're familiar with the work that
4 Marlan Simpson is doing as the head of the office
5 of Mayor's Contracts. And you may or may not know
6 that Marlan was a section chief in the Charities
7 Bureau until she took over this. And actually
8 Marlan and I were the people who tried, took the
9 lead in trying to establish this relationship with
10 the City, which he was with the State.

11 MR. CHRISTENSEN: With those discussions
12 with both the Executive and City Council?

13 MR. KIERNAN: Please say that again?

14 MR. CHRISTENSEN: With those discussions
15 within both the Mayor's Office and the City
16 Council?

17 MR. JOSEPHSON: She was not then -- we
18 did not at that time deal with the Mayor's Office
19 of Contracts. We dealt with OMB and we dealt with
20 the City Comptroller.

21 When she became head of the Mayor's
22 Office of Contracts, I did say to her and I don't
23 wish to put her on the spot in any, way, shape or
24 form, I did say, "Well, is it appropriate now to
25 try to do what we had tried to accomplish?" And

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2 her response was, "No, more work needs to be done
3 before we can do that."

4 So I think that a necessary predicate to
5 the Mayor's proposals is an effective Vendex
6 system and if Vendex couldn't do what we wanted it
7 to do in a very simple way with respect to the
8 pendancy of investigations or inquiries of lack of
9 registration, it seems to me sensible, even if you
10 still feel you're under the mandate you once were
11 under, it may still be under to postpone any
12 regulatory action until you're quite sure the
13 systems will work.

14 That's our point.

15 CHAIRMAN SCHWARZ: Which means you can
16 make a regulation, you're saying contingent on X
17 and Y being done for the --

18 MR. JOSEPHSON: I think you got to know
19 whether it's feasible or not and I don't think you
20 can now know the answer to that question.

21 CHAIRMAN SCHWARZ: But it has to be
22 feasible, I mean, these aren't conceptually very
23 difficult things to do Bill, or are they, I mean?

24 MR. JOSEPHSON: I don't know enough about
25 that.

1

2 CHAIRMAN SCHWARZ: Do you use e-mail
3 yourself?

4 MR. JOSEPHSON: I'm the last person you
5 would think to be a techie.

6 CHAIRMAN SCHWARZ: I agree with that.
7 I'm asking you a direct question of someone who is
8 more or less my age, do you use e-mail?

9 You don't have to answer though, you can
10 -- you don't have to answer.

11 MR. JOSEPHSON: Okay.

12 MR. POTASNIK: E-mail him the answer.

13 MR. JOSEPHSON: No Blackberry, no
14 beeper, no cell phone, no answering machine, no
15 computer. There are other things I still want to
16 learn at my age, but not that.

17 CHAIRMAN SCHWARZ: Yeah.

18 Peter?

19 MR. KIERNAN: Mr. Josephson is very
20 anxious for me to speak.

21 I actually was very intrigued by some of
22 the dialogue we had an opportunity to hear while
23 we were waiting. And I would really prefer to
24 address some of that then questions and answers.
25 But just to say a couple of more words about our

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2 prepared statement.

3 The question of doing business is
4 addressed here. We touched upon it and trying to
5 raise some question with respect to it.

6 Obviously that is the horrific issue and
7 one which would introduce, it seems to us, a
8 tremendous amount of confusion and again, pushing
9 on your open doors, Mr. Chairman, we think clearly
10 should be the province of the Legislative process,
11 if that were all to be possible.

12 And with respect to dealing with the
13 regulation, if that were to be what is required,
14 that we would propose certainly that there would
15 be a minimum threshold and it would have to be far
16 higher than employees, and I've raised and I've
17 had a conversation with the average taxi driver
18 and or the average small business. Because I
19 think we would gain big efficiency with a bigger
20 threshold.

21 Since Bill wants me to continue, we also
22 I think made the points pretty clear that we think
23 the burden of determining whether a political
24 contribution is disqualified should really rest on
25 the candidate or candidates' committee, because

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2 confusion really would lie more so --

3

CHAIRMAN SCHWARZ: You're saying and you
4 say it well in your opening statement, if it were
5 rest, rested with the donor, that's bound to chill
6 contributions because a lot of donors are not
7 going to know what it means to, quote to do
8 business.

9

MR. KIERNAN: Not only would it be
10 chilling effect on the donor, but it would have
11 the affect of discouraging a lot of candidates, it
12 seems to me, it seems to us; we just cited the
13 made up example of a primary -- a candidate for
14 City Council in the primary, that's running for
15 the first time. If he or she were to be confused
16 about how the law is to be interpreted, just
17 imagine what their donors would be looking for
18 guidance to the candidate or people advising the
19 candidate.

