

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

IN THE MATTER OF THE INVESTIGATION
OF THE OFFICE OF THE ATTORNEY
GENERAL OF THE STATE OF NEW JERSEY.

:
: Executive Session
:
: TRANSCRIPT
:
: OF
:
: PROCEEDINGS

Monday, November 13, 1972

28 W. State Street
Trenton, New Jersey

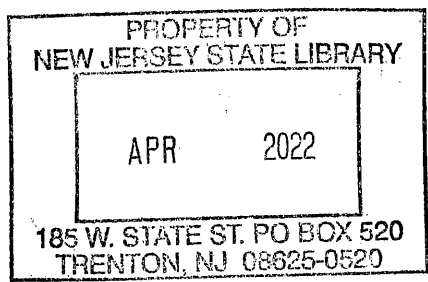
B E F O R E:

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.
and
EDWIN SILVER, C.S.R.

I N D E XWITNESSPAGE

JOHN C. KOHL

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RUDOLPH A. PETERSON

36

RUSSELL H. MULLEN

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RALPH STELLJES

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THE CHAIRMAN: Just sit down, Commissioner,
2 and we'll be going in a minute.

3

Now, have you met everyone here, Commissioner?
4 Mr. Prout and his assistant there, they're the
5 court stenographers.

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COMMISSIONER KOHL: Yes.

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THE CHAIRMAN: You have talked to Mr. Jordan,
8 have you?

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COMMISSIONER KOHL: Yes.

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THE CHAIRMAN: Mr. Sapienza and Mr. Francis
11 you know.

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COMMISSIONER KOHL: Yes.

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THE CHAIRMAN: I believe it's been our policy
14 in the beginning to have a statement read into the
15 record by the Commission, and I'll read that at this
16 time and we'll turn over the questioning to Mr.
17 Sapienza and Mr. Francis.

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It might be helpful if, at the outset, the
Commission explains the source of its obligation to
hold this hearing, as well as the specific function
it is required to perform in holding it. We consider
the explanation advisable because various press and
other comments which have come to our attention
indicate some misapprehension with respect to the
nature of the Commission as established by the

1 Legislature, its place in the governmental structure,
2 and the scope of the duty the Commission is obli-
3 gated to perform in the matter now before us.

4 The Commission was established and made
5 operational by the Legislature on September 4, 1968
6 as an independent agency of the State. Among other
7 things, it was given the power and the duty to
8 conduct investigations in connection with "the
9 conduct of public officers and public employees."
10 In particular, Section 4 of the statute provides
11 that at the request of the head of any department
12 of the State, the Commission shall investigate the
13 management of affairs of any such department.

14 Thus it appears that whenever the head of any
15 department of the State Government requests us to
16 investigate the management or affairs of his depart-
17 ment and the request is within the apparent intentions
18 of the Legislature as exhibited in the statute, the
19 Commission is obligated to undertake the investigation;
20 it has no discretion in the matter.

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2Appl

1 In this connection, however, it should be
2 noted that, as our Supreme Court said, "The
3 Commission is not an 'accusatory body.' It's sole
4 purpose is to find facts within the limited scope
5 of the required investigation, which may subsequently
6 be used as the basis for legislative and executive
7 action." (In re Zicarelli, 55 N.J. 249, 248, 1970).

8 On August 1, 1972, the Attorney General of New
9 Jersey, as head of the Department of Law and Public
10 Safety, formally requested the Commission to
11 investigate the conduct of his office in connection
12 with a subject which has come to be known commonly
13 as the Sherwin matter. Such an investigation has
14 been undertaken by our staff, and the purpose of
15 today's proceeding is to have a record made of
16 the relevant facts revealed thereby. At the
17 conclusion of their presentation, the Commission
18 will make such findings and report with respect
19 thereto as the circumstances require. Our findings
20 and report and a transcript of all of the testimony
21 taken, as well as all of the documents introduced,
22 will be made available to the press and the public
23 for examination. At that time, also, the
24 Commission will decide whether any further
25 proceeding should be taken.

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Now, that completes the opening statement.

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1 THE CHAIRMAN: I would now ask Mr. Francis to
2 continue with the hearing.

3 MR. FRANCIS: Mr. Chairman, the first thing
4 I would like to do is mark for the record the letter
5 of August 1st, 1972 of Attorney General Kugler in
6 which he requests that the Commission undertake an
7 investigation into the operation of his office.

8 (Letter dated August 1, 1972, from Attorney General Kugler
9 to Mr. McCarthy, received and marked as Exhibit C-1 in
evidence.)

10 J O H N C. K O H L

11 sworn:

12
13 MR. SAPIENZA: Mr. Kohl, before we begin,
14 I'm going to read you certain warnings we read to
15 all witnesses appearing before us.

16 My name is Charles Sapienza. I'm an attorney
17 with the Commission. You have been asked to appear
18 here, and you have done so voluntarily.

19 This is an executive session of this
20 Commission. Your testimony will be taken under oath
21 and transcribed by the shorthand reporter. It
22 may later be used against you in a court of law.
23 If you feel that your answer may tend to incriminate
24 you, you may refuse to answer. You have the right
25 to be accompanied by an attorney of your choice.

1 I note for the record that you do not have an
2 attorney with you. Is this of your choosing?

3 THE WITNESS: Right.

4 MR. SAPIENZA: If you desire to have an attorney
5 present today, you can merely tell us and we will
6 stop the proceeding. If you wish to discontinue this
7 hearing at anytime, you may do so.

8 Section 52:9M-15 of our statute forbids dis-
9 closure by you of the questions asked, your responses
10 or any information you may gain at this hearing.
11 The possible maximum penalty for violation of the
12 statute is a disorderly persons.

13 Although your testimony is now being taken in
14 private, the Commission may make it available to the
15 public at a later time or call upon you to give the
16 same testimony at a public hearing upon adoption of
17 the resolution to the effect at anytime in the future.

18 A copy of your testimony at this private
19 hearing may be made available to you, at your expense,
20 if it becomes relevant in a criminal proceeding in
21 which you are the defendant, or if you are summoned
22 to appear at a subsequent hearing before this
23 Commission, provided that the furnishing of such
24 a copy will not prejudice the public safety or
25 security.

1 You have the right to, at the conclusion
2 of this hearing, file a brief sworn statement rele-
3 vant to your testimony for incorporation into the
4 record of this proceeding.

5 Thank you very much.
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1 ~~IDENTIFICATION~~ FRANCIS:

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3 Q ~~Was the~~ Commissioner of the Department of
4 Transportation of the State of New Jersey?

5 A That is correct.

6 Q And as such, you are a member of the
7 Governor's Cabinet, are you not?

8 A Right.

9 Q When were you appointed Commissioner?

10 A The first of February, 1970.

11 Q And where had you been prior to that time?

12 A I had been in Washington, service with the
13 federal government and then consultant.

14 Q Are you an engineer?

15 A Yes.

16 Q Had you, previous to coming to New Jersey,
17 had experience with the construction of roads and
18 highways and the handling of railroads?

19 A Yes. I had broad experience in the transportation
20 field.

21 Q And in that connection had you had experience
22 with the awarding of public contracts for work, also?

23 A Yes.

24 Q And with bidding? A To a limited
25 extent with bidding.

Q But some experience in bidding?

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A Some experience.

Q At least, you knew whenever there was a public contract to be let which involved a substantial amount of money it had to be done after competitive public bidding? A Yes.

Q Prior to the time you came to New Jersey, did I understand that you had had some conversation with Governor Cahill? A Yes. He interviewed me in two meetings.

Q Did you have any kind of a commitment from him when you came here? A Yes. He had asked if I were interested in appointment as Commissioner of Transportation. I had said that I was not interested in a political appointment, that my association with the federal government had been on that understanding, and that I would not come if it were to be considered strictly a political job. And he said that he did not want a political job, that he was after a professional administration of the department of transportation and that there would be no political interference in the operation.

Q I suppose you were pleased with that conversation, were you? A Very much pleased because I felt it was a progressive outlook on the part of a state official.

1 Q Since the time you came here and took over
2 the office has the Governor in any way, directly or
3 indirectly, violated that commitment to you?

4 A No, he has not.

5 Q Down to the present time?

6 A No.

7 Q The office of your department is where,

8 Commissioner? A We are in Ewing Township.

9 Q How far away is that from the State House?

10 A Roughly, three miles.

11 Q How large a staff do you have?

12 A Between five and six thousand people.

13 Q That includes workmen, engineers, clerical help?

14 A That includes everything, from the laborers on
15 maintenance on the roads to the top professional staff.

16 Q You also have attached to your department a
17 number of deputy attorneys general, do you?

18 A Yes.

19 Q In the summer and through December of '70,
20 about how many attorneys did you have?

21 A I would say on the order of fifteen or sixteen.

22 Q Did you have a Chief Counsel?

23 A Yes.

24 Q Who was that? A Mr. David Biederman.

25 Q Was he there when you arrived?

1 A Yes. He was an incumbent.

2 Q And he was your principal legal advisor, was he,

3 while -- A He had the title of Counsel to

4 the Commissioner and administered the staff of Deputy

5 Attorney Generals working in the department.

6 Q Was his office in the same building with you?

7 A Yes, in the same wing.

8 Q Close to where your office was?

9 A Yes.

10 Q Did you also have some investigators attached

11 to the department? A Yes. There was a small

12 number that followed up on various complaints with

13 respect to contracts and other matters involving employees

14 of the department.

15 Q Well, did those investigators, for example,

16 was it within their jurisdiction upon request from you or

17 Mr. Biederman to look into matters affecting bidding on

18 public contracts? A Any matters of question,

19 yes.

20 Q In the summer of 1970, from July, 1970 through

21 December, to whom did those investigators report?

22 A I don't recall the precise dates, but there was a

23 shift from their reporting to the Director of Administration

24 and temporarily they were assigned to the office of counsel

25 because of his direct line responsibility for such matters.

1 Q So that during that summer and to the end of
2 the year, anyway, these investigators were all under Mr.
3 Biederman's supervision? A Yes.

4 Q You are familiar with the statute, or statutes,
5 under which your department operates?

6 A Yes.

7 Q And among other things, your department has
8 control over all works of improvement, betterment, recon-
9 struction and resurfacing of highways?

10 A Yes.

11 Q And you are aware, I'm sure, that one of the
12 conditions laid down in the statute is that there be
13 competitive bidding for all substantial highway contracts?

14 A Yes.

15 Q Which require an expenditure of money above
16 a rather small amount? A Yes.

17 Q And you were aware, also, that the statute
18 requires that a contract of that kind, a substantial con-
19 tract for work on roads, be awarded to the lowest responsi-
20 ble bidder? A That is correct.

21 Q And I suppose you knew or came to know that
22 the question of responsibility in a bidder means more than
23 just the lowest price?

24 A Yes.

25 Q Does the term lowest responsible bidder

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1 include such matters as experience, financial ability,
2 available facilities, sufficient equipment to do the job,
3 sufficient supply materials for access to materials
4 necessary to do the work and sufficient manpower?

5 A Yes. All of those factors are a part of the
6 determination of responsibility.

7 Q And would you say that included in the term
8 lowest responsible bidder would be moral integrity of the
9 bidder? A That has been a factor.

10 Q In fact, I think that you yourself said so
11 in two rather well known cases, the Mal-Brothers case
12 and the Trap Rock case.

