

REPORT SUBMITTED BY
THE COMMISSION ON CONCERNS RAISED AT THE 2004 NAJIT ANNUAL MEETING

THE COMMISSION, to which was referred the investigation of certain concerns raised at the 2004 Annual Meeting, having inquired and considered all substantive information presented to it, respectfully reports as follows:

HISTORY OF THE COMMISSION

On Saturday, May 22, 2004, NAJIT held its annual general membership meeting in Denver, Colorado. At that time, member Sandro Tomasi raised concerns regarding the alleged misappropriation or misallocation of approximately \$25,000 by unnamed members of a prior Board of Directors and/or others. According to the minutes of that meeting, Mr. Tomasi made several motions: one to allow non-NAJIT members to serve on NAJIT committees, which was defeated, and another that the Executive Power be removed from the Publications Committee Chair. The latter was not voted on, as there was no quorum present. The meeting was temporarily suspended to allow a quorum to be reconstituted, and that having been done, a motion was made to conduct a vote for the incoming Board of Directors. Discussion of Mr. Tomasi's second motion was not renewed. Prior to adjournment, however, member Sophia Leon moved to create a commission to review the concerns that had been raised at the meeting. This motion passed.

Pursuant to that motion, a Commission on Concerns Raised at the 2004 Annual Meeting was appointed, composed of NAJIT members Rosemary W. Dann, Esq., Chair; Jeck-Jenard Navarrete, Esq. and Fausto Sabatino. On June 18, 2004, the Commission members received their official charge from the President of the Board: "to investigate the concerns raised at the NAJIT 2004 Annual Meeting and report your findings to the Board of Directors for publication to the membership." The Commission was provided with copies of e-mail correspondence between Mr. Tomasi and the Board that had been exchanged prior to the Annual Meeting.

This correspondence indicates that Mr. Tomasi had attempted to set up a meeting with the Board for the Thursday prior to the conference. Such a meeting did not take place, as the Board requested that Mr. Tomasi provide them with substantive allegations in writing, as required by the Bylaws, and Mr. Tomasi declined to do so, citing difficulties in getting the material printed; he instead suggesting an e-mail format, which was not acceptable to the Board. He was advised that he could raise his concerns before the general membership, which he then did.

As a preliminary matter, this Commission determined that for purposes of its inquiry, e-mail was not only acceptable, but would probably expedite matters. Hereafter, any reference to writing means correspondence by e-mail, unless otherwise indicated.

On July 6, 2004, Rosemary Dann, as Chair of the Commission, wrote to Mr. Tomasi, requesting that he set forth in writing his allegations, in detail and with specificity, and that he include all concerns at once, rather than in piecemeal fashion. He was given a deadline of July 20, 2004 to do so.

Mr. Tomasi replied on July 11, 2004, raising additional concerns regarding the composition and scope of the Commission. Specifically, he objected to the number of members of the Commission, stating that the Bylaws require four or more members on an ad hoc committee; he inquired into the independence of the Commission (i.e. power to act on its own without Board intervention); whether there was an independent budget for the Commission, suggesting the sum of \$25,000 for the hiring of professional investigators and lawyers; and whether the Commission could execute disciplinary measures.

On July 22, 2004, after discussion, the Commission wrote to the Board and Executive Director, stating Mr. Tomasi's concerns, and indicating its understanding of the situation, requesting further clarification if the Board disagreed with the Commission's interpretation of the Bylaws, Robert's Rules of Order and the scope of the charge to the Commission. The Commission's understanding was as follows:

1. that it was not technically a committee, but that it would welcome an additional member, as the Board saw fit;
2. that it was to investigate and report its findings within sixty days if possible, indicating whether or not the concerns were founded, and that any further action would be taken either by the Board or the membership, as appropriate;
3. that, as two of the Commission are lawyers, it saw no need for additional help in reviewing documents, statutes or bylaws provided to it, for purposes of the report; and
4. that the motion to create the Commission mentioned only investigation of the concerns, and that anything beyond that, including discipline, was beyond the purview of the Commission.

The Commission requested that the Board indicate whether its understanding was correct, and the Chair of the Board responded affirmatively on July 23, 2004. The Board's response was communicated to Mr. Tomasi on July 24, 2004, and he was again instructed to state his concerns with specificity, granting him an extension of time until August 7, 2004.

On July 25, 2004, Mr. Tomasi again raised the issue of the number of members of the Commission, citing Chapter 50 of Robert's Rules of Order, relating to "special committees", and requesting that the Commission be deemed a "committee". He stated that if the Board voted to disregard the Bylaws and Robert's Rules of Order, he wanted a copy of the record before he would proceed, and further indicated that he would be on vacation from July 26 through August 6, 2004, and would be unable to provide any documents until after his return.

After discussion of the pertinent parts of the Bylaws and Robert's Rules, on August 6, 2004, the Commission advised the Board that, while neither provided for "commissions" per se, it was advisable to appoint an additional member to the Commission to avoid "even the appearance of impropriety". Mr. Tomasi was advised of the Board's intention to appoint a fourth member on August 18, 2004.

On August 21, 2004, Mr. Tomasi replied, indicating that he presumed that the Commission would now be deemed a “committee”. He also stated that he was not proceeding under Article 12 of the Bylaws and preferred to handle the matter via the telephone. He stated:

“I have between 100-150 pages of e-mails that I feel the commission would benefit from in its investigation. I can send that information out to you and discuss the bulk of it via conference call. I do not have time to read it and make a formal report from it.”

On August 18, 2004, Laura Garcia Hein, Esq. was appointed by the Chair of the Board of Directors, and Mr. Tomasi was so advised by the Commission on September 2, 2004. At that time he was also advised that the Commission had no intention of conducting the inquiry via telephone and that he was not being asked to summarize 100-150 pages of material. Rather he was “required to succinctly set forth the nature of [his] complaint (who, what, when, where and how)” and to indicate specifically what New York laws had been broken (in his opinion.) He was given another extension of the deadline to September 9, 2004 to comply, or the Commission “would be forced to conclude that [his] complaints are without basis, and such will be reflected in our report.”

