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Approved Minutes of the Third Meeting of the Governor's Ethics and Campaign Finance Reform Task Force

Governor's Task Force on Ethics Reform

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On June 28 and 29, 2006, the third meeting of the Governor’s Ethics and Campaign Finance Reform Task Force, hereinafter referred to as the “task force,” was held in Room 322 of the State Capitol in Santa Fe, New Mexico.

PRESENT

Gov. Garrey Carruthers, Dean, NMSU College of Business/Co-Chair
Suellyn Scarnechcia, Dean, UNM School of Law/Co-Chair
Barbara Brazil, President, New Mexico First
Matt Brix, Executive Director, Common Cause
Doug Brown, NM State Treasurer
Maralyn Budke, Public Member
John Carey, President & CEO, Association of Commerce & Industry
Dede Feldman, NM State Senator
Mary Graña, Public Member
Gay Kernan, NM State Senator
W. Ken Martinez, NM State Representative
Kathy McCoy, NM State Representative
Andrew Montgomery, Public Member
Jim Noel, Exec. Director, NM Judicial Standards Commission
Leonard Sanchez, CPA, Moss-Adams + Neff, L.L.P.
Zachary Shandler, NM Assistant Attorney General
Ron Solimon, President & CEO, Indian Pueblo Cultural Center
Hilary Tompkins, Chief Counsel, Office of the Governor
Brad Winter, Albuquerque City Councilor

ABSENT

Stuart Bluestone, NM Chief Deputy Attorney General
Stewart Udall, Former U.S. Secretary of the Interior

STAFF

Justin Miller, Associate General Counsel, Office of the Governor
Olivia Padilla-Jackson, Director, New Mexico State Board of Finance
Amy Camille Chavez, Deputy Director, New Mexico State Board of Finance
Catherine Monroe, New Mexico State Board of Finance
Tomás Martinez, New Mexico State Board of Finance
Committee Business

Governor Carruthers and Dean Scarnecchia called the meeting to order at approximately 9:00 a.m. The minutes from the last meeting of the task force on May 30, 2006 were approved with a minor correction. The task force members introduced themselves.

Governmental Conduct Discussion

Justin Miller, assistant general counsel, Office of the Governor, introduced the task force members to David Freel, executive director of the Ohio Ethics Commission. The Ohio Ethics Commission is the lead authority that interprets and applies Ohio’s ethics laws to issues and public policy concerns involving the conduct of public officials and employees at state and local levels.

Mr. Freel described the composition of Ohio Ethics Commission, which is comprised of six members appointed by the Governor. The appointees are subject to Senate confirmation and serve six-year terms. An equal number of Democratic and Republican members serve on the commission. The members represent prominent academic, legal, private and non-profit professionals from throughout Ohio. The commission chooses its own chair and vice-chair. The staff is also appointed by the commission.

There are certain restrictions upon members of the commission to prevent ethical problems arising within the commission. For instance, a member of the commission is prohibited from holding a public office or seeking a public office. A person who might be required to make any disclosure filing with the commission is also prohibited from serving on the commission.

Mr. Freel briefly described the history of the Ohio Ethics Commission, which was founded thirty-two years ago. Mr. Freel suggested that the task force can learn much from the rich history of the commission. He further suggested that the task force could benefit from study of the independence of the Ohio Ethics Commission structure.

Currently, any action by the Ohio Ethics Commission requires four votes. Mr. Freel explained that the commission must sometimes conduct ethical investigations of the authority that appointed its members. For example, the commission has investigated and recommended criminal prosecution of the Ohio governor. The commission has also been required to refer a former Ohio governor’s chief of staff for criminal prosecution. Despite the fact that ethical problems arise occasionally, Mr. Freel stated his belief that most officials generally follow the Ohio ethics laws and often perform beyond the requirements of those laws.
Mr. Freel suggested that in considering whether to suggest creation of an independent ethics commission in New Mexico, the task force should take into account certain key traits of independent ethics oversight boards. Mr. Freel identified the first of those key traits as clear jurisdiction for independent ethics and oversight boards. He stated that clear statutory powers and duties should be outlined for such a board in law. In addition, he suggested that the board should have independent appointees with clear qualifications. He further suggested that such a board should be comprised of ethical professionals from academic, former government, private and non-profit sectors.

