

*State of New Jersey
Commission of Investigation*



VULNERABLE
TO ABUSE

**The Importance of Restoring
Accountability, Transparency and
Oversight to Public Higher Education
Governance**

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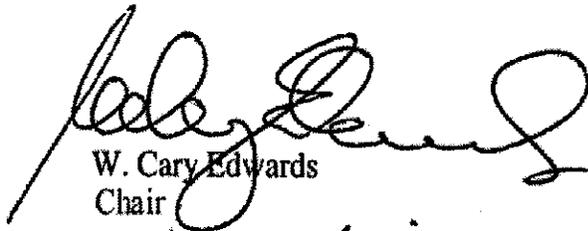
Executive Director

October 2007

Governor Jon Corzine
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith formally submits the final report of its investigation into the governance, oversight and accountability of public higher education in New Jersey.

Respectfully,



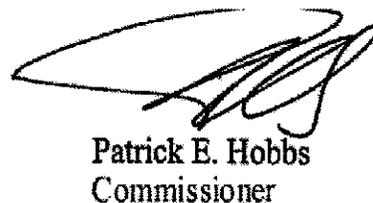
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Executive Summary

Public higher education in New Jersey has labored for more than two years under clouds of scandal and corruption. For the most part, the storm has centered on the University of Medicine and Dentistry of New Jersey (UMDNJ), a reputable health-sciences and medical school battered by waste, fraud and abuse. As revelations of wrongdoing and misconduct at UMDNJ have ebbed amid implementation of significant internal corrective action there, the focus across the larger spectrum of public higher education has shifted, and, to a certain extent, that shift is grounded in a belief that the worst is behind us, that lessons have been learned, that it is time to move on.

All are dangerously premature conclusions.

The State Commission of Investigation's own broader inquiry into the operations and administration of public higher education in New Jersey has revealed *an entire system* vulnerable to problematic governance, serious shortcomings in oversight, accountability and transparency and outright violations of the public trust. While the expansive panorama of corruption at UMDNJ clearly is an aberration in the extreme, it nonetheless signifies what can happen within a system structured to render its constituent parts susceptible to a host of questionable and patently abusive practices. The findings of this investigation demonstrate that piecemeal change would be a grossly inadequate strategy in the face of complex problems whose scope and cause extend well beyond the narrow confines of a single institution. Unless the state is willing to tolerate the risk of history scandalously repeating itself somewhere within this troubled system, wholesale reform is the only sensible and responsible course of action.

The Commission focused largely on practices at UMDNJ and at four other institutions of differing size, location and statutory grounding – Rutgers University, New Jersey Institute of

Technology, Rowan University and Ramapo College of New Jersey – and, to varying degrees, discovered troubling circumstances that bear upon the proper governance of each. Essentially, these institutions are islands unto themselves. The statutory and administrative architecture under which they and other state colleges operate is characterized by the complete absence of any mechanism to ensure internal accountability, independent external oversight and proper transparency. That is because when the state granted them across-the-board autonomy more than a decade ago, dismantling the cabinet-level Department of Higher Education and eliminating virtually all meaningful elements of state involvement in safeguarding the taxpayers’ sizable investment in this system, the vital exercise of operational oversight, accountability and transparency wound up on the cutting room floor with all the rest of what was described at the time as needless, suffocating bureaucracy.

This is significant because under current circumstances, it is difficult, if not impossible, for the public to have confidence in the integrity of the system. The Commission recognizes that, generally, state college and university autonomy is working – and working properly. In many instances, the individuals and governing boards who run these institutions strive to meet industry standards and maintain acceptable operating practices. But the absence of meaningful and effective oversight, accountability and transparency nonetheless renders the system eminently vulnerable, as evidenced by the findings of this investigation, including:

- Additional contracting and procurement abuses and waste at UMDNJ, including favored treatment of vendors in exchange for personal gifts and benefits for university employees.
- Questionable and undocumented travel, business and entertainment expenditures and structural impediments to budgetary accountability, oversight and transparency at Rutgers University.

- Excessive intrusion of politics, including efforts to solicit state college and university officials for campaign fundraising, influence-peddling in the appointment of institutional governing boards and millions of dollars in lobbying expenditures.
- Instances in which state college and university Boards of Trustees, through action or inaction, exercised questionable due diligence and accountability through inappropriate delegation of authority and/or failure to keep abreast of matters carrying fiscal or operational consequences.
- Virtually unrestrained borrowing practices that have saddled New Jersey's public colleges and universities with some of the heaviest long-term higher-education debt loads in the nation.

Much is at stake in the outcome of all the scrutiny to which New Jersey's public higher education system has been subjected these last few years – for tuition-paying parents and students, for taxpayers at large and for the institutions themselves.

The State devotes in excess of \$1.5 billion annually in direct financial support at taxpayer expense to public higher education – more than 5 percent of the entire state budget. But even that level of funding has been swamped by cost pressures that have forced state colleges and universities to raise tuition repeatedly, and they are supplementing that tuition revenue with ever-increasing student fees. In fact, New Jersey now ranks among those states with the highest average four-year cost of public college tuition and fees in the nation. Given state government's own precarious fiscal condition, the crunch on higher education is likely only to become more forceful, particularly with growing system-wide enrollments projected to top 410,000 students within the next several years.

That is why it is incumbent upon the Governor, the Legislature, the institutions and all interested parties to consider and adopt effective strategies to ensure that every dollar invested in higher education is wisely and prudently spent, that proper governance is provided and that adequate oversight and accountability are established and maintained. As Jane Oates, executive director of the New Jersey Commission on Higher Education, has told the General Assembly's Budget Committee, "Public expectations of accountability for higher education outcomes have increased over the past decade, as have expectations for fiscal accountability, which have spilled over to the nonprofit sector from the new federal requirements placed on the corporate world.

"The problem," Oates stated, "cannot be solved with business as usual."

In that spirit, and pursuant to a creative and comprehensive response to these difficult issues, the SCI presents the findings of its investigation as a prologue for systemic reform recommendations outlined in detail at the conclusion of this report.

Especially critical is the need to restore and bolster the public's badly shaken confidence with the establishment of a mechanism to ensure meaningful and effective oversight, accountability and transparency – not through blanket restoration of unnecessary and burdensome bureaucracy but through a carefully targeted overhaul of the State's existing governance apparatus. The first stop on that overhaul should be the 1994 Higher Education Restructuring Act. Well-intentioned though it may have been, this statute went entirely too far, completely eradicating the machinery of independent oversight. Legislators and executive policymakers should revisit this law, particularly with an eye toward equipping the New Jersey Commission on Higher Education with cabinet-level status and the tools necessary to ensure that public higher education – and its proper and effective governance and administration – are priorities in New Jersey.

A vigorous and reconstituted state governance apparatus, establishing standards for proper and effective autonomy, would serve a number of salutary purposes, not the least of which would be to insulate state colleges and universities from the political fray and provide them with a strong advocate in the halls of both Trenton and Washington. The absence of such an entity has contributed heavily to the rise of an anomalous situation in which these public institutions spend substantial sums of money every year on private-sector lobbyists. While the Commission finds nothing inherently wrong with the practice of lobbying *per se*, the costs associated with it in this realm – both in terms of taxpayer dollars spent and in the corrosive effects of partisan influence-peddling – have gotten out of hand. At a minimum, steps should be taken to establish standards and ensure accountability, transparency and oversight with regard to lobbying by state colleges and universities. Further, given evidence set forth in this report concerning efforts by lobbyists to solicit college and university personnel for purposes of campaign fundraising, such activity should be proscribed to prevent these institutions from becoming pawns in the insidious political game of pay-to-play.

Along these same lines, the process by which Boards of Trustees are appointed should be revamped to minimize partisanship created by the undue intrusion of politics. In recent years, far more time and energy have been spent in Trenton positioning political allies for appointment to such positions than on efforts to scrutinize college and university operations and ensure accountable and transparent governance.

Serious consideration should also be accorded legislation that would subject all state colleges and universities to rigorous and uniform standards governing financial management and internal controls – a state level, higher-education version of the federal Sarbanes-Oxley law that

now applies to the corporate world.¹ Such legislation would serve not only to safeguard the operational and fiscal integrity of what is, collectively, one of New Jersey's most valuable resources, but it would also put the state at the cutting edge of higher education regulation nationally and enable the institutions themselves to market a unique commitment to "best practice" governance with an oversight agency to establish and ensure compliance.

With regard to spending for capital projects, this investigation has shown that some of these institutions now hold the dubious distinction of having accumulated among the heaviest individual higher-education debt loads in the nation, a situation which, at the very least, demands assiduous monitoring. In addition to strengthening and positioning the Commission on Higher Education to serve as the state's central oversight mechanism, statutes governing the operations of the New Jersey Educational Facilities Authority should be amended to require that it conduct authoritative and independent financial due diligence evaluations on all financing arrangements in which it participates as a "conduit" for the sale of bonds on behalf of all state colleges and universities.

Furthermore, efforts should be undertaken immediately to ensure budgetary and accounting transparency at every state college and university in New Jersey. This was a long and difficult investigation, and one reason for its duration was the difficulty encountered in gaining ready, uniform access to critical revenue and expenditure data. Lack of transparency and delays in fully responding to requests for data and information were notably acute at Rutgers University, which is governed by a unique and privileged enabling statute that has been interpreted as setting it apart from the rest of higher education in New Jersey. There is no excuse, however, for any confusion or obfuscation in this realm, particularly in an era in which scarce fiscal resources have compelled Rutgers and other institutions to make painful

¹ Sarbanes-Oxley Act of 2002: 15 U.S.C. §§ 7201 et seq.

programmatic cuts. The students, their families and the public at large deserve nothing less than full disclosure and transparency.

Given the complexity of these matters, the Commission took unprecedented steps to ensure that the crafting of its recommendations did not occur in a vacuum. Prominent individuals and organizations deeply familiar with public higher education in New Jersey were consulted for their perspectives, concerns and suggestions in the context of both the history of the system and its current state of affairs. Coupled with the investigative record, this outreach enabled the Commission to develop truly comprehensive and viable reform proposals sensibly designed to address the system's glaring weaknesses while bolstering, or at least leaving undisturbed, the salutary strengths of autonomy already in place.

It is noteworthy that everyone consulted by the Commission agreed in substance that while autonomy should be maintained, change is in order, albeit to varying degrees and for different reasons and with different emphasis. For some, the motivating factor is a deep and abiding concern that the continuing void in oversight, accountability and transparency, along with the unbridled intrusion of politics, is the fertile soil of scandal. Others worry that fierce and uncoordinated jockeying for budgetary resources, status and academic standing threatens to transform state colleges and universities from productive educational institutions into self-aggrandizing competitors. Above all, there is the stark and disturbing realization that in the councils of state government, where public policies and priorities are formulated, debated and established, higher education in New Jersey has no fixed or influential place at the table.

As action is taken to address these and other issues, the central challenge will be to avoid going to extremes. Just as history has proven that the State's wholesale disengagement from higher education in 1994 was a mistake, it would be unwise to the point of recklessness to

compound that error by turning back the clock. A balance must be struck for the proper governance and oversight of public higher education without returning to the tightly regulated, top-heavy and overly burdensome structure of past state involvement. Institutional autonomy is important and must be retained, but it must be coupled with effective oversight, accountability and transparency.

This should be regarded as a time of opportunity. More than four decades have passed since New Jersey, after considerable study and debate, established a comprehensive system of publicly-funded higher education, and much has changed. Renewed questions abound, driven by significant events and trends. The findings and recommendations of this investigation should serve as a powerful springboard to help move this system to the next level, to ensure strong governance, oversight, accountability and transparency and to achieve and maintain administrative and academic excellence. In this context, other major issues facing public higher education, including specifically educational policy and taxpayer and student tuition support, can be reasonably debated and resolved.

LOSING CONTROL

A Brief History of College Autonomy in New Jersey

During the 30-year period from the 1960s to the 1990s, New Jersey's system of public higher education underwent a profound transformation from one of the most centralized and heavily regulated in the United States to one of the least. The facts of this wholesale deregulation provide an important systemic context for the Commission's investigation, particularly as it relates to the adequacy of existing mechanisms to ensure fiscal and operational oversight and accountability in the governance of the State's public colleges and universities.

In the mid-1960s, after considerable debate over the need for, and strategies to establish, a unified structure for publicly-funded higher education, the Legislature enacted the Higher Education Act of 1966. That statute established a cabinet-level Department of Higher Education, administered by a Chancellor and advised and directed by a statewide Board of Higher Education.² These entities exercised direct control over the governance and operation of the state's nine so-called "senior" state colleges and universities, playing a central role in the process of formulating and approving budgets, the appointments of key institutional officers and the setting of tuition levels. The State's larger "research" institutions, meanwhile, have operated with greater latitude and individual authority based upon separate enabling statutes governing each, particularly Rutgers University, which historically has advocated for unique and separate treatment under the law.³

² N.J.S.A. 18A:3-1 et seq. (Repealed by L. 1994, c.48, § 307, eff. July 1, 1994).

³ New Jersey is home to 12 state-level institutions of public higher education established over the years. Three are classified as research institutions and are governed by separate, uniquely applicable statutes – Rutgers, the State University Law (N.J.S.A. 18A:65-1 et seq.); the University of Medicine and Dentistry by the 1970 Medical and Dental Education Act (N.J.S.A. 18A:64G-1 et seq.), which combined the existing School of Medicine of Rutgers and the New Jersey College of Medicine and Dentistry into a single entity called UMDNJ; and the New Jersey

A decade later, however, the tide began to shift as educators and policymakers determined that the panoply of state regulatory controls had become unnecessarily constrictive to the maturing higher education system, particularly with regard to the nine senior state colleges and universities. Thus, efforts were undertaken to grant the individual state colleges and universities a measure of independence. In 1986, then-Governor Thomas H. Kean signed legislation commonly referred to as the “State College Autonomy Law,” which conferred upon the governing boards of the various colleges and universities significantly greater authority in a number of areas, including the ability to appoint chief executives on their own without approval by the Chancellor.⁴ Enacted after more than two years of discussion and debate, this statute also empowered the individual Boards of Trustees to engage in contract procurements without sign-off by the Department of Higher Education, and to accept grants, borrow money and deal with managerial and professional personnel outside the realm of Civil Service regulations. At the same time, however, the central unified authority vested in the Department and in the Board of Higher Education for such activities as collective state budget negotiations remained undisturbed.

Eight years later, the State went even further. In March 1994, shortly after taking office, then-Governor Christine Todd Whitman proposed as part of her first annual budget message to the Legislature that the Department of Higher Education, its Office of the Chancellor and the Board of Higher Education be eliminated. Whitman stated that “taxpayers will save millions of dollars by cutting this excessive bureaucracy” and called it a “first step in making state

Institute of Technology by the NJIT Act of 1995 (N.J.S.A. 18:64E-12 et seq.). Meanwhile, operating authority for nine other institutions – the “senior” state colleges and universities – is embodied by legislation enacted in 1968 (N.J.S.A. 18A:64-1 et seq.). Initially, six institutions were brought under the rubric of this statute: The College of New Jersey, Kean University, Montclair State University, New Jersey City University, Rowan University and William Paterson University. Two others, Ramapo College of New Jersey and Richard Stockton College of New Jersey, were added in 1969. In 1972, the Thomas Edison State College joined the group.

⁴ N.J.S.A. 18A:3-14 (Repealed by L. 1994, c.48 § 307, eff. July 1, 1994).

government smaller but smarter.” Under the plan, which within months won legislative approval, the state’s role was reduced essentially to research and policy advocacy, embodied by a new Commission on Higher Education “in but not of” the Department of State with other key responsibilities shifted to the Department of the Treasury. Meanwhile, a separate Council consisting of the presidents of public and private institutions of higher education was established to fulfill an advisory role.

The implications of the proposed changes were significant from both practical and political standpoints. For one thing, the State would no longer exercise control and oversight over any essential aspect of the administrative and fiscal operations of its public colleges and universities, which, with regard to those areas, were put on track to become individual masters of their own destiny. Although the Commission on Higher Education was empowered by statute to conduct inquiries into the affairs of state colleges and universities, such power could only be invoked at the direct request of the Governor – something that has occurred only once in the subsequent history of the system and not at all during the upheaval of the past few years.

Moreover, the stripping away of state controls extended to the very heart of the governance process – the make-up of individual college and university governing boards. Prior to decentralization, Board-of-Trustee appointments to the nine senior state institutions were the result of an open, collaborative process designed, in part, to minimize and discourage overt political considerations. Both the Board and Department of Higher Education traditionally played key roles in the recruitment and screening of candidates for these institutional boards. Using a range of sources, including letters of recommendation and the names and credentials of nominees submitted by university/college presidents and staff, department employees would examine resumes and conduct interviews to identify the most qualified candidates. A list was

then sent to the Governor's Office for consideration and a final decision. Under the new structure established in 1994, the Boards of Trustees of the individual schools could continue to recommend prospective trustees, but without any screening or input by an oversight authority. Thus, the process for filling vacancies on the governing boards of public institutions of higher education became uniform across the State with the Governor serving as gatekeeper of the process and sole arbiter of which nominees would be submitted to the state Senate for advice and consent.⁵

Further, where the Board and the Department formerly presented a unified annual budget request for the entire system of higher education, deregulation meant that the individual colleges and universities – through the hiring of lobbyists and other means – now had to negotiate their fiscal cases directly with the Treasury Department, the Office of Management and Budget and, ultimately, with the Governor and members of the Legislature.

For all practical purposes, the State's role was reduced to one of promotional advocacy and policy discussion while the individual colleges and universities took on the self-governing and self-policing aspects of independent academic institutions. The individual Boards of Trustees, through the administrators they hired, now had direct authority over all matters concerning the supervision and operation of the institutions, including fiscal affairs, institutional planning, construction and procurement contracts, employment, bonding and borrowing, compensation of staff, tuition and fees, controversies and disputes, and programs and degree offerings. In addition, the ability of the institutions to retain private outside legal counsel, previously provided primarily through the state Office of the Attorney General, was expanded.

⁵ With the exception of Rutgers University, all appointments to the governing boards of New Jersey's three research institutions, including NJIT and UMDNJ, are made directly by the Governor. At Rutgers, six members of its Board of Governors are appointed by the Governor while five are appointed by, and from, the university's Board of Trustees, a separate advisory entity outside the school's governance structure.

Governor Whitman's plan triggered intense debate. While the administration argued that "elimination of unnecessary state oversight and its accompanying bureaucracy [would] serve to unleash the creativity and innovation of these institutions," a number of high-profile figures inside and out of academia publicly questioned the wholesale lifting of state control. Indeed, some suggested that the lack of any explicit mechanism to ensure adequate self-policing by the schools was, in itself, a recipe for mismanagement. Among those who questioned the wisdom of reducing the state's role so drastically was former Governor Kean, then-President of Drew University, who warned in news media reports at the time that any structure for higher education needed to provide for a "statewide system of accountability and responsibility." Kean also discounted assertions that total deregulation was a natural outgrowth of the autonomy process he had launched eight years earlier. Other critics who spoke out through the media, including then-Princeton University President Harold T. Shapiro, who had experienced the aftermath of a similarly dramatic change in public higher education governance while serving as chief executive of the University of Michigan, warned that complete deregulation could expose state college and university operations to the unbridled intrusion of politics. Those sentiments were echoed by then-Chancellor of Higher Education Edward Goldberg, who argued that the Department of Higher Education was needed to maintain a buffer between educational priorities and the political establishment in Trenton. Martin Freedman, a Franklin Lakes rabbi who served at the time as a UMDNJ representative on the Board of Higher Education, warned that the groundwork was being laid for "a whole series of . . . scandals." A. Zachary Yamba, president of Essex County College, expressed concern that eliminating the state Board "would strip away the only defense colleges have against political interference, both at the state and local level." Meanwhile, in an analysis written in the spring of 1994, Stephen Wiley, then-Chairman of the

Board of Higher Education, observed that the plan would have the practical effect of removing “existing checks on spending by the institutions.”

The University of Medicine and Dentistry of New Jersey

As subsequent experience has shown, the early warnings were not unfounded. Indeed, the findings of investigations by state and federal authorities and the news media into waste, fraud and abuse at one institution alone – the University of Medicine and Dentistry of New Jersey – have provided ample evidence of the consequential effects of poor oversight and accountability.

The first public indication of serious problems at UMDNJ came in a March 2005 media report of a \$75,000 no-bid professional services contract that had been awarded by the university to a politically-connected Philadelphia attorney in the fall of 2001. This individual, Ronald White, was hired ostensibly to represent the UMDNJ’s interests during the transition into office of New Jersey’s then-newly elected Governor, James E. McGreevey. White, a major Democratic Party fundraiser subsequently implicated in a federal investigation of political corruption in Philadelphia, died before he could be questioned about the circumstances of his engagement by UMDNJ. The university, however, was unable to provide evidence to show that he performed any work in exchange for receipt of three separate \$25,000 checks paid to his firm by the institution, and it undertook legal action to recover the money.

Amid subsequent news media accounts detailing other questionable procurement and spending practices at UMDNJ, state and federal investigations were launched. In response to rising pressure, university officials in April 2005 made public detailed internal information related to personnel compensation practices. It showed top management received huge bonuses,

including nearly \$3 million paid out to 196 managers in 2004 alone. The data also contained examples of exorbitant raises for top brass, including one executive whose salary was boosted over a four-year period by more than \$110,000 to a total of \$280,000.

The release of the salary and bonus information served to sharpen demands for accountability. In May 2005, the institution's Board of Trustees hired Gary S. Stein, a former Justice of the New Jersey Supreme Court, to review approximately \$350 million in contract procurements undertaken by UMDNJ in FY2005. Stein produced a report detailing improper and questionable contracting practices and the use of UMDNJ funds for patently political purposes during the fiscal year that ended June 30, 2005.⁶

The most serious evidence of institutional malfeasance, however, surfaced later that fall with disclosures by the U.S. Department of Health and Human Services that UMDNJ-owned University Hospital in Newark had over-billed state and federal Medicaid programs. In December 2005, UMDNJ entered into a deferred prosecution agreement with the Office of the United States Attorney for the District of New Jersey, Christopher J. Christie, to avoid criminal prosecution for health-care fraud. UMDNJ's governing Board agreed to implement a series of financial, management and personnel reforms and to reimburse the federal and state governments \$4.9 million. In addition, Herbert J. Stern, a former United States Attorney and federal judge in New Jersey, was appointed to serve as a federal monitor with wide discretion and power to enforce compliance with the deferred prosecution agreement.

Stern subsequently opened an aggressive inquiry, issuing quarterly reports detailing a laundry list of waste and abuse, along with recommendations for reform. Evidence suggesting

⁶ Former Justice Stein presented his "Report to the President and Board of Trustees of the University of Medicine and Dentistry of New Jersey" on January 10, 2006.

possible criminal misconduct, meanwhile, has been referred to the Office of the United States Attorney for the District of New Jersey.

Here is a summary of the most compelling findings of various investigations into events, circumstances and personnel at UMDNJ:

Ethics Violations, Political Intrusion & Conflicts of Interest

- State Sen. Wayne Bryant, D-Camden, was indicted by a federal grand jury in March 2007 on charges that he entered into a scheme to obtain a \$35,000-a-year consulting job at UMDNJ's School of Osteopathic Medicine in Stratford in order to boost his pensionable state salary. While on the university's payroll, Bryant, then-chairman of the Senate Budget Committee, allegedly steered increased state appropriations to UMDNJ, according to the indictment.
- Top university officials used a ranking system for job applicants based on the status of political powerbrokers who recommended them, according to the federal monitor. An applicant with a number "1" following his/her name would get more time and attention from UMDNJ's human resources department.
- Various state and local government officials and university trustees used UMDNJ as a bastion of political patronage to reward friends and campaign donors, according to internal university memoranda compiled in an April 2006 report by the federal monitor.
- While serving on UMDNJ's Board of Trustees, then-Newark City Council President Donald Bradley used his position on the board to get friends and family members jobs at UMDNJ, according to the federal monitor. The monitor also alleged that Bradley helped one of his campaign contributors get a \$1-a-year deal to lease university space.
- R. Michael Gallagher, former dean of the UMDNJ's School of Osteopathic Medicine in Stratford, was indicted along with Bryant in March 2007 in connection with the consulting-job scheme and on additional charges of falsifying financial statements to cast the appearance that his unit was turning a profit so he could earn a \$15,000 performance bonus. He also billed UMDNJ for food and drink, including more than \$3,250 for alcohol over five years, while laying off staffers.

Questionable Expenditures

- UMDNJ's top 31 administrators and deans ran up more than \$631,000 in travel costs from 2000 to 2005, according to media reports based on university documents. The top spender billed the school for more than \$41,400 in travel and entertainment expenses.
- UMDNJ spent more than \$80,000 in 2005 to shuttle the head of a volunteer advisory board from her home in Pennsylvania's Poconos to the school's Newark campus.

No-Bid Contracts/Procurement Abuses

- Procurement rules were routinely ignored with a large number of UMDNJ contracts improperly classified as not requiring competitive bidding, according to the Stein report. Waivers were granted without regard to actual performance of work by vendors. A lack of internal controls permitted blanket waivers to be authorized with only the approval of an entry-level university buyer.
- From 2002 to 2006 unauthorized or inappropriate spending amounted to more than \$22.6 million, according to the federal monitor.

Favored Treatment of Select Employees

- A \$9 million no-bid consulting contract was awarded to a consulting firm for work between 2002 and 2003 to stem the tide of financial losses at UMDNJ's University Hospital. The chief executive officer of the university's managed-care program recommended the firm, which was co-founded by his brother, according to the Stein report.
- A UMDNJ official used his position to gain acceptance for his daughter into medical school and helped a friend obtain a no-bid contract worth \$300,000 for providing cafeteria services for three years, the federal monitor found.
- A former UMDNJ trustee pressured personnel in the university's human resources department to find a job for a relative who was eventually given a position at a higher pay grade than his qualifications would suggest. Although UMDNJ investigated this matter as a potential ethics violation, it was never resolved, according to the federal monitor.

Medicaid/Medicare Fraud

- In addition to the Medicaid over-billings for which UMDNJ was required to repay \$4.9 million under the deferred prosecution agreement, the federal monitor in July 2006 found that losses due to “over-billing,” “double-billing” and waste could exceed \$243 million, including more than \$35.5 million in additional Medicaid and Medicare overcharges.
- UMDNJ collected the \$35.5 million in Medicare and Medicaid payments as part of a kickback scheme designed to bolster its troubled cardiac surgery program, according to the federal monitor. Further, the monitor reported that in an attempt to cloak the scheme with legitimate cover, at least nine cardiologists were paid salaries and stipends of as much as \$150,000 as “clinical assistant professors” even though their primary role was to recruit patients.

Internal Reform Initiatives

It is important to note that a number of internal reforms have been undertaken at UMDNJ in response to this tide of abuse. One significant step involved the removal of certain personnel implicated in alleged improper conduct. Amid the findings of various investigations, a number of deans, Board-of-Trustee members and senior managers resigned or were terminated. This has had “a cleansing effect” on the university, according to the federal monitor.

Meanwhile, the membership of UMDNJ’s Board in August 2006 was expanded by legislation from 11 to 19, and assiduous efforts have been undertaken to enhance the Board’s quality, diversity and skills. The university also strengthened procedures for the confidential submission of employee concerns of alleged wrongdoing, including safeguards to protect whistleblowers from retaliation. Furthermore, in an effort to promote transparency in procurement and purchasing, the university limited the circumstances under which no-bid contracts can be awarded.

Other salutary steps involve the creation of new levels of accountability within the institution, including the establishment of a stronger Board-of-Trustees Audit Committee newly

reconstituted and empowered based upon Sarbanes-Oxley principles. The Board also took action to revamp internal audit and control procedures and to establish an institution-wide Office of Ethics and Compliance. It also reformed and revised the university's practices with regard to granting employee bonuses and severance packages. To provide an institutional check-and-balance-function for fiscal matters, new subcommittees of the Board were created to focus on fiscal matters. In addition, the Board established a new Governance and Ethics Committee, charged, among other things, with ensuring proper board member recruitment, orientation and development.

In a progress report to the Governor and Legislature in June 2007, the Board stated: “. . . [I]t is important to understand that the level of oversight and review which has occurred since March 2006 and which shall continue in the future will inevitably identify new and additional problems of the past which will need to be – and will be – remedially addressed. The Board's commitment to reform of the University is rooted in a recognition that the Board and the executive administration must identify all past and present problems, continually scan the environment for additional potential risks, and move systematically to address not only individual instances of wrongdoing but the broader organizational, administrative, and cultural characteristics that permitted them to arise in the first place.”

It is within this context that the specific findings of this investigation are referred to UMDNJ and appropriate law enforcement agencies for action they deem appropriate.

UMDNJ: ADDITIONAL WASTE and ABUSE

The Commission examined procurement practices in UMDNJ's Facilities, Planning and Construction Department and found evidence of contracting abuses, including favored treatment of vendors in exchange for personal gifts and benefits for university employees. Pursuant to the requirements of its statute, the Commission has referred these matters to the Office of the Attorney General of New Jersey.

An Invitation to Abuse

Eladio "Ed" Quiles, Jr., is president and chief executive officer of Circle Janitorial Supplies, Inc. (CJS) of Paterson, N.J., and runs the firm with his son, Daniel Quiles, a corporate vice president. Founded in 1974, CJS has provided janitorial and housekeeping supplies to UMDNJ for more than 25 years. Eladio Quiles estimates that 25 percent of the corporation's business derives from its dealings with UMDNJ, and records show that UMDNJ paid CJS more than \$12.5 million between November 2001 and July 2006.

Presently, CJS holds a pair of contracts awarded through competitive bidding to procure supplies and operate stockrooms at two locations on UMDNJ's Newark campus. One site provides janitorial supplies; the other, industrial supplies. UMDNJ's Physical Plant divides the campus into zones. When a UMDNJ employee orders supplies, paperwork is generated documenting the sale to UMDNJ and, on a monthly basis, CJS submits invoices. These invoices are distributed to the managers of each zone for review, and once purchases are confirmed, the invoices go to the finance department for approval. UMDNJ also maintains an Office of Supplier Diversity and Vendor Development that serves, in part, to assist minority business enterprises, such as CJS, and other small businesses in dealing with the university's bureaucracy.

Among other things, the head of that office, UMDNJ Assistant Vice President Ernestine Watson, acts as an advocate for those vendors when issues arise about the quality of their work or the timely payment of their bills. Occasionally, it becomes necessary for Watson to intervene and attempt to resolve such matters.

The Commission found that UMDNJ's contracts with CJS were written in such a way as to render the university vulnerable to exorbitant and unwarranted overcharges – sometimes to the tune of more than 100 percent of the original cost of an item – and that UMDNJ officials have done little or nothing until recently to stem the resulting loss of hundreds of thousands of dollars over the years. The investigation also revealed that CJS officials have provided gifts and benefits to numerous UMDNJ employees, including Watson, in order to ingratiate themselves.

Both the janitorial and industrial supply contracts require CJS to keep on hand specified stock items in certain quantities. Also, the firm must charge UMDNJ fixed prices set forth in the contracts for those supplies. If UMDNJ orders a non-stock item, CJS is permitted to mark up the price in order to make a profit and cover its overhead. Under the janitorial supply contract, this markup is capped at 20 percent of CJS's cost. But the contract, while explicitly defining many of its terms, inexplicably does not define "cost" in this context, a critical deficiency. UMDNJ officials interpret "cost" as the price paid by CJS to purchase a non-stock item from its distributor. CJS, however, takes the position that "cost" includes incidental expenses for credit charges paid, shipping, handling and courier services, thus inflating their bills. Worse still, the industrial supply contract provides for no ceiling on mark-ups whatsoever, and neither contract requires CJS to document its costs for non-stock items. As a result, UMDNJ has failed to determine the extent to which CJS has marked up non-stock items.

Although the Commission found no direct evidence to suggest that these contractual omissions were intentional, the language has left UMDNJ vulnerable to uncontrollable and excessive overcharges. Indeed, an internal CJS document instructs employees to mark up janitorial supplies by 35 percent and industrial supplies by 40 percent. When CJS uses a credit card to purchase supplies for sale to UMDNJ, the mark-up is 50 percent. And even though CJS receives discounts from suppliers, it marks up the prices charged to UMDNJ as though the firm has not benefited from such discounts. Moreover, although both contracts state that CJS must provide non-stock items to the Newark campus without charging for delivery and that “only special order items will be subject to shipping charges and must be limited to actual freight charges incurred,” CJS routinely bills UMDNJ for the shipping of non-stock items. The firm has even gone so far as to instruct its employees to “bury it into the price.” In some instances, the firm not only adds these hidden shipping costs but also inflates its markup even further by layering the shipping costs onto the price it originally paid for various goods.

In addition to routinely overcharging the university, CJS has sought inflated reimbursement from UMDNJ for a range of questionable expenditures generated by orders from UMDNJ personnel. In sworn testimony before the Commission, CJS Vice President Daniel Quiles described the terms of the industrial supply contract in particular as having been written by UMDNJ personnel in such a manner as to be “so open ended [that] it literally gives me the license to have my way with the University and even with that latitude and that power I still exhibit extreme prejudice and mark it what I feel to be appropriate.”

Following are just a few examples of a multitude of invoices that have been submitted by CJS and paid by UMDNJ:

- Fifty books entitled “1001 Ways To Reward Employees” purchased from Amazon.com for \$622.49 and sold to UMDNJ for \$1,033, a markup of \$410.51 (66 percent).
- CJS called a restaurant and arranged for two catered luncheons at UMDNJ. CJS paid the restaurant \$5,900 for the food and services rendered. It charged UMDNJ \$7,965 for placing the orders and using its credit card to pay the restaurant. The markup was \$2,065 (35 percent).
- Two boxes of Nitrile Gloves purchased for \$20 and sold to UMDNJ for \$43.20, a markup of \$23.20 (116 percent).
- An impellor pump, two wear rings, and two casings purchased for \$2,713.85 and sold to UMDNJ for \$4,033.28, a markup of \$1,319.43 (49 percent).
- A Brother laser printer purchased for \$155.95 and sold to UMDNJ for \$283.99, a markup of \$128.04 (82 percent).
- Five Whirlpool dehumidifiers purchased for \$875 and sold to UMDNJ for \$1,325, a markup of \$450 (51 percent).
- An industrial microwave oven purchased for \$402.77 and sold to UMDNJ for \$805.54, a markup of \$402.77 (100 percent).

The Commission also found that rebate provisions contained in the contracts have been ignored by both CJS and UMDNJ, costing the university additional hundreds of thousands of dollars.

Under both contracts, UMDNJ is supposed to receive a five percent rebate on the total volume of business if the value of that volume exceeds a certain threshold – \$700,000 for the industrial-supply contract and \$500,000 for the janitorial-supply contract. For each year of both contracts, the value of business given by UMDNJ to CJS has exceeded those thresholds, but the university has never received a penny’s worth of the contractual rebates. By the Commission’s estimate, UMDNJ was owed more than \$486,000 in rebates for the period November 1, 2001 through July 31, 2006. CJS failed to pay any rebate to UMDNJ each of those years, and the Commission found no evidence that UMDNJ ever demanded payment. Moreover, no evidence

was found that UMDNJ employees ever monitored or audited the contracts with CJS to establish that rebates were due. As a result, the vendor enjoyed the use and benefit of the unpaid rebate monies while UMDNJ did not.

Both contracts also entitle UMDNJ to an additional two percent discount if the university pays CJS's invoices in less than 30 days. Since July 1999, however, UMDNJ has paid CJS more than \$13.7 million largely without regard to taking advantage of this discount. Had the payments been made in a more timely fashion, UMDNJ would have saved nearly \$275,000 as a result of discounts from CJS. The university's cumbersome mechanism for paying vendors raises serious questions about the full extent of this failure to redeem appropriate contractual discounts.

The Commission found that collectively, CJS's undetected overcharges, its failure to pay rebates and UMDNJ's inability to process most of the firm's invoices in a timely manner has cost the university more than \$1 million in unnecessary expenditures over the past six years – losses facilitated by an unscrupulous relationship between the firm and UMDNJ personnel.

For at least 20 years, it has been a violation of UMDNJ's rules for its employees to accept gifts or things of value from entities doing business with the university and for those vendors to offer such benefits to UMDNJ employees. Under certain circumstances, such conduct can rise to the level of a crime in New Jersey. Nonetheless, Quiles and his son provided gifts and other benefits to an assortment of UMDNJ personnel. Gift baskets, bottles of liquor, tickets to New York Yankees baseball games and free meals were given to zone managers, executive housekeepers and others responsible for ordering from CJS and reviewing CJS invoices. When Eladio Quiles learned in January 2005 that UMDNJ Assistant Vice President Watson had

planned a party to celebrate her 60th birthday, CJS paid the nearly \$800 catering bill, including \$650 for catering services and \$142.25 for a birthday cake.⁷

Although some of the UMDNJ employees who accepted gifts and other things of value have left the university, public funds remain at risk so long as the judgment of UMDNJ's employees can be compromised. In sworn testimony before the Commission, Ellen M. Casey, who served as UMDNJ's executive director for materials management from November 1999 until May 2006, stated that in 2001 or 2002, CJS sent her a gift basket. Casey testified that she forwarded the basket to Robert Wood Johnson Hospital in New Brunswick and sent a note thanking the Quiles but also informing them that such offerings from vendors were improper and that neither she nor any other UMDNJ employee could accept gifts. Advised by Commission staff of evidence that CJS had continued to offer, and that UMDNJ personnel had continued to accept, gifts and other items of value, Casey was asked whether she had any suggestions as to how the institution could better enforce prohibitions against acceptance of gifts from entities doing business with the university. She responded: "I think you fire the people that took a gift . . . [T]here should be a consequence for the public employee and for the vendor. The vendor should be barred from public contracting. That's – to me, it's a no-brainer."

The Value of a Deck

During the seven-year period from June 1999 through July 2006, Cesario Construction Co., Inc., of East Hanover, N.J., was paid more than \$2.8 million by UMDNJ through a variety of no-bid and competitive contracts. The firm, which has been doing business with the university for about 15 years, specializes in emergency responses for water- and sewer-line

⁷ Nine months after the party, and within days of CJS's receipt of a subpoena for records pursuant to this investigation, Watson wrote a personal check to the catering firm in the amount of \$650.

problems. Cesario has also performed excavation work, sidewalk repairs, paving, waterproofing, maintenance and snow removal on various campuses of UMDNJ. Its founder, Daniel Cesario, estimates that current contracts with UMDNJ account for 25 to 30 percent of the company's business.

Before he founded the firm, Cesario himself worked at UMDNJ as a plumber and became friends with another university plumber, Francis X. "Frank" Watts, Jr. Cesario left the university, but Watts remained, rising to the position of acting director of UMDNJ's Physical Plant. The Physical Plant is part of the Facilities, Planning and Construction Department and is responsible for routine maintenance and minor capital construction work. It also administers janitorial services for University Hospital and all of UMDNJ's campuses. In his position at the Physical Plant, it was Watts' responsibility to review and approve for payment bills submitted by Cesario Construction.

During emergencies, when time can be of the essence, contracts for such work at UMDNJ typically are awarded on a no-bid basis. There are no official lists of tradesmen to call, and the university has opted not to contract in advance for emergency services. Thus, Watts was at liberty to offer emergency work to the company of his choice. In January 2005, the accounting firm KPMG, L.L.C. completed an audit of procurement practices at UMDNJ's Physical Plant during calendar years 2002 and 2003 in which it focused on three vendors, one of which was Cesario Construction. KPMG's report raised questions as to whether emergency purchase orders were used inappropriately by university personnel in non-emergent situations, thus bypassing competitive bidding requirements. Until going on extended sick leave in June, 2005, followed by his retirement, Watts called Cesario if water and sewer lines were clogged, leaked, or broken. To facilitate Watts' ability to reach him and offer him work, Cesario provided

him with a cellular phone on which to call him when emergencies occurred. Since Watts's departure from UMDNJ, emergency work has gone to other firms, and Cesario Construction's business with the university has been limited largely to snow removal.

In 1999, when Watts decided to add a deck to his home in Oxford, N.J., Cesario built a 400-square-foot wood deck onto the residence, at no cost to Watts. In 2002, Watts found a contractor to convert the deck into an enclosed sun room. Cesario paid in full the contractor's \$15,000 bill for the construction work. The Commission estimates that Watts benefited by at least \$20,000 from his relationship with Cesario, which resulted in a breach of UMDNJ's rules. This situation raises serious questions as to whether Watts' objectivity in reviewing and approving Cesario Construction's bills and in the selection of vendors when the need for emergency work arose was compromised by his improper acceptance of these benefits from Cesario.

RUTGERS UNIVERSITY: BUDGETARY TRANSPARENCY and SPENDING ISSUES

Rutgers University’s annual operating budget of approximately \$1.6 billion is larger than that of any other single institution of public higher education in New Jersey, and yet Rutgers cannot readily produce detailed information about significant areas of its own spending. Part of the reason for this is that, despite its stature as “the state university” of New Jersey, Rutgers is equipped with a poorly integrated university-wide accounting system that defies and frustrates reasonable standards of public transparency and accountability. Compounding this budgetary opaqueness is a record-keeping system so decentralized that requests for specific data related to university expenditures routinely meet with inordinate delay in gaining access to the information sought. Further, the Commission’s examination of fiscal practices in a number of areas at Rutgers – the allocation of staff “discretionary” funds, travel and entertainment spending and use of “emergency” funds – revealed lax internal controls and inadequate oversight that render the university unnecessarily vulnerable to financial waste and abuse.