13 A That is correct.

14 Q You said the moral integrity of a bidder was
15 a substantial factor to be considered in deciding whether
16 contracts should be awarded to that bidder or whether that
17 contractor should remain available or qualified to bid
18 on public works; is that correct?

19 A That is correct.

20 Q You are aware, also, aren't you, that under
21 the statute you have the authority to reject a bidder at any-
22 time even after his prequalification if there have been
23 any developments subsequent which, in your opinion, would
24 affect the responsibility of the bidder?

25 A That is correct.

20pg1

1 Q In your judgment, did the Legislature give
2 you a broad power to deal with bids in road contract
3 matters? A Yes.

4 Q Let me refer you to the specific language
5 of the statute. It's N.J.S. 27:7-30. That statute,
6 I'm sure you realize, gives you the power to "reject
7 and all bids not in accordance with the advertisement
8 of specifications or for any other irregularity or
9 may reject any or all bids if the price for work or
10 materials is excessively above the estimated cost, or
11 for any other cause"?

12 A Yes.

13 Q I'm sure you were familiar--

14 A Yes.

15 Q --with that, were you not?

16 A Yes.

17 Q Now, under that section you recognize that
18 you have extensive discretionary authority to reject
19 all bids or any one bid so long as your decision in that
20 regard--and that your decision in that regard would be
21 considered proper, unless it was made arbitrarily or
22 in bad faith. So, was it your view in dealing with
23 bids that so long as in your judgment there was a
24 reasonable basis for a decision to reject all or any
25 one bid your decision would be proper? A Yes.

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Q Let me ask you this: You would not consider it improper for a taxpayer to undertake to enforce the policies set out in that bidding statute, would you?

A I don't quite understand the import of your question.

Q Well, for example, in the Trap Rock case, in the opinion of the Supreme Court--

MR. SAPIENZA: Off the record.

[Whereupon, there is a discussion off the record.]

Q You are familiar with the Trap Rock case?

A Yes.

Q And I suppose at some time after the opinion came down from the Supreme Court you read it?

A A summary of it. I did not read the full.

Q On Page 479 of the opinion the Court said, "It, of course, serves the public interest to permit suits to enforce the policies of these statutes. To that end, a taxpayer may sue."

Now, let me elaborate on that a little bit. Supposing after bids have been opened and on the record, anyway, the amounts of the various bids appear and someone appears as the low bidder, and a taxpayer has some knowledge which would affect, at least in his judgment, the question whether that apparent low bidder was the lowest responsible bidder, and he brought it to the attention of your

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1 department, which declined to do anything about it. You
2 recognize that he could bring a suit to compel you to
3 reject that low bidder? A Yes.

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1 Q That's apparently, at least, one situation
2 which would be encompassed by that language, and you would
3 recognize the -- A Yes.

4 Q -- right of a taxpayer in that situation to
5 move in himself and seek to avoid the award of a contract
6 to a bidder in that situation, and you would accept, also,
7 from that statement, that a taxpayer could bring a suit
8 to force you to reject all bids if those bids did not
9 conform either to the advertisement or whatever the require-
10 ments were of the statute?

11 A Yes.

12 Q And would you recognize that a bidder who
13 in the listing of the bids did not appear as the low bidder,
14 would you recognize his right to demand that you aware the
15 bid to him even though he didn't appear to be the low
16 bidder or to bring an action to have himself established
17 as the lowest responsible bidder?

18 A Yes.

19 Q However, I suppose you recognize, also, that
20 the ostensible low bidder, as developed when the bids
21 were opening, would be entitled to a hearing before
22 you could turn him down? A Yes.

23 Q Let me pursue that a little bit further.
24 Suppose the low bidder on investigation by your department
25 turned out not to have enough equipment available to

1 do the job, in your judgment or the judgment of your
2 representatives, or enough labor or materials or the
3 Department's experience with him was bad with respect to
4 the quality of his work, and the second low bidder had
5 all the needed capacity and equipment and experience to
6 do the work. Would you say that the second low bidder
7 was the lowest responsible bidder and award the contract
8 to him? A Yes. Undoubtedly, we would
9 hold a hearing to bring out the facts in the situation.

10 Q And if the ostensible low bidder has the
11 deficiencies of the kind that I just gave you, it would
12 be your view that the second low bidder would be the
13 lowest responsible bidder and would be entitled to an
14 award of the contract?

15 A Yes, if the bid were within the ordinary limits of
16 variation from the engineer's estimate.

17 Q In other words, in that kind of a situation
18 you would not have to reject all of the bids and readver-
19 tise for new bids? A No.

20 Q So, to generalize about this, if we may,
21 if a taxpayer complained to your department about an
22 apparent low bidder's incapacity to do the job before
23 the contract was awarded, or a public official, or a
24 mayor, or an assemblyman, or a senator, or even a rival
25 bidder, you would investigate the charges, wouldn't you --

1 A We certainly --

2 Q -- before you awarded the contract?

3 A We certainly would.

4 Q And would you consider the request of any of
5 the public officials I've named or a taxpayer or a low
6 bidder an improper interference with your department in
7 making such a request? A No.

8 Q And if an investigation from one of the
9 sources I've mentioned by your department found justified
10 the complaints, whatever they were, would you or would
11 you not reject the low bidder as not being the lowest
12 responsible bidder?

13 A We would undoubtedly reject the low bidder. Depending
14 upon the pattern of bidding, might or might not award to
15 the lowest responsible bidder or reject all bids and call
16 for new submissions.

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1 Q So that, in any event, no matter who made a
2 complaint to you you would not regard the complaint as
3 improper or as political interference?

4 A No.

5 Q You would look into it?

6 A That's correct.

7 Q In your experience since you have been in the
8 Department, have you received various complaints or
9 requests to investigate of a nature that I have mentioned?

10 A A limited number, yes.

11 Q From public officials? A From taxpayers,
12 from other bidders, and from public officials; local
13 public officials.

14 Q And you have always looked into those complaints?

15 A Yes.

16 Q And after that you decided whether they were
17 justified or what action you should take on them?

18 A Yes.

19 Q I have a note indicating that Mr. Stelljes,
20 for example, said that it was not uncommon to receive
21 notice from a legislator that some constituent of his
22 was not receiving a fair deal from the Department. Would
23 you say that that happened with some frequency?

24 A In a number of cases. I would say that it was not
25 frequent, but depend upon the rivalry in particular jobs.

1 Q And you didn't brush those off out of hand,
2 you looked into all of them, did you not?

3 A We certainly did.

4 Q Let me mention one situation, for example. Do
5 you know the South Jersey Construction Company?

6 A Yes.

7 Q Was a complaint made on its behalf by a member
8 of the Legislature and you arranged for Stelljes to
9 study the situation and prepare an answer for you to deal
10 with it? A I vaguely recall.

11 Q Now to come to our present situation. On
12 or about July 20, 1970, did you receive from State
13 Treasurer McCrane a memo ostensibly from Secretary of
14 State Sherwin, but written, I think, with the initials
15 "H.M." at the bottom of it, apparently by Mr. Sherwin's
16 confidential secretary, Miss Mann, which inquired
17 about the disqualification of the Manzo Contracting
18 Company as a bidder on part of a Route 22 construction
19 project?

20 A Yes.

21 Q I show you what appears to be a photocopy
22 of that memorandum. Is that the one we're talking about?

23 A Yes, I recognize the document.

24 MR. FRANCIS: May I mark that.

25 [Photocopy of memorandum from State Treasurer

3C-3

McCrane received and marked Exhibit C-2.]

MR. FRANCIS: Off the record.

[Whereupon, there is a discussion off the record.]

Q In this memorandum you were told that the Manzo Construction Company wanted to get back on the bidder list.

A Yes.

Q And you were told, also, that on July 13, J. R. Schuyler wrote to Manzo. By the way, who is J. R. Schuyler? A He was then the State Highway Engineer.

Q And would you recognize him as the principal engineer of your Department?

A He was the principal engineer and the man who made recommendations for the award of contracts. It was under his jurisdiction that the investigations of responsible bidders and their qualifications took place.

Q In fact, the statute that I referred you to a short while ago, Section 30 of your statute, the last sentence there says that "If bidders are rejected, the state highway engineer shall make a list of the bidders rejected and the reasons for rejection"?

A Yes.

Q So that he, as the principal engineer, has

3C-4

1 that function for you, for your Department?

2 A Yes.

3 Q Now, continuing with this July 20 memorandum,

4 Mr. Schuyler wrote to Manzo in connection with a bid

5 that Manzo had made for work to be done on Route 22,

6 a section of Route 22? A Yes.

7 Q And Manzo had submitted the lowest bid?

8 A Yes.

9 Q Schuyler had written to Manzo pointing out
10 that apparently in connection with some work on Route
11 12, that the Manzo Construction Company had done previously,
12 there has been a charge that that Manzo Construction
13 Company, in violation of your regulations, subcontracted
14 the whole contract?

15 A That is my understanding.

16 Q And for that reason Schuyler was saying to
17 Manzo "The present view is that the record so far
18 would dictate a recommendation to the Commissioner that
19 your bid for such project be rejected," is that correct?

20 A Yes.

21 Q Did I say "corrected"? Rejected.

22 A Rejected.

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4Cpg1

1 Q However, Schuyler had also indicated, had
2 he not, that the matter was going to be held up until
3 the end of a workday of July 24th to give Manzo a chance
4 to meet the charge that he had subcontracted the whole
5 contract. Now, when you received this memorandum, did you
6 assign it for investigation?

7 A Yes, I immediately referred it to Mr. Schuyler
8 for investigation, report, and, also advised the
9 counsel, Mr. Biederman, of it.

10 Q And without going into all of the later
11 reports, you did get reports from Mr. Schuyler at the
12 conclusion of his investigation?

13 A Yes.

14 Q And was it reported to you that investigation
15 revealed a satisfactory explanation by Manzo Contracting
16 Company indicating that it had not subcontracted in
17 violation of your regulations? A As I recall it,
18 yes.

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1 Q Let me, to make sure about your recollection,
2 refer you to a memorandum of August 4, 1970, signed by
3 Mr. Schuyler. In it he explained that a satisfactory
4 explanation had been made by Manzo, with the result that
5 authorization had been given to award the Route 22 contract
6 to Manzo.

A That is correct.

7 MR. FRANCIS: For the record, may we mark
8 Schuyler's memorandum of August 4.
9 (Mr. Schuyler's memorandum, dated August 4, 1970, received
10 and marked as Exhibit C-3 in evidence.)

11 Q By the way, you said you asked Mr. Biederman
12 to look into that, also?

13 A Yes.

14 Q I show you a memorandum of Mr. Biederman,
15 dated August 7, 1970, which was addressed to Attorney
16 General Kugler, with a copy to you.

17 Do you remember generally that memorandum?

18 A Yes, I do.

19 Q The fourth paragraph of it talks about the
20 Manzo problem that we have been discussing. Mr. Biederman
21 said that he proved to the Chief Engineer's satisfaction,
22 however, that his subcontract was, in effect, his own
23 company and he was merely doing business under another
24 trade name.

A Yes.

25 Q And that explanation of Manzo was accepted by

1 your department?

2 A Yes, it was.

3 Q And resulted in the award to Manzo of that
4 Route 22 contract? A That's correct.

5 MR. FRANCIS: May we mark this memorandum
6 of Mr. Biederman, also?

7 (Mr. Biederman's memorandum, dated August 7, 1970, received
8 and marked as Exhibit C-4 in evidence.)

