

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

----- :
IN THE MATTER OF THE INVESTIGATION : Executive Session
:
OF THE OFFICE OF THE ATTORNEY : TRANSCRIPT OF
: PROCEEDINGS
GENERAL OF THE STATE OF NEW JERSEY :
----- : VOLUME V

Friday, November 17, 1972

28 West State Street
Trenton, New Jersey

B E F O R E:

JOHN F. MC CARTHY, JR., Chairman

CHARLES L. BERTINI, Commissioner

A P P E A R A N C E S:

JOHN J. FRANCIS, ESQ.,
Special Counsel to Commission,
and
CHARLES D. SAPIENZA, ESQ.,
Counsel to Commission.

Reported by:

JOHN J. PROUT, JR., C.S.R.

I N D E XWITNESSEXAMINATION

DAVID A. BIEDERMAN

Mr. Francis

922

MARY BRENNAN

Mr. Francis

1020

EXHIBITDESCRIPTIONPAGE

C-8A Copy of October 30th, 1970 memorandum
 with notation on right-hand corner

1034

C-52 Four change orders re Centrum
 Construction Company contract

1035

1 D A V I D A. B I E D E R M A N, having been
2 previously sworn according to law by the Officer,
3 resumed the stand and testified further as follows:
4

5 THE CHAIRMAN: I believe, Mr. Biederman, we
6 excused you--

7 THE WITNESS: Yes, sir.

8 THE CHAIRMAN: --the other day on--

9 THE WITNESS: Could I have a yellow pad,
10 please?

11 THE CHAIRMAN: --the 15th of November, about
12 two o'clock in the afternoon, and it's now November
13 the 17th. I would remind you that you are still
14 under oath, and that Mr. Francis and Mr. Sapienza
15 would like to continue to--

16 THE WITNESS: Right.

17 THE CHAIRMAN: --ask you more questions.

18 THE WITNESS: Thank you, Mr. Chairman.

19

20 EXAMINATION BY MR. FRANCIS:

21 Q I would like to go back--

22 A Certainly.

23 Q --to the October 30th memorandum--

24 A Right.

25 Q --for a minute.

A May I

1 Have that? (Document handed to the witness.)

2 Oh, thank you very much.

3 Q For the record, that has been marked C-8.
4 October 30th was a Friday, do you remember?

5 A Yes.

6 Q Do you want to see the calendar?

7 A Yes, sir.

8 Q It was a Friday. I'm unclear whether you
9 dictated it on that day and it was typed that day or
10 whether you dictated it that day and you picked it up on
11 Monday, November 1st. A I'm--I think
12 the 2nd.

13 Q 2nd, right?

14 A Yes. I'm equally unclear, Counsel. I know it
15 was dictated that day. It bears that date. But whether
16 I gave it to the commissioner that day or the Monday I
17 still don't recall for certain.

18 Q Will you tell us where he was when you gave
19 it to him? A In his office.

20 Q No question about that in your recollection?

21 A That is my best recollection. I'm fairly certain
22 of that.

23 Q And is that the day that he became ill in
24 the office and had to go home?

25 A Yes, that's my recollection.

1 Q I see. And then it is your recollection
2 that he did not talk to you about the October 30th memor-
3 andum on the telephone that day?

4 A No, sir. My recollection is that he did tell me
5 at the time after we had discussed it to--that he wasn't
6 well, to go ahead and tell Mullen to send the contract
7 out to the low bidder.

8 Q When you had the conversation with him, then,
9 on November 2nd, were you and he alone or were any of the
10 other members of the department there?

11 A No, sir, we were alone.

12 Q Neither Schuyler nor Mullen--

13 A No, sir.

14 Q --was there? A No, sir.

15 Q And your recollection is clear about that,
16 is it? A Yes.

17 Q In your conversation did you go over the
18 October 30th memorandum with the commissioner at that
19 time? A Yes, I asked him to read it.

20 Q And in the conversation did he tell you
21 that--withdraw that for the moment.

22 Before the 2nd of November and after you
23 dictated it, the October 30th memorandum, or before you
24 dictated it, while you were thinking about dictating it
25 did you talk to him on the telephone then about the subject

1 matter of it and tell him you were going to send him a
2 memorandum? A I don't recall doing
3 so, no.

4 Q When you talked with him on the 2nd and
5 when you had the memorandum along with you--

6 A Right.

7 Q --did he tell you that he had had any further
8 conversation with Mullen and Schuyler, or Mullen or
9 Schuyler, about the Centrum award?

10 A He didn't.

11 Q Well, did he tell you that--

12 A He--go ahead.

13 Q Let me just finish this, and hold in mind
14 what you want to say for a minute.

15 A Fine.

16 Q Did he tell you that between October 26th,
17 which was the date of the Mullen recommendation, you
18 will remember, and November 2nd when you had this conver-
19 sation with him that he had instructed Mullen and Schuyler
20 to keep on looking into the problem?

21 A No.

22 What I was about to say was, I think he told me then
23 that Mullen had sent him a memorandum on the subject.
24 That was the memorandum of the 26th, Mullen's memorandum
25 to him of the 26th.

1 Q That was the memorandum recommending rejection
2 you're talking about now?

3 A Yes, that's the one, as I later found out.

4 Q You don't mean that he had gotten another
5 memorandum from him after that one of the 26th and before
6 the 2nd indicating a result of further inquiry, further
7 discussion with Schuyler?

8 A No, sir.

9 Q Did he tell you in that conversation, whatever,
10 he was going along with your arguments about the
11 thing and he was going to reverse himself and direct the
12 award of the contract to Centrum?

13 A No, sir, because it wasn't really an argument about
14 the thing. In this instance for the first time in our
15 relationship, which was a very good one--it was really
16 due to the commissioner that I was held over in the new
17 administration.

18 Q I thought you told us yesterday you didn't
19 trust him?

20 A In this particular
21 instance, and I'll get to that and the reason for that.

22 I had offered to resign, you know, with the new
23 administration coming in, and this was a couple of weeks
24 after the commissioner arrived. And he said, "No, I like
25 your style. I'd like you to stay on," and I did. Then
26 we had a very fine relationship. He confided in me a good

1 deal, which was not legal, about personalities and problems
2 in the department, until this particular instance, because
3 after he had shown me Mr. Sherwin's letter to him and I
4 asked him, "Well, what were the reasons you discussed
5 with him on the 13th in that telephone call?", he never
6 disclosed those to me at any time. I found them out for
7 the first time at Mr. Sherwin's trial a few weeks ago, what
8 those reasons were, and I thought this was highly unusual
9 and unlike him.

10 Q You see, I don't want to stop you, but you
11 realize that what you have been saying is no answer to
12 my question. I simply asked you--

13 A Yes.

14 Q --whether at the conversation on November
15 2nd he told you that either as the result of your state-
16 ments to him or as the result of the discussion, the joint
17 discussion that you had, that he was now going to award
18 the contract to Centrum.

19 A No, he didn't disclose the reason why he changed
20 his mind to me.

21 Q That wasn't in my question. I said, did
22 he tell you at that time that he was going to award, di-
23 rect the contract go to Centrum?

24 A He told me to take care of--yes, to do that, because
25 he wasn't well and he was--yes.

1 Q I take it from what you just said that he
2 said he had changed his mind and now wanted the contract
3 to go to Centrum? A He didn't say

4 all of that. He just said, "Yes."

5 Q You mean/^{he}said all of what you said but not
6 all of what I just asked?

7 A No. What he said was, is, that the contract should
8 go to the low bidder; Mullen, do it. That's all he said.

9 Q Well, did he identify the low bidder?

10 A He didn't even mention the name, no. He just said,
11 "The low bidder."

12 Q You and he had an understanding of the name
13 involved, did you? A Of course.

14 Q And was the conversation as short as that -
15 "I'm going to award the thing to the low bidder. You tell
16 Mullen to take care of it"?

17 A Well, yes, it was very short. I made a comment on
18 this memorandum and he listened and that's the answer he
19 gave me after the comment I made after he had read this
20 memorandum.

21 Q And that didn't take very long, did it?

22 A No, not that long.

23 Q There was no more general discussion about
24 the problem than simply that? A No.

25 Q You handed him the October 30th memorandum

1 then? A Yes, I did.

2 Q And he read it?

3 A He read it.

4 Q Then did he immediately say, well, all right,
5 we'll award this to Centrum?

6 A No. I supplemented the memo with some oral dis-
7 cussion. Not discussion. I told him what I thought in
8 addition to this, or amplifying this, and he listened and
9 he paused and then he said what I just said he said.

10 Q Just that, "All right, tell Mullen to go
11 ahead and award this to the low bidder"?

12 A Well, I don't think he said, "all right." I think
13 he said--my recollection is what I said he said just a
14 minute ago.

15 Q Well, I want your recollection as specific
16 as you can give it to us as to what he said when he
17 announced his decision to you that the contract was going
18 to go to the low bidder.

19 A What did I just say a few sentences ago?

20 MR. FRANCIS: Just a minute. Will you read
21 the question to the witness, please.

22 THE WITNESS: Justice Francis,--

23 MR. FRANCIS: Just a minute. Listen to the
24 question.

25 (Whereupon, the pending question is read by

1 the reporter.)

2 Q Please tell us that.

3 A Tell Mullen to send the contract out to the low
4 bidder.

5 Q That's all? A Yes.

6 Q All right. A Pretty much all.

7 And I would like to make a comment for the record.
8 I think we're here to find facts. I didn't think this was
9 cross examination, but from the demeanor of counsel and
10 his approach to these questions I'm beginning to think
11 this is cross examination.

12 Q My purpose is to find the facts, and the only
13 way I can reasonably find the facts is to put questions
14 to a witness, who is in such a reasonable frame of mind
15 to give responsive answers, and that's all I ask you to
16 do. And if you will keep that in mind throughout the rest
17 of the examination, I think we'll get along very well.
18 I have had a great deal of difficulty with the discursive
19 nature of your answers which, as lawyers, we know is im-
20 proper. Now, please. I will give you every advantage to
21 give us any facts. But I don't want argument from you
22 and I just want answers to my questions, and I think we'll
23 get along very well. Now, let's try.

24 After you left the commissioner what did you
25 do? A I went back to my office.

1 Q And did you prepare any paper when you got
2 back there? A If it was Friday,
3 probably not. If it was Monday, I prepared the memo I
4 ultimately sent to Mr. Mullen.

5 Q I thought we had agreed that Monday was
6 November 2nd when you had the conversation with the
7 commissioner. Is that right?

8 A It was either the 2nd or the 30th. I think we
9 went over that. I wasn't sure, and I'm still not sure to
10 this day. The memo says the 2nd. That's why I think it
11 is the 2nd.

12 Thank you. That refreshes my recollection, Mr.
13 Chairman. Thank you.

14 Monday, November 2nd, right.

15 Q Now, at least we're clear about that, are
16 we? A That's what the memo says.

17 That's the date it happened. That--yes.

18 Q Then you know that was Monday, November 2nd?

19 A Yes, sir.

20 Q And then you prepared the memorandum that
21 we have already marked in evidence to Mullen giving him
22 the direction that you understood you had gotten from
23 Commissioner Kohl? A Yes, sir.

24 Q And you also included a note that a copy of
25 that was to go to Mr. Schuyler?

1 A I don't think so.

2 Q Did you know that a copy of it was given
3 to Mr. Schuyler by-- A No, I did not.

4 Q All right. Did you ever see after that
5 the certificate which was signed by Schuyler and two other
6 members of the department recommending the award to
7 Centrum? A No, sir, I did not.

8 Q Now, to come back to the matter we touched
9 on yesterday when the Attorney General suggested to you
10 in the telephone conversation that you suggest to Kohl
11 that he speak to Sherwin about this problem. Did you
12 give that message to Commissioner Kohl?

13 A Oh, yes.

14 Q Do you know whether or not he did talk to
15 Mr. Sherwin and tell him to stay out of his department?

16 A When Counsel says "that message," I told Commissioner
17 Kohl that the Attorney General had suggested that he could
18 straighten Mr. Sherwin out about the matter, and I think
19 I used that language in my memorandum and that's what I
20 told the commissioner.

21 Q To your knowledge, did he speak to Mr.
22 Sherwin? A I have no idea.

23 Q Did you ever ask him if he did?

24 A I knew he hadn't as of the 26th because--

25 Q 26th of what? A October,

1 because we had discussed it and my understanding, there
2 was going to be a meeting at the Governor's office the
3 next day on some unrelated matter and we both agreed that
4 we would bring this to the Governor's attention at that
5 meeting, at the close of the meeting, if we had an oppor-
6 tunity to do so.

7 Q And then you later found out that there was
8 no such meeting. And did you get any direction, then,
9 from the commissioner-- A No.

10 Q You don't know what I'm going to ask you
11 yet. A I thought you stopped
12 with "direction."

13 Q Did you get any direction from the commis-
14 sioner about speaking to Sherwin or speaking to anybody
15 else and asking him to speak to Sherwin?

16 A No, I did not.

17 Q Do you--where is that handwritten--

18 A Which one?

19 (Whereupon, there is a discussion off the
20 record.)

21 Q I show you what we have marked here as
22 Exhibit C-9, with a note on the side. Have you seen that
23 before? A I saw that in the office
24 of the United States Attorney for the first time early
25 this fall.

1 Q The note that you're looking at says, "Bieder-
2 man discussed with Garven. Garven to speak to Sherwin"?

3 A Yes.

4 Q And it has a date on there, does it?

5 A The memorandum has a date.

6 Q No, no, "Biederman discussed with Garven."

7 A Yes, 11/4.

8 Q 11/4? A Yes, sir.

9 Q Did you have a conversation with Judge
10 Garven on November 4th? A Yes, I did.

11 Q And was that your own idea or had the
12 commissioner asked you to talk to Judge Garven about it?

13 A No, that was my own idea in this sense: Since we
14 had not spoken to the Governor and he was unavailable,
15 I thought I'd do the next best thing and speak to his
16 counsel.

17 Q Do you recognize that as Commissioner Kohl's
18 writing? A No. The United States

19 Attorney called me in and asked me whose writing that was.
20 He asked me if it was mine. It wasn't. Or whether it
21 was my secretary's, and I told him I didn't think so, but
22 I gave him samples of her writing and I didn't know. I
23 didn't know.

24 Q Let me suggest this to you. Commissioner
25 Kohl has testified that it's his handwriting.

1 A That may be. This is my first knowledge that this
2 is, in fact, his handwriting.

3 Q You may take not my word but Commissioner
4 Kohl's word for it that that's his handwriting. And
5 knowing that, does it refresh your recollection as to
6 whether you--did you tell Commissioner Kohl that you had
7 discussed the matter with Judge Garven on November 4th?

