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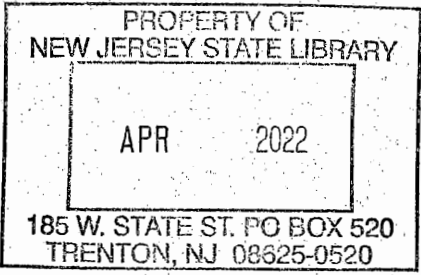
RE: PUBLIC HEARINGS OF THE :
GOVERNOR'S COMMITTEE TO :
EVALUATE THE STATE COMMISSION : TRANSCRIPT
OF INVESTIGATION :
OF
PROCEEDINGS

Friday,
June 27, 1975,
State House Annex,
Trenton, New Jersey

BEFORE HONORABLE JOSEPH WEINTRAUB
HONORABLE NATHAN L. JACOBS
HONORABLE EDWARD F. BRODERICK

APPEARANCES:

RICHARD W. BERG, ESQ.,
Deputy Attorney General,
Counsel to the Committee.



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1 MR. WEINTRAUB: Ladies and gentlemen, by
2 Executive Order number 20, dated April 11, 1975,
3 the Governor of the State established this
4 Committee; that the Committee shall study and
5 evaluate statutory responsibilities and the
6 performance of the State Commission of Investigation
7 and shall report its findings to the Attorney
8 General and the Governor together with any
9 recommendations concerning statutory amendment
10 or administrative modifications.

11 We met informally with the members of the
12 State Commission of Investigation. We received
13 from the Commission printed reports, most of which
14 are right here before me.

15 We received information which they graciously
16 supplied with respect to comparable institutions
17 elsewhere.

18 We announced by way of a press release that
19 we would welcome written comments and indicated
20 that there would be a public hearing at a time
21 to be announced.

22 We then, again by way of a press release,
23 gave notice of the public hearing, which we are
24 now holding.

25 We also issued invitations to individuals

1 in public office and to members of academia;
2 those we thought would be in a position to
3 assist us in our study.

4 We want to acknowledge receipt from
5 various individuals in this State and of their
6 comments with respect to the subject matter of
7 our hearing, we appreciate their interest and
8 their help.

9 We want to say that we were greatly assisted
10 by Mr. Richard W. Berg of the Attorney General's
11 Office, who was assigned to help us. He in turn
12 was assisted very ably by Miss Deborah Cole,
13 a law student, and the work product which we
14 received from them has been extremely helpful
15 and we are indebted.

16 We will now proceed to hear witnesses and,
17 perhaps, before we call witnesses, who will speak
18 this morning, we ought to place in the record some
19 statements which we received from interested persons
20 who were unable to be here.

21 First, Mr. Berg, I would ask you, if you will,
22 to read into the record the statement received from
23 Congresswoman Millicent Fenwick.

24 MR. BERG: Congresswoman Millicent Fenwick
25 of the Fifth District of New Jersey, who is a

1 freshman member of the House of Representatives
2 writes:

3 "Dear Mr. Weintraub:

4 "I understand that the evaluation of the
5 State Commission on Investigations is nearing
6 completion and I would like to add a word to the
7 volume of testimony you must have received.

8 "Both as a legislator and as Director of
9 the Division of Consumer Affairs, I worked with
10 the State Commission on Investigations and found
11 them most helpful. In the matter of consumer
12 affairs, for example, I brought to their attention
13 a most difficult case of consumer fraud which
14 the Division could not handle. After private
15 testimony, full public hearings were held, resulting
16 in legislation and other action which provided
17 most valuable protection to the consumer and cleared
18 up a growing area of exploitation.

19 "In all my dealings with the Commission, I
20 have found them to be careful, prudent, meticulous
21 about people's rights, and at the same time, vigorous
22 and vigilant, willing to take up a good cause and
23 follow it through.

24 "I hope this information will be useful to
25 your evaluation process.

1 "With all good wishes. Yours sincerely,
2 Millicent Fenwick, Member of Congress."

3 MR. WEINTRAUB: Thank you.

4 Congressman Edwin B. Forsythe had hoped to
5 be here. But other demands upon him have taken
6 him abroad. He was kind enough to send us a
7 statement dated June 27, 1975 and, Mr. Berg, would
8 you be good enough to read that statement into the
9 record.

10 MR. BERG: Congressman Edwin B. Forsythe,
11 Sixth District of the United States Congress writes:

12 "Mr. Chairman, members of the Committee.
13 I regret that I am unable to be with you today
14 to discuss the important role of the State
15 Commission of Investigation (SCI). I had, indeed,
16 hoped to testify personally, but official
17 Congressional duties have necessitated my traveling
18 to London and Scotland this week, instead.

19 "However, you are well aware of my interest,
20 almost parental in nature, in the SCI. Frankly,
21 I must say that I have been amazed at some of the
22 attacks on the Commission, which has done much
23 to fulfill the responsibilities given it during
24 my years in the State Senate.

25 "As we, the members of the Joint Legislative

1 Committee to Study Crime and the System of
2 Criminal Justice in New Jersey, envisioned
3 when the SCI was established, it has complimented
4 the efforts of existing crime fighting organiza-
5 tions and it has done so effectively.

6 "The bi-partisan Committee wanted an
7 Independent Commission that would function
8 outside the control of any politician or any
9 Administration. It has done so.

10 "It was to be a fact-finding investigatory
11 body, one that would bring the facts to the
12 public's attention, and make recommendations
13 for the improvements in state laws and the
14 operations of government. In establishing
15 the SCI, a fairness doctrine was also put in
16 place by the Legislature, to protect those who
17 would be subjected to the actions of the SCI.

18 "The questions that must now be asked
19 are these:

20 "Has the SCI met its responsibility of
21 Investigating crime and corruption in New Jersey?

22 "Is it necessary to continue the present
23 penalty of indeterminate confinement for civil
24 contempt, now provided by law?

25 "Have the operations of government improved

1 as a direct result of SCI activity?

2 "I must confess, Mr. Chairman, and members of
3 the Committee, I am a bit partial. But, I believe
4 the record speaks loudly in favor of the
5 SCI and its important role in helping to end
6 New Jersey's unfortunate reputation as a haven
7 for the mob and political crooks."

8 "The record of the SCI's battle against
9 organized crime is well-known. Six organized
10 crime figures served with SCI subpoenas are
11 undergoing Court-ordered incarceration for
12 civil contempt for refusing to answer SCI
13 questions. Ten other such figures have
14 testified before the Commission, three of them
15 only after prolonged Court-ordered incarceration
16 because they refused to testify after receiving
17 immunity.

18 "The Commission's efforts have been credited
19 by law enforcement authorities with having a
20 major disruptive effect on organized crime
21 in our state because of these jailings and the
22 fact that nine other underworld operatives have
23 left New Jersey to avoid subpoenas.

24 "Moreover, the use of such sentences
25 for contempt has been upheld by the New Jersey

1 Supreme Court. It is clear to me that the
2 investigations of organized crime have well-
3 served the state, and that the indeterminate
4 sentence for contempt has played a major role
5 in making this possible.

6 "I urge that this not be weakened.

7 "The Commission, six years ago, at the
8 request of the Legislature investigated the
9 garbage industry in New Jersey. It found
10 that there existed a system that encouraged
11 collusive bidding and territorial protection
12 for certain firms. Remedial legislation was
13 recommended, and subsequently enacted -- laws
14 which have inhibited the previous practices
15 of price gouging by unregulated monopolies.

16 "An investigation was undertaken into
17 organized crime influence in Long Branch.
18 Findings were made public. The police chief
19 resigned. The voters sent to power an
20 entirely new administration. Subsequently,
21 the main figure in the investigation, Anthony
22 'Little Pussy' Russo, entered a plea of guilty
23 to charges of failure to file corporate income
24 tax returns. He received a three-year prison
25 sentence.

1 "The following year, an inquiry was
2 conducted into the Monmouth County Prosecutor's
3 Office, and following its hearings the SCI
4 recommended reform of the county prosecutor
5 system, including the establishment of full-
6 time prosecutors. Legislation implimenting
7 this in most counties was approved by the
8 Legislature.

9 "An investigation into practices of
10 the State Division of Purchase and Property
11 was conducted, a state buyer pleaded guilty
12 to charges of misconduct in office, fined
13 and placed on probation. Immediate steps
14 to prevent such abuses in the future were
15 taken by the Division.

16 "The foregoing merely summarizes some
17 of the positive work performed by the SCI
18 that resulted in the improvement of government
19 both at the state and local level.

20 "An example, however, of the absolute
21 need for political independence is emphasized
22 in the case involving former Secretary of
23 State Paul Sherwin, in connection with a campaign
24 contribution made by a contractor who had bid
25 on a state highway contract. The SCI was requested

1 by the State Attorney General to investigate
2 his office's handling of the matter, and the
3 inquiry highlighted the danger of the acceptance
4 of campaign contributions 'from those aspiring
5 to public works.'

6 "I need not go further in reviewing the
7 record of the SCI, for I am sure, this Committee
8 is well aware of its record. I merely stressed
9 the above instances to emphasize the need to
10 maintain a strong, forceful, Independent
11 Commission in our State.

12 "It should not be placed under the
13 jurisdiction, direction or control of any
14 politition, of any administration. Its
15 primary weapon -- witness immunity -- should
16 not be weakened.

17 "The SCI was created by a Legislature
18 that demanded honest and independent efforts
19 to help uncover the cancerous growth of organized
20 crime and corruption in our state. It has made
21 a good beginning. It should not be weakened now.

22 "Mr. Chairman, again, let me thank you for
23 this opportunity to express my views concerning
24 this important matter. Once again, I regret that
25 I could not be with you, personally, today."

1 MR. WEINTRAUB: We have a communication
2 from Professor Robert E. Knowlton, conveying to
3 us his impressions and views through the media
4 of this letter.

5 I will read it into the record.

6 "Dear Mr. Chairman,

7 "Thank you for your letter. I appreciate
8 the opportunity to express my views upon the
9 State Commission of Investigation and shall do
10 so in this letter. However, I do not believe that
11 I am sufficiently informed to be of sufficient
12 assistance as a witness and, therefore, will not
13 take up your time by appearing.

14 "My opinions, to the extent that they are
15 negative, do not reflect upon the leadership or
16 activities of the Commission. Attorney General
17 Hyland and Mr. Rodriguez, to name the two people
18 who have served as chairman, whom I know, are men
19 of outstanding ability and fairness, whose many
20 contributions to New Jersey are well known.
21 Except for the developing impasse over the
22 contempt power, I am unaware of any abuses that
23 have developed over the years and that,
24 in my opinion, is a tribute to the leadership of
25 the Commission, rather than a demonstration that

1 the potential for abuse does not exist.

2 "The Commission is the least necessary
3 and desirable of the many reforms urged by the
4 Forsythe Committee several years ago. The
5 creation of the Criminal Justice Division and
6 establishment of the State-wide grand jury
7 gives the state government the organization
8 and investigatory power to deal with organized
9 crime and corruption within the criminal justice
10 system. The traditions of secrecy in regard to
11 grand juries and the right to vindicate oneself
12 in a trial if charged are accepted safeguards for
13 individuals. These safeguards are missing, I
14 believe, in regard to the Commission of investiga-
15 tion although these abuses seem to have been
16 prevented for the most part. However, the
17 potential for abuse is present and should be
18 permitted only if necessary.

