REPORT FOR THE YEAR 1971

of the

COMMISSION OF INVESTIGATION

of the

STATE OF NEW JERSEY

to

THE GOVERNOR AND THE LEGISLATURE

of the

STATE OF NEW JERSEY

The Commission of Investigation

of the State of New Jersey

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TO: *The Governor and the Members of the Senate and Assembly of the State of New Jersey*

The New Jersey Commission of Investigation is pleased to submit its third annual report and recommendations pursuant to Section 10 of P. L. 1968, Chapter 266 (N. J. S. A. 52:9M–10), the Act establishing the Commission of Investigation.

Respectfully submitted,

John F. McCarthy, Jr.
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FOREWORD

The New Jersey State Commission of Investigation became a legal entity December 31, 1968 and by the spring of 1969 was fully staffed and operational. Since then, its investigations have extended over a wide range of Commission jurisdictions, from the conduct of public officials and employees to official corruption and organized crime.

The Commission believes its third annual report is an appropriate time to set forth a summary of its major activities to date. The Commission views the record of past accomplishments as a springboard to a continued and concerted effort to serve the public interest in helping to assure the full and faithful execution of the laws of the State of New Jersey.

ORIGIN AND SCOPE OF THE COMMISSION

The New Jersey State Commission of Investigation was an outgrowth of extensive research and public hearings in 1968 by a Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey.

The Committee, headed by then State Senator and now Congressman Edwin B. Forsythe, was under direction to find ways immediately to meet a serious and growing crime problem in New Jersey.

Among the sworn testimony that Committee heard was a statement by a law professor, with prior U.S. Justice Department experience, that organized crime could get almost anything it wanted in New Jersey through official corruption.

The Committee's final product was a series of major recommendations for improving the administration of criminal justice. One of those recommendations was for a high level commission patterned after the New York State Commission of Investigation then in its 10th year and nationally recognized for its probes into organized crime, corruption and other matters relating to the full and faithful execution of the laws of that State.

The Forsythe Committee found that New Jersey's crime fighting pose could "benefit immensely from the continued presence" of a small but expert investigative body like the New York commission.

Creation of state-wide investigation commissions was also recommended by the President's Commission on Law Enforcement and Administration of Justice in its report, The Challenge of Crime in a Free Society. The report, widely circulated, stated:

> States that have organized crime groups in operation should create and finance organized crime investigation commissions with independent, permanent status, with an adequate staff of investigators, and with subpoena power. Such commissions should hold hearings and furnish periodic reports to the legislature, Governor, and law enforcement officials.

The Forsythe Committee Report called for a four-member nonpartisan Commission of Investigation with the broad jurisdiction of the New York Commission, and a similar structure. The report concluded that "this commission will provide a significant, independent watchdog for the entire system of administering criminal justice in New Jersey."

The bill creating the New Jersey Commission of Investigation was introduced April 29, 1968 in the Senate. Legislative approval of that measure was completed September 4, 1968. The bill created the Commission for a five-year term ending December 31, 1974. It is cited as Public Law, 1968, Chapter 266.

The primary and paramount statutory responsibility vested in the Commission is set forth in Section 2 of the Act. It provides:

> 2. The Commission shall have the duty and power to conduct investigatons in connection with:
>
> a. The faithful execution and effective enforcement of the laws of the State, with particular reference but not limited to organized crime and racketeering;
>
> b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
>
> c. Any matter concerning the public peace, public safety and public justice.

Further, Section 3 provides that at the direction of the Governor or by concurrent resolution of the Legislature the Commission shall conduct investigations and otherwise assist in connection with: (a) the removal of public officers by the Governor; (b) the making of recommendations by the Governor to any other person or body, with respect to the removal of public officers; (c) the making of recommendations by the Governor to the Legislature with respect to changes in or additions to the existing provisions of law required for the more effective enforcement of the law.

Thus it can be seen that the Commission, as an investigative, fact-finding body, has a wide range of statutory responsibilities. It is highly mobile, may compel testimony, and has authority to confer immunity on witnesses. However, the Commission does not have nor does it exercise any prosecutorial functions.

One of the Commission's prime responsibilities, when it uncovers irregularities, improprieties, misconduct or corruption, is to bring the facts to the attention of the public. The objective is to insure corrective action. Instances of that objective being achieved are included in the section summarizing the Commission's major activities to date.

The importance of public exposure was put most succinctly by a news analysis article in the New York Times on a gambling and law enforcement probe by the New York Commission. The article applies with equal pertinency to the work of the New Jersey Commission. The article stated in part:

> Some people would put the whole business in the lap of a District Attorney, arguing that if he does not bring indictments, there is not much the people can do.
>
> But this misses the primary purpose of the State Investigation Commission. It is not to probe outright criminal acts by those in public employment. That is the job of the regular investigating arms of the law.
>
> Instead, the Commission has been charged by the Legislature to check on, and to expose, lapses in the faithful and effective performance of duty by public employees.
>
> Is sheer non-criminality to be the only standard of behavior to which a public official is to be held? Or does the public have a right to know of laxity, inefficiency, incompetence, waste and other failures in the work for which it pays?

RESUME OF THE COMMISSION'S MAJOR ACTIVITIES AND INVESTIGATIONS TO DECEMBER 31, 1971

In describing the activities summarized herein as major, it is meant that they required substantial time and effort and, where appropriate, resulted in a public hearing or a report or both.

Since the following activities have been discussed fully in previous reports or are discussed in subsequent sections of this report, only a brief statement about each is set forth in chronological order.

1. Organized Crime*

The Commission in June, 1969 began subpœnaing individuals identified by law enforcement authorities as leaders and members of organized crime in New Jersey. The purpose of this effort has been to try to get a firsthand, detailed picture of organized crime's operations from the mouths of those said to be in the Mafia, especially the relative importance of the syndicate's various sources of money, how that money is handled and dispersed, and how the power structure works and is changed from time to time.

The Commission believes that once individuals have been granted witness immunity, a proper balance has been struck between protection of individual rights and the right of the public to know as much as possible about the underworld's operations.

However, eight men identified as organized crime operators in New Jersey, including four reputed Mafia chieftans, have to date elected to go to jail rather than answer with witness immunity the Commission's questions.

In each case, they have been cited for civil contempt of the Commission. They may at any time free themselves by purging the contempt through giving responsive answers to the Commission's questions. The responses to date have been legal challenges to the witness immunity section of the statute creating the Commission.

The State Supreme Court has upheld the Commission's witness immunity powers but the matter on appeal is now before the United States Supreme Court.

* See Pages 11 through 14 of this report.

2. Recommendations on the Garbage Industry*

The Legislature, early in 1969, passed a joint resolution requesting the Commission to look into the garbage industry and make recommendations for possible corrective action at the state level.

The Commission subsequently undertook a probe of certain practices and procedures in that industry. The investigation ended with two weeks of private hearings, concluding in September, 1969. A public report was issued in October of that year.

A principal finding of the Commission was that the provisions and practices of some garbage industry trade associations discouraged competition, encouraged collusive bidding, and preserved allocations of customers on a territorial basis. Unless the vice of customer allocation is curbed by the state, more and more municipalities will be faced with the situation of receiving only one bid for waste collection, the Commission concluded.

The Commission recommended legislative action leading to a statewide approach to control of the garbage industry. Specific recommendations were:

Prohibit customer territorial allocation, price fixing and collusive bidding; provide for licensing by the state (to the exclusion of municipal licenses) of all waste collectors in New Jersey, and prohibit discrimination in the use of privately owned waste disposal areas.

The recommendations were along the lines of subsequently enacted state laws, including the new solid waste control acts.

3. Investigation into the Affairs of the City of Long Branch**

The New Jersey shore city of Long Branch had since 1967 been the focus of publicized charges and disclosures about the influence of organized crime. One charge was that a Mafia leader, Anthony "Little Pussy" Russo, controlled the mayor and the city council. Official reports indicated mob figures were operating in an atmosphere relatively secure from law enforcement.

* See New Jersey State Commission of Investigation: A Report Relating to the Garbage Industry, October 7, 1969.

** See State of New Jersey, Commission of Investigation, 1970 Annual Report, issued February, 1971.

The Commission began an investigation of Long Branch in May, 1969. The exhaustive probe culminated with public hearings in the spring of 1970. Among the major disclosures of those hearings were:

That a Long Branch city manager was ousted from that job by the city council after he began taking counteraction against organized crime's influence.

That Russo offered to get the city manager job back for that same person if he would close his eyes to underworld influences and act as a front for the mob.

That impending police raids on gambling establishments were being leaked in time to prevent arrests despite the anti-gambling efforts of a then honest police chief. That police chief's widow told the Commission of threats to and harassment of her husband until his death in 1968.

That the next police chief lacked the integrity and will to investigate organized crime and attempt to stem its influence.

After the Commission's public hearings, the police chief resigned and the electorate voted in a new administration. The Asbury Park Press commented editorially that the Commission's hearings did more good than four previous grand jury investigations.

4. Investigation into the Administration of the Monmouth County Prosecutor's Office*

The Long Branch inquiry quite naturally extended to the Monmouth County prosecutor's office, since the prosecutor had prime responsibility for law enforcement in his county. This probe determined that a disproportionate share of authority had been vested in the then chief of county detectives. Twenty-four hours after the commission issued subpœnas in October, 1969, the chief committed suicide.

Public hearings were held in the winter of 1970. Testimony showed that a confidential expense account supposedly used for nine years by the chief of detectives to pay informants was not used for that purpose and could not be accounted for.

* See State of New Jersey, Commission of Investigation, 1970 Annual Report, issued February, 1971.

The testimony also detailed how that fund was solely controlled by the chief with no county audit and no supervision by the county prosecutor. In fact, the then county prosecutor testified he signed vouchers in blank, and without the knowledge they were to be used to pay informants.

The Commission, after the hearings, made a series of recommendations to reform the county prosecutor system. A principal recommendation was for fulltime prosecutors and assistants. A state law has since been enacted providing for fulltime prosecutorial staffs in the most populous counties of New Jersey.

5. Investigation into the Practices of the State Division of Purchase and Property*

The Commission, in February, 1970, began investigating charges of corrupt practices and procedures involving the State Division of Purchase and Property and suppliers of state services. Public hearings on that matter were held in the spring of that year.

Public testimony showed payoffs to a state buyer to get cleaning contracts for state buildings, rigging of bids on state contracts, renewal of those contracts without bidding, unsatisfactory performance of work called for under state contracts, and illegal contracting of such work.

After the investigation, the state buyer was dismissed from his job and a number of state bidding and purchasing procedures were changed. The Commission commended officials of the Purchase and Property Division for their cooperation in the probe and for moving so quickly to tighten procedures.