8 A Absolutely not.

9 Q You never did?

10 A No, sir. In fact, when I saw this in the United
11 States Attorney's office, I was a little amazed. I
12 thought nobody knew I had been to see Garven, except my
13 secretary and Judge Garven himself, about this particular
14 matter. Indeed, I think when I first met with Mr.
15 Goldstein, Bruce that is, I told him that--

16 Q Now, look. What we're talking about, is
17 this any answer to my question as to whether Mr. Kohl,
18 Commissioner Kohl, told you, or that you told Commissioner
19 Kohl that you had discussed the matter with Judge Garven?
20 That's all I asked. Did you tell him?

21 A No, I did not.

22 Q Never at any time down to the present time?

23 A Never at any time down to the present time.

24 Q Now, after the award to Centrum on--well,
25 you don't know the exact date of the award. The documents

1 here, if you want to see them, show that Mr. Schuyler
2 signed on November 5th the form awarding or recommending
3 to the commissioner the final award to Centrum.

4 How did you happen to go over to see Judge
5 Garven? A I walked. You mean the
6 reason I went to see him?

7 Q I have very little difficulty in understand-
8 ing or in surmising that you walked over to Judge Garven's.
9 Now I want to know-- A Why?

10 Q --what made you go over there.

11 A Oh, very simple. My memorandum of October 30th
12 contains a conclusion as legal advice based upon certain
13 preconditions. It doesn't suggest what the commissioner
14 should do unless precondition X is met. On the other
15 hand, he could have not accepted that advice if pre-
16 conditions A and B were met.

17 And the preconditions A and B were, namely, that,
18 indeed, there was an engineering reason for throwing out
19 the bids - the asphalt. And B was the fact that the bids
20 came in over the engineer's estimate. But the second, B
21 that is, I explained in my memo I had difficulty in
22 accepting for these reasons: As Counsel knows, the courts
23 have held over and over again that an administrative
24 agency's interpretation or practice in, under a statute
25 will be an aid to the court in interpreting that statute.

1 The statute that counsel showed us at the beginning of my
2 testimony with respect to rejection of bids substantially
3 above engineer's estimate, the department had developed a
4 practice over the years with respect to that, and that
5 practice, according to my information which I obtained
6 from Mr. Schuyler, was that it was over five per cent, they
7 would throw the thing out. They had the discretion to
8 throw it out. That was the statute. I later discovered
9 at Mr. Sherwin's trial that it actually was ten per cent.
10 But, in any case, it was five per cent at the time I wrote
11 the memo. The Centrum bid was 4.2%. In accordance with
12 department procedure, if this were a normal action the bid
13 would have been awarded.

14 And in addition to that rationale used by Mr.
15 Sherwin in his letter, or rationale that Mr. Mullen used
16 in his memorandum, or the rationale that the State could
17 profit by getting lower bids if these bids were thrown
18 out, was mitigated because the commissioner had told me
19 on the 26th that Mr. Sherwin now wanted the contract
20 awarded directly to Manzo, which was the second bidder.

21 So, on fact and on practice I didn't accept the
22 B reason, namely the fact that the bids had come in over
23 the engineer's estimate, as justification for throwing these
24 bids out. A, though, would have stood if it in the com-
25 missioner's judgment was a satisfactory reason.

1 My advice was based on the prerequisite that the
2 real reason and the only reason was that because Sherwin
3 wanted Manzo to get another crack at the contract. And
4 "crack at the contract" are the commissioner's words and
5 that's what he told me the first time I met with him on
6 this on the 21st before I wrote my memo of the 22nd, and
7 at that time he mentioned no other reasons, no other rea-
8 sons.

9 So, I really was putting it to him, if A and B
10 are so, well, then, throw them out. On the other hand,
11 if C is so, I think that it may be construed, and I didn't--
12 it wasn't very firm in the memoranda. I said it could be
13 construed as a conspiracy to violate the policy of the
14 bidding laws. I gave him those alternatives.

15 He knew what the true facts were, because he never
16 revealed them to me. Never revealed what Sherwin had
17 said to him on the 13th and never revealed to me the
18 intricacies of what was going on with the asphalt. And
19 I said, "You have two choices, Commissioner, under the
20 facts. You make the decision," and he made the decision.

21 Q And he made the decision--

22 A Yes, sir.

23 Q --to award the contract to Centrum?

24 A Yes, sir.

25 Q And then you went to Garven, in any event?

1 A Yes, I did go to Garven.

2 Q And you have explained--

3 A You want to know--

4 Q Just--

A I'm sorry.

5 Go ahead, Counsel.

6 Q Did you intend to--did you do anything be-
7 fore you went to Garven with respect to papers or documents?

8 A Yes, I did.

9 I thought you had asked why I went to Garven. I
10 wasn't finished with that.

11 Q Just answer this question that I put to you
12 now.

A Yes, I prepared a
13 package of memoranda, you know, all the memos in the case.

14 Q Now, what was in the package?

A My October 30th memo; the letter from Sherwin--
16 I'm sorry. If I go too fast, please slow me down--the
17 letter from Mr. Sherwin to Mr. Kohl, the one that had
18 been sent to him at his house on the 8th; Mr. Kohl's memo
19 to Mr. Sherwin back on the 5th relating to the other Manzo
20 problem and asking who Bill Loughran was and who Florence
21 was; the press clips that I had gotten from public rela-
22 tions, that's the department's public relations staff;
23 and Mr. Mullen's memo to the commissioner explaining the
24 reasons he thought the bids should be thrown out. I think
25 that's it.

1 Q Perhaps I missed this. Did you also include
2 your memorandum of the 4th to Mullen telling him that--

3 A Oh, yes, I did. Thank you. I did.

4 Q That was the memorandum in which you di-
5 rected-- A Yes, sir.

6 Q You conveyed the commissioner's order to
7 give the award to Centrum? A Yes, sir.

8 Q And when you drew the 30th memorandum did
9 you have, on the right-hand part of the page, upper part
10 of the page, any note about copies to anyone?

11 A When I drew it?

12 Q Yes. A No. When I put the
13 package together I did that. I instructed the girl to
14 do that.

15 Q I see. Well, when you sent the original
16 to Commissioner Kohl, you had no notation of copies to
17 anyone? A No, sir.

18 Q I think you told us yesterday that was
19 because you didn't trust the commissioner at that point?

20 A Well, I don't know how you define the word "trust."

21 Q Well, you used the word, Mr. Biederman.

22 A All right. I'll define it, Counsel.

23 Q I will accept whatever definition you want
24 to put into this record as to what you mean by "trust."

25 A All right, fine. At the time this had happened,

1 as I testified earlier, we had just been through the
2 Addonizio case and we had just held our first contractor
3 debarment hearing, or disqualification hearing, on the
4 grounds of moral integrity, and the department was making
5 new law in this area and we were being--the U. S. Attorney's
6 Office told us--

7 Q Now, look. A All right.

8 Q Now, look. Tell us what you meant by your
9 statement yesterday that you didn't trust the commissioner.
10 It isn't necessary--did you come here with a purpose of
11 vindicating your judgment or making an attack on anybody
12 involved in this proceeding?

13 A No, sir.

14 Q Well, just what? Did you intend to attack
15 Commissioner Kohl yesterday--

16 A Absolutely not.

17 Q --when you said you didn't trust him?

18 A Absolutely not.

19 Q So when you say you don't trust anybody,
20 you don't mean that you're attacking him or criticizing
21 him?

A Oh, absolutely not.

22 Q Do you think you're pinning a bouquet of
23 flowers on him when you say you don't trust him?

24 A If I can define the term, perhaps.

25 Q That's exactly what I asked you about ten

1 minutes ago. Now, tell us what you meant when you said
2 you didn't trust Commissioner Kohl.

3 A For the record, I'm going to object to Counsel's
4 interruptions of answers which I think will be complete
5 if I'm allowed to complete them.

6 Very simply, this: I had been through the Addonizio
7 --I said this about the Addonizio case and the debarment
8 proceedings, and what had happened up in Newark, and here
9 we had a situation where the commissioner had been re-
10 quested by the political officer in the cabinet to do a
11 favor for a contractor. He had refused to disclose his
12 reasons for so doing to me, and I simply--and I knew for
13 a fact that the commissioner had his post because Mr.
14 Sherwin had recommended him for his post. Mr. Sherwin had,
15 in fact, recruited him for his post in Washington, and I
16 didn't want Mr. Kohl to tell Mr. Sherwin that I was taking
17 these to Judge Garven and to Criminal, the Criminal Section,
18 Division of Criminal Justice, because if anything--and I
19 say "if" because all we had, all I had was inditia or what-
20 ever, and a gut feeling on the basis of what had happened.
21 If there was something there, I didn't want to alert either
22 Commissioner Kohl, who owed his job to Mr. Sherwin, to tell
23 Mr. Sherwin because obviously if there was something some-
24 body would pick up the phone or at least talk to Mr.
25 Sherwin about it. I didn't want to have an advance warning.

When I say "trust," it wasn't in trust in the sense of character. It was just so that he wouldn't, shall we say, tip off the person who might be the subject of an investigation.

Q Did it ever occur to you when you gave that to him to say, "I trust you and I trust that you will not speak to Mr. Sherwin about this"? Did that occur to you?

A No, because he hadn't--

Q Did you say, "I hope you won't talk to Mr. Sherwin about this?"

A If the commis-

Sherwin about this?" A If the commissioner had disclosed what had happened on that conversation of the 13th, those reasons he kept from me, and that's the reason I took the attitude I did.

Q You see, I only asked you, did you say any such? Did you go to the commissioner and say, "Please don't talk to Mr. Sherwin about this"? That's all I asked.

A I didn't.

Q Did you think the answer you gave me was a responsive one to the question I put to you?

A Yes.

Q All right. A Because it explains why I did what I did.

Q All right. Well, you took these papers over. When you started out, did you intend to go to Judge Garven?

A I started out intending to go to Mr. Petrella.

1 Q And when you got over there, I understand,
2 you did not give these papers to Mr. Petrella?

3 A No, sir.

4 Q Did you look for him when you went over?

5 A No, sir. After the girl had typed his name on there
6 I thought in my own mind, why go to Jim? I'll go to his
7 boss.

8 Q And then you went over and talked to his boss?

9 A Yes, I did.

10 Q How were these papers? You said you called
11 it a package. I gather it was in something, was it?

12 A No, in the sense that they were all stapled together.

13 Q It was one clip and all the documents and
14 the newspaper clippings,--

A Yes, sir.

15 Q --whatever they were, were all clipped in
16 one and that's what you mean by "a package"?

17 A Yes, sir.

18 Q And where did you see Judge Garven?

19 A In his office.

20 Q Did you just walk in?

21 A No. I asked his secretary if he was free and if I
22 could see him.

23 Q And then you went in?

24 A Yes, sir.

25 Q And you handed him this package, did you?

1 A Well, we greeted each other. We had a very good
2 relationship. And he said, "What's doing?" And I said,
3 "I have something I think you should see," and I showed
4 it to him.

5 Q When you say you showed it to him, you mean
6 by that that you handed him--

7 A Yes, sir.

8 Q --these papers?

9 And did he read them in your presence?

10 A Well, I said, "And particularly this," and I
11 flipped the papers over to Secretary of State Sherwin's
12 memorandum to Commissioner Kohl, and he read it.

13

14 EXAMINATION BY THE CHAIRMAN:

15 Q What date was that?

16 A That was, I believe--it could have been the 3rd
17 or the 4th. But from this, I guess it was the 4th.

18 MR. SAPIENZA: Well, the 3rd was Election Day.

19 THE WITNESS: Then it would have been the
20 4th.

21 Q I don't mean the date of the meeting, but
22 the date of the memorandum that you said you flipped to.

23 A Oh, that was the October 8th letter from Mr. Sherwin
24 to Mr. Kohl, the one that had been sent to him at his
25 house where he asked him to call him later on to find out

1 what the reasons were. That's the one I--

2 Q Excuse me for a minute. Were these papers
3 that were stapled together put in an envelope?

4 A No, sir. They were just like this, all stapled
5 together.

6 Q And you had to go from West Trenton to the
7 office of Judge Garven with papers like that?

8 A Sure.

9 Q Not in an envelope?

10 A No, I don't believe they were in an envelope.

11 Q Not in a folder?

12 A They may have been, yes. They may have been in a
13 folder. You know, one of those, I guess, like the one
14 you have, Mr. Chairman, sitting at your lap. I think they
15 were probably in that. In fact, we did use those folders
16 and I carried them around. I think that's the way they
17 were transmitted.

18 THE CHAIRMAN: I'm sorry for interrupting.

19 MR. FRANCIS: No, no. I hope you will.

20

21 EXAMINATION BY MR. FRANCIS:

22 Q Did you ask Judge Garven to speak to Mr.
23 Sherwin? A No, sir.

24 Q Did Judge Garven at that time ask you if
25 the contract had gone to Centrum?

1 A No, he did not.

2 Q Did he say, "Is Centrum a good outfit?

3 Will it do the job?" A No.

4 Q Nothing about the bidder that had gotten the

5 contract? A No.

6 Q Well, when you showed him particularly the

7 October 8th letter, did that end the conversation?

8 A No. He said, thank you for bringing this material,

9 I will look at it. You did right in bringing it to him.

10 Q And that was the end of the conversation?

11 A Yes, it was.

12 Q Ever talk to him again about it?

13 A No, sir, I don't believe I did.

14 Q Now, you had another such package, did you?

15 A Yes, there were two.

16 Q And did you deal with that the same day?

17 A Right after I left Judge Garven's office.

18 Q And where did you go with that?

19 A I went around the corner in the hallway, across
20 the courtyard and over to Mr. Jahos' office.

21 Q Did you see him?

22 A No, he wasn't in, I don't think, or he was busy,
23 so I left it with his girl.

24 MR. SAPIENZA: May I ask a question?

25 MR. FRANCIS: Yes.

1 THE WITNESS: Oh, sure.

2

3 EXAMINATION BY MR. SAPIENZA:

4 Q When you went to see Mr. Garven, you felt
5 there might be something wrong but you didn't know; is
6 that right?

7 A I didn't say
8 that. I said he should look at this because I thought he
9 would draw his own conclusions.

10 Q Now, about this in your mind--

11 A Oh, yes.

12 Q --there might be?

13 A Might be.

14 Q But you didn't know?

15 A I had no idea. There were just inditia that there
16 might be.

17 Q What did you expect Mr. Garven to do with
18 these things?

A Look at them.

19 Q Just read them?

20 A Absolutely.

21 Q And if there is anything wrong, to stop it?

22 A Yes.

23 Q Would that be correct?

24 A Of course.

25 Q If you had felt--all right. That's fine.
I just wanted to get that.

1 A Well,--

2 Q I understand. Thank you.

3 A Well, let me say this, because I think there is a
4 point. Although most people regarded Mr. Sherwin as the
5 number two man in the cabinet, I regarded Judge Garven,
6 really, as the number two man. And he was, in my view,
7 the brightest, most articulate and the most able man in
8 the cabinet that I had met, and through matters that we
9 had dealing with transportation we had established a pretty
10 good relationship.