19 "As I said, the investigatory power and
20 the organization to make it effective exists
21 within the criminal justice system. I am not
22 cynical enough to believe that such power is
23 needed outside that system to assure prosecution
24 of corruption nor do I believe that publicity
25 concerning organized crime and corruption is

1 necessary beyond that obtained by prosecution
2 and convictions after full trials. It is my
3 impression that the S.C.I. has played no active
4 role in bringing about prosecutions or in
5 developing facts for prosecutions.

6 "The factual development of the S.C.I.
7 presumably could be used to demonstrate need
8 for new legislation or amendment of existing
9 statutes. I do not believe it has been
10 successful in doing this or, at least, I am
11 unaware of legislation that it has fostered.
12 It seems, therefore, that actual trials and
13 investigations by grand juries will be as
14 effective in the long run. There is talk, of
15 course, of abolishing or seriously limiting
16 the use of grand juries, but I assume that
17 some investigative technique involving subpoenae
18 power and questioning under oath will be preserved.

19 "Finally, should the Commission be continued,
20 two things seem to me to be desirable. In the
21 first place, more stringent safeguards should be
22 established to assure that witnesses called before
23 the Commission are not subjected to the glare of
24 adverse publicity without a remedy. Secondly,
25 I believe that a legislatively established outer

1 limit of confinement for civil contempt is
2 imperative. I do not believe that it is proper
3 to confine somebody forever for failure to
4 testify. I understand that the person has the
5 option ^{to} purge himself of contempt, but indefinitely
6 prolonged incarceration is too harsh a remedy to
7 enforce society's undoubted right to know about
8 criminal conduct. I do not believe that Courts
9 are in a good position to handle this problem
10 and think that legislation establishing a
11 maximum, with earlier release by the judge
12 if the contempt is purged, is the best solution.
13 The maximum should be sufficiently long to
14 establish a coercive effect but not too long
15 to be abusive. Recognizing that these standards
16 are nebulous at best, I suppose that the maximum
17 should be somewhere between one and three years.

18 "Sincerely, Robert E. Knowlton, Professor
19 of Law."

20 I see that Attorney General William F. Hyland
21 is with us and I know he has a very busy day and
22 I did promise him that if he would arrive at
23 about 10:15 we would hear him forthwith. I am
24 a little bit behind schedule. If the Attorney
25 General will come forward, we would be delighted

1 to hear him.

2 MR. JACOBS: Have you had an opportunity to
3 consider some of the remarks of Professor Knowlton
4 or are these new to you?

5 MR. HYLAND: I have had an opportunity to
6 consider them to a degree. Some of them are
7 new to me.

8 Thank you, first of all, for the invitation
9 to be here and your courtesy in expediting my
10 departure on a day when a lot of things may be
11 in jeopardy including our salaries.

12 I was the first Chairman of the State
13 Commission of Investigation, as you know, and
14 because of my dual experience as Chairman of
15 that Commission and as Attorney General, I
16 perhaps, have a perspective that might be
17 broader than otherwise would be the case.

18 I am going to attempt to summarize my
19 written remarks, gentlemen, because you will have
20 an opportunity to peruse them and I don't think
21 it is worth spending the time in reading something
22 that you have before you.

23 But in essence I have reviewed as others
24 have, I am sure, the circumstances in the 1960s
25 that led to attention being given by the

1 Legislature and others to a series of improvements
2 in the criminal justice system and in the system
3 that was designed to address itself to some of
4 the problems that were highlighted on a national
5 scale at that point.

6 I considered then and I still consider today
7 that the State Commission of Investigation is and
8 remains -- was and remains a very important
9 part of the total framework of legislation that
10 came into being at that time. The Witness
11 Immunity Act, the State-wide grand jury, the
12 State Commission of Investigation, the
13 Wiretap and Electronics Surveillance Act and,
14 finally, in 1970, the Criminal Justice Act and
15 I might say, drawing upon a recent experience
16 of mine, that when the new Attorney General of
17 Arizona was elected to office and took office
18 in the early part of 1975, he talked to Department
19 of Justice people and to other recognized experts
20 in the area of criminal justice throughout the
21 nation and was told that in their judgment,
22 unanimously, New Jersey has the best legislative
23 structure for addressing criminal justice problems
24 of any state in the nation.

25 Consequently, we participated with him in

1 a legislative effort to inaugurate some of these
2 changes in Arizona, where they are now meeting
3 on probably the same scale that we did in 1960
4 the charges that organized crime and political
5 corruption are flourishing there.

6 Attorney General Babbot from Arizona told
7 me yesterday, when I was with him in Boston, that
8 the Legislature has adopted the state-wide grand
9 jury system there and is in the process of
10 giving consideration to some of the other things
11 that New Jersey has done.

12 I recognize at the same time that an
13 agency of this kind has an exceedingly powerful
14 set of prerogatives and they must be exercised
15 very carefully and judiciously.

16 I think for the most part they have been.
17 But I am prepared today to make several suggestions
18 about changes that I think should be made in the
19 Act and would then like an opportunity to look
20 more carefully at some of the questions that were
21 presented to me through Mr. Berg, which I didn't
22 have an opportunity to look at until late last
23 night when I returned from Boston.

24 First of all I have said publicly before
25 during the last several months that I think we are

1 here today because the lines of communication
2 between State Commission of Investigation and
3 this Administration were not as good as they
4 should be. And I said I thought that was
5 attributed in part to the eleventh-hour
6 appointments by the out-going administration
7 in the latter part of 1973 of three members
8 out of the four on the SCI.

9 In one case it was a new appointment and
10 in two other cases, as I recall, they were
11 reappointments and there is still one holdover,
12 Mr. Bertini. It didn't seem to me the way
13 to instill confidence on the part of the public
14 and on the part of the new administration about
15 the independence, particularly, the political
16 independence of the agency, when in the last
17 few moments of the administration, December, as
18 I recall, there were three appointments of that
19 type made.

20 Now, that can't be controlled and I am
21 not suggesting that legislation be amended
22 in any way to control that. But I do think that
23 it would be entirely consistent with the legisla-
24 tion for the incumbent Governor to have clearly
25 the power to designate the chairman of the

1 Commission. This would involve clarification
2 of Title 52:9M-1.

3 The suggestion there, perhaps, is that
4 the governor has the right to designate the
5 chairman. But the language referring to one
6 of his appointees would suggest to me that if
7 Governor Byrne should make the fourth appointment
8 to this Commission, he would not have the power
9 to designate the Chairman. I see no reason why
10 we should not at all times have the Commission
11 in the same context as it was when the Act
12 was first passed.

13 MR. JACOBS: Are you saying an incoming
14 governor would have the right at that point to
15 appoint Chairman?

16 MR. HYLAND: To redesignate and incumbent
17 as Chairman.

18 MR. JACOBS: As he comes in, he could change
19 the Chairman from whomever it is to the one he
20 would designate?

21 MR. HYLAND: If he would decide to do so,
22 In many instances he might not, but he should have
23 that prerogative and there would be better
24 credibility on the part of the Commission.

25 MR. BERG: Is it your position then,

1 Mr. Attorney General, that once the Governor
2 has appointed the Chairman, that that is permanent
3 from that point until the end of the Chairman's
4 term?

5 MR. HYLAND: - No. I think it should be
6 very clear that the Governor -- that the Chairman
7 serves as Chairman at the pleasure of the Governor.

8 MR. BERG: You would interpret the
9 statute to indicate that the Governor could
10 change the Chairman?

11 MR. HYLAND: I would change the statute
12 to clearly indicate that the Governor has the
13 right to do that.

14 Secondly, I would suggest that the Commission
15 have an obligation to confer with the Attorney
16 General before holding public hearings.

17 Under Section 52:9H-17, this is required
18 where the Commission is considering the grant
19 of immunity. The Attorney General and the
20 Prosecutors with whom the SCI might confer at
21 that time do not have the right to change the
22 decision of the Commission to grant immunity,
23 but at least they do have an opportunity to
24 alert the Commission to some of the hazards
25 that might be implicit in that being done.

1 MR. WEINTRAUB: May I ask you, General,
2 whether you have in mind protecting the State
3 in its prosecutorial interests as distinguished
4 from passing upon the good taste judgment of the
5 Commission independent of prosecution?

6 MR. HYLAND: I am not suggesting anything to
7 eliminate their independence, but rather to give
8 us an opportunity to collectively decide, if you
9 will, that there might be damage to an ongoing
10 investigation, to a prosecution, if a public
11 hearing is held.

12 When I was Chairman, we held quite a
13 number of private hearings and I am sure the
14 present Commission has done the same thing.
15 I don't see the risk or hazard involved in
16 doing that.

17 When the community procedures were
18 first established between the SCI and the
19 Attorney General, Attorney General Sills
20 was in office at that point. And it was
21 agreed that if we were to notify him, that he
22 in turn would take the responsibility with
23 conferring with all 21 Prosecutors, although
24 the Act doesn't seem to require that.

25 So that we could be advised if in some

1 fashion we would be impeding prosecutorial
2 work and we voluntarily, although the statute
3 doesn't require it, adopted a practice of communi-
4 cating in the same fashion with the United
5 States Attorney, so that we would not interfere
6 with any investigations.

7 MR. WEINTRAUB: Was there any problem in
8 that regard? Have you had any experience that
9 would lead to this recommendation or do you
10 anticipate some way a problem might arise?

11 MR. HYLAND: I think we have had that
12 experience, perhaps, in the Lindenwold investi-
13 gation, which proceeded for some period of time
14 and we are now in the grand jury phase of it.
15 and one of the problems that we encountered is
16 that after public hearings have been held, based
17 upon investigatory information, it may be relatively
18 shallow and I am not saying that critically, but
19 investigative work that has not been done, there
20 is an implication that the Division of Criminal
21 Justice or whatever prosecutor might be involved
22 should be in a position very promptly to plead
23 an investigation, move a matter before the grand
24 jury and come out with indictments and that isn't
25 really feasible in many instances. And I think it

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is also possible, looking at it from the standpoint of prospective defendants, that the notoriety given to a hearing of that type may very well infringe upon the rights of defendants.

A third suggestion I have relates to Section 52:9M-8. Under that section the SCI has an obligation to refer evidence to prosecutors when it finds that there is cause for the prosecution of a criminal. I think it should be made very clear that that referral should be made forthwith.

There are instances, perhaps, and in this case I really can't be specific, although I think we have had experience, but I don't feel free to be specific, I think the Attorney General should be notified promptly if there is cause to believe that crime has been committed or is being committed.

MR. JACOBS: You want that advice while their investigation is pending?

MR. HYLAND: Yes, sir. Yes, sir.

MR. JACOBS: Suppose the Attorney General Office is suspect?

MR. HYLAND: Well, I have no problem with

1 language that would leave the SCI with a very
2 clear right to do otherwise if the Attorney
3 General is under investigation or it involves
4 some alleged shortcoming on the part of any one
5 of our peoples.

6 MR. WEINTRAUB: A situation might be this
7 where a citizen, rightly or wrongly, says to the
8 SCI, you are the only agency I trust. I am
9 willing to talk with you, but no one else.
10 Would you recognize the propriety of the SCI
11 in its discretion withholding that information
12 to at least an appropriate point?