6. Investigation into the Building Services and Maintenance Industry*

The probe of the Division of Purchase and Property brought to the Commission's attention anticompetitive and other improper practices and influences in the building service industry. A followup investigation was carried out with public hearings being held in June, 1970.

* See State of New Jersey, Commission of Investigation, 1970 Annual Report, issued February, 1971.

Testimony showed the existence of a trade organization designed to thwart competition by limiting free bidding and enterprise. The hearings also revealed that a union official with associations with organized crime figures was the real power in the trade organization and that coerced sales of certain products and/or imposition of sweetheart contracts were sometimes the price of labor peace.

Another disclosure was that a major organized crime figure in New Jersey could act as arbiter of disputes between some cleaning companies.

The information developed in this probe was forwarded to the U. S. Congress' Select Committee on Commerce in response to that panel's request for aid in investigating infiltration by organized crime into interstate commerce.

7. Investigation of the Hudson County Mosquito Extermination Commission*

During 1970 the Commission received complaints about possible corrupt practices in the operation of the Hudson County Mosquito Extermination Commission. The subsequent investigation led to public hearings at the close of 1970.

The mosquito commission's treasurer, almost totally blind, testified how he signed checks and vouchers on direction from the agency's executive director. The testimony also revealed shakedown type payments made by the New Jersey Turnpike and other organizations with projects or rights of way in the Hudson meadowlands, the existence of a bank account kept secret by the commission's executive director from the panel's outside auditors, and kickback payments by contractors and suppliers of up to 75 per cent of the amounts received under a fraudulent voucher scheme.

The results of the SCI's probe and hearings formed the basis for subsequent indictments of the mosquito commission's executive director, his two sons and others. The director in late 1971 pleaded guilty to embezzlement and the sons pleaded guilty to conspiracy. All three were awaiting sentencing at the time this report went to press. Another result of the probe was the abolition of the mosquito commission.

* See State of New Jersey, Commission of Investigation, 1970 Annual Report, issued February, 1971.

8. Investigation into the Misappropriation of Funds in the Government of Atlantic County*

The Commission in 1970 was asked to make a thorough investigation of the misappropriation of public funds that came to light with the suicide death of an assistant purchasing agent in Atlantic County government.

Throughout much of 1971, an extensive field investigation was made by the Commission's staff and a series of private hearings was held by the Commission. The Commission in December of that year issued a detailed public report which documented in sworn testimony a violation of public trust and a breakdown in the use of the powers of county government, including an inadequate and questionable investigation by some county officials.

The report stressed a series of recommendations for more stringent and vigorous auditing standards and procedures to insure more fiscal integrity in the affairs of county and local governments.

9. Investigation into the Development of the Point Breeze Area of Jersey City**

The lands that lie along the Jersey City waterfront are some of the most valuable and economically important acreage in the state. The Commission, in the spring of 1971, began an investigation into allegations of corruption and other irregularities in the development of the Point Breeze area of Jersey City as a containership port and industrial park.

The investigation showed that that particular development, undertaken by the Port Jersey Corporation, could offer a classic and informative example of how a proper and needed urban development project could be frustrated and impeded by improper procedures.

Public hearings were held in October, 1971. Testimonial disclosures included a payoff to public officials, improper receipt of a real estate commission, and irregular approaches to the use of state laws for blighting urban areas and granting tax abatement.

* See Report on Misappropriation of Public Funds, Atlantic County, a Report by the New Jersey State Commission of Investigation, December, 1971. See also Pages 20 through 22 of this report.

** See Pages 23 through 53 of this report.

The hearings led to development of recommendations by the Commission for helping to spur the proper and productive development and redevelopment of valuable lands in New Jersey. Those recommendations are outlined in detail in a subsequent section of this report.

CONTINUED CONFRONTATION

Two back-to-back homicides in Essex and Union counties in February, 1971 were believed by law enforcement authorities to stem from incipient gangland warfare between organized crime groups.

The Commission, after consultation with the Essex County prosecutor's office and the office of the chief of Newark Police, decided to bring in for questioning a number of ranking members of organized crime groups in an attempt to get a full picture of the status of rivalries and other competitive interests that breed underworld violence.

At private hearings extending to June, 1971, four ranking Mafia members chose to go to jail for contempt rather than answer the Commission's questions, even though they had been granted witness immunity. The four, all of whom were engaged in directing gambling and other type underworld operations, are Ralph (Blackie) Napoli and John Lardiere, who operated in the Newark area, Nicodemo (Little Nickie) Scarfo, whose base was Atlantic City, and Nicholas (Nickie) Russo, who based his operations in the Trenton area.

Those four joined in the State Correctional Center in Yardville, two of the four Mafia chieftans who went to that institution during 1970 for contempt of the Commission. The two are Gerardo (Jerry) Catena and Angelo Bruno.

During 1971, another of the chieftans, Joseph (Bayonne Joe) Zicarelli, was transferred to Trenton State Prison after he was convicted of a Hudson County bribery conspiracy scheme. The fourth chieftan, Anthony (Little Pussy) Russo, was transferred to the state prison in 1970 and continues to serve out a perjury conviction sentence in that institution.

LEGAL BATTLES

The protracted legal battles stemming from the Commission's policy of continued confrontations with members of organized crime came to a head in 1971.

More than 100 legal steps had to be taken by the Commission during the year to oppose various appeals, motions for writs of habeas corpus and numerous other proceedings by those incarcerated for civil contempt of the Commission.

The year also saw the key test of the Commission's statutory witness immunity powers reach the United States Supreme Court. In March, that tribunal decided to take jurisdiction on the appeal of Joseph Zicarelli from the 1970 New Jersey Supreme Court decision upholding the 1968 statute which created the Commission.

Counsel for Zicarelli filed a brief with the U.S. high court in April. The brief of the Commission was submitted to that tribunal in July by Andrew F. Phelan, executive director, with the Commission's associate counsel, Edward A. Belmont, of counsel and on the brief.

The Commission's brief disputed Zicarelli's argument that only transactional or total immunity from subsequent prosecutions could suffice to supplant the Fifth Amendment guarantee that "no person shall be compelled in any criminal case to be a witness against himself."

The Commission argued that a person claiming his Fifth Amendment privilege to remain silent was not immune from further prosecutions developed without the use of his testimony. Therefore, the Commission concluded, a holding for transactional or total immunity was wastefully broader than the constitutionally guaranteed privilege and, to that extent, was not an even exchange but rather a gratuity to crime.

The Commission argued further that a fair and even exchange was provided for in the Commission's existing statutory powers which provide for giving immunity from use of all responsive answers and any evidence directly or indirectly derived

therefrom. This is the "use plus fruits" doctrine which leaves room for future prosecutions generated independently from compelled testimony or its fruits, with the burden of proof on the state to show total lack of taint in any subsequent prosecution.

The Zicarelli appeal was to have been argued before the U.S. Supreme Court in October, 1971. But due to the retirement of Justices Black and Harlan, the arguments were postponed to January, 1972. Mr. Phelan and Attorney General George F. Kugler Jr., as amicus curiae for the State of New Jersey, appeared before the high court in Washington on January 11 to argue for "use plus fruits" witness immunity.

In his argument before the high court, Mr. Phelan acknowledged the contention of Zicarelli's counsel that a witness must be placed in no worse position than if he had remained silent under the Fifth Amendment. However, Mr. Phelan added, "If none of the testimony he (a witness) gives, plus its fruits, can be used against him, how can the witness be in a worse position?"

Mr. Phelan also argued that since the court's 1892 *Counselman* case ruling that held for transactional immunity, the court has developed a new body of law that now makes "use plus fruits" immunity co-extensive with the Fifth Amendment privilege.

He called the Commission's statute and its witness immunity provision a "new and necessary" law in that it allows states to take action against crimes committed by the same individual when they come to light in other jurisdictions. He called "use plus fruits" immunity particularly important in cases "when we do not realize how wide the conspiracy is and another prosecutor investigating in the same jurisdiction discovers more about it."

Mr. Kugler, in his argument before the court, reminded the justices that the states still carry the great burden of crime fighting. He added that one of the most powerful weapons in the states' arsenal is the use immunity type statute. Mr. Kugler said that in recent times, many cracks have appeared in the dike of the court's former stand that transactional immunity must hold sway. Those cracks, he concluded, open the door to upholding of a "use plus fruits" standard as sufficient.

The Attorney General said that there are "very important interests" at stake in the maintenance of "use plus fruits" statutes. For example, he noted that his office had developed a half-dozen

prosecutions of Zicarelli and was prepared to defend the independent nature of those prosecutions had Zicarelli testified with immunity before the SCI.

Mr. Kugler disputed the notion that use immunity is too rich for the states' blood. He argued that the states will use it effectively and that with the greatly broadened defense discovery powers, counsel can make sure that a man does not condemn himself out of his own mouth.

At the time this annual report went to press, the U. S. Supreme Court had not issued a decision in the Zicarelli appeal.

The court's decision in this matter is particularly crucial because it decides the fate not only of the witness immunity section of the Commission's statute but also a similar federal statute.

The attorneys general from 23 other states felt the maintenance of "use plus fruits" immunity was so important that they joined in the amicus curiae brief filed by Mr. Kugler with the high court.

Angelo Bruno, in the spring of 1971, appealed a ruling by the State Superior Court again upholding the Commission and its witness immunity powers. The State Supreme Court certified the appeal directly for hearing, and the matter was argued before that tribunal May 11, 1971. The court on June 7 rendered a one sentence decision denying the appeal with reference made to the court's previous decision upholding the Commission in the Zicarelli matter in 1970.

Gerardo Catena in 1971 carried his habeas corpus motion to the U. S. Third Circuit Court of Appeals. The Commission participated in briefs and in oral arguments on that appeal which were held in May, 1971. The court on September 2, 1971 issued a decision in favor of transactional immunity.

The circuit court refused to stay its judgment pending decision of the U. S. Supreme Court in the Zicarelli matter. But the Commission moved quickly and successfully to obtain such a stay from the U. S. high court, thereby assuring the continued incarceration of the six organized crime members in the correctional center in Yardville.

RESULTS FROM PREVIOUS INVESTIGATIONS

Criminal Repercussions

As summarized previously, the Commission, in December, 1970, held public hearings based on its investigations of the Hudson County Mosquito Commission.* The information developed by the Commission was turned over to law enforcement authorities and resulted in indictments being returned during 1971 by a Hudson County Grand Jury.

C. Harry Callari, executive director of the Commission; his sons Benjamin and Ronald; his secretary, Genevieve Hill; the Commission's engineer, Michael Grasso, and a commission foreman, Vito Sestone, were all indicated on charges including conspiracy and embezzlement.

