

Testimony Before The New Jersey State Assembly
Sub-Committee On Public Corruption
By Robert G. Stahl, Esq.
August 17, 2009

I would like to thank Assemblyman Jon Bramnick and the other members of the sub-committee for inviting me here today to discuss this very important topic. As a former federal prosecutor and now a criminal defense attorney representing mostly federal white-collar matters, I have seen both sides of this issue first hand for the past 20 years.

Public corruption and New Jersey, to many people, seem to go hand in hand. It is the fodder of late night television personalities, political cartoons and TV shows. Recent statements by law enforcement have served to reinforce the belief that we in New Jersey live in a culture of pervasive corruption at every level of government.

The belief to those in the State and around the country is that politics in New Jersey is corrupt. It is even more important in our current environment of media sound bites and public commentary, for this Committee to calmly and professionally look at the situation and develop systematic, long-term changes with accountable results. I commend you for examining corruption in such a setting and applaud your outreach to a variety of professionals and citizens to appear before you.

One has to wonder why, after all of the arrests and convictions in the last five years, an office holder or public official would even entertain being in a potentially unethical let alone criminal situation. One also has to wonder why many individuals, judging on past cases, have become involved in corruption for seemingly very modest amounts of money, sometimes only hundreds or a few thousand dollars.

Greed, ambition, avarice and a sense of entitlement must certainly play into the equation. I am not a criminologist, I cannot scientifically explain what motivates people, who in the vast majority of cases start out in public life with noble, civic reasons and become corrupted.

I would, however, like to discuss three issues today based on my experience:

- (1) Are additional laws or enhanced penalties needed, and if so, what types;
- (2) Is more hands-on, specific ethics training needed for public officials; and
- (3) Is law enforcement abusing the power of the media?

First, I would suggest to you that the answer to reducing corruption is not additional criminal statutes. Between state and federal law, we have ample statutes to combat political corruption. In a climate of big round-ups and financial crises, the tempting quick "fix" may be to propose additional laws or sentencing enhancements to try to demonstrate to the public that corruption will not be tolerated.

As the past several years have shown, however, the federal government HAS successfully caught, prosecuted and convicted scores of individuals caught abusing their offices and positions, from small town local councilmen, to political operatives and big city politicians. Examining those cases reveals that the individuals received sentences ranging from 2 to 10 years in federal prison -- with no parole or early release from a federal sentence.

So when an unpaid councilman from a small town is convicted of taking a \$1,000 bribe for a zoning matter, and is sentenced to 18 months in federal prison, that is a serious sentence and should act as a serious deterrent to others.

Enhancing already serious penalties for those convicted, I would suggest, would simply add to our already overcrowded prison system and warehouse non-violent criminal offenders for unnecessarily longer periods of time. The United States already warehouses more people per capita than any other country in the world.

What I would also caution against is a hasty decision to pass additional laws to force people out of office before they are convicted. Many of the arrests are based on complaints, before they are even presented to the grand jury for a vote to indict or not. Under the Constitution, even after indictment, the presumption of innocence remains until the individual pleads guilty or is convicted at trial.

As legions of cases have demonstrated, even a conviction does not always mean the person in fact committed the crime. We have seen numerous examples of people convicted for violent crimes like rape and murder who were exonerated after decades in prison by DNA and other evidence. Recently, U.S. Senator Ted Stevens from Alaska, after the federal jury convicted him, had his corruption conviction reversed based upon government misconduct.

To pass a law that requires a public officeholder to resign upon being charged is a slippery slope that will ultimately violate an individual's rights, and perhaps more importantly, the public's right to have the elected official they chose continue to represent them. If we automatically forced an accused from public office, serious questions immediately come to mind, for instance:

- Would only elected officials be covered or would it apply to appointed officials as well?
- Would the alleged crime have to be directly related to the office holder's position?
- What if it had to do only with the person's private business or private life, but still reflected upon his or her character or trustworthiness?
- Would it require simply an arrest by complaint or indictment?
- Would it require a hearing or substantial evidence?
- What if the evidence from the beginning seemed weak or questionable?

- How could we assure ourselves that false accusations were not pressed simply to remove someone from office during an election or at any other time?

As we can quickly see there would be a host of very complicated issues raised. Perhaps the better course would be to pass laws that financially punish the convicted office holders; such as complete forfeiture of pensions, medical benefits, remaining campaign funds, and repayment of any monies used from public funds for legal defense. In addition, while the pay-to-play rules have certainly helped, we need to expand those prohibitions to the local level and prohibit wheeling and other similar ways around the current regulations.

As for my second issue: training, I think it would be extremely beneficial for local and state office holders to receive both ethics and legal training. They need to clearly understand what is expected of them, where the problem areas lie and hear specifics as to the type of conduct that is ethical, unethical and illegal. While it may seem fairly straightforward that accepting a bag of cash is probably not a good idea, most situations faced by our public officials are much more subtle.