Mr. Freel suggested that another key trait of an independent ethics oversight might include the composition of a clear and concise statement prohibiting unethical conduct and stating which persons are governed by statutory ethical standards. An ethics commission should follow clear procedures in investigation or prosecution of ethical violations. He added that the commission should also have distinct advisory, educational and disclosure authority. These powers would enable the commission to identify conflicts of interest to the public and occasionally protect against challenges of conflict. Mr. Freel stated that the practice of shared information would increase transparency in the commission’s process and build public confidence in the process of ethics oversight.

Mr. Freel finally stated that consensus of players should exist within an independent ethics commission and among all other stakeholders. He suggested that Ohio has achieved such consensus by maintaining a bipartisan commission. Other states have appointed members with an independent political affiliation. Ultimately, Mr. Freel emphasized the importance of consensus building among all stakeholders. He warned that failure to build consensus could result in failure to achieve the goal of ethics reform.

Mr. Freel mentioned that the task force might consider referring several specific sources of information during the course of its work. The sources listed included the Council on Governmental Ethics Law, Council of State Governments and the National Conference of State Legislatures. He also referred to a study conducted by New Jersey Chief Justice Paula Francese and Justice O’Hearne, which contains a study of ten principles of ethics construction.

Justin Miller provided a presentation to the task force on the topic of governmental conduct. Mr. Miller stated that governmental conduct involves issues pertaining to gifts, nepotism, lobbying and conduct of government officials.

According to Mr. Miller, New Mexico law generally does not prohibit gifts or require disclosure of the receipt of gifts. However, the Governmental Conduct Act prohibits legislators, public officers or employees from requesting or receiving anything of value in exchange for performance of an official act. Some states have adopted laws that prohibit the receipt of any gifts, with limited exceptions. Other states have restricted gifts from certain donors, such as lobbyists. A majority of states have adopted bright line tests that prohibit the donation of gifts over a specified dollar amount. Federal law states that it is unlawful to obtain property from another through force, violence, fear or under color of official right.
Mr. Miller identified issues or options that the task force might discuss with respect to ethical issues involving gifts. Those issues and options include:

- a possible ban on gifts to all public officials and employees;
- required disclosure of gifts;
- prohibition of gifts over a specified dollar value;
- regulation of gifts from prohibited individuals; and
- conformance of New Mexico law to criminal standards.

Mr. Miller next discussed the issue of nepotism. New Mexico law states that elected or appointed officials may not hire as clerks, deputies or assistants relatives within the third degree. Mr. Miller noted that other states also treat nepotism as a general ethical consideration in policy, while twenty-one states regulate nepotism by statute. Four states regulate nepotism only through state hiring policies.

Issues or options identified by Mr. Miller as those that the task force might discuss with respect to ethical issues involving nepotism included:

- expansion of the scope of public officials subject to New Mexico laws prohibiting nepotism;
- expanded list of positions to which relatives of public officials are prohibited from appointment; and
- formation of goals to hire based on merit rather than personal relationships.

Mr. Miller provided an overview of New Mexico laws that affect lobbying. In New Mexico, lobbyists are required to pay a $25 annual fee per employer and to file a registration statement. Lobbyists and lobbyist employers must further file a report of expenditures and political contributions. Like New Mexico, all other states regulate lobbyists, though fees in those states are typically higher than those in New Mexico. Since 2003, approximately half of all states have amended their lobbying laws. Provisions for electronic filing, increased detail in expenditure reports and prohibitions against lobbyists becoming government officials are among the most common reforms within the past few years. The following issues and options relating to lobbying were identified for possible consideration by the task force:

- requirement of electronic reporting by lobbyists;
- prohibition of funneling contributions through lobbyists;
- stricter reporting requirements;
- increased registration fees;
- increased penalties; and
- Secretary of State investigation of a representative percentage of lobbyist reports.

Finally, Mr. Miller summarized problems that might lead to unethical conduct by government officials and employees. One problem includes the conduct of official acts for private gain. In New Mexico, official acts for private financial gain are
prohibited. Other states also universally prohibit such conduct. Federal rules further prohibit the use of public office for personal private gain, endorsement of private interests or private gain of friends and relatives.