11 Q You regard him as being a thoroughly honest
12 person-- A Absolutely.

13 Q --that you could take this to?

14 A Absolutely.

15 Q And that he would do the right thing?

16 A Absolutely, without reservation.

17 COMMISSIONER BERTINI: Is that still your
18 opinion?

19 THE WITNESS: Yes, sir.

20 MR. SAPIENZA: Thank you.

21
22 EXAMINATION BY MR. FRANCIS:

23 Q When you took the papers to Mr. Jahos,--

24 A Yes.

25 Q --did you ever talk to him about them after

1 that? A No, sir, I didn't.

2 Q And he never called you about them, I gather?

3 A No, sir.

4 Q Did you trust him, also?

5 A Yes. I had known Van. We're on a first-name basis.
6 I had known him from the previous administration. He had
7 held the same office under Attorney General Sills for some
8 time and then had resigned and come back like I did to
9 state government.

10 Q You knew that he had had considerable ex-
11 perience in criminal law?

12 A Yes, sir.

13 Q And you believed that he would exercise
14 his experienced judgment upon an examination of--

15 A Yes.

16 Q --these papers as to what, if anything,
17 should be done about them?

18 A Right. If there was anything and he looked at them,
19 fine. If there wasn't, that would be the end of it.

20 Q Then having been to Judge Garven and having
21 been to Mr. Jahos, was that the end of it for you?

22 A Yes. I assumed that I had turned over, if there
23 was a question at all, I turned it over to the people who
24 should know about it, and as far as I was concerned the
25 matter was closed.

1 Q Did you ever discuss it with Commissioner
2 Kohl again after the 4th of November?

3 A No, sir. As I said, I thought the matter was closed.
4 It was in other hands if there were anything to look at.

5 Q And I think I did ask you this. You never
6 again discussed it with Judge Garven?

7 A No, sir, I did not.

8

9 EXAMINATION BY MR. SAPIENZA:

10 Q That meeting with Mr. Garven, that wasn't
11 a long meeting, was it?

12 A No, sir, it wasn't.

13 Q A couple of minutes?

14 A A few minutes.

15 Q Were you wearing a coat at this time, or
16 did you get a chance to sit down or not?

17 A Oh, yes. He was very affable. You know, he had no
18 idea what I was coming down on and--

19 Q It was just a couple of minutes?

20 A Just a few minutes. I think whenever I did visit
21 him I left the coat in the Governor's anteroom in any case.
22 His office adjoins the Governor's office.

23 COMMISSIONER BERTINI: What's your opinion of
24 Van Jahos' competency as an attorney?

25 THE WITNESS: Oh, as an attorney he's in a

1 completely different area of law than I am, so it's
2 really very hard for me to judge. But I knew he
3 was a tough, solid guy.

4 COMMISSIONER BERTINI: Is that still your
5 opinion?

6 THE WITNESS: Well, let's say this: My
7 opinion is that he got the same materials that an-
8 other officer in the same area of law enforcement
9 got. One got a result much quicker than he did.
10 That's all. But that could be for a lot of reasons.
11 My own opinion was that if there was anything here,
12 he would investigate, and in fact my opinion was that
13 he was.

14
15 EXAMINATION BY MR. FRANCIS:

16 Q Well, when you say another law enforcement
17 officer got a better result--

18 A Quicker result.

19 Q Quicker result? A Sure, or
20 better, whatever kind of result.

21 Q You are familiar with the manner in which the
22 ten-thousand-dollar check in this matter came to light?

23 A I read about it in the newspapers.

24 Q That at the Perucci or Warren Limestone-
25 Manzo accounting trial before Judge Stamler it appeared

1 there that a ten-thousand-dollar check had been given to
2 the Republican Finance Committee and Judge Stamler called
3 Mr. Jahos? A Yes.

4 Q Now, do you think that that was the circum-
5 stance? Did you know that up until that point nobody,
6 including this other agency you have just mentioned, had
7 any concrete evidence of any such payment to anybody?

8 A I didn't know at all what happened after I trans-
9 mitted the materials. I read about it.

10 Q But just a moment ago you said, "All I know
11 is that one other agency got a much quicker result"--

12 A Yes.

13 Q --than Mr. Jahos did"?

14 A Yes.

15 Q And you said that just out of the thin air
16 without regard to any of the circumstances that brought
17 about the ultimate indictments in these cases?

18 A That's not so, Justice Francis.

19 Q And I want to know why you said another
20 agency got a quicker result.

21 A I think my answer was, there could have been a lot
22 of other reasons. I didn't say that--would you read my
23 original answer back, because I think you covered the
24 grounds I just covered. There may have been other circum-
25 stances.

1 EXAMINATION BY MR. SAPIENZA:

2 Q Mr. Biederman, what do you mean by a result?

3 A Well, they got an indictment in eight weeks.

4 Q Well, the indictments, you understand the
5 indictments came down at the same time?

6 A Yes.

7 Q You understand that the State tried the
8 case? A Of course.

9 Q So by "result" you're talking about indict-
10 ment; is that right? A Yes.

11 Well, let me say this: When I--

12 Q One other question.

13 A Surely.

14 Q Do you understand the time period when the
15 idea of a ten-thousand-dollar contribution first came
16 to anybody's attention? Do you know when that was?

17 A No, except from what I read in the papers.

18 Q And from what you read in the paper, do you
19 understand that to have been sometime in early June of
20 1972? A May or June. I'm not sure.

21 Whatever the papers said. My only knowledge of what
22 happened after the materials was transmitted was through
23 the newspapers.

24

25 EXAMINATION BY MR. FRANCIS:

1 Q The only reason I have gone into this ques-
2 tion is because you talked about somebody else got a quick-
3 er result, and I wanted to point out to you that on May
4 30th, 1972, one of the Peruccis testified before Judge
5 Stamler about the ten-thousand-dollar check to the
6 Republican Finance Committee, which information was immed-
7 iately given to Mr. Jahos, who started the investigation,
8 and Mr. Stern, also. Perucci went to Mr. Stern and told
9 him that he had just testified before Judge Stamler about
10 the ten-thousand-dollar contribution to the Party.

T2 11 A I see. I didn't know that.

12 Q And from that moment on, almost, the two
13 agencies, state and federal, cooperated, and to the end
14 that indictments, state and federal, came down on the very
15 same day.

A I hadn't known that.

16 Q I see. A But if that's
17 the case, I would certainly withdraw my statement that
18 one got it quicker than the other.

19

20 EXAMINATION BY MR. SAPIENZA:

21 Q You concede that it was the idea of the
22 contribution that made this, that triggered the idea of
23 criminality in this thing? I put the question poorly. Let
24 me withdraw it.

A Yes, and let me
25 say this: When Kohl testified at the trial and used the

1 word "contributor," that was the first time I knew that
2 Manzo was a contributor. But if somebody had asked Kohl
3 or talked to Kohl and asked that question, and I think
4 the question should have been asked,--I asked it, he didn't
5 tell me--I think if somebody else asked, he might have
6 told him--perhaps this thing would have come to a head
7 a little sooner. That's the only comment I would have.
8 Now--

9 MR. FRANCIS: After--

10 THE WITNESS: I think that is the only comment
11 I would have, otherwise--

12
13 EXAMINATION BY THE CHAIRMAN:

14 Q May I return for a minute--

15 A Surely.

16 Q --to the meeting you had with Judge Garven
17 in Judge Garven's office?

18 A Yes, sir.

19 Q You both were sitting down at the time,
20 you stated?

A Oh, yes, I think so.

21 Q He was at his desk and you were at a chair
22 opposite the desk?
23 Very small office.

A Right, opposite.

24 Q And then you gave him various papers that
25 were stapled together?

A That's

1 right. I said, "Judge, I think you ought to see these."

2 Q And then he replied what?

3 A And I said, "Particularly this," and the first
4 thing he saw was the letter from Sherwin to Kohl.

5 Q All right.

6 A And he looked at me and said, "You're right. Thank
7 you for bringing them. I'll look at them."

8 Q Did he say anything to you as to who was
9 the successful lowest bidder?

10 A No. Well, he hadn't read all the papers at that
11 point. I don't think he--

12 Q Did you point out to him who the successful
13 lowest bidder was? A No, no. But it
14 was in one of the memos, which I assumed he was going to
15 read.

16 Q No. But do you think he read it while you
17 were in the office? A It's possible.

18 That could have been the top memo, my memo to Mullen,
19 because that was the last in terms of date and I think
20 they were chronological, the top memo being the latest
21 in time as opposed to the earlier memos going back.

22 Q Did you at any time say to Judge Garven, "I
23 believe you ought to talk to Secretary of State Sherwin
24 about this"?

A No, no, no.

25 Q Did he say that he would talk to Secretary

1 of State Sherwin?

A No, he didn't.

2 He just said, "Thank you for bringing them. You did right
3 in bringing them to me." And since the man is what I de-
4 scribed him to be, if there were any action to be taken
5 I expected him to take it. Or if there was no action to
6 be taken in his view, I expected--I really relied on his
7 judgment. To me, he was, you know, the top man in govern-
8 ment down there.

9 Q The meeting took about three minutes or so?

10 A Well, it was fairly short.

11 Q Five minutes?

12 A Could have been five.

13 Q Wouldn't more have been said in a space of
14 three to five minutes than what you told us?

15 A Well, we exchanged pleasantries. I had just moved.
16 We were both from Bergen County. You know, small talk, I
17 guess. And he said, "What did you come down on?" And I said,
18 "I think you should see these things, particularly this."
19 And he looked at it and he says, "You're right. Thank
20 you for bringing it to me."

21 Q And what you showed him, did that indicate
22 in your opinion, to Judge Garven that--

23 A That maybe there's something more to this than, you
24 know, on the surface.

25 Q That a cabinet officer was exerting influence

1 on another cabinet member?

A Oh, there

2 was no question about that, because we all knew Mr. Kohl
3 got his position because Mr. Sherwin brought him up from
4 Washington. Mr. Sherwin was responsible for Mr. Kohl's
5 appointment. No question about that.

6 Q How do you know that?

7 A Pardon me?

8 Q How do you know that?

9 A John Kohl told me that. I said, "How in the world
10 did you ever end up here in Trenton?" His wife hated
11 Trenton. Incidentally, she's a charming gal. She was
12 always saying, "I don't know why John ever brought me here."

13 And I said once to John, "Why did you come here?"
14 And he said that Sherwin had recruited him, in effect.

15 COMMISSIONER BERTINI: What's your opinion--

16 Q Did you have many occasions to telephone
17 Judge Garven or send memorandum?

18 A Yes, I did. I was, in effect--at that particular
19 point in time a matter had come up which I did personally
20 for the Governor, and that was the attempt to remove John
21 Farrell as trustee of the Central Railroad. It was very
22 early in the administration. Remove him in front of the
23 judge who had appointed him. And we didn't accomplish
24 that, but Farrell resigned immediately after the hearing
25 and the judge--the Governor was very pleased, and Garven

1 was very pleased.

2 And on other occasions, this was, remember, early
3 in the administration, emergencies had come up and the
4 Governor had called the commissioner, and the only one
5 in the office, you know, was me about six or seven o'clock,
6 and we established a very good rapport.

7 In fact, the Governor, who's a tremendous man,
8 paid me the highest compliment I have ever gotten as a
9 lawyer, he really did, on my occasion of leaving the office.

10 I was at a cocktail party at Morven and he broke
11 away from the group he was with and came over and said he
12 heard I was leaving and hoped I wouldn't, and if the reason
13 was the conflicts bill, he was amending it, and to keep
14 my powder dry and see what happens.

15 If the Governor had thought there was anything
16 wrong here, he would have thrown people through the glass
17 doors of the State House.

18 We had a very good relationship, and that's why
19 I went to Garven, and we had frequent talks.

20 Q Let me ask you again two questions getting
21 back to the conversation you had with Judge Garven on
22 November 4th. Did you ever ask Judge Garven to speak to
23 Secretary of State Sherwin about this package?

24 A No.

25 Q Did Judge Garven ever indicate to you after

1 he looked at the package, so-called, that he would speak
2 to Secretary of State Sherwin about this?

3 A No. But I assumed, really, because--well, let's
4 put it this way: You know, we got from the Attorney
5 General saying that Kohl should straighten Sherwin out,
6 fine. And John Kohl is a very human being, but he's
7 a very mild fellow, and for him to straighten out the guy
8 who got him his job I really didn't think was in the works.
9 But I felt that when Garven saw that, that he probably
10 would speak to Sherwin. It was a logical sequence of
11 events.

12 Q And say to him, look, don't get involved in
13 somebody else's department?

14 A Or, what's happening? I don't know what the conver-
15 sation was. I felt sure whatever it was Garven would
16 handle it adequately.

17 Q Let's go back several days before November
18 4th, if you can recall. Did you attend a meeting in Mr.
19 Mullen's office at the same time that Engineer Schuyler
20 was present?

A No, sir, I did not.

21 Q On October 30th, 1970?

22 A Right. My recollection is--

23 Q You did not attend any meeting between the
24 three that I just named, you, Mr. Mullen and Mr. Schuyler?

25 A No. There was--no, I did not. Mr. Mullen and I

1 testified at the same day at Mr. Sherwin's trial, and his
2 testimony, I think, was the same as mine, although we had
3 both been told that Schuyler the day before testified that
4 there was such a meeting. But both of us didn't recall
5 the three of us being together at that time at all.

6 Q When do you recall was the last time in this,
7 say, week's interval that you talked to Mr. Schuyler?

8 A I think on the 26th, as my memory reflects. Then
9 I saw him a week after these events in the hall, and that's
10 the first time I discussed my October 30th memo to the
11 commissioner with him and he says he--you know, I told him
12 that was my advice and he said, "I think you did right,"
13 and that was the end of the discussion.

14 Q Did he say to you you better put that in
15 writing?

16 A Oh, no, no. That was
17 the week after I already put it in writing. He didn't
18 mention anything about that.

19 Q But you don't have any recollection of a meet-
20 ing of the three of you on Friday, October the 30th?

21 A No, I do not.

22 THE CHAIRMAN: Take two minutes.

23 (Whereupon, a brief recess is taken.)

24 (After recess.)

25 EXAMINATION BY MR. FRANCIS:

1 Q Well, after this you remained in the depart-
2 ment until when? A Until November,
3 I believe, 13th of 1971.

4 Q I see. That was a little bit more than a
5 year after the November 4th memorandum?

6 A Yes, sir, it was.

7 Q And in that year period, as far as you were
8 concerned the thing was dead?

9 A Well, it was being investigated or it was dead.
10 The people who were in a position to make that judgment
11 I assumed made it or would make it.