20

So we would make two points, really,
21 there, we want the candidates to have to make that
22 determination, but perhaps not make this
23 requirement applicable to all races. And it would
24 be within your jurisdiction if perhaps just to
25 city-wide offices or to an instance of Speaker

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2 running for re-election to the Council, or perhaps
3 prompt the Chair like of the Finance Committee
4 Chair of Land Use.

5 I remember a big scandal years ago, I
6 won't mention any name, but it was an incumbent,
7 remember the City Council who was the first land
8 use committee after the charter provision you
9 chaired and raised tremendous of amount of money,
10 although it was disgraced and a lot exposed. But
11 he had the ability to raise a tremendous amount of
12 money because of the position he held.

13 And that was a good example of
14 pay-to-play because every real estate actor in the
15 city figure was provided money for.

16 Our statement goes on with respect to
17 attribution just from a point of experience, when
18 question of whole that sort of consider to win, we
19 were advocating the pay-to-play restrictions with
20 respect to lawyers; question was asked whether it
21 was just to law firms and the answer is it was to
22 every lawyer licensed to practice in this state
23 and wherever they were practice, licensed to
24 practice in the United states, and that's the way
25 the ultimate resolutions of the American Bar

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2 Association of the New York State Bar Association
3 read.

4 I think with respect to attributions of
5 for-profit entities, Mr. Josephson may want to
6 elaborate but, you know, in our statement we raise
7 a lot of applicable, I mean, apt questions I think
8 about shareholders and their family and their
9 immediate families, how you define that, those are
10 very difficult issues.

11 We also dealt with respect to
12 not-for-profit entities and think that there's a
13 real need to distinguish among non-for-profits
14 because there are a tremendous variety of
15 not-for-profits.

16 Some of them are very, very substantial
17 businesses. Some of them are in direct
18 competition with for-profit entities. Those that
19 use the example of banks and credit unions,
20 supermarkets and food cooperatives.

21 And then there's sort of this question
22 of in your regulations in distinguished kinds of
23 not-for-profits. For example, increasingly we see
24 that the work in government is being performed by
25 not-for-profits particularly in the social service

1
2 area. These entities depend on contracts with
3 the city and the city depends on them.

4 What's more important is that they are
5 qualified people doing government-type work rather
6 than each restricting them in how they attempt to
7 get the contracts, it seems to me.

8 But then with respect to attributions,
9 there becomes a nuance that I think with
10 not-for-profits that has to carefully considered.

11 That nuance is that, at least in my
12 experience, that with not-for-profits you
13 generally have three kinds of people that serve on
14 boards:

15 Those that raise money.

16 Those that give money.

17 And those who actually work, but there's
18 also a fourth category that people that benefit
19 from whatever the not-for-profit -- not-for-profit
20 can achieve.

21 I think that you want to be very careful
22 not to discourage people from serving on boards
23 that give money or give money on behalf of the
24 not-for-profit because if you discourage those
25 kinds of qualified people from being on board,

1
2 you're really going to hurt the not-for-profits
3 which is a new segment of our economy and our
4 service sector.

5 We don't have any answers to some of
6 these questions but it's easy to raise the
7 questions.

8 CHAIRMAN SCHWARZ: Well, it's a great
9 service to us that you're forcing us to think
10 about those questions.

11 MR. JOSEPHSON: We think in general that
12 whatever form of regulation is adopted here,
13 requires a great deal of study and the drawing of
14 lots of distinctions that are going to very
15 difficult to draw.

16 If you could think about, well, the
17 controlling stockholder in a real estate firm
18 that's carrying out a major development on the
19 part of the City, well, analytically, such person
20 could be indistinguishable from physicians who
21 control a not-for-profit health care provider.

22 And also there's carrying out services
23 for the city. And the question of which, if any,
24 you wish to add a burden to, to trammel the
25 political process, is very difficult.

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2 CHAIRMAN SCHWARZ: Bill, let me ask you
3 some hard questions in the non-profit area.

4 Let's put to the side for the moment the
5 classic non-profits that you call our attention to
6 that are really businesses, you're --

7 MR. JOSEPHSON: Some are businesses and
8 some are not businesses.

9 CHAIRMAN SCHWARZ: But I want to put the
10 ones that are de facto businesses aside --

11 MR. JOSEPHSON: Okay, we can talk about
12 it in de facto terms.

13 CHAIRMAN SCHWARZ: -- and talk about the
14 other non-profits and here I just want to express
15 what I find argues on both side of the question
16 and then hear you react.

17 MR. JOSEPHSON: Exactly correct.

18 CHAIRMAN SCHWARZ: On one side of the
19 question it worries me to apply a restraint to
20 people who do not have any profit motive, any
21 conceivable profit motive for their contribution.

22 And indeed when I was questioning the
23 Mayor's witness at the first hearing, I got him to
24 say, well, when the Mayor gives money to the
25 Congressman trying to persuade the Congressman to

1
2 allocate Homeland Security funds more fairly to
3 the City, he said that shouldn't be banned because
4 the Mayor has no profit motive.