Taken together, these problems have rendered the exercise of proper oversight, accountability and transparency difficult, if not impossible, to achieve within the university’s governance system and actually impossible for anyone attempting to achieve it from outside the university’s structure.

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During this investigation, the Commission served Rutgers with lengthy and repeated letters, e-mail requests and subpoenas, seeking access to a wide range of fiscal, purchasing,

procurement, accounting and other documents and materials. Many records were produced and subjected to careful analysis by Commission attorneys, accountants and investigators who followed up with interviews of senior university administrators. But as more materials were gathered, more questions, not fewer, arose while others remained unresolved. Additional records were sought and more interviews conducted, but despite months of communications, Rutgers failed to provide a clear and comprehensive picture of key areas of the university's accounting and spending practices. Finally, confronted by a continuing pattern of obfuscation, the Commission concluded that such circumstances left it no choice but to undertake the unprecedented step of augmenting its own staff with the expertise of a private forensic accounting firm. Through competitive bidding, UHY Advisors, Inc. of New York was selected to assist.

The investigation revealed that:

- The university has been struggling for years, with limited success, to install a comprehensive state-of-the-art financial accounting apparatus, the “Rutgers Integrated Administrative System” (RIAS). Rutgers administrators acknowledge problems with this system. Despite spending more than \$28 million on the project since 1999, RIAS is only partially deployed. This has left the university with an unwieldy amalgam of old accounting systems and new. Rutgers officials blame budget cuts at the state level for stalling completion of the system, but the Commission found that the university under-utilizes components of RIAS that are up and running in the areas of procurement and accounts payable. The absence of a fully integrated accounting system has seriously hampered the development of

effective financial recording and reporting mechanisms at Rutgers and disrupted the university's ability to produce timely information in response to queries.

- A highly decentralized recordkeeping system undermines Rutgers' ability to provide documentation for expenditures in certain areas, or to determine whether any documentation even exists. In areas particularly vulnerable to abuse, such as reimbursements for staff travel and entertainment, such records are based on paper and, are not electronically retrievable for review. The university does not even maintain an electronic database delineating its substantial real-estate holdings, the date of their acquisition or the amounts and sources of funding involved in their purchase.
- Rutgers' inability to maintain consistent internal controls governing fiscal transactions at the operational level impedes effective financial oversight and review. Some areas of expenditure are subject to detailed written policies and procedures while others are not. The investigation also found laxity with regard to the enforcement of the university's internal expenditure rules.
- Prior to and during the course of this investigation, Rutgers undertook steps aimed at strengthening internal budgeting, accounting and governance procedures, including the implementation of a number of Sarbanes/Oxley-style accountability controls adapted for higher education, an updated charter for its Board of Governors' Audit Committee, establishment of a "hotline" for confidential reporting of financial concerns, expanded conflict-of-interest disclosure rules and greater review of business-related travel and entertainment expenses. Such

initiatives, however, while laudatory, have been selective in nature and are insufficient to establish a fully transparent system of governance subject to meaningful independent oversight. This concern is exacerbated by Rutgers' unique history of near-absolute autonomy despite its status as a public institution.⁸

A Case Study: Lax Governance and Legitimate Warnings

The current administration at Rutgers was alerted more than four years ago to the need to address outdated and unwieldy accounting and information-management systems that, even then, seriously impinged upon the university's ability to maintain budgetary transparency and accountability. This advisory, along with recommendations for reform and restructuring, were contained in the text of a confidential report to President Richard L. McCormick in January 2003 from a private consulting firm retained by the university at his behest to evaluate the totality of Rutgers' administrative operations as he was taking office. The firm, Kavanagh Organization Planning, Inc. (KOP), stated, in part, that "the University needs a transparent budget process," adding:

The University had committed several years ago to develop an integrated administrative system for the University. This system, RIAS, was begun with great fanfare and a \$28 million budget. Only the first modules, a purchasing system and an accounts payable system, have (sic) been implemented before budget constraints caused an abandonment of the commitment. The university is left with a legacy [accounting] system that is over 20 years old . . . and a myriad of

⁸ Although the university's enabling statute, the Rutgers State University Act of 1956, does not expressly immunize Rutgers from state oversight, its language has become a bulwark for near-absolute operational autonomy. Moreover, the statute has been applied inconsistently. In some instances, the university has argued that the statute exempts it from state laws and regulations; in others, Rutgers has maintained that it *is* an arm of the state and thus entitled to the privileges and protections enjoyed by such entities. Over the years, the courts have been asked repeatedly to intervene and have issued rulings upholding positions taken by Rutgers on both sides of this contradictory equation. For a more detailed analysis of the peculiar status of Rutgers in the spectrum of public higher education in New Jersey, see the Appendix to this report.

shadow systems in the Schools and Colleges. The limitations of this mixture of an old central system and a “hodge podge” of local systems represent a significant constraint not only on the administration but are a significant hindrance to academic computing. No one is sure how much staff time is wasted holding together the old system or locally developing programs to work around its limitations.

The principal in that consulting study was an individual named Karen Kavanagh. She recommended to Dr. McCormick that KOP be hired by Rutgers, and she served as project manager for the firm, which is owned by her husband, William Kavanagh. Under the terms of its contract, which was awarded by the university without competitive bidding pursuant to the provisions of Rutgers’ governance rules and procedures, KOP was paid \$126,000 plus more than \$13,500 in expenses. Among the firm’s recommendations was the creation of a new senior management position – executive vice president for administrative affairs – with sweeping responsibility to revamp and oversee key areas of university operations. In February 2003, while KOP was still under contract with Rutgers, Dr. McCormick, after informal consultations with members of the university’s Board of Governors, established a position with that title and announced the appointment of Karen Kavanagh to it at a salary of \$240,000 a year plus \$25,000 annually in deferred compensation if she completed five years of service. Less than three years later, in April 2006, she left that post and was provided with a range of benefits, including the deferred compensation payments, under a separation agreement effective that September. Meanwhile, the post of executive vice president for administrative affairs was abolished and its responsibilities were assigned elsewhere amid continuing weaknesses in the structure of the university’s budgeting, accounting and internal control practices.

The Commission recognizes that it is neither unusual nor improper – indeed, it often serves a salutary purpose – for incoming chief executives, whether in the public or private

sectors, to familiarize themselves with prospective employers before they arrive and to hire professional staff of their own choosing. But events and circumstances in this instance raise substantive concerns about the fundamental integrity of the process utilized pursuant to those objectives. The facts describe an *ad hoc* process in which significant actions were taken on behalf of a taxpayer-supported public institution absent any mechanism to ensure appropriate public transparency and disclosure – from the university’s governing Board on down.

Dr. McCormick asserted in a sworn statement to the Commission that senior university officials, including members of the Rutgers governing Board, were consulted about retaining KOP, hiring Karen Kavanagh and offering her a particular compensation package. But to the extent that such consultations occurred, they were informal, and few were memorialized in a written record. Indeed, outside the minutes of a single Board of Governors meeting during which Dr. McCormick announced he had hired Kavanagh, there is no record of any discussions between him and the Board collectively or between him and individual members of the Board. There is no record to indicate that the full Board, or any committee or entity established or designated by it, reviewed or participated in the deliberations that led to the retention of KOP and the hiring of Kavanagh. In sum, the Board utilized no formal or established procedures to provide for independent evaluation and accountability in governance in this matter.

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On October 22, 2002, after seven years as president of the University of Washington, Dr. McCormick accepted an offer to lead Rutgers University. At the time, Karen Kavanagh was also employed by the University of Washington as vice president of human resources, a position she had held for three years. Kavanagh told the Commission in sworn testimony that Dr. McCormick

approached her sometime that month and asked her to consider joining his management team once he took over at Rutgers. Prior to her Washington experience, Kavanagh was employed in human resources and other capacities at the University of Medicine and Dentistry of New Jersey. “He [McCormick] wanted me to go to Rutgers to help him reorganize,” she testified. “There was also a Commission [the so-called “Vagelos Commission”] looking at the merger of Rutgers, UMDNJ and NJIT and he thought I could be very, very helpful in discussions about that merger.”

Kavanagh testified that in her initial discussions with Dr. McCormick about prospective employment at Rutgers, explicit job titles did not come up but rather the conversation focused on the “span of control” she might have and that it “would be in the administrative functions.” At first, she declined his offer “because I was very happy at the University of Washington.” But he persisted – “Dick kept on asking me,” she testified, “the President kept on asking me to make a decision to come” – and Kavanagh made a suggestion. According to her testimony:

. . . [H]e said [‘I need help immediately.’] And that’s when I suggested, well, I could help you organizationally and my husband has a company that does organization planning and I could help in looking at the organization and looking at some of the issues that you are finding out and report back to you.

Kavanagh acknowledged thinking at the time that this approach would also allow her to familiarize herself with Rutgers in the context of possible employment there. “I would say I wanted to help Dick and I wanted to help – I wanted him to have a smooth transition into his presidency. And so that was my major focus at that time and secondly, it did give me a look, but that was secondly.”

Kavanagh’s husband, William Kavanagh, founded Kavanagh Organization Planning in New Jersey in 1984 to specialize in private and public-sector organization planning, strategy

development and plan implementation services.⁹ In the fall of 2002, with the Kavanaghs residing in Washington State, the firm's offices were located in the Seattle suburb of Bellevue. Pursuant to Karen Kavanagh's suggestion to Dr. McCormick, KOP formulated a written project proposal for a comprehensive, university-wide examination of Rutgers' administrative infrastructure. The firm's seven-page proposal, entitled "Developing an Organization Plan For Improved Administrative Services at Rutgers University," was sent to Dr. McCormick via facsimile. A handwritten notation in the upper left corner of the cover sheet bears the date "11/15/02." In the proposal, the firm specified fees totaling \$126,000 to be payable in seven installments through June 30, 2003, plus "all reasonable out of pocket expenses incurred during the project including up to four round trip coach fares from Seattle to New Jersey monthly." The firm also requested that "in lieu of hotel expenses, Rutgers will reimburse Organization Planning \$1100 [sic] per month for apartment lease."¹⁰

Dr. McCormick forwarded the Kavanagh proposal to the office of Dr. Norman Samuels, the then-acting president of Rutgers. In a letter to Dr. Samuels dated November 25, 2002, Dr. McCormick wrote:

Consistent with several of our recent conversations, I am writing to ask you to arrange an outside services contract between Rutgers University and Organization Planning Inc. (sic), a professional services firm. Under the terms of the contract, this firm would evaluate certain central administrative support services of Rutgers, compare them with other university administrative structures, and advise me on needed changes and improvements in those services. I anticipate that Organization Planning Inc. (sic) will commence this project in early December 2002 and complete it by May 2003.

The project leader will be Karen Kavanagh, currently Vice President for Human Resources at the University of Washington and formerly Vice President of Human Resources at the University of Medicine and Dentistry of New Jersey. I

⁹ At the time, William Kavanagh was the sole full-time employee of Kavanagh Organization Planning, which retained independent contractors to conduct the projects such as the Rutgers study.

¹⁰ The typewritten date on the cover of the proposal is November 14, 2002. The firm is identified throughout by the abbreviated name, "Organization Planning Inc."

have worked closely with Karen at the University of Washington and know her to be an exceptionally knowledgeable and talented university leader.

It is my hope that following completion of this project Karen Kavanagh will agree to assume a major vice presidency at Rutgers, with overall responsibility for many of the central administrative support services to be reviewed by Organization Planning Inc. (sic) Her joining the Rutgers leadership team would be wonderful step forward for the university. However, even if Karen chooses not to become a Rutgers vice president, the results of this project will be extremely valuable to me and the rest of the Rutgers leadership.

In a memorandum to William Kavanagh on the same date, November 25, 2002, Dr. Samuels set forth several clarifications to the firm's proposal and approved a work schedule to consist of two phases with eight installment payments to the firm totaling \$126,000 through June 30, 2003.

Dr. McCormick officially assumed his duties as president of Rutgers on December 1, 2002 and, according to documents obtained by the Commission, the Kavanagh firm began interviewing personnel and reviewing administrative operations at the university eight days later. In an interim report to Dr. McCormick dated January 6, 2003, KOP referenced the possible need for new senior management positions at Rutgers and attached a set of draft job descriptions, including one for a proposed executive vice president for administrative affairs. Reporting directly to the president, this proposed position would encompass a wide range of responsibilities for financial management, human resources, information technology, facilities management, capital projects, and matters related to environmental health and safety. In concluding this report, Karen Kavanagh wrote to Dr. McCormick: "As always, you can contact me at any time, or Bill, who will be at Rutgers for the next two weeks. We are scheduled to meet and discuss this further on January 24. Please tell me if you need any revisions on the job descriptions."

Kavanagh testified that during the last week of January 2003, Dr. McCormick offered her, and she accepted, the position of executive vice president for administrative affairs.¹¹ A formal offer was tendered on February 6 for Kavanagh to start in her new position on April 1 with a base salary of \$240,000 plus \$25,000 per year in deferred compensation to be paid after completion of five years of service. Kavanagh's employment contract also included language obligating the university to provide her with additional compensation in lieu of a pension for her service at Rutgers.

On February 14, 2003, Dr. McCormick informed the Rutgers Board of Governors of his decision to create executive vice presidencies for both administrative and academic affairs. He announced that he had appointed Karen Kavanagh to the former but that the new academic vice presidency would remain vacant pending a national search for candidates. Minutes of the meeting at which Dr. McCormick made these announcements reflect that no vote was taken by the Board on the creation of the two positions or with regard to Kavanagh's hiring and compensation. The section of minutes dealing with the Kavanagh matter states, *in toto*:

Dr. McCormick also announced the creation of two new positions: an Executive Vice President for Administrative Affairs and Executive Vice President for Academic Affairs. He informed the Board that a search committee comprised of distinguished faculty as well as some students has been formed and that a national search has been launched to find an individual to fill the position of Executive Vice President for Academic Affairs. He also informed the Board that he has appointed Karen Kavanagh as the new Executive Vice President for Administrative Affairs, effective April 1, 2003. He noted her background as the current Vice President for Human Resources at the University of Washington and her past experience as Vice President of Human Resources at the University of Medicine and Dentistry of New Jersey. He pointed out that Ms. Kavanagh brought to the area of human resources at the University of Washington the type of service-orientation that he has outlined as one of the goals for his administration at Rutgers. Dr. McCormick also said that he would provide more

¹¹ This offer coincided with the receipt by Dr. McCormick of an interim evaluation from KOP as referenced at p. 31 of this report.

details at a future date regarding these and other roles to be defined in his administration, along with an organizational chart.

It is noteworthy that by way of contrast to Kavanagh's summary appointment to the administrative affairs executive vice presidency, the counterpart position of executive vice president for academic affairs was not filled until approximately five months later after completion of the national candidate-search referenced in the Board minutes as excerpted above. Also in contrast to the approach taken in the Kavanagh hiring, the academic affairs post was the subject of a formal resolution adopted by the board on July 11, 2003. Both positions, as created, were to be occupied at the pleasure of the president.

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In a memo to Dr. McCormick on February 6, 2003 – the same day Karen Kavanagh was formally offered the post – her husband stated that KOP would proceed with the second phase of its administrative study, focusing on four key task-force areas: strategic planning, university budgeting, information technology, research and grants policies and practices. “Qualified consultants are assigned to each focus area,” William Kavanagh wrote in a confidential memorandum to Dr. McCormick. “There is a clear time limit on each group’s work. You as president are the ultimate authority for approval over the task force results. I do not perceive any conflict of interest with Karen’s position.”

On April 16, 2003, one of KOP’s consultant’s, Ronald J. Napiorski, hand-delivered a lengthy letter directly to Karen Kavanagh (her name is misspelled Cavanaugh) reciting the conclusions of his review of finance and administrative service functions at Rutgers. Viewed

with hindsight in light of the Commission's recent findings of lax budgetary transparency at the university, Napiorski's observations are instructive. At one juncture, he stated:

The New Brunswick campus of Rutgers University promotes total decentralization, with very little overall control residing in Central Administration. The respective Schools and Colleges are provided substantial autonomy to operate their organizations at the local level. In that regard there is very little information flow from the units back to the core. . . . This structural decentralization has negatively impacted the financial operations of the university to a greater degree than it has impacted other operating areas.

At another juncture, Napiorski offered a scathing assessment of the way in which the university went about attempting to revamp its information systems operations through the establishment of the so-called RIAS (Rutgers Integrated Administrative System):

. . . Rutgers went through a system selection process that was a textbook approach on how not to select a system. . . . You can get by with what you have in place, however no one knows for how long. The current system architecture is ancient and is being held together by Elmers glue. The payroll system is so old and slow that when it is running, all other operations are shut out. The need to obtain accurate and timely financial information by each of the Colleges and other operating units and the failure of the University Information System Support has created a proliferation of underground shadow systems. I use the word underground not because they are being operated secretly but rather because they are completely out of control. There are no standards for these systems that are being adhered to, they are not synchronized nor in some instances compatible with each other so there is no hope of communicating between operating units or colleges and there is little information on the actual number of shadow systems that currently exist. . . .¹²

Napiorski's letter is the most recent document related to KOP's work that the Commission could find in Rutgers' files. Although the firm promised in its contract proposal to submit a final report of two phases of work to the university by May 30, 2003, the Commission found no evidence that a final report was ever produced. Dr. McCormick asserted in a sworn

¹² The current use and status of such shadow accounting systems at Rutgers is discussed at p. 42 of this report.

statement to the Commission that “in the course of their close consultation, the University and KOP understood that this phase of the work was accomplished through means that had evolved through the course of the project, rather than through a formal written report. The proof of the extensive work of KOP and the University with regard to this phase of the project is clearly evident in the many concrete, responsive steps taken by the University since the consulting work was done” Pursuant to the terms of its contract, KOP was paid in full – \$126,000 plus expenses.

On March 23, 2006, Karen Kavanagh left the position of executive vice president for administrative affairs. The post was abolished and she was appointed to the position of executive advisor to senior management at an annual salary of \$200,000. Kavanagh testified that the demotion was the result of disagreement with Dr. McCormick over university policies and priorities, including capital planning, the implementation of an undergraduate education task force and deferred maintenance.

The Commission found that the change in Kavanagh’s employment status at Rutgers was part of a separation agreement that enabled her to remain on the university’s payroll for six months with special benefits. Between April and September of 2006, in addition to more than \$115,000 in salary, Kavanagh received \$75,000 in deferred compensation (plus accumulated interest in the amount of \$2,014). Although the initial terms of her employment were structured such that she would not be eligible for deferred compensation unless she served a minimum of five years with the university, that arrangement was clarified via letter to her from Dr. McCormick dated April 21, 2003 – approximately two months after he had announced to the Board her hiring. In that letter, Dr. McCormick outlined a range of circumstances in which Kavanagh would qualify for a pro-rated distribution of deferred compensation short of five

years' service, including "if you are asked by the President to leave the position of Executive Vice President for Administrative Affairs" According to this letter, Kavanagh would forfeit deferred compensation prior to completion of five years' service if she left the position voluntarily or was terminated for cause as defined by the terms set forth in the letter.

The deferred compensation, plus interest, came on top of more than \$87,000 the university paid to Kavanagh between 2004 and 2006 in lieu of a pension for her service at Rutgers. The university also paid \$9,000 to a private outplacement firm to assist her in finding other employment. There is no written record to show that the change in Kavanagh's employment status or the terms of her compensation were discussed with or acted upon by the university's Board of Governors. In October 2006, she left the university for the private sector. In all, Kavanagh received more than \$1 million in compensation, apart from the payments to her husband's consulting firm, during the approximately three years of her personal employment association with Rutgers.

The Elusive "Discretionary Funds"

Emblematic of fiscal transparency issues at Rutgers was a months-long effort by the Commission's investigative staff, assisted by UHY, to identify and gain access to revenue and expenditure data involving funds allocated for use by university administrators and other personnel for purposes of their choosing. Many institutions of higher education, both in the private and public sectors, maintain such so-called "discretionary" funds, as does Rutgers. But during this inquiry, Rutgers displayed enormous difficulty in its ability to identify and quantify the discretionary funds contained within its budgeted accounts.

When the Commission initially inquired about discretionary funds at Rutgers during the fall of 2006, the university's response was that they did not exist. When pressed, university officials several months later provided a list of 485 separate line items under the budgetary rubric "Research/Professional Development Funds" (R/P Funds). An examination of these items showed that they consist of sums of money ranging individually from \$1,000 to \$60,000 allocated annually by the university to select faculty members. The purpose of these allocations, as set forth in a brief description accompanying each, is clearly discretionary. Recipients can choose to use them for a range of expenditures, including travel, attendance at conferences, payments to research assistants, the purchase of books and subscriptions, memberships in organizations, equipment, supplies, telephone toll calls and internet access. Approximately \$2.5 million in university operating funds is devoted to these allocations each year.

Substantial time and investigative resources, however, were expended before the Commission was provided with sufficient material to show that the scope of discretionary spending by Rutgers is much larger. In January 2007, after being pressured amid repeated delays, the university provided a list delineating 334 additional and different discretionary accounts reserved for use by deans, provosts, academic department heads and other administrators. When confronted with information developed by UHY's investigative team based upon its review of Rutgers' ledgers, the university added nine more to the list – for a total of 828 discretionary funds and/or accounts and/or line items. Rutgers officials, however, could not say with certainty whether that figure represents a complete accounting of all discretionary spending contained in the university's budget. Further, the university does not maintain formal written policies governing the allocation and expenditure of discretionary funds or the disposition of discretionary monies carried forward in these accounts from one fiscal year to the

next. Indeed, when asked about such policies, university officials inexplicably produced a document setting forth the discretionary fund policy, not of Rutgers, but of a private institution of higher education located in another state. “Without established and specific policies . . . ,” UHY Advisors concluded in its analysis, “it is difficult to identify and account for such spending, when for example, state appropriations are frozen or reduced.”

Once the existence of discretionary funds at Rutgers was established, the investigation revealed significant quantitative and qualitative differences. The approximately 343 accounts controlled directly by deans and other administrators contain significantly larger sums of money than the faculty R/P Funds. During fiscal year 2006, approximately \$13.4 million was expended through the administrator discretionary accounts, which appear to involve monies that are commingled. These funds derive principally from the proceeds of gifts to the university and/or its foundation from private donors, although the investigation revealed that they also contain taxpayer dollars. By contrast, the R/P Funds are covered fully by Rutgers’ regular taxpayer-supported operating budget, and their management is decentralized – that is to say, scattered across the university’s various academic departments. Because Rutgers’ budget and accounting system lacks university-wide integration and the capacity to provide detailed real-time information, each department has had to resort to the creation of a stand-alone mechanism, known as a “shadow system,” to try to manage R/P Fund usage. However, not all departments employ the same type of shadow system – some are handwritten, others are electronic – and there is no uniform method for tracking and reconciling expenditures. According to UHY’s analysis, “Reliance on the shadow systems results in inefficient use of available resources (labor), lack of timely oversight and delay in response to inquiries made by outside parties such as UHY and the SCI. The shadow systems are also subject to human error”

Travel and Business Expense Reports (TABERs)

Rutgers maintains internal regulations and procedures governing circumstances under which university employees may be provided with cash advances and/or reimbursed for the cost of “reasonable, necessary, appropriate and approved” travel, meals, lodging and other expenses incurred in the performance of official business. In every instance, employees must complete a document known as a Travel and Business Expense Report (TABER), providing a clear explanation of the business purpose, itemizing all expenses and supplying original receipts for all expenses greater than \$50. Air travel must be taken in economy coach-class and proof of payment for commercial airline tickets must be submitted, along with boarding passes where possible. With respect to lodging, the university’s policy is to cover only regular-room hotel costs incurred on trips in excess of 100 miles one-way, unless otherwise approved. The original hotel receipt must be submitted along with proof that the hotel was actually paid. Moreover, the rules explicitly state that “the cost of alcoholic beverages cannot be reimbursed from state or federal funding sources.” The university also maintains a compliance process under which TABERs are to be reviewed to verify that proper procedures have been followed and the expense claims are legitimate.

Substantial amounts of money are spent annually by the university through the TABERs system. For fiscal years 2004 through 2006, the cumulative total came to \$43.9 million, including \$15.6 million during 2006 alone. Despite the obvious magnitude of such sums, however, Rutgers has no system in place that allows for efficient and accurate electronic review of expenditures through TABERs.

UHY personnel examined travel and expense reports on file at Rutgers and found “significant failures to adhere to TABER[s] policies. . . .These results indicate a frequent lack of

transparency, submission of questionable items, and frequent failures to provide required documentation. That so many selected TABER[s] were problematic, and that so many indicated recurring issues, indicates that despite readily available and clearly-written policies, TABER[s] overall may not be well-controlled in practice.” The findings were particularly troubling, UHY stated, because expense reports riddled with flaws and discrepancies continued to gain university approval even after a 2004 internal audit prompted action by Rutgers to tighten its compliance-review procedures.

UHY specifically targeted a random selection of expense reports submitted by university faculty members who were among those who had access to discretionary Research/Professional Development Funds. Thirty-seven of 58 TABERs examined during this exercise – nearly two-thirds of the sample – presented one or more compliance issues, 23 involving reimbursement claims in excess of \$2,000 that, according to Rutgers’ policy, were to have been reviewed by university personnel.¹³

Examples include:

- A university teaching assistant submitted a TABER dated February 20, 2006 in the amount of \$11,083.30 for travel expenses to Lebanon for the purpose of research. The submission included an airline receipt but no ticket to verify passenger class. Further, although there were numerous receipts for a variety of expenses, including car rental, supplies and payment to research assistants, the receipts appear to be in the same handwriting and are on the same type of receipt forms. One of the receipts even included the purchase of a “receipt book” for \$3.

Despite these questionable circumstances, only \$83.30 was disallowed. The

¹³ The fact that compliance problems were noted in claims exceeding \$2,000 is significant because that is the dollar threshold above which claims were to be subjected to full internal review pursuant to the procedures put in place by the university in the wake of the problematic 2004 audit.

amount approved, \$11,000, was exactly equal to the cash advance that had been tendered to this individual.

- On September 29, 2003, Rutgers reimbursed an employee \$6,476.66 for claimed business expenses relating to an 11-day trip to attend a conference in Hawaii. Payment was approved, despite insufficient documentation. It was later determined that the conference lasted only five days. Further, the employee was reimbursed for the cost of a rental car even though the conference took place in the hotel where he stayed.
- On February 20, 2006, a university professor was reimbursed through the TABER system for the cost of two separate personal charitable contributions totaling \$4,000.
- A Rutgers professor submitted a TABER totaling \$29,672.71 for travel to Asia. This claim was submitted against a \$30,000 advance provided to the employee by the university on September 28, 2004. The claim was approved even though the TABER lacked sufficient documentation, including receipts. According to the record of this transaction, the employee provided a letter indicating that he had been engaged in research involving illegal drugs and could not safely obtain or even ask for receipts in some circumstances. Specifically, he stated, in part:

Payments to drug users, drug dealers, and recruiters of drug users and dealers: I did not even attempt to ask these subjects to sign anything because, in China, a person caught with a small amount of drug [sic] could be sentenced to death. Drug users are also routinely rounded up [sic] the police and sent to prisons. Getting them to talk to us was difficult enough, and if we ask them to sign something they will freak out.

This same employee submitted another TABER, dated October 10, 2005, claiming expenses of \$11,295.64 for another trip. The TABER was submitted against a \$15,000 advance. This TABER was honored by the university even though documents provided showed that a portion of the employee's airfare between Newark and Taipei, Taiwan, was for a "Deluxe" passenger accommodation.

- A Rutgers administrator submitted a TABER dated January 10, 2006 in the amount of \$5,109.41 in connection with a reunion event for certain Rutgers classes. The TABER was approved and paid despite the fact that the supporting documentation submitted by the employee lacked any information to substantiate a business purpose for the expense. The Commission ultimately obtained the proper documentation from Rutgers, but the TABER should not have been approved without this material attached.
- A university professor submitted a TABER dated March 22, 2005 and was reimbursed a total of \$5,473 to cover the cost of six people, plus family members, attending a "workshop" in Lake Placid, New York. This TABER also lacked proper supporting documentation to indicate the business purpose behind the workshop and the necessity to take family members along at university expense.
- A university professor submitted a TABER dated November 22, 2005 in the amount of \$1,222.10 for expenses related to attendance at a conference. A review of this file showed that he received double reimbursement for the same meal,

failed to provide proof of payment for travel by rail and did not provide any documentation showing the conference actually occurred.

Questionable Meal/Beverage Expenditures Outside the TABER System

The Commission, in conjunction with UHY Advisors, discovered instances in which the cost of restaurant meals and beverages, including liquor and wine, were charged to a state-funded account at Rutgers outside of the university's Travel and Business Expense Report system. These expenditures not only lacked proper documentation – and violated state and university rules prohibiting use of public funds to purchase alcohol – but they were classified to an accounting category identified only as “Supplies - Other,” which had the effect of disguising their true nature.

The existence of a potential issue in this regard was discovered during a separate review of expense vouchers submitted by faculty members through TABERs. One such voucher was in the amount of \$1,211.11 for dinner at Stage Left, a four-star restaurant near Rutgers' main campus in New Brunswick. This expenditure for six dinner guests included \$400 for three bottles of wine and was charged to the Graduate Chemistry Research Fund under the category of “Other Services.” It was determined that the Graduate Chemistry Research Fund is funded from the proceeds of a private gift to the university rather than state appropriations. Nonetheless, the fact that the expenditure was paid through a nondescript accounting category not explicitly identified as “meals” or “entertainment” raised questions of transparency and disclosure.

In its review, UHY found nine other expenditures at Stage Left during FY 2006. Seven of these meals – with a combined cost of \$3,357.29 – were billed directly to the university rather than through TABERs, and they were paid from of a state-funded account called “Critical

Analysis of Contemporary Culture” rather than through TABERs. Nearly one-third of the total billing – \$1,049 – was for alcoholic beverages, including wines ranging in price from \$30 to \$125 a bottle. All of the charges were coded in the university’s General Ledger accounts under the category of “Supplies - Other,” as referenced above. When this matter was brought to the attention of Rutgers officials during the course of the Commission’s investigation, they stated that funds from a discretionary gift account had been allocated to the state-funded contemporary culture account mentioned above and were intended to be the source of money to cover these charges. They stated that, going forward, steps had been taken internally to separate these commingled funds to ensure their appropriate use and that personnel had been apprised of relevant university policies and state laws governing proper purchase and expenditure practices.

“Emergency” Accounts

Rutgers maintains four accounts totaling nearly \$200,000, each with a fixed balance, to cover a variety of incidental emergencies and other special purposes. Structured as manual imprest checking accounts, meaning that money drawn from them is replenished in order to maintain a designated balance, they are the “Camden Emergency Account” (\$45,000), used primarily for emergency salary advances to personnel at Rutgers Camden campus, as well as for other incidental emergencies; the “Newark Emergency Account” (\$45,000), serving the same purposes at the university’s Newark campus; the “Zimmerli Imprest Account” (\$15,000) for purchases of merchandise for the gift shop and café of the Zimmerli Museum on the New Brunswick campus, as well as for paying artists and craftspeople; and the “Athletic Working Account” (\$90,000) for travel-related expenditures of university’s athletic department staff. An analysis by UHY Advisors showed that the modest size of the fixed balances do not reflect the

amounts of money moving through these accounts on an annual basis. Between 2002 and 2006, more than \$4.7 million was expended via these accounts, with the Athletic Working Account accounting for the largest share expended during that period, \$3.2 million, and the Camden Emergency Account second at more than \$715,000.

UHY examined a selection of disbursements from each account and identified an item that raises questions about the adequacy of internal controls in connection with the Camden account. On March 10, 2006, three checks totaling \$20,004 were paid from that account for expenses related to Rutgers-Camden's 55th Alumni Anniversary Dinner. One of these checks, in the amount of \$4,721.25, was for the purchase of liquor. The voucher form indicated the entire amount of the three checks was charged to a university operating account funded by state appropriations. (This account is identified by code #204621 under the designation "Camden I.D.R. Unallocated"). With respect to the liquor purchase, an internal e-mail exchange between university personnel – the original e-mail in the sequence is entitled "Subject: check for booze" – indicates that questions arose regarding which account should be charged. One of these e-mails states, ". . . We will need an emergency check for \$4,721.25. I'm not sure what account this can be charged against. I have been charging stuff like this against the IDR account. If that doesn't work we'll charge it against the SBC dean's Discretionary Fund (5-39655) and I'll transfer it to the Foundation later." Further review of this matter established that the liquor purchase was not reclassified to a non-state budget account.

INTRUSION of POLITICS

With the demise of centralized state control over New Jersey's system of public higher education, state colleges and universities not only lost a powerful unifying voice in government but also the means to insulate themselves from undue political influence and interference in their operations. Elimination of both the Department and the Board of Higher Education, as well as the Office of the Chancellor, meant that each school now had to press directly for its own interests in the political trenches of Trenton and Washington on a host of critical issues, not the least of which involved the securing of adequate budgetary resources. One practical effect of this shift was the expansion of various campus-funded offices of government relations and, more significantly, the concurrent hiring of outside lobbyists – in effect, contracting for the payment of public money to private vendors in order to secure more public money. In some instances, the Commission found that state college personnel were drawn into matters related to political campaign fundraising, a natural adjunct of the lobbying industry. In others, the Commission found that weighty political considerations spilled into matters of college and university governance, particularly with regard to the appointments process for top institutional officers and members of Boards of Trustees.

Lobbying

The Commission found that reliance by state colleges and universities on the paid services of outside lobbyists began to escalate during the period immediately after the system was deregulated in July 1994. Between 2001 and 2006, the five institutions whose operating practices were scrutinized during the course of this inquiry spent nearly \$11 million on outside

consultants to lobby on their behalf within the halls of government, including \$5.03 million for lobbying state officials and \$5.96 million for such activity at the federal level.

These outside lobbying expenditures are in addition to funds expended internally on full-time campus offices and staff devoted to government relations efforts. Three of the institutions examined by the Commission – Rowan University, Rutgers and UMDNJ – maintain such government relations offices. Together, they spent more than \$7.5 million for this purpose between 2001 and 2006, with Rutgers' expenditure alone – a total of \$3.7 million for the period – accounting for nearly half that sum.

In addition, New Jersey's nine senior state colleges and universities are required by law to be dues-paying members of the New Jersey Association of State Colleges and Universities, created in 1985 as a non-partisan organization explicitly charged with a mission to "make recommendations to the Governor, Legislature, Commission on Higher Education and President's Council regarding the coordination of the member institutions on matters of interest and concern."

Like other special interests, public institutions of higher education retain lobbyists to gain direct access to those in positions of political power; to impact the legislative, regulatory and budgetary process; and to open governmental doors otherwise perceived to be closed to them. Officials on both sides of this trade in influence readily appreciate the fundamental motivation for its proliferation. In a written pitch to secure business at one of New Jersey's state colleges, a lobbying firm stated, "As with any growing and dynamic organization, your ability to work cooperatively with government can often be the difference between success and failure. A top-notch government affairs team is no longer a luxury but a necessity." One high-ranking university executive told Commission staff in an interview that the need for governmental affairs

agents is nothing less than mandatory because “someone has to make the connection, whether in-house or outside.” Another stated that the institution which employs him targets for selection those lobbyists with a demonstrated track record of gaining access to key members of state Senate and Assembly committees. According to a federal grand jury indictment handed up in March 2007, UMDNJ actually placed a prominent sitting member of the state Legislature on its payroll to gain advantage in the political arena. That legislator, state Sen. Wayne Bryant (D-Camden), then-chairman of the Senate Budget and Appropriations Committee, allegedly was paid a starting salary of \$35,000 a year to use his official position to advocate on behalf of UMDNJ’s School of Osteopathic Medicine (SOM) with state officials and legislators and to provide official assistance in obtaining state funds for SOM, according to the indictment.

Typically, lobbyists have been treated as professional-service consultants, a designation that can enable their hiring and retention without competitive bidding. UMDNJ, for example, justified the use of blanket bid waivers for lobbyists based upon the notion that their work would involve the “often emergent nature of the activities attendant to the creation of legislation and administrative regulations” and that “the need for advocacy services is unpredictable and not susceptible to bidding.” According to findings of the federal monitor’s investigation, UMDNJ’s government affairs department routinely entered into contractual agreements with politically-connected lobbyists without following the university’s basic procurement policies.

The Commission also found that contracts with lobbyists frequently have been negotiated unilaterally by administrative personnel and often do not receive explicit approval by institutional boards of trustees. An examination of records subpoenaed from both lobbying firms and the institutions which hired them also revealed written agreements that were vague as to actual work requirements and/or the periodic submission of benchmarks to confirm that work

was actually performed. Billing records were similarly vague, in many cases essentially blank invoices merely indicating the lump-sum amount of a monthly retainer – sometimes as much as \$15,000 – with no delineation or explanation of services rendered.

A review of records obtained by the Commission also revealed instances in which lobbyists and public relations consultants participated in damage-control activity amid the publicity explosion that attended various investigative disclosures involving UMDNJ and other matters during the spring of 2005. In one such instance, an executive with the firm of Winning Strategies Public Relations, hired by UMDNJ at a fee of \$8,750 a month to provide “marketing and strategic analysis services,” suggested a course of action in the wake of criticism publicly vocalized by then-Assemblywoman Loretta Weinberg (D-Bergen) with regard to reports in the *The Record* of Hackensack newspaper about alleged abuses at UMDNJ and actions by John J. Petillo, then the university’s president. In an e-mail dated April 1, 2005, Winning Strategies executive Fred Hillmann wrote:

This is not a good outcome with loretta. She bears grudges for a long, long time; rarely forgives and never forgets. In her present political situation, she obviously sided with [the] record [newspaper] over umdnj/petillo. And, none of her legislative colleagues have criticized her stand. In fact, I’ve heard several gave her encouragement.

Special effort should be made to woo her; whatever it takes . . . humility, swallowing pride, kissing the ring, lunch with john at savoy to air it out. She’s too important to umdnj’s future in trenton to be left out there angry and unattended.

Also . . . her questioning of umdnj’s recent ‘spending patterns’ speaks to the need to get knight [identity unknown] on board quickly.

[A]s far as pat alex [a reporter for the Record] is concerned . . . mike, you and susan really pegged her right. That line about the lincoln navigator tells where she’s coming from. Wouldn’t let her near john [Petillo] for long time, at least until after state budget is resolved july 1. Last thing we need is article about john’s regal lifestyle, plush accommodations while legislators are struggling with state budget.

In another e-mail dated April 27, 2005, Hillmann suggested a strategy designed to minimize media scrutiny of the cost and nature of no-bid consulting contracts awarded by the UMDNJ.

Hillmann wrote:

Michael . . . courtenay and I will be on a 3 p.m. call.

Below is draft generic response to josh's [apparent reference to Star-Ledger reporter Josh Margolin] questions on pr, govt and legal consultants. We referenced lack of internal 'expertise' instead of resources, because we felt latter could open door to criticism of big salaries.

Documents obtained by the Commission also show that during the media uproar over events at UMDNJ, officials at other institutions became concerned about the lack of documented work by lobbyists. In at least one instance, top institutional personnel sought an accounting of work after the fact.

At Ramapo College, pursuing a strategy that is entirely proper under existing law and regulation, officials turned to their outside lobbying firm, the MWW Group, for assistance in assembling records sought via subpoena in connection with this investigation. In an e-mail to MWW executive Robert Sommer dated June 15, 2005, Cathy Davey, Ramapo's vice president for institutional development, wrote:

I may need to reach out for help to your office tomorrow. The SCI has now requested the last five years (2000-2005) of our contract, all monthly bills and time sheet logs of everything you did for us and the result. . . . For now we intend to just send your monthly bill and the attachment – I'm hoping that will be enough. If I can't locate something, is there someone I can reach out to on your staff. . . . I think I should have it all, but just in case it would be nice to have someone know I may need some quick help! . . . Also, I assume you know we got a new trustee nominated – not any we talked about. . . .¹⁴

Later that same day, Sommer replied:

¹⁴ According to sworn testimony and records examined by the Commission, Ramapo paid MWW Group the following amounts between fiscal years 2001 and 2006: FY2001, \$62,652; FY2002, \$113,090; FY2003, \$156,974; FY2004, \$125,690; FY2005, \$135,167; FY2006, \$104,760.

Ok. We will be ready.

Two weeks later, on the afternoon of June 28, 2005, Kevin Frechette, an MWW associate, sent Sommer the following e-mail:

Just an FYI. Cathy Davey and Ellen Senese at Ramapo College could not say enough about the help they received from Seth Rosenstein [an MWW executive] in pulling together the necessary documentation for state investigators. They wanted you to know how helpful he was, and how much they appreciated it.

Records examined by the Commission also evidence assiduous efforts by lobbyists to recruit officials of at least two institutions of public higher education – Ramapo College and UMDNJ – as active participants in political campaign fundraising – again, a practice that is perfectly legal under existing law and regulation.