In December, 1971 Callari pleaded guilty to embezzlement and his sons pleaded guilty to conspiracy. They were awaiting sentencing at the time this report went to press. No disposition had been made of the other indictments at that same time.

During its 1969-70 probe of the Long Branch area*, the Commission's special agents developed detailed fiscal information and records relating to corporations formed by Anthony (Little Pussy) Russo, the Mafia chieftan who operated in that area.

Copies of the information and records were sent to the U. S. Attorney for New Jersey in Newark and formed a key part of the basis for a 1971 indictment of Russo on a charge of failure to file corporate income tax returns. He subsequently pleaded guilty to that charge. He had not been sentenced for the conviction when this annual report went to press. But, as previously noted, he is serving a State Prison sentence for perjury.

Public Money Recaptured

The Commission's staff during 1970, in part of the probe that eventually led to hearings on the Hudson County Mosquito Commission, looked into allegations of lack of full payment to the state

* See State of New Jersey, Commission of Investigation, 1970 Annual Report, issued February, 1971.

for fill in the expansion of the New Jersey Turnpike in the northern meadowlands area.

The Commission analysis determined that 15 million cubic yards of fill at an average cost of $2.61 per cubic yard had been used in that project. The analysis also showed that certain amounts of the dredged fill had not been accounted for by a major contractor.

As a result of the investigation and analysis, the contractor paid the State of New Jersey an additional $14,211.84, After the Commission had notified New York State that some one million unaccounted for cubic yards had been dredged from that state's waters, the contractor paid that state an additional $156,185.10 during 1971.

The Commission's probe, therefore, resulted in a total of $170,396.94 of rightfully owed money being paid to the treasuries of the two states.

PRIVATE HEARINGS AND OTHER ACTIVITIES

Private hearings are a key part of the Commission's investigatory process. They are used to followup field investigations by the Commission's special agents. Witnesses are examined at length under oath, with at least two Commissioners sitting at all times.

During 1971 the Commission held 44 private hearing sessions at which 109 witnesses were examined. The hearings were the basis not only for a public hearing and public report during the year but also laid the groundwork for additional public hearings during 1972.

A total of 165 subpœnas were issued by the Commission during 1971 for production of public and private records and files. The public continues to look at the Commission as a sort of ombudsman, and during 1971 more than 50 citizen complaint letters were received and processed.

The extensive files and expertise the Commission has developed in its two and a half years of full operation have become a constant reference point for law enforcement authorities from the federal to the municipal level.

During 1971 the Congressional Select Committee on Commerce requested Commission assistance in developing information for that panel's investigation into infiltration of organized crime into interstate commerce.

The Commission consulted with representatives of that committee and forwarded to that panel the Commission's records dealing with organized crime's influence in the building service and maintenance industry. That information was used for part of the public hearings held by that committee.

Representatives of the U. S. Permanent Subcommittee on Investigation, headed by Arkansas Senator John L. McClellan, sought information from the Commission during 1971 in connection with that panel's probe into organized crime's role in stolen securities traffic. The representatives were briefed by the Commission's special agents and, in return, the McClellan Committee gave the Commission the benefit of some of its confidential information.

The Commission also received and responded to a request from the U. S. Interstate Commerce Commission for information about organized crime figures in legitimate business areas.

The Commission, through its membership in the nationwide Law Enforcement Intelligence Unit (L. E. I. U.), responded to 75 requests from law enforcement agencies in other states for information about crime figures operating in New Jersey, especially persons known to be involved in organized crime.

The L.E.I.U. consists of 204 state and local police departments and other agencies concerned with law enforcement throughout the United States. The organization's aim is to keep abreast of the whereabouts and activities of suspected criminal characters through confidential investigations, surveillance and maintenance of liaison with official and other sources of information.

During 1971, the Commission in 40 instances asked for and received information from other states on the background and whereabouts of suspected organized crime figures and operations with possible connections to underworld activities in New Jersey.

Connecticut Acts

In December, 1971 the Commission was contacted by Senator Joseph Leiberman of the Connecticut Legislature in connection with that legislature's Joint Subcommittee created to inquire into the presence of organized crime at construction sites throughout the state. The senator, chairman of that committee, said he was thinking of broadening the inquiry into a probe that could lead to statewide crime control legislation.

At the senator's invitation, Mr. Phelan, Charles D. Sapienza, Commission Counsel, and Special Agent Cyril T. Jordan appeared at a public hearing of Senator Leiberman's Subcommittee on December 27, 1971 in Hartford, Connecticut. The proceedings were covered by television, and Mr. Phelan's testimony was telecast throughout the state.

Another Connecticut Senator, Jay Jackson, Chairman of the Senate Judiciary Committee, sat in on the hearings. His committee was at the time doing research on ways to step up the pace of crime control in Connecticut. Both Senators Leiberman and Jackson publicly expressed admiration for the mode of operation

and the accomplishments of the New Jersey State Commission of Investigation.

The Lieberman Committee, just as this report went to press, urged the Connecticut Legislature to create a State Commission of Investigation patterned after the New Jersey and New York commissions. Senator Lieberman said creation of such a commission was essential to a more aggressive fight against crime and corruption in Connecticut.

INVESTIGATION INTO THE MISAPPROPRIATION OF PUBLIC FUNDS IN ATLANTIC COUNTY*

The findings of the Commission's investigation into the misappropriation of at least $130,196 in public funds of the Atlantic County government during 1958-1970 were reported at length to the Governor and the Legislature in an interim report issued in December, 1971.* The Commission's recommendations on those findings also were presented in detail in that report. Accordingly, only a brief review of the major findings and recommendations will be outlined in this annual report.

Through a scheme involving fraudulent vouchers, endorsements and other maneuvers, Michael F. Barrett, an assistant county purchasing agent in Atlantic County government, over the 13-year period diverted county funds to his own use. That scheme finally became public knowledge with Barrett's suicide death in the summer of 1970. The Commission later that year received requests from certain residents of the county to make a thorough investigation which the Commission undertook in 1971.

The sworn testimony taken at extensive private hearings disclosed that for years prior to 1971, the monthly departmental appropriation sheets of many departments contained irregularities that could have been traced, and in some instances were traced to Barrett, but no highly placed county official ever tried to get a full explanation of those irregularities. In addition, the testimony showed those departmental appropriation sheets were frequently diverted to Barrett rather than being sent to the various department heads, with no one in the county government for 13 years making a timely or conscientious effort to determine the true purpose of the diversion of sheets which itemized monthly expenditures. The Commission concluded that had such an effort been made, the misuse of funds could have been exposed and stopped at an earlier date.

The testimony also disclosed that after county officials were notified by a bank about the false check endorsement part of Barrett's scheme, an inadequate and questionable investigation

* See Report on Misappropriation of Public Funds, Atlantic County, a Report by the New Jersey State Commission of Investigation, December, 1971.

was conducted by some county officials and that for the better part of three months after that so-called investigation, nothing further was done to try to determine the true amount of public funds involved in the scheme. The Commission concluded that the approximate size and duration of the misappropriations might never have become public knowledge had not an accountant in late June, 1970 fortuitously discovered some of the fraudulently endorsed checks during a routine audit of county fiscal records. That discovery finally forced a full audit of all county checks still on file dating back to 1958.

The Commission's general conclusion was that the sworn testimony taken during the investigation reflects a violation of the public trust and lack of full and effective application of the powers of county government.

In prefacing its recommendations, the Commission noted that, as in its previous county-level probes in Monmouth and Hudson counties, the salient point in the Atlantic County investigation was that misuse of public funds went undetected and uncorrected for so long a period of time despite a reputable accounting firm following approved procedures for auditing the county's fiscal operations.

The Commission concluded that the public trust requires that licensed county and municipal auditors be mandated to exercise more responsibility for maintaining integrity in the fiscal affairs of governments. Some of the principal specific recommendations of the Commission are:

Reviews of the internal controls of county and local governments should be performed by the auditors on an on-going basis, including unannounced reviews of various departments rather than at set intervals; the auditor should on his own initiative periodically verify transactions with vendor firms.

Also, supervisors of governmental departments should at all times receive monthly ledger sheets reflecting the status of their budgets and all itemized expenditures, and the sheets should be hand delivered to the department heads and signed receipts secured from them; the auditor should obtain a liability certificate sworn to by responsible municipal officials to the effect that all known liabilities have been recorded and that they represent bona fide obligations of government; bank reconciliations should be per-

formed by outside auditors at irregular intervals during the year as well as at the end of the year.

Copies of the Commission's report on the Atlantic County matter were sent to county freeholder directors throughout the state to aid them in establishing practices and procedures that would avoid the possibility of any similar breakdown of government in their counties.

INVESTIGATION INTO THE DEVELOPMENT OF THE POINT BREEZE AREA OF JERSEY CITY

The Commission in the spring of 1971 received a complaint alleging irregularities in the development of the Point Breeze area of Jersey City. The area is valuable Hudson River waterfront property, and a private developer, the Port Jersey Corporation, was trying to bring to completion its bold and praiseworthy plan for turning the area into a modern containership port with an adjacent industrial park.

An initial investigation by the Commission's staff not only indicated substance to the irregularities allegation, but also convinced the commissioners that a further probe could bring to public light a clear and informative example of improper, questionable and wasteful procedures in a vital development project dependent for success on the actions of a municipal government.

Accordingly, the Commission authorized a full field investigation with subsequent private hearings. Public hearings were held October 27 and 28 in the State Senate Chamber. Chairman McCarthy at that time summarized the intent and results of the Point Breeze probe with these remarks:

> Reclamation and development of municipally governed lands throughout the state are of vital concern to the taxpaying public of New Jersey. Without proper safeguards, it is all too possible for improper procedures to be employed with resulting misuse of public and private funds and gross misuse of public trust.
>
> Employment of improper procedures also can inhibit the attraction of private capital and expertise to realize the full potential of valuable lands in the best interest of the state as a whole and of the municipalities in which the lands lie.
>
> We believe the results of this investigation and these hearings point the way toward areas of study and action that could increase the safeguards and close loopholes, all in the interest of spurring proper

and productive reclamation of valuable lands through development and redevelopment projects.

The Commission's recommendations for possible areas of study and action at the state level are given in detail in this report. The recommendations are the result of extensive analysis and thought by the Commission and its staff, and the Commission believes they are worthy of in-depth consideration.

The Port Jersey Corporation plan for a private development of Point Breeze as a modern containership port and an associated industrial park is strongly favored by the Commission. All those involved in the investigation were unanimous in finding that plan to be a necessary and excellent development project for the Jersey City area and the state as a whole. It is the Commission's hope that the clearing of the air by public hearings has aided in the achievement of completion of that project.