Mr. Miller identified the use of confidential information for private gain as another problem that might lead to unethical conduct by governmental officials and employees. In New Mexico, all public employees are prohibited from using confidential information for private gain and a similar rule is federally enforced.

Misuse of government property was also identified as a potential ethical issue. New Mexico law indirectly prohibits the misuse of government property by stating that public employees shall use resources only to advance the public interest and not to obtain personal benefits. On the other hand, federal rules directly prohibit misuse of governmental property.

Like misuse of governmental property, misuse of official time might be considered as a potential ethical problem. New Mexico law does not address this issue. However, the law might be interpreted to include time as a resource for which employees are required to use solely advancement the public interest. Federal rules require employees to use official time in an honest effort to perform official duties.

Mr. Miller finally identified conflicts of interest as an issue that might affect ethical conduct of government officials and employees. The New Mexico Governmental Conduct Act states that full disclosure of real or potential conflicts of interest shall be a guiding principle. To further combat conflicts of interest, state law requires candidates, elected officials and appointed officials to file a financial disclosure statement. The Procurement Code also requires prospective contractors to disclose certain campaign contributions to public officials. For possible consideration by the task force, Mr. Miller the following options and issues to combat conflicts of interest:

- amendment of the Governmental Conduct Act to apply to more than just public officers and employees;
- consolidation of existing law and codification of a single law on conflicts of interest;
- periodic training in ethics law and policy; and
- enactment of new laws to prohibit unlawful sue of state property and time.

The task force members discussed the possibility of the creation in New Mexico of an ethics commission similar to the Ohio Ethics Commission and potential separation of powers issues that might arise. The members also discussed entities that might be capable of lobbyist oversight. Some members asked Mr. Freel questions regarding funding and staffing needs of the Ohio Ethics Commission. Other members asked Mr. Freel about the percentage of ethical complaints against public officials initiated by businesses and about the effectiveness of strict whistle-blower laws. Educational methods and investigation methods used by the Ohio Ethics Commission were also discussed by the members and by Mr. Freel.
Dean Suellen Scarnecchia opened the discussion to comment from the public regarding the issue of governmental conduct. None of the audience members present commented on the issue.

**Campaign Finance Discussion**

Matt Brix explained that there are five major topics that might be studied with respect to campaign finance reform. Those topics include campaign spending, campaign donations, campaign reporting, public campaign funding and third party expenditures and out-of-state funding.

Mr. Brix provided the task force with a report of existing laws related to campaign finance. First, he summarized existing New Mexico laws pertaining to campaign spending. He explained that the Campaign Reporting Act makes it a petty misdemeanor for a political party to expend funds for or against a candidate or candidates of the same party during a primary campaign. On the other hand, lawful expenditures of political committee funds include the following: expenditures for campaigns; expenditures related to legislative duties; donations to the general fund; donations to tax exempt organizations; expenditures to eliminate campaign debt; donations to a political party; donations to another candidate; and disbursements to return unspent funds to contributors.

Mr. Brix identified options and best practices that might be explored with respect to campaign spending. He first stated that the task force might discuss the possibility of additional oversight and enforcement of campaign expenditure laws. He suggested that the task force might further explore the possibility of training elected officials and candidates about what constitutes lawful campaign expenditures.

Next, Mr. Brix summarized existing state laws pertaining to campaign donations. He stated that New Mexico is among the least restrictive of the states with respect to regulation of campaign donations. For example, New Mexico does not limit individual, political action committee, state, corporate or union contributions to political committees.

Despite that New Mexico laws governing campaign donations are generally unrestricted, some campaign donations are prohibited. A legislator, a candidate for the state legislature and the governor are prohibited from soliciting campaign donations during a regular or special legislative session. It is also unlawful for a regulatory officer, employee or candidate for a regulatory office to solicit donations from an entity regulated by that office.

Mr. Brix identified options and best practices that might be studied as means of improving campaign donation practices in New Mexico. He first stated that the task force might study the potential limitation of total annual amounts that donors and political action committees would be permitted to provide to particular candidates. He further suggested that the task force might consider the possibility of limitation of
campaign contributions from corporations and unions and of limitation of all cash contributions.

Mr. Brix indicated that the Campaign Reporting Act governs state campaign reporting. He explained that the act specifies who must report fundraising and expenditure activities; the identity of the filing officer; the schedule of annual reporting; required information for each report; regularly scheduled random audits by the filing officer; exclusion of certain candidates from filing; and limits for anonymous contributions.