While the assembly and senate receive a degree of training in such issues, local and county office holders receive embarrassingly little to none. In the past, State Attorneys General and the U.S. Attorney have given talks at the League of Municipalities and other such gatherings about very general principles of what is legal or not. Out of a genuine concern that their words could later be used as part of a defense, these talks have been of the most general nature that only highlight the more obvious scenarios.

I would strongly suggest that what is needed is formal training using concrete examples from recent cases to emphasize the types of conduct that are ethical, approaching unethical, and those that are unethical and potentially criminal. New Jersey has over 500 municipalities with part-time mayors, council people, Boards of Adjustment, Planning Boards and the like. These individuals usually donate their time to help their local towns. They take time away from their businesses and families to work nights and weekends for their constituents and may feel a sense of entitlement.

As typical of any level of politics, money through fundraising is essential to mount a campaign and get elected. Once elected, those office holders select the individuals for the various government positions and boards that affect substantial issues in those municipalities and this system presents very real issues of conflict and patronage.

Officials face potential conflicts of interest and hidden agendas that may result in unethical or criminal situations. The person who is mayor but also a builder in town, or an attorney, or developer, or architect, or business owner is confronted with a host of ethical issues from fundraising to reviewing building permits, zoning and

parking issues and the awarding of public contract. Often, they have little first-hand experience to go on and rely on advice from complicated printed materials and their own judgment.

Office holders may look to their party or political advisors to assist them in their efforts. It is not difficult to imagine one of these advisors leading the public official in one direction based upon how things are traditionally done, stating with confidence that it is the right way. Without structured ethics training we foster breeding grounds for questionable behavior.

Imagine for a moment a situation where a candidate or official seeking re-election meets with a supporter who is also a local business person. That person contributes to the campaign to gain access to the official. The official wants the supporter's money and vote. If the supporter/businessman says something like, "I hope you remember me once you're elected" and the official says "of course I will" or "of course I will, I remember all those who supported me." Is there something wrong? Unethical? Illegal? Does it depend on what the official meant or how the supporter meant it? If the contributor is a developer that has or will have projects in town, does he think he just curried favor with the potential mayor, does he think his projects will get special attention? Is anything wrong if the official is elected and thereafter meets with the developer to discuss the project or supports it? Is it simply an appearance of impropriety or something more?

Very quickly we can see how difficult these issues become. Where is the line in this situation? Is the line clear or subject to interpretation or differing opinions? If we develop training programs for these dedicated public officials, we have taken steps to alert them to the potential trouble spots and what to look out for when fundraising, meeting with the public, discussion with a local developer, and other similar situations. New Jersey needs to provide uniform detailed instruction and training to our office holders.

To be forewarned is to be forearmed. I suggest that educating our officials with specific, relevant ethical and legal hypotheticals and scenarios will serve to help eliminate the grey area and foster integrity.

The last issue I would like to mention in my prepared remarks is the power of the media and the potential for abuse. The government has a very powerful tool with its ability to hold press conferences announcing "round-ups, corruption sweeps and other arrests." There are legitimate and civic-minded reasons to announce arrests in press conferences and press releases. However, in the scramble for prime TV and print coverage, prosecutors and law enforcement agents announce charges in dramatic sound bites and catch phrases that highlight the sensational while the accused right to the presumption of innocence is lost on the reader and listeners. ,

When officials make broad sweeping statements about the ingrained, "culture of corruption" in New Jersey, and, "the most corrupt state in the country," the public

starts to think that any politician accused of corruption must be guilty. As former New Jersey Attorney General John Farmer wrote this weekend, “we now have the presumption of guilt, rather than innocence.”

The importance of this cannot be over estimated. Prosecutors, as licensed attorneys, are accountable to the Rules of Professional Conduct when issuing statements about an alleged crime. But even with these restrictions, the rules are routinely flouted. Law enforcement agents have no hard and fast rules about what they can say about an accused. The media attention by law enforcement is passed off as their desire to educate the public and act as deterrence for those thinking of committing a future crime. And while there are legitimate reasons for press conferences and public announcement, we must respect the legal difference between the duty to inform the public of the allegation and the temptation of making broad based dramatic claims that make for good press but violate the rights of the accused.

In conclusion, if we don't educate and train, manage public officials' sense of entitlement and foster integrity in a systematic fashion, we will never have the infrastructure to support sustainable transparent, honest government.

I thank the Committee for its time and interest in hearing from a broad range of individuals on this extremely important topic for all New Jersey citizens. By listening to a range of experts and citizens, the Committee will have before it insights into the problem, its causes and hopefully some very concrete solutions.