The Developer's Dream

The availability of the property along the Jersey City waterfront known as Point Breeze was initially brought to the attention of Arthur L. Abrams, a Newark attorney who represented Construction Aggregates Corporation in New Jersey, by Clinton B. Snyder, a real estate broker from Jersey City.

Mr. Abrams in turn contacted Ezra Sensibar, president of Construction Aggregates Corporation, who visited the site and conceived the idea of a containership port which would surpass any services then being offered to ocean going vessels by the city of New York. These three men formed a corporation known as E.S.C.A. Corporation, later to be named Port Jersey Corporation, for the sole purpose of bidding on the property. On August 1, 1967 at a public auction, the city accepted a $2,040,000 bid by E.S.C.A. for approximately 223 acres of its waterfront area.

The Commission of $102,000 is Paid

Statute N.J.S.A. 40:60–26 states that any municipality may pay a commission of not more than 5 per cent to any real estate broker or other person *other than the purchaser* actually consummating the sale.

However, in this instance a commission of $102,000 was paid by the city to the C. B. Snyder Realty Company, which was controlled by C. B. Snyder personally. At this time, Mr. Snyder held a 25 per cent interest in the purchasing entity (E.S.C.A. Corporation). Mr. Snyder distributed this commission in the following manner:

The sum of $51,000 was paid to Mr. Abrams, himself a 25 per cent shareholder in the purchasing corporation. Mr. Abrams, in turn, deposited this amount in the trusteeship account which he kept in the name of the purchasing corporation and from which he paid its bills. In effect then, one half of the commission found its way into the hands of the actual buyer.

The remaining half was distributed by C. B. Snyder to himself and various people in his employ. One such person was Gerard Kelly, who joined Snyder's company two months after the purchase. Prior to that, he had been the executive director to the Area Development Council and as such, had the prime responsibility for soliciting developers for the Point Breeze area.

Since the public hearings exposing the improperly paid commission, the City of Jersey City has demanded the return of the $102,000 commission from the Snyder firm. The city has said it will go to court, if necessary, to get the money returned to the City's treasury.

Assurances are Sought

Immediately after the auction, Ezra Sensibar sought a meeting with John V. Kenny, the Hudson County Democratic leader, to settle from the beginning whether the Port Jersey group would be able to proceed without further demands by city or county officials and with the active cooperation of the municipality. On August 16, 1967, this meeting was held at Bernard Kenny's office, the architectural firm of Comparetto and Kenny, and included Ezra Sensibar, John V. Kenny and Clinton B. Snyder.

Ezra Sensibar, being duly sworn, testified as follows:

> A. After we were the successful bidder on the property I began to think about the implications of what Mr. Snyder had told me, that the Kislak Organization seemed to him to be the preferred buyer as far as the city was concerned, and I thought that we

ought to find out whether we would be treated fairly, whether we would get reasonable cooperation or whether we would be treated with hostility.

Q. And what steps did you take to find those things out?

A. I asked Mr. Snyder to arrange a meeting for me with Mr. J. V. Kenny.

Q. And did he do this?

A. Yes, he did that, and we met on August 16th.

Q. When you say "we," who are you referring to?

A. Mr. J. V. Kenny and I.

Q. Where was this meeting?

A. It was in the office of Mr. Bernard Kenny.

Q. And that would be the architectural firm of Kenny & Comparetto?

A. That's right. I should mention that Mr. Snyder was at this meeting.

Q. And this meeting actually took place in the private office of Mr. Bernard Kenny. Is that right?

A. It did, yes.

Q. Can you tell us, to the best of your recollection, what the conversation was at this particular meeting?

A. At the start of the meeting Mr. Bernard Kenny introduced us and then left the room. I said—I explained to Mr. J. V. Kenny in some detail the background of our company, of Construction Aggregates Corporation. I explained to him our interest in this project; that it was not to any great degree in the industrial park portion.

I must say that the property at that time consisted of a garbage dump of about sixty acres surrounded by ten or fifteen acres of marshland. The rest of the two hundred thirty-five acres that we had bid on was land under water covered by anywhere from eight to twenty feet of water.

I pointed out to Mr. Kenny that we had very little interest in the shoreward end of it, that we intended to remove the garbage dump and convert the area into

an industrial park which would cover something like a hundred acres but that our real interest was in the outward end, in the land that was under water, which we could fill by methods that are historical with our company, which formed the basis of our business, and that we had the dream of converting that into a major containerport. I explained to him what that meant, what that should mean to Jersey City and the area in terms of investment and employment.

Q. And did you say anything else to Mr. Kenny?

A. I told him that we would need many forms of cooperation from the city in order to make this possible. I told him that I had been told by our people that this project had been set up for the Kislak people and that we might be—I feared we might be regarded as intruders. I said that what we wanted was the ordinary treatment that a businessman and developer is entitled to and I wanted to be sure that we would get it, and I asked him to level with me. I said at that time we had only $50,000 invested in this project and if he felt that we were not going to be treated correctly and given the full cooperation we were entitled to, we would rather leave our $50,000 and go away rather than continue.

Q. And by "cooperation", did you also mean that you wanted to be free from any demands that anyone might make upon you as a price for this cooperation?

A. That's right. I said to him that I wanted to be sure that we would get the cooperation that we were entitled to and that nobody would have his hand out; that we wouldn't be harassed.

Q. And what was Mr. Kenny's reply?

A. Mr. Kenny said that as far as Kislak was concerned they owed him nothing, that they had done enough for him already. He said that the explanation that I made about our intentions in the project was the best thing he had heard, the first spark of development on the waterfront and that he thought that we we were doing a great deal more for Jersey City than they could do for us. He said that he would guarantee every form of cooperation by the city, and they

wanted us there. And he said that if any son-of-a-bitch asked for money, to come to him and we would take care of him.

The Project Needed Tax Abatement

The marine nature of the development placed it directly in competition with the Port of New York Authority, an agency enjoying a substantial tax advantage. This together with the soaring Jersey City tax rate made some tax reduction a necessity.

Mr. Sensibar testified:

Q. Was it also apparent at this time that you needed the city's help in the tax structure of the project itself?

A. Yes, because this project, the marine end of this project in order to be successful had to compete with the Port Authority. It was extremely essential to the project to have favorable tax treatment.

Q. Now, what do you mean, competition with the Port Authority? Could you explain to the Commission?

A. Yes. The Port of New York Authority operating particularly in Newark and in Elizabeth is, of course, the main marine terminal in the port. They have two advantages over any private developer. The first is that they pay no taxes and in lieu of taxes pay a nominal amount. The second is that they can finance themselves with tax-exempt securities, which means that even today they can borrow money at five and a half or six per cent, whereas we're paying ten and a half per cent for our money.

Now, these two advantages make it extremely difficult for any private operator to develop port facilities, and the only chance that a private operator has is to have the advantages offered by the Fox-Lance treatment in respect to future taxes. Now this is not on the land, but on the buildings, on the improvements that are put on the land.

Q. Were you aware of the high tax rate which Jersey City had prior to your purchasing the property?

A. Was I aware of it?

Q. Yes.

A. No, sir.

Q. This was a stumbling block, then, that you became aware of after you had purchased the property?

A. That is correct.

A stable tax rate was also necessary to attract shipping clients who had to project their own charges over a number of years.

Mr. Sensibar further testified:

Q. Was one of your problems also trying to attract clients into your project?

A. Yes, indeed. And, of course, the problem of the taxes always came up. Our rental offers or net offers, in other words, the client who rents the property has to pay rental to us and he has to pay the taxes. And, so, of course a basic consideration in making these deals and attracting any client is his assurance of what the tax rate will be in the future.

Pressure for a Payoff

In the spring of 1968 the Port Jersey Corporation began to experience great difficulties in securing the cooperation of the municipality regarding the providing of access roads, sewage and water connections and other sundry items. In addition, these private developers were confronted with a snarl of red tape on the muncipal, state and federal levels when they attempted to solve the many title problems which these coastal lands raised. On November 21, 1968 the closing of title was finally consummated, and clearing, filling and construction was commenced in January of 1969.

Between January and February of 1969, Mr. Sensibar received constant complaints from Port Jersey's men on the site that the city was doing nothing towards those items of cooperation already agreed upon. In February of 1969, at a meeting in the Downtown Club of Newark, Clinton Snyder and Arthur Abrams heard their

architect, Bernard Kenny, deliver a message that, "the organization wants 5% of the total construction cost."

Mr. Abrams, being duly sworn, testified as follows:

Q. And at this time, Mr. Abrams, what was the anticipated cost of construction of the project, approximately?

A. Fifty, a hundred million dollars.

Q. Over a hundred million dollars, wasn't it, sir?

A. Well, at that time I'm not so sure. I mean, now it looks big.

Q. Well, did Mr. Kenny indicate to you who composed the organization; on whose behalf was he speaking?

A. No, he did not.

Q. Well, did you ask him?

A. I did not.

Q. Did you ask him how it would be paid over?

A. He said it should be paid in cash. That's what he said.

Q. Did he suggest manners through which you could raise this type of cash or did he go into detail?

A. No.

Q. Did he say what was going to be done with the money?

A. No.

Q. Did he say that it could be turned over to him personally for distribution to the, quote, organization, unquote?

A. No, I don't recall that. I don't recall that.

Q. You mean he simply said to you that "we want five per cent"?

A. He said a lot of things. He didn't say "we;" he didn't say "we." He didn't include himself. He said, "the organization."

Q. He left himself out?

A. Yes.

Q. Do you know which organization he was referring to?

A. The only organization he could have been referring to is the Hudson County Democratic Organization. I don't think I had to ask him any details about what he meant, and he didn't think it was necessary to tell me.

Q. Well, as a result of this meeting—well, incidentally, Mr. Abrams, did he indicate to you what, if anything would happen if this percentage was not met?

A. No, he didn't threaten. He just indicated that difficulties—we would experience difficulties. He said that we might—if we didn't want to pay it, that they would try to, and he would help complete the project independently, but it would be difficult.

Ezra Sensibar, when told about the demand, requested Bernard Kenny to arrange a meeting with Thomas Flaherty, President of the Jersey City Council, at Sensibar's hotel room in New York City. Mr. Sensibar testified:

Q. ". . . after you received the complaints from your people on the job site did you also have a conversation in which Mr. Snyder told you that Bernie Kenny had indicated that you had better see someone?

A. Yes. Mr. Snyder told me that he and Mr. Abrams had met with Mr. Kenny, Bernard Kenny, and they discussed this problem of non-cooperation at city hall and that Mr. Kenny said that it was essential that I should meet with Tom Flaherty.