In a “strategy memo” dated January 15, 2004 to senior Ramapo officials, MWW executives outlined a series of “steps MWW will take to advance Ramapo College and better position it for success in the coming years.” In addition to scheduling meetings with state legislators, including “key members of the state legislative Appropriations Committees,” the MWW team said the firm “would also be pleased to assist Ramapo in establishing its political fundraising efforts at both the state and federal levels.” Subsequent e-mail traffic included direct solicitation by MWW of campaign contributions.

In a March 23, 2004 e-mail on the subject of an event designated “Senator Lautenberg Invite Round II”, portions of which were redacted prior to submission to the SCI, MWW Vice President Jon Alexander told colleagues at the firm,

We need your help in turning folks out for this fundraiser we are doing for [redacted] on 4/19 (lunch). I realize that many of these folks may be scared away by the asking price, so if you could follow up with them, and let them know we would be happy to work with their budget – whatever that may be. Please let me know the client you are responsible for and forward this invite to the following:...

The substance of the remainder of this e-mail is redacted with the exception of the statement, “DC office will send to: Ramapo.” In a follow-up e-mail on the same subject dated March 31, 2004, Alexander queries Robert Sommer, “how do you want to work it for cathy davey? ask for \$250?” Twenty minutes later, Sommer replied: “ask 1k from cathy.”

In a series of e-mails among MWW executives the morning of April 15, 2004 on the subject “Monday luncheon,” there is discussion of the possible “bundling” of contributions, a common practice:

Alexander to Sommer et al.: *Here’s who I have coming: Cathy Davey, Ramapo maybe.*

Sommer to Alexander: *wha[t] is Kathy (sic) davey telling you – she has to give*

Alexander to Sommer: *yes . . . thanks
kathy (sic) balked at \$500 according to [redacted]. . . i told
cathy to bundle a couple of \$250s.*

Sommer to Alexander: *speak to Kathy (sic) directly, bundle 5 1’s in (sic) needed*

A review of records obtained from UMDNJ revealed that a firm retained by the university for the purposes of lobbying at the federal level, JordanBurt, picked up the tab for the attendance by two top officials of University Hospital, a UMDNJ affiliate, at a political fundraising event for then-U.S. Rep. Robert Menendez.¹⁵ In a late March 2000 memorandum, Evelyn Moore, then-manager of federal relations for UMDNJ, told the two officials that John Ekarius, the university’s then-vice president for governmental affairs, had asked JordanBurt lobbyist Marilyn Thompson “to cover the cost of two tickets (\$500 each) to Rep. Menendez’ Third Annual Evening at the Races fundraiser Ms. Thompson will do this for us,” Moore wrote. “Mr. Ekarius would like you to represent UMDNJ at this event.” A separate memo from

¹⁵ Records obtained by the Commission show that UMDNJ paid JordanBurt more than \$1 million in fees and expenses between FY2001 and FY2006.

Thompson makes reference to a JordanBurt check for \$1,000 to cover the cost. Thompson stated that this check, along with another JordanBurt check for \$1,000 on behalf of then-Mayor Sharpe James, would be submitted by James to the Menendez campaign. On the afternoon of the scheduled fundraiser, UMDNJ's Evelyn Moore sent the following e-mail to one of the University Hospital attendees:

. . . Marilyn Thompson called and just wanted to make sure you are aware of the sensitivities of the money raised to cover 2 tickets for UMDNJ at this event. As you know, Marilyn covered the cost of our 2 tickets – she also covered 2 tickets for Mayor Sharpe James. The mayor is presenting the checks to Menendez and will say that the checks are from Newark and UMDNJ. And, that is correct. Reason for telling you this is we do not want to give the impression that UHS [University Hospital System] paid for these tickets (you are sitting at their table and your tickets were sent by Menendez office to UHS). I know this is all a “big political game” but Marilyn knows how it is played.

In May 2001, an official of UMDNJ's Office of Government Relations sent a facsimile transmission querying whether JordanBurt's Marilyn Thompson could purchase two tickets at \$65 apiece to a fundraising luncheon for U.S. Rep. Donald Payne. Attached to this fax in records submitted to the Commission by UMDNJ were several other documents, including a personal check from Thompson for \$130 to “Donald Payne for Congress” and copies of two ticket stubs for the event, one of which bears the typewritten name, title, address and telephone number of UMDNJ's John Ekarius. It is noteworthy in connection with this event that, initially, an effort appears to have been made at UMDNJ to have the university cover the cost out of its own budget. A request dated May 31, 2001 and submitted to the university's accounts payable unit sought a check for \$130 and clearly spelled out that it was for the Payne fundraiser. Handwriting scrawled across the check request, however, states, “We are not allowed to do this.”

The Commission, however, found evidence of direct political contributions by UMDNJ over the years. Analysis of the university's internal accounting records revealed that for the

period May 1999 through May 2004, UMDNJ donated a total of nearly \$92,000 to candidates and committees associated with both major political parties, primarily at the state and local levels. Individual donations ranged from a low of less than \$100 to as much as \$6,250. In most instances, the funding source was a UMDNJ internal budget account entitled “Community Events – Entertainment and Meal Functions.”¹⁶

Politics and Governance

In recent years, politics and political players, including lobbyists, have become increasingly involved in the appointment of public college and university Boards of Trustees, and, by extension, in the administration of the institutions. Indeed, the level of activity in this regard stands in stark contrast to the lack of scrutiny paid by state officials to actual operations and governance. For example, while there have been episodes in recent years where political pressure has been applied from Trenton with regard to the make-up of college governing Boards, no steps were taken to trigger the necessary statutory provisions that would have authorized the state Commission on Higher Education to investigate any reports or evidence of waste and abuse, particularly that which flourished at UMDNJ.

Prior to decentralization of the system in the mid-1990s, the state Department of Higher Education took an active role in screening and selecting qualified candidates to fill vacancies on state college and university Boards. Candidates were interviewed by a special committee established by the Board of Higher Education, and a list of those judged to be most qualified was submitted to the Governor, who would then make the final selection. For the State’s three research institutions – Rutgers University, the University of Medicine and Dentistry of New

¹⁶ In May 2005, UMDNJ’s governing Board voted to prohibit political contributions by the university.

Jersey and New Jersey Institute of Technology – the Governor’s choice required the advice and consent of the state Senate.

Under the current statutory scheme, state colleges and universities may recommend prospective Trustees, but the Governor may select from as wide a pool of candidates or applicants as he or she deems appropriate without pre-screening from any oversight authority. A review by the Commission of documents related to an assortment of such gubernatorial appointments over the past decade revealed no evidence that candidates or their qualifications were evaluated by any outside entity, including the current Commission on Higher Education, no evidence of any formal or professional background checks and no evidence that they were interviewed. The only ubiquitous documents contained in the files of prospective appointees were their resumes. The law now also requires Senate confirmation of nominees to the Boards of the nine state colleges and universities, as well as those candidates for seats on the governing Boards of three research institutions.

Events and circumstances involving The College of New Jersey and Ramapo College, in particular, illustrate the problematic spillover of politics and political considerations into the governance of higher education in New Jersey.

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Thomas A. Bracken was appointed to the Board of Trustees of The College of New Jersey in the late 1990s for a term to expire in 2002. According to Bracken’s sworn testimony before the Commission, he received a call from then-Gov. James E. McGreevey after the expiration of his (Bracken’s) term and was asked if he would be interested in being reappointed

to the Board. Bracken testified that he indicated he was interested and that the Governor told him the reappointment would be forthcoming.

Bracken testified that approximately three weeks after this conversation, he received a call from the Governor's Office advising him that the decision to reappoint him had been rescinded. He testified that the reason given to him was that he had criticized the administration's approach to the New Jersey business community concerning taxes.

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Through the 1990s, the Ramapo Board of Trustees interviewed candidates for the purpose of either reappointment or the filling of vacant seats and then made a recommendation to the Governor's Office. According to present and former Trustees who testified before the Commission under oath, the Board saw this approach as a way to determine a prospective Trustee's commitment to service and whether he/she would be a good fit for the unique needs of the institution. Indeed, many of the incumbent Trustees had had a prior relationship or experience with Ramapo and/or its foundation. Historically, sitting Board members in many instances were asked to serve at least two terms. During the first term, a new Trustee would be placed in a committee role designed to allow him/her to become familiar with key issues confronting the Board and the institution as a whole. In the second term, the now-seasoned Trustee would move into a leadership role vacated by a colleague who had served at least two terms. Several former Board members characterized this system as effective in ensuring continuity and proper governance.

After the 2001 gubernatorial election and with the advent of the administration of Gov. McGreevey, however, the Trustee selection process underwent dramatic change. Without

explanation, several first-term Trustees were not reappointed. One striking example of this involved a Board member who had donated at least 1,000 hours of service to the institution both as a Trustee and in other capacities. Also, although the Board continued its practice of interviewing and vetting Trustee candidates, their nominee submissions began consistently to fall on deaf ears in Trenton. By 2004, the Governor had made four appointments to the Ramapo Board. At one point, a sitting member tendered his resignation, complaining publicly that the Board was being politicized and losing its independence. According to the minutes of an April 2004 executive session, the Board, in a bid to accommodate the incumbent first-term Trustees that were to be replaced, sought to amend its bylaws to increase the size of the Board. The effort failed.

Concurrent with the turmoil over appointments, the Board was approaching the end of an exhaustive nationwide effort to recruit a new university president. By November 2004, an 18-member presidential search committee, assisted by an outside consultant who had previously served as Ramapo's chief executive, had narrowed a list of approximately 80 candidates and was conducting interviews in an effort to establish a field of five or six finalists. Around this time, however, a push was under way to position a prominent Trenton legislator with experience in education, then-state Sen. Joseph Doria (D-Hudson) for the post. It was widely known in Trenton media and political circles that Sen. Doria, who had served for nearly three decades as an administrator and adjunct professor of St. Peter's College in Jersey City, enjoyed the aggressive backing of prominent figures in government and politics. Gail Brady, chair of the Ramapo Board, told the Commission in sworn testimony that she was contacted by the Governor's Office and told that the presidential search committee was illegally constituted. The panel's chair was a trustee whose term had expired and who was serving as a holdover – and

thus, technically ineligible to head the panel. This individual was quickly replaced in conformance with the rules, however, and a decision was made to invite Sen. Doria for an interview even though he had yet to file a formal application for the presidency and had not been part of the process leading to the selection of semi-finalists.

Ultimately, Sen. Doria did not make the cut, and one final effort to derail the search collapsed in December 2004 when the Board of Trustees, meeting in open session, defeated an attempt to have the process suspended. A resolution to do so failed when the Board's student representative cast a tie-breaking vote against it. On July 1, 2005, the Board appointed one of the other finalists, Dr. Peter P. Mercer, as president. He continues to serve in that position.

The controversy, however, prompted one member of the Ramapo Board, Jeffrey A. Shepard, to resign after five years' service. Shepard testified,

The state's interference in the appointment of trustees and also the attempt to basically install a political appointment as president certainly left a very bad taste in my mouth, which really was the primary reason for my resignation. And the way people were treated in the process really was, to me, a travesty. And, again, for the record, the trustees devote hundreds and, in some cases, thousands of hours of their time to the college, also their personal funds in support of the college, and to have happened what happened . . . was absolutely wrong. And, you know, I have basically pulled out of all support of the colleges because of that in New Jersey . . .

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Events and circumstances involving the Ramapo Board also illustrate how the public higher education system's Board-of-Trustee appointments process is open to political gamesmanship at the legislative level.

As referenced in the preceding section of this report, Ramapo College has had a longstanding contractual relationship with the MWW Group, a lobbying and public relations firm it hired in 1994 to provide "targeted public relations and government affairs services with

the goal of building productive relationship with New Jersey corporate leaders and legislators. These relationships would be expected to yield additional funding for Ramapo in the form of contributions, grants and state appropriations.” Records obtained by the Commission show that MWW’s activities, for which it was paid approximately \$10,000 a month, included shepherding prospective Ramapo Board candidates through the appointments process. In this context, the college relied from time to time on MWW’s political connections to help navigate candidates through “senatorial courtesy,” an informal rule that enables members of the New Jersey Senate to unilaterally block any state appointment involving an individual who resides in his/her legislative district.

For example, in September 2002, MWW executive Kevin Frechette authored a memorandum to state Sen. Byron D. Baer (D-Bergen) on behalf of two Ramapo Board candidates whose nominations were pending before the Senate Judiciary Committee. “. . . [I]t is my understanding that you have voiced some concern about one, or both, of these appointments,” Frechette wrote, adding that “Ramapo is extremely desirous of securing these appointments.”

On another occasion, in May 2000, Ramapo President Robert A. Scott, e-mailed Robert A. Sommer, MWW executive vice president and director of public affairs, expressing concern about Board candidates becoming snagged in an apparent political dispute between two Bergen County Republican senators, Gerald Cardinale and Henry McNamara. “We need to strategize about the problems” Scott stated. In a subsequent letter to Ramapo officials, Sommer’s colleague Kevin Frechette wrote, “Per your conversation with Bob Sommer, below is a listing of friends of Senator Cardinale from his hometown of Demarest. Hopefully, they can help with the college’s trustee situation.”

INTERNAL OVERSIGHT DEFICIENCIES

Under New Jersey law, state college and university governing Boards possess sweeping authority over essential matters concerning the administration of their respective institutions. The various governing Boards are also responsible for ensuring proper and consistent internal accountability, transparency and oversight. During the course of this inquiry, the Commission found select instances in which the fulfillment of those responsibilities was brought into question.

Personnel Compensation Packages

It is common and accepted practice within the realm of higher education for administrators and other personnel to be provided with adjuncts to regular compensation, including bonuses, severance-pay arrangements and other financial benefits. The Commission, however, found inconsistencies and questionable transparency with regard to the processes utilized by various institutions to award such benefits. In some instances, funds were expended for such purposes based upon institutional policies and/or contracts approved by the various Boards of Trustees. In others, the Commission could find no evidence of any uniform written standards, guidelines or involvement by governing Boards in the decision to award such incentives, raising concerns over the extent of proper and adequate oversight and public disclosure.

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As with other troubling issues involving governance of higher education in New Jersey, UMDNJ has blazed the most egregious trail in matters of questionable personnel compensation.

Over the past 18 months, various inquiries, media reports and examinations of the school's own documents have revealed that UMDNJ spent approximately \$3 million during 2004 alone on bonuses paid to 196 administrators and managers. More recently, the institution has taken significant steps to reform its practices and control excessive spending in this regard.¹⁷

The university for many years also maintained a severance policy that delivered lucrative benefits to select senior officials who left the university's employ at their own volition or when terminated. These separation-of-employment packages, tantamount to private-sector "golden parachutes," provided up to two years' salary, plus, in some instances, health and pension benefits, cars, free use of university office space and clerical help, cellular phones, computers and expense-paid executive job-search assistance.¹⁸

The Commission found examples of similar – though far less expansive and generous – severance arrangements at Rowan and Rutgers universities.

Rowan maintains a unique policy under which management personnel with five or more years of service receive one year advance notice of expiration of employment without cause. Those with less than five years of service receive six months' notice of expiration of employment. The Commission found that although this policy is based upon a resolution approved by the Board of Trustees, it has evolved, in practice, into something quite different. The university's president has used it to craft separation-of-employment compensation packages

¹⁷ The UMDNJ Board of Trustees suspended the university's incentive compensation program in FY2006. However, funding for personnel merit raises was included in the FY2007 budget. These merits increments are associated with approximately 1,255 non-union employees and exclude 38 senior management positions.

¹⁸ In a resolution adopted on July 25, 2006, the UMDNJ Board revised, but did not eliminate, the university's employee severance policy. Incumbent management is no longer eligible for severance compensation, and its provision is restricted to situations in which recruitment of prospective university executives is contingent upon the competitive offer of such plans. If offered, and employment is conditionally accepted, the president must submit a recommendation with explanation to the Board's Compensation Committee, which can approve, reject or modify the offer. The full Board will then consider the matter. If granted, severance payments will not exceed the value of one year's salary. Employees with more than three years' service are not eligible. Severance payments will cease upon the separated employee obtaining new employment. Severance will be withheld under circumstances in which an employee is separated under certain circumstances, including improper conduct.

for employees who leave Rowan's employ prior to the effective date of their employment termination. In essence, it has become the basis for an informal, discretionary severance policy with no established board oversight procedures. Examples are as follows:

- In June 2001, a university vice president received \$59,166 as a payout for leaving the institution's employ under an early-separation incentive.
- In May 2005, that individual's successor as vice president was awarded one year's salary of \$170,075 plus a lump-sum payout for unused sick and vacation leave in exchange for his departure. Disbursal of the money was structured such that the recipient would not have to pay taxes on the full amount during a single calendar year.
- In March 2006, the university agreed to provide an administrator with a lump-sum payment – \$48,204 – equal to one-half of his annual base salary of \$96,408 based upon his decision to leave prior to the designated date of his separation.

Although university officials maintain that the Board of Trustees is routinely advised of the terms of separation-of-employment agreements, there is no requirement that such discussions be memorialized in writing or that the Board cast a formal vote to approve them.

In another matter, in July 2004, then-Rowan provost Helen Giles-Gee was placed on administrative leave at her then-current salary of \$162,000 a year until the beginning of the spring semester of 2005, at which time she returned to the university as a member of the faculty.

Rowan maintains no distinct policy or procedure for granting sabbaticals to administrative personnel.

President Donald J. Farish asserted in a sworn statement to the Commission that it is common practice, both nationally and at Rowan, for academic administrators who hold

appointment as tenured professors to be awarded sabbaticals before returning to the classroom. He further stated that due to Giles-Gee's years of service, she was entitled to a sabbatical and severance in 2004. According to Dr. Farish, these types of sabbaticals are different from those awarded faculty insofar as they do not move through the usual university committees, but rather are granted directly by Rowan's governing Board.

Dr. Farish provided a copy of a Board resolution by which Giles-Gee was appointed to a teaching position in the university's department of secondary education/foundations of education. However, a review by Commission staff of Board agendas, resolutions and meeting minutes for 2003, 2004 and 2005 revealed no evidence that the Board approved Giles-Gee's sabbatical. The only Board meetings in which sabbatical leaves were on the agenda during that time period were held June 18, 2003, June 16, 2004 and April 27, 2005. Giles-Gee's name was not listed for sabbaticals considered at any of those meetings. The only occasion in which Giles-Gee's name appeared in a resolution during the aforementioned time period was at a Board meeting on September 14, 2005 when her resignation from the department of secondary education/foundations, effective June 30, 2005, was listed under resignations in Resolution # 2 concerning personnel actions accepted and approved by the Board.

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At Rutgers University, a severance package for one ranking administrator revealed a personnel and payroll co-mingling between the university and the Rutgers University Foundation, a nonprofit fundraising corporation.¹⁹

In July 1997, Michael W. Carroll was appointed executive director of the Rutgers University Foundation and vice president of development and alumni affairs for the university.

¹⁹ 26 U.S.C. §501(c)(3)

According to payroll records, Carroll was an employee of the foundation, but his salary – \$147,000 at the time of his hiring – and benefits were paid out of the university’s regular taxpayer-supported operating budget. He resigned from the foundation effective July 31, 2004. In a letter from university President Richard L. McCormick dated July 26, 2004 “to formalize the terms of your transition,” Carroll was informed that the university would provide him with a salary of \$210,000 and benefits at the current level through June 2005. “. . . [T]here will be no expectation on my part,” Dr. McCormick wrote, “that you will render any professional services to Rutgers University or to the Rutgers University Foundation.” The separation agreement included a \$15,000 lump-sum payment for unused accumulated sick leave and \$44,011 for unused accumulated vacation leave. Dr. McCormick’s letter also stated that Carroll would qualify for a \$25,000 bonus payable in January 2005 “by prior agreement with [former university] President Francis L. Lawrence and Chair of the [Foundation] Board of Overseers, Kevin Collins . . .” The letter’s sole caveat was that if Carroll were to obtain another job during the severance year, Rutgers would “pay the difference between your current salary of \$210,000 and the salary of your new position if it is less.” Ultimately, the university paid Carroll \$30,000 pursuant to this provision.

Based upon materials provided by Rutgers, it could not be determined whether, or to what extent, the terms and circumstances of Carroll’s separation agreement were brought before the university’s governing Board for consideration and approval. According to a letter received by the Commission from Michael Quinlan, the university’s associate vice president for business services, “executive compensation was not discussed at open sessions of the Board of Governors meetings and it was standard practice in the past to not keep minutes of the meetings of the Executive Compensation Committee of the Board.”

In another personnel matter involving the Rutgers Foundation and the university, the Commission found that beginning in July 2000, Foundation funds were disbursed in a series of payments to boost the compensation of then-President Francis L. Lawrence. Between July 2000 and October 2002, when he stepped down, Dr. Lawrence received a total of more than \$165,114 in ten separate installments from the Foundation over and above his university salary of \$225,000. Some of the individual payments were as high as \$37,500.

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The Commission also found that a senior administrator hired by Rutgers under questionable circumstances received a separation-of-employment package that allowed her to remain on the university's payroll for six months with special benefits. In April 2006, Karen Kavanagh left the position of executive vice president for administrative affairs, which she had held for more than three years at an annual salary of \$240,000.²⁰ Under the separation agreement – for which there is no record of discussion and/or approval by the university's governing Board – she was placed in the position of executive advisor to senior management and remained on the payroll at a salary of \$200,000, collecting more than \$115,000 of that amount through September of 2006. In addition to salary during this period, Kavanagh received \$75,000 in deferred compensation, plus interest. The university also agreed to pay \$9,000 to a private outplacement firm to assist her in finding other employment. In October 2006, Kavanagh left the university for the private sector.

²⁰ The circumstances of Kavanagh's employment by Rutgers are examined in detail at pp. 31-41 of this report.

Favored Treatment

In March 2005, administrators at New Jersey Institute of Technology approved an unusual arrangement that, in effect, put a foreign national on the institution's payroll, with health benefits, even though her visa had expired and she was no longer eligible for employment under U.S. immigration law.²¹ Further, in order to give an appearance of legitimacy to the more than \$30,000 paid to this individual during the period in question, disbursement was made in three separate payments disguised in the university's budgetary accounts as loans. In sworn testimony, a senior NJIT official acknowledged that these "loans," or "promissory notes" as they were formally characterized, were actually cash advances against possible future salary. The Commission found no evidence in the documentation concerning these transactions to establish that there was ever any intent for the disbursements to be repaid, and, indeed, they never were. The Commission also determined that there was no mechanism in place to ensure that the substance of these transactions, although examined and questioned by NJIT's internal auditor, were brought to the attention of the university's Board of Trustees, and indeed they were not.

The individual, Pavlina Klimova, a citizen of the Czech Republic, was employed as head coach of NJIT's volleyball team at a salary of \$35,275 beginning in September 2003. According to her letter of appointment to this position, Klimova's employment was "necessarily contingent upon [her] furnishing documents as specified in the Immigration Reform and Control Act of 1986 as amended, authorizing [her] to work in the United States." That authorization took the form of credentials granting her a student visa valid through August 30, 2004. After that date, NJIT had no legal alternative but to terminate her from employment because she no longer held legal immigration status to remain in this country.

²¹ 8 U.S.C. §1324(a)(1)(A)(2).

The university's athletic department, however, allowed her to stay on in the capacity of volunteer coach. In March 2005, Klimova requested a salary advance to assist in paying for living expenses. In response, NJIT officials set in motion a process that, cumulatively, led to the payment of \$30,500 to her, disbursed under the guise of loans, or promissory notes. William Garcia, the university's controller and assistant vice president for finance, told the Commission in sworn testimony that ". . . the thought always was that Ms. Klimova was going to get her work visa, then be put on the payroll, and given a paycheck in sufficient amount to pay this back." According to Garcia, "Ms. Klimova did work for her money She was not given loans for which she did not work. She was literally given salary advances."

The first promissory note was executed on March 3, 2005, the same day a university check made out to Klimova for \$11,000 was processed. Garcia testified that the transaction initially was posted to the salary advance account. In fact, the transaction was treated as a loan and not a salary advance. In May, it was reclassified. At Garcia's behest, the transaction became a "miscellaneous receivable." Then, in July, it was placed into a ledger category called "allowance for doubtful accounts," essentially a repository for potentially uncollectible accounts receivable.

Later that month, the university entered into a second payment arrangement with Klimova. The note, dated July 20, 2005, authorized a \$6,500 check. In this instance, the transaction was posted simultaneously to both the university's salary advance account and the allowance for doubtful accounts.

The final payment to Klimova, \$13,000, was executed on December 14, 2005. Garcia testified that he discussed this payment with Henry Mauermeyer, the university's senior vice president for administration/treasurer, in the presence of the NJIT President Robert Altenkirch

and expressed concern about the arrangement's propriety. According to Garcia, both Mauermeyer and Dr. Altenkirch agreed that the university's relationship with Klimova needed to be resolved and that this would be the final payment to her.

Meanwhile, the payments came to the attention of NJIT's internal auditor, Alice Blount-Fenney, during a routine audit. Blount-Fenney, who at the time doubled as the university's ethics liaison officer, examined the transactions in some detail and, in a report to Mauermeyer and Garcia dated December 22, 2005, raised a number of substantive concerns. She found that none of the checks was subjected to withholding for tax purposes and warned that the university was at risk of violating the federal immigration laws. She also noted that Klimova continued to receive health benefits at NJIT's expense for five months beyond her termination date, in violation of university policy. Blount-Fenney told the Commission in sworn testimony that her concern extended to the fact that collection of the purported loans could never have been enforced because, as written, the package lacked a number of fundamental elements, such as interest provisions and a repayment schedule.

The Commission could find no evidence that any information related to the Klimova transactions was brought to the attention of the university's Board of Trustees. Although the existence of Blount-Fenney's report was made known to the Board's audit committee, its substance was not presented. Mauermeyer told the Commission in sworn testimony that he ". . . never considered it an issue that needed, necessarily, to be brought to the board's attention given the amounts, the time . . ."

Collapse of a University Institute

In October 2006, a management training and research unit associated with Rowan University was shuttered amid cumulative financial losses of more than \$1 million over a three-year period beginning in 2003. This entity, known as the Rowan Management Institute, had been established in the mid-1970s as a nonprofit university affiliate designed to provide local businesses with a personnel training resource. In 1992, it became part of the university's business school, structured as a self-supporting enterprise with an official mission to "establish and maintain outreach initiatives."

Until its demise, the Institute for all practical purposes existed within a gray area of university governance. For example, although the Board did not provide regular oversight, it did take action from time to time on selective matters affecting the Institute's operations, such as granting blanket approval of contracts for supplies and consultants utilized by the Institute. Meanwhile, an advisory panel attached to the Institute met twice a year to review budget and management summaries but did not report to the Board of Trustees. As to the issue of oversight by Rowan administrators, that responsibility rested several layers below the president, who failed to receive accurate and timely information about ongoing problems at the Institute.

The Commission found that during the period 2003 to 2005 alone, the Institute suffered mounting financial losses of more than \$663,000. By the end of Fiscal Year 2005, its reserves completely drained, the Institute piled up a deficit of approximately \$76,000, which the university covered through its regular operating accounts. Prior to its closure in 2006, the deficit grew by an additional \$339,000 and, again, Rowan stepped forward to absorb the loss for a total cost to the university's taxpayer-supported budget of \$415,000.

The Commission determined that throughout most of the period leading up to the Institute's collapse, the university's president and Board of Trustees were unaware of the developing financial crisis – even after a 2003 examination by Rowan's internal auditor that raised questions about the accuracy and completeness of expense reimbursement forms filed by various Institute consultants. Not until the summer of 2005 did the full magnitude of the problems begin to come to the attention of the university's governing Board and top administrators. Their concerns were triggered when Barry Kramer, the Institute's executive director, sought a \$76,000 appropriation from the university with no supporting documentation. When a member of the Board raised questions, Kramer revised the request to \$36,000 but again without satisfactory explanation. At that point, Rowan's internal auditor was directed to conduct a comprehensive audit and found that the Institute was poorly managed and hemorrhaging substantial sums of money. The auditor also repeated his earlier findings of weaknesses and gaps in the expense reimbursement system for consultants. In November 2005, with the financial losses mounting, Kramer was given notice of termination of employment under Rowan's policy. On July 5, 2006, he died of a self-inflicted gunshot wound.

The Commission confirmed the findings of Rowan's internal auditor with regard to the Institute's consulting-contract deficiencies and found that spending by consultants, much of it questionable, exerted significant pressure on the Institute's budget. During 2005 alone, the Institute spent approximately \$434,000 on consultants, whose ranks included a dozen Rowan University employees retained on a part-time basis plus approximately 21 outside independent contractors. In one instance, a consultant was paid more than \$500,000 over the five-year period between 2001 and 2005 even though there was no written contract between him and the Institute. His only requirement was to submit request-for-payment forms identifying the client and listing

the days and hours of instruction provided. In a similar instance, another consultant was paid more than \$250,000 over the same five year-year period with no written contract. She was merely required to submit weekly request-for-payment forms delineating days worked and amounts due but no documentation of work performed – in her case, primarily the writing of grant proposals. The Commission also found:

- The Institute paid approximately \$6,000 in 2004 for travel, lodging and related expenses incurred by Kramer and an outside consultant for attendance at a training conference in Las Vegas. Although the conference duration was two days, records show Kramer and his traveling companion spent five days and four nights on this trip, departing October 18 and returning October 22.
- Kramer authorized payment for numerous meals with staff and consultants.
- Consultants were reimbursed for meals and meetings with other consultants.

In the aftermath of the Management Institute's collapse, Rowan's president and senior staff have established a series of internal financial and administrative controls designed to provide enhanced oversight of similar entities affiliated with the university.

UNBRIDLED BORROWING

New Jersey’s system of public higher education has grown dramatically over the past two decades, but that growth has not come without a price. The Commission examined the process by which state colleges and universities finance capital construction projects and found that they have accumulated some of the heaviest long-term debt loads of any public higher education system in the nation. Taken as a whole, current bonded debt obligations carried by the State’s nine public colleges and universities and its three research institutions has nearly quadrupled to almost \$2 billion since 1985 – merely a portion of the ultimate anticipated cost of paying off the principal and interest on more than \$3.4 billion in bonds issued during that period. The fiscal exposure represented by these numbers has raised red flags on Wall Street and serious questions about future institutional credit ratings and overall fiscal viability. Moreover, the Commission found that the continuing explosive growth in public college and university debt here is virtually unchecked by any meaningful state controls or oversight.

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The primary vehicle for borrowing by public colleges and universities is the New Jersey Educational Facilities Authority (NJEFA), established in 1968 to serve essentially as a “conduit” for issuance of capital-construction bonds on the institutions’ behalf. By law, the State’s nine “senior” state colleges and universities cannot incur debt on their own and are required to utilize the services of NJEFA.²² The three “research” institutions – Rutgers University, the University

²² Rowan University, Ramapo College, Kean University, Montclair State University, The College of New Jersey, New Jersey City University, Thomas Edison College, Richard Stockton College and William Paterson University. NJEFA also provides bond financing for the state’s private independent institutions of higher education. N.J.S.A. 18A:72A-27.2.

of Medicine and Dentistry of New Jersey (UMDNJ) and New Jersey Institute of Technology (NJIT) – have the option to go through NJEFA or borrow independently.²³ In its role as the borrowing conduit, NJEFA sells bonds and then repays the principal with interest through payments collected from the schools. In every instance, the bonds are backed by the credit of the schools themselves, and each is responsible for the full cost of debt service.²⁴

The Commission’s investigation revealed that the bonded indebtedness of New Jersey institutions of higher education has skyrocketed:

- Total outstanding obligations for bonds issued by NJEFA on behalf of public state colleges and universities have jumped more than 375 percent over the past two decades. In 1985, the institutions owed nearly \$380 million. By 2005, the total current payment obligation was pegged at \$1.8 billion.²⁵
- Four institutions of public higher education in New Jersey were among the 15 most leveraged of all colleges and universities, including private institutions, in the U.S. in 2004, as measured by total debt – Montclair State University, Rowan University, Ramapo College and the College of New Jersey.²⁶ The level of accumulated debt at these four schools ranged from just over \$150 million (Ramapo) to nearly \$350 million (the College of New Jersey).
- Among public colleges and universities in the U.S. in 2004, five such institutions in New Jersey – New Jersey City University, Montclair State, Rowan, Ramapo and the College of New Jersey – ranked among the 15 most leveraged in the nation.²⁷
- Of the nearly \$3.4 billion in bonds issued by NJEFA for New Jersey’s public institutions of higher education between 1985 and 2006, the bulk occurred during the most recent half of that two-decade period – some \$2.6 billion between 1996

²³ NJIT utilizes NJEFA for nearly all of its bond issues, while Rutgers generally issues bonds on its own. UMDNJ issues some of its bonds through NJEFA.

²⁴ The NJEFA, whose operating budget is derived from fees charged for the execution of new bond issues and the administration of outstanding bonds, also administers so-called general obligation bonds backed by the full faith and credit of the State of New Jersey. For these bonds, schools are generally responsible for only a portion of the debt service payments, with the State paying a portion through appropriations. State-backed bond funds represent only a small portion of the borrowing undertaken by institutions of higher education since 1985 and are now nearly exhausted.

²⁵ Comparison in constant 2005 dollars (U.S. Dept. of Labor Consumer Price Index).

²⁶ According to information provided to NJEFA by Moody’s Investor Services.

²⁷ Source: Moody’s Investor Services and NJEFA.

and 2006. By contrast, the level of borrowing between 1985 and 1996 totaled approximately \$800 million.²⁸

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The process for initiating capital borrowing at the behest of state colleges and universities in New Jersey is highly informal, often beginning with a simple telephone call to NJEFA from an institutional administrator. As Roger L. Anderson, who has served as the Authority's executive director since 2002, testified,

It's a fairly small [higher education] community here in the State. We know the institutions very well. If they need money, they call us up and tell us that they want to build a dorm, they want to build a science building, they want to build a parking garage and so we talk to them about when they need the money, how much money they need and then we present them with our [bond finance] options. . . .

. . . [W]e pride ourselves in being very un-bureaucratic. We don't require an application, we don't require any approval form, we don't require any application fee. We try to be very helpful and make it as easy as possible for our clients.

Following initial contact with NJEFA, an institution's board of trustees then typically adopts a resolution pursuant to the proposed project, which goes before the Authority's executive board for final authorization.²⁹ Proposals involving stand-alone projects that will not generate revenue – laboratories or other academic buildings, for example – must also be submitted to the state Legislature, which has 45 days to disallow a project via concurrent resolution passed by both houses. Bond proposals to raise money for revenue-generating projects, such as dorms, parking decks, sports facilities or book stores, are not required to be submitted to the Legislature. The

²⁸ During the 20-year period between 1985 and 2005, NJEFA issued approximately \$2.7 billion in bonds on behalf of private colleges and universities, some \$700 million less than their public counterparts.

²⁹ The NJEFA board consists of seven members, including the chairperson of the N.J. Commission on Higher Education and the state Treasurer (or their designees), who serve *ex officio*, and five citizens appointed by the Governor with the advice and consent of the state Senate, for terms of five years.

Commission's investigation revealed no instance in which a higher education bonding proposal was ever blocked by legislative resolution or, for that matter, by the Office of the Governor, which is empowered by statute to veto NJEFA resolutions. Indeed, the Commission could find no instance in which the Authority itself has ever turned down a bonding request from a public institution of higher education.

When considering projects brought before it by public institutions for financing, the NJEFA has chosen to limit the scope of its evaluation by focusing solely on factors that might impinge on the viability of the proposed borrowing – i.e. the institution's balance sheet and credit rating and the marketability of the bonds to prospective investors. It performs no substantive or qualitative assessment of proposed capital projects, although it could under the terms of its enabling statute. As long as the subject school appears to have the financial ability to pay off the bonds and receives an acceptable bond rating from the major private-sector rating agencies, NJEFA will approve the issuance of bonds. When asked about the Authority's approval process, NJEFA Executive Director Anderson testified that, generally, “[w]e don't like to tell clients [the schools] ‘no.’ We like to work with them in coming to a common conclusion as to what makes sense.” Asked why the Authority does not conduct more substantive evaluations of public projects that come before it, Anderson testified, “. . . [J]ust because we have the authority to do something doesn't mean we have the requirement to do it.”

Moreover, the Commission found significant differences in the level of scrutiny given bond proposals filed with NJEFA by public institutions of higher education versus that for private colleges and universities.

Before a private institution is permitted to issue bonds, federal laws governing the sale of tax-exempt bonds require that a public hearing be held. Private colleges and universities must

also specify all projects for which proceeds from the bonds will be used. When the bonds are issued, it is very difficult for private institutions to alter the approved project list without jeopardizing the tax-exempt status of the bonds. Further, any bond proceeds remaining upon completion of the approved project list must be used by the private school for repayment of the bonded debt.

By contrast, public institutions of higher education are not required to conduct public hearings prior to the issuance of bonds. They also are permitted by law to alter the approved project list after issuance of the bonds as long as a resolution to that effect is adopted by the school's Board of Trustees and NJEFA's governing Board.³⁰ Moreover, any bond proceeds remaining after completion of the approved projects are released to the school's general operating accounts.

The Commission discovered instances in which NJEFA, when issuing bonds to private institutions, has actually recommended that certain projects be scaled down or built in phases in order to make them more affordable. By contrast, the Authority has not intervened in similar fashion with respect to projects undertaken by public colleges and universities. According to Anderson, NJEFA takes this posture because it is confident in the ongoing financial viability of these institutions given the substantial state budgetary support they regularly receive and their ability, due to that support, to attract greater numbers of students via competitive tuition levels.

However, the Commission's investigation revealed a troubling truth – that the level of borrowing by New Jersey's public institutions of higher education is limited only by forces in the bond market and/or the level of fiscal responsibility exercised by each institution. Moreover, these factors can often become intertwined, resulting in circumstances that are not necessarily in

³⁰ If any such proposed changes include the addition of non-revenue-generating facilities, such as laboratories or academic buildings, the project must be re-submitted to the Legislature, triggering the 45-day process in which a project can be disallowed via concurrent resolution passed by both houses.

the best interests of the citizenry, particularly that segment which must absorb the cost of a college education. Indeed, the very ability of colleges and universities to increase tuition and fee levels has actually been cited as a *positive* attribute in private-sector financial reports that gauge institutional bond ratings, thus potentially serving as an incentive to schools to both charge more and borrow more. Indeed, during the course of the past decade, the period during which the bulk of current outstanding bonded indebtedness was accumulated, annual tuition and fees charged by four-year public colleges and universities in New Jersey rose sharply – the average tuition nearly doubling from \$3,091 for the 1996-97 academic year to \$6,657 for 2006-07 and average fees nearly tripling from \$879 to \$2,573 over the same period.³¹

Furthermore, although most of New Jersey’s public institutions of higher education currently have good credit ratings that fall within the “A” range as determined by private-sector ratings services, there are clouds on the horizon. In 2005, Moody’s issued negative bond outlooks for at least three of New Jersey’s public institutions – Rowan University, Kean University and Ramapo College – warning that they are at risk of long-term erosion in their credit ratings. The Moody’s report at that time for Kean University alone warned that the school had exhausted its debt capacity at its then-current bond rating. Despite the warning, Kean in March 2007 executed the sale of bonds through NJEFA in the amount of \$275 million, a transaction that resulted in a downgrade of the university’s bond rating by Moody’s rating service.

The Commission is concerned, meanwhile, that legislation currently pending before the New Jersey Legislature could inject a disturbing new facet into this bonded indebtedness picture.

³¹ These averages were calculated based upon data for New Jersey’s nine senior state colleges and universities and two of its three research institutions, Rutgers University and New Jersey Institute of Technology. From a national perspective, the combined cost of current average four-year public college/university tuition and fees in New Jersey – \$9,230 – is nearly twice the national average of \$5,836.

The bill, A-3677, would allow NJEFA to issue new types of debt not currently permitted under existing law on behalf of the state's nine senior public colleges and universities. The most troubling aspects of this bill are provisions that would allow NJEFA to issue bonds on behalf of the schools to raise funds for the so-called "working capital." According to Anderson, this term refers to short-term operating expenses, and the money borrowed would be intended to help the schools cover such expenses during periods when their cash-flow is restricted. As currently written, however, the measure would provide far more expansive borrowing abilities, enabling public colleges and universities to actually borrow in anticipation of future budget shortfalls.

LACK of EXTERNAL OVERSIGHT

When New Jersey's system of public higher education was deregulated in the mid-1990s, the goal was to free state colleges and universities from what was perceived to be a burdensome and stifling apparatus of control from Trenton. Proponents reasoned that elimination of "unnecessary state oversight and its accompanying bureaucracy," as they described it, would launch publicly-funded institutions of higher learning into an era of "creativity and innovation."

As the findings of this and other investigations have demonstrated that some of that era has been defined by innovative forms of waste and abuse and lack of oversight, accountability and transparency. Well-intentioned though it may have been, the 1994 Higher Education Restructuring Act went too far, dismantling the entire machinery of state oversight in one fell swoop. To be sure, the individual institutions no longer had to feel the leash of a multi-tiered state Department and Board and Chancellor of Higher Education, but at the same time, when it came to ensuring operational integrity and accountability on behalf of the taxpayers, they were left largely to their own devices.

During the course of this inquiry, the SCI determined that the only existing mechanism for direct state involvement in this system – the state Commission on Higher Education (CHE) – is a mere remnant of meaningful oversight, a toothless shell of the centralized bureaucracy it replaced. An examination of CHE activities since its creation in 1994 revealed that, although empowered by statute to perform a coordinating function for "statewide planning of higher education," this entity is primarily a very weak advisory body, research outlet and information clearinghouse that has little or nothing to do with hands-on oversight of the multi-billion-dollar system whose name it bears.