13 How would you handle that? I doubt that can
14 happen.

15 MR. HYLAND: Perhaps, where the SCI feels
16 it is imperative to do rather than what I have
17 suggested, it should go to the Assignment Judge
18 and ask for some relief from the requirement
19 that would otherwise prevail and I think that
20 could be written in the statute. That could cover
21 the situation where it is the Attorney General's
22 Office who is involved or where there is some
23 special need for protecting the ongoing investi-
24 gation and not alerting the prosecuting agency
25 of the activity that is proceeding.

1 - I think there are instances where, especially
2 as a crime is in progress, that much can be gained
3 in terms of the ultimate prosecution if our office
4 or the appropriate county prosecutor is cooperating
5 more closely then.

6 And, finally, I would suggest that under
7 Section 52:9M-4 that for the protection of the
8 SCI there should be some restriction on the
9 variety of department heads and officials who
10 have the right to make referrals to the agency,
11 which must be responded to on a mandatory basis.

12 For example that statute says at the
13 direction or request of the Legislature, by
14 concurrent resolution or of the Governor or
15 of the head of any department, board, bureau,
16 commission, authority or other agency created
17 by the State or to which the State is a party,
18 the Commission shall investigate the management
19 or affairs of any such department, etc.

20 I think it is conceivable that a proliferation
21 of referrals of that type would completely bog
22 down the work of the agency. I am certainly not
23 suggesting that the right of the Legislature to
24 make a referral or the Governor or the Attorney
25 General should be Impeded. But, once again,

1 maybe the balance of the departments and agencies
2 ~~that~~ are referred to in that instance should have
3 the right of referral only upon application to the
4 Assignment Judge. Perhaps, on notice to the SCI.
5 So that the SCI has some concern about its
6 capability of doing the job in terms of work load,
7 resources or whatever, it would have an opportunity
8 to hold off that referral.

9 MR. WEINTRAUB: I notice, General, you keep
10 coming back to the Assignment Judge. Now, at this
11 point I am concerned with involving the judicial
12 branch. Your first suggestion was appropriate.
13 We have had some situations where there was need
14 to go along with some particular event and it was
15 appropriate by virtue of the relationship between
16 the grand jury and the judicial branch to clear
17 certain facets with someone judicial. I can
18 understand that. But I am wondering whether it
19 would be appropriate to have the judiciary screen
20 requests of the administrative agency. Might
21 it not be more appropriate to use either the
22 Governor or the Attorney General to screen them
23 or, perhaps, at the request of the SCI.

24 MR. HYLAND: How do we have the problem then
25 if it would be the Attorney General or Governor

1 who could be directly or profliferally involved
2 in the investigation?

3 MR. WEINTRAUB: I would suggest that it might
4 be appropriate to leave it to the SCI to call
5 upon the Attorney General or the Governor to
6 call for relief. You are concerned with the
7 agency being overwhelmed with tremendous
8 requests. We are not talking about protecting
9 or shielding, but rather preserving the ability
10 of this agency to keep functioning. It could
11 be that if you have a demand load or case load
12 beyond their capacity, that they ought to be able
13 to go to the Governor or the Attorney General
14 and say this agency asked us to pick something
15 up. We feel we don't have the manpower.

16 MR. HYLAND: I think your suggestion would
17 be acceptable.

18 In my judgment then I would limit that to
19 the Governor and not bring the Attorney General
20 into the situation.

21 That completes my direct presentation,
22 although over the next week or so, if I have some
23 specific language to suggest or further responses
24 that I might care to make to the questions
25 presented to me, I would like the right to do that.

1 MR. JACOBS: Do you have any views on the
2 power of the Commission to institute proceedings
3 resulting in contempt for an indefinite term?

4 MR. HYLAND: Yes.

5 I have always been bothered by the length
6 of time, theoretically, that someone could be
7 incarcerated for civil contempt.

8 At the same time I think that if you have
9 a precise minimum on the confinement, limit on
10 the confinement, it really can lose its coercive
11 effect very quickly and, certainly, as time goes
12 on it becomes less and less coercive if there
13 is a termination date to the sentence.

14 I have heard suggestions that 18 months
15 is enough. I don't think that is the case.
16 I would certainly not suggest a period of less
17 than three years.

18 But on balance I think I remain convinced
19 that the indeterminate sentence is the one that
20 is likely to be most coercive and as in the
21 Catena case, there is at least an opportunity for
22 the individual to come back to court and attempt
23 in some fashion to establish that the incarceration
24 will be ineffective.

25 That is the argument being made by Mr. Catena.

1 MR. WEINTRAUB: How does that indeterminate
2 sentence in the punitive setting differ from
3 indeterminate sentence civilly? Isn't that the
4 same problem of too much time elapsing?

5 Let me suggest the possibility that there
6 be a criminal sentence with a high misdemeanor
7 with a very substantial maximum to allow flexibility
8 depending upon, really, the size of the wrong
9 involved in the individual's refusal to talk.
10 Might not that be an appropriate solution?
11 While the sentence is finite, it could be
12 substantial. If you want to put a top on it,
13 which would permit appropriate treatment
14 where the public injury is great.

15 MR. HYLAND: I am bothered, however, by
16 the fact that in the organized crime area there
17 is terribly significant information that the
18 public in some fashion should get and I think
19 the indeterminate sentence in some cases has
20 been useful. Catena, if we are to believe his
21 affidavits, is an exception to that. But there
22 were instances in which individuals came back to
23 the Commission when I was a member and did
24 testify.

25 I don't know how much we learned, because

1 I think there are ways of parroting those
2 questions and seemingly complying with the
3 directive and yet not producing very much infor-
4 mation.

5 MR. WEINTRAUB: Well, your view of indeter-
6 minate sentence does not deal with the problem of
7 excessive maximum, does it? If by indeterminate
8 you mean indeterminate, it can mean forever.

9 MR. HYLAND: I don't think I mean that.
10 I have thought from time to time of the parallel
11 to the grand jury limit on incarceration. The
12 SCI initially had a five year term. Maybe that
13 is a good figure to look at, but it should be a
14 moving five year period. It presupposes whether
15 or not it is an assured fact or not that at the
16 end of the given termination date of the Commission
17 it is going to be renewed by the Legislature.

18 MR. JACOBS: Is there any reason for obtaining
19 a limited term for SCI?

20 MR. HYLAND: Yes, sir, I think so.
21 I think it is an extraordinarily powerful agency,
22 that as in the case of the Wiretap and Electronic
23 Surveillance Act, I think we are dealing with
24 matters that impinge upon personal liberties and
25 the Legislature from time to time should reevaluate

1 the need for the agency.

2 MR. JACOBS: That would be true even if they
3 had an indeterminate term. If there was no term
4 they could reevaluate it.

5 MR. HYLAND: It could work, your Honor, in
6 the other direction, I think, if it had no term.
7 It was important we found at the very beginning
8 in attempting to recruit a staff to be able to
9 say to the people that we recruited from the
10 I.R.S. for special purposes or from other areas,
11 that we do have an existence that will assure you,
12 assuming that you are doing the job for us
13 that you should be doing, that your employment
14 term is at least five years.

15 Now, as time passes that gets less and less.
16 But I think it is more difficult to recruit if
17 you don't have some assurance that you will be
18 able to proceed.

19 MR. JACOBS: I think it would be the
20 reverse, frankly. I think if you had a permanent
21 agency it would be easier to recruit.

22 MR. HYLAND: We might argue about that.
23 At least the experience that I had in the early
24 phase was that many of the prospects were quite
25 concerned about being put out of business the

1 following year. But I think my main attitude
2 is back to the point I said before. I think
3 there is a value in having the Legislature from
4 time to time reexamine the need for the agency.

5 MR. JACOBS: May I ask you something on
6 another subject? Are you content with the
7 protective devices that are incorporated in the
8 statute?

9 MR. HYLAND: The Fair Hearing Tactics,
10 yes. I think it is working out satisfactorily.

11 MR. JACOBS: You have no suggestion as to
12 any improvements?

13 MR. HYLAND: No, I don't. I think the
14 Call case, for example, adjusted itself to the
15 problems of fairness. The Federal case that Judge
16 Garth decided, which I think was later reversed in
17 Circuit is the type of recourse, I believe,
18 individuals have in the court system.

19 I have no suggestions to make in that
20 respect.

21 MR. WEINTRAUB: Mr. Berg.

22 MR. BERG: You were referring to Freeman
23 and Bass?

24 MR. HYLAND: Yes.

25 MR. BERG: You have no other suggestions

1 for amendment or administrative modifications?

2 MR. HYLAND: I have none at this moment.
3 I may have some that I could address to you
4 in the questions I received.

5 MR. WEINTRAUB: We would welcome any further
6 communication from you, General. Thank you very
7 much for coming.

8 Mr. Boylan, I am torn between you and Mr.
9 Holleran, who got here very early.

10 MR. BOYLAN: I am only going to take a
11 few minutes.

12 MR. WEINTRAUB: Mr. Holleran will be here
13 longer than that.

14 MR. BOYLAN: I endorse fully the Attorney
15 General's prepared statement, essentially, because
16 it is necessary to have an independent agency
17 and, as you pointed out, one where any citizen
18 may very well go and say I have complete trust
19 in it and I want it to handle this particular
20 investigation.

21 I think the public demands diffused centers
22 of investigation. The more there are in a
23 democratic society, the better off it is.

24 The SCI fulfills that essential function
25 of providing another independent agency, which on

1 the face of it it is an independent agency and
2 has created and maintained that impression.

3 The only suggestion I made and I spoke to
4 the Attorney General briefly about it this morning
5 is on staffing the membership or for filling out
6 the membership. I thought that appointing a
7 dean from the two prospective law schools as
8 permanent members, increasing the membership
9 from four to six, you would have a dean or his
10 representative permanently on the SCI over
11 the life of it. They would be the anchors of the
12 independence, so to speak.

13 MR. JACOBS: If they don't have the
14 independence, why keep an equal number? Why
15 not have an odd number?

16 MR. BOYLAN: Well, odd number comes in
17 because you would have two from the Legislature
18 and two ---

19 MR. JACOBS: I understand, but they are
20 now getting into the term independence.

21 MR. BOYLAN: You could reduce it to one,
22 but that would be the Governor. Then somebody
23 would have to give up one of their choices,
24 if you wanted to maintain the present division
25 between the Legislative and the Executive of two

1 and two.

2 MR. JACOBS: What you are bringing up would
3 be the nonpolitical, I assume.

4 MR. BOYLAN: Yes, the nonpolitical in order
5 to assure that the reputation for independence
6 and integrity that the Committee has is anchored
7 into the permanent legislation.

8 MR. JACOBS: Why not get the entire
9 Commission nonpolitical?

10 MR. BOYLAN: In reality the other side of
11 that coin is that you would then drop the requirement
12 that three of the four remaining commissioners
13 be lawyers and implement the present Commission
14 on Criminal Justice to get the public involved.