12 Q I see. But you made no inquiry?

13 A No, sir; no, sir.

14 THE CHAIRMAN: Excuse me a minute, Mr. Francis.

15

16 EXAMINATION BY THE CHAIRMAN:

17 Q May I just go back one minute--

18 A Surely.

19 Q --to the time that you went to Mr. Jahos'
20 office-- A Yes, sir.

21 Q --and gave this same, as you call it, package
22 to his secretary? A Yes, sir.

23 Q What did you say to his secretary?

24 A I said, "Van's expecting this. Would you please
25 give it to him?"

1 Q Why would he be expecting it?

2 A Oh, I had called him previous to that and told him
3 I was going to bring a package down to him, it was a matter
4 that concerned a cabinet officer and I thought he might
5 find it interesting and I thought he should see it.

6 Q When was this?

7 A This was prior to my putting the package together.
8 I guess it was around the 30th or the 2nd. The 2nd or
9 the 3rd, around that time.

10 Q I mean, was it ten minutes before you got
11 there?

12 A Oh, no, no, no. It
was a day or so before.

13 MR. SAPIENZA: You spoke to him?

14 THE WITNESS: In fact, I think it was the
15 day before. When I put the package together, I
16 think, I called up and said I was going to bring
17 the package down and that it was a matter I had
18 previously spoken to the Attorney General about.

19 Q What did Mr. Jahos respond?

20 A He said, "Fine."

21 At that time we were sending down to him in connec-
22 tion with these moral integrity debarment things materials,
23 because he was going to get for our department, because of
24 his expertise, either an affidavit for contractors to sign
25 or some type of prequalification on the moral integrity

1 thing, and he was trying to work that out, so he wanted
2 materials on our bidding procedures and all of that, so
3 we had been in contact on that.

4 Q Was there anything left this particular day
5 with Mr. Jahos' secretary--

6 A Yes, sir.

7 Q --that dealt with any item other than the
8 particular package that you had?

9 A No, sir. I just, you know, handed it to her and
10 said--

11 Q I mean, you had no other memorandums dealing
12 with what you call the moral integrity study?

13 A Oh, no, no, no.

14
15 EXAMINATION BY COMMISSIONER BERTINI:

16 Q Well, you had pending the question of the
17 collusive bidding? A Oh, yes, we did,
18 that's true.

19 Q That was pending between you and--

20 A That was still pending, that's right. That was
21 still pending in addition to the moral integrity thing,
22 that's correct.

23 MR. SAPIENZA: You didn't give Mr. Jahos
24 in that conversation any reason to believe that
25 anything that wasn't concerned either with the moral

1 integrity of bidders or with that collusive bidding
2 affair regarding Route 35, did you?

3 THE WITNESS: This was other than those two,
4 is that what you're saying?

5 MR. SAPIENZA: No. But you didn't indicate
6 that to Mr. Jahos, did you?

7 COMMISSIONER BERTINI: In the telephone call.

8 THE WITNESS: No, no.

9 COMMISSIONER BERTINI: You didn't?

10 THE WITNESS: All I told him was what I said.

11 COMMISSIONER BERTINI: "Can I see you?"

12 THE WITNESS: Yes, "I've got something for
13 you to see. It concerns a cabinet officer. I
14 previously discussed it with the Attorney General
15 briefly," and that's all. Very short conversation.

16 THE CHAIRMAN: And he replied, "Okay"?

17 THE WITNESS: He said, "Sure, bring it down,"
18 or "Send it down."

19 THE CHAIRMAN: Did he indicate when, or did
20 he ask you when you're going to bring it?

21 THE WITNESS: No, no.

22 COMMISSIONER BERTINI: And you never talked
23 to him then or since then about it?

24 THE WITNESS: No, no, no.

25 THE CHAIRMAN: Actually, you couldn't say for

1 certain right now by having handed this so-called
2 package to Mr. Jahos' secretary Mr. Jahos ever got
3 it?

4 THE WITNESS: Except for that and perhaps
5 that my girl had sent it in the ordinary course of
6 business, because that one memo I saw when Mr.
7 Cowan interviewed me had the BCC on it. I think
8 we went over that in our preliminary talk, and
9 scratched alongside of it it said, "DOT bidding
10 procedures," or something like that.

11 COMMISSIONER BERTINI: Which would indicate
12 where it was filed?

13 THE WITNESS: Yeah. And as I said, we had
14 been sending stuff to him on bidding procedures
15 in connection with the other thing. When I first
16 saw it, I thought, "My God. Maybe they misfiled it."
17 That was my natural reaction.

18 COMMISSIONER BERTINI: It was probable, in
19 your opinion, from what you have seen now that it
20 may have been considered to be something in connection
21 with the bidding question that was raised?

22 THE WITNESS: That's right. In fact, I walked
23 into Mr. Cowan's office and I saw that and I said,
24 "My God. Maybe they put it in this file and just
25 forgotten about it." That was my own personal

1 reaction. You know, secretaries do that. I said,
2 "Well, maybe Van walked in and said, 'Biederman said
3 he has more stuff for you,' and he said, 'File it.'"
4 It's altogether possible, absolutely.

5 THE CHAIRMAN: Because you never discussed
6 with Mr. Jahos after you left the premises?

7 THE WITNESS: No. As far as I was concerned,
8 I transmitted it. I told my superiors I had some-
9 thing suspicious, or something unusual is the word.
10 That was the end of it.

11 THE CHAIRMAN: You don't recall, Mr. Biederman,
12 calling Mr. Jahos or in passing saying, "What ever
13 happened to those papers I left?"

14 THE WITNESS: No, no, because I thought if
15 there were an investigation or something he would
16 call me, because I would have to do what I'm doing
17 today or what I did with Mr. Stern.

18 THE CHAIRMAN: Mr. Francis, I again beg your
19 pardon for interrupting.

20 MR. FRANCIS: Oh, no, no, don't beg my pardon.

21 THE CHAIRMAN: Well, sometimes it's very
22 difficult when you've got a question in your mind.

23 COMMISSIONER BERTINI: To hold it.

24 THE CHAIRMAN: I beg your pardon.
25

EXAMINATION BY MR. FRANCIS:

Q Let's see where we were. I have one further inquiry.

A Yes, sir.

Q I'm sure this has been covered. You did tell me that in that so-called package that you had delivered to Mr. Jahos' office was your memorandum to Mullen of November 4th--

A Yes, sir.

Q --saying that the award had gone to, was going, was ordered to go to Centrum?

A Yes, sir.

Q And so that if Mr. Jahos had read the whole package through to the November 4th memorandum, he would know that whatever Sherwin's interference was, or attempted interference was, that it was frustrated and that the contract had gone to Centrum?

A Yes, sir, absolutely.

Q And assuming--don't answer this if you don't think you should on the basis of--

A My lack of expertise?

Q --experience. Assuming he read all that package through the November 4th memorandum which indicated frustration of what Sherwin tried to do, contract gone to the low bidder and said, well, I don't see anything here that warrants further, or warrants criminal investigation, and filed it away, can you express an opinion as to whether

1 that would be improper or lack of due care, would you say?

2 A Oh, I couldn't. I don't have experience in that
3 area.

4 But following that thought, you used the word yester-
5 day "proper" with respect to the 35 reference to me, and
6 I thought then that my--I had an ego trip. I thought it
7 was kind of Mr. Jahos to have such confidence in me that
8 he wanted me to investigate a collusive bidding matter
9 even though I myself thought it properly should be in his
10 jurisdiction, because he thought I must be doing a good
11 job. You know, we're working together on the moral integri-
12 ty thing and everything else, even though, Justice, just
13 to clarify the record, while the department could have
14 held a hearing on this matter I didn't think it was proper
15 or usual because the department had no subpoena power, and
16 to conduct that type of an investigation without subpoena
17 power, I really didn't think it could be done. So when
18 he said it to me, I was sending it back to him.

19 In addition to that, even though the division of
20 investigation has some civil service description that to
21 investigate wrongdoing in the department, I thought that
22 related civilly, not criminally, because the enabling
23 statute, Title 27, gives the department actually no
24 criminal jurisdiction at all. And when Van sent it to me,
25 I just simply thought that, well, he thinks I could do a

1 better job for him, that's all, or maybe he's too busy
2 to do something like that. But technically it should
3 have been his, or it should have stayed in Criminal, and
4 that's why it went right back. I sent it right back to
5 him after I interviewed Manzo and his attorney.

6 Q Well, we were about here a short while ago.
7 You stayed in the department until November 14th, 1971?

8 A Yes, sir.

9 Q And simply engaged in your regular work in
10 that period until the time you came to leave?

11 A Yes, sir, right.

12 Q At that time you had no tenure in the depart-
13 ment?

A That's correct, sir.

14 Q And did you inquire as to whether you could
15 have tenure or not? A Yes, I had made
16 an inquiry.

17 Q And you made that inquiry of whom?

18 A The Attorney General.

19 Q I show you a letter, dated July 1, to the
20 Attorney General marked C-40 here and ask you if that's
21 the letter in which you inquired whether he would give
22 you tenure.

A Yes, yes, that is,
23 exactly.

24 Q You did not get tenure as the result of that
25 request?

A No, no.

1 Q How did you feel towards the Attorney

2 General then? A No different than I had
3 before when he gave me my promotion and my thirty-three-
4 and-a-third per cent increase and raise.

5 Q You mean you felt that just as fine--

6 A Yes.

7 Q --in your own mind when you were told you
8 were not going to be given tenure as you did when you got
9 a thirty-three-and-a-third per cent increase in salary?

10 A Well, I had some fine offers on the outside.
11 What I was really saying to him was, look, with the
12 conflicts bill being what it is, at my age, and if you
13 want to keep me, this is what I need to stay. If you
14 don't, well, I'm going to have to leave. And he made
15 the choice, just like he made the choice to keep me orig-
16 inally, which I thought was really very fine because I was
17 a holdover from a previous administration.

18 Q Well, in any event, it made no impression
19 on you whatever that he had rejected your request for
20 tenure?

21 A No. In a sense, I was
22 relieved because I felt I owed him, at least, having been
23 so kind to me before, I owed him at least the opportunity
24 to, you know, for me to stay; that out of loyalty, you know,
25 with this thing coming up, if he really wanted to keep me,
I gave him the opportunity to keep me. If he did want to,

1 fine. If he didn't want to, fine, because I had some fine
2 offers.

3 Q If he had given you tenure, would you have
4 stayed? A I think I would have,

5 but it was open to significant doubt. My wife wanted me
6 to leave, and we had bought a home at about that time.
7 We had negotiated. We actually bought it that month in
8 July, in Old Tappan, which is way up on the New York line,
9 and the commute was bad enough from Fort Lee. I think
10 Mr. Bertini knows where Old Tappan is. And the commute,
11 I realized, would be pretty bad.

12 COMMISSIONER BERTINI: It is.

13 A (Continuing) It is. And in addition to that, the
14 year had passed, well, since my appointment of chief
15 counsel and I accomplished pretty much what I thought I
16 would try to accomplish that year. Things were now pretty
17 routine and getting a little dull. And with the house and
18 a growing family, money was a question. I think the
19 President's wage freeze had come along at that time. And
20 I really had some handsome offers. So I--even with the
21 tenure, I have a feeling that I might have left.

22 Q Well, if you had these handsome offers and
23 you had the new home and the problems of commuting, why
24 did you even bother to ask for tenure?

25 A Because I thought I owed him that, that if he wanted

1 to keep me.

2 Q Oh, you were doing him a favor in asking
3 him to give you a job that would give you protection for
4 the rest of your days until retirement age, if you wanted
5 to keep it, barring bad conduct?

6 A Well, protection, I don't know. When you talk about
7 a government position, everybody is always underpaid and
8 overworked in addition to everything else.

9 Q You're not indicating that civil service
10 status or tenure status isn't worth quite a lot to a public
11 employee? A It is; it is.

12 Q That's why you asked it?

13 A Yes, in order to survive a change of administration,
14 if I was to protect my future I had here. I could be
15 thrown out at--

16 Q At least you indicated that in your letter--

17 A Yes, sir, I did.

18 Q --at least one reason why you wanted tenure
19 was so you wouldn't have to worry about holding your posi-
20 tion? A Right.

21 Q Assuming the next governor or administration
22 came along and wanted to drop you?

23 A What I wanted was the best of both worlds. I wanted
24 to know he would keep me and protect me. Then I could
25 consider the offers I was getting from a position of real

1 strength. Then I would have made my decision. That's
2 really what I had in mind.

3 Q So that it was neither here nor there that
4 he said no, that you-- A Well, it made
5 up my mind concretely that there was no question that
6 I'd go.

7 Q Well, you didn't go for quite a while after
8 that, did you? A Well, we actually
9 resigned September 1. You know, the summer months are
10 supposedly slow for private practice. We had actually put
11 our partnership together and we were ready to go, and
12 we submitted our resignations September 1 expecting to
13 leave then. But we were asked to stay until replacements
14 could be found for us. That's why we were held over until
15 November. But July 1 we were ready to go. We had firmed
16 up and were about ready.

17 Q Well, on September 1 you wrote to the
18 Attorney General and told him that you wanted to resign?

19 A Yes, sir.

20 Q And you indicated to him, did you not, that
21 the conflict-of-interest bill was the motivating factor at
22 that time? A Well, one particular
23 provision, really.

24 Q Well, let me show you the letter September 1,
25 marked C-41. Is that the letter?

1 A Thank you. Yes, that's it, uh-huh. That's right.

2 Q I don't recall reading in there any reference
3 to any tremendous offers that you had had as influencing
4 this resignation. A We had already formed

5 the partnership as of September 1.

6 Q Well, the only question I asked you just
7 then was whether you saw in the letter any reference to
8 any of the tremendous offers you have talked about a few
9 minutes ago. A No, I didn't put

10 it in the letter.

11 Q So that in the letter you indicated that the
12 motivating force was really the conflict-of-interest bill?

13 A Yeah, that made it impossible for me to stay re-
14 gardless of what happened on the outside.

15 Q I gather before you wrote that letter and
16 placing the stress on the conflict-of-interest bill you
17 had gone over it pretty carefully? I don't mean the
18 letter, I mean the conflicts bill.

19 A The one particular provision was brought to my
20 attention by Jack Kraft, who was the Governor's associate
21 counsel. He was very concerned about it. I looked at
22 that and we both agreed that we thought the bill--and
23 this was the amendment which the Governor did later, in-
24 cidentally, get out of the bill, repeal--that it would
25 bar anybody from practicing before the state two years

1 in any department, in any capacity, and bar his partners
2 from doing so as well. And Jack resigned, also, for the
3 same reason, I think, on August 1st. But he was the
4 fellow I originally discussed it with way back, I guess,
5 in May or before that. Legislative Correspondents Dinner
6 earlier in the year had gone over that.

7 Q Well, in any event, because of that bill you
8 finally made up your mind to resign and you did so formally
9 by letter of September 1st?

10 A Yes.

11 Q And the Attorney General, in answer on
12 September 8th, said that your resignation would be accepted
13 on a date prior to the effective date of the bill?