With a staff of approximately 20 – one-tenth the number of personnel formerly assigned to the Department of Higher Education – the CHE’s stripped-down bureaucracy is not equipped with any unit or entity that deals with fiscal or operational oversight.³² Moreover, only a very small share – \$1.4 million – of the CHE’s annual \$45 million state budget appropriation is devoted to operational functions. Most of the funding is dedicated to student financial aid programs.

One of the most glaring deficiencies in the current oversight structure is the fact that even though the CHE’s enabling statute authorizes it to undertake inquiries into the affairs of state colleges and universities, that power may be invoked *only* at the direct request of the Governor and has rarely been used – and not at all during the scandal-ridden period of the past two years. Indeed, the CHE has conducted *only one* such “visitation,” or investigative, inquiry in its history, a review of circumstances surrounding the presidential selection process at Kean University in the mid-1990s. Further, although the CHE is also empowered by law to issue subpoenas and to examine witnesses, this also can only be done at the direct request of the Governor, something which has *never* occurred.

CHE files also yielded no evidence that it has ever investigated and/or taken any action as a result of complaints received from citizens or other sources. Standard operating procedure is the use of canned responses based on some iteration of the following sentence: “. . . Institutional operations and management are the responsibility of college and university administrators and governing boards” These responses typically direct complainants to contact the administrators and/or governing boards of the very institutions targeted by their complaints. Recently, the CHE adjusted its response policy so that complainants are now at least provided

³² The Department of Higher Education, by contrast, maintained a number of positions related to fiscal and operational oversight, including a Controller, a Director of Accounting and a Manager of Fiscal and Operational Integrity.

with more detailed information on how to contact the appropriate official at a given institution. Nevertheless, the CHE lacks authority to compel schools to remedy legitimate complaints.

The current administrative leadership regime at the CHE recognizes, and is frustrated by, the agency's feeble condition. In sworn testimony, Executive Director Jane Oates described the CHE as "anemic" and said the State's role in higher education has become so diminished that public colleges and universities in many instances no longer believe they are parts of a larger system.

Feeding that notion, Oates testified, is the absence of any explicit requirement compelling these institutions to submit to the CHE even the most basic information regarding their operations, including expenditure data, procurement procedures, ethics guidelines or plans for capital borrowing. Without such information, it is difficult to get a comprehensive and accurate fix on the general health of public higher education as a whole at any given time. Worse still, Oates said, the paucity of operational data required for submission by the various institutions makes it virtually impossible to detect and prevent waste and abuse, including the kinds of violations of the public trust that have occurred at UMDNJ. According to Oates,

. . . [T]he problems that exist there [UMDNJ] . . . nobody can say they don't exist somewhere else. We hope that they don't, but there's no centralized structure on procurement. There's no centralized list of must-do's on hiring. We kind of hoped that faculty organizations and unions will keep that honest. On procurement, nobody is overseeing anything . . . I think some of the schools have really stronger policies and procedures in place than others, but I have no way of judging that. That would be just anecdotal. We don't see any of their policies or procedures.

The marginalization of the CHE is illustrated by the fact that it is not unusual for it to have to rely on the news media to find out about major initiatives undertaken by state colleges and universities. Oates cited a recent attempt by Rowan University to construct an athletic

facility for purposes of attracting a U.S. Major League Soccer Team as an example of a major undertaking CHE was unaware of until reports of it surfaced in local newspapers. Similarly, CHE was in the dark about a proposal by Kean University to establish a satellite academic facility in a province of China until it appeared in published reports. Oates also stated that the recent controversial effort by Rutgers University to eliminate certain sports programs came as a surprise to her office.

The failure of the schools to report adequate governance information to the CHE provides a partial explanation as to why the Commission's annual report, ostensibly designed for use by the public to track system-wide performance of higher education, has devolved from a detailed and comprehensive 55-page, stand-alone document to its present form, a 17-page appendix to the CHE's long-range plan. The current edition contains none of the detailed, school-level information provided by earlier CHE reports. Information in the earlier reports touched upon school expenditures and revenues and provided useful comparisons between the three New Jersey-based research institutions – Rutgers University, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology – and comparable institutions elsewhere in the U.S. The newer reports have done away with virtually all useful school-level information, while substituting more general summary data.

Documents reviewed in conjunction with this investigation suggest that the evisceration of these reports was no accident, that they have purposely been watered-down over the years in order to avoid controversy and that they have evolved into mere promotional tools. Further, while most taxpayers would interpret "accountability" as pertaining to how efficiently schools of higher education utilize billions of dollars they receive every year in tuition, fees, investment income, gifts and state appropriations, the CHE view of accountability is quite different. Except

for the Commission's second annual report, in 1997, subsequent reports contain little to no data regarding appropriations on a school-by-school basis. Nor do most of these reports contain information on how state schools have spent their appropriations. As applied by the CHE and the academic community, the term "accountability" has more to do with matters such as graduation and student retention rates than the efficient use of funding.

Evidence of the deconstruction of CHE annual accountability reports includes:

- An October 30, 2001 memorandum from the CHE to its advisory panel of college and university leaders, the Presidents' Council, contained the following reference to a format for the Commission's proposed 6th annual report: *Given the advent of a new Governor and new members of the legislature, we recommend that this year's report be more general and comprehensive without a separate specific topic of focus.*
- A November 19, 2001 CHE memorandum to school presidents boasted that *for the first time, this year's accountability report will highlight and take a closer look at some of our college and university accomplishments that speak to the dedication and hard work of faculty, staff and students and our partners from business, academe, government and the community.*
- Summary notes from a January 25, 2002 CHE accountability meeting attended by CHE members and school presidents contained the following suggestion regarding the purpose and future use of CHE annual reports: *[T]he annual institutional accountability reports should be used to generate a statewide report that sells higher education to the public.*
- A February 21, 2003 letter from the CHE to a university president regarding a recommendation for the seventh annual accountability report states:
*Based upon our conversations during the meeting and discussions we held internally here afterward, I have a suggestion to make. I believe it would be wisest for us to pursue a course of action along the lines of the Oklahoma State Report Card for purposes of completing this year's system wide accountability report. You may recall that document as a handy four color foldout that exhibits statewide data on five or so comprehensive measures. **None of those measures are of the contentious variety that committee members agreed we should especially avoid during the throes of state budget deliberations...**if you have any concerns about pursuing this approach, I will not make any public mention of it. However, if it seems alright (sic) in your view, you might include it*

in your remarks at the board meeting and I could echo it in my report. [Emphasis added].

REFERRALS and RECOMMENDATIONS

The Commission refers the findings of this investigation to the following agencies of government and institutions of public higher education for whatever action they deem appropriate:

- The Office of the Governor, the Legislature and the Office of the Attorney General of New Jersey
- The Office of the United States Attorney for the District of New Jersey
- The New Jersey Commission on Higher Education
- The New Jersey Education Finance Agency
- The University of Medicine and Dentistry of New Jersey, Rutgers University, New Jersey Institute of Technology, Rowan University, Ramapo College of New Jersey
- All other institutions of higher education, both public and private, in the State of New Jersey

• • •

The Commission is obligated by law to set forth reasonable and appropriate recommendations for statutory and regulatory reforms warranted by the findings of its investigations. Given the scope and complexity of the matter at hand, extraordinary steps were taken to ensure that the crafting of such recommendations did not occur in a vacuum. Prominent individuals and organizations deeply familiar with public higher education in New Jersey, including representatives of the New Jersey Association of State Colleges and Universities, senior officials at Rutgers University, former Governor and former Drew University President Thomas H. Kean; former Princeton University President and current UMDNJ Trustee Harold J.

Shapiro; Jane Oates, executive director of the New Jersey Commission on Higher Education; Robert J. Del Tufo, current chair of the UMDNJ Board of Trustees and former New Jersey Attorney General and SCI Commissioner; and others, were consulted generally for their concerns and suggestions with regard to governance, accountability, transparency and oversight, which, collectively, comprised the multi-pronged focus of this investigation. The scope of this investigation was not charged with encompassing the two other primary “legs” of the higher education stool – public policy implications (i.e. taxpayer and student tuition support) and education/academic policy matters, which should also be scrutinized by the appropriate entities. Nevertheless, the SCI’s consultations, coupled with the full record of its own investigation and those conducted by other parties involving UMDNJ, enabled it to develop comprehensive and viable reform proposals sensibly designed to address glaring systemic governance failures and weaknesses while bolstering, or at least leaving undisturbed, the salutary systemic strengths of autonomy and self-governance.

It is noteworthy that everyone consulted by the Commission recognized the importance of preserving institutional autonomy. At the same time, however, they agreed in substance that change is in order to strengthen and protect the best attributes of autonomy and self-governance, albeit to varying degrees and for different reasons and with different emphasis. For some, the motivating factor is a deep and abiding concern that the continuing void in independent oversight and accountability of governance and operations, coupled with diminished transparency and the unbridled intrusion of politics, is the fertile soil of scandal. Others worry that fierce and uncoordinated jockeying for budgetary resources, status and academic standing threatens to transform state colleges and universities from productive educational institutions into self-aggrandizing competitors to the detriment of all in the contest for limited state and federal

dollars. Above all, there is the stark and disturbing realization that in the councils of state government, where public policies and priorities are formulated, debated and established, higher education in New Jersey has no fixed or influential place at the table, and all of public higher education seems to be suffering as a result.

As action is taken to address these and other issues, the central challenge will be to avoid going to extremes. Just as history has shown that the state's wholesale disengagement from higher education in 1994 was a mistake, it would be unwise to the point of recklessness to compound that error by turning back the clock. A balance must be struck for the proper governance and oversight of public higher education without returning to the tightly regulated, top-heavy and overly burdensome structure of past state involvement. Institutional autonomy is important and must be retained, but it must be coupled with effective oversight, accountability and transparency. Pursuant to the achievement of that balance, the commission makes the following recommendations for systemic reform:

1. Establish Effective and Efficient State Oversight of Public Higher Education

As the findings of this investigation amply demonstrate, New Jersey urgently requires an influential statewide entity to act on behalf of public higher education at the highest levels of government – not to run, dictate to or unduly interfere with the basic mission or operations of state colleges and universities but to ensure a proper balance between strong institutional autonomy and effective oversight, transparency and accountability. There is no need to create a massive bureaucracy to get this job done. The framework for such an entity already exists in the form of the New Jersey Commission on Higher Education (CHE). But, clearly, if the CHE is to provide effective leadership, it must be reshaped, strengthened and expanded in significant ways

and equipped with the appropriate statutory and regulatory authority and resources to establish oversight and provide greater accountability and transparency for these institutions and the public they serve. Legislation, therefore, should be enacted to achieve these goals through a number of means, including but not limited to the following:

- Grant the CHE permanent cabinet-level status, eliminating its current station “in but not of” the Department of State and providing it with all proper powers and obligations as conferred upon any of the various agencies, departments and commissions that report directly to the Governor in the executive branch of state government, including the appropriate regulatory authority to implement key recommendations of this report.
- Expand the CHE’s membership from 14 to a maximum of 18.³³ The number of members subject to appointment by the Governor, with the advice and consent of the Senate, should be expanded from the current six to at least 10. Further, the CHE should be equipped with the means to attract and retain the best and brightest talent for oversight and accountability of public higher education in New Jersey. Pursuant to that goal, the CHE should establish in its by-laws an appropriate and detailed set of skill-related criteria for use by the Governor in recruiting, evaluating and selecting candidates for membership on the Commission. While the Commission itself should be a source of membership candidate recommendations, the Governor should not be restricted in his/her final choice, and the advice and consent of the Senate should be protected.

³³ The CHE’s current composition is statutorily dictated by N.J.S.A. 18:A:3B-13.

- Provide for the CHE’s executive director to be appointed by the Governor, after consultation with and recommendation from the CHE commissioners, and upon the advice and consent of the Senate.

- Provide the CHE with proper statutory authority and sufficient staff and resources necessary to conduct and maintain adequate oversight of the operations and governance of all public institutions of higher education in New Jersey.
 - In particular, the CHE should be empowered to administer and enforce compliance with the provisions of a Sarbanes-Oxley-style statute mandating “best practices” in higher education governance and fiscal accountability and transparency as proposed in Recommendation #3 of this report.

 - Furthermore, the CHE should not be unduly constrained as it presently is in the use of its current investigative powers regarding the governance and operations of all individual public institutions of higher education, including the issuance of administrative subpoenas to compel sworn testimony and document production. In addition to its current authority to invoke those powers at the request or direction of the Governor, the Commission should be permitted to do so based upon its own independent determination.

- Position the CHE to serve as the premiere advisory agency to the Governor and the Legislature on all policy-making for public higher education in New Jersey. Working with the individual institutions, the CHE should evaluate, coordinate and prioritize matters of concern to the higher education community; develop and pursue a unified budget plan for submission to the Governor and Legislature;

establish effective long-range planning and review across the entire spectrum of issues affecting higher education; and coordinate the activities of all other governmental agencies that deal with matters affecting public higher education.

- Empower the CHE to devise, disseminate and enforce compliance with, in addition to the “best practices” outlined herein at Recommendation #3, a set of standards for proper operational conduct by public institutions of higher education and their personnel, including a uniform Code of Ethics. The Code of Ethics should strike a reasonable balance between safeguarding the public trust held by state colleges and universities as quasi-governmental entities and ensuring that they continue to fulfill a unique mission. The Code should not be structured or construed so as to hinder their ability to recruit academic and administrative personnel on an equal footing with private institutions of higher education or to prohibit the receipt of tangible recognition by and from outside organizations of exceptional performance, e.g. cash or other awards for academic or scholarly achievement.

2. Strengthen State College and University Governing Boards

When New Jersey’s nine so-called “senior” state colleges and universities were granted full autonomy in 1994, Boards of Trustees became the paramount mechanisms of accountability across the entire spectrum of state-level higher education. At the time, New Jersey’s three larger academic/research institutions – Rutgers, UMDNJ and NJIT – already enjoyed high degrees of autonomy and self-governance.

Full devolution of power from state to campus not only brought operational challenges; it also implied special obligations and responsibilities. In effect, tuition-paying students and

parents, taxpayers at-large and others with a direct stake in the quality and administration of public higher education were asked to rely more heavily than ever on the competence, skill, dedication and attentive stewardship of institutional governing Boards.

Given the findings of this investigation, which raise significant questions about the proper exercise of due diligence, accountability, transparency and oversight by Boards of Trustees among both the senior and the research institutions, a number of crucial reforms are in order. The SCI recognizes and applauds salutary steps already taken in this regard by many institutions amid the crisis of the times, such as action by UMDNJ to expand and upgrade the quality of its governing Board in response to the findings of many earlier investigations and revelations. But to ensure quality self-governance universally and to build upon the half-steps already taken, the SCI recommends that legislative action be taken to strengthen all state college and university governing Boards, including but not limited to the following:

Board Appointments and Composition

Regardless of individual institutional charter, mission, by-laws or size, every state college and university has a governing Board, and every governing Board should not only be independent and serve as the first line of authority over institutional governance but also as the first line of protection against possible abuses of governance. To strengthen these vital bodies and to ensure that they are properly and adequately equipped with the tools, structure and the membership to fulfill these fundamental responsibilities, the size, composition, independence and appointments process for all state college and university governing Boards should be improved in a number of ways, including but not limited to the following:

- Given the central role of state college and university governing Boards in institutional governance, oversight and accountability – and in light of the expanded scope of Board responsibility recommended herein – it is critical that they be sufficiently constituted to meet the workload. Therefore, Board membership should be expanded to a required minimum of 19 up to a maximum of 27. The current authorized range is seven to 15, with an average membership of between 10 and 11.³⁴
- Statutory authority to appoint all members of state college and university governing Boards should continue to rest with the Governor with the advice and consent of the state Senate, subject to the limitations and procedures set forth herein.
- Legislation should be enacted requiring the process for filling Board vacancies to begin at the college and university level with the establishment by each institutional governing Board of a Trustee Nominations and Governance Committee to recruit, screen and recommend candidates to the full Board for consideration. This committee would enable those most familiar with the strengths, weaknesses and needs of each institution – the incumbent trustees – to suggest and evaluate prospective Board candidates possessing the most appropriate and diversified skill-sets.

³⁴ Establishing a required minimum number of governing Board members will necessitate amendments to the appropriate statutes that govern New Jersey’s nine “senior” state colleges and universities as well as a trio of separate statutes that apply to the state’s three research institutions – UMDNJ, NJIT and Rutgers. Among the latter, UMDNJ already has taken steps to expand its governing Board to 19 members. Given Rutgers’ unique status as the state university of New Jersey, the composition of its Board of Governors and other matters associated with its governance are dealt with separately in Recommendation #6 of this report.

- Boards of trustees should be required to develop explicit written qualifications for prospective Board members. These “job descriptions” should be tailored to the peculiar requirements of each institution and made consistent with the statutory responsibilities of each Board. Nominations and Governance committees should be required to actively consider candidates of diverse background and experience, as well as those with ties to the school.
- Candidates for each vacancy should be voted upon and recommended by the Board. These nominees would be submitted to a Permanent Advisory Committee on Board Appointments to be established within the CHE. This advisory panel would screen candidates submitted by the Board and, as appropriate, forward them to the Governor for consideration. If either the advisory committee or the Governor rejected all candidates for a given vacancy, the appropriate institutional Board’s Nomination and Governance Committee would then recruit and recommend a new set of candidates, and the process would repeat itself. Failure to gain appointment to a current Board vacancy would not disqualify an individual from consideration for a future vacancy.
- The CHE should develop guidelines available for use throughout the appointments process delineating model qualifications, credentials, skill-sets and diversity. At a minimum, each institutional governing Board should include one or more members who possess financial and accounting expertise.

- Status as a non-resident of New Jersey should not automatically render an individual ineligible for appointment to a state college or university governing Board, particularly in instances involving qualified out-of-state alumni.

Oversight by Governing Boards

In order to bolster and protect the integrity of self-governance, state college and university governing Boards should play a direct role by establishing and maintaining an essential committee structure to include, but not be limited to, the following committees of the Board³⁵:

- *Audit Committee*

Given the new standards of accountability and best practices as outlined herein at Recommendation #3, it is critical that every state college and university governing Board establish an Audit Committee composed of entirely independent members.³⁶ The chair of this committee should possess accounting or financial expertise, and every effort should be made to ensure that a majority of the committee's members have accounting or financial expertise. The Audit Committee should have a written charter detailing its institutional jurisdiction and responsibilities, which should include but not be limited to:

- Assist the Board in ensuring the integrity of the institution's financial statements, in complying with all relevant legal and regulatory requirements, in establishing and ensuring the independence of outside

³⁵ The roster of proposed committees set forth in this recommendation should augment, and not detract from, existing Board committee structures.

³⁶ The N.J. Commission on Higher Education (CHE) should define "independent" in a manner similar to the way the New York Stock Exchange defines and determines independence in its Corporate Governance Rule 303(A)2(a). For example, "No member should qualify as independent unless the governing Board affirmatively asserts that the member is independent in accordance with guidelines established by the CHE."

auditors retained by the institution and in overseeing performance of the institution's internal audit function.

- Evaluate the performance of the institution's internal auditors.
- Safeguard the integrity of the institution's financial statements.
- Evaluate and investigate allegations of misconduct and/or conflicts of interest.
- Ensure the institution's compliance with all relevant legal and regulatory requirements.

- ***Executive Committee***

Given the expanded size of institutional governing Boards as recommended herein, it would be anticipated that the full Board would meet three to four times a year. Therefore, each Board should establish an Executive Committee consisting of the Board Chair, Vice Chair, Chairs of the various Board committees and others as deemed appropriate. The Executive Committee would be authorized to meet and act on behalf of the full Board as circumstances warrant between meetings of the full Board.

- ***Compensation Committee***

This committee should be responsible for establishing and evaluating compensation for the president, vice presidents and all other senior administrators and recommending action to the full Board on a range of matters, including the amounts, types and particulars of compensation plans and the performance measures and targets upon which institutional executives should be judged for purposes of calculating incentive awards. The Compensation Committee's

deliberations should be voted on, memorialized and reported to the full Board for information and/or action as appropriate and required.

- ***Nominations and Governance Committee***

In addition to playing a primary role in identifying and evaluating candidates for appointment to the Board, as referenced above, this committee should monitor and report upon all matters directly affecting governance, including conducting periodic reviews to update and strengthen institutional by-laws.

- ***Professional Services Committee***

As referenced in detail at Recommendation #5, all state college and university governing Boards should maintain a Professional Services Committee to assist the Board with regard to evaluating and retaining outside professional-service contractors, particularly involving contracts awarded outside the competitive bid process.

All meetings and deliberations of Board committees, as well as all meetings and deliberations of the Board itself, should be recorded in minutes or otherwise memorialized to ensure transparency and availability for future reference and disclosure.

Board Responsibilities, Training and Development

- As the size, composition and oversight obligations of state college and university governing Boards evolve and grow pursuant to the recommendations herein, so too should their responsibilities with respect to the long-term development of their respective institutions with the goal of offsetting the need for ever-rising

governmental budget subsidies. Thus, each Board should formulate and execute custom, state-of-the-art fundraising and development strategies requiring active involvement by all members. This activity should include action whenever possible and appropriate to assist fundraising by institutional foundations.

- Current and prospective members of state college and university governing Boards should be required to undergo formal education and training at least annually, focusing primarily on Board best-practices and governance responsibilities as defined, developed and promulgated by the CHE.
- Training should encompass and reinforce the fundamental fiduciary responsibilities of each member, the importance of conducting Board business with the highest standards of ethics and transparency and the central mission of the Board to provide policy guidance, oversight and accountability of institutional personnel and operations and systems rather than to be involved in the day-to-day running of the institution.
- The CHE should assist institutional Boards in this regard by developing an effective training curriculum encompassing the full gamut of relevant topics, including but not limited to ethical standards, due diligence and the requirements of New Jersey's Open Public Meetings and Open Public Records Acts, as well as lawful and necessary exceptions to those statutes that serve to bolster the uniqueness of higher education's mission – i.e. student privacy requirements, academic freedom, etc.

3. Enact Sarbanes-Oxley for New Jersey’s Public Higher Education System; Mandate “Best Practices” in Governance and Fiscal Accountability

Over the past decade, in response to spectacular accounting defalcations and the subsequent collapse of a number of private companies, including such prominent multi-national firms as Enron, Tyco and WorldCom, the U.S. government imposed tough financial reporting and internal-control obligations on all publicly-traded for-profit business enterprises. Named for its two principal congressional sponsors, the Sarbanes-Oxley Act of 2002 established new accountability standards in the corporate world, and new penalties, both civil and criminal, for transgressions, as regulated through the U.S. Securities and Exchange Commission (SEC). In recent years, the nonprofit sector has found itself under increasing pressure to adopt similar standards for institutional accountability, including new regulations administered by the U.S. Internal Revenue Service that do and/or will apply to *private*, but not *public* nonprofit institutions of higher education.

The collective findings of this and other investigations into the governance, administration and fiscal affairs of *publicly-funded* institutions of higher education in New Jersey amply demonstrate that those institutions also should be subject to new and effective accountability standards as well.

Acting at their own volition, a number of colleges and universities already are considering, or have adopted, changes in operations and fiscal governance based, in part, upon a 2003 report by the National Association of College and University Business Officers (NACUBO) recommending enhanced institutional governance procedures – so-called “best practices” – to enhance the integrity of senior management, financial reporting, Board oversight

and internal controls, as well as institutional reputations.³⁷ Based upon the SCI's evaluation, however, it is plain that NACUBO's recommendations do not go far enough to accomplish the fundamental goal of a Sarbanes-Oxley approach to governance and accountability, i.e. to establish an effective framework for early discovery of conditions and practices that could lead to waste, abuse and/or outright corruption.

The New Jersey Commission on Higher Education should be vested with the statutory and regulatory authority to establish, administer and enforce proper standards and practices designed to provide state colleges and universities with an effective structure of internal and external controls for financial accountability. The CHE's jurisdiction in this realm should mirror that of the SEC in its oversight of private-sector public corporations and that of the IRS with respect to nonprofit entities. Failure to establish CHE in that role for state colleges and universities could doom "best practices" by rendering them ineffective and unenforceable. In order to ensure an orderly, uniform and equitable approach, the SCI recommends systemic reforms to include, but not be limited to, the following key areas:

³⁷ In November 2003, NACUBO issued a checklist of best practices for both public and private institutions of higher education as set forth in the federal Sarbanes-Oxley Act. *NACUBO Advisory Report 2003-3*.

In 2004, the U.S. Senate Finance Committee held hearings and issued a draft report concerning the application of Sarbanes-Oxley principles to nonprofit entities, including colleges and universities but, to date, no legislation has resulted. Also in 2004, the U.S. Internal Revenue Service became more aggressive in examining nonprofits, specifically in the area of executive compensation, and announced a new enforcement effort – the "tax exempt compensation enforcement project" – aimed at identifying excessive compensation and other forms of financial benefits by tax-exempt organizations to officers, directors and other insiders.

The 2005 edition of *The Journal of College and University Law* was dedicated to the application of Sarbanes-Oxley "best practices" in academia. *Sarbanes-Oxley in Higher Education Bringing Corporate America's Best Practices to Academia*, *The Journal of College and University Law*, Vol. 32, No. 2 (2005).

In April of 2007, the Association of Governing Boards of University and Colleges issued a report to the nation's governors outlining four steps to strengthen innovation, performance and accountability in public college and university governance. They include: embracing accountability, investing limited resources effectively, establishing a shared set of state priorities and demonstrating that competence trumps politics in the selection of those who serve on public college and university governing Boards. *AGBCU, April 2007*.

Accounting Standards and Procedures

- Pursuant to the statutory and regulatory authority granted it under Recommendation #1, the CHE should design, administer and enforce compliance with financial accounting standards explicitly relevant to the operations of publicly-funded institutions of higher education in New Jersey. In order to devise the most effective array of standards available, the CHE should consider adopting a hybrid consisting of relevant and appropriate standards as set forth by such private- and public-sector organizations as the Financial Accounting Standards Board (FASB) and the Government Accounting Standards Board (GASB).

Internal Controls

- Based upon the appropriate mix of accounting standards as referenced above, the CHE should establish internal-control standards for each state college and university in New Jersey to ensure institutional accountability and transparency.
- Each state college and university governing Board should retain outside financial consultants approved by the CHE and not affiliated with the institution or its internal and external auditors to evaluate and report on the present adequacy and appropriateness of internal controls for that institution.³⁸

Internal Audit

- State colleges and universities should directly employ aggressive, credible internal auditors who periodically test and report on internal controls to the Audit Committee and senior management. Although the establishment of an effective

³⁸ See Sarbanes-Oxley Act Sec. 404(b).

internal audit team will require investment by institutional operating budgets, long-term cost-savings should result through diminished unilateral reliance on the outside auditors and from efficiencies produced by better internal controls.

- The internal audit should be utilized by the institution to ensure adherence to proper internal controls and accounting standards as established by the CHE. The internal auditor should report to senior management and to the audit committee of the governing Board.

External Audit

- State college and university governing Boards should, if they are not already doing so, retain independent outside auditors who are Certified Public Accountants (CPAs), to conduct appropriate annual audits of institutional financial accounts based upon the standards established by the CHE to improve the quality and scope of the audits.
- The process involving the activities of the independent auditor is crucial to proper accountability, oversight and transparency and should proceed as follows:
 - The independent auditor should report its findings to the Audit Committee of the Board and, through the audit committee, to senior management of the institution.
 - Senior management should evaluate the independent auditor's findings and file comments thereon with the Audit Committee.
 - The Audit Committee should report the findings of the independent auditor to the full Board, along with management's evaluation and comments. The committee should recommend appropriate action to rectify any material weaknesses and deficiencies in internal controls identified throughout this process.

- The independent auditor should be retained annually by a vote of the full Board based upon the recommendation of the Audit Committee acting in conjunction with the Professional Services Committee.
- In order to safeguard the integrity of the process, an independent auditor retained for consecutive annual audits by the same institution should serve in that role for a finite period of years based upon limits set forth by the CHE. Similarly, the personnel of an independent auditor who manage consecutive audits at a given institution should be limited by the CHE in how long they can continue in that role.
- Independent auditors should not have employed the chief executive officer, chief financial officer, controller, chief accounting officer or any person holding an equivalent position at the audited institution during the one-year period preceding the audit, or that fail to meet any other limitations and/or restrictions as established by the CHE
- State colleges and universities should retain financial records for a reasonable minimum period of time to be established by the CHE.

Integrity of Senior Management

- Background checks should be conducted for new employees, especially those hired for senior management or financial positions.
- Annual disclosures of conflicts of interest should be required of governing Board members, senior management and employees in key financial positions pursuant

to a written conflict of interest policy or bylaw provision adopted by the institution's governing Board based on standards established by the CHE. In developing such standards, the CHE should strike a balance between adequate oversight and the continued ability of an institution to attract and retain qualified personnel.

- A code of conduct should be formulated and adopted for governing Board members and senior management that addresses both professional and personal conduct, including sanctions for non-compliance and a credible system for investigating and responding to allegations of improper conduct. Again, in developing such a code, a balance should be struck between adequate oversight and the continued ability of these institutions to attract and retain the best, brightest and most qualified personnel possible for New Jersey's higher education system.
- The President and Chief Financial Officer of the institution should be required to certify financial statements submitted to the CHE in a manner similar to the way corporate chief executives and financial officers certify financial statements to the SEC.³⁹
- Based upon standards established by the CHE, top institutional personnel, including the general counsel, president, chair of the governing Board and members of the Audit Committee, should be notified immediately of any reports of potential misconduct bearing upon the integrity of the institution. The Audit

³⁹ See Sarbanes-Oxley Act Sec. 302.

Committee should be the primary institutional mechanism for investigating any such allegations.

- Based upon standards established by the CHE, state colleges and universities should be required to establish written whistleblower policies and procedures that provide confidentiality and protect informants from retaliation.

Enforcement/Penalties for Non-Compliance

- The CHE should be provided with the means necessary to monitor proper adherence to the standards and practices set forth in this recommendation, including, but not limited to, full administrative subpoena power and unfettered access to all appropriate state college and university records and personnel.
- The Legislature and Governor, with the advice and recommendation of the CHE, should establish appropriate statutory noncompliance penalties, to be administered and enforced by the CHE, including but not limited to fines and disciplinary action against institutions as a whole as well as individual personnel. In matters involving possible criminal misconduct, the CHE should be required to make referrals to appropriate prosecutorial agencies.

4. Enact Controls on Lobbying

One of the many consequences of New Jersey's diminished role both in overseeing the affairs of public institutions of higher education and in providing a powerful centralized vehicle for advancing their interests has been increased reliance by state colleges and universities on

lobbying. Millions of dollars are spent by these institutions to hire private-sector lobbyists and/or to establish internal offices of government relations in an effort to influence politicians and regulators in Trenton and Washington for a variety of purposes, sometimes promoting the undue intrusion of partisan politics.

The potential for waste and abuse with respect to lobbying is well known, both in terms of sheer dollars spent and the slippery slope of partisan influence-peddling. It would be a mistake, however, to limit the ability of these vital institutions to get their message across. While an empowered and invigorated Commission on Higher Education would be positioned to assist and advocate on behalf of the collective higher education community, individual colleges and universities, given the exigencies of autonomy and self-governance, may still deem it necessary to engage in tailored efforts to make their case to government policymakers, legislators and regulators. The preferable course would be to establish and/or enhance internal governmental relations offices, but the hiring of outside lobbyists – subject to stringent controls set forth herein – should not be ruled out, particularly if it is a less costly and more effective option. Therefore, the SCI recommends the following:

- All proposed contracts to retain the services of private outside lobbyists by a state college or university should be publicly considered and approved by the institution's Board of Trustees.
- Every state college and university governing Board should maintain a Professional Services Committee with a written charter specifying its jurisdiction and detailing its authority, to include:
 - Evaluating and recommending Board action with respect to professional services contracts that fall beyond the normal competitive bidding process,

and providing oversight of such contracts, including, but not limited to, those involving lobbyists.

- Reviewing proposed professional service contracts to verify the need for the proposed services; determine whether any conflicts of interest exist between the vendor and the institution; ensure appropriate procurement procedures are utilized; determine whether the proposed compensation is reasonable; and monitor the services delivered by the vendor.
 - Each member of the committee should be required to certify in writing that he/she is not engaged in a real or potential conflict of interest involving a prospective vendor, and to recuse him/herself from the committee's deliberations in the event such a conflict does exist.
- A Code of Standards and Ethics should be established and enforced by the CHE to define and regulate the types of activities in which private-sector and government-relations lobbyists are permitted to engage on behalf of state colleges and universities. Under this code, lobbyists and government-relations personnel, whether employed directly or retained under contract by the institution, should be expressly prohibited from using their position as agents of these institutions to:
 1. Solicit political campaign contributions from the institution directly or through its personnel on behalf of the institution.
 2. Engage in or recommend on behalf of the institution any involvement in the partisan activities of specific political parties and/or candidates.
 3. Support or promote directly or indirectly on behalf of the institution any specific political party or individual for election or re-election.

In drafting this code, the CHE should take care not to limit – indeed, it should encourage – the assistance and expertise that lobbyists and government-relations personnel can provide to state colleges and universities pursuant to legitimate nonpartisan and bipartisan activities vital to the election process, including, but not

limited to, the scheduling and holding of on-campus political debates, voter-registration drives and similar nonpartisan and bipartisan events and activities.

- Pending legislation which would require lobbyists retained by agencies of state government to file notice of representation and separate quarterly and annual reports with the New Jersey Election Law Enforcement Commission (ELEC), should be amended to include lobbyists retained by public institutions of higher education.⁴⁰

5. Establish Capital Facilities Plans for Each Institution and Strengthen Due Diligence Requirements for Capital Improvements and Bonded Indebtedness

In order for New Jersey's state colleges and universities to keep pace with current and future demands for quality higher education, they must continually confront the need for capital expansion and facilities maintenance, which are essential components in the machinery of any successful strategy for long-term institutional achievement. Both, however, must be pursued in an orderly, accountable fashion with proper oversight and coordination. Presently, that is not the case. As demonstrated by the findings of this investigation, the individual schools have been left largely to their own devices in borrowing for capital projects and necessary maintenance. State oversight is virtually non-existent, project approvals are granted virtually on a rubber-stamp basis, there is no established statewide context in which capital construction initiatives are undertaken, and many institutions seem to neglect – to the point of abject indifference – the need for proper maintenance of *existing* facilities. One extremely troubling result of this lax, open-ended and uncoordinated borrow-and-build process is that state institutions of higher education here have accumulated some of the heaviest long-term debt loads of any public higher education

⁴⁰ S-1874

system in the nation – a situation that demands rigorous action before getting further out of control.

The SCI's investigation has shown that the state's current architecture for review and oversight of borrowing by the public higher education community fails to provide a proper balance between, on one hand, the needs and actions of individual institutions and, on the other, the short- and long-term interests of taxpayers and the system as a whole. The primary agency in the current mix, the New Jersey Educational Facilities Financing Authority (NJEFA), serves merely as a processing conduit for such borrowing, does not adequately evaluate proposed capital projects and is not geared to taking into consideration the bigger picture, i.e. the long-term statewide implications of campus construction and bonded indebtedness across the full spectrum of higher education.

The SCI, therefore, recommends action to effectuate systemic reforms, including but not limited to the following:

- Each state college and university should be required to develop an individual long-term Capital Plan and Budget for maintenance, repair and capital improvements and to submit that plan and budget, along with all relevant materials and supporting documentation, to the CHE for evaluation and approval.
- Approval of each institutional Capital Plan and Budget by the CHE would constitute authorization for that institution to execute its plan through the NJEFA, subject to review and limitations set forth herein. If an institution decided to modify its Capital Plan and Budget, the proposed modification should be subject to the same CHE consideration and approval process.

- Taking into account the collective submissions of the individual Capital Plans and Budgets of all state colleges and universities, as well as all other relevant data and information, the CHE should develop a comprehensive statewide Master Plan for Long-Term Capital Expenditures and Maintenance in public higher education.
- Statutes governing the NJEFA should be amended to require that it conduct authoritative and independent financial due diligence evaluations on all financing arrangements in which it agrees to participate as a “conduit” for the sale of bonds or with which it is integrally involved. The new statutory mandate should require NJEFA to assess all sales of bonds by institutions of higher education while accounting for the state’s interests in maintaining the fiscal health of both the individual schools as well as that of the system of higher education as a whole. NJEFA should also make that information available to CHE for Capital Plan and Budget purposes.
- NJEFA should also be required to collaborate with the CHE in the establishment of a cohesive statewide capital improvement master plan for public higher education and allow the CHE to use its, NJEFA’s, expertise and resources to meet its own responsibilities with regard to capital budget and planning matters.
- NJEFA scrutiny of bonds issued on behalf of public institutions of higher education should be at least as stringent as it is for the issuance of bonds for private, independent colleges and universities. The enhanced scrutiny required for the sale of bonds on behalf of independent schools is mandated by the Federal Tax Code and by

private capital market bond ratings. Similar measures should be codified in New Jersey State Law, as follows:

- NJEFA should be required to conduct public hearings prior to the sale of bonds on behalf of public institutions of higher education. Federal law already requires that the Authority conduct such hearings when bonds are being sold on behalf of the private independent schools.
 - Public institutions of higher education, during the public hearing process, should be required to specify all potential projects for which bonded indebtedness is sought. Should a public institution subsequently decide to change the scope of a project for which bonds have been approved, a supplemental hearing on the revisions should be conducted by NJEFA before the revised plan is submitted to the CHE for final approval.
 - State law should require that any surplus bond proceeds remaining after the completion of proposed projects at public institutions of higher education should be solely dedicated to repayment of bonds sold for the project. Federal law currently contains a similar restriction for bonds sold on behalf of private independent schools.
- The Governor should retain statutory authority to veto NJEFA minutes, and proposals involving non-revenue-generating projects – laboratories or other academic buildings, for example – should continue to be submitted to the State Legislature, which, pursuant to current law, has 45 days to disallow a project via concurrent resolution passed by both houses.

Meanwhile, the SCI is concerned about the implications of pending legislation that would significantly expand the ability of public institutions of higher education to borrow.⁴¹ Under this bill, NJEFA could be used not only as a conduit for the sale of bonds in pursuant to capital construction but also to raise funds – so-called “working capital” – to cover shortfalls in institutional operating budgets. If the Governor and Legislature were to deem that “working

⁴¹ A-3677

capital” is necessary for cash-flow purposes at these institutions, the Commission would recommend this measure be amended as follows:

- Provisions permitting NJEFA to issue “working capital” bonds should require repayment of the bonds within the same budget year in which they are issued. The intent of the current bill provisions is to permit short-term borrowing for purposes of covering periodic expenses during times of the year when a school may not have sufficient cash flow (such as the time before tuition payments are received from students). As the bill is currently drafted, however, a school could use taxable working capital bonds to finance long-term budget shortfalls.⁴²
- Institutions should be required to justify the need for “working capital” on a cash-flow basis during the current budget year prior to being authorized to take advantage of this unique borrowing mechanism.

6. Strengthen and Position Rutgers University as a Leader in Higher Education Governance and Accountability

Comprehensive reform of public higher education in New Jersey will succeed only if every state college and university is equally vested in uniform standards of governance, accountability and oversight pursuant to the common goals of effective administration and academic excellence. Presently, that is not the case. Nine so-called “senior” state colleges and universities share one enabling statute while three larger “research” institutions function under the direction of separate, individually crafted laws. Even among the research institutions, however, none matches the tailored empowerment of Rutgers University, which has enjoyed a

⁴² According to NJEFA’s executive director, the bill’s drafters presumed that tax-exempt bonds would be issued for “working capital” loans. He stated that a same-year mandatory repayment period was not specified in the bill because the Federal Tax Code pertaining tax-exempt working capital bonds already mandates repayment within 13 months of the date the bonds are issued. However, the bill theoretically would allow NJEFA to sell *taxable* bonds for these loans. In such instances, the federal restrictions pertaining to tax-exempt bonds would be inapplicable, and state schools could bond for “working capital” loans with repayment periods exceeding 13 months for purposes of covering long-term budget shortfalls. Such loans could be refinanced repeatedly for 13-month periods without end and final repayment.

long and peculiar history of autonomy, occasionally to the point of being beyond the reach of government regulation and oversight.⁴³

That should not be. Rutgers *is* unique, but as *the* state university of New Jersey, it should not exist as an entity unto itself, exemplifying the system's current bifurcated and disparate condition. Rather, it should be positioned and strengthened to lead that system positively – and by example – in the essentials of proper and authoritative self-governance, accountability, transparency and oversight. In sum, while Rutgers' autonomy should be preserved and protected, a balance must prevail in which this institution, as with the other state colleges and universities, is subject to the same fundamental oversight and accountability standards and requirements set forth throughout these recommendations.

Achievement of this will require thoughtful changes to the university's enabling statute, "The State University Law of 1956", particularly with respect to Rutgers' governance framework.