15 If you had two representatives of the legal
16 community from the law schools, then the remaining
17 four commissioners would not have to be divided
18 among the legal community and you would be
19 encouraging what is essential today, which is
20 community involvement, through putting someone
21 from some other professional field or business
22 field on the Commission and thereby enhancing
23 its responsibility to the community through the
24 nature of its members and that is the only
25 suggestion I have to make, which the Attorney

1 General and I discussed beforehand in addition
2 to the prepared remarks.

3 MR. BERG: Do you think that, really, an
4 odd number would upset the political balance
5 in the Commission?

6 MR. BOYLAN: I think the attempt to maintain
7 the political balance can be overcome by putting
8 or two people who would clearly be nonpolitical,
9 namely, the deans or their representatives.

10 MR. BERG: Are they really nonpolitical?

11 MR. BOYLAN: Is anybody really nonpolitical?
12 The game that is played is -- well, let's not --
13 no one is nonpolitical or at least if you
14 if he participates in the real world. But the
15 public appearance on nonpolitical is essential
16 to the effectiveness of an institution such as
17 the SCI.

18 MR. WEINTRAUB: Thank you very much.

19 MR. BOYLAN: Thank you, gentlemen.

20 MR. WEINTRAUB: Mr. Holleran.

21 MR. HOLLERAN: Good morning, gentlemen.

22 MR. BERG: Do you have a formal statement?

23 MR. HOLLERAN: Yes, I do.

24 I believe, as the Attorney General before
25 me, that I have submitted a formal statement.

1 I have hand delivered it to the members of the
2 Commission and to yourself and I don't feel it
3 is necessary for me to read from that statement.
4 But I would like to summarize some of my views
5 that I have set forth in that statement and answer
6 what questions that I can.

7 MR. WEINTRAUB: If you don't mind, I would
8 appreciate it if you would be rather complete
9 in your summary because while we have seen the
10 statement and have it, others seated behind you
11 have not and I would like them to have the
12 benefit of your views.

13 MR. HOLLERAN: Very good, sir.

14 Would you like my background and qualifications?

15 MR. WEINTRAUB: Please.

16 MR. HOLLERAN: I am an attorney-at-law admitted
17 to practice in this State in 1963. I am also
18 commissioned to practice before the United
19 States Supreme Court, the Courts of The District
20 of Columbia and the Commonwealth of Virginia.

21 I became Executive Director of the New Jersey
22 State Commission of Investigation on November 1,
23 1972, and continued in that position for a period
24 of two years. Prior thereto, I was the Project
25 Director of the City-County Organized Crime Strike

2 Force in Newark, New Jersey, and have served
3 as an Assistant County Prosecutor and an
4 Assistant United States attorney.

5 I hope that the information which I will
6 present to you will be of assistance.

7 In 1968 and for decades prior thereto, there
8 existed, and I believe there presently exists,
9 in New Jersey, as in most urban areas throughout
10 the United States, organized criminal activities,
11 which ranged from loosely knit confederations
12 to well-administered syndicates supplying illegal
13 goods and services. The activities engaged in
14 by these organizations include organized gambling,
15 traffic in narcotics, loan sharking, highjacking,
16 embezzlement, bankruptcy fraud, fencing, stolen
17 property, labor racketeering and official corruption.

18 I take some pride in saying that we in New
19 Jersey have sought to become leaders in the fight
20 against these criminal organizations through the
21 use of new, innovative and imaginative devices.
22 I have no hesitancy in stating that one of these
23 devices was the organization of the State Commission
24 of Investigation and I must emphatically say at the
25 outset of my statement that I am a proponent
of the continuation of this Commission

and of its philosophy.

2 The New Jersey State Commission of Investigation
3 is a four-member, independent commission with
4 state-wide jurisdiction and was created to be
5 an "Independent watchdog" for the entire system
6 of administering criminal justice in New Jersey.

7 The mandate of the Legislature was that the
8 Commission first investigate the enforcement of
9 the law of the State with particular reference
10 to, but not limited to, organized crime and
11 racketeering.

12 Secondly, to investigate the conduct of
13 public officials in all branches and on all levels
14 of government.

15 Thirdly, to aid and assist law enforcement
16 officials.

17 Fourthly, to keep the public informed as to
18 the operations of organized crime and problems
19 of criminal law enforcement and the activities
20 of government.

21 I believe that, philosophically, the first
22 mandate to investigate the enforcement of the law
23 with particular reference to organized crime
24 and racketeering was given the status of "First
25 among equals" by the charter members of the

Commission. With this philosophy I am in agreement. Nonetheless, the activities of the Commission, I feel, should be broader in scope than just the investigation of organized crime and I hope that during my tenure as Executive Director we did increase the scope of our direction.

It can be seen that the Commission, as an investigative, fact-finding body, has a wide range of statutory responsibility. It is highly mobile and that the three most important powers which it has been given, and without which it could not survive, are the power to compel testimony by subpoenas, to confer immunity upon witnesses and to cite witnesses who refuse to cooperate for contempt. The immunity power and the contempt power, together with the possible duplication of work in other governmental agencies and the independence or lack thereof of the Commission seem to constitute the core of criticism leveled at the State Commission of Investigation and I would like to address myself to these criticisms individually. I feel there is no need to dwell on the accomplishments of the Commission since they are ably chronicled in the Annual Reports.

1 Addressing myself first to the due process
2 question, may I make these observations?

3 The common theme running through most
4 critics' charges relative to the State Commission
5 of Investigation is that its proceedings are
6 somehow violative of due process. They desire
7 that the Commission be bound by all due process
8 safeguards required in adjudicatory proceedings.
9 This criticism has been considered many times
10 by the Judiciary, not only in this State but
11 throughout the United States, and indeed by the
12 United States Supreme Court. The Courts have
13 unanimously held that greater procedural
14 safeguards would divert investigative agencies
15 from their legitimate duties and plague them with
16 collateral issues that would make the investigations
17 interminable. They would sterilize the investiga-
18 tive process by burdening them with trial-like
19 procedures, make a shambles of the investigation
20 and stifle the agency in its collecting of facts.

21 It is important to remember that the State
22 Commission of Investigation is an investigative,
23 fact-finding, non-accusatory body. No complaints
24 may issue therefrom. It is non-adjudicatory in
25 nature. It makes no specific findings of guilt

as to individuals and no penalty may be imposed by it.

While the full panoply of rights available to a defendant in the criminal process is not available, nonetheless the code of fair procedure is binding upon the State Commission of Investigation and provides numerous rights to witnesses and people who are named in Commission hearings and reports. The rights of due process, I submit, vary with the type of proceedings.

This, I suppose, leads us logically to the question of whether there is a valid legislative purpose in holding public hearing, issuing public reports and identifying individuals in those hearings and reports.

Although I view the State Commission as somewhat of a hybrid between the Executive and Legislative branches, because of the dual appointment powers of the Governor and the leaders of the Legislature and the dual reporting requirements to both the Governor and the leaders of the Legislature, nonetheless the Judiciary has held the State Commission of Investigation to be a valid creature of the Legislature.

The Legislature, as constitutional scholars

1 view it, has two primary functions. A, to
2 recommend and enact legislation and, B, to provide
3 information to the people.

4 The investigations undertaken are extremely
5 wide in scope. They deal with entire systems,
6 such as the workmen's compensation system or
7 a State-wide surplus property system and they
8 deal not only with accusations of a criminal
9 nature, but also allegations of abuses, improprieties
10 and unethical conduct which would forever be
11 buried without personalization.

12 The Commission deals with people, attorneys,
13 physicians, public officials, etc., and their
14 names must be revealed to proceed in an orderly
15 fashion to comply with the mandates given to the
16 Commission. It is important to show the entire
17 scope of cynicism and moral decay. Personalities
18 and personification give credibility. The people
19 of this State in order to help their legislators
20 and to vote properly must believe that a personalized
21 situation exists which cries out for remedial
22 action. All details and circumstances, including
23 names, are relevant and necessary to present
24 specific evidence, to support it and to make it
25 understandable.

2 Undeniably, there is a great deal of
3 interest by the public in the effectiveness
4 of the system and the enforcement of the laws
5 in the system. The public hearings and reports
6 are required to maintain an informed public
7 opinion and the effective functioning of
8 free government is dependent largely on the
9 force of an informed public opinion.

10 Woodrow Wilson in fact felt that the
11 informing function should be the preferred
12 function of the Legislature because it clears
13 the public mind and shapes the demand of
14 public opinion and Thomas Jefferson wrote that to
15 provide information is the most legitimate function
16 of government.

17 If as a result of these hearings, people
18 are subjected to public approbrium and scorn,
19 I say so be it. The Commission did not force them
20 to undertake the type of conduct which subjects
21 them to that approbrium and scorn. I say if you
22 are going to dance, you have to pay the band.

23 Turning now to the contempt power, the
24 criticism centers not on the use of contempt
25 itself, but upon the indeterminate incarceration
of those individuals who have suffered the

consequence of their contumacious conduct.

1
2 The simplest and most effective answer to this
3 criticism may appear trite but true. The key
4 to the jailhouse door is in the pocket of the
5 contemnor. The State Commission of Investigation
6 is mandated to obtain information on organized
7 crime. If one refuses to cooperate, he is brought
8 before a Court of competent jurisdiction and
9 found, upon the submission of proper proofs, to
10 be in contempt. He is advised that he will remain
11 in contempt only so long as he refuses cooperation
12 and that he will be incarcerated for the length
13 of his contumacious conduct. He, therefore,
14 knows the consequences of his act. Even
15 Thoreau, who advocated civil disobedience,
16 agreed that when you undertake civil disobedience,
17 you must be prepared to accept the consequences
18 of that disobedience.

19 The State must have the ability to coerce
20 testimony and a civil contempt citation simply
21 is an established method of coercing a recalci-
22 trant witness to do that which the law requires
23 of him. Of course, the question arises, when
24 does the contempt incarceration become punitive
25 rather than coercive. I agree that in such a

1
2 case the use of contempt and incarceration is no
3 longer legitimate.

4
5 However, I further believe that to permit
6 an individual to say that he will not answer
7 questions, I have no intention of answering that
8 question and I never will answer that question and
9 to find that on that basis the contempt becomes
10 punitive rather than coercive is unconscionable.
11 You would permit such an individual to flout
12 the law, make a mockery of the law, to insult
13 every citizen who has respect for the law and is
14 law abiding, to denigrate democracy.

15 I further believe that no artificial or
16 arbitrary time limit can be placed upon civil
17 contempt as is done in the Federal system.
18 Each case must be decided on its own merits.
19 It is known in the organized crime society that
20 if one chooses silence rather than cooperation
21 with law enforcement he has paid his dues and
22 that his family and obligations will be taken
23 care of. He will in fact be rewarded for his
24 silence. I do not think we can afford to permit
25 the underworld society to reshape our laws in its
own image.

Turning now to the area of duplication, I

believe that the criticism voiced by those who say that the State Commission of Investigation duplicates the work and responsibilities of other governmental agencies is the criticism of those who are ignorant of the unique role of the Commission as complimentary and supportive of law enforcement.

Those who would assimilate the State Commission of Investigation to the Office of the Attorney General or into law enforcement should be reminded that in the democratic system of checks and balances the State Commission of Investigation is the only investigatory agency that has the independent ability to investigate the criminal justice system. Further, the primary purpose of the Commission is not to probe outright criminal acts and, as criminal actions are uncovered, it is the duty of the Commission to make available this information to the proper prosecutorial authority and to cooperate with that authority to the fullest extent possible. The Commission's mandate is broader than that. It is charged by the Legislature to check on and expose lapses in the faithful and effective performance of duties

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by public employees.