According to Mr. Brix, the Campaign Reporting Act also governs disclosures required with respect to campaigns. For instance, a candidate seeking statewide office that receives or spends $2,500 or more must file an annual campaign disclosure report. A candidate seeking a non-statewide office who receives and spends $1,000 or more must also file an annual campaign disclosure report. Mr. Brix listed several other disclosure requirements contained in the Campaign Reporting Act. Options for campaign reporting reform identified by Mr. Brix included requirements for more frequent campaign reporting, electronic filing requirements and additional information reporting requirements. Due to a lack of a discernable structure in the Campaign Reporting Act, Mr. Brix also indicated that several provisions of the act might be revisited and improved.

Next, Mr. Brix discussed existing state laws relating to public campaign finance. He explained that the Voter Action Act currently provides public campaign funding for Public Regulation Commission races. Candidates seeking to qualify for public funding are required to gather qualifying contributions from registered voters to equal .25 percent of the number of votes cast for all candidates for governor in the candidate’s PRC district in the last general election. Once this requirement is met and verified by the Secretary of State, the candidate is certified. The candidate, however, must agree to spend no more than the candidate receives from the public fund and to seek contributions from no other source. If a certified candidate is opposed by a candidate who has not opted into the voluntary system, the certified candidate can receive additional funding if the non-certified candidate raises or spends more than the amount allocated to the certified candidate. Mr. Brix suggested that the task force might consider expanding the PRC “clean elections” system to additional offices.

Mr. Brix discussed state law governing third-party expenditures and out-of-state funding. He mentioned that although third-party expenditures are not specifically referenced in existing New Mexico statutes, existing law makes reference to political action committees. Mr. Brix thus suggested that the task force might consider study of the definition of third-party expenditures. He also suggested that the task force might study the possibility of implementing reporting requirements for third party expenditures.

Mr. Brix introduced to the task force Todd Lang, executive director of the Arizona Citizens Clean Elections Commission, the public agency that oversees the Arizona Clean Elections Law. The Clean Elections Law was enacted in 1998 by citizen
initiative, and permits candidates to run publicly financed campaigns if they comply with the law’s specific requirements.

Mr. Lang discussed the success of the clean elections process in Arizona. He stated that candidate participation and the number of contested races has risen since the Clean Elections Law became effective. Donations to fund candidates within the clean elections system have risen. While 23,000 donations were received by clean elections candidates in 2000, 36,000 were received by candidates in 2002 and 42,000 were received in 2004. Mr. Lang indicated that this new funding method has influenced increasing numbers of candidates to run for office under the Clean Elections Law. Citizens who previously did not have the funding to run for office found new opportunities through the Clean Elections Law to raise funds. Mr. Lang stated that during the last general election in Arizona, eleven statewide officer holders ran as “clean elections candidates.”

Mr. Lang further attributed increased voter turnout to the Clean Elections Law. He also stated that the Clean Elections Law has spurred increased public confidence in elected officers. The voters have expressed through polls their belief that the Clean Elections Law improved the elections process. Implicit approval of the Clean Elections Law might be indicated by the election of several top elected officials who ran for office as “clean elections candidates”. The present governor of Arizona ran as such a candidate.

Another indication of the law’s success, according to Mr. Lang, is the fact that the voters rejected a referendum on the ballot to repeal the law. Mr. Lang stated that like the voters, elected office holders have attested to the success of the Clean Elections Law. He stated that elected officials have indicated that they have more time to perform their public duties and to meet with voters because it is not necessary to spend as much time raising campaign funds.

The Arizona clean elections process is funded through an income tax return check off provision, private contributions and a ten percent surcharge on civil penalties. Any surplus generated by these funds at the end of a certain period reverts to the state’s general fund.