5 So these trustees of non-profits don't
6 have a profit motivation. So that sort of in my
7 mind says, well, maybe we should put that kind of
8 non-profit aside.

9 On the other hand, there is a, you know,
10 non-profits who have enormous stake in the budget
11 contributions they get from the city and there's a
12 pattern, I think of non-profit people rewarding --
13 I'll strike that word rewarding to making major
14 contributions to city officials that are able to
15 help them or have helped them get a favorable
16 budget resolution.

17 So in my own mind it's completely torn
18 on it and others may, you know, be on one side or
19 another of that question, or may also be torn.

20 But you've been a specialist in
21 non-profits A, the Attorney's General Office, and
22 B for your life at Fried, Frank.

23 How would you come out in weighing those
24 two concerns?

25 MR. JOSEPHSON: I'm very skeptical about

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2 what economists now analyze as altruism. You
3 know, we started out thinking about altruism as if
4 it was a certain purity attached to it.

5 I think the current economic thinking is
6 that altruism is a very important factor in lots
7 of market decision making, but there is also
8 attached to it rather less purity than would of
9 imagined.

10 I mean, take the position just as an
11 example, of the head of a major New York City
12 hospital system that also runs one of the City's
13 hospitals under contract with the Health and
14 Hospitals Corporation, take that situation.

15 This is a person who's probably making,
16 and properly making, a million dollars a year.

17 Well, what is his motivation when he
18 makes a contribution or helps a public officer who
19 has some say over that hospital system contract?

20 It's a mixed bag.

21 Is it appropriate to regulate? Well, do
22 we have evidence of abuse? This is why I think
23 properly you've been concerned throughout the
24 hearing that I attended, with what is the factual
25 basis for any proposed legislation? I don't know

1
2 the answer to that question. But I think before
3 one can responsibly act, one needs to have a
4 record that provides a sufficient basis for that
5 action, especially since we're talking about First
6 Amendment rights here. We are talking about
7 participation of the political process.

8 And that's why generally in our
9 statement we're very skeptical that such a basis
10 exists for any action of any kind at this time.

11 CHAIRMAN SCHWARZ: So I'm sure there are
12 other --

13 MR. CHRISTENSEN: Yes, I had a question
14 for Mr. Kiernan. You mentioned an example of a
15 political office holder who had disgraced
16 themselves.

17 I'm not really interested in who the
18 person is, but in your experience and this
19 sentence is directed to either or both of you, are
20 you aware, have you seen any instances where
21 office holders or bureaucrats have disgraced
22 themselves because of political contributions as
23 opposed to outright corruption? Someone who paid
24 a bribe?

25 Have you ever seen, I mean, has there

1
2 ever been a submission case, and you're both
3 lawyers, that the instant bad act was --

4 MR. JOSEPHSON: Yes, I think you can
5 contrast, for example, the behavior with respect
6 to political fundraising, of the, not the current,
7 but the past two State Comptrollers, one of them,
8 you may recall, was the subject of very extensive
9 hearings, commission hearings.

10 The other adopted policies perhaps in
11 light of the hearing commissions' findings, that
12 certainly tried to ensure that things the hearing
13 commission found were things which did not occur
14 under his regime. Yet, yet, he was absolutely
15 adamantly opposed to Municipal Security Board
16 making or G37. Because he did feel that that
17 would have a very, very serious negative effect on
18 his ability to raise legitimate money for
19 legitimate political purposes.

20 I just cite these two as a contrast to
21 show how complicated this issue is.

22 MR. KIERNAN: And I would just give a
23 much more pointed answer and the answer is yes,
24 you asked if I was aware of someone, elected
25 official becoming disgraced or whatever the word

1
2 you used, simply because of political
3 contributions. And the obvious example was, is a
4 candidate or officer using money for personal
5 expenses, using money for personal gain and not
6 using it for the reason which it was given.

7 Or then we can ask the second question,
8 why was it given in the first place? Maybe
9 someone is subsidizing another person's lifestyle
10 in the form of a political contribution and
11 getting, getting influence or undue favoritism in
12 return. So there you have, you know, both
13 corruption and abuse.

14 MR. JOSEPHSON: And you also have
15 abundant current examples, unfortunately
16 judiciary, the elected judiciary which is very
17 much, you know, concern of the group which was the
18 concern of my office which is now is a concern of
19 the Commission of Judicial Conduct.

20 We're beyond the scope of the Campaign
21 Finance Board's jurisdiction, but I think one of
22 the reasons why we see so much abuse in the
23 elected Judiciary is the kind of transparency that
24 other witnesses talked about with respect to the
25 City contract process and grant process, does not

1
2 exist in the judicial campaign process, although
3 we're now struggling to try to achieve that kind
4 of accountability in various ways.