9 Q I suppose you considered the result of your
10 investigation which resulted in the award of Route 22
11 contract to Manzo Construction Company a just and proper
12 result? A Yes. I acted upon the recommendations
13 of the State Highway Engineer.

14 Q And you did not consider Mr. Sherwin's request
15 that you look into that as improper political interference
16 with your department, did you?

17 A No.

18 Q To come back to that July 20 memorandum, you
19 remember that the last three lines of it caused some
20 further investigation to take place?

21 A Yes.

22 Q And that was because the last three lines made
23 a reference to an allegation by Manzo that he refused to
24 join a group of road contractors who agree among themselves
25 only to bid certain jobs. The other contractor, whose name

1 he will not divulge, is going to get the job when they
2 get rid of Manzo.

3 You remember that? A Yes. I was
4 much more concerned about that than I was about the
5 qualifications of the Route 22 contract.

6 Q And both you and Mr. Schuyler and Mr. Biederman
7 suggested that some investigation be made in connection
8 with that allegation of collusive bidding?

9 A Yes.

10 Q And you knew, did you, that subsequently
11 Mr. Biederman was instructed by Mr. Jahos, Director of
12 Division of Criminal Justice, to look into it?

13 A Yes.

14 Q Were you aware that in October, particularly
15 on October 14, some members of your staff and Mr.
16 Biederman met with Manzo and his attorney to discuss this
17 and other Manzo problems? A Yes.

18 Q Now, sometime in August of 1970, in that
19 summer, did you have a request from Senator Dumont and other
20 groups up in Warren County to do some improvement work on
21 Route 46 in that county?

22 A Yes. The request really stemmed from a visit I made
23 to Warren and Sussex Counties at the request of the
24 Legislative Delegation. And I viewed a great many of the
25 road problems, and Route 46 was one of the more acute

1 problems.

2 During my inspection trip, the local residents
3 actually picketed our visit to the area of Route 46 and
4 demanded some relief from what they considered the hazardous
5 state of that roadway.

6 Q And you concluded that some effort should be
7 made to improve a section of Route 46 in that area?

8 A Yes. That was an obsolete roadway. It was carrying
9 a very heavy load of traffic from the Pocono region.
10 Interstate Route 80 was being opened and dumping a large
11 volume of truck traffic onto that road, and it was in a
12 sad state of repair.

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Q You didn't, I gather--and I can't tell from what we have here--this was not a project that had been planned at the beginning of the year, had been budgeted for, had it? A No. The Department apparently had assumed that the completion of interstate Route 80 across northern New Jersey would divert the traffic and there was no immediate need to rebuild Route 46.

Q So when you decided that it ought to be done, you had to get money from somewhere?

A Yes. It became evident that the construction on Interstate 80, which is not yet complete, would be delayed and that this section of roadway would have to carry a very substantial load of traffic for some two to three to four years.

Q Where did you get financial help to do it?

A We scrounged, literally, and established the fact that there were some remainders in the federal aid account and that the project could be qualified under the Federal Aid Highway Program. Fifty percent of the money came from our remainders, 50 percent came from the unexpended balance of the current federal aid allotment.

Q How long a section of Route 46 did you decide to repair or resurface?

A I don't recall the exact length. I believe it was on the order of eight miles.

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Q And after the decision was reached to resurface, was that what the project was, to resurface the 8-mile section?

A To upgrade the road, it meant building up the shoulders and some widening, because, as I said, the road was an obsolete pavement, too narrow for modern day traffic.

Q Did your engineers go out and survey the situation and plan the designs of the reconstruction?

A Yes. Plans were prepared prior to advertising the project for bidding.

Q Then when it was advertised for bidding, I suppose the specifications were then available for prospective bidders?

A Yes.

Q And those specifications were in accordance with the plans and the designs that your engineers had prepared for the job?

A Yes, and had the approval of the Federal Highway Administration.

Q And the bids were opened on September 24, were they?

A As I recall, yes.

Q At that time what company appeared to be the low bidder?

A I believe company known as Centrum Construction Company.

Q And who was second?

A Manzo.

Q Do you remember that the Manzo bid was

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1 \$607,657, and Centrum's was \$603,871?

2 A I don't recall the exact amounts, but I know that
3 they were relatively close for a project of that size.

4 Q Assuming those figures to be correct,
5 there was a difference of \$3786 in the two bids.

6 After your people had finished their plans
7 and the design of the reconstruction, did the federal
8 people come to you with change requests?

9 A I don't recall.

10 Q I will try to refresh your recollection.

11 Who is Mr. Rudolph Peterson?

12 A He is one of the engineers on the staff.

13 Q Who is Mr. Suess? A I don't know.

14 Ordinarily, none of these requests for technical change
15 would come to my attention.

16 Q Mr. Suess was identified by Mr. Peterson
17 "As a principal engineer in my division at that time."

18 You don't remember him?

19 A I don't know the individual.

20 Q Did you know that Mr. Suess as the result
21 of recommendations from the Federal Highway
22 Administration gave Mr. Peterson memorandum with a
23 set of plans and a cost estimate for lengthening the
24 vertical curve on Route 46, both vertical curve and
25 superelevation designed for a speed of 40 miles an hour,

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as suggested by the Bureau of Public Roads? Do you

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remember that? A No, I don't.

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Q Does it refresh your recollection that according to Mr. Peterson the call was for a modification of the plans originally by the contractor to add super-elevation and bituminous pad to make the sight distance longer on this vertical curve?

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A I had no involvement in that.

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Q Do you recall that there was a recommendation also that three bridges in the distance of this eight miles were required to be resurfaced also that were not included in the original plans or designs of the department and the advertisement for bids?

A I don't recall. I did not get into details of the specifications.

Q And you can't tell us whether there was any substantial difference between the project as advertised for bids and the actual work that was done before the 8-mile stretch was completed?

A No, I cannot.

MR. FRANCIS: Mr. Chairman, I understand Mr. Peterson is here. Perhaps in the aid of some continuity I could withdraw Commissioner Kohl for the moment and fill in this detail with Mr. Peterson.

Would you mind having Commissioner Kohl

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stay and listen to him?

THE CHAIRMAN: No problem at all.

Commissioner Kohl, we will just ask you to remain here and we will call in Mr. Peterson.

MR. FRANCIS: You don't have any objection to that?

THE WITNESS: No.

If I might volunteer for the record--

THE CHAIRMAN: Let's hold off now.

Do you want him to--

MR. FRANCIS: Suppose you hold it until we hear what Mr. Peterson has to say, and then we can fill it in.

THE WITNESS: Okay.

D3-1

1 (Rudolph Peterson enters the room.)

2 THE CHAIRMAN: Mr. Peterson, you are here this
3 morning, we have two members of the State Commission
4 of Investigation sitting, Commissioner Bertini on
5 my right. My name is John McCarthy. Mr. Francis
6 has a few questions he would like to ask you.

7 Prior to the questions, sir, would you stand
8 up to be sworn by the court reporter.

9 R U D O L P H A. P E T E R S O N, sworn:

10 MR. SAPIENZA: Mr. Peterson, briefly, before
11 we begin, this is an executive session of the State
12 Commission of Investigation. The hearing is private,
13 but there are certain warnings that we give to all
14 witnesses that appear before us. I'm just going to
15 briefly give them to you now.

16 You are here at our request. But, of course,
17 you volunteered to come down, too; is that correct?

18 THE WITNESS: Yes.

19 MR. SAPIENZA: There is a record being made
20 of your testimony by the shorthand reporter, and such
21 record could be used against you later on in a court
22 of law. For that reason, you don't have to answer
23 any of our questions. You understand that ?

24 THE WITNESS: I understand.

25 MR. SAPIENZA: Counsel is allowed at these

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1 private hearings. Do you feel that you need
2 counsel today before you could answer our brief
3 questions?

4 THE WITNESS: I don't think so.

5 MR. SAPIENZA: Although this is an executive
6 session, the Commission has the power to release the
7 testimony later on as a public record. Do you under-
8 stand that?

9 THE WITNESS: Right.

10 EXAMINATION BY MR. FRANCIS:

11 Q Mr. Peterson, what is your official position
12 with the Department of Transportation?

13 A I'm Assistant Chief Engineer of Design.

14 Q Were you there in the summer of 1970?

15 A No. In 1970 I was Supervising Engineer of the
16 Bureau of Maintenance.

17 Q And in that connection did you become familiar
18 with the Route 46 project involving the improvement of
19 resurfacing?

20 A Yes. The plans were
21 prepared in my office.

22 Q The plans were prepared in your office?

23 A Yes.

24 Q And the plans included just generally what?

25 A It included a two foot widening and resurfacing
on Route 46 from Buttzville to Columbia, about eight miles.

1 Q And after you had completed your plans and
2 designs, did your office prepare the specifications that
3 were to be used for bidding purposes?

4 A Yes, sir.

5 Q And was all that work done before advertising
6 for bids took place? A You say that
7 all were. There was an exception. We had a change of
8 plan that we knew was going to come about.

9 Q I'm going to come to that. But when you
10 finished your work of planning and design and preparation
11 of specifications, that was the original completion of the
12 project? A Yes, that's correct.

13 Q After that did any suggestions come from
14 the federal authorities with respect to those plans?

15 A I can't recall the exact time it came out, but there
16 was a request from the Bureau that we upgrade the plans
17 and take care of a short vertical curve. I think the
18 speed limit on the curve was something under 30 miles an
19 hour, and they wanted us to lengthen the curve, make
20 a pad, so we could increase the speed to forty miles an
21 hour.

22 Q How great a distance did that encompass?

23 A I really don't know, but it was a relatively short
24 distance. I'd say perhaps in the neighborhood of a thousand
25

1 feet, fifteen hundred feet, something like that.

2 Q Were there some further suggestions with
3 respect to repaving or paving or reconstructing the

4 three bridges? A No, sir. That did not come
5 from the Bureau. That was an internal thing. We had
6 a directive from the State Highway Engineer that we were
7 not to resurface any bridges without approval from the
8 Division of Bridges. It's Bureau of Structures now.

9 At that time I think it was called Bureau of Bridges,
10 I think. I'm not sure about the exact name.

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1 Q Well, in any event, whatever the source, --

2 A Right.

3 Q --it did develop that this project was
4 going to be required to resurface those three bridges?

5 A I think the actual circumstance was that we had
6 called for resurfacing the bridges, that was included
7 in the contract if I'm not mistaken, and the only thing
8 that I did was to get an official approval of the bridge
9 division to go through with that resurfacing. I don't
10 think it was actually left out of the plans originally.

11 Q Let me see if I can refresh your recollection.
12 You testified in Freehold in the Sherwin trial, did you
13 not? A Yes.

14 Q Let me call your attention to your testimony
15 on Page 170 of that record where you were asked, "QUESTION:
16 What about resurfacing the three bridges?" and your
17 answer, "That was a matter apparently that had been
18 overlooked during the preparation of plans. I don't
19 know if we had a directive that we had to get consent
20 to overlay any structures. I don't know. And this
21 apparently was an afterthought that hadn't been taken
22 care of during the preparation of the plans."

23 Does that refresh your recollection?

24 A Yes, I know what they're referring to. I don't
25 think this is quite what I said. We did have a directive

1E-2 1 and we had to get permission to overlay bridges. That
2 was not the question in my mind.