On September 6, 2004, Mr. Tomasi telephoned the Chair of the Commission. Following the call, she e-mailed him a memorandum, recapitulating the conversation. Mr. Tomasi was advised that the Commission intended to proceed in an impartial fashion and to be bound by Robert’s Rules, even if it was not designated a “committee”; that the allegations were to be submitted in writing, at the very least in outline form; and that there would be no further extensions of time. He was further advised that he was not required to cite statute numbers, but at the very least, the nature of the alleged crime he believed had been committed, and that if he felt that litigation was in order, he was free to pursue that avenue.

On September 7, 2004, Mr. Tomasi stated that, “it is now my understanding that the commission will adhere to the rules and bylaws of our association as a ‘committee’ since there is no guidance for ‘commissions’ therein. If this is not so, please advise before the September 9th deadline.”

On September 8, 2004, Mr. Tomasi requested a confirmation of his understanding:

“...before I send the material you requested. Since this commission received advise [sic] that involved the chair of the board and the executive director which was not adherent to the NAJIT bylaws and Roberts Rules of Oder [sic] with regard to the size and scope of this commission. I believe that it will be more clear to the commission as to why I am so reticent to continue without knowing that our bylaws and the mentioned rules will be adhered to once you have received my initial and subsequent materials.”

The Chair responded two hours later, advising Mr. Tomasi that the Commission had no authority to deem itself a “committee” but that it would adhere to the Bylaws and Robert’s Rules in conducting the inquiry.

On September 9, 2004, Mr. Tomasi sent a two-page letter, which, among other things, reiterated that he was not proceeding under Article 12 by filing a complaint; rather, he was just informing

the association of wrongdoing, as he had at the Annual Meeting, and because the Chair had stated on July 6, 2004 that she believed that the Commission was not bound by the requirement of “hard copies” that he had been afforded an opportunity to “voice” [sic] his concerns, “and that was the way [he] wanted and planned to communicate the issues from the very beginning.” He stated that on September 6, 2004, he had agreed to send the Commission the basic information in writing, but that he needed more than three days, as he had never put the issues in writing and needed to review many documents. He again requested a ruling from the Board of Directors as to whether the Commission was a committee under the Bylaws and Robert’s Rules.

On September 9, 2004, the Chair wrote to the Board requesting an expedited clarification of the issue. The Executive Director responded that “the Chair of the Board of Directors has ruled that the body appointed by the Board of Directors is a Commission and not a Committee.” This was immediately communicated to Mr. Tomasi. At 11:36 p.m. ET, the Chair received the first of six e-mails, in which Mr. Tomasi stated his concerns.

The Commission members reviewed the information and held a conference call on September 19, 2004. The issues raised in the numerous e-mails, which sometimes overlapped, were distilled down to six areas of inquiry:

1. The Tape Translation and Transcription Project and Manual
2. NJITCE
3. Issues concerning the 2002 Eastern Regional Conference, revolving around the question of whether the proceeds, of approximately \$25,000, could be disbursed to NAJIT – which holds a 501(c)(6) status, or only to SSTI, -- which holds a 501(c)(3) status, and the part that Dagoberto Orrantia played in the matter.
4. Issues concerning the 2003 Annual conference, specifically the Transcription/Translation Seminar.
5. The “financial loophole” relating to free travel and lodging for selected individual presenters at NAJIT meetings.
6. Generally, how appointments are made to committees and projects and how presenters for workshops are chosen.

On September 27, 2004, a detailed draft of information requested of the Board, by the Commission, was circulated among the Commission members. It was subsequently sent on September 29, 2004, without additions, deletions or corrections. At the same time the aforementioned draft was circulating, a letter was sent to Mr. Tomasi, requesting further information from him. This included:

1. Mr. Tomasi’s e-mail to Sylvia Zetterstrand (which she allegedly referenced in a six-page essay);
2. the allegedly misleading message Ms. Zetterstrand sent to the membership to join the TTT Subcommittee, not in accordance with the Board’s instructions, as well as allegedly misrepresented instructions;
3. the alleged misrepresentation by Ann Macfarlane to the people involved in the TTT “to proceed as indicated by the chair of the Publications Committee” as well as alleged misrepresentations to the membership regarding the project.

On September 29, 2004, the Commission requested information from the Board regarding the 2002 Eastern Regional Conference, alleged advice given to the organizer of the 2004 Eastern Regional Conference, issues on tape transcription and translation, and the selection method for the appointment of project leaders.

Also on September 29, 2004, the Commission received a request from the Executive Director to caution Mr. Tomasi about contacting Board members directly by ex parte communications. The Chair advised Mr. Tomasi that such contact was inappropriate and impermissible. On September 30, 2004, Mr. Tomasi apologized for the contact, but cited as his reason for having done so, his unanswered request for a procedural ruling as to whether the Commission was a committee.

On November 3 and 5, 2004, Mr. Tomasi requested a formal response to his e-mail of September 30, 2004 regarding the procedural issue of whether the Commission was a committee under the Bylaws and Robert's Rules, and requested that he be included in any discussions of the same. This request was forwarded to the Executive Director for a response from the Board.

On November 5, 2004, the Executive Director responded that the Board had ruled on September 9, 2004, that this was a commission, not a committee, but that it would be governed by the Bylaws and by Robert's Rules of Order, the parliamentary authority of the organization.

On November 8, 2004, Mr. Tomasi inquired again if the Board had received his contentions on the procedural matter in question. After discussing the matter, the Commission, through the Chair, responded on November 16, 2004, indicating that it intended to be bound by the Bylaws and Robert's Rules and that if Mr. Tomasi believed that any New York state laws had been broken, he was to identify said laws to the Commission.

On November 29, 2004, Mr. Tomasi contacted individual members of the Board of Directors regarding an Article 12 Complaint with respect to the Commission's method of conducting the inquiry, and against the Executive Director for not removing herself from working with the Commission, as she was a subject of the investigation. Said message was forwarded to the Commission by the Chair of the Board of Directors and by several individual Directors.