Rutgers is governed by a Board of Governors consisting of just 11 members, six appointed by the Governor and five by, and from, a separate advisory body of Trustees. Given the enormity and complexity of myriad responsibilities facing institutions of public higher education in New Jersey – responsibilities that will only grow larger and more complex with the systemic reforms recommended in this report – the membership of this Board clearly should be expanded. Thus, taking into account current circumstances and the unique status of this university, steps should be taken to determine an optimal level of membership for a newly constituted Rutgers governing board. The Commission defers to the Legislature and Governor, in consultation with Rutgers and other parties, to decide upon an actual number but takes note that another leading research institution, UMDNJ – an institution with a comparable budget – has

⁴³ See Appendix – "The Peculiar Status of Rutgers"

recognized the need for change in this regard. Pursuant to the provisions of its own enabling statute, UMDNJ boosted the size of its governing Board from 11 members to 19 last year and undertook a number of other internal reforms designed to provide a better balance between self-governance and oversight.

As to accountability and transparency, the Commission during this investigation found access to financial and budgetary information particularly wanting at Rutgers, which lacks an integrated accounting system of the caliber reasonably expected of a premier public university that receives the largest single share of taxpayer funds distributed by the state to support higher education. The university some years ago began taking steps toward achieving greater financial transparency with installation of the initial elements of a state-of-the-art financial accounting apparatus, the Rutgers Integrated Administrative System (RIAS). University officials very recently have also reacted to weaknesses in financial controls by strengthening internal procedures and making changes to their existing accounting system. RIAS, however, languishes unfinished amid an unwieldy amalgam of new and antiquated systems that limit the university's ability to track and disclose financial information in a full and timely manner. Thus, Rutgers should be provided with the resources necessary to make this system fully functional to meet the university's own needs and to serve as a model for other institutions of public higher education.

Finally, although nothing in the State University Law of 1956 expressly immunizes Rutgers from state oversight, language contained therein has given rise to a troubling set of circumstances. In some instances, Rutgers has maintained that the statute exempts it from state laws and regulations; in others, the university has argued that it *is* an arm of the state and thus entitled to the privileges and protections enjoyed by such entities. Over the years, the courts

have been asked repeatedly to intervene and have issued rulings upholding positions taken by Rutgers on both sides of this contradictory equation.

This bipolar, situational approach to oversight and accountability is inappropriate and unbecoming of an institution regarded by many as a flagship of public higher education in New Jersey. More broadly, Rutgers' persistence in clinging to this double-standard sets it apart from the rest of the state's public higher education community and its citizens and sends precisely the wrong signal at a critical juncture in the history of that system, a juncture that requires leadership over self-interest. Thus, the State University Law of 1956 should be subjected to thorough legislative and gubernatorial review to ensure that it is structured in such a way as to serve the best interests of Rutgers and the citizens of New Jersey while not detracting from its status in the larger and distinguished community of state-level public higher education. Rutgers *can* protect its autonomy and standing and still meet the same governance standards set forth in these recommendations for all senior institutions of public higher education in New Jersey.

7. Define and Codify State College and University Charters for Maximum Performance

More than four decades have passed since New Jersey, after considerable study and debate, established a comprehensive, unified system of publicly-funded higher education. Much has changed since then, and renewed questions abound, driven by significant events and trends. Apart from the recent history of scandal at UMDNJ and problematic issues associated with governance, accountability, oversight and transparency highlighted by this investigation and its resultant recommendations, the fundamental landscape of public higher education has experienced profound change since the early days.

Through statute, practice and judicial intervention, the system has evolved in ways that were not necessarily anticipated by its architects. For example, as cited above, statutory tiers have emerged, one occupied by the nine senior state colleges and universities, another by the larger research institutions.

Furthermore, since 1994, when the state withdrew from direct regulation, advocacy and oversight of higher education, the nine senior state colleges have received no central or coordinated guidance with respect to questions and concerns about their future course – for example, whether it is feasible or advisable for them to aspire to become “research” institutions in their own right. Similarly, the existing research institutions face their own array of unresolved matters, notably including the issue of proposed mergers, to the detriment of any reasonable process of planning for the future.

As noted at the outset of these recommendations, this investigation dealt with issues and problems associated with but one leg of the higher-education stool, that of oversight, accountability and governance. It is just as vital at this juncture, however, for policymakers in New Jersey to address the other two legs, i.e. matters involving actual academic and educational policy and those related to the sphere of public policy, primarily taxpayer and student tuition support. The SCI lacks the special expertise required to delve into those areas. Therefore, the Commission recommends that a special Task Force on Higher Education be appointed by the Governor and/or Legislature to answer a host of urgent questions in these two realms: What is the status of the system today? Where is it going? Where do its component institutions fit in? How do they relate to each other? Should there continue to be two systemic tiers, one reserved for the research institutions, another for the senior colleges and universities? What are the current

and future fiscal implications for taxpayers, students and the institutions themselves? Are these institutions effectively and properly positioned to meet the best interests of the state as a whole?

Most importantly, the Task Force should undertake a fundamental examination of state college and university charters broadly defined to include everything from the adequacy and appropriateness of their current enabling statutes to their mission, vision statements, goals, responsibilities and aspirations for the future.

Utilizing the CHE in an advisory capacity, the Task Force – with adequate staffing and resources – should be comprised of individuals who understand not only the role and function of academic institutions higher learning but also the unique manner in which public policy is formulated and established in New Jersey.

The actual work of the Task Force should comprise two phases. First, it should examine the existing system to get a clear and accurate fix on the current status, structure, performance and goals of every state-level institution of public higher education in New Jersey. This review and analysis should take into account the entire landscape of the system, everything from academic and educational standards to capital planning, budget levels and taxpayer and student tuition support. Within six months of its establishment, the Task Force should produce a report defining and assessing the present structure and charter of the system and its component institutions.

Using that material and report as a foundation, the Task Force should move forward into a second, more critical phase to design and delineate a system-wide plan for academic excellence and effective, accountable administration of state-level public higher education going forward. Again, as with the first phase, this exercise should take into account every significant issue relevant to public higher education in New Jersey. But the ultimate goal of this second phase

should be to “look over the horizon,” to recommend sensible and viable ways to build upon and improve the present system and to chart a productive and effective course for state public higher education and each of its component institutions well into the future.

APPENDIX



THE PECULIAR STATUS OF RUTGERS

Rutgers University has a checkered history in which it has grown dramatically with generous taxpayer support over the years while simultaneously arguing – with a good deal of success in court – that it should be free of regulation applicable to other traditional public institutions funded by the State.

Originally chartered by the King of England in 1766 as a Dutch Reform Church-sponsored private school called Queen’s College, the institution changed its name in 1825 to “The Trustees of Rutgers College in New Jersey” in recognition of Colonel Henry Rutgers, a generous donor and Revolutionary War hero. Scholastically classical and professional, the school provided parochially-sponsored training for clergy, legal practitioners, educators and physicians.

As early as 1858, however, the school, though private, began to feel the impact of public funding when the New Jersey Legislature sought and received federal funds to buy land for a college to promote the science and practice of agriculture. In 1864, the Legislature received additional federal funds from the First Morrill Act¹, which stated, in part:

*[T]he leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, . . . in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.*²

Rutgers was designated the recipient of these federal grants because of its existing scientific curricula. Acknowledging the school’s ability to provide a platform for training the “industrial class” as referenced in the Morrill Act, the Legislature continued to earmark state and federal grants to Rutgers for promotion of the sciences. Though the Rutgers Agricultural School was designated as the State’s land-grant college, state and federal funding over the years evolved to cover education in the mechanical arts, English and various branches of the mathematical, physical, natural and economic sciences.

In the ensuing decades, an infusion of public money prompted concern over the need for public control. In 1945, after re-examining the State’s relationship with Rutgers, the Legislature

¹ 7 U.S.C. §§ 301 *et seq.*

² 7 U.S.C. § 304.

established a Board of Regents to oversee State property interests at institutions of higher learning that received State funds. The same year, the State and the Rutgers College Board of Trustees jointly designated the school as a university. The Legislature called it an “instrumentality of the State for providing public higher education,”³ and its property and educational facilities were impressed with a “public trust for higher education”⁴ of the people of the State. Thereafter, all of the parts of Rutgers became subject to the general superintendence of the State Board of Education, even though it continued to function as a private corporation bound by a contractual arrangement between the Trustees and the State. Under that arrangement, the State bought collegiate educational services in return for a promise of annual appropriations from the Legislature.⁵

Rutgers subsequently grew, absorbing other schools, expanding its curricula and degree programs, establishing a college for women and merging with existing State teaching colleges and a school of law. During the course of this expansion, it received ever-increasing State appropriations, and, in time, legitimate concerns arose over who or what ultimately was responsible for overseeing the university’s operating and capital accounts. Given the taxpayers’ rising stake, it became apparent that the school’s hybrid, private-yet-public status was no longer appropriate. This realization coincided with an urgent recognition that New Jersey required a modern, State-level higher education structure in order to properly and fully educate its children in the arts and sciences and to retain them to compete for employment in New Jersey’s diverse economy.

Thus, the Legislature enacted the “Rutgers, the State University Law of 1956,”⁶ creating a new system of governance for the institution. The proprietary Board of sixty (60) Trustees ceded their authority over education and general supervision of the university to an eleven (11) member Board of Governors, six (6) to be appointed by the Governor of the State of New Jersey with the advice and consent of the Senate and the other five (5) appointed privately and directly by the Board of Trustees from their own membership. This eleven (11)-member board was empowered to run the institution through in large part, State appropriations.

³ Rutgers v. Piluso, 60 N.J. 142, 155 (1972).

⁴ Trustees of Rutgers v. Richman, 41 N.J. Super. 259, 269 (Ch. Div. 1956).

⁵ See id.

⁶ Rutgers, the State University Law, L.1956, c. 61, §§ 1 et seq. (current version at N.J.S.A. 18A:65-1 et seq.).

Despite establishing a new governance structure, the Rutgers' Law preserved the historical status of the university's "Corporation." Also, its Trustees retained an advisory role and control of properties, funds and trusts vested before August 31, 1956. After that date, net income from these funds was to be made available to the Board of Governors and held impressed with the public trust for higher education. By retaining title and control over the properties, funds and trusts, including the existing endowment invested by them as of the date of the Rutgers Law, the Trustees were given the responsibility to generate funding and to distribute net income from their investments to offset the cost of running the university.

The title to all properties paid for by State or federal appropriations and used by the university for educational purposes was to remain State property, and all university accounts were made subject to State audit.

In essence, this had the effect of commingling State and private funds for educational pursuits, thereby impressing all funds legislatively appropriated or those generated by the Trustees for the express purpose of providing cost-effective and quality higher academic education for future generations of New Jersey residents.

The Rutgers Law of 1956 also contained problematic language that opened the door to inconsistency in how the statute would be interpreted with regard to the degree of control and oversight by the State. A key provision, in pertinent part, states that:

*The boards [Governors and Trustees] shall have and exercise the powers, rights and privileges that are incident to their respective responsibilities for the government, conduct and management of the corporation, and the control of its properties and funds, and of the university, and the powers granted to the corporation or the boards or reasonably implied, may be exercised **without recourse or reference to any department or agency of the state, except as otherwise expressly provided by this chapter [N.J.S.A. 18A:65-1 et seq.] or other applicable statutes.** [emphasis added]*
N.J.S.A. 18A:65-28.

Although nothing in the statute expressly immunized the university from State oversight, this language has proved over the years to be a major stumbling block to that end. Indeed, through sheer deference by the courts to the theory of literal statutory construction, the law has been interpreted to grant wide, almost absolute, autonomy to Rutgers. Moreover, the provision referenced above has enabled the university, virtually at its own choosing, to determine when it

elects to be considered a State instrumentality or agency subject to laws that apply to all other State institutions and when it does not.

In 1970, in Rutgers v. Kugler⁷ the court, relying on a memo written in 1955 by then-Governor's Counsel Joseph Weintraub to Governor Meyner, interpreted the legislative language to mean that Rutgers was exempt from complying with competitive bidding statutes⁸ applicable to all other agencies and instrumentalities of the State. See id. at 430-31. The sum rationale of the Kugler decision was:

If the intent had been to incorporate the public bidding statute into the 1956 [Rutgers Law], the Legislature would have done so expressly.
110 N.J. Super. at 429.

Rutgers argued that since it does not enjoy privileges generally granted other State agencies, it is not the State or an agency thereof. See id. at 433. Rutgers also asserted that its capital improvements were not subject to review by appropriate State agencies.

Rutgers has successfully used the Kugler decision to argue in other courts that it is unlike other State agencies and that statutes applicable to other institutions, such as the enabling statute for the University of Medicine and Dentistry of New Jersey subjecting UMDNJ to public bidding requirements, do not apply to it. The university's position is that the Rutgers Law was crafted so as to limit the authority of the Legislature to only those powers that were not expressly granted by that statute to the Rutgers governing board. The contention is that Rutgers is not subject to any statutes applicable to State or public agencies unless the provisions were specifically incorporated within the 1956 Law.

It is difficult, however, to reconcile that reasoning with arguments raised by Rutgers in other cases over the years in which the university has taken an opposite position.

In 1972, in Rutgers v. Piluso, Rutgers argued conversely that it was a State instrumentality and, like the New Jersey Turnpike Authority, the Garden State Parkway Authority and similar public entities, was not subject to local zoning laws, but rather was governed by applicable State statutes. See 60 N.J. at 147. Hence, Rutgers successfully argued, and the Court accepted, the proposition that the university is a "full-fledged State agency"

⁷ 110 N.J. Super. 424 (Law Div. 1970), aff'd, 58 N.J. 113 (1971).

⁸ N.J.S.A. 52:34-6 et seq.

performing an essential governmental function for the benefit of the people, and that the Legislature would not intend that its growth and development should be subject to restrictions or control by local land use regulations. See id. at 153.⁹

Thus, as a result of Piluso, Rutgers, for zoning purposes, is recognized as a State entity. On the other hand, Kugler declared that Rutgers should not be treated as a State entity because the 1956 Law states that the Board of Governors' autonomous powers are "without recourse or reference to any department or agency of the State except as otherwise expressly provided by [that 1956 statute] or other applicable statutes." Id. at 158.

These differing interpretations have enabled Rutgers to argue that it is immune from any law that its own governing body deems inconsistent with its own autonomous growth or operation. In addition to Rutgers' exemption from public bidding statutes and zoning laws, the university is not required to comply with any aspect of the State College Contracts Law.¹⁰ Rutgers has argued that it is not a State college pursuant to Chapter 64 of Title 18A, since it is governed by its own statute, Chapter 65 of Title 18A, and that different rules apply, resulting from its distinct charter. Furthermore, Rutgers is not subject to civil service rules; it has full control over internal personnel practices, despite the fact that its employees are paid as State employees and granted the same benefits, including pension entitlements, as thousands of other State employees.¹¹

In another area, although there would appear to be no reason why Rutgers – or any New Jersey state college or university for that matter – should ignore "pay to play" legislation enacted in 2005, Rutgers does just that. The legislation, requiring vendors to disclose contributions in excess of specific amounts, plainly states that the Act "shall apply to State agencies, including any of the principal departments in the Executive Branch and any division, board, bureau, office, commission or other **instrumentality** within or created by such department and any independent State authority, board, commission, **instrumentality** or agency."¹² (Emphasis added.) However, as confirmed in a letter provided by Michael C. Quinlan, Associate Vice President for Business Services at Rutgers University, "Rutgers does not ask its vendors to complete any form reflecting

⁹ When it enacted the New Jersey Tort Claims Act in 1972, the legislature, reasoning that Rutgers is an entity which exercises governmental functions, included Rutgers within the definition of public entities protected by the Act.

¹⁰ N.J.S.A. 18A:64-52 et seq.

¹¹ Rutgers employees' health benefits (including dental and prescription drugs) are paid for out of the General State Treasury and are not included within Rutgers' budget appropriation. In 2007, that amount was \$109.1 million.

¹² N.J.S.A. 19:44A-20.23.

whether that entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee or election fund of any candidate or holder of public office of Governor or to any State or County political party committee.”

By contrast, the Rutgers governing body by resolution in 1983 selectively acknowledged that it should be bound by the New Jersey Conflicts of Interest Law.¹³

Also, although Rutgers has agreed to comply voluntarily with New Jersey’s recently enacted disclosure laws for Board members, the university does not acknowledge a legal obligation to do so, despite the fact that Governor Jon S. Corzine’s Executive Order No. 14 specifically references members of governing boards of State colleges and universities.

This straddling has extended into the federal courts as well. In the 1987 case, Kovats v. Rutgers,¹⁴ the Rutgers Board of Governors argued that it is an “arm” of the State and, therefore, should be granted 11th Amendment constitutional immunity insulating it from lawsuits. The court ruled against Rutgers, finding that it remains under state law an independent entity able to direct its own actions and responsible for its own judgments. Id. at 1312. Ironically, in a prior matter in 1974, the university argued on one hand that reliance upon the Rutgers Law of 1956 gave it power to sue and be sued, yet on the other that it was beyond the reach of the New Jersey Contractual Liability Law,¹⁵ thus reflecting yet another example of Rutgers’ situational legal interpretation of its own enabling statute.

Despite Rutgers’ objections, the courts have also held that, like all other public bodies, Rutgers is bound by Open Public Records Act (OPRA).¹⁶ The university also complies with the requirements of the Sunshine Law¹⁷, which establishes the right of all citizens to have adequate advance notice of all public meetings and the right to attend meetings at which any business affecting the public is discussed. In this instance, Rutgers complied even in the absence of any court having so ordered. The university also was directed to comply with Governor Corzine’s executive order requiring each State department, agency, authority, college, or university, to designate a liaison to the newly created Division of Minority and Women Business Enterprise within New Jersey’s Office of Economic Growth. This obligation to adhere to State law enforcing diversity and equality was never envisioned in the expressed provisions in the Rutgers

¹³ N.J.S.A. 52:13D-12 et seq.

¹⁴ 822 F.2d 1303 (3d Cir. 1987).

¹⁵ See Frank Briscoe Co. v. Rutgers, 130 N.J. Super. 493 (Law Div. 1974).

¹⁶ N.J.S.A. 47:1A-1 et seq.; cf. Keddie v. Rutgers, 148 N.J. 36 (1997) (addressing the Right-to-Know Law).

¹⁷ Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

Law of 1956, another example of the need for the legislative intent of that Law to be reviewed in light of changing circumstances.

Rutgers is also bound by the 14th Amendment to the U.S. Constitution, despite its shocking argument that, as a private institution, it is not. In the case of Handsome v. Rutgers,¹⁸ when litigation was brought against the university for not releasing the transcripts of a student who had claimed bankruptcy and had outstanding student loans, Rutgers took the position that it acts in a proprietary rather than governmental capacity and should not be regarded as an arm of the State. Id. at 1367, n.7. In a decision written by Judge Herbert Stern, the court rejected this notion, finding that Rutgers is the State University and an arm of the State and, as such, is bound by the 14th Amendment. It held that Rutgers cannot discriminate against a bankrupt student's request for records and deprive an individual of a fresh start.

In Fine v. Rutgers, 163 N.J. 464 (2000), the New Jersey Supreme Court had to decide whether Rutgers is a public agency for purposes of *Rule* 4:3-2(a), providing the venue rule for contractual causes of action. The Rule states that lawsuits against public agencies must be filed where the cause of action arose: "The right of a litigant to choose his own forum is required to yield to the venue Rule's objective of minimizing inconvenience to public entity defendants." Id. at 472. The Court acknowledged Rutgers' "hybrid status" and reviewed the history of litigation in which Rutgers had asserted that it was, and in other cases conversely was not a State entity, and found that whether or not particular law is applicable to Rutgers depends upon a consideration of both the laws' general purposes as well as the purpose of Rutgers' enabling statute. The Court said that the Rutgers law created a public, but autonomous, institution. Therefore, unless public status would "frustrate the purposes of the Rutgers charter," or the primary purpose of the underlying law or Rule, Rutgers ordinarily should be considered an instrumentality of the State. See id. at 471-72. Accepting Rutgers' argument that the recognition of their public status for purposes of the venue Rule would not frustrate the purpose of the Rutgers Law or compromise Rutgers' autonomy, the Court held that Rutgers was entitled to the venue preference enjoyed by other public entities under the Rule. See id. at 472 -73.

¹⁸ 445 F. Supp. 1362 (D.N.J. 1978).

Conclusion

Compliance by Rutgers University with laws designed to promote a statewide public policy for all public institutions of higher education in New Jersey is critical. However, the confusion that reigns because of the statutory construction of the Rutgers Law of 1956 and the problematic interpretation of it by the courts hampers the creation of a strategy for universal standards applicable to all public institutions of higher education in New Jersey.

The Judiciary has been put into the uncomfortable position of having to adjust to Rutgers' bipolar arguments that it is on one hand a proprietary institution with all inclusive powers granted in the 1956 Law, and on the other that it is a State instrumentality or agency exempt from local laws, constitutional amendments and conflict of interest laws. That should not be. It is apparent that the struggle should be lifted from the courts. The "Legislative will" to design a comprehensive and cohesive plan for the unification of higher educational needs for the next several generations of students in New Jersey should be placed in the hands of the Legislature to rewrite the charters and resolve the debate over appropriate standards for all institutions to abide by, including Rutgers. Academic freedom and institutional distinctiveness are not antithetic with accountability and transparency. Public funding of higher education requires rational State oversight. New Jersey currently possesses neither a strong regulatory coordinating agency nor a centralized university system. The Legislature and Governor should decide which course to follow. If not, the status quo of decentralization epitomized by Rutgers hybrid status and the separate development of the missions and aspirations of State colleges and universities will continue to impede the achievement of quality and cost efficiency in the creation of a truly effective statewide system of public higher education.

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following materials are responses submitted pursuant to those statutory requirements.



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* Also Admitted in NY
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October 18, 2007
Page 2

— LAW OFFICES —
**DeCOTIIS, FITZPATRICK,
COLE & WISLER, LLP**

The parties would first like to express their appreciation to the Commission for acknowledging their full cooperation in assembling records sought by the SCI in connection with this investigation. Secondly, the parties also appreciate the Commission's recognition in the Report that they have always acted in accordance with the law in connection with their representation of Ramapo College. Of course, no such improper actions are alleged.

For instance, in the section of the draft Report discussing fundraising activities of the parties, the SCI specifically acknowledges that their activities with respect to fundraising and conversations discussing -- but not implementing -- the bundling of political contributions were "perfectly legal under existing law and regulation." More specifically, the Report discusses a few emails involving a fundraising event and the potential for the "bundling" of political contributions, an activity which the Commission Report notes is a "common practice" and which is by no means illegal. It should be further noted that the emails quoted from in that portion of the Report involve nothing more than internal conversations between the parties seeking donations from private sources, not public. Lastly, completeness requires that the public be informed that to our knowledge those discussions never materialized into any donations by College officials in any capacity, public or private, and that no one from Ramapo College, to our knowledge, attended the event mentioned in the Report.

October 18, 2007

VIA OVERNIGHT MAIL & ELECTRONIC MAIL

Alan A. Rockoff
Executive Director
State Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, New Jersey 08625

Re: **Notice of Proposed Report (State College Governance)
Dissemination Nos. 07-10-003, 07-10-004, and 07-10-005**

Dear Executive Director Rockoff:

I am in receipt of your correspondence of July 27, 2007 and October 17, 2007, in which you provide excerpts from a draft Report concerning the SCI's review of the New Jersey public higher education system. Those excerpts contain references to the MWW Group and its current and former employees, Kevin Frechette, Robert G. Sommer and Jon Alexander (collectively, "the parties") regarding their activities in connection with their representation of Ramapo College.

Finally, in the portion of the Report discussing the accepted, longstanding, practice of Senatorial Courtesy, a practice that has been subject to the review and approval of the New Jersey Supreme Court, see DeVesa v. Dorsey, 134 N.J. 420 (1993), it should be noted that Ramapo College approached MWV to assist it with the appointment process of a number of Board member appointees as a last resort because the Board was dangerously close to not having the requisite number of members needed to act. As the Report recites, the issues surrounding Courtesy are borne of the legislative process and do not implicate any improper activity by the parties as a consequence of their advice to the College regarding a lawful process.

The simple truth is that the parties have performed admirably on behalf of Ramapo College over the years, and have significantly advanced the College's interests to the benefit of the College and the community it serves.

At all times, the parties have engaged in lawful activities carried out in a lawful manner in areas that are subject to intense State oversight and strict regulation. There is no allegation of wrongdoing in the Report as to the parties, nor could there be, since there are no facts to support even a hint of such a claim.

We therefore appreciate that the Commission has clearly acknowledged the parties' full cooperation with this investigation, and that they have always acted properly and lawfully in connection with their representation of Ramapo College.

Thank you for your consideration of these comments.

Respectfully submitted,



William Harla

cc: Hon. W. Cary Edwards, Chair
Hon. Joseph R. Mariniello, Jr., Commissioner
Hon. Kathy Flecker, Commissioner
Hon. Patrick Hobbs, Commissioner

CERTIFICATION OF ROBERT G. SOMMER

I hereby certify that I am in receipt of a letter from Executive Director Alan A. Rockoff, dated October 17, 2007, in which he attaches portions of a draft SCI report in which I am mentioned (Dissemination No. 07-10-003). I have reviewed that report and have authorized William Harla to respond to that report in my name.

I further certify that I have reviewed Mr. Harla's letter to SCI Executive Director Alan A. Rockoff, dated October 18, 2007, and affirm that the statements contained therein represent my response to those portions of the draft report that has been provided to me by the SCI. By my signature below, I hereby adopt that letter as my own.

I hereby certify that the statements set forth herein are true to the best of my knowledge and that I am subject to punishment if false.



Robert G. Sommer

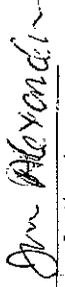
Dated: 10/18, 2007

CERTIFICATION OF JON ALEXANDER

I hereby certify that I am in receipt of a letter from Executive Director Alan A. Rockoff, dated October 17, 2007, in which he attaches portions of a draft SCI report in which I am mentioned (Dissemination No. 07-10-004). I have reviewed that report and have authorized William Harla to respond to that report in my name.

I further certify that I have reviewed Mr. Harla's letter to SCI Executive Director Alan A. Rockoff, dated October 18, 2007, and affirm that the statements contained therein represent my response to those portions of the draft report that has been provided to me by the SCI. By my signature below, I hereby adopt that letter as my own.

I hereby certify that the statements set forth herein are true to the best of my knowledge and that I am subject to punishment if false.



Jon Alexander

Dated: 10/19, 2007



SHVETA MATHUR
Notary Public - State of New York
No. 01MAG146970
Qualified in New York County
My Commission Expires May 30, 2010



103 COLLEGE ROAD EAST • PRINCETON, NEW JERSEY
PHONE 609-987-0880 • FAX 609-987-0850 • anderson@njefa.com
2007 AUG -9 AM 10:24

STATE COMMISSION OF INVESTIGATION
ROGER L. ANDERSON
Executive Director

August 8, 2007

VIA Overnight delivery

Alan A. Rockoff
Executive Director
State of New Jersey
Commission of Investigation
28 West State Street
P.O. Box -045
Trenton, New Jersey 08626-0045

Re: Notice of Proposed Report Dated July 27, 2007
Dissemination No. 07-07-014 (the "Notice")

Dear Mr. Rockoff:

Thank you for sending me the captioned notice from the State of New Jersey Commission of Investigation (the "Commission") regarding the Commission's forthcoming report (the "Report") on the public institutions of higher education in New Jersey. As permitted by the statute you cited, I am submitting this response to the Notice.

The Notice recaps some of the information I provided to the Commission about the New Jersey Educational Facilities Authority, its procedures, and its interaction with New Jersey colleges and universities in carrying out its mission to assist New Jersey institutions of higher education in obtaining financing for capital projects. At the conclusion of the Notice is the following excerpt from the Report:

The Commission is concerned, meanwhile, that legislation currently pending before the New Jersey Senate and General Assembly could inject a disturbing new facet into this bonded indebtedness picture. The bill, A-3677, would allow NJEFA to issue new types of debt not currently permitted under existing law on behalf of the state's nine senior public colleges and universities. The most troubling aspects of this bill are provisions that would allow NJEFA to issue bonds on behalf of the schools to raise funds for the so-called "working capital". According to Anderson, this term refers to short-term operating expenses, and the money borrowed would be intended to help the schools cover such expenses during periods when their cash flow is restricted. As currently

CERTIFICATION OF KEVIN FRECHETTE

I hereby certify that I am in receipt of a letter from Executive Director Alan A. Rockoff, dated October 17, 2007, in which he attaches portions of a draft SCI report in which I am mentioned (Dissemination No. 07-10-005). I have reviewed that report and have authorized William Harla to respond to that report in my name.

I further certify that I have reviewed Mr. Harla's letter to SCI Executive Director Alan A. Rockoff, dated October 18, 2007, and affirm that the statements contained therein represent my response to those portions of the draft report that has been provided to me by the SCI. By my signature below, I hereby adopt that letter as my own.

I hereby certify that the statements set forth herein are true to the best of my knowledge and that I am subject to punishment if false.


Kevin Frechette

Dated: 10/19, 2007

written, however, the measure would provide far more expansive borrowing abilities, enabling public colleges and universities to actually borrow in anticipation of future budget shortfalls.

I start with two technical corrections:

First, A-3677 has not yet been introduced in the New Jersey Senate, so it is not pending there.

Second, A-3677 would enhance the Authority's ability to serve all of our clients, not just the nine senior public institutions.

Moving on to the substance of the criticism, I have three responses.

First, we do not expect this provision to increase colleges' overall debt levels. Many of our smaller clients must already obtain short-term loans to cover seasonal cash flow needs. Since NJEFA cannot currently provide such loans, the colleges must seek these loans directly from banks, which charge taxable rates. A-3677 will allow the colleges to replace those taxable loans with tax-exempt loans, thereby lowering the cost of their debt and reducing the debt service burden on colleges' budgets.

Second, it is our smaller private clients that need these cash flow loans. The public institutions are generally large enough to be able to manage through their seasonal declines in cash. Therefore, we do not expect this provision of A-3677 to be used much by public institutions.

Third, A-3677, as originally drafted, would amend NJEFA's enabling legislation by adding the following new definition:

"Working capital" means, with respect to any public institution of higher education or private college situated within the State, funds to be used in or reserved for the operation of the institution.

As the Report states, our intention is to be able to offer our clients tax-exempt financing to cover their seasonal short-term cash flow needs. NJEFA has no interest in deficit financing. I explained in my testimony before the Commission that tax-exempt working capital loans are subject to federal tax restrictions on the maturity and use of short-term working capital loans. Specifically, unless (1) the borrowed proceeds are expected to be spent within 13 months under Treasury Regulation 1.148-2(e)(2), and (2) at least 90% of the borrowed proceeds are actually spent within 6 months under Section 148(f)(4)(B)(iii) of the Internal Revenue Code of 1986, as amended, there are strict limitations on the investment of the borrowed proceeds and the earnings on those proceeds.

During my testimony, the Commission's Chair suggested that it would be appropriate to have limitations on working capital borrowings in State law as well as in federal law, so that such borrowings could not be used to finance operating deficits.

NJEFA took this suggestion to heart and, on March 30, 2007, we suggested to the sponsor of A-3677 and the staff of the Assembly Higher Education Committee that the proposed definition of "Working capital" be changed by inserting the text that appears in bold type below:

"Working capital" means, with respect to any public institution of higher education or private college situated within the State, funds to be used in, or reserved for, the operation of the institution *which are borrowed and repaid within the same budget year.*

I further requested this change in my testimony before the Assembly Higher Education Committee regarding A-3677 on May 17, 2007.

Accordingly, NJEFA has already addressed this specific criticism.

More generally, I note that the Report's discussion of the requirement that public colleges and universities must submit non-revenue-generating projects to the Legislature improperly lists "dorms" as an example of such a project. In fact, student housing projects are revenue-generating projects and, as such, are not subject to the legislative submission requirement.

I also take exception to the title *"UNBRIDLED BORROWING"*.

Any discussion of debt incurred by colleges and universities in New Jersey is incomplete if it does not consider both the facilities financed with such debt as well as the competitive market forces faced by colleges and universities.

Unlike most institutions of government, institutions of public higher education operate in a competitive environment. They must compete for students, faculty and resources. They are not guaranteed any of those.

The market for higher education has become globally competitive at the same time that State support for college facilities has evaporated. As New Jersey's institutions have worked to build the facilities to attract and prepare New Jersey's students for the technologically advanced economy of the 21st century, they have had to balance the costs of such facilities against their other needs for resources and against their limited abilities to raise additional resources, either from students or philanthropists.

Both students (and their parents) and philanthropists are competitive market forces that evaluate colleges' facilities plans and costs, and their judgments serve as limiting factors on what colleges can do.

Alan A. Rockoff

4

August 8, 2007

In addition, the credit markets, including both the rating agencies and investors, serve as additional limiting factors. Borrowing too much will cause a college's borrowing costs to increase, placing further strain on the balance described above.

In our experience, all the colleges and universities in New Jersey weigh the costs of new facilities against the need for such facilities, against competing needs and against the challenge of raising resources. NJEFA believes each institution is in the best position to evaluate its own competitive position in determining whether or not a project is both needed and affordable. Therefore, NJEFA focuses on the viability of a proposed borrowing—an area in which we believe we have greater expertise than do our clients and consequently provide value—and does not interject itself into the internal decision making of an institution.

Evaluating competitive positions is not common within government and is not often appreciated. I submit that any proposal to require greater bureaucratic evaluation of college facilities must first show how the competitive forces affecting higher education today are inadequate to the task, and second how distant bureaucrats will be in a better position to evaluate an institution's needs and resources than are the institution's leaders.

The Legislature determined in 1994, when it adopted the Higher Education Restructuring Act, that:

[T]he institutions of higher education are one of the most valuable and underutilized resources in the State; and
[T]he elimination of unnecessary State oversight and its accompanying bureaucracy will serve to unleash the creativity and innovation of these institutions

We believe the Legislature has been proved right. The public colleges have used self-government to define and distinguish themselves, to appeal to distinct markets and to serve growing numbers of New Jersey students. The State should be proud of these institutions.

I hereby certify that, under penalties of perjury, to the best of my knowledge and belief, the information I have provided is true, correct and complete.

Sincerely,



Roger L. Anderson
Executive Director

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RAYMOND A. BROWN
RAYMOND A. BROWN
MEMBER OF N.J. & N.Y. BARS

August 13, 2007

State of New Jersey
Commission of Investigation
28 West State Street - P.O. Box 045
Trenton, NJ 08625-0045
Attn.: Alan A. Rockoff, Executive

Re: Answers to Proposed Report
Dissemination No. 07-07-015

Dear Mr. Rockoff:

Please be advised, that this letter is in response to your letter dated July 27, 2007 and received on July 30, 2007. I, Donald Bradley, do hereby depose and state the following:

1. I state without exception that I did not use my position as Trustee on the Board of University of Medicine & Dentistry to obtain for either friends or family positions of employment within the UMDNJ hospital system. I wish to make particular note of an individual, namely Linda Rodgers. Ms. Rodgers was a former student who resided in the Newark area. As was my custom, not only as a councilperson - but as a community activist and one deeply concerned with Newark and its citizens, Ms. Rodgers, who is not a family member or personal friend contacted my office and asked if I knew of any employment she might be qualified to make application for. I advised Ms Rodgers to access the Human Resources Department via the internet and complete the online application at UMDNJ. I was later informed that Ms. Rodgers had interviewed with several people and was eventually hired for a position. I am not aware for which position, Ms. Rodgers was hired. I am aware of the fact that Ms. Rodgers eventually left this area when her mother passed away after a long illness with Cancer, and relocated to Charlotte, North Carolina.

I also advised my former daughter-in-law, to apply on line at UMDNJ. This advice was given only after conversations concerning her former employment at Beth Israel Hospital. To the best of my knowledge, she

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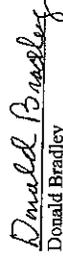
STATE INVESTIGATION
INVESTIGATION
(201) 882-2388

REPLY TO NEWARK

As a member of the community at large and politician within the City of Newark, I was aware of the premises being available, and was also aware that other parties were looking at this particular site with regards to the possibility of leasing same. It is my position, that I, Donald Bradley in no way influenced or brokered an agreement relative to 194 Clinton Avenue, whereby a lease for the sum of one dollar (\$1.00) would be put in place. I did not speak with any high ranking officials to influence this lease. As stated above, while I know Dr. Patel, I in no way argued on his behalf relative to this the above referenced Lease.

My only interest in UMDNJ, before and after becoming a Trustee, was to advance the interest of the public and the institution. My position as Trustee in no wise resulted in my attempting to influence the power of the office to obtain services, jobs, etc., from any entity. As a person who has served the community of Newark for many years, I cannot recall or number the individuals who have approached me throughout the years; whom I have referred to services such as drug rehabilitations, housing assistance, food pantry(s), daycare services and venues where employment might be sought and hopefully gained, based solely on the person's ability to hold such employment. I state again, without exception, that my position as Trustee was never used to influence and/or obtain services for friends or family members.

Very truly yours,


Donald Bradley

Subscribed to and sworn before
this 13th day of August, 2007


Raymond A. Brown, Esq.
Attorney at law

worked at UMDNJ for a short time on a probationary basis. She was released after working for approximately 120 days and was never made a permanent employee. I again further state that I in no way intervened on her behalf with regard to her obtaining employment.

During my role as a volunteer member of the Board of Concerned Citizens, I served as vice president for approximately nine years. As a councilman, devoted church-member and community activist I have referred many individuals to UMDNJ for many services, but at no time have used my position on the board to obtain employment for family or friends. A particular issue which comes to mind is one in which a young lady appeared at my office for help. She stated that she was unemployed and was presently living in a shelter. I directed her to a temporary agency for UMDNJ and she went on to be hired and eventually find housing. In this case as well, my position as Trustee was not used to intervene, coerce or guarantee employment on this individual's part. Again, this individual was not a family member, member of my church or personal friend; simply one seeking assistance at which instance I was only too happy to assist.

In my capacity as a City councilmember, I have handled many citizen complaints, inquiries, and requests for services. As a result I have referred several hundred Newark and Essex County residents to many employment opportunities. Including, but not limited to NBIMC, NHA, Continental Airlines, UMDNJ, Prudential, IDT, Blue Cross Blue Shield, and NYNJ Port Authority.

2. I, Donald Bradley, do further state that I have never used my position as UMDNJ Board of Trustee member, to influence a lease for the sum of one dollar (\$1.00) per year. The University's records indicate that UMDNJ was leasing space at 294 Clinton Avenue for an amount well in excess of one million dollars per year for use as a storage facility upon my initial visitation. I thought that this former medical facility could be better utilized for a medical facility for the community residents that I served. I believe that the allegations concerning this issue pertain to a Dr. Patel. While I knew Dr. Patel and was aware of his attempting to obtain a lease at 294 Clinton Avenue in Newark, I exercised no influence in the processing of this lease. The lease was processed via attorney and real estate individuals, without any influence on my part.



INSTITUTIONAL ADVANCEMENT

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August 13, 2007

VIA HAND DELIVERY (with receipt)

Chad Lackey
State of New Jersey
State Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, New Jersey 08625-0045

RECEIVED
2007 AUG 14 AM 9:24
STATE COMMISSION OF
INVESTIGATION

Re: Response to Notice of Proposed Report
Dissemination No. 07-07-005

Dear Mr. Lackey and Members of the Commission:

In accordance with the provisions of N.J.S.A. 52:9M-12.2, which provides that any person whose conduct will be criticized in a proposed Commission Report be provided with an opportunity to respond thereto, I, Cathleen Davey, swear and affirm the truth of the matters contained in this response.

I thank you for the opportunity to preview those portions of the proposed Commission Report that refer to me personally. Upon review of the portions provided, I do not find the excerpts to be particularly critical of my conduct at Ramapo at all. Nonetheless, I submit this response to provide the context not otherwise provided that leads me to that conclusion as it may inform or clarify the Report's overall analysis under the subject heading of the "Intrusion of Politics" and subheading of "Lobbying" in which my - and by extension, my employer's - conduct will be discussed. The references are with regard to my dealings with the lobbying firm, MWV Group, in the context of this investigation and with regard to reported attempts by the firm to recruit college executives as active participants in campaign fundraising. Little analysis is provided of the few email communications excerpted. Accordingly, I first reiterate and clarify that: (i) I have completely cooperated in this investigation to inform the Commission's noble efforts; and (ii) Ramapo has never made a political contribution, directly or indirectly, to any political campaign, in strict compliance with its legal obligations, nor have I felt pressured to do so.

The excerpted portion of the Report provided refers, first, to a June 15, 2005 email I sent to the lobbying firm, MWV Group, as Ramapo was faced with responding quickly to the Commission in this matter, a situation unfamiliar to me. No impropriety is expressly conveyed in the Report, and I have sought and received an assurance from the Commission that that is not the implication it specifically intends the reader to draw. This portion of an email exchange is placed in the Report without any discussion other than that "officials turned to their outside lobbying firm, the MWV Group, for assistance in assembling records sought via subpoena in connection with this investigation." Accordingly, I am electing to reiterate the testimony I provided and facts surrounding this email.