3 Q Well, what I'm trying to find out is, this
4 is your--

5 A This is substantially my testimony, yes.

6 Q Well, does it refresh your recollection
7 in your original plans you had not prepared for, or asked
8 for, the bids to include the resurfacing of those three
9 bridges?

10 A Well, I haven't -- it could be verified from the
11 actual plans that were put out, but I think the resurfacing
12 of the bridges was included. What I was trying to get
13 was an approval from the bridge section to continue with
14 that overlay. I don't think the overlay was omitted
15 from the original construction.

16 Q Well, not the original construction, but
17 the original plans --

18 A Original plans, yes.

19 Q --and specifications which called for bids?

20 A Right.

21 Q It was not included in the original
22 specifications, was it, the work on the three bridges?

23 A I don't know. I'm of the opinion that it was
24 included, but I haven't verified it or checked the plans.
25 But I think the plans would indicate that that was in

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1 the contract, that we did include the resurfacing.

2 MR. SAPIENZA: Off the record.

3 [Whereupon, there is a discussion off the record.]

4 Q Well, to continue with the answer you just
5 read from that record, --

6 A Yes.

7 Q -- "QUESTION: So this occurred," meaning
8 resurfacing of the bridges, "did it, apparently, around
9 or about October 19th, the time that you called it to
10 the attention of Mr. Sunderland?"

11 A Right.

12 Q "ANSWER: That's correct?"

13 A Yes. Excuse me. This was--

14 Q Let me just stay with this for a minute.

15 A All right.

16 Q "This occurred apparently around October
17 19th, the time you called it to the attention of Mr.
18 Sunderland?"

19 "ANSWER: That's correct."

20 These bids were all in by September 24th,
21 were they not?

22 A That's correct.

23 Q And then next question, "So, now you have
24 discovered this," meaning resurfacing the bridge, "and
25 you're setting about it as you say." As you say your

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1 sentence in your last sentence, "A speedy reply to
2 this letter is essential." Do you remember that you sent
3 a memorandum around about the resurfacing, an inter-
4 office memorandum about the resurfacing?

5 A Yes, to Mr. Sunderland.

6 Q To Mr. Sunderland?

7 A Yes.

8 Q And when you discovered this on or about
9 October 19th, you called it to Mr. Sunderland's
10 attention?

11 A Right.

12 Q You wanted to get him to estimate the
13 additional cost of that? A No, no. I merely
14 wanted approval, which we had to get to make the overlay.
15 In other words, overlaying the bridge required a prior
16 approval from the bridge division, a matter of load
17 and the effect on the bridge itself.

18 Q Well, in any event, you did receive a
19 reply from Mr. Sunderland to your memorandum about your
20 resurfacing of the three bridges?

21 A I don't recall actually seeing the memorandum,
22 but I assume that we did.

23 Q Well, you do remember that the work of
24 resurfacing the three bridges was done?

25 A Yes.

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Q "QUESTION: Now, was that done--would that also be a change order?"

"ANSWER: It wouldn't have to be a change order because they were culverts. The span was 6-2-6, so they would have just gone through and it would have been additional. It would have been a formal--it wouldn't have been a formal change of plan for that?"

A That's probably correct, if they were very small.

Q "QUESTION: Just a unit price increase?"

"ANSWER: That's correct?"

A No, that was not correct.

Q Well, you said it, did you not?

A Yes, I said that. I must have misunderstood the question. It wouldn't have been an increase in unit price.

1 Q Well, would it have been an increase in the
2 price? Whether you call it a unit price or what, would
3 it have caused an increase in the construction costs?

4 A If it had been left out and had -- and was additional
5 material, it would have caused an increase, yes.

6 Q Well, would the increase -- oh, by the way,
7 come back to the specifications. The specifications did
8 not include, calling for bids, did not include the request
9 of the Federal Authorities for the -- what, superelevation
10 of the curve on this. A No.

11 Q And that -- A That was additional.

12 Q That was additional. And you don't know
13 how much additional it would cost?

14 A I don't, no.

15 Q Do you know how many additional tons of
16 bituminous concrete it would require?

17 A I can't recall now.

18 Q Do you know how much additional Centrum was --
19 well, in any event, to come back to it, the bids of the
20 bidders on this job did not include this additional cost
21 that was required by the request of the Federal Authorities?

22 A No.

23 Q That would have been extra cost?

24 A That's correct.

25 Q And that request of the Federal Government was

1 in possession of your Department before the bids were
2 advertised, wasn't it?

3 A I think it was. That's my recollection.

4 Q Why is it that it was not included in the
5 specifications? A Because it took time
6 to get the change order prepared to figure out the
7 quantities and make a decision as to just how it was to
8 be accomplished, and the job was given to us as being
9 a very high priority. I think we had an order to come up --
10 to complete it as of a certain date.

11 Q I see. So then in view of the high --

12 A In the interest of getting the job out in a hurry,
13 we decided to make that a change of plan.

14 Q So that because it was a high priority job,
15 whatever the additional cost, you were satisfied that
16 you needn't bother including that in the specification for
17 bids but to treat it as additional cost by --

18 A That's correct.

19 Q -- a change order?

20 Is that what you call it?

21 A Yes.

22 Q But you can't tell us, you say, what the
23 additional cost was?

24 A I don't recall. It
25 can be checked out. If we go back to the records we can
find out.

1 Q Well, do you remember in round figures the
2 amount that was paid for Centrum above its bid of \$6,381?

3 A No, I don't.

4 Q Can you tell us this: Was it a substantial
5 amount? A I think it was in the
6 neighborhood of 6 to \$10,000 for that change order. I'm
7 speaking of the change order, now, not -- I don't know
8 how much they got over their contract. I have no idea
9 of what that was. But the change order, I think we
10 estimated that the cost of that to be in the neighborhood
11 of 6 to \$10,000, as I remember.

12 Q What was the additional cost for resurfacing
13 the bridges?

14 A I still don't think there was any additional cost.
15 I think the original plan called for it to be resurfaced.

16 Q Well, do you remember that I read to you a
17 few minutes ago -- A Yes.

18 Q -- you were asked "That would be a unit price
19 increase?" and you said that was correct?

20 A No.

21 Q But now you say that that was not correct?

22 A I must have misunderstood, because it would have been
23 an increase in the total price but not an increase in the
24 unit price.

25 A ton of material would have cost X number of dollars

1 according to what was bid. The additional work would have
2 increased the total quantity if more ~~tonnage~~ was required,
3 but it would not alter the price bid per unit per ton of
4 material.

5 Q Well, then, should we put it another way?

6 The resurfacing of the bridges did impose an additional cost
7 on the Highway Department? A If it required
8 more material. I said before, I don't recall whether that
9 was included in the original plan or not. I'd have to go
10 back to the plan and check.

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1 Q Well, in-- A It seems to me
2 it was included and that the memorandum to Sunderland
3 was to get approval for the work which we had already
4 included. But, as I say, I can't be sure of that unless
5 I go and look at the plans.

6 Q Well, had you looked at them before you
7 testified in Freehold? A No, I had not.

8 Q Do you remember, does this refresh your
9 recollection, that one of the attorneys said, "Well,
10 Mr. Peterson, can you tell me the amount of increased
11 cost that was incurred by resurfacing these bridges,
12 these three bridges?" and you said, "No, I can't,"
13 and "QUESTION: Do any of your records disclose that?"
14 Your answer, "I doubt my records would show it. Perhaps
15 the construction records would show it, but my records
16 wouldn't show it"?

17 A Yes.

18 Q Does that indicate--

19 A If there had been a change, it would have been
20 a matter of construction record.

21 Q The memorandum we have talked about of
22 October 19th to Mr. Sunderland, --

23 A Yes.

24 Q Was that your memorandum?

25 A Yes.

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1 Q And you remember that you were asked to
2 read it to the jury? A Yes, I recall.

3 Q And your memorandum said--was addressed to
4 Mr. Sunderland from you? A Uh-huh.

5 Q "Relating to Route 46, 19-A and 2-B, re-
6 construction. 'Reconstruction located within the
7 limits of the above indicated project are three bridges' "--

8 A Right.

9 Q -- "'numbered,'" giving the numbers. "'The
10 scope of this work is principally a 3-inch variable
11 overlay of FABC 2. Your opinion as to the advisability
12 of resurfacing the bridge decks would be greatly
13 appreciated since the contract for this work had already
14 been let. A speedy reply to the matter, this matter
15 is essential.'

16 "It was signed from me. I didn't actually sign
17 it"?

18 A Right.

19 Q When you wrote this, the contract had
20 not yet been let, had it?

21 A Actually, it had not, no.

22 Q But, in any event, you asked for his opinion
23 as to the advisability of resurfacing the bridge decks?

24 A Yes.

25 Q And does that indicate to you, especially

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1 since this letter of yours was October 19th, that that
2 was a matter that was not covered in the original
3 specifications or request for bids? A No, it could
4 have been either way, because if he advised against
5 resurfacing and it was included, we would have had
6 a deletion. If he approved it and we hadn't included it,
7 it would have been an increase. But it would not have
8 been--it would not necessarily prove that we had either
9 called for resurfacing or not called for resurfacing.

10 Q Well, what is your recollection as to whether
11 it was or was not included in the--

12 A I can't recall what we had planned on that.

13 Q Well, is there any reason--

14 A I'm of the--

15 Q --now for your hesitancy as to whether
16 resurfacing of the bridges was included in the
17 specifications for bid which was not troubling you at
18 the time of your testimony in Freehold?

19 A No, this is a recollection that I had afterwards.
20 I got--after testifying at Freehold, I got to thinking
21 about it and I realized that there were two situations
22 that were possible; that it could have been included
23 and we wanted verification or it could have been omitted
24 and we wanted approval to do it.

25 Q All right. Well, I take it it would not be

x 1 a very difficult thing for you to check it out?

4E-4 2 A I don't think so. I think the original plans should
3 show whether or not it was included.

4 Q And at the same time can you find out,
5 or is it within your area to find out, how much the
6 additional cost was for resurfacing the three bridges,
7 and the making of this, the elevation of this curve.

8 A I can find out what we estimated the change to
9 be as far as the curve was concerned, and I can find
10 out the status of the bridges.

11 Q And the cost of resurfacing the bridges?

12 A If there was any involved, yes. But I can't
13 find out what was actually paid to Centrum. That would
14 be a matter of construction records. Somebody else
15 would have to look that up.

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1 MR. FRANCIS: Right. All right. I think
2 that's all for now, Mr. Peterson.

3 THE CHAIRMAN: You're excused, Mr. Peterson,
4 and --

5 THE WITNESS: Okay.

6 THE CHAIRMAN: -- we will let you know when we
7 would like to have you return.

8 (Witness excused.)

9 J O H N C. K O H L, having been previously sworn
10 according to law by the Officer, resumed the stand and
testified further as follows:

11 EXAMINATION BY MR. FRANCIS:

12 Q Well, I don't know whether that colloquy
13 helped our discussion any or not. Did it?

14 A I was not aware of that, those problems. I ordinarily,
15 as I said, would not get into any of those technical
16 details of the plans and specifications.

17 What I would like to make clear is that I had become
18 convinced that this was a highly urgent project and had
19 communicated my feeling to the staff. We were threatened
20 with demonstrations by mothers of the school children who
21 attended a school located across the roadway. There had
22 been a fatal accident there earlier in the summer, and
23 the area of Knowlton Township, through which Route 46
24 passed, was one where there was a highly emotional charge
25 and obviously the roadway did require this rebuilding.