On December 1, 2004, the Commission advised Mr. Tomasi that, having consciously bypassed Article 12 throughout the inquiry, he would not now be allowed to rely on it in order to contact the Board of Directors directly. On December 2, 2004, Mr. Tomasi responded, stating that he did not wish to pursue the entire inquiry through Article 12, but wished to limit himself to perceived procedural mistakes made by the Commission. He requested that the Commission cite the Bylaws and rules that would preclude him from pursuing an Article 12 action with respect to the procedural complaints.

On January 25, 2005, the Commission wrote to Mr. Tomasi, indicating that if he believed that the Commission had made procedural errors pursuant to the Bylaws or Robert's Rules, that he should cite pertinent sections. He was asked to focus on the substantive issues and to provide specific information to support his allegations, including records of his correspondence with the individuals he was accusing of wrongdoing, and the resume he submitted in support of his

application to be considered for the TTT Project. He was given a deadline of February 8, 2005 to submit these items.

On January 27, 2005, Mr. Tomasi indicated that it would be “fiducially irresponsible” for him to abandon the procedural mistakes and unless the Commission provided him with authority that banned him from pursuing an Article 12 complaint against the Commission, he had no alternative but to report these actions and all other complaints to the membership at the annual meeting. Furthermore, he would not continue assisting in the Commission’s investigation until all his issues were resolved.

On January 31, 2005, Mr. Tomasi was advised that his information would be accepted through February 8, 2005. As that date has passed and no information has been forthcoming, the Commission has based its conclusions and recommendations solely on material received from the Board and other sources contacted independently.

On May 9, 2005, Mr. Tomasi telephoned the Chair of the Commission to inquire who, besides the Commission members, had been informed of the individuals whose names he had “given up”. He was informed that the Board had been advised of his allegations, and presumably the individuals themselves were aware, as the Board had requested information from them. The Chair also indicated that the report would be published to the membership, to which Mr. Tomasi replied, “OK. Good.”

Over the course of the inquiry, the Commission reviewed information supplied to it by the Board and by other individuals. The information was analyzed and discussed, a consensus was reached as to findings and conclusions, and members were assigned writing and reviewing tasks. The substance of the analyses was then reviewed by the members of the Commission and the Chair edited the final version of the report. This was reviewed and approved by Commission members prior to its submission to the Board of Directors.

DISCUSSION AND ANALYSIS OF ISSUES

I. 2002 EASTERN REGIONAL CONFERENCE

Mr. Tomasi alleged that Dagoberto Orrantia, a member of the 2002 Eastern Regional Conference (ERC) Committee and husband of the SSTI President at the time, misled NAJIT by stating that John Jay College (JJC) would only allow a 501(c) 3 organization to hold a conference on its premises and receive proceeds thereof, when in reality the college had no such requirement. Based on Mr. Orrantia's information, NAJIT made a decision to allow the proceeds of this conference, approximately \$25,000, to go directly to SSTI rather than to NAJIT, which is a 501(c) (6) organization. The two main issues which can be inferred from these allegations are discussed below.

1. Whether Dagoberto Orrantia provided misleading information to NAJIT

During the months prior to the ERC, which took place at John Jay College on February 1 and 2, 2002, there was a series of communications between members of the organizing committee. During the organizational stages of the Conference, Mr. Orrantia acted as the link between JJC's administration and the Conference Committee. In his "Report on the Regional Conference of the NAJIT" (March 1, 2002), Mr. Dagoberto Orrantia not only explained his perspective on this issue but also added copies of relevant documentation.

Mr. Orrantia stated that, after being contacted by Mr. Tomasi, he agreed to collaborate as an organizer and to participate as a speaker in the ERC. As such, he offered to help secure the site for the conference by having the Foreign Language Department at JJC, where he worked, act as co-sponsor of the event. On page two of said report, in his statement of facts, Mr. Orrantia underlines his personal condition for his participation and his assistance to get rooms at John Jay College: "***I had one condition: that SSTI would co-sponsor it [the ERC] and that the proceeds for the conference be assigned to SSTI.***" (Highlight has been added).

A few paragraphs later, on the same page, Mr. Orrantia once more stressed that it was his condition by stating: "... *the fact that both the Association and the Society are not-for-profit organizations does not alter the fact that **my condition** for holding the meeting at John Jay College was that SSTI would receive all proceeds from the conference.*" (Highlight has been added).

From reading Mr. Orrantia's Report to SSTI and NAJIT Board Members, there is no doubt that it was *he*, and not JJC, who required that SSTI be the co-sponsor of the 2002 ERC. He justified his condition because he knew of the financial commitment that SSTI, acting as the educational arm of NAJIT, had made to Measurement Inc. However, the language that he used in the written documents received by this Commission is ambiguous, and as such, leaves room for misunderstanding.

Attachment A of said document shows an e-mail from Mr. Orrantia to Mr. Tomasi, dated 9/23/01, wherein he states: "***The regional conference under discussion can be held at my college on the condition that it be co-sponsored by a non-profit org, which NAJIT is not, and the FLL***

department. ***If this arrangement is not satisfactory, then it is not feasible, and alternate space will have to (be) found.***” (Highlights have been added). Unlike the wording in his Report to the two Boards, Mr. Orrantia does not specify that it is *his* condition. Instead, because the sentence is worded as an impersonal condition, immediately preceded by the mention of “college” and followed by another impersonal sentence, it can logically be inferred that this was the college’s, and not Mr. Orrantia’s, condition. This attachment shows an e-mail dated 9/25/01 from Ms. Arlene Stock [NAJIT’s Executive Director at that time] to Mr. Orrantia and Mr. Tomasi, which confirms the ambiguity of the information. She states: “[...] *NAJIT is a not-for-profit under Section 501 (c) (6) of the Internal Revenue Service Code, SSTI is a not-for-profit under Section 501 (c) (3) of the Internal Revenue Service Code. My understanding [...] is that John Jay is making this offer with the understanding that they are entering into a relationship with a 501 (c) (3) organization.*” (Highlights have been added).