Mr. Lang explained that the Arizona Clean Elections Commission is composed of five members. Two of those members are Republican, two are Democrat and one is from another political party. No more than two members can reside in any one county. The commission makes rules, debates the meaning of the Clean Elections Law, contributes to civic understanding of the law and ensures that campaign funds raised under the law are spent properly. Oversight of candidate compliance with the Clean Elections Law contribution limits, disclosure requirements and matching fund distribution are among the most important duties of the commission. The commission has subpoena power to aid with those duties. Mr. Lang discussed in detail some of the specific provisions that must be enforced by the commission. He also discussed recent legal challenges brought against the commission on the basis of compelled speech.
Mr. Lang opened up his presentation to questions from task force members. Task force members asked questions about the requirements that might favor incumbent and non-incumbent candidates under the clean elections system. They also inquired about matching fund triggers and electronic filing requirements. The task force members additionally discussed the possibility of increased participation in elections by fringe candidates, who might be encouraged to run for office due to the availability of funding pursuant to the Clean Elections Law. Other task force members asked about the effectiveness of the Clean Elections Law and about indicators of its success, including increased voter turnout, increased minority candidate participation and overall improvement of state government.

Governor Carruthers opened the discussion to comment from the public. A public participant, Rick Lass, stated his belief that clean elections are effective and expressed his hope that a clean elections law would be enacted in New Mexico.

**Thursday, June 29**

**Legislative Compensation Discussion**

Governor Carruthers expressed his support for legislative compensation as a reform option. He provided the task force with examples of other states that provide legislative compensation. He pointed out that several states that geographically surround New Mexico provide some form of compensation to their legislators. In Colorado, legislators are paid salaries of $30,000 per year in addition to per diem rates. In Oklahoma, legislators receive salaries of $38,400 per year plus per diem rates. Texas legislators receive an annual salary of $7,200 in addition to per diem rates. Also in addition to per diem rates, Arizona legislators receive annual salaries of $24,000 per year. Governor Carruthers noted that New Mexico is the only one of the surrounding states that does not pay legislative salaries. However, New Mexico legislators receive a per diem rate of $146 per day, which is tied to the federal rate and the constitution.

Governor Carruthers provided the task force members with a National Conference of Legislatures analysis of the time devoted by full and part-time legislatures to legislative sessions. According to the analysis, legislators in larger states such as California, Michigan, New York and Pennsylvania devote approximately 80 percent of their time annually to legislative sessions and other legislative work. Legislators in states such as Alabama, Tennessee and Washington devote approximately 70 percent of their time to such activity. Legislators in other states such as North Dakota, South Dakota, Utah and Wyoming devote approximately 54 percent of their time to legislative work. Many of the states that fall into that category are citizen-based legislatures.

Governor Carruthers suggested that the task force consider reform options to provide legislative salaries. Another option might include a “bright line” rule to prohibit gifts exceeding a certain dollar amount of value. Governor Carruthers suggested that the task force members might also consider exploration of the possibility of restricting the
use of campaign funds to campaign activity only. As a result, the use of campaign funds for legislative initiatives might be prohibited. Legislative activity could be supported by an expense allowance provided in conjunction with an annual salary. Governor Carruthers finally suggested that longer legislative sessions might also be considered.

The task force members discussed whether legislative compensation would provide a fair means of compensation to legislators, since current citizen legislators must often take time away from their businesses and careers to serve during legislative sessions. They talked about whether conflicts of interest might occur less frequently if legislative salaries are offered. The task force members also discussed whether legislative compensation would attract additional candidates to run for legislative seats.

Dean Scarnecchia opened the discussion to public comment. One public audience member, Terry Riley, spoke in favor of legislative compensation. He also spoke in favor of longer legislative sessions. Eliot Gould spoke about the financial issues that candidates must confront when they run for office. He mentioned that the campaign revenues raised are not deductible for tax purposes and that campaign expenses are often high. Thus, he stated that many candidates are forced to face ethical questions because of financial shortfalls.

Prevention and Enforcement

Zachary Shandler, assistant attorney general, provided the task force with an overview of the existing laws in New Mexico that affect prevention and enforcement of ethics rules. He explained that New Mexico has a mix of ethical canons and statutes that include the Governmental Conduct Act, Procurement Code and Financial Disclosure Act. The judicial branch and legislative branches have their own codes of conduct. Executive branch agencies likewise develop and maintain agency specific codes of conduct.