14 A Right.

15 Q So that-- A Right.

16 Q --you would be able to get out--

17 A Sure.

18 Q --before the bill became effective?

19 A Right.

20 Q We have already marked that C-42. If you
21 would like to see it, you may.

22 COMMISSIONER BERTINI: C-41.

23 MR. FRANCIS: C-42. This is the acceptance
24 of the resignation.

25 BY MR. FRANCIS:

1 Q I'll leave it there, anyway, in case you
2 would like to look at it. A Thank you.

3 Right, yes, that's the letter, I think.

4 Q And actually I think we have agreed that
5 you physically left the department on November 7th, how-
6 ever, you had some vacation time or something accumulated
7 and that as of the records, I guess, it was November 14th?

8 A Actually, from when Mr. Nardelli arrived there was
9 nothing really left for me to do. But that's about right,
10 I think.

11 Q Now, when you left you took some few memor-
12 andums along with you, did you?

13 A I took eight crates of memorandums and briefs with
14 me. Cardboard boxes.

15 Q And among those cardboard boxes you took the
16 October 8th letter from Sherwin to Kohl?

17 A Well, yes. I had one of those little brown folders
18 like the Commissioner has, and it was marked "Route 46"
19 and it had all those memos in it.

20 Q Well, how did you come by the October 8th
21 letter?

 A How did I come by it?

22 Q How did you come by it?

23 A When the commissioner handed it to me across the
24 desk that day, I asked him if I could have a copy and he
25 said, "Sure."

1 Q You have a distinct recollection of that?

2 A What?

3 Q You have a distinct recollection--

4 A Not distinct.

5 Q --that on that day when he showed it to you
6 you said, "Can I have a copy of that?" and he said, "Yes"?

7 A I think so.

8 Q Did you make the copy or did he do it for you?

9 A I don't do Xeroxing myself when I have twenty-six
10 secretaries working for me, which is what it was in the
11 good days. I have one now.

12 Q Which was it; did he do it, or have it done,
13 or one of your twenty-six secretaries?

14 A Somebody brought it to me.

15 Q You kept it until after you left?

16 A I set up a file on Route 46 with the newspaper clips,
17 my memos to the file, whatever came after that. There
18 was a definite Route 46 file of my own.

19 Q And then you took all that Route 46 file of
20 yours along with you and you kept it where?

21 A In one of the cardboard boxes.

22 Q I see. And then in April--well, I know in
23 a cardboard box. I didn't assume you dumped it on the
24 cellar floor.

A Right.

25 Q Did you keep it at home or in your office, or

1 where?

A No, it was in the office.

2 Q And by this time you had formed a firm. That
3 was Biederman & Mulligan?

4 A We had back on September 1st formally, although
5 actually we were together before that.

6 Q By the way, in connection with this conflicts
7 bill, prior to the time you left or prior to the time you
8 actually submitted your resignation, had you held a press
9 conference?

A I wouldn't call it a
10 press conference. A reporter interviewed us, both of us.

11 Q Well, did he come to see you about it or did
12 you call him in to see you?

13 A He said he heard I was resigning and wanted to know
14 why.

15 Q Came into your office and said that to you?

16 A No. We were downtown.

17 Q And where did you have this interview?

18 A Well, he called me in my office and I said we'll
19 be downtown later and I'll talk to him. I think in the
20 hallway either at the State House or the State House Annex.

21 Q Any other deputy with you?

22 A My partner.

23 Q Mr. Mulligan? A Yes.

24 Q How many newspaper men were there?

25 A One, from UPI I think. If you have his name it

1 might refresh my recollection. He was a Knick basketball
2 fan and we used to discuss that.

3 Q Then you gave him your viewpoint about the
4 conflicts bill, did you?

5 A Yes, I did.

6 Q Did the Attorney General criticize you for
7 that? A Yes, severely.

8 Q Did you like that?

9 A Well, the Attorney General had a thing about the
10 press, and I guess he was angry about it.

11 Q And-- A There was a rule
12 in the office that nobody speaks to reporters unless it's
13 cleared through his assistant and then through him and all
14 of that.

15 Q I see. Was there a file in the Highway
16 Department office containing a list of all of the names
17 and addresses of the contractors who did business with the
18 department? A I have no idea.

19 Q Well, when you left, did you take a list
20 of the contractors-- A No.

21 Q --who had done business?

22 A No.

23 Q When you set up your firm, did you send notice
24 of the opening of your offices to the contractors?

25 A Oh, no, no.

1 Q Did you send out notices at all about your
2 new firm?

A We never sent out announce-
3 ments. We never did have them printed, as a matter of
4 fact. We talked about, but we never did have the printing
5 made up.

6 Q Now, you remember the Trap Rock case?

7 A Yes, I do.

8 Q You were out of the department then?

9 A No, I was in the department when Trap Rock came
10 along.

11 Q Perhaps I didn't put it correctly. After
12 you were out of the department you wrote to the Attorney
13 General about the result of the Trap Rock case, did you?

14 A Oh, yes. I had taken the case. I guess I was
15 part of the brief in the Appellate Division, and then from
16 there it had gone up to the Supreme Court.

17 Q And I show you two letters marked C-43 and
18 44. Are they letters you wrote to the Attorney General
19 about the Trap Rock case?

20 A I guess so.

21 Q Well, now, is there any doubt?

22 A No, not at all now that I see them. It's been a
23 long time and I didn't realize I had written two.

24 Q And do you discuss in there one of the basic
25 issues in the Trap Rock case as being the moral integrity

1 issue? A Let me see. I'll have
2 to read it.

3 Q Three-quarters of the way down that first
4 page, I think, you see reference to it.

5 A Which?

6 Q It's in both letters.

7 A Oh, both letters. Yes, lack of--that's right, sure.

8 Q You had very strong feelings about the moral
9 integrity issue with respect to contractors who were deal-
10 ing with the department?

11 A I believe that the department was correct in taking
12 that position, although my commissioner had taken the
13 opposite view initially. His mind was changed.

14 Q Now, after you were out--withdraw that for
15 the moment.

16 While you were there, speaking of the moral
17 integrity issue, you represented your department in a
18 hearing before Commissioner Kohl involving Mal-Bros.?

19 A Yes, I did.

20 Q In which you on behalf of the department
21 sought to disbar Mal-Bros. as being morally unfit to con-
22 tinue as a potential bidder on highway contracts?

23 A Right. "Lack of moral integrity" is the phrase, and
24 we were successful.

25 Q Did you handle the entire hearings there?

1 A Well, I was the counsel for the department at the
2 hearings.

3 Q And you argued the appeal?

4 A Yes, I did.

5 Q And the appeal was taken by Mal-Bros.
6 because the commissioner had barred the company from
7 bidding?

A Yes, he did.

8 Q Do you remember for what the disqualification
9 period was? A It was pending their
10 federal indictments and it had no period.

11 Q It was simply, you're disqualified, period,
12 and no time limit set out in the commissioner's--

13 A I don't recall.

14 Q But, in any event, the explanation that was
15 offered at that hearing by Mal-Bros. you regarded as in-
16 credible and argued as being incredible, did you?

17 A Well, the Court regarded it that way, and the
18 commissioner in his decision regarded it that way. I
19 advocated that position as an advocate does.

20 Q By this, what I take to be a qualification,
21 do you mean that the commissioner said it was incredible,
22 the Court said it was incredible, but you simply argued
23 it without feeling that it was incredible?

24 A Well, a lawyer advocates. He doesn't judge and he
25 doesn't make policy.

1 Q Well, in this case did you consider that the
2 explanation that Mal-Bros. offered--

3 A Personally?

4 Q Yes. A No, I didn't.

5 Q So that what you did in that case was argue
6 that-- A The commissioner didn't--

7 Q --Mal-Bros. was morally unfit to be a bidder
8 even though your heart wasn't in it?

9 A The commissioner felt the same way, as a matter of
10 fact. His mind was changed.

11 Q Did I ask you anything about the commissioner?

12 A Oh, no.

13 Q I said, do you feel? Do you have any
14 difficulty understanding my question?

15 A What?

16 Q Do you have any difficulty understanding the
17 question I put to you? A It's Friday after-
18 noon and it's late and it's been a tough week. That's the
19 only difficulty I have.

20 Q What do you think all of us around here have
21 been doing from quarter to ten in the morning till five-thirty
22 in the afternoon every day this week? Do you think we had
23 a tough week or an easy one? Do you think it adds to the
24 gaiety of nations or gives us stimulation to sit here and
25 examine you for a whole week?

1 A I hate to think so.

2 Q Well, I just would like to find out whether
3 you think your week was tougher than ours. It was kind of
4 hard. A Actually, I didn't think

5 it was incredible. I thought it was hardly credible. You
6 know, didn't make much sense to me.

7 Q You didn't care whether you won or lost?

8 A Oh, I cared. I always care when I advocate for
9 a client. In fact, we won.

10 Q In fact, was it a just result?

11 A I thought so.

12 Q After you got out of the department you wrote,
13 or you entered the case as counsel for Mal-Bros., did you
14 not? A No, we didn't enter that

15 case as counsel for Mal-Bros.

16 Q You mean by this answer, which I assume you
17 meant to be a responsive answer, that you made an applica-
18 tion for reinstatement-- A That's

19 right.

20 Q --of Mal-Bros. as a bidder?

21 A That's right.

22 Q I see. And you considered that to be a
23 different case from the one that you had handled while
24 you were in the department?

25 A Yes, as different as a parole hearing is from a

1 trial and indictment on a particular offense.

2 Q Is that the analogy that you were following
3 when you announced, wrote to the commissioner saying--

4 A There were two analogies. That was the closest I
5 could find. The other one was the P.T.&L. and their case,
6 which your Honor sat on, where the governor who vetoed the
7 claim, his law firm represented P.T.&L., and at a hearing.
8 That's the only analogy. Of course, the Governor's veto
9 of the claim--I'm not finished--the Governor's veto of the
10 claim was a veto of the claim. The case was a litigated
11 case, so they were not the same case. That's the analogy.

12 Q Well, there came a time when you decided
13 to withdraw from the case?

14 A Yes, sir.

15 Q And at that time had you discussed it with
16 anybody whether you should stay in or withdraw prior to the
17 time you actually withdrew?

18 A Oh, yes, with the client.

19 Q And with Commissioner Kohl?

20 A No.

21 Q Mr. Nardelli, your successor in the depart-
22 ment?

23 A We discussed the matter
24 with Commissioner Kohl and Mr. Nardelli. They apparently
25 had no problem with it.

Q They had no problem with your appearing in

1 the case?

A That's right.

2 Q I see. All right.

3 A The problem came later.

4 (Whereupon, there is a discussion off the
5 record.)

6 THE WITNESS: Are we ready to go back on the
7 record?

8 I think Counsel is now getting into an area
9 which is precluded by the Court, because this relates
10 to an ethics hearing which arose out of these cir-
11 cumstances, which concerns an area which is assured
12 of confidentiality by the rules of court. The
13 letters you're now seeking are exhibits of that
14 hearing, and what relevance this has to the inquiry
15 of the Commission I cannot see.

16 THE CHAIRMAN: Well, as you probably know,
17 Mr. Biederman, we're bound under the Code of Fair
18 Procedure--

19 THE WITNESS: Yes.

20 THE CHAIRMAN: --and not by any rules of
21 evidence.

22 THE WITNESS: Whatever.

23 THE CHAIRMAN: Or the Court.

24 THE WITNESS: Well, would you explain the
25 relevance of this to the inquiry?

1 THE CHAIRMAN: Well, I think Mr. Francis will
2 give you an explanation.

3 THE WITNESS: Sure.

4 BY MR. FRANCIS:

5 Q I show you a letter on the stationery of
6 Biederman & Mulligan to Commissioner Kohl, dated March
7 22, and ask you if you sent that letter.

8 A The firm sent the letter. I signed it.

9 Q Well, are you distinguishing between the
10 activity of the firm and your activity even though you
11 signed the letter?

A Whatever either
12 one of us did was for the firm, you know, as a partner.

13 Q Well, you said, it's the firm's letter, but
14 I signed it?

A Oh, yes.

15 Q Well, I'm trying to find out just what dis-
16 tinction you were trying to convey to us when you said it.

17 A Oh, I think we dictated this together, and if Bob
18 had been in the office when the girl finally got it typed,
19 he would have signed it. I was there, so I signed it.

20 Q Then is that the only reason that you signed
21 it, that you happened to be there?

22 A Oh, yeah.

23 Q And in the letter you make argument, do you
24 not, for the reinstatement of Mal-Bros.?

25 A I think that's what the letter says. It speaks for

1 itself.

2 Q Well, when you say, "I think that's what the
3 letter says," will you look at it and tell us if you have
4 any doubt as to whether that it's an argument for Mal-
5 Bros.?

6 A I think it's an argument,
7 yeah.

8 Q Now, after-- A Background and
9 argument, especially the last paragraph. I think it's--
10 well, that's a request. I don't know how much of an argu-
11 ment it has in it.

12 And to correct the record, the firm was Crescent
13 Construction Company, a corporation.

14 Q And who organized the Crescent Construction
15 Company?

16 A There were two brothers,
17 three brothers in the corporation, Malanga brothers.

18 Q Who was the attorney who incorporated it?

19 A I have no idea.

20 Q Had it already been incorporated when the
21 matter came to you?

22 A Oh, long before, I
23 understand.

24 Q I see. And the same parties, the Malanga
25 brothers, were in control of Crescent, were they?

26 A Oh, yes. They owned a majority of stock.

27 Q When you mentioned Crescent Company a minute
28 ago, if the Crescent Company had been a separate and distinct

1 corporation you wouldn't have had to apply to reinstate
2 the Malanga brothers--Malanga, was that the name?

3 A Mal-Bros.

4 Q Mal-Bros. as a bidder, would you?

5 A Well, it was pretty much the same outfit.

6 Q You regarded them as one and the same for
7 the purpose of making this application for--

8 A Oh, yes.

9 Q --reinstatement?

10 A Absolutely.

11 Q Now, you were aware when you wrote the letter
12 that you had actually handled the Mal-Bros. disqualifica-
13 tion proceeding before the commissioner?

14 A Well, when you say "handle," what do you mean?

15 Q Well,-- A I was counsel
16 to the department.

17 Q Are you unclear as to what I mean by "handled"?

18 A Handled as attorney for the department, absolutely.

19 Q Conducted the proceedings before Commissioner
20 Kohl which resulted in the debarment of Mal-Bros. as a
21 bidder on--

22 A Commissioner Kohl didn't
23 conduct. It wasn't before him. He didn't appear at the
24 hearings that they were debarred at. I think Mr. Schuyler
25 did for him.

Q I see. Whoever sat,--

1 A Whoever, right.

2 Q --you put whatever proof was put in?

3 A Yeah, I was the counsel.

4 Q And you advocated debarment?

5 A No. My conduct of the hearing was to get the
6 transcript, bring it to the commissioner, let him read it.
7 He made his decision. I didn't advocate debarment.