The information provided on January 18, 2005 by Ms. Linda Vonlumm of JJC to the Commission, validates Mr. Tomasi’s claim that the College rents its facilities to for-profit as well as not-for-profit organizations. Not-for-profits are given pro-bono considerations such as waiver of rental fees for the use of the facilities if the events take place within college hours. Furthermore, until she received this Commission’s inquiries, Ms. Vonlumm was unaware of the existence of different categories of not-for-profits. JJC only uses the aforementioned categories; whether the not-for-profit is a charitable organization under 501 (c) (3), as is SSTI, or a business and professional organization under 501 (c) (6), as NAJIT, does not affect either the possibility of renting space at the college or the pro bono considerations.

In conclusion, the Commission on Concerns finds that because of the ambiguity in explaining the conditions in the written communications, these were susceptible to misconstruction. None of the documents exchanged during the preparation stages of the conference provided to this Commission unequivocally states that the need to have a 501(c) (3) organization, i.e. SSTI and not NAJIT, co-sponsoring the event was Mr. Dagoberto Orrantia’s personal requirement and not JJC’s. Moreover, the distinction between the two categories of not-for profit organizations did not come as a requirement from JJC’s administration, as the person in charge was oblivious to such difference.

Whether Mr. Orrantia is responsible of “misleading” the committee, however, is a matter that this Commission cannot resolve by relying solely on the facts and information made available to it. The concept of “misleading” implies a calculated action to lead someone into error. The Commission is not in a position to determine, from the relevant information, if the intentional element of “calculated” was present in Mr. Orrantia’s actions at the time or not.

2. Whether there was an inappropriate distribution of proceeds from the 2003 ERC

As a result of these events, SSTI received the proceeds of the 2002 ERC. According to SSTI’s Profit and Loss Statement their total reported income for Regional Conferences was \$20,789.55 in the year 2002. The Commission found no evidence of express opposition to this distribution of funds from either NAJIT’s Board or SSTI’s Board. The Commission found, however, that there are contractual bases for NAJIT’s acquiescence to this proposal, as follows:

During the May 21-22, 2000 NAJIT Board of Directors meeting in Miami, FL, NAJIT pledged “a one-time contribution to SSTI of \$50,000 for the purpose of funding the development of a credentialing exam for judicial interpreters.” The conditions of the pledge were delineated by the NAJIT Board of Directors in their meeting on February 6, 2001: SSTI was to destine that amount exclusively to pay off MI and not to cover SSTI’s operating expenses. In July of 2000, SSTI entered into an agreement with Measurement Inc., which would develop such exam. The signing of this contract was approved by NAJIT Board of Directors during their May 2001 meeting in Chicago, IL.

A few months after this last meeting the 2002 ERC Committee started its exchange regarding the allocation of proceeds. In the analysis of the previous matter, the Commission on Concerns outlined Mr. Orrantia’s reasons for allotting the funds to SSTI. In light of the information provided, this Commission has found that Mr. Orrantia was not alone in his considerations.

In a November 21, 2001 e-mail sent by Mr. Sandro Tomasi to Cristina Castro and other NAJIT Board members, Mr. Tomasi writes: “[...] As far as how that gets distributed, that is not up to me nor do I fully understand this area – but I will offer my novice opinion. Based on the fact that SSTI is carrying out a NAJIT assignment (creating the association’s very own system of certifying court interpreters and translators) that a 1996 survey demonstrates that over 60% of the NAJIT membership approved; based on the fact that the ERC is the only one of its kind in years (to be counted as icing on the NAJIT budget cake); and based on the fact that there is still an outstanding balance with Measurement Incorporated; **I recommend that all monies, after expenses, go to SSTI, to be used by SSTI strictly to reduce the outstanding balance with MI. I leave this matter between you and the rest of the Board.**” (Highlights have been added).

Mr. Tomasi, aware of the pre-existing financial commitment, expressly recommended to the Board that SSTI be the recipient of the 2002 ERC proceeds, particularly due to the extraordinary nature of the ERC.

The aforementioned SSTI Profit and Loss Statement for January to December 2002, shows a payment of \$20,000 to Measurement Incorporated.

NAJIT made a pledge to SSTI, in other words, the association made a binding agreement, a contract, to pay \$50,000 to SSTI, which would, in turn, use that money to pay the outstanding balance to MI for the development of the certification exam.

Subsequent Board of Directors’ meetings have also entertained motions aimed at the fulfillment of this contractual obligation. On the September 17, 2002 meeting, the Board agreed to destine three-quarters of the forthcoming Northwestern and Eastern Regional Conferences to SSTI as partial payment of the pledge. The Commission on Concerns has been informed that the \$50,000 has now been paid in full.

In conclusion, in light of the documents and information provided, the Commission on Concerns finds that there are no grounds to support the allegations of inappropriate distribution of the 2002 ERC proceeds. NAJIT had a contractual obligation to fulfill with SSTI and a decision was made

and carried out, to destine the proceeds of the 2002 ERC to SSTI, which, in turn, made a payment that same year to reduce the outstanding balance with Measurement Inc.

II. FINANCIAL GUIDELINES

Mr. Tomasi alleged that [Executive Director] “Ann Macfarlane gave erroneous advise [sic] to the organizer of the 2004 Eastern Regional Conference by stating that the NAJIT Financial Guidelines allowed the association to pay selected speaker’s [sic] travel and lodging expenses to the regional conference in Miami. It was pointed out to her that there was no such provision in the guidelines, but she refused to recognize this fact.”

Mr. Tomasi provided no substantive material to support this claim. The Board provided a copy of the Financial Guidelines approved by the Board of Directors on December 5, 2002, which was in effect at the time the allegedly erroneous advice was given, and copies of correspondence between the Executive Director and Mr. Tomasi.

Initially, Mr. Tomasi inquired as to how Paragraph 10 of the Guidelines, titled “Guest Presenters” applied to him. He was advised that “guest” means someone not a member of NAJIT. A question then arose regarding a distinction between “educational” and “regional” conferences. Paragraphs 11 and 12 refer to “Regional Conferences”, and state that organizers and presenters are entitled to register without payment of any fee, but must cover their own travel, lodging and meal costs. Paragraphs 15-17 fall under the title of “Annual Meeting and Educational Conference”. These indicate that presenters at the pre-conference seminars receive an honorarium and may be reimbursed for travel expenses.