1 Now, I ask is sheer noncriminality the only
2 standard to which a public official is to be held?
3 What of acts of misfeasance, malfeasance and
4 non-feasance which do not reach the magnitude
5 of criminality? What of conduct that is immoral
6 or unethical which is, nonetheless, non-criminal?
7 What of wanton and reckless abuses of discretion
8 or errors in judgment? The public has a right to
9 know of the abuses of public trust, the laxity, the
10 inefficiency, the incompetence, the waste and
11 other failures for which it pays. This is especially
12 true in the case of elected public officials.

13 As to whether public hearings hinder rather
14 than assist law enforcement through the public
15 hearing vehicle, I can only say that qualitative
16 judgments must be made, and it is a qualitative
17 judgment which should be made by the mature minds
18 of both the Commission members and the Attorney
19 General acting in concert. Should a few minor
20 governmental functionaries be convicted or is the
21 better priority alerting the public to a potential
22 pattern of illegal activities? As the New York
23 Times editorialized on May 22, 1973, on Watergate,
24 "Far more important for the public is that the
25

2 full panoply of cinicism and moral rot be exposed
3 to public view; such disclosure is the best
4 insurance against a rebirth of the Watergate
5 mentality ever again in American Political History."
6 It is a simple matter of putting priorities in
7 order.

8 The final criticism of any major import to
9 which I should address myself deals with the
10 independence or lack thereof of the Commission.
11 Not surprisingly, there has been criticism on both
12 sides. To those critics who state that the Commission
13 is under the thumb of one branch of government
14 or the other, I say, I suppose that when matters
15 of political consequence or other import are
16 thrust into the lap of the Commission, matters
17 upon which there are likely to be hotly contested
18 differences of opinion among citizens, the media,
19 public officials and, predictably, among political
20 candidates, there are bound to be some cries of
21 anguish as to the independence of the Commission.

22 But let me remind you that it is only after
23 a decision is rendered with which these individuals
24 disagree that they deride the Commission and, in
25 fact, it is usually the loudest critics of a particular
hearing or report who either advocated that the

1 Commission undertake the investigation or
2 who stood silent and expressed no concern about
3 the Commission's impartiality.

4 The Commission members, almost to a man,
5 from its creation have been men of ability,
6 character and unblemished reputation. They have
7 been men of different political persuasions,
8 even within their own parties. A professionally
9 competent and completely non-political staff
10 has been assembled and has continued through
11 succeeding administrations of both parties.
12 The Commission's best reply to those critics
13 is a dignified silence and a reliance upon
14 its record, unless we have the opportunity to
15 appear before a distinguished Committee such
16 as this.

17 I say to you that in my knowledge the
18 Commission can and does act without fear or
19 favor, impartially and independently and to use
20 the vernacular, let the chips fall where they may.

21 On the other hand, the Commission must not
22 become too independent. It is a viable and valuable
23 part of the government, but, in order to properly
24 carry out its function, the members of the Commission
25 must have a mutual rapport and respect for the

1 appointing authorities. They must keep the
2 appointing authorities advised as to the matters
3 before the Commission. While I do not mean on
4 a daily basis or even on a formal monthly basis,
5 I do believe that an annual report and various
6 interim reports are not sufficient. Discretion
7 must be exercised. Obviously, if an individual
8 hypothetically a confidant of the President of
9 the Senate or the Governor were the subject of
10 an investigation, then that appointing authority
11 should out of courtesy be advised that an
12 investigation is under way. But, obviously, should
13 not be advised as to intermediate activities
14 relative to this individual to protect the
15 honest and integrity of the investigation,
16 but more importantly, to protect the integrity
17 of the appointing authority.

18 Before I conclude there is one minor problem
19 to which I would like to address myself and it
20 relates to the administration of the Commission.

21 When the Commission was created it was,
22 as I stated, given a broad mandate. But the
23 first among equals was the investigation of
24 organized crime. It was then decided that to
25 fulfill its mandate the staff to be assembled

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be oriented almost exclusively toward the investigation of organized crime. It was recognized, however, that this highly qualified and skilled staff should be tempered with non-law enforcement individuals for policy - making roles; that is the Commissioners, especially since the State Commission was not to be a law enforcement agency and its mandate was more far reaching than organized crime investigations.

This, however, has created a problem administratively and that is this:

In essence the Executive Director, because of his experience, skill and expertise had the potential to become the exclusive policy maker to whom the Commission would look for guidance. Thus, he could become both the individual who set policy and the individual who determined the manner in which it should be carried out with the Commission members more or less ratifying his decisions.

Frankly, I don't know how to solve this problem. However, I do note that the New York Commission, upon which this Commission is patterned, does not have an Executive Director,

1 but rather has a Deputy Commissioner and a
2 Chief Counsel who are separate but equal.

3 The Chief Counsel being responsible, obviously,
4 for the legal operation and the Deputy Director
5 being responsible for the remaining portions
6 of the operations. Thus, the Commission was
7 in a position to obtain more than one point
8 of view on a particular policy matter.

9 In conclusion I would like to emphasize
10 that the Commission is valuable and viable,
11 not only to the Governor and the Administration,
12 but to the citizens of this State.

13 I urge you to keep it.

14 You have asked for recommendations which
15 I believe have been properly included in the body
16 of my statement.

17 I appreciate the opportunity to give my
18 views and your courtesy in hearing them. If you
19 have any questions I will be pleased to answer
20 those I can.

21 Thank you.

22 MR. BERG: Mr. Holleran, we would like to
23 give you an opportunity to respond to some of the
24 criticisms that have been received and I am going
25 to quote from Professor Knowlton's letter and he is

1 the law professor and I imagine I am going to use
2 his quote.

3 "The factual development of the S.C.I.
4 presumably could be used to demonstrate need
5 for new legislation or amendment of existing
6 statutes. I do not believe that it has been
7 successful in doing this or, at least, I am
8 unaware of legislation that it has fostered."

9 MR. HOLLERAN: Well, relevant thereto,
10 may I say that I went through the annual reports
11 and very quickly I was able to pick out the
12 following.

13 Twenty-one bills revamping the Workmen's
14 Compensation system are presently sponsored
15 by Assemblyman Worthington.

16 Legislation has been prepared relative to
17 Narcotics Strike Force Jurisdiction.

18 Legislation has been prepared relative to
19 Narcotics Strike Force interchange of agents.

20 Legislation has been prepared relative
21 to the use of money seized as contraband and
22 other investigations.

23 Changes in penalties in the New Jersey
24 Controlled Substance Act for the head of narcotics
25 trafficking operations, making them stricter

1 have been introduced into the Legislature.

2 Amendments to the Local Land and Building
3 Laws, N.J.S.A. 48:12-1.

4 Amendments to Blighted Areas statute,
5 N.J.S.A. 40:55-21.1.

6 MR. JACOBS: Thus far you have mentioned
7 bills that have been introduced.

8 Will you separate those from any which
9 have passed.

10 MR. HOLLERAN: Amendment to the Local
11 Land and Building Laws. Amendments to the
12 Blighted Areas statute. Amendments to the
13 Conflict of Interest law. I believe there
14 was a statute dealing -- and there is a
15 statute dealing -- sponsored by Senator Dodd,
16 which has passed with the forfeiture of vehicles.

17 MR. JACOBS: Has it become law?

18 MR. HOLLERAN: It has become law.

19 MR. JACOBS: All of these appear in the
20 reports?

21 MR. HOLLERAN: Yes, it does appear in the
22 annual reports, sir.

23 I have just picked the ones out that I thought
24 was significant. There are others.

25 I am sure that if the Chairman could address

1 himself to it at a later time, he will.

2 MR. BERG: It is also said no active role
3 has been taken in bringing about prosecution or
4 developing facts for prosecution.

5 MR. HOLLERAN: Well, presently, there is
6 a trial under way involving a police sergeant
7 in Essex County concerning a burglary ring.
8 The facts were uncovered by the State Commission
9 of Investigation.

10 On May 16, 1974, there were indictments of
11 more than 31 individuals by the Essex County
12 and Federal grand juries in what was described
13 as the smashing of a loosely knit federation
14 of crime rings which had engineered scores of
15 armed robberies and burglaries as well as
16 homicides, atrocious assaults and receipts of
17 stolen goods.

18 On October 30, 1974, Lucerne County,
19 Pennsylvania, convicted Gerald Donnerstag of
20 Belleville, New Jersey, for the gangland-style
21 of Jed Feldman, whose body was found in a
22 pond near Scranton, Pennsylvania. Facts uncovered
23 by the New Jersey Commission of Investigation.

24 Donald Tierney, a former Madison
25 Township Councilman, was found guilty of misconduct

1 In office and extorting \$10,000 from a land
2 developer in Madison Township. Information
3 uncovered by the SCI.

4 Donald Borst, Chairman of the Madison
5 Township Planning Board was indicted.

6 Alex Smollek, who held simultaneously the
7 positions of Purchasing Agent and Business Manager
8 of the Passaic County Vocational and Technical
9 High School and Secretary of the Board of Education
10 of Vocational Schools, was indicted for abuses
11 of purchasing practices.

12 On May 16, 1974, 12 companies and five
13 individuals were indicted for violation of Section
14 one of the Sherman Anti-Trust Act.

15 Anthony Little Pussy Russo was indicted
16 for failure to file corporate income tax returns
17 and received a three-year sentence.

18 Harry Calari, Executive Director of the
19 Hudson County Mosquito Commission, pleaded guilty
20 to embezzlement charges and was sentenced to
21 two years in prison. His two sons pleaded guilty
22 to conspiracy.

23 Santo Santisi, President of the Middlesex
24 County Bank and other members of the Otnas Holding
25 Company pleaded guilty to misapplication of bank

1 funds and were sentenced to prison.

2 These are some criminal activities which
3 were uncovered by the SCI.

4 MR. BERG: Has the SCI been instrumental
5 in obtaining removal of public officials?

6 MR. HOLLERAN: I believe several councilmen
7 have been removed.

8 There is legislation, incidentally, relative
9 to the removal of public officials upon an indictment.

10 It is a difficult thing under the laws that
11 exist today to remove a public official upon
12 indictment, but not upon conviction. It is a
13 very hazy area and I recall personally drafting
14 a piece of legislation which we sent over to the --
15 I forget the name of the exact committee. They were
16 going to formalize it for us.

17 MR. BERG: Can you comment at all on your
18 tenure as Executive Director as to the spirit of
19 cooperation between the SCI and law enforcement
20 authorities?

21 MR. HOLLERAN: I have always enjoyed a fine
22 cooperation and cooperative effort with all law
23 enforcement agencies from the local, municipal
24 level right on up through the State Police, the
25 FBI. We feel that we have cooperated with them

1 and will cooperate with them.

2 We are mandated to cooperate with them.

3 MR. BERG: Do you believe that government
4 investigating entities, such as the Division of
5 Criminal Justice and the State Grand Jury are
6 sufficient in themselves to do the job of investi-
7 gating organized crime and corruption?

8 MR. HOLLERAN: No, I don't.

9 I think that this is the import or purpose
10 of the Commission, which is broader in scope.
11 That is to check all lapses more than those
12 which are just criminal in nature.