Q. Now, do you recall Mr. Snyder or Mr. Abrams telling you where they had met with Mr. Bernard Kenny and discussed this?

A. No, I do not.

Q. All right. Did you make arrangements to meet with Mr. Flaherty?

A. Yes. I asked Mr. Bernard Kenny to arrange a meeting with Mr. Flaherty.

Q. Why did you ask Bernard Kenny to perform this?

A. Well, he was the local man in Jersey City and knew everybody.

Q. Was that one of the reasons that you hired him, that he had political contacts in Jersey City?

A. Yes, one of our considerations in hiring his firm was that they were well regarded, well connected locally.

Q. Did Mr. Bernard Kenny manage to set up a meeting between you and Mr. Flaherty?

A. Yes. He set up a meeting which was held in my hotel room in New York and attended by Mr. Flaherty and Mr. Snyder.

Q. Was Mr. Bernard Kenny there, also?

A. Sir?

Q. Was Mr. Bernard Kenny there, also?

A. He was not.

Q. Can we fix a time for this meeting with Mr. Flaherty?

A. Early February, I would say, middle February.

Q. Of 1969?

A. Yes, sir. Excuse me. Now, I think it might have been the end of January. It was right up close to the 1st of February.

Q. Will you tell the Commission as nearly as you can recollect how the conversation went at this particular meeting?

A. I told Mr. Flaherty that I was getting these complaints from our people about lack of cooperation. I told him of my original discussion with Mr. J. V. Kenny and the promise of cooperation.

Mr. Flaherty said, yes, he knew about that, but that the organization needed money and he thought that we should contribute three per cent of the value of our construction work.

Q. Were you aware that previous to this Mr. Bernard Kenny had met with Mr. Abrams and Mr. Snyder in Newark in the Downtown Club and there had told Mr. Abrams and Mr. Snyder that the organization was requesting five per cent of your total construction cost?

A. I was not aware of it.

Q. As far as you can recollect, then, when Mr. Flaherty met with you in New York he was requesting three per cent of your total project?

A. That's correct.

Q. And what did you do when you were faced with this particular demand?

A. I told him that it was completely and utterly out of the question; that Mr. Kenny had promised us cooperation, promised us that we would be free of harassment; and that I intended to proceed on that basis.

He said it was—that he knew about that, but it was nevertheless necessary; and that he was the man appointed to collect funds for the organization; they had an expensive political campaign underway; they needed money; they had to look to the larger people like ourselves to make the contributions and that he couldn't take no for an answer.

I had told him that nevertheless we couldn't pay it, and the meeting broke up on that note.

Sensibar then asked Bernard Kenny to arrange for a second meeting with John V. Kenny to discuss Flaherty's demand. Mr. Sensibar testified:

A. I continued, of course, to receive complaints from our people, and when I went back to Chicago and thought about this thing, the more I thought about it the more angry I became.

Q. And what did you do?

A. I thought then that the thing to do was to go back to J. V. Kenny, and I asked Mr. Bernie Kenny to set up an appointment for me with Mr. Kenny.

Q. And did he set up an appointment for you with Mr. John V. Kenny?

A. Yes, he did, and I met with him a couple of weeks or so later.

Q. Where did this meeting take place?

A. In Mr. Bernard Kenny's office.

Q. This would be, then, sometime in—

A. Early February, middle of February.

Q. Of 1969?

A. Yes, sir.

Q. Would you tell the Commission, as nearly as you can recollect, the conversation that took place at this particular meeting with Mr. John V. Kenny?

A. I told him of Mr. Flaherty's demand. I reminded him of our initial discussion.

Mr. J. V. Kenny said that he remembered it; he remembered our initial discussion, that he would stand by it. He said nevertheless that they did have an expensive campaign; that Mr. Flaherty was the man who was delegated to raise funds for the campaign, and that it would be appreciated if we would make a campaign contribution.

Q. What did you say in reply to this, if anything?

A. I don't recollect that I made any answer at all. I think that the meeting ended on that note.

Q. Now, was there any change in your position as regards to your financial commitment into the project at this time?

A. By this time we had over $3,000,000 invested in this project and we were spending money every day on a grand scale.

With the project still stalled by municipal delay and daily costs mounting, Sensibar asked Bernard Kenny to arrange another meeting with Thomas Flaherty on April 16, 1969, Mr. Sensibar testified:

A. By sometime in early April Mr. Snyder and Mr. Abrams and Mr. Kenny, Bernie Kenny, said that they

were so stymied at city hall that they thought it was necessary that I should have another meeting with Mr. Flaherty.

Q. Now, with your knowledge that your men on the scene were running into these drawbacks did you, in fact, arrange for another meeting with Mr. Flaherty?

A. Yes, I had another meeting with him on April 16th.

Q. And who arranged for that meeting?

A. Mr. Bernie Kenny.

Q. Where did the meeting take place?

A. To the best of my recollection it was in his office.

Q. And who was at that meeting besides yourself and Mr. Flaherty?

A. No one else.

Q. This time Mr. Snyder did not accompany you?

A. No one accompanied me to that meeting.

Q. Would you tell the Commission, to the best of your recollection, what the conversation was at that meeting?

A. I complained to Mr. Flaherty that the matters were not moving in city hall and he brought up again the matter of the campaign contribution. The campaign was then drawing to an end. This was April. I think the election was in May, or to be in May. He said that he particularly needed $140,000 to finance the balance of the campaign; that he had to go to a few large contributors to get the money. He said that Mr. Kenny had talked with him, Mr. J. V. Kenny had talked with him; that he was—he realized that the proposal that he had made to me before was unrealistic; that he was willing to come down to a basis of one per cent of our building construction as a contribution.

I turned the conversation away from the question of any basis and tried to put in on a platform of what he was—was the minimum he needed right now. We did a little talking about it. I suggested a campaign contribution of $10,000. He said it was not enough and after considerable discussion raised it to $20,000.

Q. This as far as the meeting went, then, was probably merely a down payment on what Mr. Flaherty expected to take from you; would that be correct?

A. I don't know his state of mind. I know my state of mind; that we had the shotgun to our heads at that time. We couldn't go forward with this project. By this time we had 4 or $5,000,000 into it and I knew it would all go down the drain if we didn't somehow make peace and get quick cooperation from city hall. I was disposed to make a campaign contribution of $20,000 to get that peace.

Q. Now, did you discuss with Mr. Flaherty how the money was to be paid?

A. Yes. I asked him what the mechanism was, to whom we should make out the check, and he said that in Hudson County you don't make out checks. This would have to be paid in cash.

Q. How did you arrange to generate this $20,000 in cash?

A. I had Mr. Abrams on behalf of Port Jersey send me a check for $20,000, which I had cashed in Chicago.

Q. Now, I show you what has been previously marked as Exhibit C-1—C-4, I'm sorry, and I ask you if that is the check which Mr. Abrams did send to you in Chicago?

A. It is; it is.

Q. And did you have someone cash this check at a bank in Chicago and receive the currency?

A. I did.

Q. Now, at every point in your discussions either with Mr. Kenny or with Mr. Flaherty were you advising your two partners, Mr. Abrams and Mr. Snyder, of what was taking place?

A. Yes. Shortly after my meeting with Mr. Flaherty on the 19th I consulted with Mr. Snyder and Mr. Abrams. They both said that it was unrealistic to expect that we could do as much construction work, as much business as we were doing in Hudson County without acceding to a shakedown of some kind. They

thought that $20,000 in the circumstances might be nominal and they urged that I should arrange for us to pay it.

Q. Did these men warn you prior to your coming into this project in New Jersey that it would be unrealistic for you to complete construction without having to pay something to someone?

A. They did not. We didn't discuss that subject.

Q. Now, after you received the $20,000 from Mr. Abrams in the form of this check and you cashed it on, I believe it was, April 23rd—let me get that check —on April 23rd, 1969 how soon thereafter did you arrange to get the money in Mr. Flaherty's hands?

A. Within a few days after that at a meeting which we had in New York at one of the shipping lines in an effort to attract them to Port Jersey I met Mr. Snyder and handed him the $20,000 to deliver to Mr. Flaherty.

Q. Did you give the $20,000 to Mr. Snyder in any sort of container or package, or was it just in cash?

A. It was in an envelope in cash.

Q. Did you instruct Mr. Snyder what to do with it or did he already know?

A. Well, he already knew, and I handed him the money and said, "This is the money for Flaherty."

Q. Do you know—well, as far as you know, then, Mr. Snyder delivered that money to Mr. Flaherty?

A. I certainly believe he did.

Mr. Clinton B. Snyder was called to testify. However, upon being warned of his rights he gave the following response:

Q. Mr. Snyder, did you participate in any payoff to any city official in Jersey City or Hudson County?

(Whereupon, the witness confers with counsel.)

A. I refuse to answer on the grounds that it might incriminate me.

Was Money Paid for Tax Abatement?

The testimony raised the question of whether money was paid for the granting of tax relief in addition to the $20,000 which Mr. Sensibar and Mr. Abrams said they paid for municipal "cooperation" in other areas. Mr. Edward Light, Sr., a former employee of C. B. Snyder Realty Company, testified that he participated in a conversation with Mr. Edward Patterson and M. Gerard Kelly regarding Port Jersey development:

Q. Mr. Light, I direct your attention to the month of August, 1969, and I ask you, sir, where were you employed at that time?

A. At C. B. Snyder Realty in Jersey City.

Q. And in what capacity were you employed?

A. As an industrial representative.

Q. At that time, sir, was there also one M. Gerard Kelly employed on the premises of C. B. Snyder?

A. Yes.

Q. And what were his responsibilities?

A. Gerry was responsible for the development of the Port Jersey facility as an industrial complex.

Q. Were you, sir, at this time also endeavoring to attract clients to the Port Jersey project?

A. Of course.

Q. Were you having difficulties doing this?

A. Yes, for the reason that the development was not going forward as it properly should.

Q. Well, at any time, sir, during the month of August, 1969, did you go to Mr. Kelly and discuss this with him?

A. Well, I didn't personally. Together with Mr. Patterson, we interviewed Gerry Kelly after a Monday morning meeting with regard to what we could expect as far as the advancement of the development could be expected, and at that time he told us that it looked like a downhill pull from there on for the reason that the corporation had been able to secure a tax abatement of some $400,000. It had cost $50,000 for the securing of the abatement, but he said it was

well worth the investment because now the building could go forward and all of the rest of the development could move.