On October 13, 2003, Mr. Tomasi e-mailed the Executive Director, who responded by e-mail on October 15, 2003. From what the Commission can glean from this correspondence, Mr. Tomasi was concerned that Margaret Redd, the Organizer of the 2004 Eastern Regional Conference wished to have speakers’ expenses paid even though Paragraph 11 of the Guidelines clearly did not provide for this. However, Paragraph 12 does provide that “[u]nusual expenditures for regional conferences require the approval of the NAJIT board.” The Commission assumes that the Executive Director was relying on that section when she replied that “[w]ith regard to the forthcoming forensics conference, the board realized that it would probably be necessary to pay some expenses for speakers because of the specialized nature of this event, and the fact that not all speakers could be located in the same city as the conference. In general, of course, it is desirable to draw speakers from the area of the regional conference, as you so excellently have done with the events you have organized. This one is a little bit different, however.”

This Commission has no direct knowledge of whether the NAJIT Board approved such expenditures in advance, but assuming that it did so, Ms. Macfarlane’s advice would not have been erroneous. Rather, it was a reflection of an interpretation by the Board, based on an ambiguity in Paragraph 12. It is unclear to the Commission if this is the “loophole” to which Mr. Tomasi refers in his allegations.

The Commission has not been advised whether or not the Financial Guidelines were subsequently amended. If they have not been, the Commission recommends that the ambiguity raised by Mr. Tomasi's allegation, as well as a clarification of whether a regional conference is also an educational conference, be addressed. It further recommends that in the future, all prior approvals for unusual expenditures or deviations from the Guidelines be approved by the Board of Directors, in writing, to avoid similar problems in this area.

III. MR. TOMASI'S SERVICE ON THE EDUCATION COMMITTEE

There has been no factual support provided for Mr. Tomasi's allegation that in or around April, 2003, Ms. Macfarlane "threw a temper tantrum" and threatened to have him removed as Chair of the Education Committee. The Board indicated that Mr. Tomasi was appointed Chair of the Education Committee on October 24, 2002 and his appointment was to continue until the end of the 2004 Annual Conference. The Commission is not aware of his removal from that position. To the best of the Commission's knowledge, Mr. Tomasi remained in that position until his term of appointment naturally expired. Whether Ms. Macfarlane's dealings with Mr. Tomasi can be characterized as "throwing a temper tantrum" is a matter of speculation in which the Commission will not indulge.

The Executive Director summarized several telephone conversations in which Mr. Tomasi allegedly stated that he had found a loophole which would permit him to receive reimbursement for his expenses: he would resign from NAJIT and thus become a "guest" speaker. The Executive Director informed him that the Board could distinguish between a real guest and a member who was attempting to receive reimbursement by failing to renew his membership, and would not allow reimbursement in such a case. Moreover, under instruction from the Chair of the Board, she informed Mr. Tomasi that if he failed to renew his membership, under the Bylaws, he would be ineligible to hold the position of Chair of the Education Committee. It is unfortunate that Mr. Tomasi viewed this as a threat. The Commission does not view it as such.

At the 2004 Annual Meeting, Mr. Tomasi moved to amend the Bylaws to allow non-NAJIT members to serve on NAJIT committees. The proposed amendment was defeated. The Commission notes this, but takes no position on whether the proposed amendment was a continuation of Mr. Tomasi's attempt to address the loophole in the Guidelines.

IV. ISSUES REGARDING TAPE TRANSCRIPTION AND TRANSLATION PROJECT

Mr. Tomasi raised a number of issues regarding the tape transcription and translation project, as well as other high-profile projects. These will be treated seriatim.

1. Presenter Favoritism by the 2003 Conference Committee and Intentional Non-Delivery of Mr. Tomasi's Tape Transcription and Translation Abstract

- a. Mr. Tomasi alleged favoritism by the 2003 Conference Committee in the selection of presenters.

The 2003 Conference Committee elected to hold three sessions to address the topic of tape transcription and translation. In the first session, Janis Palma presented her paper “Transcribing Tapes: Where Are All the Experts?” In the second session, Joaquin Font spoke on “The Case for Forensic Transcription-Translation Guidelines”. The third session was a working session wherein Janis Palma and Joaquin Font were joined by Sylvia Zetterstrand to work toward the preparation of NAJIT’s forensic guidelines.

The investigation of Mr. Tomasi’s non-specific allegation has led the Commission to review presenters’ credentials and the subject matter of the presentations on Tape Transcription and Translation (TTT) at said conference. This investigation presumed that Mr. Tomasi’s allegations relate to the selection of speakers presenting on TTT issues. Therefore the investigation focused on indicia of the unfair favoring of one person at the expense of another by the 2003 Conference Committee. After careful review of the speakers’ credentials and topics, the Commission finds that three highly qualified individuals presented on well-worthwhile topics, and does not find signs of unfair practice by the 2003 Conference Committee.

- b. Mr. Tomasi alleged that his abstract proposal sent to NAJIT Headquarters for a presentation on forensic transcription was not forwarded to the selection committee. Therefore his proposal was not part of the presentation pool for the 2003 NAJIT Conference.

Mr. Tomasi’s statement to this Commission alleged that Ann Macfarlane did not forward to the Selection Committee one of two proposals he had submitted for said conference. He attributed Ms. Macfarlane’s alleged actions as having resulted from a public confrontation in which he had expressed concerns related to a statement regarding the 2002 Eastern Regional Conference. When contacted by this Commission, Ms. Macfarlane acknowledged being the recipient of all abstracts for the Annual Conference since taking the post of Executive Director in July 2002, and stated that she had forward every one of them to the appropriate Conference Committee since that time.

Based on the information provided and its findings herein above, the Commission sees no grounds to further this investigation to confirm receipt of Mr. Tomasi’s abstract on TTT by the 2003 Conference Committee, nor does it deem necessary an inquiry into the selection process and criteria used in 2003. The Commission finds this allegation to be untrue based on Ms. Macfarlane’s acknowledgment of services rendered and no substantive evidence to the contrary.

2. Irregularities in the Tape Transcription and Translation (TTT) Project

- a. Mr. Tomasi alleged that the “strict and not fully-enforced criteria to join the TTT Subcommittee” were never applied with respect to the person overseeing the project, Sylvia Zetterstrand.