This email was sent before counsel for Ramapo College, separate counsel for Ramapo College Foundation, and proper internal and outside legal procedures for responding to the Commission were put into place. The individual who acted, for years, as custodian of the documentation sought had then recently retired. In fact, this five-year period was one of great transition at Ramapo with several changes at the Presidential level. As I testified in March, because the Interim President had only been in that role for less than a year, and because the request was for documentation covering five years, the President's Office had asked me to gather documents. I, accordingly, responded to an MWV representative's email as cited, in part, in the portions of the proposed Report provided. The remainder of the email exchange that ensued, not provided in the Report, related to retaining an attorney to address the Investigation's needs on behalf of the College. While initially, as of June 15th, I thought that I may need assistance from MWV in gathering a host of materials at both the federal and state levels, I was later told, more narrowly, what the Commission needed with regard to the financial data requested. I am confident, at any rate, that both Ramapo and I have dealt with all productions quickly and responsibly in compliance with the College's obligations under the circumstances. This email is the only communication cited in the portion of the Report provided that was drafted or received by me.

With regard to the internal MWV email two weeks later regarding my appreciation for MWV's assistance also cited in the Report, I can deduce, as I did at my March interview, that my secretary may have dealt with the individual from MWV referenced in following up on the earlier suggestion. I can say without reservation, however, that Ramapo responded as appropriate and required and that I personally did not use MWV to secure any documentation in the process ultimately undertaken to satisfy our obligations.

The portion of the Report provided, also, by way of a seemingly detached footnote to the email I drafted, discusses the amounts paid for MWV's services over the years.¹ As I testified, activities and results were discussed by the President and the Board throughout the year, and I gave status reports on the successes with federal appropriations. This scrutiny of what I clearly described as a beneficial relationship for Ramapo over the years occurred despite the contract's having always fallen into a category that legitimately did not require bidding. Ramapo has met with and reviewed other firms over the years and has never been able to identify a firm that has fully-staffed offices in Bergen County, Trenton and Washington, D.C. We have also considered that MWV did not represent any other New Jersey college. My scrutiny of the contract has most recently resulted in a reduction in the retainer amount.

The portion of the Report provided to me, without any transition or further discussion, next discusses what is referred to as "evidence of assiduous efforts by lobbyists to recruit officials of at least two institutions of public higher education - Ramapo College and UMDNJ - as active participants in political campaign fundraising." As I clearly stated at several points upon questioning during my SCI interview, particularly when presented with these same excerpts, I did not, in fact, feel pressure by anyone to make political contributions. Without knowing how such facts are analyzed or applied in

¹ The footnote simply cites the amounts paid by Ramapo to MWV between 2001 and 2006. The MWV contract was discussed in more detail at my interview, during which time, I pointed out the following: (i) MWV handled roughly 70% federal and 30% state lobbying; (ii) the MWV contract was approved on a non-bid yearly retainer by the Board, falling under "non-bid professional services"; (iii) the monthly retainer for MWV's services was reduced from \$10,000 to \$6,500 in March of 2007 due to State budget cuts, and also due to the facts that the President has been at Ramapo for a year and a half and has established his own relationships with people in Trenton and that the Board of Trustees also has strong relationships with legislators; (iv) all incidental expenses are systematically itemized on invoices and reviewed by me for accuracy; and (v) MWV was the only lobbying firm regularly employed by Ramapo.

the context of the Report at large, I reiterate my testimony that if solicitations were directed at Ramapo, they simply would not be considered. As I also testified, I have often received invitations by regular mail, which I simply discard as a matter of course.

It appears to me, based upon the cited internal MWW communications, that follow-up attempts were made with regard to this particular invitation, directed at me and others. My unwillingness to contribute apparently persisted as MWW apparently scrambled to "turn" folks out for this fundraiser" four days before the event. These exchanges comport with my standard mode of operation, to not make any such contribution from the College or the Foundation or entertain, in any way, any such attempt to solicit others to make gifts in Ramapo's name or to bundle donations. I can add to this discussion that Ramapo did not contribute to the candidate, by bundling or otherwise, nor did I attend the subject event, or consider doing so.²

Press reports in advance of the issuance of the Report here illustrate that serious transgressions regarding the alleged making of political contributions and the enlisting of more than one lobbying firm may have, indeed, occurred with regard to other institutions. To the extent that the conduct of others is discussed in conjunction with Ramapo's in this regard, particularly where the same "assiduous efforts" are reported to have been directed at executives at two distinct institutions that may have reacted differently, I note that no such transgressions were occurring at Ramapo as a matter of a sound policy and consistent judgment. Hopefully, the Report will sufficiently distinguish any transgressions of existing policy that may be discussed as to others from the "intrusion of politics" otherwise inherent in Ramapo's legitimate use of a lobbying firm to secure significant appropriations, but not to inappropriately influence any political candidate.

As I explained at my interview, Ramapo College does not have a staff member dedicated to government relations, and no one person would ever have the experience of a professional, multi-office firm, especially at the federal level. Utilizing a lobbying firm has, in my experience, been the only way for Ramapo to stay "ahead of the game." I realize that the Commission is diligently focused on any potential waste of public funds -- or, perhaps, the use of public funds at all -- to pay politically-entrenched private lobbyists under varying circumstances at the State level. I hope that in fashioning its Report and/or recommendations that the Commission take into consideration, also, the great utility of the legitimate use of lobbying firms in the appropriations process such as I have discussed in the context of this investigation.

I have devoted much of my career to fundraising at institutions of higher education with the ultimate goal, since 1993, of getting as much money as possible for Ramapo's students, in particular. All New Jersey colleges have recently been faced with significant State budget cuts and have not received capital funding for projects, thus causing colleges to place financial burdens on students and their parents. Ultimately, even with private donations, colleges are forced to seek special appropriations at both the state and federal levels to fund strategic initiatives and to increase the much-needed capacity issues at our institutions. Hopefully, strengthening accountability and ensuring the

² Notable, also, is that these March and April 2004 exchanges occurred just prior to the enactment of legislation on June 16, 2004 regarding such political contributions. In this regard, my actions on Ramapo's behalf in 2004 may be viewed as compliant with even as-yet-to-be enacted legislation which will, no doubt, be addressed further in the Report at large in relation to the very different actions of others. That a discussion amongst MWW personnel internally about the prospect of "bundling" may have ensued, as the Report states, should be read against the clear backdrop that Ramapo had a clear policy that was adhered to and that went above and beyond its legal obligations in this regard.

transparency of the use of a lobbyist will earn the public trust fostering an environment where students and their families can get the most for their money.

I hope that my comments and the information I have supplied in this investigation have been helpful to the Commission. I thank you for kind consideration.

Respectfully Yours,


Cathleen Davey

Enc.

STATE OF NEW JERSEY)
)
COUNTY OF BERGEN)

Sworn to and subscribed before me this 13th
day of August, 2007


Notary Public
State of New Jersey

CHRISTINE VOTO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/16/2008

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STATE COMMISSION
INVESTIGATION

CERTIFICATION OF
JOHN EKARIUS

Notice of Proposed Report

Dissemination No. 07-07-023

JOHN EKARIUS, of full age, hereby certifies and states:

1. I am fully familiar with the facts set forth below, and make this Certification in connection with the State Commission of Investigation's (the "Commission") letter dated July 27, 2007 regarding the Notice of Proposed Report Dissemination No. 07-07-023. Pursuant to N.J.S.A. 52:9M-12.2(c), this Certification responds to the portions of the above-referenced report that were disclosed to me in the July 27, 2007 correspondence.

2. As an initial matter, I note that I was never contacted by any of the Commission's investigators and consequently never given an opportunity to provide information, context, or response to any of the information contained in the draft of the Commission's report until now.

3. By way of background, I was employed at UMDNJ from March, 1998 through August, 2002. Upon my separation, I was required to be available on campus for a period of ninety days (until November 2002) to handle transition matters.

4. I believe that the federal lobbyist employed by JordanBurt and referenced in the draft Proposed Report, Marilyn Berry Thompson, represented UMDNJ from approximately 1981 through at least 2006. Thus, her relationship with UMDNJ began well before my tenure. Up to and through the period of my tenure, it is my understanding that Ms. Thompson had been responsible for obtaining in excess of \$100 million of federal funds for the University. In that regard, her role was similar to other federal lobbyists for many other major universities

throughout the country.

5. It was then and remains my understanding, based upon the legal advice that was provided to me by University counsel, that universities were precluded from financially supporting candidates for federal office, but that there is no prohibition preventing lobbyists from doing so, nor is there a prohibition preventing university officials from contributing personally to federal candidates. As a consequence, when Ms. Thompson purchased tickets to a fundraiser for New Jersey federal candidates or elected officials, her office would often make those available to UMDNJ officials to attend fundraising functions.

6. On the state level, I was made aware by my predecessor, Russ Molloy, Esq., that UMDNJ did in fact contribute to state official's campaigns. During my tenure, these contributions were only purchased for specific fundraising events where UMDNJ officials could attend and meet the candidate or elected official. I recall that there was in fact a memo in the files to former UMDNJ President Stanley Bergen from one of my predecessors outlining the UMDNJ policy on this issue and the fact that no state or federal funds should be used for these contributions. In addition, I also confirmed with the University Chief Council and University Vice President of Finance that funds for state official's campaigns were derived from a segregated account.

7. The policies regarding political contributions to state officials had been in place from at least the early 1980's through the period of my tenure. These policies, originally developed under then-President Bergen continued under Presidents Stuart Cook and John Petillo, and were well known throughout the UMDNJ leadership. Indeed, this practice was publicly reported every year. I note that the Fitzgerald's Manual of 2002 lists a number of public colleges, counties, municipalities and other public agencies using lobbyists in Trenton.

8. In regard to the two pages of transcript provided to me for my comments, I would note that in both cases it appears that the Commission is relying on third party records or emails which I have not been privy to or given access to as part of your investigation. In the first case, (late March, 2000) referenced in your materials, I can state that sending representatives of UMDNJ to fundraising events would be consistent with the policies at the time. Given the number of text deleted references to the record, it is impossible for me to comment further.

9. In the second case (May 2001), I am not familiar with the text deleted official who may have made a request to Jordan Burt to purchase tickets. I would note that my name appearing on a ticket stub would be consistent if I were one of the attendees. Further, during my tenure I myself had corrected attempts to purchase tickets to political fundraisers which may have involved the inappropriate use of state or federal funds. Indeed, the reference in this section to a check request to Accounts Payable for a contribution, with a note that "We are not allowed to do this," may in fact have been from me.

10. I have fully cooperated with every inquiry surrounding UMDNJ since my departure, including the investigation conducted by former New Jersey Supreme Court Justice Gary Stein and his review of UMDNJ purchasing policies, as well as the New Jersey Office of Insurance Fraud investigation into Medicaid billing issues at University Hospital.

11. As I stated from the outset, I have never been interviewed by your investigators and am deeply concerned that the Commission is inadvertently casting my tenure at UMDNJ in an inaccurate light. I hope that the information contained in this response is helpful to the Commission in its efforts to fairly and accurately represent the issues that are the subject of the Commission's report.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By 
JOHN EKARIUS

Dated: August 8, 2007

John C. Ekarius
ekariusj@hotmail.com



15 October, 2007

Chadd Lackey, Esq., Acting Executive Director
State Commission of Investigation
P.O. Box 045
Trenton, NJ 08625

Dear Mr. Lackey:

The State Commission of Investigation spent 2 1/2 years investigating Rowan University. Its policies require that it allow a named individual who is criticized in the report to respond to those portions of the report in which he or she is named. Therefore, it sent me redacted portions of a draft report as it related to me on two occasions—27 July 2007, and 29 August 2007—to which I sent written replies. However, the first and only time the SCI interviewed me was on 26 September 2007. Thereafter, by letter dated 3 October 2007, I received a redacted third version of portions of the proposed SCI report. This letter is in response to that most recent version.

INTRODUCTION

I was surprised, and more than a little disappointed, to see, in the context of criticizing the organization and management of higher education in the state of New Jersey, that the SCI has chosen to ignore relevant facts favorable to Rowan, present other facts in a biased manner, and add criticisms that were never discussed with me. The nature of the criticism changed as a consequence of the letters I wrote, in which I pointed out the errors and flaws in the two earlier drafts, but it is apparent that the SCI still feels the need to find something to criticize.

After four letters (two from our Vice President for Administration and Finance, Richard Hale, and two from me) and a four-hour conversation I had with you and Commissioner Flieker in your office on 26 September, 2007, I am pleased to see that the SCI no longer has concerns regarding the methodology we have used at Rowan to assess and compensate managers. I gather, from the fact it is no longer mentioned, that you accept my explanation that the method we have used to divide compensation increases into modest base increases coupled with occasional one-time temporary non-base augmentations actually saves the state money (because the base grows more slowly and therefore is lower, at the time of retirement, than would have been true if all the increases had been to the base).

However, I am truly amazed that this third version of the report references concerns that had hitherto not existed, or at least had not been shared with me. Not only were these concerns absent from previous versions, but in one instance formed but a

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STATE COMMISSION OF INVESTIGATION

minor part of our four-hour conversation on 26 September 2007, and in a second instance had never before been mentioned!

I note from your website that your predecessor as Executive Director, Mr. Rockoff, says in his "message to the public" that:

"The Commission was established to serve the people of New Jersey fairly and independently"

and that:

"We are fact-finders, not advocates..."

The Mission Statement for the Commission says that:

"In order to achieve this vital mission effectively, fairly and impartially, we pursue our work independently, within a framework untainted by politics, self-interest or favoritism."

Given these statements of principle, one must question whether the sudden interest in bringing an investigation to an immediate conclusion, after more than 2 1/2 years, is to ensure that the report will reach the public's eye just three weeks before the November election, and at a time when legislation has been introduced that would dramatically alter the governance of the public campuses in New Jersey.

In your opening remarks to our 26 September 2007 conversation, you actually used the term "flawed" to describe the current system of higher education in New Jersey. I asked whether you had begun your investigation with that conclusion, and whether the 2 1/2 year investigation was simply a search for evidence that supported a conclusion already reached. You assured me that no good lawyer would engage in an investigation where the conclusion drove the facts and not the other way around.

Sadly, the evidence I see supports the opposite contention. You told Richard Hale on the telephone that no campus could withstand the level of scrutiny SCI had given Rowan and come out looking as good as we did (a statement that I repeated in your presence during our conversation, and which, with the Commissioner present, you did not deny). There is absolutely no indication in the redacted version sent to me that favorable comments are included in the report. I can only hope that the final report presents its criticisms in an accurate and balanced context.

PERSONNEL COMPENSATION PACKAGES

In the SCI's desperate search for a criticism—any criticism—that might be used to justify the state's asserting greater control of the state colleges and universities, the SCI has provided a new example of what you describe as a criticism:

"The university's president has used [an adopted board policy] to craft separation-of-employment compensation packages for employees who leave Rowan's employ prior to the effective date of their employment termination."

The report goes on to describe it as follows:

"In essence, it has become the basis for an informal, discretionary severance policy with no established board oversight procedures."

These are strong words indeed, clearly implying an out-of-control president or an asleep-at-the-switch board—or perhaps both.

The example you use to begin your illustration of this transgression reads as follows:

"In June 2001, a university vice president received \$59,166 as a payout for leaving the institution's employ under an early-separation agreement."

Well, that's true—Rowan did have an early-separation agreement in place at that time, and 92 employees took advantage of the offer, including the vice-president you mention. But it was in no way *"an informal, discretionary severance policy with no established board oversight procedures."* The separation agreement was enacted following a great deal of discussion, both on campus and with various officials and offices in Trenton, and with a specific Board resolution which I attached. Therefore, it is grossly inaccurate to say that I am operating without Board oversight.

It is correct to say that Rowan has a Board-approved policy that authorizes a severance package for managerial employees. This policy, which I crafted for the Board's consideration and approval, replaced a policy in effect when I arrived at Rowan in 1998 that gave managers who had served more than five years a rolling five-year contract. As I explained in our September conversation, most senior university administrators, at campuses across the country, are hired to begin in the summer before a given academic year. Elemental fairness would therefore dictate that adequate notice be provided to someone who is separated without cause in order to give that person time to find another position. Those circumstances do not, in my mind, justify five-year rolling contracts, a provision which would require a very costly negotiation and settlement if the need existed to separate someone from the University. I eliminated this provision in order to reduce the state's exposure to huge settlement claims.

Were the SCI truly a finder of fact, this fact would have been stated, presumably with approval. Instead, our current policy is described as *"unique"* (which it most assuredly is not), and there is the further implication that every manager who is leaving employment at Rowan is financially rewarded. That is simply not true. In my nine years at Rowan, only three people have received a cash settlement upon separation. Others have been given notice, but have continued to work until the end of their notice period. Still others were relocated to other positions on campus for which they were qualified, or

voluntarily left campus employment for other positions or into retirement. In every instance, the Board has been made aware of a separation before it happened, and the change is memorialized in an appropriate Board resolution. It is inaccurate, and frankly puzzling, that the SCI has suggested otherwise.

The second example, that of a vice president who was given one year's salary in return for his departure, was noted in the previous two redacted drafts of the report, and I responded in both instances. Why the SCI continues to make an issue of the fact that the severance pay was spread over two calendar years is beyond me. As I have repeatedly pointed out, had he been regularly employed during that time, his salary would have been spread over two calendar years. Moreover, by delaying the payment of part of his severance, the university earned interest on the retained money. There is an implication that the university has done something wrong in structuring the payment in this manner, even though it was perfectly legal. Immuendo of this type does not belong in what is claimed to be a determination of facts.

The third redacted report also mentions, for the first time, another administrator who was paid six months' salary when he was separated. Again, I acknowledge having used Board-approved policy three times in nine years. I properly exercised my authority pursuant to that policy. State statute requires a significant period of notice for a separation that is not the result of wrongdoing by the employee, and Rowan's policy follows the state statute in that regard.

The SCI devotes more than a page of its report to an instance where a provost resigned her administrative position and returned, at reduced salary, to her faculty position. Because she had been out of the classroom for many years, I followed the common practice in New Jersey and throughout American higher education of giving her one semester to renew her expertise and refresh her knowledge base before she returned to the classroom. In my letter to her I indicated that this one semester of paid administrative leave, which had been discussed and approved by the Board in return for her resignation as provost, could be called a sabbatical, inasmuch as it functioned in just that manner.

However, since the maximum number of faculty sabbaticals that we are able to award is specified in the bargaining agreement, it would have been entirely inappropriate for me to use one of those sabbaticals for the provost, and thereby deprive an eligible faculty member of the opportunity of a leave. The provost was on paid administrative leave for a semester, as I indicated in my letter. I simply indicated that she was free to call the arrangement a sabbatical if she wished to do so. Under the circumstances, I saw no reason to present this arrangement to the Board for their formal approval as a sabbatical, since they had already agreed to an administrative leave.

To see a routine matter such as this, something not at all uncommon when long-serving academic administrators return to the classroom, being given such prominence in the SCI's report underscores to me, as I believe it will to the public at large, that an

investigation lasting more than 2 ½ years yielded nothing of substance—and that is what your report should have said, were it truly focused on finding facts.

THE MANAGEMENT INSTITUTE

More than half of the redacted third version of the report focuses on a concern that was oddly not of sufficient significance in the first two versions to warrant even a mention. I refer to the Management Institute that has somehow emerged from obscurity to occupy the center of the SCI's radar screen in this version of the report.

No one would know from the SCI's description that the Management Institute began at then-Glassboro State in 1974, over the next 30+ years generated more than \$20 million in revenues, and that profits from the Institute funded dozens of student scholarships. Instead, the focus is on the last three or four years of its existence, a time when, with the virtual elimination of workforce training programs by both the State of Pennsylvania and the State of New Jersey, programs that were the life blood of the Management Institute, it to begin to fail. The staff of the Management Institute tried for three years to reinvent the institute, but ultimately was unsuccessful. I shut the Institute down in 2005, merging its remaining functions in the newly created College of Professional and Continuing Education in the fall of 2006.

The SCI's version of this story is told in far more lurid language. I take exception, for example, to the characterization that the Management Institute:

"existed within a gray area of university governance."

The Management Institute followed the same rules and standards of approval as any unit of the university. To say that the Board of Trustees functioned by:

"granting blanket approval of contracts for supplies and consultants utilized by the Institute"

creates an entirely inaccurate perception. The fact is that the Institute followed the guidelines and restrictions imposed by the state. Contracts requiring Board approval before they were executed received that approval in the form of specific resolutions. These resolutions do not in any way represent "blanket approval," and to say otherwise is to deliberately misrepresent the actual facts.

The SCI report notes that the Management Institute Advisory Board did not report directly to the Board of Trustees. That was not its charge, nor was it anyone's expectation. Instead, the Advisory Board reported to the Dean of the College of Business, following its Charter.

Because of the uncertainties of the demand for services from year to year, the Management Institute always maintained a healthy reserve, in order not to create a drain on College resources in years when revenues did not meet expenses. During the fiscal

years of 2003 to 2005, the Management Institute expended its entire reserve as it attempted (ultimately, unsuccessfully) to create new revenue streams to replace the programs cancelled by the states of New Jersey and Pennsylvania. When I learned that the Management Institute had been unsuccessful in this regard, as I noted earlier, I shut it down.

Much is made by the SCI of the fact that the Management Institute ran a deficit in FY 2005 and 2006. The FY 05 deficit was \$76,000, and although the Management Institute was then shut down and the director given notice, in the face of a small number of existing contracts, it was allowed to function in FY 06 to meet contractual obligations. Revenue was insufficient to cover expenses, and in this quasi-bankruptcy mode, the Institute ended the year with an additional deficit of \$339,000.

The SCI notes that:

"Rowan stepped forward to absorb the loss for a total cost to the university's taxpayer-supported budget of \$415,000."

The use of the modifier "taxpayer-supported" is, I gather, important to the SCI to underscore its implication that Rowan has been casual with tax dollars (an implication that conveniently ignores the more than \$20 million in revenue generated by the Management Institute over its lifetime).

The SCI is incorrect in concluding that tax dollars bailed out the Management Institute. Rather, the College of Business has been charged with fully reimbursing the university for the loan that covers the overage in the Management Institute. The College of Business receives substantial non-taxpayer support from the \$500,000 annually it receives from the Kohrer Foundation, and from revenue earned through its activities with the College of Professional and Continuing Education. The point is, contrary to SCI's claim, the debt of the Management Institute will be fully covered by the College of Business without using a nickel of taxpayers' dollars.

The SCI claims that:

"a 2003 examination by [Text Deleted] that raised questions about the accuracy and completeness of expense reimbursement forms filed by various Institute consultants"

was essentially ignored by the president and Board of Trustees. In actuality, the 2003 internal audit report gave the Management Institute a clean bill of health. Interestingly, the same management practices were found to be entirely unsatisfactory in a 2005 audit performed by the same auditor as in 2003, but of course this was after the fact as far as the revenue flow to the Management Institute was concerned. The Dean of the College of Business effectively refuted the claims of the internal audit, save only the fact that the Institute was losing money, and indeed the review by the internal auditor was found to be significantly deficient. Subsequently, in order to improve the quality of the internal audit

function, the University engaged an outside auditing firm that specializes in internal audits to perform all internal audits not only to protect the public purse, but also to introduce a "best practices" approach to institutional management.

All of these details were previously provided to the SCI. The fact that the SCI is now apparently relying on this discredited audit is an indication of a certain level of desperation on the part of SCI to find something of which to be critical.

To give one example: The SCI's statement is that the concerns of the administration and board:

"were triggered when [Text Deleted] sought a \$76,000 appropriation from the university with no supporting documentation."

In fact, the Management Institute, following appropriate procedures, sought authorization through a Board of Trustees resolution, to spend \$76,000 of its own money on consultants for the forthcoming academic year. Again, had you thought to ask me, I could have prevented the embarrassment of yet another erroneous claim of "fact" by the SCI.

By far the most egregious example of the desperation SCI is using to cast aspersions at Rowan University is the reference to the death of the executive director. By juxtaposing his notice of separation with a graphic and gratuitous description of his death, the SCI is deliberately endeavoring to create, in the mind of the reader, a cause-and-effect relationship between the ending of employment and death. The SCI freely uses innuendo in a public document with no regard for the pain that might be caused to family, friends, and colleagues. How can the SCI reconcile such rhetoric with its stated mission to be fact-finders who fairly and impartially serve the people of this state?

The SCI claims to have "confirmed" the findings of Rowan's then-internal auditor with respect to some specific circumstances. The problem is that the internal auditor used precisely the same methodology as was commonly used by the SCI: gathering forms and copies of documents and drawing inferences, rather than interviewing personnel in a position to shed light on various activities and practices. The result was the same as with the SCI investigation: erroneous conclusions, findings, and comments.

The SCI's concern about a training conference to Las Vegas provides an excellent example of this point. The SCI says that:

"although the conference duration was two days, records show [Text Deleted] and his traveling companion [earlier referred to, correctly, as 'an outside consultant' but of course that language does not titillate the way that 'traveling companion' does] spent five days and four nights on this trip, departing October 18 and returning October 22."

The clear implication is that the Director used this extra time frivolously, and that public monies were expended for personal use.

But as the SCI should know full well, that implication is erroneous. Copies of the travel expense voucher and miscellaneous disbursement voucher, earlier provided to the SCI but now conveniently ignored, show that the Director and his principal Six Sigma instructor—the outside consultant referred to above—flew to Las Vegas on 18 October 2004, to attend pre-conference workshops on 19 October. The conference itself ("Successfully Implementing Six Sigma in Service and Transactional Environments") occurred on 20 and 21 October, and the Director and his instructor departed from Las Vegas on a 9:00 a.m. flight to Philadelphia on 22 October 2004.

The SCI condemns the use of Management Institute funds for:

"numerous meals with staff and consultants."

This was an honest mistake by the Director. He had assumed that Management Institute funds could be used in this manner, and, by virtue of the fact that he provided the names of all individuals who participated in the lunches in his requests for reimbursements, it is clear he had no intent to deceive anyone. The University erroneously reimbursed the Director for the lunches, but when the mistake was recognized, the Director ended the practice. It is important to note that the total charges for lunches involving staff amounted to \$286.30. The SCI's 2 ½ year investigation cost hundreds of thousands of dollars in rooting out this "flagrant" abuse.

CONCLUSION

I am not claiming that Rowan University, in the hundreds of transactions that occur on a daily basis, has never made a mistake. However, our outsourcing of the internal audit function to a company that specializes in identifying best practices nationwide is but one piece of evidence of our continuing commitment to ensure that we are accountable and transparent in our use of taxpayers' money. The SCI acknowledges in its closing paragraph the fact that, subsequent to the demise of the Management Institute, I have instituted additional safeguards to enhance still further the likelihood that failing enterprises will be flagged earlier.

The fact remains that the SCI's claim of objectivity and fairness in identifying facts has, in this instance, been trumped by the obvious effort to find something—anything—at Rowan that can be criticized.

I earlier provided the SCI with information that upon the resignation, at different times, of two vice presidents, the University worked for more than a year in each instance with no vice president in place, and between the two positions saved more than \$250,000. That is a fact—but it is a fact nowhere mentioned in the redacted version sent to me by the SCI.

I showed that our method of using temporary salary adjustments rather than permanent, base-level salary adjustments, ultimately save the state considerable costs for retirement income. That is a fact—but it is a fact nowhere mentioned by the SCI.

I have twice in written responses to the SCI redacted draft reports indicated that academic administrators who voluntarily or by request step down from their position and return to their faculty position are routinely and commonly given a semester "sabbatical" to refresh and prepare for their teaching role, but I continue to be criticized by the SCI for failing to submit such sabbaticals through the faculty committee structure, because it is evidently important to find something—anything—to criticize.

It is clear to me, and I believe to the casual reader, that the SCI began with the proposition that the public higher education system in New Jersey was seriously flawed, and then spent 2 ½ years, hundreds of person hours both by Rowan and SCI staff, and hundreds of thousands of dollars, seeking evidence to justify that contention. Failing to find anything very convincing, the SCI simply ignored the true facts, and instead relied on innuendo, argumentation, and implication, at a level worthy of the National Enquirer, to create a document that would provide ammunition to those who would seek to impose greater state oversight on public institutions of higher education in New Jersey.

In doing so, not only has the SCI violated its own mission of political independence, but it has willingly and knowingly cast aspersions on the character of members of the New Jersey higher education community who have devoted their professional lives to the creation of meaningful opportunities for our residents to pursue their educational goals at quality institutions within the state. The SCI has started with a conclusion, and reasoned backward to "facts," directly the opposite of how any authentic investigation would proceed.

The SCI's mission states that it seeks to identify "waste, fraud, and abuse" in public entities in the state. As regards "waste," I suggest the SCI need only look in the mirror to find a particularly flagrant example.

Sincerely yours,


Donald J. Farish, Ph.D., J.D.
President

Sworn to and subscribed
before me this
15th day of October, 2007

BONITA M. SHORAKER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/30/2009

5/12/09

RESOLUTION #1

EMPLOYMENT SEPARATION PROGRAM

- WHEREAS,** State statutes 18A-64-6 and 18A-64-7 provide certain powers and duties for the Board of Trustees, and
- WHEREAS,** in exercising these powers and duties the Board of Trustees seeks to make the most efficient and effective use of funds to carryout the programmatic mission of the University, and
- WHEREAS,** the administration has developed an employment separation program that will provide budget flexibility and salary savings for the University, and
- WHEREAS,** this plan will be implemented within the attached guidelines, and
- WHEREAS,** the plan has been reviewed by the Budget and Finance Committee of the Board of Trustees, and
- WHEREAS,** the plan will be monitored and the results reported to the Board of Trustees on a quarterly basis

THEREFORE BE IT RESOLVED that the Board of Trustees approves the attached Employment Separation Program pending the request of the employees' collective bargaining agent to be included in the program.

RECEIVED
 2007 AUG 20 AM 10:21
 STATE COMMISSION OF
 INVESTIGATION

State of New Jersey
 Commission of Investigation
 26 West State Street
 PO Box 045
 Trenton, NJ 08625

Attr: Alan A. Rockoff, Executive Director

RE: Notice of Proposed Report
 Dissemination No. 07-07-031

Dear Mr. Rockoff:

The emails attributed to me (attached) have nothing to do with Winning Strategies' communications work for UMDNJ. I was simply offering personal advice to an old friend and former employer, Dr. Petillo, who was President & CEO of Blue Cross & Blue Shield of New Jersey when I was that company's Director of Public Affairs.

The six-month UMDNJ communications project, for which I served as a consultant to Winning Strategies, consisted of an audit of university communications, an extensive survey and interviews with communications personnel at other major medical/universities around the country, and recommendations for the reorganization of UMDNJ's communications functions. A more than 50-page report of comprehensive findings and recommendations was submitted at the conclusion of the project. Many of the recommendations have been implemented, including an e-newsletter which allows UMDNJ to communicate more effectively.

For Your Information: Because of overlapping vacations, I did not receive a copy of your letter until 8/14/07. I hope this response meets your deadline.



Fred Hillmann

Home.....908-964-9538
 Cell.....908-370-4721

If there is need for further communications, my mailing address is:

550 Schuyler Way
 Union, NJ 07083

Subscribed and sworn to before me this 14th day of August, 2007

 John D. Goldsmith
 NJ Notary Law

Rowan University
 Employment Separation Program Fact Sheet
 March 12, 1999

1. **Employees eligible** - The program is available to current full-time employees with at least 20 years of service at Rowan University by June 30, 1999.
2. **Plan separation incentive** - lump sum payment equal to 90% of one year's salary paid in two installments.
 - A. First installment on or before July 15, 1999.
 - B. Second installment on or before July 15, 2000.
 - C. These payments shall be subject to normal payroll withholding deductions but excluding contributions to the appropriate pension plan.
3. **Plan incentive and related employer's cost** for social security and medicare (7.65%) will be paid from Rowan University budget.
4. **Expected savings to Rowan University in 4 years** = \$3,052,375
5. **Expected savings in employer's share of benefits** (social security, medicare, pension) to the State over 5 years = \$1,746,230; over 14 years = \$2,256,312.
6. **To participate employees must submit a participation form by June 15, 1999.** If a situation arises that would seriously affect an academic or administrative program because of the number of faculty/staff who opt for the employment separation program, the University may extend the date of resignation for certain employees to June 30, 2000. To participate these employees must still submit a participation form by June 15, 1999.

3. Year Projection of Salary Savings

	Total	Prof.	Other	Staff
Number Eligible	281	140	63	78
Estimated Participants	88	44	19	25
Deferred Participants to Second Year	18	10	6	2

Fiscal Year	Salary Savings	Cost Of Separation Incentive ^(A)	Salary Costs for Replacement ^(B)	Net Annual Savings/(Loss)
2000	\$4,417,874	\$2,150,534	\$1,735,747	\$571,593
2001	\$3,572,093	\$2,898,167	\$3,450,921	(\$976,955)
2002	\$3,572,093	\$337,833	\$3,789,468	\$1,244,492
2003	\$2,572,083	\$3,789,468		\$1,782,025

^(A) The program is being funded by the Rowan University Foundation, an organization that oversees the management/investment of all charitable contributions to the University.
^(B) Does not include any negotiated salary increases.

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
ATTORNEYS AT LAW

1300 MOUNT KEMBLE AVENUE
P.O. BOX 2076
MORRISTOWN, NEW JERSEY 07962-2076
(973) 993-1000
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RECEIVED

2007 SEP 13 AM 9:48
STATE COMMISSION OF
INVESTIGATION

JOHN J. PEIRANO
Direct dial: (973) 425-0711
jpeirano@mdmc-law.com

September 12, 2007

VIA FEDERAL EXPRESS

Alan A. Rockoff, Executive Director
State Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, New Jersey 08625-0045

**RE: Karen & William Kavanagh & New Jersey State
Commission of Investigation**

Dear Mr. Rockoff:

Enclosed please find an original and two (2) copies of the Karen Kavanagh Response to the State Commission of Investigation's Revised Portion of the Proposed Report, submitted pursuant to N.J.S.A. 52:9M-12.2, along with the signed affirmations of Karen Kavanagh and William Kavanagh.

Additionally, we hereby request that you advise the undersigned in the event any changes are made to the Commission's draft revised report regarding the conduct of William and/or Karen Kavanagh, and afford those individuals the right to view any such changes and the opportunity to submit a reply to any such revisions. If there are no changes to the Commission's revised report, we understand the enclosed response, and the exhibits attached thereto, will be included in its entirety in the Commission's final report, in accordance with N.J.S.A. 52:9M-12.2(c). If our understanding is incorrect in any regard, kindly advise us immediately.

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Alan A. Rockoff, Executive Director
September 12, 2007
Page 2

Thank you to your courtesies and attention to this matter, and please feel free to contact me if you have any questions.

Very truly yours,

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



John J. Peirano

JJP/MAA
Enclosures

BEFORE THE STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

**KAREN KAVANAGH RESPONSE TO THE STATE
COMMISSION OF INVESTIGATION'S REVISED
PORTION OF THE PROPOSED REPORT,
SUBMITTED PURSUANT TO N.J.S.A. 52:9M-12.2**

John J. Peirano, Esq.
McElroy, Deutsch, Mulvaney &
Carpenter, LLP
1300 Mt. Kemble Ave.
P.O. Box 2075
Morristown, NJ 07962-2075
(973) 993-8100

Karen Kavanagh
6 George W. Helme Dr.
Helmetsa, NJ 08828

Pursuant to N.J.S.A. 52:9M-12.2, Karen Kavanagh submits this response to portions of the revised report (herein sometimes referred to as "report") prepared by the State Commission of Investigation ("Commission") involving the New Jersey public higher education system which were provided to Ms. Kavanagh.¹ The excerpts of the Commission's revised report omit numerous relevant facts and mischaracterize many of the circumstances surrounding Ms. Kavanagh's services to Rutgers, The State University ("Rutgers" or "University") as a consultant and as an employee. The result is that the report creates a completely unwarranted and misleading aura of impropriety. As set forth in detail below, any fair and unbiased review of the facts demonstrates that the contractual arrangement between Kavanagh Organization Planning, Inc. ("KOP") and Rutgers was the result of arms length negotiation between the parties; that KOP fulfilled all requirements of the contract; and that KOP received only that compensation to which it was contractually entitled. Such review also would reveal that the University entered into a contract of employment with Ms. Kavanagh to employ her in one of the most senior executive positions at Rutgers, for which she was exceptionally well qualified, and that she received only those benefits to which she was entitled contractually.

Initially, the subheading of the section of the Commission's report dealing with Ms. Kavanagh's conduct is "A Case Study: Lax Governance Amid Legitimate Warnings and a

¹ The Commission's draft report to which this response is directed is, in fact, a revised report. The Commission initially sent Ms. Kavanagh a proposed report under cover of July 27, 2007. Ms. Kavanagh submitted a detailed response which, according to correspondence from the Commission's Executive Director, the Commission considered and then submitted a "revised" report to Ms. Kavanagh. (See letter from Executive Director dated August 29, 2007, attached hereto as Exhibit A). Extensive segments of the Commission's revised report are unchanged from its first report and to which Ms. Kavanagh's "earlier initial response shall not be deemed relevant or appropriate for inclusion." Since large portions of the revised report are the same as the Commission's initial report, Ms. Kavanagh's earlier response clearly remains relevant. The Executive Director failed to explain why he deemed Ms. Kavanagh's initial response as "inappropriate" for inclusion in the Commission's final report. In this connection, Ms. Kavanagh notes that the New Jersey statute pursuant to which the Commission issues its reports does not vest discretion in the Executive Director as to inclusion of a response by a citizen whose conduct is being criticized. Rather, the statute specifically provides that "the commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person" N.J.S.A. 52:9M-12.2(c) (emphasis added).

Questionable Consulting Arrangement.” In the draft report, the Commission notes only two items from which a reader might conclude that the consulting arrangement between Rutgers and KOP was “questionable.” One of those is the Commission’s statements about the date appearing on a facsimile cover sheet of KOP’s proposal to Rutgers. That issue is discussed later in this response. The second is the Commission’s statement that the contract “was awarded by the university without competitive bidding.” A reasonable reader could infer from that statement that there was something improper in awarding the contract to KOP without competitive bidding. If it was not the Commission’s intent that readers should draw such a conclusion from that statement, then there was no reason to make such comment. The Commission’s intent is further evidenced by its complete failure to note or even mention that the Supreme Court of New Jersey has held that Rutgers is not bound by New Jersey’s public bidding statute, N.J.S.A. 52:34-6 et seq. See Rutgers. The State Univ. v. Kugler, 110 N.J. Super. 424 (Law Div. 1970), aff’d o.b., 58 N.J. 113 (1971). It is clear that the Commission is simply trying to create an innuendo of wrongdoing by noting the contract was awarded without bid, but conspicuously avoided advising any reader of the Commission’s report that Rutgers is not required by law to do so, as determined by our Supreme Court. If it is the opinion of the Commission that good practice may have suggested the consulting contract be put out to bid, it could have so stated, while noting there was no legal requirement to do so. But it did not do so.

The Commission then states that KOP recommended “the creation of a new senior management position – executive vice president for administrative affairs.” A reader could reasonably infer, based on the Commission’s language, that KOP recommended the creation of only one position – executive vice president for administrative affairs, the position eventually assumed by Ms. Kavanagh. This statement is misleading and simply ignores the fact that KOP

recommended that Rutgers’ change its entire top senior management organizational structure. In the Phase I Report submitted to Rutgers’ President Richard L. McCormick, KOP specifically stated that in order to “insure organizational clarity and transparency,” the University needed to “announce ... key organizational changes,” including new organizations under *both* an Executive Vice President of Academic Affairs *and* an Executive Vice President of Administrative Affairs. Thus, KOP’s recommendations were not limited to the creation of a single executive position. The recommendation was for an overall organizational change involving several executive positions. The Commission, during its investigation, requested and was provided a copy of that Phase I Report. Thus, the Commission had all of the relevant facts, but chose to utilize only a portion of them, resulting in the creation of an incorrect impression.

The Commission also asserts that the position of Executive Vice President for Administrative Affairs was “unilaterally” established by Dr. McCormick, and that “[m]inutes of the meeting [of February 14, 2003] at which [Dr. McCormick] made these announcements reflect that no vote was taken by the Board on the creation of the two positions or with regard to Kavanagh’s hiring and compensation.”²

The Commission’s use of the term “unilaterally” suggests that Ms. Kavanagh’s hiring was somehow improper. Based upon conversations with Dr. McCormick, and the Commission’s own revised report which quotes the minutes of the February 14, 2003 meeting of the Board, Ms.

² It is noteworthy that in the initial draft sent by the Commission to Ms. Kavanagh, the report said that when the announcement was made to Rutgers’ Board of Governors there was “no discussion.” The revised report actually quotes the minutes of the meeting which clearly reflect discussion occurred, and therefore, the revised report substituted the phrase “no vote” for “no discussion.” What is noteworthy is that upon information and belief, the Commission was in possession of the minutes before issuing its initial draft report. It is also noteworthy that nowhere does the Commission assert that there is any legal requirement under New Jersey law that a “vote” of the Board be taken with respect to the matter at hand, or even that University Regulations required such a vote. The obvious reasons for the absence of any such assertions is because, as the Commission is aware, there is no such requirement.

Kavanagh states that the Board of Governors clearly was informed and that Dr. McCormick did not act "unilaterally" as asserted by the Commission.