Q. Did he explain to you what he meant by the payment of $50,000?

A. No, not exactly, just that $50,000 it had cost to get the abatement of the tax.

Mr. Edward Patterson, a witness of this conversation, also testified as to what he remembered was said:

Q. Mr. Paterson, were you during the month of August, 1969, employed by the C. B. Snyder Organization?

A. Yes.

Q. And in what capacity, sir?

A. In the industrial department. I was a supervisor.

Q. And you have this morning, sir, heard the testimony of M. Gerard Kelly, is that correct, sir?

A. I have.

Q. And have you also heard the testimony of Mr. Edward Light?

A. I have.

Q. Is Mr. Edward Light's version of what transpired at this meeting an accurate representation of the conversation?

A. Yes, it is.

Q. Is there anything you wish to add to it?

A. No, I think that was it in totality.

M. Gerard Kelly denied making the statement at all:

Q. Mr. Kelly, did you ever make a statement referring to Port Jersey that it "cost us $50,000, for tax abatement, but it was well worth it"?

A. I don't believe I ever said that statement.

The Blighted Miracle

When the Port Jersey group became the successful bidder on August 1, 1967, the mayor of Jersey City hailed their development idea as a "miracle" for the Jersey City waterfront. Soon thereafter this same group began to press the city for a tax abatement as a prerequisite to successful development. The law required that before property could be granted Fox-Lance treatment, it must be declared blighted and a development plan be formulated for its use.

Not all property can be blighted—only that land which satisfies one of five statutory conditions can be so designated. To this end the City planning board commissioned Alvin E. Gershen Associates to make a blight survey of the entire waterfront area. They recommended to the Planning Board that this entire area be declared blighted. After a public hearing, the Planning Board made the same recommendation to the City Council. The Council, however, designated only the property owned by the Port Jersey Corporation and an area belonging to the federal government known as Caven Point.

Mr. Alvin Gershen and his employee, Elwood Jarmer, were both duly sworn and testified as follows:

Q. And one of the accounts that you had on a consultant basis was the Jersey City account. Is that correct?

A. (By Mr. Gershen) Yes, sir.

Q. You were a consultant to them?

A. (By Mr. Gershen) Our firm was, yes, sir.

Q. And did you also aid Jersey City by sitting on what is known as the Mayor's Development Council?

A. (By Mr. Gershen) I did, sir.

Q. Was that part of your consulting duties?

A. (By Mr. Gershen) It was.

Q. In addition to that, were you commissioned by the city council to make a blight survey of the area known as the Jersey City waterfront?

A. (By Mr. Gershen) We were.

Q. Did you make such a survey, or did your firm make such a survey in conjunction with the Jersey City Planning Board?

A. (By Mr. Gershen) Our firm did.

Q. And who actually did the field work?

A. (By Mr. Gershen) Mr. Jarmer did the field work and wrote the report.

Q. I show you what has been marked previously as C-6 for identification, which is the Waterfront Study Blight Report.

A. (By Mr. Gershen) Yes, sir.

Q. Is that the blight report which you submitted in July of 1970 to the Jersey City Planning Board?

A. (By Mr. Gershen) Yes, sir, to the division of planning.

* * * * *

Q. Did you know why you were asked to make such a survey?

A. (By Mr. Jarmer) To my knowledge the reason for the survey was to do a comprehensive study of the entire waterfront to determine if it were blighted and then to come up with a plan for the entire waterfront.

Q. Well, do you know why Jersey City was interested at this point in determining whether this waterfront area was blighted?

A. (By Mr. Jarmer) The reason, to my knowledge, was to have a comprehensive development of the waterfront.

* * * * *

Q. All right. If I may get back to Mr. Gershen. Mr. Gershen, did you learn later on that the Jersey City Council had declared a portion of the waterfront area a blighted or renewal area?

A. (By Mr. Gershen) Yes, I did.

Q. And I believe this particular resolution or decision was made on September 15th, 1970. Is that correct?

A. (By Mr. Gershen) I would take that to be correct. I don't have that information with me, but it would be about then.

Q. Now, in your opinion as a planner is it in the best interests of the City of Jersey City in developing the property as a whole, in developing the waterfront as a whole, that they should single out only a small portion of that particular property and designate it as a blighted area?

A. (By Mr. Gershen) It is not. That's in my judgment as a planner.

Q. Now, is it possible in your judgment to designate only the area in blue which was owned by the Port Jersey Corporation under construction at that time as a blighted area?

A. (By Mr. Gershen) Sir, I'm unclear as to precisely what your question is: If you are saying would we recommend that the blue area at the bottom of that map, if that were the only area to be presented for a blight determination, would we recommend that it be blighted?

Q. Yes.

A. (By Mr. Gershen) At the time on the calendar it was blighted, the answer is no.

Q. Now, Mr. Gershen, in your experience as a Planner have you had occasion to counsel other municipalities in a law known as the Fox-Lance Law or the tax abatement statute?

A. (By Mr. Gershen) Yes, sir.

Q. This particular statute, can you tell the Commission briefly what sorth of benefit it gives to a developer who comes in and starts to redevelop an area?

A. (By Mr. Gershen) In general terms, under the Urban Renewal Corporations and Association Law, commonly referred to as Fox-Lance after two state senators, namely two state senators, permits a municipality to forgive a specific urban renewal corporation

from the payment of taxes for a period of time, generally fifteen years, and to pay in lieu of taxes a percentage of either income or value to the municipality. This percentage obviously is somewhat less than what would be paid had full taxes been required.

Q. Now, prior to such treatment it's necessary that the municipality blight the area it's dealing with. Is that correct?

A. (By Mr. Gershen) In our judgment that's one of the conditions that must prevail, that the area be blighted.

Q. Well, that is one of the statutory provisions?

A. (By Mr. Gershen) Yes. I say, one of the statutories. There are others, we feel.

Q. Are there any others that must be met before you can designate an area as an area that should receive Fox-Lance treatment?

A. (By Mr. Gershen) In our professional judgment, what's required in addition to the blighting of an area is the adoption of an urban renewal plan in accordance, as the statute says, in accordance with the precedures specified in Section 17(b) of Chapter 306 of the Laws of '49. That citation is the Redevelopment Agencies Law of 1949.

Q. Well, in other words, what you are telling us is that an additional statutory requirement before an area may receive tax abatement is that there be a plan for the development of that area that qualified?

A. (By Mr. Gershen) An additional qualification for the use of the Urban Renewal Corporations Act, because there are other acts under the statute, under our New Jersey statutes, which provide for tax abatement. So under this statute there is a requirement that there is blight, and in our judgment there is a requirement in addition to that that the conditions as recited in 40:55C–17(b), which is the Redevelopment Agencies Law, must be present since 40:55C–46 of the Fox-Lance Law requires it. I don't mean to get that technical.

Q. Let me ask, in your opinion do you feel that the statute requires that there be a redevelopment plan for an area before Fox-Lance may be applied to the area?

A. (By Mr. Gershen) Yes, sir.

Q. Do you know whether there was a redevelopment plan for the area known as Port Jersey before Fox-Lance was applied to it?

A. (By Mr. Gershen) I do not know the answer to that. I know that we prepared, our firm prepared, a redevelopment or a land-use plan for the total area you see on that map.

Q. When was that submitted to the City of Jersey City?

A. (By Mr. Gershen) It's submitted in a report dated July, 1971, and that was submitted to the division of planning.

MR. SAPIENZA: Mr. Chairman, for the record, the city entered into a financial agreement with the Harbor Renewal Corporation on December 7, 1970, granting that corporation Fox-Lance treatment.

Q. Now, Mr. Gershen, let me ask you this: In your opinion having worked with Fox-Lance in other municipalities, is it possible to grant Fox-Lance treatment to an area which is under construction where construction has been commenced and a phase of it completed?

A. (By Mr. Gershen) In my judgment, no.

LABOR COOPERATION FOR A PRICE

Testimony revealed that the president of the International Longshoremen's Association local for the Jersey City area was paid $3860 to "reimburse him for expenses" incurred on behalf of the Port Jersey Corporation.

Mr. Arthur Abrams testified:

Q. C-5 for identification is a check drawn on the trust account of Arthur Lawrence Abrams under date

of July 11, 1968, in the amount of $3860, payable to Frank Murray. I show you that check, sir, and ask you whether you issued that.

A. Yes.

Q. Who, Mr. Abrams, is Frank Murray?

A. He was then, and I don't know whether he still is, he was then president of the Jersey City local of the ILA.

Q. The Longshoremen's local?

A. That's right.

Q. For what purpose did you issue this check to Mr. Murray?

A. To reimburse him for expenses that he claimed he had on our behalf.

Q. At whose direction did you issue that check to him?

A. Mr. Sensibar.

Q. Did you ever see a voucher submitted by Mr. Murray to explain what expenses he had incurred?

A. No, there was no voucher submitted.

Q. No voucher was submitted. Did you ever ask Mr. Murray what he did?

A. No.

Q. Did you ever ask Mr. Sensibar what he did for you, for the money?

A. Oh, Mr. Murray. The way you phrased the question, did I ask him. Mr. Murray had been extremely helpful to us in terms of introducing us to potential shipping people. He had done a great deal of leg work on our behalf trying to interest people, not for unselfish reasons but for the fact that he wanted shipping companies to come to Jersey City.

Q. Well, have you obtained any clients at all as a result of introductions you received through Frank Murray?

A. No. Not through any brokers, either, so we had a lot—

Q. So he really didn't do that much for you?

A. Well, $3,800 worth, I don't know. But he did. He did work for us. He did. He helped.

Q. Well, did he mail you a bill?

A. No.

Q. Well, how did you arrive at the thirty-eight-hundred-sixty-dollar figure?

A. That was his. That was what he asked for.

Q. He said, "Give me $3,860"?

A. Exactly.

Q. Well, did he offer to do anything for Port Jersey with regard to potential labor problems in exchange for that?

A. Yes. He indicated that it was related to a number of gangs that would potentially be required at Port Jersey and that he needed that sum to pay some expenses in connection with allocating these gangs to Port Jersey.

Q. In other words, he had to pay expenses to allocating some of these gangs to Port Jersey?

A. That was what he said.

Q. You are still active in the Port Jersey operation, aren't you, sir?

A. Oh, yes.

Q. And this check is dated July 11, 1968. Today do you have an ILA local working on your project?

A. I don't know. I just don't know. Maybe one of the warehouses has ILA labor. I don't know. We don't have any.

Q. They are, in fact, Teamsters working in the warehouses, aren't they?

A. I know they're Teamsters. They may be ILA people, too.

Q. You don't know?

A. No, I don't know. I don't have anything to do with that. That's tenants. We have no shipping facility in operation yet.

Summary of the Commission's Recommendations

1. Possible formation, after appropriate study, of a new or revised unit of state government to plan and coordinate the development of valuable lands throughout the state and to assist private developers in improving and realizing the full potential of those lands.