8 Q Just about five minutes ago you said, "I was
9 acting as an advocate"? A Yes.

10 Q "And I didn't have to believe that that
11 story was incredible"? A That was
12 on the appeal. At this stage we're fact-finding, yeah.

13 Q You weren't fact-finding, were you?

14 A Sure. We were.

15 Q "We." I'm talking about you. You were pre-
16 senting the proof and at that time advocating that the
17 proof showed lack of moral integrity, and for that reason
18 Mal-Bros. should be debarred as a bidder?

19 A Well, we were fact-finding at the original hearing.

20 Q Were you fact-finding?

21 A Well, the hearing officer was fact-finding. I asked
22 the questions.

23 Q You were presenting the proof on which you
24 were maintaining warranted the debarment of Mal-Bros.
25 as a bidder because they lacked moral integrity?

1 A No, we hadn't drawn that conclusion.

2 Q What were you trying to prove by the facts

3 you put in? A Whether or not they should

4 be debarred on that ground. Just fact-finding at that

5 stage.

6 Q You weren't fact-finding?

7 A Absolutely.

8 Q What were you seeking by this hearing?

9 A The explanation of why they had passed a check through
10 Kantor's account, Mr. Irving Kantor, who was, in the
11 Addonizio trial, the vehicle by which government officials
12 were paid off through contractors giving checks to a non-
13 existing company, which was the Kantor company. We wanted
14 to know why Mal-Bros. check had gone to Kantor, whether this
15 was part of the thing or whether there was another explana-
16 tion.

17 Q Are you suggesting that in presenting the
18 proof that you did you were merely acting as a neutral
19 agent and not advocating any position?

20 A At that point in time the department was a neutral
21 agent.

22 Q You as the attorney for the department, what?

23 You don't-- A The same capacity you're

24 acting in today, Justice Francis, as a fact-finder to find

25 out what the facts are so the commissioner can make a

1 determination.

2 Q What did you ask the commissioner to do?

3 A I didn't ask him to do anything. I gave him the
4 transcript and he read it and then he told me what to do.

5 Q Did you argue what the facts and circum-
6 stances warranted him in doing?

7 A Oh, no, no. He read it and he said, "Gee, I don't
8 see any problem here. Reinstate them."

9 Q And you were really simply an automaton for
10 the purpose of presenting some facts to him on a platter
11 and, in effect, saying to him, "Here are some facts; you
12 do what you want with them"? A My function
13 was the same as yours is, I assume, supposed to be at this
14 hearing; to find facts--

15 Q Your function-- A --which
16 would be recommended to other people, you know, which
17 would be referred to other people or could be referred to
18 other people.

19 Q You think your function in that proceeding
20 was the same as mine is here?

21 A To find facts, yes. That's what the Commission's
22 function is by statute.

23 Q You will pardon me if I don't quite agree
24 with that, won't you? A Of course.

25 Q Well, in any event, they were debarred after

1 you finished presenting these facts to the commissioner?

2 A Oh, no, quite the contrary. The commissioner said
3 not to debar them and instructed me to prepare a decision
4 finding the facts and conclusions justifying that conclu-
5 sion based on my expertise. And then when I was in the
6 middle of that, he walked in and he said they were going
7 to debar them, change the opinion after he had received a
8 call from downtown. That's exactly what happened. So, I
9 had the intellectual exercise of being halfway through
10 an opinion not to debar them to debar them, and the court
11 ultimately upheld the second one, which is an interesting
12 commentary on justice. That's exactly what happened.
13 He got a phone call from downtown, he walked in and he
14 said, "I just got a phone call from downtown. Change the
15 opinion." That's exactly what happened.

16 (Whereupon, there is a discussion off the
17 record.)

18 Q In any event, then, you say that having
19 changed his mind again he told you to prepare a determina-
20 tion debarring Mal-Bros.?

21 A When you say "changed his mind again," I didn't
22 realize there was a first change of mind except back when
23 he had issued a statement to the press saying he believed
24 that a presumption of innocence applied even in administra-
25 tive proceedings and changed his mind the following Monday

1 after getting a message from downtown.

2 Q I see. What you're telling us now is another
3 reason, I suppose, why you didn't trust him?

4 A Oh, no, no. It's another reason why I suspected
5 that he was susceptible to accepting recommendations from
6 people outside his department on matters his department
7 was exclusively concerned with.

8 Q And, in any event, after Mal-Bros.--

9 A As a matter of fact, I'm not finished. The press
10 release and his statements to the press are a matter of
11 public record, they appeared in many of the newspapers
12 of this state, and yet the department took action exactly
13 contrary to the commissioner's statements to the public
14 press the very next week.

15 Q Was that the reason why you entered it after
16 you left the department, to see if they could be reinstated?

17 A Oh, no.

18 Q Did you have any moral compunction about
19 arguing in the Appellate Division that the explanation of
20 Mal-Bros. was incredible and that the outfit did lack
21 moral integrity and ought to be barred as a bidder?

22 A No, I had none. I was an advocate and I did my
23 job and I won the case.

24 Q Well, after you filed these letters, this
25 letter first that we talked about,--

1 A Yes, sir.

2 Q --then did you talk to somebody in the
3 department as to whether you should stay in?

4 A We had been attempting, my partner and I, to call
5 the Attorney Genral to find out if he thought whether there
6 was a possible conflict in this situation. Our calls
7 were not returned, so I finally asked Mr. Nardelli if
8 he would ask the Attorney General, whether he thought
9 that he could ask the Attorney General to get his reaction.
10 And he did so and he, you know, he got the reply for us
11 and he told us the Attorney General thought there was a
12 conflict, so we got another lawyer to handle the case.

13 Q And did you appear at the hearing?

14 A Yes, I did.

15 Q And in your letter telling the commissioner--

16 A As a spectator.

17 Q --that you had--there was another lawyer
18 being substituted, is that the letter you wrote to the
19 commissioner?
20 correct.

A Yes, that's

21 Q That is dated March 27th?

22 A Yes, it was.

23 Q And in this letter you tell him that this
24 letter supplements your first letter about the matter?

25 A Uh-huh.

1 Q And "Requesting reinstatement of Crescent
2 Company as a qualified contractor for the department,
3 we now request a formal hearing in this matter. Please
4 schedule the same at your earliest possible convenience."
5 Were you speaking in that paragraph as the attorney for
6 Mal-Bros. or Crescent Construction Company?

7 A Well, we had not been formally substituted at that
8 point.

9 Q I see. So that, in any event,--

10 A And that was--

11 Q --you got that in before your substitution?

12 A Well, to protect the time factor. The client, you
13 know, was barred and he said he'd probably go out of
14 business unless he got reinstated, and time was a factor,
15 and he said, "For God's sake, we waited around while
16 you're trying to find out whether there is a conflict or
17 not. Do something," and we did.

18 Q The time element was such a great factor
19 that you could not have written this letter saying we
20 are substituting Mr. Okin and have him write a letter
21 at the same time and deliver them both the same time
22 to the commissioner saying, I am now in this case, will
23 you please schedule it for an early hearing?

24 A That client, and I guess you gentlemen know clients,
25 he was hopping up and down and on our backs. He said,

1 "For God's sake, at least do something," because the
2 commissioner had told me on receipt of the first letter
3 that we'll have to have a formal hearing, or sometime
4 shortly after the first letter. That's why we requested
5 it, to protect the client's position so that he wouldn't
6 suffer by any delay in the substitution, and at the same
7 time we informed the commissioner of the substitution.

8 Q Did you appear at the hearing?

9 A I turned up.

10 Q When you say you turned up,--

11 A Yeah.

12 Q --are you distinguishing between my ques-
13 tion as to whether you appeared at the hearing?

14 A Oh, yes. But nobody knew I was going to do that.

15 Q So what you're saying is that you did not
16 appear at the hearing, but you turned up?

17 A Well, appear in the sense of acting in any capacity
18 other than that of sitting there watching the thing.

19 Q Did you come into the hearing room with Mr.
20 Okin?

A I don't think so. I
21 may have come in after him. I was talking general
22 chatter with the commissioner in the hall. I think he
23 was already in. Exchanging pleasantries.

24 Q And with a man, you say, had changed his
25 mind at the order from some--as a result of some message

1 from downtown-- A Yes.

2 Q --and directed the debarment?

3 A That particular case.

4 Q Where did you sit? Where did you sit with
5 relation to where Mr. Okin was at this hearing?

6 A He was at counsel table and I was in the spectators'
7 seats which surround the room.

8 Q How far away from him?

9 A Oh, five, ten feet. He was where you are and I was
10 where I was, except this was up against the wall and there
11 was counsel table where you were.

12 Q Did you pass him any messages during the
13 hearing? A Absolutely not.

14 Q Not one? A Not one. Never
15 had any communication at all with him during the entire
16 thing.

17 Q So that-- A And he so testi-
18 fied in my ethics case.

19 Q Thank you for telling us, for volunteering
20 that. A Well, we want to make

21 the record perfectly clear, don't we? After all, we're
22 here to find the facts and the truth, aren't we, Counsel?

23 THE CHAIRMAN: Now, wait. I think that's
24 out of order. You're getting argumentative.

25 THE WITNESS: You're going into an area which,

1 I think, is protected and still hasn't been ex-
2 plained to me. We're retrying the ethics case,
3 which is a case protected under the rules of court.
4 I do not have counsel. I don't intend to retry
5 the ethics case in this room. If you would like
6 the transcript of the hearing--

7 THE CHAIRMAN: You were volunteering informa-
8 tion that came out of the ethics committee. All
9 we're asking you is to respond to the questions
10 asked by Mr. Francis to the best of your ability.

11 THE WITNESS: I'm not going to respond any
12 further because we're now getting into an area, a
13 protected area.

14 MR. SAPIENZA: Do you feel you need counsel
15 at this point?

16 THE WITNESS: Not really. I don't mind if
17 you look at the transcript of the hearing of the
18 ethics committee. I don't want to waste time now.
19 You can have the transcript. Take a look at it.
20 I don't care. That has witnesses in addition to
21 me, so you will have the whole picture.

22 Q I simply asked you for a fact.

23 A Yes, sir.

24 Q Did you pass messages up to Mr. Okin at
25 this hearing?

A I gave you the answer.

1 Q Is there-- A It's on the
2 record.

3 Q And you put into your answer the reference
4 to somebody saying so at the ethics committee, did you
5 not? A Yes, I did.

6 Q Did I ask you anything about what happened
7 in the testimony at the ethics committee?

8 A Does it really make any difference?

9 Q If it doesn't make any difference, why did
10 you object to it that this raises a question of confidential-
11 ity just a minute ago?

12 A Because I don't know what in the world, with the sub-
13 ject matter of this particular inquiry is, my ethics hearing
14 has anything to do with that. It happened in 1972. The
15 events we're speaking of throughout this whole thing
16 happened in 1970. What's the relationship?

17 Q Well, I will demonstrate it in a little
18 while.

19 THE CHAIRMAN: Let's proceed with the ques-
20 tions and answers.

21 THE WITNESS: Well, it's three-thirty and,
22 as you know, I have to leave, as I have told the
23 Commission.

24 THE CHAIRMAN: All right.

25 Q Now, at the end of that hearing did you make

1 a statement? A The commissioner
2 solicited a statement from me and I made a statement.

3 Q What did he say which solicited this state-
4 ment from you? A Well, he said,

5 "I note Mr. Biederman's appearance in the room. In what
6 capacity do you appear?" So, I got up and answered him.

7 Q You got up and said, "I'm an interested
8 observer," did you not?

9 A I said what's in the statement.

10 Q And then you added, you said, "I'm here as
11 an interested observer," and then you said, "I would like
12 to make a comment for the record"?

13 A Yes, and the commissioner let me go ahead and make
14 the comment, and his counsel permitted me to do so.

15 Q When you say the commissioner let you go
16 and make the statement,-- A Yes.

17 Q --what you mean is you went right on talking
18 and he didn't interrupt you; is that it?

19 A Neither he nor his counsel interrupted me.

20 Q You think that's an easy matter?

21 A What?

22 Q To interrupt you.

23 A To say "I object"? I don't think that's hard. I
24 think that's very easy. In fact, he used to interrupt me
25 all the time when I worked for him.

1 Q Did you make a legal argument for the
2 readmission of Mal-Bros. as a bidder and removal of the
3 disqualification in this?

4 A No. I gave what I considered character testimony
5 on behalf of those people.

6 Q In the statement did you say that the United
7 States Attorney's Office have given these gentlemen a
8 clean bill of health?

9 A That's what I was given to understand, yes.

10 Q Who gave you to understand that?

11 A The client had given me to understand that at the
12 time we represented them.

13 Q Did Mr. Stern give you that assurance?

14 A Oh, no. That was given, I said,--the client had
15 gone to--they had gone to Judge Whipple, or they were
16 going to go to Judge Whipple or something, and they told
17 me that as far as the U. S. Attorney was concerned they
18 were through; it was all over; no problems.

19 Q Well, did you suggest to the commissioner
20 that if he had any doubt as to whether they got a clean
21 bill of health, that he should call Mr. Stern?

22 A I think that, yes, I did.

23 Q I see.

24 A And I think he
25 should have. He shouldn't take my word or those people
word for what they had told me.

1 Q Did you ever ask Mr. Stern if he gave them
2 a clean bill of health?

3 A I never asked Mr. Stern.

4 Q After this ended--

5 A Yes.

6 Q --this complaint that you mentioned before
7 was filed against you with the ethics committee?

8 A No complaint has ever been filed against me with
9 any ethics committee. What was filed was filed in June
10 of this year. It was a statement in lieu of charges
11 alleging a violation of one of the disciplinary rules.

12 Q What did you call that?

13 A What did I call that?

14 Q Yes.

15 A Statement in lieu of charges.

16 Q Not a complaint?

17 A Oh, no. A complaint has to be sworn to. To this
18 date nobody's sworn to anything with respect to this ex-
19 cept myself and my witnesses. And I think the rules so
20 provide, that a complaint must be sworn to.

21 THE CHAIRMAN: Let's just try to respond to
22 the questions.

23 Q In any event, you filed an answer to the
24 statement in lieu of complaint?

25 A Yes, we did; yes, we did.

1 Q Now, you knew the Attorney General was the
2 prime factor in the filing of this statement in lieu of
3 charges?

4 A Well, I didn't know
5 for certain, and I found out subsequently that he was not,
6 or, at least, that's what I have been given to understand.

7 Q Who gave you to understand?

8 A It's a triple hearsay statement, but I was given
9 to understand that his first assistant was the prime
10 mover in this matter, and that he simply signed whatever
11 he signed.

12 THE CHAIRMAN: Can we just take a two-minute
13 break, because we ought to discuss with Mr.
14 Biederman his problem of time now.