1 Q Now, the purpose of my inquiry was this:
2 If it appeared as the result of the request of the Federal
3 authorities, that this extra work was necessary, the
4 elevating, if you can call it that.

5 A Superelevation.

6 Q Superelevating the curves of the road and
7 resurfacing the bridges, which involved additional expendi-
8 ture, under ordinary circumstances if you knew that,
9 or if your department knew it before the bids were
10 advertised for, you would include them in the specifications,
11 would you not? A Yes, we would have
12 delayed the advertising for the bids and so on. But in
13 this instance the time schedule was very important. The
14 location of the roadway is such that it is the principal
15 access until Interstate 80 is completed to the Pocono
16 Mountains, and the summer traffic beginning roughly Labor
17 Day through -- or beginning roughly Memorial Day through
18 Labor Day is extraordinarily heavy in that area and we
19 wanted to get the work done by the middle of May in the
20 following spring at the very latest.

21 Q Well, then, would you do that, go ahead and
22 advertise for bids without regard to this additional cost
23 regardless of how substantial the cost of changes were
24 going to be?

25 A Not if there were substantial change. But this was

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1 regarded as a minor change in the plan, something that
2 could be accommodated without a major increase in cost
3 or without a major change in the plans. Primarily
4 involved additional material and some slight adjustment
5 of the grade.

6 Q What would you regard as an insubstantial
7 increase in cost? A Well, if this were
8 something over the order of \$50,000 we would have con-
9 sidered this a substantial increase.

10 Q In other words, if this additional cost involved
11 a sum in the area of \$50,000, you would regard that as a
12 substantial change?

13 A No, not in a job of this magnitude and where the
14 change was primarily one that could be accommodated during
15 the work. If there were major technical changes in the
16 design, then there have been some change in the work pro-
17 gram and so on. But --

18 Q Well, I thought you just said that if the sum
19 of \$50,000 additional cost were involved, you would regard
20 that as a substantial increase?

21 A Yes.

22 Q And that really would be about 12 percent of
23 the original bid? A Somewhere in the order of
24 ten to fifteen percent.

25 Q Ten to fifteen percent, you would ordinarily

1 regard that as sufficiently substantial as to either not
2 to call for bids -- A Or delay.

3 Q Delay the bidding?

4 A The advertising of the bidding until --

5 Q You could cover the whole project?

6 A Yes.

7 Q And you can't tell us -- do you have a
8 recollection as to how much extra you did pay?

9 A No, I have no knowledge of that.

10 Q Well, to go on, we were talking about the bids
11 that were opened on September 24th, at which time it
12 appeared that Centrum was the low bid. Is it the practice
13 of your department as soon as the low bidder appears
14 immediately to award the contract?

15 A No. The bids are opened. Then all of the bids
16 are reviewed for conformance to the bidding requirements
17 and specifications, and there is a regular procedure for
18 review and recommendation for the award.

19 Q Well, then, do you look into the lowest
20 bidder to see if he's the lowest responsible bidder?

21 A I don not personally. That is the responsibility of
22 the State Highway Engineer and his organization.

23 Q But it is a rule of your Department that that
24 investigation is made?

25 A Oh, yes.

1 Q And that was done with respect to Centrum,
2 was it not? A Yes. To a degree, it's
3 a formality because of your prequalification process,
4 and those bidders that are prequalified are presumed to
5 meet, in general, all of the requirements. But there are
6 specific aspects that may be investigated.

7 Q Under the statute how long do you have to
8 decide whether to award the contract to the apparent --

9 A Thirty days.

10 Q And while the Centrum Company was being checked
11 out -- I'll withdraw that for the moment.

12 Did you know the Centrum Company before?

13 A No, I did not.

14 Q And as far as you know did it or did it not have
15 any substantial contracts with the State prior to that
16 time? A I was not aware of that
17 company at all.

18 Q While Centrum was in the course of being checked
19 out, did you receive any mail about it, about the contract?

20 A Yes. I received a communication from the Secretary
21 of State calling attention to the fact that the bids were
22 above the estimate and asking that I call him to talk about
23 the contract.

24 Q Was there any paper or document attached to that
25 letter? A Yes. There was, as

1 I recall it, a photostat of one of the construction
2 journals that carried the bid prices that had been
3 received at the formal opening of the bids.

4 Q Did you recognize the name of any of the

5 contractors?

A Only the name of the

6 second low bidder, Manzo

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Q And that name rung a bell with you, did it?

A Yes.

Q Why was that? A Because of the previous concern over the qualifications of that firm and particularly because of the charge that--or the implication that there had been some collusion to exclude the Manzo firm from the bidding.

Q I show you a letter of October 8, signed Paul, on the stationery of Paul Sherwin. Is that the letter that you received? A Yes, it is.

MR. FRANCIS: May we mark this letter, dated October 8, 1970.

[Letter from Mr. Sherwin, dated October 8, 1970, received and marked C-5 in evidence.]

Q I think you have already given us your recollection of Mr. Sherwin in this letter called to your attention that all of the bids were above the budgeted amount, and he suggested that you have an option to review the higher bids and to seek bids once again for the contract work.

A Yes.

Q And he says, also, that he has been told that you could accept the lowest bid since in this instance it is not too far removed from the maximum amount of \$580,000. A That is correct.

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1 Q And he suggested that in this case he
2 would prefer that you reject the bids and request a
3 rebidding.

4 A Right.

5 Q And he asked you to telephone him on
6 Tuesday, the following Tuesday, and he would talk to
7 you about it. A Yes.

8 Q Now, after you received this letter and before--
9 First of all, you did talk to Mr. Sherwin
10 the following Tuesday, did you not? A Yes, I did.

11 Q Between those dates had you started some
12 investigation? A I was out of the office and
13 had called in and asked--I should state that I do not
14 get into the award of contract until the recommendations
15 from the State Highway Engineer come to me. I was not
16 at all familiar with the bids that had been received.
17 The first knowledge I had of the amounts was in the
18 enclosure that came with the October 8th letter. I was
19 scheduled to be out of the office on Friday, I think the
20 following day after the letter. And I called in and
21 asked that--because I knew that they were expediting the
22 review--I asked that they hold up until I could check
23 with them on the following Tuesday. Monday was a holiday,
24 as I recall, Columbus Day.

25 Q This letter came to you where?

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A It came at my home.

Q Do you know why that was?

A Well, I had been out of the office sometime previously. I had been hospitalized with a virus infection and had been away from the office for some days and had been off and on under doctor's orders to take it easy for a period, so that a great deal of mail was delivered to me at home. I did work there and in fact prepared answers to letters and correspondence was shuttled back and forth when I was working at home.

Q Was it unusual for you to get a letter like this at your home? A No.

Q Now, I understand that between October 8 and the following Tuesday, from what you have said, that because of the name Manzo rang a bell with you and because of the allegation that he had been treated unfairly previously, you instituted an inquiry into the situation?

A Well, I really didn't institute an inquiry. I asked that they hold up action on the award of bids until I could look into the matter the following week.

Q Well, before you made the telephone call on Tuesday, had you found out that some of your construction people were concerned about Centrum's ability to secure necessary asphalt for the job?

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1 A I was not aware of the concern about Centrum.
2 I was aware of the general concern about all contractors
3 having contracts involving asphalt, because there had
4 been a definite shortage of materials on the east coast
5 during the summer.

6 Q Well, at that time did you know or were you
7 aware that some contractors of this kind were not
8 getting the supply of bituminous concrete at all, and
9 because of that you voiced some concern about the asphalt
10 supply and Centrum's ability to complete the job on
11 schedule?

12 A That was subsequent to that letter. I was not
13 aware of Centrum particularly at that time.

14 Q You remember testifying in Freehold?

15 A Yes.

16 Q Do you remember being asked this question.
17 Let me see if I can refresh your recollection. The
18 question is:

19 "Did you look into this job as the result
20 of the request made to you by Secretary of State Sherwin?

21 "ANSWER: I think that a proper answer is
22 that I looked into it because my attention to it had been
23 alerted by Mr. Sherwin's request, but the fact that I
24 was aware of the shortage of material and also of the
25 concern for the completion date, that we should be doubly

1F-5 1 sure that the contractor could perform on schedule."

2 Is that correct?

3 A That's correct.

4 Q Would you say you were particularly concerned
5 about Centrum's ability to get the asphalt because you
6 had no dealing with Centrum before?

7 A Yes, when I became aware that there was an unknown
8 contractor was the low bidder.

9 Q By the way, before you talked to Mr. Sherwin
10 on Tuesday, had you talked to Mr. Mullen about it?

11 A Yes, I did.

12 Q Did you ask him to look into the question
13 of the asphalt shortage?

14 A Yes, on Tuesday, when I returned to the office
15 I did.

16 Q That was before you had the telephone call?

17 A Before I talked--

18 Q Before you had the telephone conversation
19 with Mr. Sherwin? A Yes. As I recall, it was the
20 first thing that morning that I got into this.

21 Q Did you tell Mullen in that conversation that
22 you had a question as to whether a small company like
23 Centrum would have sufficient material to do this job?

24 A I believe I did.

25 Q And then when you did call Mr. Sherwin on

1F-6 1 Tuesday morning, did you talk to him about the asphalt
2 shortage? A Yes, I did.

3 Q And what, in general, was Mr. Sherwin's
4 conversation with you on that telephone call?

5 A As I recall it--and I don't recall the exact
6 words--but he reiterated his request that he preferred
7 we reject all of the bids because they were above the
8 engineer's estimate. I indicated that because of the
9 pressure of time to complete this job that we expected to
10 award the bid to the lowest bidder, provided he could
11 assure us of his supply of materials because his bid
12 was only about 5 percent above the engineer's estimate.

13 In ordinary practice, we considered a 10 percent
14 tolerance in the bidding, particularly if the patterns
15 of bids were such that there were other bids that were
16 within the same range. So that we felt that there was
17 a reasonable tolerance for justification for an award.
18 And I indicated that we fully intended to award the
19 bid to Centrum if we had assurances of his supply of
20 materials.

21 Q Was there any suggestion in that conversation
22 that you reject the low bid alone and award the contract
23 to the second low bidder? A No. At that time
24 the suggestion from Mr. Sherwin was that we reject all
25 bids. He became, I think, a little irritated at my

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1 stand to award the bid if we had good reason to believe
2 that Centrum could perform on schedule. He indicated
3 that he would regard it as a distinct favor if we could
4 reject all the bids and give Manzo another crack, I
5 believe is the term that he used, at the contract because
6 Manzo was--and again I don't recall the exact words--
7 but certainly, the implication of the phrasing was that
8 he was a good contributor to the party.

9 Q Did he also say Manzo was a friend and
10 supporter of the party?

11 A In general, that was the tenor of his remarks,
12 that he was a friend, supporter, contributor to the party.

13 Q Was there any suggestion at all in that
14 conversation, by inference or otherwise, that rejection
15 of the bids meant anything to Sherwin, either personally
16 or the party, in terms of money?

17 A No. It was merely in terms that it would be
18 regarded as a favor.

19 Q Is there any doubt in your mind at all about
20 that? A No.

21 Q Was there any suggestion that rejection of all
22 bids meant any particular result to Sherwin?

23 A No.

24 Q And you say that it was strictly in terms
25 of doing a favor? A Yes.

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1 Q Was there any request at that time, or any
2 other time, for that matter, that you ask your people
3 in your department to find reasons to avoid the awarding
4 of the contract to Centrum? A No.