13 The secretive nature of the grand jury would
14 not bring many of the less than criminal activities
15 of certain individuals, public bodies to the attention
16 of the public and to be an informed electorate, they
17 need to know these things.

18 MR. BERG: So you don't believe the SCI should
19 be limited in investigation just to organized crime
20 and corruption?

21 MR. HOLLERAN: Very definitely not.

22 I would think in such a case there would be a
23 more valid claim that the SCI was duplicative of the
24 state wide grand jury system.

25 MR. BERG: Would you care to respond to

1 Attorney General Hyland's proposal as far as
2 when matters should be referred to prosecutors,
3 when they are being investigated by the SCI?

4 MR. HOLLERAN: Yes.

5 I believe that that would undermine the
6 hvestigative process of the SCI.

7 I feel that it would to a degree undermine the
8 independence of SCI. The SCI has four men, as I
9 say, who are mature minded and have the ability
10 to excercise their discretion. I believe and
11 wholeheartedly agree with the Attorney General
12 that upon a public hearing there should be
13 an inter-relationship between the SCI and his
14 office, so that the public hearing doesn't
15 in any way hinder a criminal investigation and
16 I think that there should be a joint effort there
17 to make a determination whether in fact there
18 should be a public hearing or not.

19 And I know that in the past that when I was
20 at the SCI that we always did meet when there was
21 a public hearing which may have some criminal
22 import or overtones with the Attorney General
23 and we got our ducks in a row.

24 MR. WEINTRAUB: May I ask you something about
25 your last answer?

1 I want to get the difference between what
2 you just said and what you said at the outset.

3 I got the impression that first you thought
4 it would impair the independence and utility of the
5 SCI if there were immediate notification to the
6 Attorney General of a criminal event.

7 MR. HOLLERAN: Right.

8 MR. WEINTRAUB: Assume the criminal event
9 would not effect the Attorney General's Office
10 or law enforcement agencies as such. Might you
11 not -- might not the SCI interfere with an ongoing
12 investigation unwittingly?

13 MR. HOLLERAN: Yes.

14 MR. WEINTRAUB: If there were no communication?

15 MR. HOLLERAN: Very definitely, sir.

16 But I believe, as I said in my prepared statement,
17 that there should be an inter-relationship between
18 the SCI and the Administration, i.e. the Attorney
19 General and I believe in the past we had a very
20 good rapport and inter-relationship.

21 It was not formalized. It was informal and I
22 would say at least once a week the division director
23 and myself sat down and discussed what was going on.

24 MR. WEINTRAUB: Well then, I take it you
25 do believe there should be communication?

1 MR. HOLLERAN: Very definitely.

2 MR. WEINTRAUB: Absent some overriding reason
3 why there ought not to be.

4 MR. HOLLERAN: What I am saying is I don't
5 believe that it should be the responsibility of
6 the Attorney General to say cease and desist.
7 That that responsibility once the Attorney
8 General and the Commission meet, it should be
9 the responsibility of the Commission to say,
10 well, we are not going to interfere with this
11 investigation, thus, we will not have a public
12 hearing or on the other hand we will make the
13 qualitative determination that it is more important
14 to let the people know what is going on in a
15 particular area than to indict several minor
16 governmental functionaries and that decision
17 should lie within the Commission not within the
18 Attorney General's Office.

19 MR. WEINTRAUB: I take it, ordinarily, the
20 SCI would not investigate a criminal event as such?

21 MR. HOLLERAN: That's correct.

22 MR. WEINTRAUB: You need more than that to
23 activate the SCI.

24 MR. HOLLERAN: Yes, sir.

25 MR. BERG: What standards or have you

1 developed standards as far as when to take on
2 an investigation?

3 MR. HOLLERAN: There were no standards.
4 No norms set down as to when to take an investiga-
5 tion. However, what happened was this: If I can
6 hypothecate? A complaint would come in from,
7 let's say, a citizen or one of the appointing
8 authorities. Obviously, if the Governor directed
9 us, we would undertake that and, obviously, if the
10 Legislature directed us, we would undertake
11 that. But if a complaint came in relative to
12 let's say the Lindenwold situation, it would come
13 to the Executive Director. The Executive Director
14 would evaluate it and bring it to the attention
15 of the Commission at the regular meeting on
16 Thursdays, at which time the information would
17 be provided to him.

18 The following then would be entertained.
19 We would discuss it and we would make a determination
20 as to whether it was something for which we had --
21 over which we had jurisdiction or it was something
22 that should immediately be referred to the
23 Attorney General's Office and there were many
24 things we referred to the Attorney General's
25 Office and, conversely, there were many things

1 that the Attorney General's Office sent over
2 to us.

3 Once we made that determination that we
4 were going to undertake the investigation, then,
5 at one time two Commissioners were assigned
6 to oversee that investigation, because we
7 got too many investigations, everything funneled
8 down to the Executive Director and out again.

9 The attorneys were responsible for
10 overseeing the investigation on the staff level.
11 They would report and we had when requested
12 at least monthly status reports. But on a
13 weekly basis the attorneys came in to see the
14 Commission and I think it is important that the
15 attorneys report directly to the Commission.

16 The attorneys then came in to see the
17 Commission and discussed the ongoing nature
18 and as things broke the Commission was kept
19 advised.

20 MR. BERG: So the status reports went
21 directly to the Commissioners as well as the
22 Executive Director?

23 MR. HOLLERAN: There is a status report --
24 we did not feel that it was in the best interest
25 of the integrity of the agency, the security

1 of the agency, to have status reports floating
2 around in Commissioner's offices. We had a
3 book for the Commissioners of status reports
4 that they could see at any time. The Executive
5 Director also kept a status report on -- in
6 every investigation and every attorney who
7 was responsible kept a status report on the entire
8 investigation.

9 MR. BERG: As you know, the statute as
10 presently constituted provides for wide powers
11 of the SCI to initiate its own investigation
12 and provides for the Governor and Legislature
13 to direct or certain government personnel to
14 request investigation. Do you believe that the
15 statute should be modified in any respect in
16 that regard or other agencies be permitted
17 input? The Attorney General indicates it should
18 be more limited.

19 MR. HOLLERAN: I never thought of that,
20 frankly, until the Attorney General brought that
21 up. My only comment relative thereto, really, is that
22 I feel that the statute should be broadened in
23 such a way to direct the SCI to aid other agencies,
24 boards, instrumentalities of government in any
25 problems that they may have.

1 Now, the only time the SCI can or the
2 only time it is necessary for the SCI to do
3 that is if the head of an agency requests them
4 to undertake an investigation. But there may
5 be other things that are necessary with a
6 particular agency and, technically, they don't
7 have to give us assistance.

8 When I say us, I mean another agency.

9 MR. BERG: You don't think it would be
10 too burdensome for all these agencies -- it
11 would be too burdensome on the SCI to have
12 that input from other agencies?

13 MR. HOLLERAN: It may be. It may be but
14 I really think -- I think that during my tenure,
15 anyway, that we attempted in any way as we could
16 to aid other agencies. But there was no
17 direction there. It may be burdensome.

18 MR. JACOBS: I understood you to be
19 satisfied with the protection afforded to the
20 individual. You said something about you are
21 not concerned. Frankly, many people have been
22 concerned.

23 MR. HOLLERAN: I am sure that is correct.

24 MR. JACOBS: May I ask you whether you are
25 content that procedures effectively protect

1 Individuals to the extent possible?

2 MR. HOLLERAN: Yes, sir. I think that the
3 Code of Fair Procedure, as it is presently
4 written protects any individual who may be a
5 witness or who may be adversely named in a
6 report or a hearing.

7 I think that the granting of any further
8 rights, for example the right of cross-examination,
9 would absolutely defeat the purpose of the State
10 Commission of Investigation.

11 It could cause collateral matters to be
12 brought up. It could cause diversion from the
13 prime purpose. It could interminably delay, as
14 the Courts have said, a hearing and it could --
15 well, you couldn't separate the wheat from the
16 chaff.

17 MR. JACOBS: Are all witnesses heard
18 privately in advance?

19 MR. HOLLERAN: I am trying to think if we
20 ever made an exception to that.

21 It is a general policy to hear witnesses
22 privately in advance. I can't say for certain
23 that there hasn't been one or two or three times
24 where a witness's name came up and he or she was
25 brought into a public hearing as a result thereof.

1 But it is the general procedure to hear the
2 witness in advance in private.

3 MR. BERG: Do you think a person or attorney
4 should have the right to object to a question
5 at a public hearing?

6 MR. HOLLERAN: Very definitely. And I
7 think they do have that right.

8 MR. BERG: They do have that?

9 MR. HOLLERAN: Yes. And it is up to the
10 Chairman to rule on that.

11 MR. BERG: One of the things that has
12 bothered us is the number of leading questions
13 that we see in the hearing reports. It seems
14 to us that the attorney knows what the
15 witness is going to say from the private
16 hearing or the interview and then comes into
17 the public hearing and really feeds the witness
18 the answer.

19 MR. HOLLERAN: I might say that I would be
20 in agreement with you on that. We would have
21 critiques after all the public hearings and one
22 of the things that I have always tried to harp
23 on was the fact that, look, we want to hear from
24 the witness. We don't want to hear from the
25 attorney. Further I tried to put it in the

1 framework of sooner or later you are going to
2 have to get out there, there is going to be an
3 attorney on the other side, so why don't you
4 learn now to do it right here. I dropped in on
5 the hearing yesterday and for the most part I
6 thought that was conducted in such a way that
7 there weren't that many leading questions.

8 I would be in agreement with that. That
9 is a valid criticism of technique. But I think
10 that, maybe, a little over exuberance brings
11 that about.

12 MR. BERG: What do you think is the best
13 way to deal with a recalcitrant witness?

14 MR. HOLLERAN: The best way to deal with
15 a recalcitrant witness -- I think that civil
16 contempt is probably the best tool in the arsenal
17 that we have to deal with a recalcitrant witness.

18 When using such a tool you bring into
19 play the judicial process.

20 We have to submit proofs to a Court before
21 the Court makes a determination that the conduct
22 is contemacious. We have got to show that the
23 question or the answering that we are eliciting
24 from the questioning is germane. I shouldn't
25 lapse into the we. The SCI has to show that the

1 man absolutely refuses to answer. For example
2 I think that evasive contempt is one of the
3 most difficult things we will ever have to prove
4 and some day we will have to face up to that and
5 I think the indeterminate sentence, if I might
6 say, is really the key to coercion. And I feel
7 that every case must be determined on its own
8 merits.

9 Obviously, a Peter Bridge or William Farr
10 would not be incarcerated as long as, let's
11 say an organized crime figure and I give a valid
12 reason for that. Because I feel that we are
13 the recipients of a weapon that we really did not
14 know we had or how important it was to us and that
15 is the organized crime order of omerta and it is
16 because of this that these individuals don't
17 testify.

18 If Mr. Catena were to come in and testify
19 to things that happened in 1958, he would legitimately
20 say I don't know or I don't remember. Nonetheless
21 he won't do that and the reason he won't do that,
22 I feel, is because of the code of omerta. And he
23 has got to set a standard among those in organized
24 crime for his underlings and I think this is why
25 Mr. Catena is in his particular predicament now.