During the 2003 Annual Meeting and Educational Conference, the NAJIT membership welcomed the idea of drafting guidelines for Tape Transcription and Translation. On

August 27, 2003, NAJIT's Board of Directors resolved to direct Ms. Zetterstrand, as Chair of the Publications Committee, to appoint the TTT Subcommittee and to use her best judgment regarding membership and direction for the new subcommittee. In the charging document the Board of Directors gave decision authority to Ms. Zetterstrand to draw upon the expertise and advice of the subcommittee in order to determine the TTT publication's research method, topics, stages of consultation, editing and review, final form and title of the publication. The NAJIT Board of Directors reserved the right to review the final phase of the TTT Project, otherwise giving ample authority to Ms. Zetterstrand, as Committee Chair, to perform the specific tasks of the TTT Subcommittee.

The September 30, 2003 announcement for the NAJIT TTT Project publicly stated Ms. Zetterstrand's charge by the Board of Directors. It listed the criteria for selection of the subcommittee members and requested that interested parties forward their credentials and other relevant information to the Publications Committee Chair for subcommittee membership consideration. This open invitation set a deadline of October 24, 2003. Interest and questions by a number of individuals resulted in the issuance of the October 22, 2003 Announcement Addendum for the NAJIT Tape Transcription and Translation Project. That announcement extended the deadline to November 24, 2003 and provided further information on goals of the project, list of criteria, pre-selection of participants, number of subcommittee members, sources to be used. It again called for submission of credentials to participate in the TTT Project.

Ms. Zetterstrand provided information to this Commission regarding the TTT Project history, the status of the TTT Project, and the three main criteria used for membership in the TTT Project: extensive experience working in TTT, being a certified interpreter, and the ability to work with others as part of a team. She reported reaching a final selection of project participants in early January 2004. Ms. Zetterstrand further informed this Commission that Mr. Tomasi first conveyed his interest in the official TTT Project after the stated deadline for submission of credentials for Project membership. She reported that although the deadline had passed, she had extended to Mr. Tomasi the opportunity to submit his credentials for proper consideration. She further reported never receiving Mr. Tomasi's submission. Submissions by all applicants, including those chosen, are in a file void of Mr. Tomasi's submission. Ms. Zetterstrand recalled conveying to Mr. Tomasi her opinion of him as a great consultant due to his knowledge about TTT. The only communication from Mr. Tomasi was his reply to an e-mail of Ms. Zetterstrand's in March 2004.

This Commission does not find irregularities related to the TTT Project; it does not find the selection criteria to be unduly strict; nor does it find these criteria applicable to Ms. Zetterstrand as head of the TTT Project.

- b. Mr. Tomasi alleged a unilateral change in the nature of the Tape Transcription/Translation Project by Ms. Zetterstrand without consulting the then-existing working group, and accused Ms. Zetterstrand of "gaining control of the project by communicating privately with NAJIT's Executive Director, Ann Macfarlane".

Based on all pertinent information before the Committee on Concerns we find Ms. Zetterstrand's actions congruent to her directives as spelled out in the August 27, 2003 resolution taken by the NAJIT Board of Directors. This Commission finds no evidence of the alleged unilateral change in the nature of the TTT Project. It does find evidence that Ms. Zetterstrand has consulted and drawn upon the expertise of the working group as directed by the NAJIT Board of Directors. There is also evidence that she has drawn upon the expertise of others outside the working group. This Commission does not find evidence of the alleged nefarious gain of control by Ms. Zetterstrand, as her actions are a direct result of her charge by the NAJIT Board of Directors.

- c. Mr. Tomasi alleged that Ms. Zetterstrand withheld his "cutting-edge ideas" from the informational packet, distributed to those who signed-up for the TTT Project.

In response to this Commission's inquiry, Ms. Zetterstrand reported sending the informational packet to the three individuals who signed up. She described the materials as: Janis Palma's TTT manual and a handful of messages from Janis, Joaquin Font, Margaret Redd and Sandro Tomasi about things that had been discussed in the informal pre-project era; some materials were forwarded e-mails. Ms. Zetterstrand acknowledged her willingness to pass on Mr. Tomasi's ideas on "unintelligible [UI]" issues had they been in writing, she checked with TTT Project participants and reported that no substantial information for inclusion in the informational packet to be submitted to the working group had been received from Mr. Tomasi.

In his March 30, 2004 e-mail to Ms. Zetterstrand, Mr. Tomasi expressed his views on the "unintelligible [UI]" issue. He stated that her analysis focused strictly on "hypothetical unintelligibles" not demonstrating its relation to the intelligible portions that are the actual focus of a forensic transcript. In the same e-mail he assured the TTT working group of the prevalence of his ideas and challenged the membership of the then-TTT working group to what seemed to be transcript duel, in order to prove wrong the group's opinion regarding his "approximated unintelligibles". He invited them to do so in a public forum allowing him the opportunity to rebut the group's assertions and make comments on the group's proposed transcript.

This Commission finds no basis to support Mr. Tomasi's allegation regarding Ms. Zetterstrand having withheld his ideas from inclusion in the informational packet distributed to those who signed-up for the TTT Project.

- d. Mr. Tomasi asserted that Ms. Zetterstrand incorporated into her own six-page essay on the topic, his "cutting-edge ideas" on measured unintelligible [UI] portions on a forensic transcript, merely referencing Mr. Tomasi's original e-mail communication. Mr. Tomasi asserted that as a result of Ms. Zetterstrand's alleged actions, she appeared to the other members of the then unofficial project to be more of an expert than he on the topic.

Ms. Zetterstrand has informed the Commission of a casual conversation among individuals who happen to have expertise and interest in TTT issues. This informal meeting led Ms. Zetterstrand to write a six-page essay, entitled "Tape Transcription, Word-Count Issue", which begins with an acknowledgment of Mr. Tomasi's contribution. She suggests further distinctions to be made in the unintelligible [UI] portions of a transcript as she lays out her linguistic insight and position on the [UI] issue. In the "practical considerations" section of her essay she thanks Mr. Tomasi for his suggestion that both parties at trial stipulate to a transcript beforehand and she provides her own insight on this topic. This essay concludes by stating the need for further information before reaching a solid recommendation about the [UI] portions and that she welcomes further comments.