5 Q But you say you did tell Sherwin in that
6 conversation that the work was urgent and that it was
7 your intention to award the contract to the low bidder
8 if you found him upon completion of your investigation
9 to be qualified?

10 A Right.

11 Q By the way, this letter of October 8th, which
12 we have marked C-5, what did you do with it after you
13 received it?

14 A I brought it to the office with me and it was among
15 the papers on my desk.

16 Q How long did you have it on your desk?

17 A I don't recall.

18 Q Was it long? Did you ultimately make a
19 file?

20 A Yes. It would be collected and go into the files
21 in my office.

22 Q Do you have any recollection as to how
23 long it remained on your desk before it was put in a file?

24 A No, I don't. My work habits are somewhat irregular
25 as far as the handling of papers on the desk.

1 Q After your conversation with Mr. Sherwin did
2 you ask anybody to look into the matter?

3 A Yes. I asked Mr. Mullen, the Assistant Commissioner
4 of Highways.

5 Q How about Mr. Schuyler, the Chief Engineer?

6 A Mr. Schuyler reported directly through Mr. Mullen
7 and we did discuss the problem.

8 Q Mr. Mullen, at that time was your Chief
9 Assistant, was he? A Yes. He was the

10 Assistant Commissioner for Highways and had prime responsi-
11 bility for the Highway program, and Mr. Schuyler ordinarily
12 reported directly to him.

13 Q They were two top men in the department and
14 whom you would rely on?

15 A They were the key officials on the Highway program.

16 Q What, if anything, did you instruct Schuyler
17 to decide with respect to Centrum?

18 A I gave Mr. Schuyler no instructions directly.

19 Q Well, did you not, for example, instruct him
20 to determine if Centrum could guarantee a source of materials
21 and finish the job on schedule?

22 A That was the question I directed to Mr. Mullen, and
23 he in turn to Mr. Schuyler.

24 Q Well, let me just see if I can refresh your
25 recollection with respect to Schuyler. Let me just call

1 your attention to your testimony before the State Grand
2 Jury Investigation on June 23, 1972 here in Trenton.

3 On page 35 of your testimony there, do you
4 remember being asked this question and giving this answer:

5 "Now, after that conversation, Commissioner,
6 did you instruct Mr. Mullen or anyone else to rebid that
7 job?

8 "Answer: No. We instructed the State Highway
9 Engineer, then Mr. Schuyler, to determine to his satis-
10 faction whether the low bidder could guarantee a source of
11 materials and get the job done on schedule."

12 Is that correct?

13 A Yes. The "we" is an editorial "we". It included
14 Assistant Commissioner Mullen and myself.

15 Q Well, this does refresh your recollection that
16 you did either personall or through Mr. Mullen instruct
17 Schuyler to determine -- A Yes, I certainly
18 did instruct Mr. Mullen.

19 Q What is your recollection as to whether it later
20 appeared through Schuyler and Mullen that Centrum's source
21 was shakey?

22 A That was my understanding,
23 that is, as they looked into it they had considerable
24 doubts about the availability of asphalt to that contractor.

25 Q And did your construction engineers in your
department, and particularly Stelljes, indicate to you that

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1 they had some doubts as to the reliability of Centrum's
2 source and doubt as to Centrum's ability to perform if
3 the stated source was Centrum's source?

4 A Mr. Stelljes did not directly inform me, but that
5 was the information that came to me through the channels.

6 Q Let me just see if we can make this as
7 specific as possible.

8 Again referring to your Grand Jury testimony,
9 on page 35:

10 "Question: Now, did there come a time before
11 the award was made when Mr. Mullen came to you with a
12 recommendation with regard to the bids on the Route 46
13 project?"

14 "Answer: Yes. It appeared for a time that
15 the source of supply of Centrum was shakey and our
16 construction engineer, particularly Mr. Stelljes, had
17 some doubt about the reliability of the source and had
18 indicated that in all probability they could not perform
19 if that were to be the source of the actual."

20 Do you remember that?

21 A Yes.

22 Q And then you were also asked:

23 "Now, was that information which you received
24 from Mr. Mullen?

25 "Answer: Mullen and Schuyler, yes."

1 A Yes, that's correct.

2 Q And after that one telephone call, did you ever
3 again speak to Sherwin about this matter?

4 A No, I did not.

5 Q Toward the end of October, after you had been
6 getting reports from the various people in the department,
7 was there any general feeling as to Centrum's ability to do
8 this job? A I think the feeling was that
9 it was somewhat doubtful.

10 Q And again toward the end of the month, did
11 you have a specific conversation with Mullen on the subject
12 of accepting or rejecting the bids, all the bids?

13 A Yes, sir. He indicated that he would recommend
14 rejection of the bids on the basis of exceeding the estimate
15 and the inability of the contractor to guarantee to the
16 satisfaction of the department his supply of materials.

17 Q Did you go over those reasons of Mullen with
18 him at length? A Yes. And formal
19 recommendation was subsequently made.

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1 Q And in the report that you received and in the
2 conversation from Mullen, did you have a recommendation
3 from Schuyler, also?

4 A Yes. Mr. Mullen was basing his recommendation
5 on Schuyler's finding.

6 Q In other words, Mullen told you that aside
7 from whatever his own findings were that he was going
8 to recommend that all of the bids be rejected because the
9 chief engineer, Schuyler, had also made that recommenda-
10 tion to him? A Correct.

11 Q Do you remember whether in addition to the
12 asphalt shortage there was a problem about Centrum's
13 equipment that it would have available to do the job?

14 A I believe there was some question, but I was not
15 familiar with the details of that.

16 Q Well, did you finally reach a conclusion
17 as to what should be done with all of the bids after
18 these conversations with Mullen and Schuyler?

19 A Yes. I said that if that were their recommendation
20 I would support it.

21 Q Well, is it fair to put it in these terms,
22 that you did give oral approval to Mullen to get rebids
23 and reject all of the--

24 A Yes, to prepare the formal rejection.

25 Q By the way, in your discussions with Mullen

3RF2 1 was there any reference to matters that we were discussing
2 with Mr. Peterson, the inclusion of certain extra work
3 that had not been in the specifications?

4 A No, I don't recall any such conversation.

5 Q Did you receive a written recommendation
6 from Mr. Mullen on the subject of rejecting all of the bids?

7 A Yes, I did.

8 Q And that was dated October 26, 1970, was it?

9 A I believe that it was.

10 Q I show you a memorandum from Mr. Mullen,
11 with a copy to Mr. Schuyler. Is that the memorandum
12 of recommendation?

13 A Yes, it is.

14 MR. FRANCIS: May we mark this.

15 [Memorandum from Mr. Mullen, dated October
16 26, 1970, received and marked as Exhibit C-6
17 in evidence.]

18 Q I think instead of going over this item by
19 item, I will just read parts which I think ought to be
20 mentioned now, without going over all of this.

21 In this recommendation Mr. Mullen speaking
22 of the time interval between the bids and when you hoped
23 to have the work completed, he said:

24 "During this same time interval, the
25 asphalt shortage about which we had heard became more

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1 acute, and the state highway engineer thought it only
2 proper, a decision in which I fully concur, to ask
3 the successful bidder for some realistic and solid
4 guarantee that he would be able to obtain the material
5 with which to perform the work.

6 "So much for history. The facts of the situation
7 at the present time are as follows:

8 "1. The low bidder was some 5 percent over the
9 engineer's estimate and the second low bidder was some
10 8 percent over the engineer's estimate.

11 "2. The best rate of progress in good weather
12 is estimated at approximately 900 feet per day.

13 "3. The low bidder did supply the department
14 with a written statement regarding the availability of
15 material which, in the opinion of the state highway
16 engineer, did not represent the time of commitment
17 he has requested.

18 "4. Although the original contract called for
19 completion of the entire project by Memorial Day 1971,
20 it was contemplated that by far the major portion of
21 the work could be accomplished before winter. This is
22 no longer possible.

23 "5. Some verbal conversations with other bidders
24 have indicated that all bidders are inclined to give
25 the department almost everything that might be requested

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1 in the way of verbal assurances, but it is extremely
2 unlikely in view of our own information regarding the
3 materials problem that the department can get a solid
4 written commitment.

5 "6. The State Highway Engineer advised that
6 even if the contract was awarded to the low bidder,
7 it would be necessary to process a change of plan to
8 alter the time schedule, since it is now impossible
9 to handle it according to the strict contract language."

10 You were aware of those six reasons?

11 A Yes.

12 Q And on the basis of those six reasons, you
13 concurred in the recommendation to call for rebids?

14 A Orally concurred.

15 Q And I assume you knew both Mullen and
16 Schuyler very well from operating with them?

17 A Yes.

18 Q And you had confidence in them?

19 A Yes, very much so.

20 Q Did you believe that their recommendations
21 which are expressed in this memorandum were expressed
22 in good faith? A Yes.

23 Q And you relied on them in reaching your
24 decision to reject all of the bids?

25 A Yes, I did.

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[A short recess was taken.]

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1 (After recess.)

2 BY MR. FRANCIS:

3 Q May I go back for just one minute to the time
4 prior to your receipt of the October 8th letter from Mr.
5 Sherwin.

6 Before that time had you voiced any concern
7 about Centrum's ability to do the job and to produce
8 asphalt, the necessary asphalt supply and its ability
9 to complete on schedule? A No, not with
10 respect to Centrum. I had voiced concern about the
11 ability of any and all contractors.

12 Q And that was after the bids had been opened
13 but before -- A I don't recall,
14 but there was a general concern at that time and I had
15 alerted the staff to the need to be certain that any
16 successful contractor could provide guarantees of materials.

17 Q I see. To come back, now, into the continuity
18 we've been trying to follow, after you concurred orally
19 in Mullen's recommendation to reject all of these bids,
20 there was a press release prepared, was there?

21 A I understood that there was. I was out of the office
22 a great deal at that time on various commitments, and I
23 understood that a press release was prepared.

24 Q Had you seen it before it was released?

25 A No, I had not.

1 Q Had Mr. Mullen talked with you about it over
2 the telephone? A No. I understood he

3 was preparing it, but I had not seen it.

4 Q You have seen it since?

5 A Yes, I have seen it since.

6 Q And does it or does it not contain substantially
7 the contents of his October 26th memorandum to you that
8 we went over a while ago?

9 A Yes, it does.

10 Q Do you know whether that was actually released?

11 A It was released in part by telephone messages to some
12 of the news media in the area of the job up in Warren
13 County, but it was not released generally -- had not yet
14 been released generally as a normal public release.

15 Q There is a memorandum of Mr. Biederman's,
16 dated October 26th, referring to the Sherwin request and
17 stating that his suggestion that the matter be discussed
18 at the meeting the next day, October 27th, at the
19 Governor's Office, and the statement that he did not attend
20 any such meeting. Was there any such meeting held?

21 A I don't recall any such meeting.

22 Q If there had been any such meeting and this
23 affair was discussed, you probably would have remembered,
24 would you? A Yes.

25 Q Do you remember, was the meeting that he talked

1 about in that memorandum a regular routine meeting?

2 A I don't recall such a meeting or the subject of the
3 meeting.

4 Q I see. Now, after the press release had been
5 prepared and you had concurred orally in Mullen's
6 recommendation, was any formal action taken immediately
7 on the recommendation? A Well,
8 preparations for formal action were taken. There is a
9 process, which is known as a Commission Action, which
10 requires the review and signature of various key staff
11 members, including, finally, the State Highway Engineer
12 and the Assistant Commissioner for Highways.