1 MR. BERG: You are focusing on organized
2 crime.

3 MR. HOLLERAN: In the Farr case there is a
4 standard set up by the California Supreme Court
5 and, obviously, I don't think that William Farr
6 or Peter Bridge, who is an attorney, who was
7 incarcerated for contempt before a grand jury
8 in New Jersey, I don't believe that they would
9 be incarcerated as long. They would have proved
10 their point and the fact is that with an individual
11 such as that, if he is going to carry the standard
12 for the State, let's say, there will be a point
13 where it will reach the point of being punitive
14 rather than coercive and it is going to have to
15 be a reaction in each case.

16 MR. BERG: Do you oppose a proposal that
17 there be a maximum penalty for contempt?

18 MR. HOLLERAN: I heard the Chief Justice
19 indicate that, perhaps, one of things that this
20 Committee was discussing was a maximum of -- rather
21 severe maximum. I would just wonder -- of course,
22 a Court could have the ability -- the discretion
23 to allow purging. That is a viable solution, but
24 I am more in favor, I think, of indeterminate.

25 MR. WEINTRAUB: I am bothered about the

1 distinction between coercive and punitive. Those
2 are adjectives and I get very little guidance
3 from them. I can think in terms of the purpose
4 of the Commission, if the Commission still needs
5 the evidence and they are still attempting to get
6 it, it is coercive. It may seem punitive to the
7 fellow who doesn't want to talk. But it would
8 seem to me that it will always be coercive as long
9 as the agency in good faith feels it ought to have it.

10 Now, when you speak about weighing the
11 motivations of the man who is recalcitrant,
12 that may be all right in a criminal sentence,
13 if you have an indictment and trial. There you
14 may take into account the value of the evidence
15 to the agency, motivation, good or bad, holy or
16 not.

17 But I don't know how in a civil contempt,
18 other than in terms of a good faith decision of
19 the agency that it still needs this testimony ---

20 MR. HOLLERAN: This is the proposition that
21 the SCI has put forth, that we legitimately need
22 this information.

23 MR. JACOBS: That was rejected and, frankly,
24 I doubt this Committee is going to reinvestigate
25 the legal determination by the Supreme Court.

1 MR. HOLLERAN: It was rejected. So having
2 it rejected, we then have to regroup and say what
3 other terms, how else are we going to impress upon
4 the Court that incarceration is still coercive and
5 then you have got to get into the individual thought
6 process of the contemnor.

7 MR. WEINTRAUB: I don't want to quarrel with
8 the Supreme Court of New Jersey. I am simply
9 advancing this thought. I happen to get no
10 guidance from that distinction. If we get into
11 that kind of thinking analysis of mental reactions,
12 don't we have to get into a criminal process where
13 you then will have an appropriate sentence keeping
14 in mind the extent of the public wrong?

15 MR. HOLLERAN: Perhaps, you do.

16 MR. WEINTRAUB: You need not. You can always
17 provide that the sentencing judge reconsider the
18 sentence after imposition if the offender does come
19 forward. It seems to me once we get into this
20 kind of area, you might just as well translate it,
21 ultimately, into a penal liability with credit for
22 any period served as a so-called civil contemnor.

23 MR. HOLLERAN: There are two thoughts I have
24 on that, sir. One, the SCI has in the past used
25 criminal contempt in the case of Frank Coccerio

1 also known as Frank Conday, who around the
2 courthouse is known to have taken the longest
3 coffee break, when he came out for a cup of
4 coffee and showed up in Florida a couple of years
5 later. He was sentenced and did spend approximately
6 20 months and then came back and purged himself
7 of contempt.

8 I question the validity.

9 MR. WEINTRAUB: May I interrupt? Twenty
10 months, was that an indictment for contempt?

11 MR. HOLLERAN: Yes, it was an indictment.
12 Yes, sir.

13 I question the validity of placing the burden
14 of a criminal sanction on a civil contemnor.
15 When I say burden, I mean loss of citizenship
16 type burdens that go with penal conviction.

17 MR. WEINTRAUB: If I can strike from your
18 statement the word civil contemnor, because that
19 kind of begs the question, would you have the
20 same problem? By that I mean this: If there is
21 a duty to speak, to reveal what you know, I have
22 no difficulty in concluding there is a public
23 wrong in not doing it. Why do you object to making
24 that public wrong criminal?

25 MR. JACOBS: By legislation.

1 MR. WEINTRAUB: That is what I mean.
2 It could be a very severe wrong.

3 MR. HOLLERAN: I don't think -- let's
4 again take a hard core case -- that you should
5 criminally penalize someone for following the
6 dictates of his conscience.

7 MR. WEINTRAUB: You do dsawhere. Conscience
8 will not excuse other conduct, which you think is
9 serious enough to warrant the condemnation of
10 the criminal law. Why do you think this is
11 different?

12 MR. HOLLERAN: Maybe because it is new.

13 MR. WEINTRAUB: Well, that may be.

14 MR. HOLLERAN: I just haven't had a chance
15 to get used to it or think it through.

16 MR. WEINTRAUB: It seems to me what we
17 have to do is make an evaluation of the extent
18 of the wrong involved. The man says I will
19 not tell what I know and that could be a
20 tremendous public wrong, depending upon what
21 criminal events you are investigating or even
22 noncriminal events, hypothetically.

23 At any rate, I don't mean to suggest a
24 final view. I am simply trying to egg you into
25 giving me a response. That's all.

1 MR. HOLLERAN: I don't think I am equipped
2 to.

3 It reminds of Mark Twain. One time he was
4 asked the question to which he didn't know the
5 answer and he said I was pleased to answer
6 promptly and courteously. I said I didn't know.
7 I will invoke Mark Twain.

8 MR. WEINTRAUB: Anything else, Mr. Berg?

9 MR. BERG: Do you have any other suggestions
10 for administrative modifications or legislation?

11 MR. HOLLERAN: I really don't.

12 MR. WEINTRAUB: All right. Thank you very
13 much, Mr. Holleran.

14 May I suggest that we take a five minute
15 recess and we will then continue until one o'clock
16 and resume at two after lunch.

17 (A brief recess is taken.)

18 MR. WEINTRAUB: Richard Williams.

19 MR. WILLIAMS: I am Richard Williams,
20 President of the New Jersey Prosecutors Association.

21 Honorable Chief Justice Weintraub and members
22 of the Committee, I appear here today at the
23 invitation of the Committee on behalf of the
24 County Prosecutors Association of New Jersey.

25 I thank you for your invitation and for your

1 consideration of our views.

2 The end of the decade of the 1960's saw
3 the birth of a revolution in New Jersey in the
4 area of professionalism in law enforcement.
5 The period of the past seven years has seen,
6 among other things, the birth of the Division
7 of Criminal Justice in the Attorney General's
8 Office, the development of full-time prosecutors
9 offices with career personnel and the effective
10 fight against organized crime and corruption
11 through the careful use of such tools as
12 electronic surveillance and witness immunity.
13 No less important a development during this
14 period was the creation of the State Commission
15 of Investigation.

16 The primary function of a Prosecutor is,
17 of course, different from the primary function
18 of the SCI. While a Prosecutor carries many
19 responsibilities, he is charged first with the
20 prosecution of criminal cases in the courts.
21 The basic function of the SCI lies in the area
22 of making recommendations with respect to
23 public officials or public issues. Both the
24 Prosecutors and the SCI in order to fulfill their
25 responsibilities must have the authority and

1 the resources to conduct thorough and fair
2 investigations. It is particularly in this
3 investigative area that Prosecutors and the
4 SCI have cooperated for mutual benefit.

5 As evidence of this willingness on
6 the part of the SCI to cooperate with Prosecutors,
7 I submit copies of two letters received from
8 the SCI by me as Prosecutor of Atlantic County.
9 Similar letters were received by other Prosecutors.

10 The first letter dated January 10, 1974,
11 from their Executive Director Martin G. Holbran
#4 12 is attached as Exhibit A. The second letter of
13 February 20, 1975, from Executive Director Frank
14 L. Holstein is attached as Exhibit B and I would
15 like to read for the record, if I may, those
16 letters.

17 The letter of January 10, 1974, addressed
18 to me, "Dear Prosecutor Williams:

19 "As you know, the New Jersey State Commission
20 of Investigation is mandated by statute to investi-
21 gate all aspects of Organized Crime within the
22 State of New Jersey. To that end we are attempting
23 to revitalise our intelligence function and have
24 divided the State generally along county lines
25 into nine regions. Special Agent --" and it names

1 the agents -- "Have been assigned to coordinate
2 the intelligence effort in your region and will
3 be communicating with you shortly.

4 "We would greatly appreciate your assistance,
5 including the possibility of assigning a liaison
6 man within your office to aid them in this effort.
7 You may be assured of our continuing cooperation
8 with your office and that any information gathered
9 will be made available to you.

10 "In appreciation of your past courtesy and
11 cooperation, I remain very truly yours, Martin G.
12 Holleran, Executive Director. "

13 The letter of February 20, 1975, a little
14 over a year later.

15 "Dear Prosecutor Williams:

16 "I have recently joined the State Commission
17 of Investigation, and I hope that we can be of
18 service to you and your staff whenever you wish.
19 You and your staff have provided the SCI with
20 valuable cooperation and assistance over the years
21 and I am sure that we can continue to work together
22 in matters of mutual interest and concern.

23 "As you may know, the statutory mandate
24 of the SCI is as follows:

25 "One, the faithful execution and effective

1 enforcement of the laws of the State, with
2 particular reference but not limited to organized
3 crime and racketeering;

4 "Two, the conduct of public officers and
5 public employees, and of officers and employees
6 of public corporations and authorities;

7 "Three, any matter concerning the public
8 peace, public safety and public justice.

9 "We have on our staff several skilled and
10 experienced accountants who are former employees
11 of the Internal Revenue Service. Almost all of
12 our agents are former employees of various law
13 enforcement agencies and have expertise derived
14 therefrom. Our staff attorneys have developed
15 expertise in their specialized field of work.
16 If the need arises, you are invited to call on
17 our staff for whatever advice or assistance we
18 can provide.

19 "Very truly yours, Frank L. Holstein,
20 Executive Director."

21 These promises have not been hollow promises.
22 As indicated in the letters, the SCI has on
23 its staff highly skilled and experienced personnel.
24 This reservoir of specialization, particularly in
25 the area of sophisticated and complex financial

1 transactions, is not matched at present by each
2 of the 21 County Prosecutors' offices. Therefore,
3 the SCI serves a valuable function through its
4 ability to undertake such protracted and complicated
5 investigations. Where such investigations yield
6 evidence of possible criminal activity, the SCI
7 from my personal experience has made available
8 both its files and expertise to assist investigation
9 by the Prosecutor's Office.

10 Not only has the SCI been effective in
11 assisting in the fight against criminal financial
12 transactions but its record in the area of dealing
13 with organized crime figures is well known.

14 While I cannot be specific for obvious
15 reasons, I can indicate to you that certain
16 Prosecutors have direct evidence that leading
17 organized crime figures are staying out of this
18 State because they do not want to appear before
19 the State Commission of Investigation.

20 The SCI has also been effective in the
21 area of recommendations for changes in the
22 administration procedures for public agencies.
23 To cite but one example with which I have become
24 familiar, I refer to the June 1972, "Report and
25 Recommendations on the Property Purchase Practices

1 of the State Division of Purchase and Property."