Mr. Schandler stated that education of public employees and officers contributes to efforts to prevent ethics violations. There are also several entities that participate in enforcing ethics rules for different branches of government and different stakeholders. He listed entities that provide education and enforcement to the different branches and stakeholders in the table on the following page.
ETHICS EDUCATION AND ENFORCEMENT

<table>
<thead>
<tr>
<th>Govt. Branch/Stakeholder</th>
<th>Education</th>
<th>Enforcement</th>
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<tbody>
<tr>
<td>Executive Branch</td>
<td>Secretary of State</td>
<td>• Personnel&lt;br&gt;• State Auditor&lt;br&gt;• State Board of Finance&lt;br&gt;• Legislative Committees&lt;br&gt;• Attorney General&lt;br&gt;• District Attorney</td>
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<tr>
<td>Legislative Branch</td>
<td>Legislative Council Service</td>
<td>Legislative Committees</td>
</tr>
<tr>
<td>Judicial Branch</td>
<td>Institute of Public Law</td>
<td>Judicial Standards Commission</td>
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<tr>
<td>Local Governments</td>
<td>Self-educating</td>
<td>Self-enforcing</td>
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<tr>
<td>Contractors</td>
<td>None</td>
<td>General Services Department</td>
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<tr>
<td>Candidates</td>
<td>Secretary of State</td>
<td>• District Attorney&lt;br&gt;• Attorney General</td>
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<tr>
<td>Lobbyists</td>
<td>Secretary of State</td>
<td>• District Attorney&lt;br&gt;• Attorney General</td>
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Jim Noel suggested that since there are several rules that apply to different agencies and different branches, a uniform code of ethics for all government employees should be compiled. Mr. Noel provided the task force with a presentation on prevention and enforcement of ethical behavior in New Mexico. He first stated that a National Press Club report ranked New Mexico thirty-ninth of the fifty states in reported cases of federal corruption convictions. The report additionally indicated that New Mexico has a rate of federal 1.50 convictions per 100,000 residents. New Mexico ranked forty-seventh with respect to the relative strength of its legal structure to protect against corruption and to promote integrity.

Based upon research of practices in other states, Mr. Noel identified some best practices that the task force might study during the course of its work. He first stated that the task force might consider study of the establishment of independent ethics commissions. Independent commissions are generally composed of members that have no connections to the branches of government or individuals that they oversee. Such commissions might have responsibility for conducting routine ethics audits, providing training programs and advisory opinions. He noted that different commissions might need to be established for different branches of government, because different standards might govern different branches. For example, the standards that govern judicial conduct might be different than those that govern the legislative branch. He also stated that the ethics commissions might need to coordinate their efforts with other enforcement
agencies to avoid duplication of effort. Finally, he stated that such commissions should be adequately funded and provided adequate technological resources.

In addition to the establishment of independent ethics commissions, Mr. Noel suggested that the task force study the establishment of a uniform ethics code that would apply to all state employees. He indicated that consolidation of the state’s scattered ethics laws into a single act might aid in establishing the uniform ethics code.

Mr. Noel suggested that the task force might further study the possible establishment of a business ethics guide that is binding on all those who do business with the state. Other suggested methods of improving prevention and enforcement include adoption of general post-employment restrictions for government employees, strengthening of anti-nepotism laws and imposition of ethics laws on administration transition teams and banning public servant’s acceptance of gifts, except under certain limited circumstances. Mr. Noel finally suggested that the state should take action to ensure that there is no undue influence by former state officials and employees on state law and policy developments by adopting rigorous post-employment restrictions and effective follow-up procedures.

Task force members discussed the best practices with respect to prevention and enforcement in other states. They also discussed distinctions that might be made between ethical and criminal conduct. Other issues discussed included the need to reduce complexity in ethical requirements and the possibility of permitting independent commissions to conduct random audits of governmental conduct. Separation of powers issues with respect to independent commissions were also debated.

Governor Carruthers permitted public audience members to provide input to the task force. Eliott Gould inquired about the manner in which investigations by independent ethics commissions would be disclosed to the investigated parties. Dean Scarneccchia noted that although there are a variety of methods that such commissions use, notice rules often provide that investigated parties must be informed of investigative actions that are taken with respect to their conduct.

**Announcement of Next Task Force Meeting and Adjournment**

Governor Carruthers announced that the next meeting of the Governor’s Ethics and Campaign Finance Reform Task Force will occur on July 26 at the University of New Mexico School of Law at 9:00 a.m. The meeting adjourned at approximately 12:30 p.m.