The Commission also attempts to imply impropriety by stating that "the academic affairs post was the subject of a formal resolution adopted by the Board on July 11, 2003" and Ms. Kavanagh's appointment was not. What the Commission fails to note is that Ms. Kavanagh's administrative position did not carry with it the grant of tenure. The academic affairs position carried academic tenure with it. (See July 11, 2003 Board of Governor's Resolution, attached hereto as Exhibit B). That distinction is critical. Upon information and belief, the filling of non-academic administrative positions does not require Board action. However, an award of tenure can be made only by action by the Board of Governors. Moreover, upon information and belief, employment contracts such as Ms. Kavanagh's - which was for \$240,000 - are not brought by the Administration to Rutgers' Board of Governors for approval. Further, Ms. Kavanagh was a party to the negotiations for an employment contract. She had no duty or responsibility to ensure the Board of Governors was involved.

The Commission in its revised draft report also states that any consultations between Dr. McCormick and the members of the Board were "gratuitous and informal, and few were memorialized in a written record." First, the February 14, 2003 meeting minutes cited by the Commission clearly demonstrate that the Board was fully informed of Ms. Kavanagh's background and qualifications. Interestingly, as noted in footnote 2 of this response, in its first draft report the Commission asserted that "[m]inutes of the meeting at with [Dr. McCormick] made these announcements *reflect no discussion of Kavanagh's qualifications or background* . . ." (emphasis added). As the Commission's revised report shows, the Board was made aware of Ms. Kavanagh's qualifications. Specifically, the minutes show that:

[Dr. McCormick] also informed the Board that he has appointed Karen Kavanagh as the new Executive Vice President for Administrative Affairs, effective April 1, 2003. He noted her background as the current Vice President for Human Resources at the University of Washington and her past experience as Vice President of Human Resources at the University of Medicine and Dentistry of New Jersey. He pointed out that Ms. Kavanagh brought to the area of human resources at the University of Washington the type of service-orientation that he has outlined as one of the goals for his administration at Rutgers.

Only the drafter of the initial Commission report knows whether the omission of the meeting minutes from the first draft report was intentional or inadvertent. However, when a State agency such as the Commission of Investigation criticizes the conduct of a citizen of New Jersey, such criticism clearly has the potential to damage the good reputation of an individual. Accordingly, it is submitted that the Commission should ensure that its report reflects all relevant information, not just the facts which support inferences of impropriety which the Commission is attempting to make.

In addition, the fact that every conversation between Dr. McCormick and members of the Board were not memorialized in writing does not mean that such conversations did not take place. Even minutes of formal meetings are not transcripts of every word spoken. That is simple common sense. Further, prior to being offered the senior level position at Rutgers, Ms. Kavanagh was introduced to and met with Gene O'Hara, who at the time was Chair of the Board of Governors. Ms. Kavanagh met Mr. O'Hara in her capacity as a member of KOP. Clearly, the Chair of the Board had full knowledge of Ms. Kavanagh's role as a consultant to the University at the time of the announcement of her appointment as Executive Vice President of Rutgers.

The Commission also seems to suggest that the lack of a national search for a candidate to fill the position of Executive Vice President for Administrative Affairs was improper. Once

again, the Commission has not identified any law, rule, or even University Regulation requiring a national search to fill an administrative position. Indeed, as the Commission itself states in its draft revised report "it is neither unusual nor improper – indeed, it often serves a salutary purpose – for incoming chief executives, whether in the public or private sectors, to familiarize themselves with prospective employers before they arrive and to hire professional staff of their own choosing," (emphasis added).

In its revised report, the Commission refers to the Confidential Interim Report dated January 6, 2003, submitted by KOP to Dr. McCormick. While the Commission notes that the Interim Report attached a "set" of job descriptions, it singles out and discusses only one – a job description for "a proposed executive vice president for administrative affairs." In fact, KOP included position descriptions for a Chief Financial Officer and Treasurer and an Executive Vice President for Academic Affairs. KOP suggested the creation of these positions in accordance with Dr. McCormick's request that he wanted the administrative functions at Rutgers to mirror those which were in place and which had worked well for him during his tenure as President of the University of Washington. At the University of Washington, the Provost was the Chief Academic Officer, and on the administrative side, there was an Executive Vice President for Administrative Affairs. At Rutgers, Dr. McCormick wanted equal positions on both the academic and the administrative sides of his organization. Accordingly, KOP recommended there be an Executive Vice President on the academic side and one on the administrative side. Thus, Dr. McCormick explained exactly what he envisioned at Rutgers, and KOP did exactly what it was hired to do – it advised Dr. McCormick of its opinion of the manner in which to implement what the incoming President envisioned.

The Commission places a great deal of emphasis on the date when KOP's proposal entitled "Developing an Organization Plan for Improved Administrative Services at Rutgers University" was faxed to Dr. McCormick. Ms. Kavanagh unequivocally states that a written proposal was not submitted to the University until she was advised that Dr. McCormick had accepted the position of President of Rutgers. However, even if the Commission is accurate and the proposal was, in fact, faxed on October 17, 2002 – only five days before the Commission states Dr. McCormick accepted the position – the report fails to explain why this is noteworthy. Even if KOP submitted a proposal for Dr. McCormick's consideration on October 17, 2002, at most this simply would suggest that Dr. McCormick was seriously considering the offer at that time and was examining options open to him. It is suggestive of absolutely nothing more. The Commission's noting and indeed highlighting this fact appears to be simply another instance of attempting to create an appearance of impropriety where none exists.

In discussing Ms. Kavanagh's background and experience (and thus the bona fides of her qualifications), the Commission states that at the time she accepted the position at Rutgers, Ms. Kavanagh was "employed by the University of Washington as vice president of human resources," and that prior thereto she was employed "in human resources and other capacities at the University of Medicine and Dentistry of New Jersey." The second statement, while technically accurate, appears to intentionally understate or omit background which demonstrates Ms. Kavanagh's extensive experience in human resources and New Jersey higher education. Ms. Kavanagh was employed at the University of Medicine and Dentistry of New Jersey ("UMDNJ") for a six year period, eventually rising to the level of Vice President for Human Resources. UMDNJ at the time was the largest free standing health and sciences university in the nation. Prior to her tenure at UMDNJ, she served as the Director of Human Resources at

Meadowlands Hospital Medical Center, and as Vice President for Human Resources at St. Michaels Medical Center, reporting directly to the Chief Executive Officers of each of those institutions. Also conspicuously absent from the Commission's report is the fact that Ms. Kavanagh served as Assistant to the President for Employee Relations, Human Resources, and Administrative Services for a ten year period at one of New Jersey's county colleges. If the Commission had accurately reported Ms. Kavanagh's experience and background, a reader could not have concluded that her experience was somewhat limited. The actual facts demonstrate a very different picture. It is worth noting that all of this information was provided to the Commission during the course of its investigation.³

Perhaps the most egregious misstatement of facts by the Commission is its treatment of the deferred compensation Ms. Kavanagh received. The Commission first states that Ms. Kavanagh's contract with Rutgers provided that she would receive "a salary of \$240,000 a year plus \$25,000 annually in deferred compensation if she completed five years of service. Less than three years later, in April 2006, she left that post and was provided with a range of benefits, including the deferred compensation payments, under a separation agreement effective that September." (emphasis added). The Commission's draft report later states that "[a] formal offer was tendered on February 6 for Kavanagh to start in her new position on April 1 with a base salary of \$240,000 plus \$25,000 per year in deferred compensation to be paid after completion of five years of service." (emphasis added).

³ In its initial draft report, the Commission inexplicably referred to Ms. Kavanagh's position at the University of Washington as "assistant vice president of human resources." (emphasis added). Ms. Kavanagh provided her resume to the Commission and testified before it. Thus, it was well aware of her actual position. The initial draft contained several other purely factual errors. For example, the initial draft report incorrectly stated that Ms. Kavanagh filed for retirement from New Jersey's Alternate Benefits Program upon leaving the University of Washington. Ms. Kavanagh retired from State service upon leaving UMDNJ, not the University of Washington. In discussing the February 6, 2003 memo from KOP, the Commission, in its initial draft, incorrectly quoted from the report. In it is initial draft report, the Commission also incorrectly quoted from a letter dated April 16, 2003. The Commission's revised report corrects certain of the factual errors pointed out by Ms. Kavanagh in her first response. These matters are noted because they reflect on the quality of the Commission's investigation and report.

Thus, the Commission asserts that Ms. Kavanagh was required to complete five years of service at Rutgers in order to receive deferred compensation; she did not serve for five years; and nevertheless received deferred compensation. Any reader of the Commission's report could only conclude that Ms. Kavanagh received deferred compensation payments to which she was not entitled. The problem with such a conclusion is that it is more than simply misleading. It is entirely false. As demonstrated below, Ms. Kavanagh received only the deferred compensation payments to which she was contractually entitled.

The letter from Rutgers offering Ms. Kavanagh the position of Executive Vice President provided that her "starting base annual salary in this position will be \$240,000, and [Ms. Kavanagh] will receive an additional \$25,000 per year in deferred compensation, to be paid after completion of five years of successful service in this position." In a subsequent letter dated April 21, 2003, a copy of which was provided to the Commission during its investigation, the University described the deferred compensation program referenced in the offer letter and explained that Ms. Kavanagh would be entitled to receive distribution of the deferred compensation under the following four circumstances:

First, if you die while serving as Executive Vice President for Administrative Affairs Second, if you become disabled while serving as Executive Vice President for Administrative Affairs Third, subject to the forfeiture provision below, if you are asked by the President to leave the position of Executive Vice President for Administrative Affairs, the entire deferred compensation account as of that date will be distributed to you as soon thereafter as practicable. Fourth, if you complete five (5) years of successful service and are serving as Executive Vice President for Administrative Affairs on March 31, 2008

[emphasis added.]

The forfeiture provision referenced above provided that the deferred compensation would be forfeited only if Ms. Kavanagh voluntarily left her position, or if “it is determined by the President that [Ms. Kavanagh] engaged in conduct that constituted actual fraud, actual malice, willful misconduct or an intentional wrong under the New Jersey Tort Claims Act”

Thus, the contractual agreement between Ms. Kavanagh and Rutgers specifically provided that Ms. Kavanagh would be entitled to deferred compensation under four different circumstances, including if she was asked to leave the position of Executive Vice President for Administrative Affairs. In that circumstance, she was entitled to deferred compensation on a *pro rata* basis. That is exactly what occurred. There was no absolute requirement that Ms. Kavanagh remain at the University for five years.

In its initial draft report, the Commission stated in several instances that Ms. Kavanagh “was relieved of her duties.”⁴ As noted above, in that circumstance Ms. Kavanagh clearly was entitled to *pro rata* deferred compensation. In its revised report, however, the Commission changes the language of its report to state, in an obvious attempt to suggest that Ms. Kavanagh forfeited her right to the deferred compensation, that “she left the post,” “Karen Kavanagh left the position,” and “left the university for the private sector.” (emphasis added). The Commission is well aware that Ms. Kavanagh did not voluntarily leave her position, nor did the President make any determination that she had violated the Tort Claims Act. Nonetheless, the Commission has changed the language of its report to imply impropriety where none exists.

The revised report continues its factual inaccuracies with respect to the deferred compensation issue. The revised report provides that “[Ms.] Kavanagh would forfeit deferred

⁴ In its initial draft, the Commission did not even acknowledge that there were circumstances other than the service of five years that would entitle Ms. Kavanagh to the deferred compensation. The revised report does not there were other circumstances which would entitle Ms. Kavanagh to deferred compensation. Obviously, the change is because Ms. Kavanagh pointed out this egregious error to the Commission in her first response.

compensation only if she was to leave the position voluntarily prior to the completion of five years of service.” (emphasis in the original). In fact, the deferred compensation document, which the Commission has in its file, specifically provided that the deferred compensation is also forfeited if the President of the University determined that Ms. Kavanagh engaged in conduct that constituted actual fraud, actual malice, willful misconduct, or any intentional wrong under the New Jersey Tort Claims Act. It is therefore inexplicable how the Commission could state that Ms. Kavanagh forfeited her deferred compensation only if she left the university voluntarily.

In any event, the President never made a determination that Ms. Kavanagh engaged in misconduct such as to warrant forfeiture, and Ms. Kavanagh was relieved of her duties as Executive Vice President for Administrative Affairs. Accordingly, she was contractually entitled to *pro rata* deferred compensation. That is exactly what she received. Despite the Commission’s revised report’s strong inference to the contrary, Ms. Kavanagh received nothing more than that to which she was contractually entitled.

The Commission’s revised report further asserts that “Kavanagh’s employment contract also included language obligating the university to provide her with additional compensation in lieu of a pension for her service at Rutgers.” That assertion is also misleading and inaccurate. When she resigned from UMDNJ, Ms. Kavanagh also retired under the State’s Alternate Benefits Program (“ABP”). As a result of that retirement, Ms. Kavanagh was ineligible to participate in Rutgers’s pension plan. In its offer letter, Rutgers stated that it would “work with [her] to identify pension, life insurance, and long-term disability care options equivalent to the benefits you would otherwise have received through membership in the ABP, or we will provide you with additional compensation equal to the State contribution to those benefits (e.g.: 8% salary pension contribution).” (emphasis added). That provision was the result of an arms-length

negotiation between Ms. Kavanagh and the University. Both parties intended to equalize the benefits received by Ms. Kavanagh with those received by all other members of senior management. Upon information and belief, Ms. Kavanagh states the compensation received by her pursuant to her contract with the University was not out of line with compensation received by others of the same rank at Rutgers, and indeed, consistent with compensation received by senior executives at major research institutions of higher education. Notwithstanding the obvious attempt by the Commission to portray Ms. Kavanagh's compensation as excessive, the Commission has not cited to a single fact demonstrating that her pay was inappropriate or out of line with that of other senior executives, or that of other executives in other research institutions of higher education.

The Commission also mischaracterizes the circumstances in existence at the time Ms. Kavanagh was relieved of her duties as Executive Vice President for Administrative Affairs. The Commission states that "the post of executive vice president for administrative affairs was abolished amid sustained and glaring weaknesses in the structure of the university's budgeting, accounting and internal control practices." Any reader of the report reasonably would conclude that Ms. Kavanagh was being blamed for the "glaring weaknesses" in "budgeting, accounting and internal control practices." In fact – and the Commission does not note this – Ms. Kavanagh was not responsible for either budgeting or accounting. While the phrase "internal control practices" is undefined in the Commission's report, to the extent Ms. Kavanagh understands its meaning, she notes that the University's internal auditor did not report to her. The Commission fails to note this also.

As noted above, the Commission's report states the position of Executive Vice President for Administrative Affairs was abolished "amid" glaring weaknesses in the areas noted. This too

is misleading in that it strongly suggests the weaknesses were present at the time of the position elimination. Yet every single quote cited by the Commission in the excerpt provided to Ms. Kavanagh critical of these areas was from reports from KOP in 2003, more than three years before Ms. Kavanagh left that position. The Commission totally ignores the significant progress made by Rutgers to improve those areas in the three year interim and does not cite a single source to the effect that the problems remained unabated.

The Commission also implies that the separation agreement executed between Ms. Kavanagh and the University was improper, noting that "there is no record of discussion and/or approval by the university's governing board." Once again, the Commission fails to identify a single legal requirement or Rutgers' Regulation which required Board approval for a separation agreement of this nature. Ms. Kavanagh is without knowledge as to whether the Board of Governors was advised of the terms of her separation agreement. However, Ms. Kavanagh notes that she certainly had no obligation to keep the Board informed or seek the Board's approval.

Finally, with respect to the consulting agreement between KOP and Rutgers, the Commission's report asserts that it "found no evidence that a second phase was ever undertaken or that a final report was ever produced, even though KOP, pursuant to the terms of its contract, was paid in full - \$126,000 plus expenses." Once again the Commission's revised report is incomplete, and therefore, inaccurate. The proposal submitted by KOP to Dr. McCormick provided that as a part of Phase II of the project:

The President will use the announcement of Phase I recommendation approval to announce Phase II of the project.
Letters will be sent notifying executives and staff both those involved in Phase I and additional staff in other administrative

units of the next round of interviews and planning meetings and their involvement.

Interviews will be conducted in February and March.

Planning Teams will meet in April and May.

A final report will be delivered to the President by end May.

In short, Phase II was designed to move towards implementing the recommendations which resulted from Phase I through interviews and creations of teams responsible for implementation. In addition, KOP was to deliver its wind-up report to the University no later than the end of May, 2003. Nowhere in the proposal is there any requirement that the Phase II report be in writing. Moreover, as demonstrated below, each of the Phase II items were accomplished in a timely manner.

KOP conducted all interviews referenced in the Phase II portion of the proposal even earlier than originally scheduled. Specifically, all interviews (which numbered well over 100) took place during the same time period that Phase I of the project was being accomplished, in December 2002 and January 2003.

Subsequently, on February 6, 2003, KOP submitted to Rutgers President a memorandum regarding "Administrative Systems Review Project – Phase 2." In that memorandum, KOP set forth organizational infrastructural changes necessary to effectuate the recommendations developed during Phase I of the project. As noted, the purpose of Phase II was essentially to implement the recommendations made as a result of Phase I.

Over the course of several weeks following the submission of the February 6 memorandum, four meetings were held between Ms. Kavanagh and William Kavanagh on behalf of KOP, and, on behalf of Rutgers, Dr. McCormick, and Dr. Norman Samuels, the former acting

president who was assisting Dr. McCormick during this transitional period. Each meeting consisted of KOP presenting its final report to the University with respect to four distinct areas:

(1) University and academic budgeting; (2) information technology; (3) changes in research and grant policies and practices; and (4) the strategic planning process for the University. These reports were presented to Dr. McCormick and Dr. Samuels orally, rather than a written report, in order to provide a setting for questions, responses and discussion.

Ultimately, a decision was made not to implement the strategic planning process because the University did not wish to proceed with implementation in that area until a new Academic Vice President was in place. In order to implement the other recommendations, Dr. McCormick then established three Presidential Task Forces responsible for "developing plans to solve fundamental problems in administration quickly, efficiently and effectively."

On April 1, 2003, Ms. Kavanagh commenced her employment with Rutgers. Thereafter, Ronald Napiorski, a member of the team of consultants who worked on the Rutgers project with KOP, submitted a written review dated April 16, 2003 of the Finance and Administrative Services function at Rutgers. Although the review had been completed earlier, it never had been reduced to writing, or shared with the University in any oral presentation. As a result, Ms. Kavanagh directed Mr. Napiorski to submit a written report to Rutgers. Ms. Kavanagh then submitted the report to Joanne Jackson, who at the time was Treasurer of the University and the person ultimately responsible for the operational areas discussed in the April 16 report.

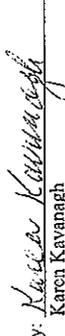
As the foregoing illustrates, KOP, in accordance with the November 14, 2002 proposal, conducted interviews and participated in planning meetings, during which the implementation of recommendations made during Phase I were discussed. Planning teams were established in order to effectuate these recommendations, and reports, both oral and written, were presented to the

University concerning Phase II. It is noteworthy that all of the foregoing was made known to the Commission, and the documents referenced were provided to the Commission, prior to the time the Commission sent excerpts of its report to Ms. Kavanagh. The failure of the Commission to note or even comment upon any of this evidence, and simply to conclude it "found no evidence that a second phase was ever undertaken or that a final report was ever produced" is telling.

In sum, the portion of the draft revised report provided by the Commission to Ms. Kavanagh contains numerous material factual errors and omissions. The result is a portrait of conduct that potentially is extremely damaging to Ms. Kavanagh's reputation. The foregoing is submitted in an attempt to correct the biased report of the Commission, and to ameliorate the damage certain to be caused by the Commission's report.

AFFIRMATION OF KAREN KAVANAGH

I, Karen Kavanagh, of full age, hereby affirm that the foregoing statements contained in this Response are made by me and are true to the best of my knowledge, or information and belief where so stated. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: 
Karen Kavanagh

Dated: September 14, 2007



State of New Jersey
COMMISSION OF INVESTIGATION
 28 WEST STATE STREET

PO BOX - 045
 TRENTON, NEW JERSEY 08625-0045
 TEL (609) 292-6767
 FAX (609) 633-7366

Alan A. Rockoff
Executive Director

W. Cary Edwards
Chair

Joseph R. Marinello, Jr.
Kathy Flicker

Patrick E. Hobbs
Commissioners

August 29, 2007

HAND-DELIVERED

Karen Kavanagh
 c/o John J. Peirano, Esq.
 McElroy, Deutsch, Mulvaney & Carpenter
 1300 Mount Kemble Avenue
 Morristown, NJ 07962-2075

Re: Notice of Proposed Report
 Dissemination No. 07-08-004

Dear Mrs. Kavanagh:

Thank you for your response to the portion of the Commission's proposed report sent to you with a cover letter dated July 27, 2007. Pursuant to its mission to provide complete and accurate factual findings, the Commission has considered your response. Attached is a revised portion of the proposed report.

Be advised that the Commission intends to publish this attachment as part of its final report. Pursuant to N.J.S.A. 52:9M-1 et seq. you may submit a response which the Commission shall consider for inclusion in the final report. Be further advised that, in light of changes to the text of the proposed report, your earlier initial response shall not be deemed relevant or appropriate for inclusion.

In accordance with the provisions of N.J.S.A. 52:9M-12.2, your response must be received within 15 days from receipt of this letter.

All other rights, privileges, and restrictions set forth in N.J.S.A. 52:9M-1 et seq. continue to apply.

Respectfully,

ALAN A. ROCKOFF
Executive Director

AAR:mfj
 Encl.



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AFFIRMATION OF WILLIAM KAVANAGH

I, William Kavanagh, of full age, hereby affirm that I have read Karen Kavanagh's Response to the State Commission of Investigation's draft report and adopt it, to the extent necessary, as my own. The statements contained therein are true to the best of my knowledge, information and belief. I am aware that if the foregoing statement is willfully false, I am subject to punishment.

By:
 William Kavanagh

Dated: September 12, 2007



RECEIVED

2007 AUG 13 AM 10:13

STATE COMMISSION OF
MOUNT LAUREL INVESTIGATION
3 Richland Drive
Mount Laurel, NJ, 08054
August 10, 2007

Francis L. Lawrence
President Emeritus
University Professor

Via Certified Mail

The Honorable Alan A. Rookoff, Executive Director
State of New Jersey Commission of Investigation
28 West State Street
PO Box - 045
Trenton, NJ 08625-0045

Re: Notice of Proposed Report, Dissemination No. 07-07-019

Dear Executive Director Rookoff:

As you undoubtedly know from postal records, I received your certified letter dated July 27th on August 6th because I was absent when it arrived and the address was in error—I live at 3 Richland Drive, not 2 Richland Drive.

Unfortunately, I found it difficult to respond to your request for a reply to the excerpted portions of the Commission report that you provided because the text does not ask clear-cut questions in regard to the matters on which it touches. In addition, as you are aware, I was not contacted or interviewed by the Commission. Nevertheless, I will do my best to cast what light I can upon the university procedures to which the text refers.

The individual to whom the first paragraph of the text refers is Michael Carroll, whom Rutgers hired in 1997 under a dual title for responsibilities as Executive Director of the Foundation and as Vice President of Development and Alumni Affairs. Let me explain that in matters of executive hiring and salaries at the levels of dean or vice president, the president of the university does not act alone. In hiring deans and vice presidents, I consulted the chair of the Board of Governors (who was sometimes engaged in the interview process) and the chair sought the advice of other board members as appropriate. The chair gave me clearance to hire the person I recommended to him or her. The Committee on Executive Compensation and Nominations also played a very significant role in high-level hiring and salary decisions.

So far as Mr. Carroll's separation agreement is concerned, I have no knowledge of it, since I stepped down from the presidency in 2002 and he resigned in 2004. However, I do recall having a conversation with the Chair of the Board of Overseers at an event celebrating the close of the campaign in 2004 in which he advanced the idea that Mr. Carroll ought to be awarded a bonus in recognition of his outstanding work during the

Resolution on the Appointment of the
Executive Vice President for Academic Affairs
Rutgers, The State University of New Jersey

WHEREAS, on February 19, 2003, a Search Committee for the Executive Vice President for Academic Affairs, consisting of seventeen distinguished members, was appointed by President Richard L. McCormick and was chaired by Dr. David Mechanic, Director, Institute for Health, Health Care Policy and Aging Research; and,

WHEREAS, the Search Committee submitted its recommendation to the President, and after careful review and consideration, the President selected Dr. Philip Furmanski, the first-ranked choice of the Search Committee, and appointed him as Executive Vice President for Academic Affairs; and,

WHEREAS, Dr. Furmanski has had extensive administrative experience at New York University having served as Dean of the undergraduate College of Arts and Sciences, Dean of the Faculty of Arts and Sciences, and Chair of the Department of Biology, and has maintained his research laboratory and NIH (National Institutes of Health) funding and continued to be a productive scientist during his entire administrative career; and,

WHEREAS, Dr. Furmanski has outstanding academic credentials in Biology, Microbiology and Cancer Research; and,

WHEREAS, it is anticipated that, upon the approval of the faculty and Dean of the Robert Wood Johnson Medical School, Dr. Furmanski will receive an appointment at the rank of Professor in the Department of Molecular Genetics, Microbiology and Immunology at the Robert Wood Johnson Medical School of the University of Medicine and Dentistry of New Jersey; and,

NOW, THEREFORE, BE IT RESOLVED, that Dr. Furmanski, who will hold the position of Executive Vice President for Academic Affairs of Rutgers, The State University of New Jersey, is hereby granted academic tenure as a Professor II in the Department of Cell Biology and Neuroscience in the Faculty of Arts and Sciences-New Brunswick, Rutgers University, effective September 1, 2003;

BE IT FURTHER RESOLVED, that Dr. Furmanski's appointment as Executive Vice President for Academic Affairs be effective on September 1, 2003 and that Dr. Furmanski shall thereafter serve as Executive Vice President for Academic Affairs indefinitely at the pleasure of the President.

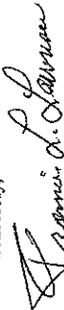
Board of Governors
Rutgers, The State University
of New Jersey
July 11, 2003



largest and most successful fundraising campaign in Rutgers' history. I readily agreed that Mr. Carroll was deserving of such a bonus, but I did not sign off on it, since I was no longer Rutgers' president.

The final paragraph of the text lacks as context the conditions of the contribution from the Rutgers Foundation to my compensation. The amount of my compensation was fixed every year by the Committee on Executive Compensation and Nominations. Because, as Rutgers' president, I was deeply involved in fundraising and spent a good deal of time on it in addition to my duties in oversight of the university, the Executive Compensation Committee, the Board of Overseers of the Rutgers Foundation, and Board of Governors decided that my compensation ought to be funded in part by the Foundation. The money from the Foundation was paid to me annually as honoraria in recognition of my work on its behalf.

Sincerely,


Francis L. Lawrence

CERTIFICATION

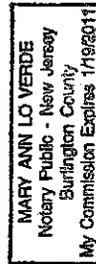
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Francis L. Lawrence

Subscribed and sworn to before me on

August 10, 2007


Notary



BEFORE THE STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

HENRY MAUERMAYER RESPONSE
TO THE STATE COMMISSION OF
INVESTIGATION'S DRAFT REPORT,
SUBMITTED PURSUANT TO N.J.S.A. 52:9M-12.2

John J. Petrano, Esq.
McElroy, Deutsch, Mulvaney &
Carpenter, LLP
1300 Mt. Kemble Ave.
P.O. Box 2075
Morristown, NJ 07962-2075
(973) 993-8100

Henry Mauermayer
506 Old Boonton Road
Boonton, New Jersey 07005

Pursuant to N.J.S.A. 52:9M-12.2, Henry Mauermeyer, Senior Vice President for Administration and Treasurer at the New Jersey Institute of Technology ("NJIT" or "University"), submits this response to the excerpts of the draft report prepared by the State Commission of Investigation ("Commission") which were provided to Mr. Mauermeyer. The excerpt of the Commission's report omits relevant facts and does not present a clear and accurate picture surrounding the loans issued to Pavlina Klimova. As set forth in detail below, certain loans were made to Ms. Klimova for humanitarian reasons to assist her with living expenses while she had no source of income, and enforceable notes were executed by Ms. Klimova with regard to each such loan. Further, there is no assertion contained in the draft report that Mr. Mauermeyer benefited personally in any way whatsoever with respect to these loans. Finally, no law, rule, or regulation, including University policies, were violated.

On June 12, 2003, NJIT offered Ms. Klimova the position of Assistant P.E. Specialist/Head Women's Volleyball Coach in the Physical Education/Athletics Department. The offer letter specifically stated that Ms. Klimova's appointment was "necessarily contingent upon [her] furnishing documents as specified in the Immigration Reform and Control Act of 1986, as amended, authorizing you to work in the United States." Ms. Klimova presented NJIT with a valid Employment Authorization Card authorizing her to work in the United States. This authorization card was valid from October 7, 2003 through August 30, 2004. (A copy of said Employment Authorization Card is attached hereto as Exhibit 1). Thus, at the time of hire, Ms. Klimova's status was appropriate.

With the University's support, Ms. Klimova filed H-1B applications, seeking temporary worker status, with U.S. Immigration and Citizen Services. Because those applications were not approved by the expiration date of her Employment Authorization Card, Ms. Klimova was

removed from the University's payroll. When Ms. Klimova's second application was not approved an appeal was immediately filed.

Although no longer employed by NJIT, Ms. Klimova elected to continue assisting the women's volleyball team in a volunteer capacity. NJIT appointed a replacement for Ms. Klimova as head coach as a result of the expiration of her Employment Authorization Card. Mr. Mauermeyer eventually was advised that Ms. Klimova was in need of funds for basic living expenses. A request was made to him by the Vice President for Academic and Student Services, whose responsibilities include athletics, to issue Ms. Klimova a loan, in order to allow her to cover her living expenses as the immigration process continued. A total of three loans, totaling \$30,500, were made by the University to Ms. Klimova. The University's willingness to support Ms. Klimova's H-1B application and to assist her during this difficult financial period also was based, in part, on the fact that NJIT considered Ms. Klimova a valuable asset, with significant professional skills and a strong personal commitment.

The Commission's report notes the testimony of NJIT's internal auditor, that, "the purported loans could never have been enforced because, as written, the package lacked a number of fundamental elements, such as interest provisions and a repayment schedule." This statement is misleading and inaccurate. The promissory note executed on March 4, 2005, explicitly provided that "Maker will pay the Principal upon demand of the Payee." Clearly, the loan was enforceable on demand. As to the other two loans, executed on July 20, 2005 and December 14, 2005, the fact that they lacked a specific payment schedule did not render those loans unenforceable. Pursuant to N.J.S.A. 12A:3-108, which governs negotiable instruments, "[a] promise or order 'is payable on demand' if it states that it is payable on demand or at sight,

or otherwise indicates that it is payable at the will of the holder, or *does not state any time of payment.*" (emphasis added).

The Commission further notes testimony to the effect that the lack of an interest provision in the promissory notes rendered the loans unenforceable. Once again, this is simply wrong. It is true Ms. Klimova was not charged interest. The fact that NJIT did not charge Ms. Klimova, a person it deemed valuable to one of its women's sports teams, interest has nothing whatsoever to do with whether the promissory note is enforceable.

Thus, contrary to the implications in the Commission's draft report that the notes somehow were unenforceable, the loans in fact were clearly collectable.

At the time the loans were issued, Mr. Mauermeier believed that Ms. Klimova's authorization to work would be approved within a relatively short period of time. Indeed, an e-mail to the University from then U.S. Senator Jon Corzine's administrative aide demonstrates that his office had the same expectation. Thus, that communication states, in relevant part, "[p]lease keep [Ms. Klimova] out of the guide books till January, at which point I hope to have this totally resolved." (A copy of said e-mail is attached hereto as Exhibit 2). Mr. Mauermeier believed that Ms. Klimova would be eligible to become employed again by the University and thus in position to repay the outstanding loans relatively easily.

As noted by the Commission in its draft report, a final loan for living expenses was made in December 2005, and it was decided at that time that no further loans would be issued and resolution of her status had to occur within a very short period of time. When the matter was not resolved in January 2006, Ms. Klimova was advised she would not be permitted to continue to assist the women's volleyball program. (A copy of said letter is attached hereto as Exhibit 3).

The Commission further asserts that during a routine audit the internal auditor raised some concerns about the loans to Ms. Klimova. In the Commission's draft report, it states that in the auditor's report requested by Mr. Mauermeier, the auditor "found that none of the checks was subjected to withholding for tax purposes and warned that the university was at risk of violating the federal immigration laws."

As to the first issue – the withholding of funds for tax purposes – it would have been entirely inappropriate for the University to have done so since Ms. Klimova was not an employee of NJIT. Indeed, as also noted in the auditor's report, Ms. Klimova's "employment was terminated on 8/30/2004 due to an expired Visa [sic]."

With respect to the Commission's statement that the University was "warned" by the auditor that it "was at risk of violating the federal immigration laws," such statement could create an inference that, in fact, such laws were violated. Mr. Mauermeier notes that the draft report does not set forth any legal analysis supporting such an inference or the auditor's "warning." The auditor's report itself did not provide any rationale for its "warning." The Commission's draft report also does not note that the auditor's recommendation was only that the University should determine the proper relationship between Ms. Klimova and NJIT going forward. That is exactly what occurred.

The Commission's draft report also states that it "could find no evidence that any information related to the [Klimova] transactions was brought to the attention of the university's board of trustees." Based on the Commission's language, a reader could reasonably infer that Mr. Mauermeier was under some obligation to advise the Board of these loan transactions. The Commission presents no evidence in the excerpts provided to Mr. Mauermeier to show that such an obligation existed. Mr. Mauermeier did not consider the matter to be one which required any

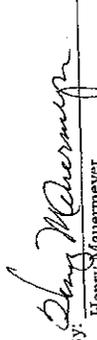
AFFIRMATION OF HENRY MAUERMEYER

Board involvement. In fact, by Board resolution in effect at that time expenditures less than \$750,000 made by the University did not require presentation to the Board, or further Board action or approval. Indeed, if every transaction involving amounts of money similar to those involved here required Board approval, the Board of Trustees would be inundated with involvement in day-to-day operating issues. As noted, the total cumulative amount (\$30,500,000) loaned to Ms. Klimova was well below the \$750,000 threshold. Clearly, under such circumstances, Board approval was not required. Further, as noted in the Commission's draft report, the Board was made aware of the existence of the internal auditor's report on this matter.

Finally, the Commission's draft report states that the auditor's report asserted that Ms. Klimova "continued to receive health benefits at NJIT's expense for five months beyond her termination date [of August 30, 2004], in violation of university policy." First, the auditor's report did not state that any violation of University policy occurred. In addition, a reasonable reader could infer, based on the Commission's language, that Mr. Mauermeyer was responsible for approving the payment of health benefits to Ms. Klimova. Such inference is wrong. Mr. Mauermeyer's responsibilities do not include monitoring or administering health benefits. Rather, those duties are those of the Vice President of Human Resources, who reports directly to the President. Thus, Mr. Mauermeyer has no knowledge of any health benefits allegedly provided to Ms. Klimova.

Thus, a more complete recitation of the facts surrounding loans to Ms. Klimova clearly demonstrates that the loans were designed to assist Ms. Klimova through financial difficulty; that enforceable promissory notes were executed with respect to each such loan; that Mr. Mauermeyer did not profit personally with respect to these loans; and that no law, rule, regulation, or University policy was violated.

I, Henry Mauermeyer, of full age, hereby affirm that the foregoing statements contained in this Response are made by me and are true to the best of my knowledge, information or belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: 
Henry Mauermeyer

Dated: August/3, 2007

From: Ritter, Beth (Corzine) [mailto: Beth_Ritter@corzine.senate.gov]
Sent: Wednesday, August 24, 2005 11:15 AM
To: Marshall, Bill
Subject: RE: Current Status

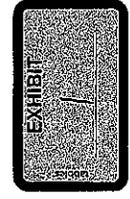
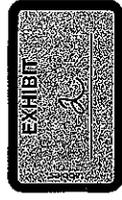
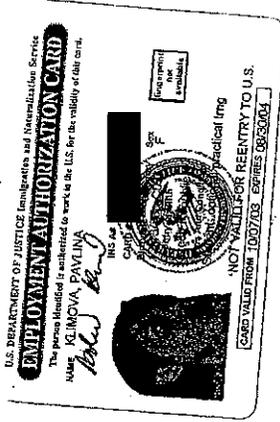
Bill-

Yes, but it is not what we had hoped it would be. According to the AAO (Administrative Appeals), they do not expect to look at this file until Nov of 06. They will not pull it and they do not have a process for expediting. Please keep her out of the guide books till January, at which point I hope this is totally resolved. If I hear anything before then, I will reach out to you. I am sorry that there was an initial denial of the first H and we were not able to take advantage of the new H filing.

-Beth

-----Original Message-----
From: Marshall, Bill [mailto: Marshall@ADM.NJTT.EDU]
Sent: Tuesday, August 23, 2005 11:57 AM
To: Ritter, Beth (Corzine)
Subject: RE: Current Status

Hope you are feeling OK any news on this yet. -B





DIVISION OF PHYSICAL EDUCATION & ATHLETICS



RECEIVED

2007 OCT -9 AM 10:53
STATE COMMISSION OF
INVESTIGATION

Richard L. McCormick, President

Via Express Mail

October 8, 2007

January 31, 2006

Ms. Pavlina Kimova
10 Hill Street Apt.5-S
Newark, NJ 07102

The Honorable Alan A. Rockoff, Executive Director
New Jersey State Commission of Investigation
28 West State Street
PO Box 045
Trenton, NJ 08625-0045

Dear Pavlina,

Re: Notice of Proposed Report
Dissemination No. 07-10-002

I would like to thank you for volunteering your time and efforts in support of the NJIT women's volleyball program, since September 30, 2004.

Dear Executive Director Rockoff:

However, at this time, being your immigration status is still unresolved; I ask that you immediately cease all participation with the NJIT women's volleyball program. This includes recruiting and team training.

I am writing in response to your letter dated October 3, 2007, concerning the State Commission of Investigation ("SCI") draft report on the New Jersey public higher education system. This response is intended to correct factual errors in the brief portions of the draft report that have been shared with me to date, and to provide additional, relevant factual information that bears directly on the matters discussed in the draft and that should also inform any conclusions drawn from an impartial and thoughtful review of these matters. Given that the portion of the draft that has been shared with me is heavily excerpted and redacted, I will do my best to respond without the additional context of the rest of the draft report. To date I have seen only small sections of the report in which my name is mentioned, and therefore reserve the right to comment on the rest of the report once it is released.

If I can be of any further assistance, please let me know.
Good luck in the future.

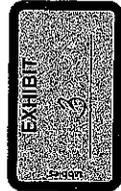
Sincerely,


Lesny Kaplan
Athletic Director

It is my understanding that you are required by statute to publish this response with the final report. Please let me know if that understanding is not correct.

As you know, I was not given the opportunity to provide my perspective to the SCI on the particular facts and circumstances in question until the very end of this long process (which has taken over two years)—after the SCI had already drafted its own factual interpretation. The University has cooperated fully with the SCI throughout the investigation and repeatedly offered to make me available to provide testimony as needed. In particular, once we became aware of the SCI's apparent interest in documents related to the work of Kavanagh Organization Planning and the employment of Karen Kavanagh, University staff repeatedly indicated my willingness to address any questions on this subject in person. While I have appreciated the opportunity to share my perspective on these issues with the SCI in recent weeks, I think the process could have been much more even-handed had I been given the opportunity to address these issues before the SCI developed and drafted its own interpretation of events.

Cc: Joel Bloom VP Academic and Student Services



UNIVERSITY HEIGHTS
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KAVANAGH ORGANIZATION PLANNING AND EMPLOYMENT OF KAREN KAVANAGH

The draft report includes a lengthy, yet selective and misleading discussion of the University's relationship with Kavanagh Organization Planning ("KOP"), and of the University's employment of Karen Kavanagh. The draft includes an inflammatory heading citing "lax governance," and seems to suggest that the SCI has included this distorted interpretation of events that took place several years ago as some sort of "case study" in order to justify recommendations regarding new or different standards for the review and approval of presidential appointments and/or professional services contracts. While the SCI is certainly entitled to present such recommendations for the future, it has provided no reason for casting aspersions on decisions in the past that were made according to established policies and procedures, and that were completely within the bounds of the law as well as established norms in higher education governance.

Ironically, in this instance the SCI has chosen to malign a substantial, strategic effort by the University to improve its administrative practices—an effort that led to demonstrable results that have had a real and lasting positive impact on University operations. The facts and evidence clearly demonstrate that the law and university policies and procedures were followed—indeed, the SCI has acknowledged as much in our recent conversations, and its draft points to no violations of law, policy, or procedure in this instance.

Furthermore, the SCI has now been provided with significant information about substantial consultation (in keeping with University policy and practice) between the University administration and its Board of Governors regarding the events under discussion. Nevertheless, the SCI relies on a combination of hindsight and new rules of its own making to assert that "events and circumstances in this instance raise substantive concerns about the fundamental integrity of the process" used by the University in pursuing what the SCI itself recognizes were appropriate purposes. The SCI blatantly ignores the good governance mechanisms that were in place, and the fact that existing policies were followed, in order to mistakenly conclude that the University's procedures were "ad hoc" and failed to provide accountability. For these reasons, this portion of the SCI report is distorted, superfluous and beside the point, and is especially unbalanced because it fails to acknowledge the valuable service provided to the University by affected individuals.