2 As a result of an intense investigation,
3 recommendations were made which, had such been
4 in effect before the report, would have saved
5 the State of New Jersey over \$200,000 in one
6 case alone.

7 Has the SCI been effective? The feeling
8 of the Prosecutors is that it has.

9 Has the SCI cooperated with law enforcement
10 agencies? The experience of the Prosecutors is
11 that it has.

12 Is there a legitimate role for the SCI
13 in the future development of this State?
14 The Prosecutors Association takes the position
15 that there is such a role. The Prosecutors
16 Association supports the concept of the State
17 Commission of Investigation and emphasizes the
18 need for a continuation of the cooperative
19 relationship between the SCI and the Prosecutors.

20 MR. JACOBS: Does this represent the
21 unanimous view of all the Prosecutors?

22 MR. WILLIAMS: This represents the views
23 of every Prosecutor that attended our meeting.

24 We had a meeting just this week and
25 every Prosecutor attended except for some

1 of the Prosecutors in some part-time Counties
2 and this does represent the view of everyone
3 at that meeting.

4 MR. JACOBS: I take it that you see no
5 substantial duplication of effort?

6 MR. WILLIAMS: We do not.

7 I don't think the present resources
8 available in this State are anywhere near providing
9 duplication of services at the present time.

10 MR. BERG: Do you have any recommendation
11 for any constructive changes in the statutory
12 basis for the SCI or in the administration of
13 the SCI?

14 MR. WILLIAMS: I would have no major
15 recommendation. I do, however, agree with
16 Attorney General Hyland's comments that with
17 regard to the grant of immunity, it would be
18 highly desirable that there be consultation
19 and I understand that this has been done in the
20 past on an informal basis. But that there be
21 consultation so that an investigation by one
22 agency not necessarily interfere with an
23 investigation of the other.

24 MR. BERG: That is provided for in the
25 statute that there be consultation, but there is

1 no provision for the Prosecutor to reject
2 immunity or in any way inhibit it.

3 MR. WILLIAMS: I don't know whether in
4 fact because you are talking about value judgments
5 which have to be made, as Mr. Holleran indicated,
6 there may be value judgments as to whether it is
7 more important to prosecute in the criminal area
8 one or two minor officials or expose a scheme
9 which may be a larger scheme. I don't know if
10 you can legislatively manage to effect the
11 proper judgment for each case through the
12 statutory scheme.

13 I think the important thing is that you
14 have dedicated people who are willing to
15 sit down and I would suggest that in 98 per
16 cent of the cases there is going to be a meeting
17 of the mind as to what is the most important
18 thing for public interest.

19 MR. BERG: Do you think that the SCJ should
20 heed the recommendation by the Prosecutor?
21 Should there be provision in the statute that
22 it should heed the recommendation as far as the
23 granting of immunity?

24 MR. WILLIAMS: I would prefer that, basically,
25 be with the Attorney General. Because many of the

1 Investigations with which the SCI becomes
2 involved may be multi-county in nature.
3 Presently, with the witness immunity procedures,
4 which Prosecutors have with the Attorney General,
5 the matter will be cleared through the Attorney
6 General. I don't know that Prosecutors have
7 difficulty with clearing that through the Attorney
8 General. So that there may be a touching of
9 base with everyone else in the State.

10 I think where we are talking about this kind
11 of a judgment, if that is made in consultation with
12 the Attorney General, the experience has been that
13 he in turn will consult the Prosecutors that are
14 involved and then you can have several minds
15 involved with the subject and, generally, there
16 will be a meeting of those minds.

17 MR. WEINTRAUB: Thank you very much.

18 MR. WILLIAMS: Thank you very much.

19 MR. CANNEL: John Cannel. I am appearing
20 here this morning for Stanley Van Ness, the
21 Public Advocate, who is unable to attend.

22 MR. BERG: Spell your name.

23 MR. CANNEL: C-a-n-n-e-l, John, initial M.

24 Basically, the position of the Public
25 Advocate is that the State Commission on Investigation

1 has in fact performed a useful function and
2 should be continued.

3 As time has gone on it has been shown both
4 in this State and in other places that the avail-
5 ability of an outside, completely neutral agency
6 to handle special investigations is useful.

7 It is also important that that agency be
8 beyond reproach and the bi-partisan nature of
9 the SCI, I think, puts it in that position.

10 This function of the SCI, I think, is
11 clearly proper and useful. I think that it is
12 the function which is set out in the statute.
13 The function of examining law enforcement
14 and state officials and official functions.

15 The more difficult area comes in the
16 area of law enforcement itself. There is where
17 there have been objections of duplication, of
18 possible abuses of power.

19 Well, let me withdraw the abuse of power,
20 as such. A use of power in a way that it has the
21 danger of abuse and putting power in an area where
22 it is not possible to check.

23 Part of what Prosecutor Williams spoke of
24 is something that might be characterized as
25 duplication. He spoke of providing services to

1 Prosecutors for the ordinary handling of criminal
2 cases. Where this is not improper in any real
3 sense, it might well be said that this is better
4 the function of the division of criminal justice
5 and the function of the Attorney General's Office.
6 That has not been a pressing concern.

7 *The concern that the Public Advocate
8 asked me to put forward most forcefully this
9 morning is the one concerned with the civil
10 contempt power. It is the position of the
11 Public Advocate that although the present law
12 is clear that the civil contempt power is proper
13 and that a person can be held in jail for what
14 amounts to, well, forever or nearly so for a
15 civil contempt, that this is more power than the
16 State should use in this situation.

17 Perjury, which also obstructs justice, is
18 not treated so severely. Of course, it might be
19 a contempt, as well. There is that possibility.
20 But, by and large, this is not the way we deal
21 with it.

22 And there just comes a time when you say,
23 yes, we need the information. We may even still
24 need this information, but we are not going to
25 get it and, as the Chairman has stated, the

1 gravity of the wrong is a particular level and
2 let us deal with the gravity of the wrong.

3 MR. JACOBS: How would the Public Advocate
4 handle it?

5 MR. CANNEL: He would either put a time
6 limit on civil contempt or say civil contempt is
7 a misdemeanor and punishable as a misdemeanor.

8 MR. BERG: With a three year limit?

9 MR. CANNEL: With three limitation. He has
10 no objection to a seven year limit of a high
11 misdemeanor. It is not a magic number of years
12 which is proper. It is merely the matter that it
13 is a crime and that is the way to handle it.

14 Beyond that there are some problems in
15 the area of the use of publicity. With your
16 permission I would reserve the right for the
17 public advocate to make a written submission
18 on the adequacy of safeguards in general.

19 Just in general terms there is the problem
20 that the SCI has in fact between the view that
21 it serves a function in exposing wrongdoers to
22 public scrutiny and it is the view of the office
23 that it might -- that these people might better
24 be handled by the trial and conviction route,
25 which provides safeguards and provides penalties

1 In an organized fashion as opposed to the
2 mere spreading out of the person's name across
3 the record and this being treated as if this
4 is a punishment in and of itself.

5 MR. BERG: Would you not have then the
6 SCI name people? How can they accomplish their
7 function?

8 MR. CANNEL: There are going to be difficult
9 cases. I think the bulk of the cases where they
10 have stated and various people who have been
11 involved with SCI have stated publicity is very
12 useful, names were not central to the publicity.
13 Basically, there are things like publicity
14 associated with purchase and property. Now,
15 names may have been involved there, but the
16 basic function is a function of spreading out
17 a problem, which is independent of the names
18 and more basic than the names of the few wrong-
19 doers.

20 But I am not even sure that in some cases
21 they need the names in the report. If there is
22 evidence of criminal wrongdoing associated with
23 it, that can be forwarded to a prosecutorial
24 agency.

25 MR. WEINTRAUB: May I suggest to you

1 two problems there and get your reaction?

2 Number one, the lack of names may deprive
3 the public disclosure of credibility. To simply
4 say that -- we will call him X without any detail
5 may leave someone wondering whether it really
6 happened or whether it is fictitious or the
7 like. Secondly, if you do not name names, may
8 you not smear -- and that can be put in quotes --
9 a lot of people who answer to the generic
10 descriptive terms that are used instead of names
11 Take local purchasing. Now, to simply say that
12 somewhere in New Jersey this happened, everyone
13 concerned with purchasing in New Jersey is under
14 a cloud.

15 MR. CANNEL: I am not suggesting that names
16 be left off for just that reason and in many
17 kinds of cases, perhaps, the greater majority of
18 them, because rather than to destroy credibility,
19 I think it will create that second problem of
20 speculation in the press and a great number of
21 suggestions as to who X is. Some of whom will
22 be true and, perhaps, have more force than if
23 his name were put in the first place and some
24 would not be true. But I think the publicity
25 function is properly limited to the cases where

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what the SCI is trying to achieve is a general change. Where the SCI is trying to achieve a problem dealing with a particular person, the public approach is the wrong approach. I don't think you can use X's and Y's except in very unusual circumstances.

MR. WEINTRAUB: I don't know if you have any specific instance where you feel that the SCI could have achieved the result it achieved or sought to achieve without naming names? Do you have something in mind?

MR. CANNEL: It is a little hard to come up with something particular in mind. What I have in mind as a general thing is some of the organized crime approaches themselves, where this was criminal activity that they were looking for. They find the criminal activity. They were not the prosecutorial agency. They merely published the report and the person, rightly or wrongly in terms of what the truth of his criminal activity is, is now branded a criminal member of organized crime and, perhaps, later has been found guilty of something else. Perhaps hasn't. But I think the proper way is to forward this information to the prosecutorial agency to put

1 together the case and if this leads to
2 something, fine. Have the persons prosecuted
3 and convicted for criminal activity.

4 MR. WEINTRAUB: What you say is so.
5 But the problem is concrete application.

6 MR. CANNEL: Concrete application is
7 difficult.

8 MR. WEINTRAUB: Everybody will agree
9 that you do not without good cause publicize
10 alleged criminal conduct on the part of any
11 human being. We all agree with that. The
12 question is there a formula which can meet the
13 total public interest in the setting we are
14 talking about.

15 MR. CANNEL: The formula may be in the
16 statute. The statute sets a number of purposes
17 for the SCI. The first couple of which are
18 quite definite. Especially with reference to
19 organized crime. I think if what is being
20 approached is whether or not the Prosecutor's
21 Office in X County is handling its problem, it
22 may be necessary to do public hearings and
23 particular people are going to have their names
24 in the public eye and that can't be prevented.
25 But where the problem is that the public

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agencies are perfectly willing to prosecute these people, that there is no question that this is not -- that this is a failure of prosecution, but merely it is a matter of putting together the case and then having it prosecuted. In that situation I think that the public hearing is, perhaps, the wrong forum.

Now, I understand that this line is not always easy to draw. I think in some cases the statute now has given guidance. I think from time to time more in its statement than in its actions, there is a sense that the Commission of Investigation has taken the view that it is out to oppose organized crime everywhere in the State at all times.

The two letters, as a matter of fact, gave certain of that view. I think this is more a by-product than the real need for SC! as an independent agency.

* * *
C E R T I F I C A T E

I, Robert B. Grossman, C.S.R., Official Court Reporter, do hereby certify the foregoing to be a true and accurate transcript of the proceedings stenographically reported by me in the above captioned matter.

DATE: July 11, 1975 
ROBERT B. GROSSMAN, C.S.R..