15 (Whereupon, a brief recess is taken.)

16 (After recess.)

17 BY MR. FRANCIS:

18 Q As a result of the statement in lieu of
19 charges, as you put it, you were angry at the Attorney
20 General, weren't you?

21 A I wasn't delighted.

22 Q Well, I really didn't ask you that. Does
23 your answer that you were not delighted mean that you
24 were angry at him?

25 A I wouldn't say angry. I would say that it was not
atypical, and that that was George Kugler.

1 Q Well, let's put it this way: Did you re-
2 sent it? A What?

3 Q Resent it?

4 A Yes, I did resent that, because I thought I had
5 acted properly.

6 Q I see. Specifically,--

7 A And I do.

8 Q --did you call him a bastard?

9 A Oh, no.

10 Q Did you call him a bastard to your partner,
11 Mulligan? A No. That would be the

12 type of word my partner would use. I wouldn't use that
13 type of word.

14 Q But you didn't say that to Mulligan?

15 A No. I said I don't think that was nice. That's
16 all I would say, and I think I did say.

17 Q Did you say, I don't think that was nice of
18 him to do? A That's right.

19 Q Well,-- A I didn't
20 say "nice." I said "right," because I had acted
21 properly.

22 Q A couple of days after this statement was
23 filed with the ethics committee did you come in to see
24 Commissioner Kohl? A No. The state-

25 ment was filed with the ethics committee--you're talking

1 about which statement, now, so I'm sure?

2 Q I'm talking about--I call it a complaint.

3 You call it a statement in lieu of charges.

4 A No.

5 Q A few days after that was filed did you come
6 into Commissioner Kohl's office and talk to him about it?

7 A After I learned that the Attorney General had
8 questioned my behavior. The statement in lieu of charges
9 happened in June. This was back in April or late March
10 at this point, whatever. Yes, I did. I went to see
11 Commissioner Kohl.

12 Q Well, were you angry when you went in there
13 and did you say you were going to get Kugler?

14 A No, no, I wasn't angry.

15 Q You're sure about that?

16 A And I didn't say that. I went down there to find
17 out if John Kohl knew about this, whether he had anything
18 to do with this, and he said, absolutely not. He was in
19 a state of complete surprise. And then he said, "Well,
20 you know, George is a funny duck." And I said, "Well,
21 you know, you always say that about George," and we threw
22 up our hands and that was the conversation.

23 Q Did you meet him a few days later at the
24 cafeteria at the State House Annex and say again to him
25 that you were good and sore about this ethics situation.

1 and that you were going to get them?

2 A No, I didn't.

3 Q Meaning Kugler and Nardelli?

4 A No, no, I didn't. I don't recall any meeting at
5 the State House cafeteria, State House Annex cafeteria.
6 And the only meeting I had with John Kohl on this was the
7 one meeting in his office that particular day.

8 Q Did you, either at that meeting or at an-
9 other one, whether it was at the State House Annex cafe-
10 teria or not, ask Commissioner Kohl to reinstate Mal-Bros.?

11 A No, no.

12 Q I see. Did you later than that, sometime
13 after that in conversation with Judge Garven, ask him to
14 give--see if he could help you to get the Mal-Bros. rein-
15 stated?

A No.

16 Q Never? A Absolutely not.

17 Q Never spoke to Judge Garven about that?

18 A I never spoke to him. I sent him a letter, but not
19 about that particularly, and that letter was before that
20 point in time. That was back when we still had not been
21 formally substituted in the case, and it concerned--and
22 it concerned--let me get it on the record. It concerned
23 what I regarded as an inequity and perhaps a matter of
24 selective justice being practiced in Trenton in connection
25 with debarment proceedings.

1 Q Do you remember the question I put to you?

2 A Yes.

3 Q I said, did you ask Judge Garven to help you
4 get the Mal-Bros. reinstated?

5 A No.

6 Q That's all. All right. By the way, did
7 you ask Judge Garven over a period of time before you left
8 to help you get a judgeship?

9 A I--not to help me. I told him that I knew there
10 was one available in Bergen and I was interested, and to
11 let me know if there was a possibility of an appointment.

12 Q And how many times did you speak to him
13 about it?

A Oh, I think maybe once
14 or twice. That was when his partner got it. His partner
15 got the judgeship. His former partner got the judgeship,
16 Mr. Gelman. When George Gelman was originally appointed.

17 Q When you say "his former partner got the
18 judgeship," is the implication you wanted to put in the
19 record that, in spite of the fact that you have superior
20 ability,--

A Oh, no.

21 Q --because Gelman was Judge Garven's former
22 partner--

A Quite the contrary.

23 Q --he got it?

24 A Oh, quite the contrary. Gelman's a brilliant lawyer,
25 and, if anything, I would think perhaps I'm inferior to his

1 ability.

2 Q I'm just trying to find out why you added
3 that on the end of your answer.

4 A Oh, because the--because Judge Garven told me.
5 He said, "Dave, I know you're good, but I think I know a
6 guy who's a little better and I've got a lot of confidence
7 in him, and I think he's going to get it." And then he
8 told me it was George Gelman.

9 COMMISSIONER BERTINI: It was also a
10 Democratic appointment and you were a Republican?

11 THE WITNESS: Right, I had joined. When I
12 moved to Old Tappan, I became a Republican.

13 Q Well, as a result of the ethics complaint,
14 the failure to get the judgeship, the failure to get
15 tenure, did you have feelings of animosity against the
16 administration? A I think I

17 stated the way I felt about Judge Garven, who, to me,
18 he and the Governor are the administration, on this record
19 a short time ago. I've got the greatest respect for
20 those gentlemen, and I still have.

21 Q And sometime in April, April of '72, you
22 went to the United States Attorney's Office--

23 A Yes.

24 Q --with these documents we have talked about
25 here? A Yes, I did.

1 Q And was that in retaliation for the filing
2 of the ethics committee statement?

3 A Absolutely not.

4 Q It was about seven days afterwards, wasn't
5 it? A Chronologically, per-

6 haps. I don't know what time it was.

7 Q So that your going in this chronological
8 order, as you said, was a purely fortuitous circumstance
9 and not related at all to the ethics complaint?

10 A Yes, because there was another reason for me going.

11 Q Was there no causal relationship between
12 the filing of the ethics complaint and your visit to the
13 United States Attorney's Office with these documents?

14 A Let's say rather than discouraging me, it prompted
15 me there. I walked a little faster, perhaps.

16 Q I see. A But because of
17 the other reason there was no question that these docu-
18 ments were going to be delivered.

19 Q And they would have been delivered even
20 though the ethics complaint--even if the ethics complaint
21 had never been filed? A Absolutely.

22 Q You had been sitting on them for about fif-
23 teen, sixteen, seventeen months since November 4th, 1972,
24 had you not? A I hadn't sat on them.

25 I had turned them over to my superiors. After that I

1 thought there was nothing further for me to do, because
2 if, in fact, there was something I assumed that it would
3 be turned over to Mr. Stern, because this was a federal-
4 aid road project and he should share whatever they found.

5 Q And that's the reason you didn't do any-
6 thing until you went down to the United States Attorney's
7 Office?

8 A Well, I found during
9 the course of another investigation touching my depart-
10 ment, my old department at that point, because I had
11 brought a witness to the United States Attorney in con-
12 nection with that investigation, that in fact Mr. Stern's
13 office knew nothing about this and had never been given
14 any information by Mr. Jahos or Mr. Garven, or anybody,
15 and I thought just to make the record complete, since it
16 was a fifty-fifty federal-aid road he should have it,
17 because I didn't want to be criticized for not having
18 given it to everybody that should have gotten it.

19 Q So you were fearful you might be criticized
20 if you didn't turn these documents over to the Federal
21 Government?

22 A After having found out
23 they had no knowledge of them and nobody in Trenton had
24 turned them over.

25 MR. FRANCIS: I see. I think that's all.

THE WITNESS: Thank you.

Now, I do have a statement, which is allowed

1 to me to make. But if the Commissioner will per-
2 mit, I will mail that as a sworn statement and that
3 will fill out the record on my testimony.

4 THE CHAIRMAN: I would just mention to you
5 that the Rule 5 of the Code of Fair Procedure does
6 indicate it's to be a brief sworn statement to be
7 relevant to the testimony which you gave.

8 THE WITNESS: Yes, it's all relevant. It
9 merely goes to what we discussed when I was making
10 those notes yesterday and it flushes out the
11 testimony a little bit.

12 THE CHAIRMAN: All right.

13 THE WITNESS: Whether it's brief or not--
14 brevity, I know, is the sole of wit, according to
15 Shakespeare.

16 COMMISSIONER BERTINI: How much time do you
17 want to file this?

18 THE WITNESS: Oh, if you give me a week it
19 should be enough. I'll do it in affidavit form.
20 I'll just dictate it out and have the girl type it.

21 THE CHAIRMAN: This is Friday.

22 THE WITNESS: If the Commission is going to
23 meet again, I would like the opportunity to come
24 down, because I can go through it in about twenty
25 minutes. I don't have time today to do that. At

1 any of your meetings over the next week or two,
2 I think that would be better procedure.

3 THE CHAIRMAN: Let us stay in touch with
4 him, Mr. Francis.

5 MR. FRANCIS: If he wants to file a sworn
6 statement, because if he comes down and makes an
7 oral statement, on the basis of what I have heard
8 so far with respect to the character of the answers,
9 I will have to engage in further examination, and
10 I suggest that a more expeditious course is to let
11 him file a sworn statement.

12 THE CHAIRMAN: Would that be agreeable with
13 you, Mr. Biederman, to file a sworn statement pur-
14 suant to--

15 THE WITNESS: The other way would be better,
16 because what I'm doing is simply touching on matters
17 which Judge Francis raised yesterday, which, I think,
18 need a little further explanation.

19 COMMISSIONER BERTINI: Can we give him a week?

20 THE WITNESS: Whenever you fellows are
21 free. If you have fifteen or twenty minutes, I'd
22 put it on the record and that would be the end of
23 it. I'm in Trenton, anyway, to do closings for
24 these companies.

25 MR. FRANCIS: You gentlemen decide. My own

1 view is that what we should have, whatever he wants
2 to say in an explanation of his testimony, which is
3 relevant to the testimony, the act says may be
4 handled by the filing of a sworn statement.

5 As to me, as far as I'm concerned, I would
6 prefer to have this sworn statement, whatever he
7 wants to say.

8 COMMISSIONER BERTINI: I would, too.

9 THE CHAIRMAN: Fine. Well, then, would you
10 file a brief sworn statement?

11 THE WITNESS: Certainly.

12 THE CHAIRMAN: Within five days, or so,
13 probably.

14 THE WITNESS: That's a little tough.

15 COMMISSIONER BERTINI: Next Friday is all
16 right.

17 THE WITNESS: What if I can get it to you
18 by next Friday? All right.

19 MR. FRANCIS: I would suggest by next Friday.
20 You know, I have other things to do, too.

21 COMMISSIONER BERTINI: I realize.

22 MR. FRANCIS: And I don't want to rush any-
23 body unduly, but I would like to conclude these
24 hearings.

25 COMMISSIONER BERTINI: Let's make it next

1 Friday.

2 THE WITNESS: Fine, fine.

3 MR. FRANCIS: I think within a week ought to
4 be plenty of time.

5 THE CHAIRMAN: Thank you very much for
6 coming down.

7 (Witness excused.)

8 (Whereupon, a brief recess is taken.)

9 (After recess.)

10 THE CHAIRMAN: Mrs. Brennan, this afternoon
11 you have two of the commissioners from the State
12 Commission of Investigation sitting. Mr. Bertini
13 is on my right. My name is John McCarthy.

14 I understand you are here voluntarily to
15 testify in connection with our investigation of
16 the Attorney General's Office's handling of what
17 we commonly refer to as the Sherwin matter.

18 MRS. BRENNAN: That's right.

19 THE CHAIRMAN: Would you stand up at this
20 time, Mrs. Brennan, to be sworn, please.

21
22 M A R Y B R E N N A N, having been duly sworn
23 according to law by the Officer, testified as
24 follows:
25

1 MR. SAPIENZA: Mrs. Brennan, just before
2 we start I'm going to read you certain warnings
3 that we read to all witnesses that appear before
4 us.

5 This is an executive session of the Commis-
6 sion. Your testimony will be taken under oath and
7 transcribed by the shorthand reporter. It may
8 later be used against you in a court of law. There-
9 fore, if you feel that your answer may tend to in-
10 criminate you, you may refuse to answer. You have
11 the right to be accompanied by an attorney of your
12 choice.

13 I note for the record that you do not have
14 an attorney with you. Is this of your choosing?
15 It is, right?

16 THE WITNESS: Yes.

17 MR. SAPIENZA: If at any time during this
18 proceeding you feel that you would like to consult
19 with an attorney, just tell us to stop and we will
20 stop. Or if you just want us to stop for any other
21 reason, we will.

22 THE WITNESS: All right.

23 MR. SAPIENZA: Section 52:9M-15 of our statute
24 forbids disclosure by you of the questions asked,
25 your responses to us or any other information you

1 may gain at this hearing. That means you can't
2 talk to anybody about what goes on here.

3 THE WITNESS: I understand.

4 MR. SAPIENZA: It's to remain among our-
5 selves.

6 Although your testimony is now being taken
7 in private, the Commission may make it available to
8 the public at a later point in time, or even call
9 upon you to give the same testimony at a future
10 public hearing if they adopt a resolution to that
11 effect. Do you understand that?

12 THE WITNESS: Yes, I do.

13 MR. SAPIENZA: A copy of your testimony at
14 this private hearing may be made available to you
15 at your expense if it becomes relevant in any
16 criminal proceeding in which you are the defendant,
17 or if you are summoned to appear at a subsequent
18 hearing before this Commission, provided the furnish-
19 ing of such a copy will not prejudice the public
20 safety or security.

21 You have the right, at the conclusion of this
22 hearing, to file a brief sworn statement relevant
23 to your testimony for incorporation in the record,
24 if you like to.

25 Thank you very much.

1 EXAMINATION BY MR. FRANCIS:

2 Q Did we have your full name for the record?

3 THE REPORTER: Yes, Mary Brennan.

4 Q Mrs. Brennan, where do you live?

5 A I live at 518 Walker Avenue in West Trenton.

6 Q And you are in Mr. Jahos' Department of

7 Criminal Justice? A Yes, I am.

8 I'm his secretary.

9 Q You are a secretary for him, are you?

10 A Yes.

11 Q How long have you been with him?

12 A Since June 15th, 1970, when he was sworn in as
13 director.

14 Q Do you know David Biederman?

15 A Yes, I do.

16 Q Do you keep a record of the telephone calls
17 that come in to Mr. Jahos?

18 A Yes, I do.

19 Q And what do you keep it in?

20 A I keep it in a Lawyers Diary.

21 Q And do you have that Lawyers Diary for
22 October and November of 1970?

23 A Yes, I do.

24 Q And in that you have logged all of the tele-
25 phone calls that Mr. Jahos received?

1 A And places.

2 Q I didn't hear the last part.

3 A And places, outgoing calls.

4 Q Oh, and outgoing calls?

5 A Right.

6 Q And you have the record of incoming calls to
7 him on October 30, 1970, October 31, November 2nd,--
8 the 1st would be Sunday--November 2nd and November 4th?