13 Q And that was not done immediately, was it?

14 A No.

15 Q After your approval of the recommendation did
16 you go any further with an inquiry about it before you
17 gave final approval to rejection of the bids?

18 A As I recall, I asked whether -- again, whether they
19 were convinced that this was the proper action.

20 Q And to whom did you put that inquiry?

21 A To Mr. Mullen and to Mr. Schuyler, I believe.

22 Q And that conversation or request, I assume,
23 took place sometime between October 26th, the date of
24 Mullen's recommendation, and November the 7th, November 2nd,
25 rather, when you had a conversation, telephone conversation,

1 I think you said? A Yes.

2 Q With Biederman? A Yes.

3 Q And changed your mind about the recommendation?

4 A Yes.

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Q Did you talk to Schuyler again after you asked him to--withdraw that for the moment.

Do you remember the terms of your request to Schuyler to look into it again?

A No, I don't.

Q For example, do you remember that you said to Schuyler that you reviewed the matter with him again and suggested that for the purpose of firming up the fact: that there was serious doubt whether Centrum could perform; do you remember if that was substantially your language to Schuyler?

A Yes, it probably was.

Q In other words, you wanted to be doubly certain before you took the final action?

A That is correct.

Q That his recommendation was a sound one?

A Well, I think that the principal in the Centrum Construction Company had come in, I believe, and met with certain members of the Department after the indication was made that the bids would be rejected, and I wanted to find out what the results of that meeting might have been.

Q Well, did Schuyler come back to you then, after your instruction to him following the October 26th recommendation?

A Yes, I--either directly or

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1 through Mr. Mullen.

2 Q Well, what was it? Did he indicate any
3 change of view in the staff about Centrum's ability to
4 perform as the result of this further inquiry?

5 A Yes. It was my understanding that the regional
6 engineer, a Mr. Englishman, had had further contact
7 with the contractor and had become convinced that he could
8 perform the job and had communicated that view to the
9 engineering staff.

10 Q During the period between October 20--well,
11 let me withdraw that for the moment.

12 Did you know that on October 20th, Mr. Hale,
13 the president of Centrum, had come in to see Mr. Biederman?

14 A I subsequently learned that, but I did not know it
15 at the time.

16 Q Yes. Well, sometime after the 20th when Hale
17 came in and prior to the 26th when Mullen made his
18 recommendation, did you talk to Biederman about it?

19 A Yes, I believe I did.

20 Q At that conference with Biederman did you
21 tell him that you were going to ignore Sherwin's request
22 and award the contract to Centrum? Now, this, to
23 refresh your recollection is between--

24 A No.

25 Q --the 20th when Hale came in and the 26th when

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1 you got Biederman's--got Mullen's recommendation to
2 reject.

3 A No, I believe that the substance of that conversation
4 was that we would expect to reject the bids because of
5 Centrum's failure to satisfy the Department that it
6 could perform the job according to schedule.

7 Q Then it is not your recollection then that
8 in that first conversation with Biederman before you
9 got the recommendation from Mullen, that you told
10 him that you were not going to grant Sherwin's request
11 and that you did intend to award the contract to the
12 low bidder, Centrum?

13 A That--my recollection is that we at that time
14 indicated the rejection. Shortly after the conversation
15 with Mr. Sherwin, I believe, -- was it the 13th of
16 October? --I had indicated my position that if we had
17 satisfactory assurances, we intended to award the
18 contract to Centrum, but we were looking into the
19 contractor's ability to supply the material.

20 Q By the way, when you talked with Biederman
21 and after he told you in that conversation that Hale
22 had been in to see him, did you know that Hale had
23 been Biederman's client?

24 A No, I did not.

25 Q Can you say with certainty, or with some

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1 definiteness, that Biederman did not tell you that Hale
2 had been his client?

3 A I knew of no activities of Mr. Biederman outside
4 of the normal responsibilities within the Department.

5 Q Well, I gather from that that you did not
6 know that at the time when Biederman came in to see you
7 about his conversation with Hale, you did not know
8 that either Centrum or Hale owed Biederman a balance of
9 a bill for legal services rendered?

10 A I certainly did not.

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1 Q Do you recall in the memorandum of Mr.
2 Biederman's of October 30, 1970, addressed to you? I
3 show you a memorandum from David A. Biederman to
4 Commissioner Kohl, dated October 30. Will you look at
5 it for a minute to kind of refresh your recollection
6 about it.

A Yes, I recall this, yes.

7 Q Do you remember when you received this
8 memorandum whether there were any notes on the upper right-
9 hand corner about copies to anyone?

10 A No, I don't recall.

11 Q Did you keep a copy of that in your file, do
12 you remember?

A Yes, presumably all
13 of these communications ultimately went into the files.

14 Q Did someone ever pick up your copy from your
15 file?

A I don't know.

16 Q When did you first see this statement of
17 October 30th?

A I don't recall. I
18 had a flare-up with this infection that had been bothering
19 my ear and I had been sent home by the doctor and was
20 under treatment for several days. It was about that
21 time.

22 Q When you had this flare-up, I think you were
23 in the office, were you?

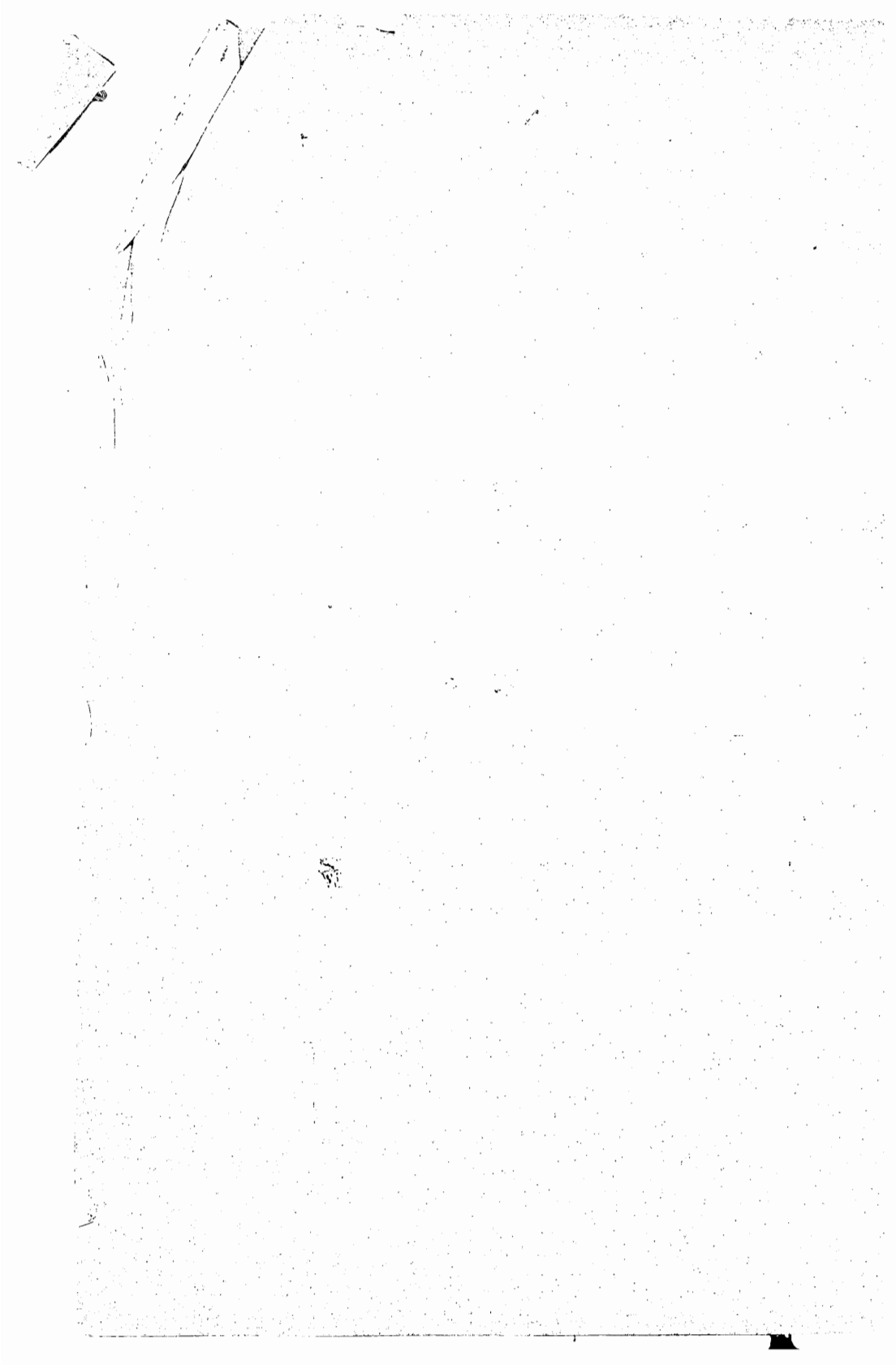
A Yes.

24 Q Was Biederman present when you had it?

25 A I think he came in. General concern among several of

Correction for Page 84 of Attorney General's Office
Investigation Report by the N.J. State Commission of
Investigation:

The date in line seven after the first
paragraph indentation on this page should read
October 21, 1970.



1 the staff. His office was in the immediate vicinity.

2 I don't recall the detail.

3 Q Well, did your flare-up occur after he showed
4 you this October 30, 1970 memorandum?

5 A I don't recall.

6 Q Do you remember whether you saw this, actually
7 saw the memorandum and read it, prior to the time you
8 came back to the office on Monday, November 2nd?

9 A I don't believe that I did. I do recall talking
10 with Biederman on the telephone and gaining the substance
11 of this memorandum from the conversation.

12 Q Well, is that your best recollection now?

13 A Yes.

14 Q That he talked to you on the phone. Were you
15 in the office then or had you gone home?

16 A No, I had gone home.

17 Q And it's now your recollection that he did
18 not come over on the 30th and hand you this and talk to
19 you and after talking to you you got sick and had to go
20 home?

21 A I don't recall the
22 timing.

23 Q But is it your recollection now that the first
24 time he talked with you about the substance of this October
25 30th memorandum was when you were at home and that was done
on the telephone?

26 A Yes.

1 Q And then you did not see the memorandum until
2 you came back on Monday, November 2nd?

3 A I think that's the timing.

4 Q Well, during the time that you were home,
5 October 30th, you remember, was a Friday?

6 A Yes.

7 Q And then you came back on Monday?

8 A It was either on Monday -- I believe it was on the
9 4th --

10 Q The day before Election Day?

11 A I'm not sure. A little hazy as to the schedule at
12 that point.

13 Q Well, let's see now. When you went home on
14 Friday, on Monday, the 2nd of November --

15 A Yes.

16 Q -- you had a conversation with Biederman, did
17 you not? A Yes.

18 Q Now, between Friday, the 30th and the 2nd and
19 before you had this conversation with Biederman, had you
20 talked to Schuyler again? A Yes, I

21 recall talking with Schuyler in the corridor to my office
22 that morning of the 30th.

23 Q And did you talk to him again on the phone or
24 otherwise or on Monday morning of the 2nd before you talked
25 to Biederman? A I believe I talked to Mr.