My Prior Knowledge of Rutgers' Administrative Needs

When I was offered the position as president of Rutgers, I knew—based on many years of previous personal experience at Rutgers as a faculty member, department chair and dean—that there were administrative issues that needed attention as the university's programs continued to expand and as the institution became more complex. I also knew that many administrative challenges were directly related to the chronic underfunding of the institution, which had resulted in thin administrative staffing at all levels of the organization.

Having served as the president of the University of Washington, as well as provost at the University of North Carolina at Chapel Hill, I had seen different models of administrative structures at major public research universities. When I accepted the offer to serve as president of Rutgers, one of my top, immediate priorities was to get an outside perspective on the administrative structure and systems in place at Rutgers from one or more experts whom I trusted and who were familiar with my leadership.

Karen Kavanagh's Administrative Expertise and its Value to Rutgers

At the time I was offered the Rutgers presidency, Karen Kavanagh was serving as the Vice President for Human Resources at the University of Washington. I had great respect for her work in that role, and thought that she might be able to make a valuable contribution to my administration at Rutgers. In particular, I was aware that Ms. Kavanagh had previously served as Vice President for Human Resources at the University of Medicine and Dentistry of New Jersey ("UMDNJ") and in an administrative capacity at Middlesex County College, and was a Rutgers graduate—and was thus very familiar with Rutgers and with public higher education in New Jersey. Her experience with New Jersey public higher education—and at UMDNJ in particular—was especially critical in light of the fact that discussions were actively underway with regard to a possible merger of Rutgers with UMDNJ and the New Jersey Institute of Technology at the time I accepted the offer to serve as president of Rutgers.

For these reasons, shortly after accepting the Rutgers presidency, I asked Ms. Kavanagh to consider joining my management team at Rutgers. I knew that it was critically important for a new president to have his own executive leadership team, and that I would need immediate help in looking at the administrative structure. For many reasons, Ms. Kavanagh was initially reluctant to leave the University of Washington and to move back across the country. Whether or not she decided to come to Rutgers permanently, however, I indicated to her that I would value her insights with regard to the structure of the administration.

Procedures Were Followed in Engaging KOP and Keeping Board Informed

It was at that point that Ms. Kavanagh and I discussed the possibility of engaging the services of KOP. As reflected in a letter dated November 25, 2002, I discussed the proposed consulting arrangement with Norman Samuels, Acting President of Rutgers. I also discussed the proposed arrangement with the chair of the Rutgers Board of Governors at the time, Gene O'Hara. Under Rutgers' management structure, these were clearly the appropriate individuals with whom to discuss the arrangement.

The draft SCI report notes that KOP was hired without a formal bid process, but conspicuously fails to acknowledge the legitimacy of the clearly stated rationale for the engagement—much less the fact that Rutgers is not subject to public bidding statutes as a matter of law. See *Rutgers, the State University v. Kugler*, 110 N.J. Super. 424 (Law Div. 1976), *aff'd*, 58 N.J. 113 (1971). The hiring of KOP was a classic example of a very specific and immediate need. As an incoming president, I was seeking advice and consultation from one or more people whose judgment I trusted, and who were personally familiar both with me and my leadership style and priorities and with public higher education in New Jersey. I wanted to compare Rutgers' structures with those at the University of Washington with which I (and Ms. Kavanagh) were closely familiar, and with best practices elsewhere. The University leadership clearly took careful cognizance at the time of the juxtaposition of the possible future employment of Ms. Kavanagh and the consulting work of KOP, and authorized the consulting work after explicit consultation. This juxtaposition, along with the nature and purpose of the consulting arrangement, was explicitly set forth in my November 25, 2002 letter to Norman Samuels:

Under the terms of the contract, this firm would evaluate certain central administrative support services of Rutgers, compare them with other university administrative structures, and advise me on needed changes and improvements in those services. . . .

It is my hope that following completion of this project Karen Kavanagh will agree to assume a major vice presidency at Rutgers, with overall responsibility for many of the central administrative support services to be reviewed by Organization Planning Inc. Her joining the Rutgers leadership team would be a wonderful step forward for the university. However, even if Karen chooses not to become a Rutgers vice president, the results of this project will be extremely valuable to me and the rest of the Rutgers leadership.

The KOP review proved to be a thorough, efficient, expeditious, relevant, and cost-effective evaluation of many of our administrative operations. The KOP firm was indeed uniquely qualified for this task given the experience of Ms. Kavanagh and the circumstances in New Jersey at that time. Retaining the KOP firm was discussed with appropriate individuals at Rutgers and compiled with existing university purchasing policy and applicable law. As confirmed by the SCI's own draft report on the testimony of Ms. Kavanagh, the KOP firm was retained long before Ms. Kavanagh was employed at Rutgers and even before a formal offer of employment was extended to her.

Creation of Executive Vice President for Administrative Affairs: Consultation with Board Leadership

The draft SCI report mischaracterizes the nature and degree of consultation I had with members of the Rutgers Board of Governors and other University officials with regard to the hiring of Karen Kavanagh as Executive Vice President for Administrative Affairs. The report states that I established this position after "informal" consultations with members of the Board. In fact, I consulted closely with the leadership of the Rutgers Board of Governors with regard to this administrative appointment. There was nothing casual or informal about these careful consultations. As it does today, the Board of Governors at that time took a great interest in the administrative structure of the institution. I discussed Ms. Kavanagh's qualifications for the senior management position with the full Board. Board members asked thorough and thoughtful questions about the appointment to make sure that they understood the nature of the structure and the responsibilities involved.

The draft SCI report dismisses such substantive discussions as being merely "informal" and as reflecting an absence of "any mechanism to ensure appropriate public transparency and disclosure" because the discussions are not captured in detail in formal votes or meeting minutes. Such votes and minutes typically focus on certain *pro forma* actions taken pursuant to the board's official responsibilities, however. The Board's oversight responsibilities extend far beyond official, recorded votes in open session. For example, consultation with regard to sensitive personnel issues is not conducted in public session—indeed, the Open Public Meetings Act contains an explicit exception for discussion of confidential personnel matters. See N.J.S.A. 10:4-12b(3). Among other things, this recognition of the need for confidentiality in personnel discussions protects the legitimate privacy interests of individuals (who may not yet have given notice to their current employer(s) that they are under consideration for a job at another institution, for example).

The degree of consultation would have become readily apparent, however, if the SCI had simply extended the courtesy of interviewing me or Rutgers Board of Governors leaders from that time before drafting this section of its report. In the letter dated November 25, 2002, I also discussed my desire for Ms. Kavanagh to accept a major vice presidency at Rutgers with Norman Samuels before the consulting arrangement was finalized.

I speak with members of the Rutgers Board of Governors virtually every day—sometimes more than once a day. These volunteer leaders devote extraordinary amounts of time and energy to their responsibilities as board members. As in this instance, many of my conversations with board members involve sensitive personnel or strategic matters in which I seek their candid consultation or advice. While it is certainly true that not every such conversation is subsequently captured in a formal written document, there is no such requirement to do so. Any such requirement would create a massive and unnecessary paperwork burden and would have an enormous chilling effect on the ability of institutional leaders to engage in such thoughtful and routine communications. Formal board votes represent only a small part of good governance and accountability, and the SCI account here seems to dismiss out of hand the accountability inherent in close, continuing consultation almost every day between a president and governing board.

The latest draft SCI report has added language contrasting the creation and approval of the Executive Vice President for Administrative Affairs with that of the position of Executive Vice President for Academic Affairs during that same time period, asserting that this contrast is "noteworthy" as if to suggest that there was something inappropriate about the former appointment. It is true that I appointed an individual whose work I knew and trusted to the administrative position without a search, while the academic position was filled after a national search and was formally approved by the Board of Governors. These distinctions reflect the fundamental differences between the nature of these positions and their responsibilities, however, as well as academic culture and norms. This particular portion of the SCI draft report thus seems to betray a lack of understanding on the part of the SCI with regard to these norms and roles in higher education.

Chief academic officers at major universities (such as the Executive Vice President for Academic Affairs at Rutgers) almost always hold the status of a faculty member with tenure. Under Rutgers Policy 60.5.13 on Academic Tenure, "[a]cademic tenure means that the appointee shall hold office indefinitely at the pleasure of the Board of Governors. Academic tenure can only be conferred by the Board of Governors." Thus, a resolution of the Board of Governors was necessary to confirm this appointment because the Executive Vice President for Academic Affairs must be a tenured faculty member. The same is not true for the Executive Vice President for Administrative Affairs.

Moreover, academic leadership positions (such as the Executive Vice President for Academic Affairs) at an institution like Rutgers are typically filled after national searches based on specific sorts of academic criteria. At Rutgers, for example, we always conduct national searches to fill provost and dean positions. The same is not always true, however, for non-faculty administrative appointments. It is not at all unusual for university presidents to place people with whom they are familiar and in whom they have personal confidence in high-level administrative positions to assure that the day-to-day operations of the institution are organized and carried out so as to further strategic goals and objectives. These distinctions thus reflect longstanding, legitimate aspects of university culture and governance that the SCI draft report simply fails to grasp.

Completion of KOP Work and Implementation of Recommendations

The draft SCI report recites heavily from several-year-old consultant memoranda with regard to the university's budgeting, accounting and internal control practices, and then incorrectly and inexplicably infers that the problems identified in such reports remained in place at the conclusion of Ms. Kavanagh's tenure at Rutgers. Indeed, the very purpose of getting those consultant reports was to identify and then address issues that needed attention. In fact, the University paid a great deal of attention to the consultants' reports and recommendations, and acted upon them in many

significant and concrete ways that have been shared with the SCI throughout the investigation. During the course of my presidency, the University has made significant progress with regard to these issues, and has greatly improved its administrative efficiency, accountability and transparency. See, e.g., "Continuous Improvement of Business Practices at Rutgers," September 6, 2007 (e-mail message to all Rutgers faculty and staff reaffirming the University's commitment to responsible business practices) (copy enclosed).

While I hope and expect that the full draft SCI report acknowledges and enumerates the many positive steps that have been taken to strengthen the governance and administration of Rutgers—which have been extensively discussed with the SCI throughout its investigation, and which also have been thoroughly documented (see, e.g., letter from Michael C. Quinlan to the SCI dated April 18, 2007)—the limited text shared with me to date unfortunately makes no mention of the many major, systematic improvements. In fact, the University administration and the Board of Governors (along with its Committees on Audit, Budget and Finance, Buildings and Grounds, and Executive Compensation and Nominations) have focused a great deal of attention in the past several years on best practices in budgeting, accounting and internal control practices.

For example, the draft SCI report quotes from an April 2003 KOP letter criticizing the decentralization and information flow in the internal University budgeting process. Since that observation was made, however, the University has instituted a comprehensive "All Funds Budgeting Process," a new system for increased accountability and centralized review of all unit budgets. This process has regularized previously unit-specific arrangements on issues such as indirect cost recovery and aligned resource allocations with high priority institutional strategic goals. The elimination of the position of Executive Vice President for Administrative Affairs did not affect this budget process, which is under the leadership of the Executive Vice President for Academic Affairs.

Likewise, the draft SCI report quotes extensively from a critical KOP observation about the revamping of the University's information systems operations through the establishment of the Rutgers Integrated Administrative System ("RIAS"). Although it is true that budgetary constraints have made full implementation slower than the University's leadership would have liked, the University administration has committed to the next phases of this vital project. The first phase, purchasing and accounts payable, is in place and functioning well. A second phase, involving the general ledger and financial data warehouse, is currently being implemented. The University has now also committed funding and staff for future phases including human resources/payroll, budgeting, and grants management, which will occur over the next three years.

Many other administrative areas have also been addressed since the KOP project was undertaken, including: purchasing policies and guidance; bid waiver requirements; capital construction bidding board members and university officers; travel and business expenses; political activities and awards; policies on the retention of lobbyists, charitable contributions, political activities and the use of university resources; and annual, written strategic goals by which progress is measured across the University. We are continuing our efforts on other related governance and accountability issues as we constantly strive to learn from, and take advantage of, emerging best practices and improvements in technology.

The draft SCI report also indicates that the Commission found no evidence that a "final report" was produced by KOP. The record clearly demonstrates, however, that the purpose and objectives of the consulting contract were met through extensive discussions and analysis involving both the consultants and many University administrators. The second phase of the work involved the development and implementation of a comprehensive, integrated

administrative organization plan, and inevitably overlapped with the first phase of the project as plans and ideas began to take shape. The nature of the second phase of the work involved ongoing leadership and coordination among many different administrative units. This work was accomplished through extensive interviews and meetings involving many University employees, through which processes and structures were in turn put into place to ensure that administrative changes were carried out. The results speak for themselves—the University took many specific steps to reorganize and strengthen its administrative structures and processes to improve accountability, transparency and efficiency as noted above. Some of these changes (such as the accounting and budgeting systems) have taken place in phases over time, and the University is continuing to make improvements in these areas at the present time.

Appropriate Payments Made to Karen Kavanagh with Board Consultation

The draft SCI report mentions that the University agreed to make payments to Ms. Kavanagh in lieu of the traditional pension payments for her service at Rutgers. It was agreed to make these payments because Ms. Kavanagh was not eligible for enrollment in the Alternate Benefit Program (ABP), including ABP's retirement program due to the personal circumstances of her previous employment in New Jersey and subsequent move to Washington. It is normal and appropriate for a senior administrator's contract to include the equivalent of benefits to which other employees are entitled.

The draft SCI report also states that the University paid deferred compensation to Ms. Kavanagh as she made the transition out of her position as Executive Vice President for Administrative Affairs. It was perfectly legal and appropriate to provide such compensation in recognition of the significant contributions Ms. Kavanagh had made to the University, and this arrangement was discussed with the leadership of the Rutgers Board of Governors. Further, such payments were required by the specific terms of the University's employment agreement with Ms. Kavanagh (letter dated April 21, 2003).

The SCI's latest draft report notes that this April 21, 2003 letter clarified the deferred compensation arrangement two months after her initial hiring. In fact, the April 21, 2003 letter merely spelled out in detail all circumstances of her lawful entitlement to deferred compensation in the event that she did not serve in the position for five years. In accord with standard practice, the initial appointment letter in February 2003 provided a summary of all of the various benefits of employment, including deferred compensation in this case. As is the practice at the University, a specific follow-up letter was written to clarify the deferred compensation component after it was reviewed by legal counsel so as to reflect the details of the Internal Revenue Code. The change in Ms. Kavanagh's employment status fell within the parameters set forth in the April 21, 2003 letter, and she was lawfully entitled to payment of the deferred compensation.

When Ms. Kavanagh became Executive Advisor to Senior Management, the draft SCI report fails to mention that she was given responsibility for specific projects that built upon her previous administrative work at the University, and that she provided written reports on these projects to the University administration. Again, in accordance with the governance structure discussed above, this arrangement was specifically discussed in thoughtful and thorough conversations with the leadership of the Board of Governors. The Board was not required to vote or act formally upon this arrangement, which is why this consultation was not reflected in written summaries of meetings.

transitions—are of course handled on a case-by-case basis, reflecting the particular circumstances of the transition and the nature and extent of the individual's service to the institution. It is the norm at Rutgers for the leadership of the governing board to be thoroughly consulted on a confidential basis of such circumstances in light of the sensitive nature of such discussions.

Sincerely yours,

Richard L. McCormick
Richard L. McCormick

Encl.

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Richard L. McCormick
Richard L. McCormick

Subscribed and sworn to before me on
October 3, 2007

Carol J. Kowcsol
Notary

MICHAEL CARROLL

The SCT's draft report implies that a separation agreement for Michael Carroll "revealed a personnel and payroll co-mingling between the [U]niversity and the Rutgers University Foundation" that was somehow problematic. This is not the case. It is certainly appropriate for the University to provide funds for a salary of an employee of the Foundation who functions in dual capacities, advancing the missions of both the University and the Foundation. Mr. Carroll was employed at Rutgers as Vice President for Development and Alumni Relations, and as the Executive Director of the Rutgers University Foundation. The Foundation is a separate 501(c)(3) tax-exempt organization that was created in 1973 to enhance Rutgers' mission of excellence in education, research and public service. As the University's Vice President for Development and Alumni Relations, Mr. Carroll served on the President's Cabinet and was part of the inner circle of senior administrators who actively advised the President about development and alumni issues. In his official role as the Executive Director of the Foundation, Mr. Carroll had responsibilities to the Foundation as its Chief Executive Officer. His compensation package—including his separation agreement—reflected that dual role, and he was appropriately paid from the University's regular operating budget.

The draft report's summary of Mr. Carroll's separation arrangements also fails to mention that there was close consultation with the Board of Governors leadership with regard to the circumstances of his departure, and that the payments to Mr. Carroll for unused vacation and sick leave were made in full accordance with existing university policy and applicable IRS regulations. These types of personnel situations—when high-level individuals are making

Jonathan Alger

From: Richard L. McCormick (president@rutgers.edu)
Sent: Thursday, September 06, 2007 4:31 PM
To: PRESIDENT_ALLSTAFF@RAMS.RUTGERS.EDU
Subject: Continuous Improvement of Business Practices at Rutgers

Rutgers Faculty and Staff:

As we start the new academic year, I wanted to remind you of our university's commitment to responsible business practices. Public universities and colleges receive state and federal funds in carrying out their essential missions, and thus have a particular obligation to be careful stewards of these resources. Rutgers enjoys a special degree of autonomy as a result of the 1956 Act, which fully and formally established our institution as The State University of New Jersey. This unique status, which ensures us considerable independence in serving the state's higher education needs, only underscores the critical importance of conducting responsible fiscal practices at Rutgers - a responsibility we take with the utmost seriousness.

While Rutgers' commitment to the continuous improvement of business practices is longstanding, the Board of Governors and the administration have made a focused effort in the past four years to review and strengthen university policies and procedures. Since this review began, the following policies and/or practices have been revised or implemented at Rutgers:

- * A revised purchasing policy, which provides guidance on competitive purchasing and bid limits; restricted goods and services; conflicts of interest and ethics; supplier diversity; and sustainable purchasing.
- * A revised conflicts of interest policy for members of the boards of governors and trustees and university officers, which makes clear when the possibility of a conflict exists and how to resolve the conflict.
- * A new policy on charitable contributions that explicitly prohibits the use of state-funded resources for charitable donations and provides guidance on the use of other university resources for charitable contributions.
- * A revised policy on political activities, which clarifies the university's prohibition on the use of university resources for political activities.
- * A revised policy on travel and business expenses, which also strengthens the auditing of these reimbursements.
- * The establishment of a "Reporting Financial Concerns" website (<http://www.financialconcerns.rutgers.edu>) and a confidential, independently operated hotline (1-800-445-7079), which anyone can use to report suspected misconduct in accounting and financial matters.
- * The new All Funds Budgeting Process, which established increased accountability and centralized review of all academic unit budgets.

The institution of a comprehensive, written series of annual strategic goals and areas of emphasis and effort by which progress is measured across the university. These goals are published on my website each year, along with a follow-up report on our progress. The Board of Governors evaluates my performance based on these goals and I, in turn, evaluate those who report directly to me.

The policies are posted in the University Policy Library at <http://policies.rutgers.edu>. In the coming academic year, the university intends to adopt or strengthen policies governing the purchase of alcohol for university events, the hiring of federal and state lobbyists, and the employment of current and former public officials.

Our changes have been the result of our own due diligence as well as many external influences. These include governing board-requested reviews of best practices at other

institutions, principles and practices related to financial controls from the Sarbanes-Oxley Act of 2002, and various federal and state directives and reports related to business practices and governance. In each case, Rutgers has welcomed the opportunity to cast a thorough and discerning eye on our policies and practices and to fix any problems thoughtfully and comprehensively.

Every improvement of a business practice not only strengthens the public trust but also helps Rutgers make the best use of our limited resources to prepare our students well and create new knowledge in areas critical to our state and the world. I am grateful to all those individuals who have helped us strengthen our fiscal practices, and I urge all Rutgers employees to remain vigilant in following the letter and spirit of our commitment to responsible business practices.

Richard L. McCormick
President
Rutgers, The State University of New Jersey

RECEIVED

August 10, 2007

2007 AUG 15 AM 10: 11

Mr. Alan A. Rockoff
Executive Director
State of New Jersey
Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, NJ 08625-0045

STATE COMMISSION OF INVESTIGATION

Re: Notice of Proposed Report
Dissemination No. 07-07-020

Dear Mr. Rockoff:

I am in receipt of your letter of July 27, 2007, which was originally sent to my former address in New York and hand delivered to my current address on August 8, 2007.

I have no recollection of the March 2000 correspondence to which your letter refers. Any correspondence I did prepare on behalf of the University was done under the direction of my immediate supervisor. I am particularly troubled by the e-mail for several reasons. First, I would not usually communicate to top officials via e-mail. Also, I would not refer to University Hospital as UHS. I would use UH to distinguish it from University Health System (the consortium of affiliated hospitals) known as UHS. Most important is the last sentence, which implies a familiarity with the receiver of said e-mail (written more in a peer to peer style). As a manager, I would not be on such terms with a top official. And, I would never "editorialize" comments in any correspondence I was preparing on behalf of the University. However, after so many years, it is difficult to prove or disprove the authenticity of these documents.

I also want to make clear that I was not in a position to make recommendations or decisions concerning fund-raising. If instructed to do so, I would prepare memos or make telephone calls regarding the University's decision to purchase tickets and attend such events. Thank you for the opportunity to comment to this matter.

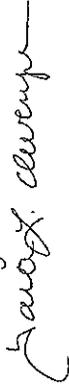
Very truly yours,

Evelyn Moore

18 Lakewood Avenue
Medford, NJ 08055

Sworn and subscribed to
before me this 10th day
of August 2007.

TARA L. CLEVELAND
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 10, 2009



RECEIVED

August 16, 2007

2007 AUG 17 PM 2: 33

State New Jersey
Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, NJ 08625-0045

STATE COMMISSION OF INVESTIGATION

Re: Circle Janitorial Supplies, Inc.
Proposed Report regarding UMDNJ

Honorable Commissioner Flicker:

Pursuant to our statutory rights, the undersigned, Eladio Quiiles, Jr., and Daniel Quiiles, officers of Circle Janitorial Supplies, Inc., ("CJS") do hereby respond to said Proposed Report referenced above. We do so under oath, and to the best of our recollection and knowledge.

While we choose to respond to certain selected issues raised by the Report, our failure to respond to other issues or asserted facts should not be interpreted as an acceptance of the accuracy of the balance of the Proposed Report.

CJS has been supplying the needs of UMDNJ for almost two decades. During this time CJS has enjoyed an excellent reputation and has delivered unparalleled service. CJS participated in the Commission's investigation in order to help enlighten the Legislature as to certain practices at UMDNJ which CJS has observed first hand feels and which it feels could be improved to the betterment of the University, its vendors and the taxpayers of the State of New Jersey.

The Proposed Report, dissemination number 07-07-011, is inaccurate in certain respects and misleading in tone. As stated in the Proposed Report, CJS holds two contracts, one for janitorial supplies and the other for industrial supplies, which were awarded through competitive bidding. That is, CJS provided UMDNJ and the taxpayers of this state the best combination of prices and services among those companies which sought to obtain the business.

Upon awarding of the bids, CJS was required to execute contracts prepared by UMDNJ. The Commission noted that UMDNJ's contracts with CJS were "written in such a way as to render the University vulnerable...." It must be noted at the outset that CJS played no part whatsoever in the drafting of said contracts. The contracts were not subject to negotiation; CJS was allowed no input; and these contracts of adhesion were an "all or nothing" proposition.

The failure of the UMDNJ-generated contracts failure to define "cost" therefore lies at the feet of UMDNJ, and not CJS. While reasonable men may differ as to which definition is the more pragmatic, clearly the one utilized by CJS--and as testified before the Commission--was well known to UMDNJ, accepted by all agents of UMDNJ, and never the subject of any criticism, critique or correction. The Proposed Report finds that the omission of a definition for this term "left UMDNJ vulnerable to uncontrollable and excessive overcharges...." UMDNJ was always able to control, through direct input and simple inquiries, pricing and the basis of the pricing, and the prices were never overcharges nor excessive. Indeed, on special orders, UMDNJ almost always directed CJS as to the price it had obtained through its own efforts and searches, and CJS obtained the special request item at that price, subject to its costs in obtaining it. By way of example, as given in the Proposed Report, two boxes of Nitrile Gloves purchased for \$20 were sold with an overhead of \$23.20. For this \$23.20, CJS had to accept the special order, generate the not insignificant paperwork documenting it, utilize its manpower to find the item, place the order, obtain the item, pay for transportation and associated personnel costs, deliver it to the requesting party and obtain the necessary authorizations and signatures to document it. It is inconceivable that CJS's costs were only \$23.20. This supposed "excessive overcharging" undoubtedly resulted in a loss to CJS, as did similar transactions.

The Proposed Report indicates that CJS "routinely bills UMDNJ for the shipping of non-stock items." The Proposed Report does not indicate that testimony before the Commission advised that CJS's definition of "cost" included all the costs associated with the product through its receipt at the CJS warehouse where it was then available for "sale." Delivery from the CJS warehouse to UMDNJ was not a chargeable item, and was not charged to UMDNJ. Where the cost of delivery was an allowable cost under the contract, CJS was advised by an official of UMDNJ to "bury it into the price," as accurately quoted in the Proposed Report. That phrase was one directed by a specifically named (in testimony) official at UMDNJ to CJS, and thereafter dutifully

instructed to CJS employees.

The Report states that CJS provided gifts and benefits to UMDNJ employees in order to "ingratiate" itself. In point of fact, under the contracts, UMDNJ was required to purchase all items through CJS. No amount of "ingratiating" conduct would alter the fact that when UMDNJ needed janitorial and industrial supplies, CJS was the required vendor. That gifts of an extraordinarily minimal value, such as a plant or fruit basket or tickets to a Yankee game, were given on rare occasion to people with whom the officials at CJS had worked for years and had come to know on a personal level is not evidence, nor even the basis for an inference, that these gifts were meant to influence. Rather, such trivial amenities reflect the normal camaraderie and collegiality between people whose relationship have evolved over a long course of time from a strictly professional one to a relationship of mutual trust, respect and affection. If the months or years that CJS's invoices were left unpaid is any test, any alleged efforts of CJS to "ingratiate" itself were an abject failure.

The Proposed Report also finds that rebate provisions contained in the contracts have been "ignored by both CJS and UMDNJ...." In point of fact, all rebates under the new contract have been paid or are in the process of being calculated. Under the prior two contracts, an equitable arrangement was made by and between the parties to offset the rebates against the damages suffered by CJS by UMDNJ's unilateral and inexplicable failure to abide by the terms of its contracts to satisfy its janitorial and industrial needs to other campuses *exclusively* through CJS. As a result, CJS lost millions of dollars of contract work and the associated profits which had been specifically agreed to and contracted by and between the parties.

The Proposed Report also incorrectly identifies a 5% rebate on the total volume of business once that business exceeds a certain threshold. Pointedly, under the initial contract, the rebate was only 3%, not 5%, thus altering dramatically the losses ascribed from the dealings of these parties.

The Proposed Report also fails to note that CJS was required to pay its vendors promptly for goods CJS obtained for UMDNJ, while UMDNJ often times did not pay its invoices to CJS--invoices which were never questioned as to amount or veracity--often until 6-24 months after presentation to UMDNJ. As such, CJS was forced to carry the burden of hundreds of thousands of dollars of unpaid invoices, with their attendant carrying interest charges, while UMDNJ and the taxpayers of the State of New Jersey enjoyed the benefits of that money staying within the State's coffers.

Amended Statement by Marilyn Barry Thomson in Response to the State of New Jersey
Commission of Investigation's Draft Report on Lobbying
Submitted September 12, 2007

After serving for more than a decade as the Washington Representative of the State of New Jersey under three Governors of that State, I have served the University of Medicine and Dentistry of New Jersey ("UMDNJ") as its principal federal relations representative for over 25 years in private practice and almost 12 years in State public service, with pride and distinction.

When I received notice from the State Commission on Investigation ("SCI") in September, 2006 that they wished to interview me, I authorized my attorney, Scott Harshbarger, Senior Counsel to the Firm of Proskauer Rose LLP, a former Massachusetts Attorney General, and former President of Common Cause where he was a nationally recognized expert on federal laws governing campaign contributions, to immediately contact the SCI and offer to make me available at any point in time and in any capacity. Indeed, we even went to great lengths to update the SCI concerning the death of my only child that same month of September, and to make the point that despite this tragedy in my life, Mr. Harshbarger reiterated that I would nevertheless make myself available. We never had a single response of any kind from the SCI to any of the several written or telephonic communications we undertook.

Then, on August 1, almost a year later, and after more than three decades of representation of the medical school system, I was quite shocked and dismayed to receive a letter from the SCI containing draft text for an upcoming report that included negatively portrayed references to my lawful participation in two fundraising events, one in 2000 and one in 2001.

Mr. Harshbarger immediately contacted the SCI and, given his recognized expertise in the federal laws governing campaign contributions, questioned the SCI staff; he was reassured that there was no allegation being made of unlawful or unethical activity on my part. Our concern is that the report would seem to leave a far different impression with others with less expertise.

I was given just 15 days to respond, with no guarantee that my response would be included in the final report. Upon inquiry of my attorney, I was further informed that I would not be given access to any of the documents referenced in this section of the report, inasmuch as they allude to me and suggest an intent or objectives to which I do not subscribe, and which I maintain are inaccurately portrayed. In fact, I never authored nor participated in the writing of those communications, and never had the opportunity to review or approve them.

In my profession, one's reputation for honesty and trustworthiness is of absolute paramount importance. My reputation has been flawless. I believe I am viewed as a very thorough and experienced professional with considerable expertise concerning federal health, education, science, and student aid funding programs, with unique experience in representing both the State of New Jersey and New Jersey health and education interests in these specific arenas for over three decades.

Labeling the relationship between CJS, whose services to UMDNJ have been unquestioned as to efficiency and honesty over the years, as "unscrupulous" is inaccurate, unwarranted and mean-spirited. The Proposed Report, when referencing an on-site birthday party for a UMDNJ employee, fails to point out that although CJS contributed to the cost (but did not pay all the costs) for the party, the party was jointly held for both Eadio Quiles and the UMDNJ employee. When referencing the dinner tab at the Bellagio Hotel in Las Vegas, the Report does not indicate that half of that tab was for Daniel Quiles and his wife.

In summary, CJS officials spent numerous hours over multiple days in pointing out deficiencies in UMDNJ's ordering and bill paying systems. The majority of the flaws noted were to the detriment of CJS requiring it to, for instance, pay for staffing the UMDNJ supply stores rather than having those costs borne by the University as required by the Contracts, or having to carry hundreds of thousands of dollars in receivables while the University spent months or years in getting around to paying those bills. When in excess of \$10,000,000.00 is being spent on supplies throughout the UMDNJ campus, it is both unfair and unreasonable to pick and choose half a dozen instances of alleged overcharges ranging from tens of dollars to a few hundred dollars, and infer that these isolated incidents are representative of a larger systemic failure.

CJS officials stand ready to continue to assist in improving the delivery of services and goods within the UMDNJ system in the most cost-effective and efficient manner possible.

CERTIFICATION IN LIEU OF OATH

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 16, 2007



EADIO QUILES, JR.

August 16, 2007



DANIEL QUILES

Accordingly, I am dismayed by references to two events over 37 years of service to the University System that are constructed in such a way as to portray and tie together events in a way that does not, in my opinion, reflect accurately and fully actual events, and certainly not my intent or activity related to these events.

The SCI has apprised my counsel that while they are not suggesting these actions were unlawful or unethical, they are being utilized to make a broader point and more general thesis concerning the influence of lobbying on public policy, funding and elected officials. If there is inappropriate political influence, my participation in these two events is not an example of it.

I do participate in the elective process, and believe one should support candidates who advocate for education, health, and student aid – my fields of expertise and interest, both personally and professionally. Accordingly, I offer no apology for my support of members of the New Jersey congressional delegation who year in and year out work very hard to advance these interests for the State of New Jersey, and indeed, are supportive of New Jersey's only statewide medical education and sciences system to advance child health, minority health, indigent care, cancer research and treatment, AIDS, TB and infection diseases, and bioterrorism, biomedical research and medical education, and federal student aid. These are the issues which I am charged to advance for the New Jersey medical school system, and on which I was especially working in 2000 and 2001.

Allow me to discuss each of the two events in question. First, in 2000, I lawfully purchased tickets to congressional/political events with personal funds and funds that are appropriately allocated for such purposes from my firm. All such purchases are allowable and fully reported, and are consistent with federal law. Inasmuch as I was not going to be able to personally come from Washington to attend the events in New Jersey, I did allow others to utilize my tickets, but there was no intent to orchestrate, organize or facilitate inappropriate lobbying activity. Such activity is not supposed to occur at such events, in any case. That simply was not my intent. I did agree that it would be valuable for the system to have a presence at events honoring individuals who have, through their leadership, advanced health, medical education and biomedical research, which are University goals. Many other New Jerseyans from the health and hospital community were also anticipated to attend.

But, to have the report suggest that this was some kind of organized plan to advance specific outcomes is not accurate; the objective was simply to enable them to have a presence, along with other New Jersey education and health interests, and to join others in an expression of appreciation for leadership in these arenas.

The report references a communication written by another person to yet another person that says I had raised concerns about the sensitivities surrounding attendance at an event. I frankly cannot at this point recall any such comment, and I cannot speak to a document that I did not author or participate in, and that I have not seen. Nor can I explain this statement made by another. But any such sensitivities I believe I would ever have expressed would have been to counsel and ensure that there were no such misunderstandings, or inappropriate activity. I had no awareness of the communications included in the Commission's report, written by others, that

seem to leave a different impression, an impression of a much more complex set of arrangements than there ever was.

I feel I am being held accountable for descriptions and references to me in documents that I just had no control over or played no role in. In one such document there is a phrase, for example, that I "know how the political game is played". I would never characterize what I do or the federal legislative process as a political game and am dismayed that it was portrayed in such a manner and am unable to explain why.

There is also much made of my sending copies of checks to the University, again, leaving an impression of something nefarious. Certainly, if there had been some more complex plan or scheme, open and accessible facsimiles of checks and so forth would not have been used. Indeed, I only -- and simply -- provided copies of my checks to UMDNJ to facilitate orderly entrance to the event as proof of ticket purchase.

With regard to the second event approximately one year later, there is discussion about the purchase of tickets totaling \$130 by a personal check of mine, and that while I could not attend, I apparently allowed others to utilize my tickets. Through records retrieved from my bank, I have confirmed that these tickets were purchased for an event for Congressman Payne. Again, there simply was no intent to utilize this event to conduct inappropriate lobbying activities.

The report further alludes to or suggests an attempt by a University official to secure approval to purchase a ticket or be reimbursed for these tickets. It is not clear. Indeed, the report could also be interpreted as an attempt by a University official to reimburse me for these tickets. The report again is not clear. What is clear is that at no point did I ever intentionally seek or plan to seek reimbursement for such voluntary contributions from the University. I would never have knowingly submitted any political event check for reimbursement.

Respectfully, I request that these two paragraphs be deleted from the SCI Report, or that I be given the opportunity to appear before you in person to correct the record -- a basic right to due process and fairness, I believe.

In the event these two alternatives for a just result are denied, I request that you substitute the Commission's draft paragraphs with the text set forth below, which is factually accurate based on my recollection and records. At a minimum, I request that this statement and the following rebuttal paragraphs be included entirely and prominently in your report.

I object to the inclusion of both paragraphs addressing my involvement with lobbying activities connected to UMDNJ, as they are a compilation of hearsay, innuendo, and characterizations that I firmly believe present an incorrect picture of my actions. The first paragraph should be deleted or replaced with the following facts and legal/ethical conclusions:

I have served as UMDNJ's federal relations advisor for more than 25 years in private practice and for more than a decade in state public service, almost 37 years in all, with pride and with a flawless reputation. Seven years ago, I contributed, in accordance with federal and state

law, \$1000 toward each of two annual fundraisers in honor of New Jersey Congresspersons. These purchases were fully disclosed and paid for by the Firm under the law and by me in compliance with the state and federal campaign and gift laws, and applicable ethical rules and regulations. Inasmuch as I would not be able to attend, I did permit others to utilize these tickets. There was no intent to utilize these contributions or these events to conduct inappropriate lobbying or political influence.

There is even more reason to totally delete the second paragraph, or at least delete the current text and include instead: In spite of a variety of unsupported innuendo seeking to characterize a \$130 expenditure, six years ago, as an attempt to obtain reimbursement for a lobbying expense by UMDNJ – and by some UMDNJ official to have it paid for by the University (unsuccessfully) – the fact is that it was a perfectly legal personal check issued for tickets to a lawful event, and that I did not ever intentionally or knowingly seek or plan to seek such reimbursement.

I respectfully submit this affidavit for the use of SCI and for the record.

under oath



Marilyn Berry Thompson

District of Columbia 55.

Subscribed and sworn before me this 1st day of September, 2007.


Notary Republic

VENETTA VERES
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 1, 2011

RECEIVED
2007 AUG 28 AM 10:20
STATE COMMISSION OF
INVESTIGATION

August 23, 2007

Mr. Alan A. Rockoff
Executive Director
State of New Jersey
Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, New Jersey 08625-0045

Re: Response to Notice of Proposed Report
Dissemination No. 07-07-029

Dear Mr. Rockoff:

I welcome the opportunity to provide my response to the concerns that have been raised by the Commission concerning an event held in my office at UMDNJ to mark my 60th birthday on January 12, 2005. Specifically, the Commission questioned whether I engaged in any conduct with UMDNJ Vendors that violated UMDNJ rules or state regulations as it relates to employee/vendor relationships. For the record, when I planned this party in 2004, I never discussed it with any University vendors; nor did I ever discuss it or request support of any kind from vendor CJS. As I stated to the Commission's investigators during an interview conducted on February 27, 2007, I retained the services of Supreme Catering and therefore any and all financial obligations for the services provided were between me as Ernestine Watson, in my private capacity, with Supreme Catering as my vendor of choice. At no time did I ever anticipate receiving services from Supreme Catering for free. When I attempted to pay James L. Porter, owner of Supreme Catering, for his services, he stated "happy birthday". Therefore, I believed that Supreme Catering had provided this service as a gift to me.

Several months later, I learned that the catering bill had been paid by vendor CJS. I was shocked and very disturbed since I had absolutely no knowledge of this transaction. Recognizing this action to be not only inappropriate, but a violation of UMDNJ rules concerning employee/vendor relationships, I immediately contacted my supervisor and apprised her of the situation. We both agreed that this situation needed to be rectified immediately. Further, I advised my supervisor that in order to rectify this situation, I would pay Supreme Catering for the full cost of the services provided. I then contacted M. James F. Porter, owner of Supreme Catering, and provided him with a check dated October 19, 2005, in the amount of \$650.00 to cover the stated costs of the event which was cashed on October 21, 2005. (See catering proposal attached).

Supreme Catering
15 Hillcrest Terrace
East Orange, New Jersey 07018
973-676-1975

Based on the Commission's most recent communication to me dated July 27, 2007, it is clear to me that questions still exist regarding the cost of my birthday cake \$142.50. My response which I trust you will find acceptable and which is absolutely truthful is that when I paid the \$650.00 to Supreme Catering, I believed that the cake was a part of the service contracted for, although a cake is not specifically listed in the catering proposal, but was discussed.

I reiterate that at all times in the planning of my birthday celebration I followed all UMDNJ rules as it relates to having events on campus. There is no way I could have known, nor envisioned that Supreme Catering would submit a bill for my event to CJS.

I trust that my letter is responsive to any and all concerns raised by the commission.

if you have any further questions, I am available to answer them.

Very truly yours,


Ernestine Watson

cc: Michael R. Clarke, Esq.
Vice President, Chief Ethics & Compliance Officer
UMDNJ

Ms. Ernestine Watson
Assistant VP-Special Vendors Program
UMDNJ
Newark, New Jersey

Proposal:

This proposal is to provide 'Buffet Style' catering service on January 12, 2005 at 08:00 AM. Set-up will be in the Special Vendors Department arca, Building #1 located on the Newark Campus.
(Anticipated Guest 200 - 225)

Color, lavender + Purple

Menu:

The menu will consist of the following breakfast foods:

Assorted Pastries
Bagels / Cream Cheese
Bacon (pork)
Fruit Cup
Grits
Rolls / Butter
Sausage (pork links)
Scrambled Eggs
Coffee, Tea, Cream, Sweeteners
Juices

In Addition:

Plastic coated utensils, plates (large & small), cups, napkins, forks, knives and spoons will be provided by Supreme Catering. (Burgundy colored)

Champagne, champagne glasses, specialty napkins, table cloths and tables will be provided by Special Vendor's Department.

Special Requirements:
Supreme Catering will need access to designated 'Buffet' area at least two
(2) hours prior to serving time (for delivery, set-up and food preparation).

Cost:
Total proposal cost is Six Hundred Fifty Dollars (\$650.00)
Supreme Catering will provide two (2) food servers.

 04-03-04
James L. Porter
973-676-1975

October 19, 2005
Mr. James L. Porter
15 Hillcrest Terrace
East Orange, New Jersey 07018

Dear Mr. Porter,

Inclosed please find a check for \$650.00 six hundred fifty dollars for the January 2005
event. Many thanks,

Ernestine Watson