After careful review of the aforementioned essay, this Commission finds the essay to be a working document that encourages further discussion and research. The intent of the essay is clear. It gives direction to the working group and presents the author's ideas which draw upon the expertise at hand and comply with the charging document issued by the NAJIT Board of Directors on August 27, 2003. This Commission finds nothing to support an appearance of greater expertise of Ms. Zetterstrand to Mr. Tomasi's detriment.

- e. Mr. Tomasi claimed that Ms. Zetterstrand wrote a misleading message to the NAJIT membership to join the Subcommittee, not in accordance with what the Board of Directors had instructed.

The above-referenced message is the September 30, 2003 Announcement for the TTT Project asking for submission of credentials by those qualified and interested. For the benefit of those interested, the October 22, 2003 Announcement Addendum provided further information on the TTT Project. It once again called upon those interested in participating in the TTT Project to submit their credentials.

The Commission does not find these communications to be misleading and finds them in accordance with Ms. Zetterstrand's authority and discretion, as directed by the NAJIT Board of Directors in its charging document.

3. Lack of Open Solicitation

- a. Mr. Tomasi criticized the NAJIT Board of Directors for its practice of granting appointments without an open solicitation process for relevant projects, including the TTT Project, the Puerto Rico Training Project and the NJITCE Project.

The NAJIT Board of Directors acknowledged a practice of making appointments on the basis of its best judgment and not through an open solicitation process. Appointments for the TTT Project, the Puerto Rico Training Project and the NJITCE [National Judiciary Interpreters and Translators Certification Exam] Project were done based on the Board's best judgment. Mr. Tomasi correctly points out that these appointments are not part of the open solicitation process as they are indeed based on the Board's best judgment.

Mr. Tomasi raised a number of specific questions, which follow:

b. “Why did the board and executive director name the chair of the Publications Committee as the leader of the TTT Project and not consider other national experts such as Roseann Dueñas Gonzalez?”

The NAJIT Board of Directors directed the Chair of the NAJIT Publications Committee, Ms. Zetterstrand, to oversee the TTT Project. Her charge was to produce a quality publication on audio-source transcription and translation. She proceeded to announce the initiation of this relevant project, requesting the participation of qualified individuals, with the goal of producing a set of guidelines (in the form of a manual or handbook) for transcribing and translating from audio and visual sources.

Ms. Zetterstrand assembled a group of qualified working judiciary interpreters. Many of them are well known to the interpreting community as active members of our profession, who have come to specialize in tape transcription and translation through their extensive work. Some have also made presentations, taught workshops and/or published articles about transcription and translation issues. In this working group, the working languages represented are Spanish, Italian, Chinese, Thai, Laotian, Hebrew, and American Sign Language (ASL). The TTT Project will receive independent work with a separate outline as a contribution from ASL under the direction of Ms. Anna Witter-Merithew, Assistant Director for the Distance Opportunities Interpreter Training Center.

The many documents now before the Commission consistently reveal a well-qualified group of unpaid experts, diligently fulfilling their assigned tasks in an atmosphere of professional camaraderie. It is evident to this Commission that the oversight and direction of Ms. Zetterstrand is effective. The diverse group of experts has been able to successfully determine the structure and main components to be included in NAJIT’S TTT Manual.

The Commission finds the Board’s appointment of Ms. Zetterstrand to oversee the TTT Project to be appropriate. This Committee does not see the need to entertain subjective comparison of subcommittee members who are professionals in the field of interpretation.

c. “Why did the SSTI president get to do the Puerto Rico training project?”

Mr. Tomasi questioned the reason why Janis Palma was named the head of the Mirta Vidal-Orrantia Interpreting and Translating Institute. Documentation received by this Commission establishes Ms. Palma as being the individual who proposed the idea and created the Institute project. She also takes responsibility for the project, which essentially falls under the aegis of SSTI.

d. “Why did a handful of people get contracted to become graders, proofreaders, designers and consultants to the NJITCE?”

SSTI, together with Measurement Incorporated, recruited qualified individuals to develop the examination and to carry out its implementation. Some of these individuals were

NAJIT members and some were not. These decisions were made by the SSTI Board and Measurement Incorporated. Modest honoraria were legally and correctly paid by Measurement Incorporated to some Board members on NAJIT and SSTI consistent and in accordance with the advice of NAJIT's legal counsel.

e. "Why wasn't Roseann Dueñas Gonzalez contracted to design and create the NJITCE?"

This Commission will not pry into the professional affairs of Ms. Dueñas nor make a subjective comparison to the person(s) or entity contracted to design and create the NJITCE. Moreover, Mr. Tomasi has no standing to raise this issue, as there is no evidence before this Commission to indicate that Ms. Dueñas, herself, complained of exclusion.

f. "Would Ms. Gonzalez have named the same graders, proofreaders and consultants for a NAJIT certification exam?"

This Commission finds the issue moot and will not explore the world of possibilities inherent to such a hypothetical question.

g. "Would it help to have Measurement Incorporated and SSTI produce a list of every person that has received payment for their involvement in the NJITCE?"

This Commission has received detailed information and explanations of who has been hired and what they have been paid for their services or reimbursed for expenses incurred in giving training. This Commission finds no sign of impropriety by anyone involved with NJITCE, SSTI or Measurement Incorporated.

FINDINGS AND CONCLUSIONS

It is clear that Mr. Tomasi has concerns about the manner in which business is conducted by the Organization. He views himself as a “whistle-blower” who is being penalized for bringing irregularities to light. He brought the matter before the membership at the 2004 Annual Meeting, as was his right. It is clear from the minutes that the business portion of the meeting extended far beyond the time historically allotted for business purposes at NAJIT’s annual meetings. The business discussed related primarily to Mr. Tomasi’s motions. Ultimately, another member moved to form this Commission to investigate Mr. Tomasi’s allegation of misappropriation of approximately \$25,000.00, and that is what was approved by the membership.