9 A Yes, I do.

10 Q And did you look at your record before you
11 came over here? A Yes, I did.

12 Q And was there a telephone call made from
13 Mr. Biederman to Mr. Jahos on any one of the days I have
14 just mentioned to you? A No.

15 Q You mean by that that you have no record
16 of any such call in your Lawyers Diary?

17 A No, I don't.

18 Q And for the record, we come back here on
19 Monday. Will you present that diary to us so that we can
20 mark it here for our record?

21 A Yes, I will.

22 Q On November 4th did Mr. Biederman come to--
23 first of all, were you in Mr. Jahos' office on November
24 4th, 1970? A I'm pretty sure I was.

25 I could check my diary.

1 Q Your present recollection is that you were?

2 A Yes.

3 Q And you will check your diary?

4 A Yes.

5 Q Would that be the same diary we've been
6 talking about?

A Yes, uh-huh.

7 Q And that would indicate whether you were in
8 on November 4th?
9 handwriting.

A Yes, by my

10 Q What?
11 A By the handwrit-
ing of the girl that took the calls.

12 Q Now, on November 4th did Mr. Biederman come
13 into your office and give you some sheets of paper
14 stapled together?

A He did not.

15 Q It has been said here by Mr. Biederman that
16 he came in and gave you some memoranda; one dated October
17 30, 1970; one dated November 4th, 1970; one dated October
18 8th, 1970, and several newspaper clippings, all stapled
19 together, as he put it, in one package. Did you get any
20 such package from him?

21 A No, I did not.

22 Q Do you have a clear recollection that no
23 such thing happened on November 4th?

24 A Yes, I do.

25 Q What is your practice when letters or documents

1 or memoranda of any kind come in to you or for Mr. Jahos?

2 A As soon as I receive them I stamp them with--we
3 have a stamp, a rubber stamp, "Received Division of
4 Criminal Justice" and the date.

5 Q And did you, at the request of this Com-
6 mission, examine your files to see if you had any such
7 package anywhere in your file with a stamp on it indicat-
8 ing that they had come in on November 4th through the
9 agency of Mr. Biederman?

10 A I did check the file.

11 Q And did you find any such--

12 A No.

13 Q --package?

14 Did you ever see--withdraw that for the
15 moment.

16 Did anybody ever ask you to specifically
17 look through your files to see if you had these memorandums
18 I have just mentioned anywhere in your files in your
19 office?

20 A Yes. Mr. Jahos
21 asked me to look, go through our files and to bring out
all the memorandum which we received from Mr. Biederman.

22 Q And did you find any memorandum from Mr.
23 Biederman?

24 A Yes. I found
25 the October 30th memo.

1 EXAMINATION BY THE CHAIRMAN:

2 Q Where did you know to look for any memorandum
3 or memoranda from Mr. Biederman?

4 A Well, I had a Department of Transportation folder,
5 which was broken down according to the names of bidders -
6 Mal-Bros., Stavola - and in it--and the moral integrity
7 affidavit file. And in it were various memorandum from
8 Biederman, and that's where I found it.

9 Q And what is that file entitled?

10 A Well, it was "Department of Transportation" and
11 "Bid Procedures."

12 Q Was there attached to the October 30, 1970
13 memo any other papers?

14 A Just the two newspaper--copies of newspaper articles.

15 Q Did you examine those papers at all?

16 A Yes, I did. I read the October 30th one when Mr.
17 Jahos asked me to look for them.

18 (Whereupon, there is a discussion off the
19 record.)

20

21 EXAMINATION BY MR. FRANCIS:

22 Q I show you a memorandum, dated October 30,
23 from Mr. Biederman to Commissioner Kohl, attached to which
24 is two or three newspaper clippings. Is that the memorandum
25 you found in your file?

A Yes, it is.

1 Q On the right-hand corner there is a notation,
2 "File Bid Procedures"?

3 A That's right.

4 Q Do you know whose handwriting that is?

5 A That's Mr. Jahos' handwriting.

6 Q And when you took this from the file, was
7 it clipped together like that?

8 A Yes.

9 Q You didn't put that slip in?

10 A No, I did not.

11 Q It was already there?

12 A Uh-huh.

13 Q When you took it out, did you give it to
14 Mr. Jahos? A Yes.

15 Q And looking at it now and recalling when
16 you got it and showed it to Mr. Jahos, is your recollection
17 refreshed at all as to whether you ever saw that before?

18 A No. The first time I saw it was mid-summer or
19 late June, sometime then, when he asked me to get out all
20 of the Biederman memorandum. That was one of them.

21 MR. SAPIENZA: What year was that, please?

22 THE WITNESS: 19--this year, '72.

23 Q Do you have a clear recollection after
24 seeing that memorandum that Mr. Biederman never handed
25 such a document to you? A He never

1 did. If he had--

2 Q Or any other? A This is
3 a copy of what we have. I would have stamped it.

4 Q I see. If this had been handed to you, your
5 procedure would have been what?

6 A To stamp it immediately before Mr. Jahos saw it.

7 Q What kind of a stamp? What would the stamp
8 say? A It would say "Received,
9 the Division of Criminal Justice," and the date.

10 Q Can you conjecture or surmise how that
11 happened to be in your file without any stamp on it?

12 A I assumed from looking at it that somebody must
13 have handed it to Mr. Jahos.

14 Q I see. A That's how it
15 got by me without the stamp.

16 Q You think the only explanation you can give
17 of this is that somebody may have handed it to him and
18 he looked at it or otherwise, in any event, he wrote
19 that on it? A Yeah, "Bid Procedure."

20 Q "Bid Procedure," and put it in the bid
21 procedure file? A Right.

22 Q At about this time were you and Mr. Jahos
23 engaged in any discussions with Mr. Biederman about bid
24 procedures or moral integrity problems of contractors?

25 A Well, the only thing I knew was that Mr. Brennan

1 was working with him on bid procedures and the moral in-
2 tegrity thing, and that he had made an appointment to see
3 Mr. Jahos to discuss his moral integrity affidavit.

4 Q And when was that?

5 A That was October 2nd, 1970, at 2:00 P.M.

6 Q And the date that you just gave us you took
7 from your diary before you came over here today?

8 A That's right, uh-huh.

9 Q Do you have on that piece of paper before
10 you a record of all of the telephone calls that Mr.
11 Biederman made to Mr. Jahos in the period in October and
12 November? A Yes, I do.

13 Q Would you give us the list, beginning with
14 October, of his calls?

15 A October 15th, 1970, November 13th, 1970, and
16 November 17th, 1970.

17 Q And there were no other calls from him?
18 You looked carefully in your diary?

19 A Yes, I did.

20 Q Did you have any conversation with Mr. Jahos
21 about this memorandum as to how it got there?

22 A We discussed it last week and before then, but we
23 really--I don't really know how it got there.

24 Q Were there any other memorandums nearby in
25 the folder? What kind of a folder is it that you would

1 have these bid procedure matters in?

2 A It's a black folder, and then it has brown folders
3 that are broken down according to bidders.

4 Q I see. Can you give us any idea of about
5 how many are in that?

6 A I'd say about eight. Seven or eight.

7 Q Oh, seven or eight?

8 A The folder's about this big.

9 Q And did you look at all the other seven or
10 eight that were in there?

11 A Yes, I did.

12 Q Was the subject matter covered in those
13 other memorandums unrelated to what appears in this
14 October 30th memorandum, or were they in any way related
15 to it?

16 A No, they were not re-
lated to this. They were about different things.

17 Q I see. You went carefully through the
18 seven or eight other folders that were in this big file?

19 A Yes, I did.

20 Q And you, after examining them, found that
21 there was no other document in any way related to what
22 appears in the one you have before you dated October 30th?

23 A There is not.

24 Q I should have asked this before. Do you do
25 Mr. Jahos' filing?

A Yes, I do.

1 Q Does anybody else do it, that you know of?
2 Would it be likely that anybody else would do any?

3 A Well, we--I do most of his, well, pending things.
4 And when they have been resolved, I usually send them to
5 our central filing room.

6 MR. SAPIENZA: Well, was this taken from
7 the central filing room or--

8 THE WITNESS: This was with Mr. Brennan's
9 file.

10 MR. SAPIENZA: Mr. Brennan's file?

11 THE WITNESS: Yes.

12 Q And what was his file?

13 A The bid procedures thing and the moral integrity.

14 Q How did he happen to have it?

15 A Because he was working with Mr. Crystal on the
16 moral integrity.

17 Q Who was Mr. Brennan?

18 A He was our chief investigator.

19 Q Is he still there?

20 A No. He's doing part-time work. He's been ill.

21 Q I see. You say that this procedures file
22 was in his possession? A Yes.

23 Q Did you look--is that the only file he had
24 in his office? A I don't really
25 know.

1 Q When you found the bid procedure file, you
2 went through and dug this out?

3 A Yes.

4 Q Did you look around, also, to see if there
5 were any other documents around that looked to be--

6 A Yes, I did.

7 Q Did you find anything else that was related
8 to this at all? A Well, Mr. Brennan
9 kept a file of three-way checks that we had done on bidders
10 who did more than \$100,000 worth of business with the
11 State, and in that file I found several references to
12 Manzo. They had requested three-way checks on him from
13 the State Police. But that's the only other stuff that
14 he had.

15 Q But again, no one of those documents appeared
16 to be in any way related to this--

17 A No.

18 Q --October 30th memorandum?

19 Would anybody else be in your office?

20 Supposing you went out for a minute or ten minutes or to
21 lunch. Who would be there to receive any papers that
22 have to come in? A Well, they
23 usually left them with our receptionist.

24 Q I see. Is the same receptionist there now?

25 A No. We used to be on the second floor of the State

1 House and now we're on the first and we have our own
2 receptionist now. But she wouldn't open any mail. If
3 mail were left with her, she would put it on my desk and
4 I would open it when I came back from lunch.

5 Q She would never come into your office and
6 put anything in the bid procedure file, would she?

7 A No, no.

8 Q Can you think of anybody else who would
9 possibly get a document such as the one you have before
10 you and put it in the bid procedure file?

11 A No.

12

13 EXAMINATION BY MR. SAPIENZA:

14 Q Mrs. Brennan, if a package came in and was
15 marked personal and confidential to Mr. Jahos, would you
16 open that? A No. I would hand it
17 to him unopened.

18 Q Would you stamp the envelope, though, what
19 time it came in, the date?

20 A Yes, I would.

21 Q Stamp that and you would give it to him?

22 A Yes.

23 Q Do you recall--you have already testified,
24 I believe, that you don't recall Mr. Biederman ever coming
25 into your office on November 4th or any other time--

1 A That's right.

2 Q --and handing you any package marked
3 personal or confidential or anything else?

4 A That's right.

5

6 EXAMINATION BY MR. FRANCIS:

7 Q I notice that one before you, dated October
8 30th, is marked personal and confidential on the top?

9 A Yes.

10 Q So that if it was handed to you you would
11 have given it to Mr. Jahos rather than file it?

12 A I would stamp the envelope and hand it to him.

13 Q Assuming it came--

14 A Then when it came back out, I'd put the date on it.

15 Q Assuming it came to you in the form in
16 which you have it now, not in any envelope, just handed
17 to you like that stapled, you would stamp that stapled
18 package?

A Yes, I would.

19 Q Before you gave it to Mr. Jahos?

20 A That's right.

21 MR. FRANCIS: Well, I think we ought to see
22 the diary.

23

24 EXAMINATION BY THE CHAIRMAN:

25 Q Mrs. Brennan, the October 30th, 1970 memo,

1 I believe you testified you read it?

2 A Yes.

3 Q At the time you read it, do you recall
4 whether or not the writing was on the upper right-hand
5 corner which, I believe you testified, was Mr. Jahos'
6 handwriting?

A Yes, it was there.

7 Q That was already on there?

8 A Yes, it was.

9

10 EXAMINATION BY MR. FRANCIS:

11 Q Well, would you mind if we call you again
12 on Monday morning?

A Not at all.

13 Q So that we can mark your diary.

14 A Shall I bring my diary with me?

15 Q Will you bring it with you?

16 A Yes.

17 Q We would like to mark it for the record,
18 if you don't mind.

A Not at all.

19 Q Mr. Brennan's not there any more, is he?

20 A Well, we can reach him.

21 Q Do you suppose you could talk to him and
22 ask him if he knows anything about this?

23 A I talked to him when he was in the office last
24 week and he says he doesn't remember how it got there.

25 He doesn't recall it at all, he told me.

1 Q He has no recollection at all?

2 A No.

3 Q Can you think of anything else of your
4 wide experience in the office that would enable us to get
5 any more light on this October 30th stapled package?

6 A No, I don't. I can't.

7

8 EXAMINATION BY THE CHAIRMAN:

9 Q Mrs. Brennan, in your opinion, Mr. Jahos
10 is not in the habit of filing documents, is he?

11 A No, he never files himself.

12 Q So you wouldn't believe that he would have
13 placed this-- A No.

14 Q --10/30/70 memo in the bid procedure
15 file? A No, I don't think he would
16 have done that.

17 THE CHAIRMAN: Okay. That concludes the
18 questioning. Thank you.

19 MR. FRANCIS: I would like to mark this one
20 October 30th with a notation on the right-hand
21 corner, for the record.

22 (Copy of October 30th, 1970 memorandum with
23 notation on right-hand corner received and marked
24 Exhibit C-8A.)

25 (Witness excused.)

1 MR. SAPIENZA: Mr. Chairman.

2 THE CHAIRMAN: Yes.

3 MR. SAPIENZA: Just for the record, we have
4 procured the change orders affecting the contract
5 let to Centrum Construction November 5th, 1970, and
6 I would like to place them in the record now.
7 There are four change orders.

8 THE CHAIRMAN: Yes, sir, you may do so.

9 (Four change orders re Centrum Construction
10 Company contract received and marked Exhibit C-52.)

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STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

----- :
IN THE MATTER OF THE INVESTIGATION : CERTIFICATE
OF THE OFFICE OF THE ATTORNEY : OF
GENERAL OF THE STATE OF NEW JERSEY : REPORTER
----- :

I, JOHN J. PROUT, JR., a Certified Shorthand
Reporter and Notary Public of the State of New Jersey,
certify that the foregoing is a true and accurate
transcript of the proceedings in the above-entitled
matter, as taken stenographically by me at the place
and on the date hereinbefore set forth.

JOHN J. PROUT, JR.,
Certified Shorthand Reporter.