2. The statutes should be changed to require formulation of a municipal redevelopment plan in time for that plan to be adopted simultaneously with a declaration of blight.

3. The Fox-Lance tax abatement statute and its effects in the past 10 years should be thoroughly studied and analyzed with the aim of making that statute a more effective tool for stopping urban decline.

4. The statute on brokerage fees paid for sales of public lands should be amended to bar more effectively any payment of those fees to purchasers of the land.

5. The state should have up-to-date and more effective criminal statutes on bribery and corruption.

The Commission's Recommendations in Detail

1. *Possible formation, after appropriate study, of a new or revised unit of state government to plan and coordinate the development of valuable lands throughout the state and to assist private developers in realizing the full potential of those lands.*

The Commission concluded from its investigation and hearings on the Port Jersey project that strong consideration should be given to the state's playing a larger and more influential role in the development of lands so valuable to the economic well-being of New Jersey as a whole.

However, the Commission believes that prior to creation of any new or revised unit of state government, an exhaustive study should first be made of the various federal, state, county and local functions now pertaining to the development and redevelopment of lands, particularly urban lands. That study should pinpoint exactly what an enlarged state role can accomplish most effectively and efficiently, while still reserving to the municipalities the power to shape their own destinies.

The Commission notes that after its public hearings last October and before issuance of this annual report, Governor Cahill in his 1972 Annual Message to the Legislature called for a far-reaching program of state, county and municipal cooperation to revitalize the Lower Hudson Waterfront.

The governor's recommendations included creation of a special interdepartmental committee to prepare a plan for development of the waterfront and to recommend needed revisions of municipal land use regulations, plus legislation to create a multi-purpose agency to encourage private investment in the area.

The Commission believes the record of its hearings on the Port Jersey project, as detailed in sworn testimony in previous pages of this report, offers a concrete and specific instance of the need for the greater coordination and planning that the Commission now joins the Governor in advocating. Obviously the Port Jersey plan represents a development project with a function and impact that go far beyond the municipal boundaries in which the project lies.

The hearings on the Port Jersey project also demonstrated how private developers can be faced with a bewildering, frustrating and all too costly process of having to deal with an array of federal, state and local agencies from the time of looking for available land to completion of a project. The Port Jersey corporation had to negotiate with no less than 37 federal, state and local agencies. The matter of getting a riparian grant from the state took three years. Those facts certainly indicate the usefulness of some type of single governmental unit of statewide stature and expertise to provide information and otherwise help to smooth the path for developers of similarly important land through the complex web of making a development dream become a reality.

The Commission urges that once appropriate study has determined the best exact nature of any new or revised unit of state government, that unit be given responsibilities and powers in the following areas:

A. To survey and keep an up-to-date statewide inventory of all lands available and suitable for various kinds of development and redevelopment projects.

B. To determine which lands or areas should be declared blighted under the Blighted Areas Act to pave the way for redevelopment projects.

Municipalities still would be empowered to make their own blight declarations. But, the investigation and findings by any proposed state office would, in effect, do much of the homework for the municipalities in determining the propriety and usefulness of blighted areas.

What is envisioned by the Commission is a degree of statewide coordination of *urban blight* land redevelopment, with municipalities working in harmony rather than competition with the state which should have, at least, the power to review local decisions on development plans and on blighting.

C. Any proposed new state unit should be under statutory direction to be of all possible assistance to developers. It is suggested the office could take the following steps as a minimum:

- Maintain an adequate and expert staff that will discuss freely and fully with a developer all problems and procedures involved in developing a certain area.
- Find and execute, in cooperation with the developer, all possible ways of cutting red tape and delays in acquiring and getting clear title to lands. The proposed new office could be helpful in straightening out riparian land problems.
- In keeping a constant inventory of lands, the office should compile full data on municipal tax rates and any other fiscal factors affecting those lands as a way of aiding the developer in estimating the true costs that will be encountered in a project.
- Any proposed new office should make and maintain channels of communication with all federal, state, county and municipal agencies that could be involved in development and redevelopment projects so that a developer can be directed to specific agencies and people within those agencies.
- The office should keep a thorough and up-to-date file on all developers who might be interested in various types and aspects of development and redevelopment projects so that combinations or marriages of various developer interests and capabilities can be accomplished.

The Commission found that the Port Jersey Corporation was primarily interested in filling in a waterfront area and constructing a containership terminal. The corporation would have liked to enter

the project jointly with another developer expert in industrial park projects. Port Jersey, however, didn't find a partner and had to undertake on its own both the containership terminal and the adjacent industrial park project.

2. *The statutes should be changed to require formulation of a municipal redevelopment plan in time for that plan to be adopted simultaneously with a declaration of blight.*

The existing statutory requirement is that a municipal redevelopment plan must be formed prior to granting Fox-Lance tax abatement to a project but not before the declaration of blight which paves the way for municipal redevelopment.

Logic and proper planning procedures would dictate that a municipal redevelopment plan should be carefully thought out and formulated before decisions are made on blighting areas. In the Port Jersey project, Jersey City never did formulate and adopt a redevelopment plan for its waterfront property until after the sale of its property, the declaration that a portion of it was blighted, and some tax relief was granted. Although the city planning board recommended blighting the entire waterfront area, the city council voted to blight only the Port Jersey area and the adjacent Caven Point area. That procedure was, to say the least, chaotic and, to say the most, possibly improper.

We urge the statutes be amended so that the Blighted Areas Act requires adoption of a municipal redevelopment plan contemporaneously with a declaration of blight and as a precedent to use of municipal power in dealing with a blighted area.

The redevelopment plan should, by statutory direction, be formed by the municipal planning board. In cases where a municipality does not have that type of board, the plan could be formed by any new proposed State government unit.

3. *The Fox-Lance tax abatement statute and its effects in the past 10 years should be thoroughly studied and analyzed with the aim of making that statute a more effective tool for stopping urban decline.*

The Fox-Lance law is a method for attracting private capital to develop an area by assuring the private developer a stable tax base for 20 years from the signing of a development agreement or 15 years from completion of the contract, whichever comes first.

During that time, the developer pays taxes on land but not on improvements on the land. In lieu of no tax on improvements, the developer pays *up to* two per cent of the total project cost or *up to* 15 per cent of the rents paid by users of the improvements.

The Commission suggests any study of the Fox-Lance statute should delve into the questions of whether to continue to leave room to negotiate the abatement rate up to certain levels or whether a shift to more fixed, non-negotiable rate might be in order.

One principal problem raised by granting Fox-Lance abatement on too grand a scale is that the municipality involved in an effort to attract new industry indirectly places a higher tax burden on other properties, and the higher taxes, in turn, tend to drive existing industrial ratables and homeowners from the city.

The decision to grant tax abatement and realize less than full revenue on a project is rightfully placed with the mayor and governing body of a municipality because they are responsible for imposing taxes and balancing the municipal budget.

However, the Commission suggests as worthy of close study a suggestion that the Fox-Lance statute should be altered to permit any proposed new state government unit to grant property tax abatement to private developers but with a companion requirement that the state reimburse a municipality for the full difference between what a municipality would have gotten by fully taxing a project and what it actually got under state grant of tax abatement.

The Commission notes the possibility that the Fox-Lance law is unnecessarily confining and inflexible in not permitting tax abatement to be applied retroactively to existing improved properties. A city might want to keep valuable industry within its borders by giving some sort of tax break. However, under the present statute, tax abatement can be applied only to new construction projects.

4. *The statute on brokerage fees paid for sales of public lands should be amended to bar more effectively any payment of those fees to purchasers on the land.*

The Commission's hearings on the Port Jersey project showed that half of a $102,000 brokerage fee paid by Jersey City wound up in the coffers of the Port Jersey Corporation. The other half went to a real estate firm, the head of which was a principal in the Port Jersey Corporation.

Obviously, if purchasers wind up getting all or part of the brokerage fees paid by a municipality, they are in effect getting a refund that lowers the amount they had to pay to acquire public lands.

The last paragraph of the statute (*N.J.S.A.* 40:60–26) now reads in part:

> In all sales made pursuant to paragraphs (a) (c) or (d) of this section the governing body of any municipality *may pay a commission to any real estate broker or other person other than the purchaser actually consummating such sale, but such commission shall not be more than 5% of the sale price.*

The statute does not define the term "purchaser" nor does it require that the decision to pay a commission be included in the conditions publicly advertised nor in the contract for sale. The commision recommends the following changes in the statute:

- The term purchaser should be defined as including any person, corporation or other business entity which owns or controls directly or indirectly more than 10 per cent of the purchasing entity.
- Before any commission may be paid, the proposed payment must be included in the conditions of sale publicly advertised, and the recipient must file an affidavit with the governing body stating that he is not a purchaser within the terms of the statutes.

5. *The State should have up-to-date and more effective criminal statutes on bribery and corruption.*

The Law Revision Commission, in revising the state's entire criminal code, has come up with excellent, modern proposals for new bribery and corruption statutes. We heartily endorse that work of that Commission and urge that our patchwork mixture of outmoded statutes intermingled with common law be replaced with a truly effective and integrated language as recommended by the Commission.

With new and modern statutes, the Commission believes the pace and success of law enforcement in the bribery and corruption field will increase markedly.

Certainly, no stone, statutory or otherwise, should be left unturned in trying to prevent re-occurences of the shocking nature revealed at the Commission's hearings on the Port Jersey development. The Port Jersey Corporation was pressured into making an improper $20,000 cash payment to a Jersey City official as the price of having the city cooperation so vital to the success of the project.

* * * * *

APPENDIX I

STATE COMMISSION OF INVESTIGATION

New Jersey Statutes Annotated 52:9M–1, *Et. Seq.*

L. 1968, C. 266, as amended by L. 1969, C. 67, and L. 1970, C. 263

52:9M–1. Creation; members; appointment; chairman; terms; salaries; vacancies. There is hereby created a temporary state commission of investigation. The commission shall consist of 4 members, to be known as commissioners.

Two members of the commission shall be appointed by the governor, one by the president of the senate and one by the speaker of the general assembly, each for 5 years. The governor shall designate one of the members to serve as chairman of the commission.

The members of the commission appointed by the president of the senate and the speaker of the general assembly and at least one of the members appointed by the governor shall be attorneys admitted to the bar of this state. No member or employee of the commission shall hold any other public office or public employment. Not more than 2 of the members shall belong to the same political party.

Each member of the commission shall receive an annual salary of $15,000.00 and shall also be entitled to reimbursement for his expenses actually and necessarily incurred in the performance of his duties, including expenses of travel outside the state.