Mr. Tomasi brought the issue to the membership because he had been denied the opportunity for a face-to-face meeting with the Directors prior to the business meeting. His request had been denied because he refused to put anything in writing regarding his concerns. He maintained that he was not making a complaint under Article 12 of the Bylaws, but only expressing concerns, and therefore he was not required to put anything in writing.

This Commission was formed pursuant to a motion proffered by another NAJIT member and passed by the vote of the membership; it was charged with investigating Mr. Tomasi’s concerns and reporting its findings to the Board of Directors for publication to the membership. Unfortunately, Mr. Tomasi’s fixation on whether the investigating body was officially a committee impeded the investigation. He stated that he would not provide information unless the Commission were designated a committee and refused to budge from this procedural point. He steadfastly refused to produce any information whatsoever regarding his concerns, including a simple outline of what they were. After months of wrangling over the nature of the Commission, he was given a final deadline to articulate his concerns in writing, and was advised that if he failed to do so, the Commission’s report would indicate that they were without merit. At ten minutes before midnight on the final day, he e-mailed several messages, indicating the general nature of his concerns.

The Commission reviewed the allegations and requested information from the Board of Directors and from Mr. Tomasi. The Board sent the major part of the information requested within several weeks. Mr. Tomasi has refused to supply any substantive support for his allegations. Mr. Tomasi was advised that if he failed to supply evidence to support his claims, the Commission would base its findings and conclusions on whatever information it had received from other sources. He then e-mailed individual members of the Board of Directors, requesting a ruling on the nature of the Commission. The Commission was advised of said contact and warned Mr. Tomasi to desist, as he had previously been advised that all correspondence was to be directed to the Commission, and he was to have no direct contact with the Board during the course of the investigation of his concerns. He then claimed that he was permitted to contact the Board, as he was proceeding under Article 12. He was advised by the Commission that, having studiously avoided bringing this entire investigation as an Article 12 complaint, he would not now be permitted to rely on Article 12 to bypass this Commission. He was given a final deadline for submitting materials in support of his allegations. That deadline passed with no supporting material forthcoming from Mr. Tomasi.

After reviewing the materials provided, the Commission finds that:

1. While Mr. Orrantia's statements with respect to the conditions under which John Jay College would permit the use of its facilities by non-profit organizations were ambiguous, and to that extent, capable of misconstruction; and while it appears that Mr. Tomasi and members of NAJIT's Board did, indeed misconstrue the requirement, believing that the organization using the facilities must be a 501 (c) (3) non-profit, the Commission is not in a position to determine, based on the relevant evidence provided, that Mr. Orrantia intentionally set out to mislead either Mr. Tomasi or the Board.
2. Even assuming that Mr. Orrantia's statements were misleading, they had no impact on the allocation of the proceeds from the 2002 ERC to SSTI, as NAJIT had pledged \$50,000.00 to SSTI to apply to the debt that SSTI owed Measurement, Inc. for preparation of the Certification Exam. Said pledge was a legally binding obligation, and directing the proceeds of the 2002 ERC to SSTI was a valid method of fulfilling that pledge.
3. The advice given by the Executive Director, Ann Macfarlane, to the Organizer of the 2004 Regional Conference was not erroneous per se, having resulted from the interpretation of an ambiguity in the Guidelines as they related to unique circumstances of a specialized conference (forensics). Because many of the expert speakers necessary for a successful conference were not available locally, payment of their travel expenses was appropriate under the Guidelines, as interpreted.
4. There is no support for Mr. Tomasi's allegation that Ann Macfarlane "threw a temper tantrum", nor that she threatened his removal as chair of the Education Committee. The Commission concludes that Mr. Tomasi completed his designated term as Chair, as there is no evidence to the contrary. Moreover, the unrefuted evidence suggests that Ms. Macfarlane merely communicated to Mr. Tomasi the consequences that would result from his plan to be designated a "guest speaker" by allowing his NAJIT membership to lapse, thus allowing him to be compensated for his conference expenses.
5. There was no proof of favoritism by the 2003 Conference Committee in choosing Janis Palma, Joaquin Font and Sylvia Zetterstrand as presenters on the topic of Tape Transcription and Translation for the 2003 Annual Meeting and Educational Conference, nor was there any evidence that Mr. Tomasi's abstract on forensic transcription was intentionally withheld by the Executive Director, thus denying him the possibility of being considered as a presenter.
6. There was no irregularity in the formation of the Tape Transcription and Translation Project, and the selection of Sylvia Zetterstrand to head the project was within the purview and discretion of the Board of Directors.
7. Ms. Zetterstrand's actions with respect to the TTT Project conformed to the directives she received from the Board of Directors, and there is no evidence that she unilaterally changed the nature of the Project.

8. There is no evidence to support the allegation that Ms. Zetterstrand withheld Mr. Tomasi's ideas on "unintelligible [UI] issues" from distribution as part of the information packet sent to those who signed up for the TTT Project; to the contrary, Ms. Zetterstrand indicated that Mr. Tomasi's ideas would have been included had he submitted them in writing.
9. There is no evidence to support the allegation that Ms. Zetterstrand's essay on Tape Transcription resulted in the appearance that she had greater expertise and insight than Mr. Tomasi on that issue.
10. Ms. Zetterstrand did not issue misleading messages announcing the TTT Project and inviting NAJIT members to submit their credentials in application to join the subcommittee.
11. Janis Palma's appointment as head of the Puerto Rico Training Project was appropriate, as she proposed the idea and created the project.
12. SSTI and Measurement, Inc. selected graders, proofreaders, designers and consultants to the National Judiciary Interpreters and Translators Certification Exam (NJITCE) in a manner consistent with legal advice regarding conflicts of interest. A number of these individuals are not members of NAJIT.
13. Hypothetical questions regarding the potential selection of individuals for work on the NJITCE are both moot and inappropriate.
14. There is no evidence of impropriety involving individuals who have been hired to work on the NJITCE or who are associated with SSTI or Measurement, Inc.

Respectfully submitted on May 11th, 2005, by the Commission on Concerns raised at the 2004 NAJIT Annual Meeting,

Rosemary W. Dann, Chair

Jeck-Jenard Navarrete, Member

Laura Garcia-Hein, Member

Fausto Sabatino, Member