5 CHAIRMAN SCHWARZ: You had, when you
6 started to say you had some comments, you were
7 intrigued by the dialogue before and we asked if
8 you would say something about that, so let me ask
9 you what you think about that, because I want --

10 MR. KIERNAN: Well, there were a couple
11 of things, but I think the one that I most -- I'm
12 anxious to say is, in listening to the dialogue
13 there seems to be a bit of a stigma attached to
14 lobbyists.

15 I have a couple of points, I'll be very
16 brief.

17 I mean, I'm not a lobbyist, so I not
18 defending myself. But I think that a lot of
19 members in our profession, my profession, that are
20 lobbyists, and sometimes effective lobbying takes
21 on the nature of litigation where you have a good
22 cross current of ideas; Mr. Christensen you
23 repeatedly were asking, you know, if we place this
24 ban on contributions, for example, well, what
25 would happen? Well, one of the things that I

1
2 think would happen is you would have less people
3 involved in the process and less talented people
4 perhaps involved in the process.

5 Sometimes, I mean, I've seen this more
6 vividly in Washington where I've had experience
7 and also in Albany, when I did have a position
8 with the Legislature, but lobbyists provide a lot
9 of data, a lot of information, provide a lot of
10 ideas. And they provide a lot of responses to, to
11 charges and allegations that are made by opponents
12 of another position.

13 And they play a useful role and I
14 wouldn't want to see them discouraged from
15 participating.

16 Now, the more -- two minor points.

17 When I always think about a member of
18 our profession, a younger lawyer who's just
19 starting out maybe in a small town or maybe he's
20 been practicing for a couple of years, gets a
21 client that wants to get something accomplished in
22 Albany.

23 That person doesn't have the kind of
24 stature, hasn't served on boards or commissions
25 like Mr. Begun has, and the only way that person's

1
2 going to gain any access is if he or she were to
3 buy a ticket of, at a fundraiser and then have the
4 gumption or the whatever it takes to go right up
5 to the State Senator or Committee Chair and talk
6 about their problem and get in that person's face
7 and get them to know them better, in a charming
8 way hopefully, and get to an appointment.

9 But there has to be an entry point and
10 there are young people that would get hurt if we
11 just ban, it seems to me, ban contributions from
12 lobbyists.

13 I'm all in favor of limiting them, I'm
14 very much in favor of pay-to-play properly done
15 but I don't think you should -- I don't think
16 anyone should just attach a stigma to lobbyists.

17 MR. JOSEPHSON: I was kind of struck by
18 what I thought was a kind of conflation between
19 what I understand the issue before the Board to
20 be, and the emphasis of prior witnesses on
21 lobbying.

22 And lobbying is a different species
23 entirely, it's a separately regulated activity at
24 the federal, state and local levels. And it does
25 not necessarily, does not necessarily have

1

2 anything to do with campaign contributions.

3 Now, to the extent -- to the extent that

4 a lobbyist becomes a bundler or significant

5 contributor, that's one thing. But to the extent

6 that the lobbyist is trying to influence the

7 passage of the --

8 CHAIRMAN SCHWARZ: That's irrelevant to

9 us, it's entirely protected.

10 MR. JOSEPHSON: Yes, yet I felt that

11 some of the statements here were confusing exactly

12 the points you made.

13 I mean, I have been a registered

14 lobbyist, I don't happen to agree with one of the

15 witnesses who said that lobbyists don't accomplish

16 anything, I think actually the one time we

17 achieved something that had been pending in the

18 Legislature and hadn't got done for a long time

19 and should have been done in the public interest.

20 But did we make political contributions

21 in the course of that activity, absolutely not.

22 CHAIRMAN SCHWARZ: Bill, do you?

23 MS. PATTERSON: No.

24 CHAIRMAN SCHWARZ: You didn't hear the

25 statement that I made at the beginning that I

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2 hoped that we would begin to hear some dissent now
3 you guys. We don't hear dissent, we hear be
4 cautious and be careful but it's an excellent
5 contribution that you've made and we really
6 appreciate it.

7 MR. KIERNAN: Thank you.

8 MR. JOSEPHSON: Thank you.

9 (Time noted 4:41 p.m.)

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C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, Marc Russo, a Notary Public within

8 and for the State of New York, do

9 hereby certify that the within is a

10 true and accurate transcript of the

11 proceedings taken on March 1, 2005. I

12 further certify that I am not related

13 to any of the parties to this action by

14 blood or marriage and that I am in no

15 way interested in the outcome of this

16 matter.

17 IN WITNESS WHEREOF, I have hereunto

18 set my hand this 25th day of March,

19 2005.

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MARC RUSSO

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PAUL BECKER, CSR, P.C.

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