Vacancies in the commission shall be filled for the unexpired term in the same manner as original appointments. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

52:9M–2. Duties and powers. The commission shall have the duty and power to conduct investigations in connection with:

a. The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering

b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;

c. Any matter concerning the public peace, public safety and public justice.

52:9M–3. Additional duties. At the direction of the governor or by concurrent resolution of the legislature the commission shall conduct investigations and otherwise assist in connection with:

a. The removal of public officers by the governor;

b. The making of recommendations by the governor to any other person or body, with respect to the removal of public officers;

c. The making of recommendations by the governor to the legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law.

52:9M–4. Investigation of management or affairs of state department or agency. At the direction or request of the legislature by concurrent resolution or of the governor or of the head of any department, board, bureau, commission, authority or other agency created by the state, or to which the state is a party, the commission shall investigate the management or affairs of any such department, board, bureau, commission, authority or other agency.

52:9M–5. Cooperation with law enforcement officials. Upon request of the attorney general, a county prosecutor or any other law enforcement official, the commission shall cooperate with, advise and assist them in the performance of their official powers and duties.

52:9M–6. Cooperation with federal government. The commission shall cooperate with departments and officers of the United States government in the investigation of violations of the federal laws within this state.

52:9M–7. Examination into law enforcement affecting other states. The commission shall examine into matters relating to law enforcement extending across the boundaries of the state into other states; and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern to this and other states.

52:9M–8. Reference of evidence to other officials. Whenever it shall appear to the commission that there is cause for the prosecu-

tion for a crime, or for the removal of a public officer for misconduct, the commission shall refer the evidence of such crime or misconduct to the officials authorized to conduct the prosecution or to remove the public officer.

52:9M–9. Executive director; counsel; employees. The commission shall be authorized to appoint and employ and at pleasure remove an executive director, counsel, investigators, accountants, and such other persons as it may deem necessary, without regard to civil service; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. Investigators and accountants appointed by the commission shall be and have all the powers of peace officers.

52:9M–10. Annual report; recommendations; other reports. The commission sall make an annual report to the governor and legislature which shall include its recommendations. The commission shall make such further interim reports to the governor and legislature, or either thereof, as it shall deem advisable, or as shall be required by the governor or by concurrent resolution of the legislature.

52:9M–11. Information to public. By such means and to such extent as it shall deem appropriate, the commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the state and other activities of the commission.

52:9M–12. Additional powers; warrant for arrest; contempt of court. With respect to the performance of its functions, duties and powers and subject to the limitation contained in paragraph d. of this section, the commission shall be authorized as follows:

a. To conduct any investigation authorized by this act at any place within the state; and to maintain offices, hold meetings and function at any place within the state as it may deem necessary;

b. To conduct private and public hearings, and to designate a member of the commission to preside over any such hearing;

c. To administer oaths or affirmations, subpœna witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation; and the commission may designate any of its members or any member of its staff to exercise any such powers;

d. Unless otherwise instructed by a resolution adopted by a majority of the members of the commission, every witness attending before the commission shall be examined privately and the commission shall not make public the particulars of such examination. The commission shall not have the power to take testimony at a private hearing or at a public hearing unless at least 2 of its members are present at such hearing;

e. Witnesses summoned to appear before the commission shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State.

If any person subpœnaed pursuant to this section shall neglect or refuse to obey the command of the subpœna, any judge of the superior court or of a county court or any municipal magistrate may, on proof by affidavit of service of the subpœna, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpœna, issue a warrant for the arrest of said person to bring him before the judge or magistrate, who is authorized to proceed against such person as for a contempt of court.

52:9M–13. Powers and duties unaffected. Nothing contained in sections 2 through 12 of this act [chapter] shall be construed to supersede, repeal or limit any power, duty or function of the governor or any department or agency of the state, or any political subdivision thereof, as prescribed or defined by law.

52:9M–14. Request and receipt of assistance. The commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by the state, or to which the state is a party, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

52:9M–15. Disclosure forbidden; statements absolutely privileged. Any person conducting or participating in any examination or investigation who shall disclose to any person other than the commission or an officer having the power to appoint one or more of the commissioners the name of any witness examined, or any information obtained or given upon such examination or investigation, except as directed by the governor or commission, shall be adjudged a disorderly person.

Any statement made by a member of the commission or an employee thereof relevant to any proceedings before or investigative

activities of the commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander.

52:9M–16. Impounding exhibits; action by superior court. Upon the application of the commission, or a duly authorized member of its staff, the superior court or a judge thereof may impound any exhibit marked in evidence in any public or private hearing held in connection with an investigation conducted by the commission, and may order such exhibit to be retained by, or delivered to and placed in the custody of, the commission. When so impounded such exhibits shall not be taken from the custody of the commission, except upon further order of the court made upon 5 days' notice to the commission or upon its application or with its consent.

52:9M–17. Immunity; order; notice; effect of immunity. a. If, in the course of any investigation or hearing conducted by the commission pursuant to this act [chapter], a person refuses to answer a question or questions or produce evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the commission may order the person to answer the question or questions or produce the requested evidence and confer immunity as in this section provided. No order to answer or produce evidence with immunity shall be made except by resolution of a majority of all the members of the commission and after the attorney general and the appropriate county prosecutor shall have been given at least 24 hours written notice of the commission's intention to issue such order and afforded an opportunity to be heard in respect to any objections they or either of them may have to the granting of immunity.

b. If upon issuance of such an order, the person complies therewith, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that such person may nevertheless be prosecuted for any perjury committed in such answer or in producing such evidence, or for contempt for failing to give an answer or produce in accordance with the order of the commission; and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt.

52:9M–18. Severability; effect of partial invalidity. If any section, clause or portion of this act [chapter] shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

52:9M–19. There is hereby appropriated to the Commission the sum of $400,000.

52:9M–20. This Act shall take effect immediately and remain in effect until December 31, 1974.

Appendix II

MEMBERS OF THE COMMISSION

The commission's activities since February 22, 1971 have been directed by John F. McCarthy, Jr., who was named chairman at that time by Governor William T. Cahill. Mr. McCarthy succeeds James T. Dowd who resigned as a commissioner and who had been acting chairman for eight months. The other three commissioners are Charles L. Bertini, Wilfred P. Diana and Thomas J. Shusted.

Mr. McCarthy, of Princeton, was appointed to the commission by Governor Cahill and took his oath of office July 8, 1970. A graduate of Princeton University and the University of Pennsylvania Law School, he is the senior partner in the law firm of McCarthy, Bacsik, Hicks and Dix, in Princeton. He was attorney for the Borough of Princeton during 1957-1960.

Mr. Bertini, of Wood-Ridge, was sworn in as a commissioner January 3, 1969 following his appointment by former Governor Richard J. Hughes. A graduate of the former Dana College and the Rutgers University School of Law, he was president of the New Jersey Bar Association when he was named to the commission. Bloomfield (N. J.) College awarded him an honorary Doctor of Laws degree in 1970. Commissioner Bertini conducts a general law practice in Wood-Ridge.

Mr. Diana, of Watchung, was appointed to the commission by Senate President Raymond H. Bateman and took his oath of office June 14, 1971. A graduate of Colgate University and Harvard Law School, Mr. Diana was serving as Senator Bateman's chief legislative aide and as Township Attorney for Berkeley Heights and Attorney for the Bedminster Board of Adjustment when he was named to the commission. He was Commissioner of Assessments for the city of Plainfield in 1962 and served as Assistant City Attorney for Plainfield during 1963-65. His law firm, Diana and Diana, has offices in Plainfield. Mr. Diana filled a vacancy caused by the resignation of Commissioner Glen B. Miller, Jr.

Mr. Shusted, of Haddonfield, was appointed to the Commission by former Assembly Speaker and now State Senator Barry T.

Parker to fill a vacancy caused by Mr. Dowd's resignation. Mr. Shusted took his oath as a commissioner March 10, 1971. A graduate of LaSalle College and the Rutgers University School of Law, he was serving his first term in the General Assembly until he resigned to become a commissioner. He was a member and Director of the Camden County Board of Freeholders during 1964-69 and is former Municipal Judge of Laurel Springs, former Borough Solicitor for Clementon and former member of the Planning Board of Haddon Township. Mr. Shusted conducts a general law practice with offices in Westmont.

APPENDIX III

CODE OF FAIR PROCEDURE

Chapter 376, Laws of New Jersey, 1968, N. J. S. 52:13E-1 to 52:13E-10.

An Act establishing a code of fair procedure to govern state investigating agencies and providing a penalty for certain violations thereof.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

(a) "Agency" means any of the following while engaged in an investigation or inquiry: (1) the Governor or any person or persons appointed by him acting pursuant to P. L. 1941, c. 16, s. 1 (C. 52:15–7), (2) any temporary State commission or duly authorized committee thereof having the power to require testimony or the production of evidence by subpœna, or (3) any legislative committee or commission having the powers set forth in Revised Statutes 52:13–1.

(b) "Hearing" means any hearing in the course of an investigatory proceeding (other than a preliminary conference or interview at which no testimony is taken under oath) conducted before an agency at which testimony or the production of other evidence may be compelled by subpœna or other compulsory process.

(c) "Public hearing" means any hearing open to the public, or any hearing, or such part thereof, as to which testimony or other evidence is made available or disseminated to the public by the agency.

(d) "Private hearing" means any hearing other than a public hearing.

2. No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of this act, and a general statement of the subject of the investigation. A

copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the agency upon request therefor by the person summoned.

3. A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the agency shall ask the witness such of the questions as it may deem appropriate to its inquiry.

4. A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided the same is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

5. A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record of the investigatory proceeding.

6. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the agency or its counsel at such hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either to appear personally before the agency and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative at the option of the agency, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

7. Nothing in this act shall be construed to prevent an agency from granting to witnesses appearing before it, or to persons who claim to be adversely affected by testimony or other evidence

adduced before it, such further rights and privileges as it may determine.

8. Except in the course of subsequent hearing which is open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview conducted before a single-member agency in the course of its investigation shall be disseminated or made available to the public by said agency, its counsel or employees without the approval of the head of the agency. Except in the course of a subsequent hearing open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview before a committee or other multi-member investigating agency shall be disseminated or made available to the public by any member of the agency, its counsel or employees, except with the approval of a majority of the members of such agency. Any person who violates the provisions of this subdivision shall be adjudged a disorderly person.

9. No temporary State commission having more than 2 members shall have the power to take testimony at a public or private hearing unless at least 2 of its members are present at such hearing.

10. Nothing in this act shall be construed to affect, diminish or impair the right, under any other provision of law, rule or custom, of any member or group of members of a committee or other multi-member investigating agency to file a statement or statements of minority views to accompany and be released with or subsequent to the report of the committee or agency.