1 Mullen, not to Schuyler.

2 Q Well, in that conversation with either Mullen
3 or Schuyler, or both perhaps, had you reached any decision
4 with respect to the October 26th --

5 A Yes, I had.

6 Q -- recommendation?

7 A I advised Mr. Mullen that I wanted to reverse that
8 decision; that I was convinced that Centrum could do the
9 job, and that we would suffer even further delay and run
10 the risk of higher prices if we were to reject all the bids
11 and call for new submissions.

12 Q Well, now, I would like to have you refresh
13 your recollection, if you can, or probe into your recollection
14 and try to remember if you, on Monday, November 2nd, had
15 talked to Schuyler in the -- oh, I beg your pardon.

16 In your office on the day you had the upset,
17 you had talked to Schuyler before talking to Biederman
18 on the telephone? A That is my
19 recollection.

20 Q And did you have a recommendation from Schuyler
21 at that time different from the recommendation that Mullen
22 had made and that you had concurred in earlier?

23 A Yes. I was apprised of Mr. Englishman's view that
24 the contractor did have a firm source of supply.

25

4G-1

1 Q And then on Monday, November 2nd, after you
2 had talked to Schuyler and had learned about Englishman's
3 recommendation, did you talk to Biederman?

4 A Yes, I believe I did.

5 Q And what, if anything, did you tell him about
6 the new recommendation from Schuyler?

7 A I told him that we were going ahead; I had ordered
8 the award of the contract; and, further, in view of his
9 expressed concern about the improprieties that might
10 have been read into the request of the Secretary of
11 State, that this was a matter that should be discussed
12 with the Attorney General.

13 Q Did Biederman tell you that prior to that
14 time the Attorney General had told him to come over
15 and tell you to talk to Sherwin and tell him to stay
16 out of your department and not to interfere with the
17 bidding process in your department?

18 A I believe it was in this conversation on the
19 2nd.

20 Q It was not before that? A I don't
21 recall it before that. And it was at that time, I
22 believe, that I requested Mr. Biederman to discuss the
23 matter with Judge Garven, the Governor's counsel,
24 because this was apparently a matter of legal opinion
25 and one in which I felt unqualified to elaborate.

4G-2

1 Q What can you say, if anything, about the
2 nature of Biederman's attitude toward the change of
3 your point of view from Mullen's recommendation?

4 A He regarded it as the right thing to do, as I
5 recall.

6 Q Was he insistent about your changing it?
7 Was there any--can you put it in terms of intimidation
8 or threatening to you?

9 A No. He did stress the fact that he felt that this,
10 if we were to follow through with the rejection of the
11 bids, that this could be construed as interference with
12 the bidding process and could be a serious--could develop
13 into a serious matter.

14 Q And did you tell him at that time that you
15 had told Schuyler that the Department should go ahead
16 and award the contract and get the job done?

17 A I believe that I did.

18 Q And you knew that Biederman had, on November
19 4th, prepared a memorandum, too, which he sent to Mullen
20 telling him to reverse the situation and telling him--

21 A Yes.

22 Q --to prepare to award the contract to Centrum?

23 A Yes. I had been out of the office and I asked
24 him to advise Mullen. I could not reach him at the phone
25 at that particular instant, I believe.

4G-3

1 Q I show you a memorandum of November 4th
2 from Biederman to Mullen, copy to you, and ask you if
3 that's the memorandum we're talking about.

4 A Yes, it is.

5 Q Now, this memorandum says that
6 "The Commissioner discussed the matter with me on Monday,
7 November 2nd, and due to his illness he asked me to confirm
8 his decision"?

9 A Yes.

10 Q So that when Biederman talked to you on
11 Monday, November 2nd, you were still home, I take it?

12 A Yes, I believe that.

13 Q And in that conversation you told him
14 that on the basis of recommendations in your Department
15 you were going to reverse your decision?

16 A On the basis of further information.

17 Q And did you tell him to notify your people?

18 A Yes, I asked him to because time was of the
19 essence.

20 Q At that time was it, as this memorandum
21 suggests, your view that some progress in building the
22 road is better than no progress since the Department
23 made a public commitment to begin this project in
24 September and, therefore, you felt that the commitment
25 ought to be fulfilled regardless of the objections that

4G-4 1 Mullen had raised in his--

2 A Yes. I felt there was reasonable prospect for
3 completing it on schedule.

4 MR. FRANCIS: Will you mark this November
5 4th memorandum.

6 [Photocopy of two-page memorandum from Mr.
7 Biederman to Mr. Mullen, dated November 4,
8 1970, received and marked Exhibit C-7.]

9 MR. FRANCIS: I think I overlooked marking
10 the October 30th memorandum. May we have that
11 marked.

12 [Photocopy of memorandum, dated October 30,
13 1970, received and marked Exhibit C-8.]

14 [Whereupon, a luncheon recess was taken.]

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lHegl 1 J O H N C. K O H L, resumed, and testified further
2 as follows:

3 EXAMINATION BY MR. FRANCIS:

4 Q I think just before we recessed that you told
5 us that on the telephone conversation with Biederman
6 on November 2nd you told him to discuss the matter with
7 Judge Garven?

8 A Yes.

9 Q Now, in that connection, I show you a
10 memorandum dated October 29, 1970 on the stationery
11 of the Secretary of State, directed to you. Do you
12 remember that memorandum? A Yes, I do.

13 MR. FRANCIS: Will you mark it, please.

14 [Memorandum dated October 29, 1970, received
15 and marked as Exhibit C-9 in evidence.]

16 Q By the way, do you know whether Biederman
17 did talk to Judge Garven, as you suggested?

18 A I believe he did.

19 Q How did you find that out?

20 A From Biederman.

21 Q And memorandum which we just marked C-9
22 has some handwriting on the bottom of it, "Biederman
23 discussed with Garven 11/4."

24 Whose handwriting is that?

25 A That's mine.

lHeg2

1 Q And below that, "Garven to explain to Sherwin."
2 Is that also your handwriting?

3 A Yes.

4 Q How does this happen to be on this Sherwin
5 memorandum of October 29? Do you remember?

6 A I believe that was on top of the pile of papers
7 with respect to this particular contract.

8 Q In other words, it was pure coincidence that
9 your note was made on that? A Yes, pure
10 coincidence. It had no bearing on the particular
11 subject matter of that. I think that was on top of the
12 pile.

13 Q It has more relevance, I suppose, to this
14 sloppy desk that you keep that you were talking about
15 earlier? A Right.

16 Q Well, I just want to straighten this out,
17 if possible.

18 This memorandum we have talked about, marked
19 C-9, from Sherwin to you, refers to the memo of October
20 5. The memo it refers to of October 5 was attached to
21 that memorandum from Sherwin to you?

22 A Yes.

23 Q And it's still attached under a marking of
24 C-9, which we have just marked? A Right.

25 Q And the memorandum of October 5 from you to

1H-3 1 Mr. Sherwin informs him that a meeting is being set up
2 to discuss the problems of Manzo Contracting Company
3 and says, "You have previously submitted to me a background
4 memorandum in this matter dated July 20, 1970 from
5 yourself to Treasurer McCrane."

6 Do either of those two documents have any
7 bearing whatever on the Route 46 property?

8 A No, none at all.

9 Q This October 5 memorandum of yours relates
10 to the problems of Manzo that are referred to generally
11 in the July 20 memorandum?

12 A Yes, the Route 22 contract.

13 Q And is there any doubt in your mind at all
14 about that? A No.

15 Q Now, after Biederman's memorandum of
16 October 4th to Mullen and to Schuyler telling them that
17 he had talked with you and you had changed your mind
18 in proceeding to award the contract to Centrum, a
19 formal action was then taken, was it, awarding the
20 contract to Centrum? A Yes.

21 Q I show you what appears to be a form of
22 award of contract. Is that generally the form that was
23 filled out? A Yes. That is what is known
24 as a commission action form, and with the certifications
25 of the staff that review the contracts, and finally for

1H-4 1 my approval.

2 MR. FRANCIS: May we mark this.

3 [Department Action Slip received and marked
4 as Exhibit C-10 in evidence.]

5 Q This form of award of contract, which has
6 now been marked C-10, I notice is signed at the bottom
7 by Mr. Schuyler, and his date is November 5, 1970.

8 That's the first time that Mr. Schuyler
9 ever signed a form of this kind recommending the
10 award of the contract to Centrum? A To my
11 knowledge.

12 Q And this was really the final action?

13 A Right.

14 Q The signature by Schuyler resulted from your
15 instructions to go ahead and award to Centrum?

16 A Right.

17 Q As of November 4th, as far as you were
18 concerned, it was over and done, the award had been
19 directed to be given to Centrum?

20 A Right.

21 Q And this signature of Mr. Schuyler on
22 November 5 completed it formally? A It was part
23 of the formal process.

24 Q So after this memorandum of the 5th with
25 Schuyler's signature on it, that ended the 46 matter,

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did it?

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A Except for the--

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Q Except for the doing of the work?

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A Yes.

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Q And Centrum went ahead and did the work?

6

A And completed it ahead of schedule.

7

Q And you are not in a position to tell us

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the total cost? A No, I am not.

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Q And by total cost, I mean the total payment

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to Centrum for the job.

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A No.

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1 Q Did you ever again hear from Sherwin about
2 the matter? A Never at all.

3 Q Did you instruct anybody to call him and tell
4 him of your final decision, if you remember?

5 A I don't recall. I think that it was a part of the
6 discussion that I had asked Mr. Biederman to have with
7 Mr. Garven, Judge Garven, to acquaint him with our
8 action.

9 Q In other words, you had directed the contract
10 to go to Centrum and that as far as his intervention,
11 if you want to call it that, is concerned, it was at an
12 end? A Yes.

13 Q And that you were going to disregard his
14 intervention and award the contract to Centrum?

15 A That's correct.

16 Q Now, after that Mr. Biederman remained in your
17 department for quite a while, did he not?

18 A Yes, he did.

19 Q Do you remember when he resigned?

20 A I think it was December of '71.

21 Q Does the date of November 4, 1971, as the
22 actual date refresh your recollection?

23 A I don't recall the exact date. He was an appointee
24 of the Attorney General and assigned to the department,
25 so we did not have any direct participation in his

1 employment or resignation.

2 Q Well, in any event, you remember that sometime
3 toward the end of the year of '71 he left your department?

4 A Yes. It was late in '71.

5 Q Did you know that when he left he took a number
6 of memoranda along with him?

7 A I understand he had taken considerable material,
8 which I assumed had been his personal files, but I --

9 Q Were you aware that he came into your office
10 and took the October 8 letter that you received from
11 Sherwin from your file? A No.

12 Q Did he ever tell you he had taken it?

13 A I don't recall his discussing any of the material that
14 he took.

15 Q Did you ever give it to him?

16 A I probably showed it to him at the time of the
17 discussions of the contract award back in October of 1970.

18 Q Do you remember he saw Hale of Centrum the
19 first time on October 20? I think we agreed earlier that
20 he came in to see you perhaps the next day after that.

21 Do you recall that you showed him the October 8th letter
22 that day? A I don't recall when.

23 We have said earlier his office was immediately adjacent
24 practically to mine and my door was always open for staff
25 and there were frequent discussions and we probably talked

1 about it several times.

2 Q When you talked about it several times, you
3 don't remember that the first time was after October 20
4 when he came to tell you that Hale had been to see him
5 about the Centrum contract?

6 A No. I think we had talked about the problems with
7 the contract earlier because he had been very active in
8 the affairs of the department and had, so far as I was
9 concerned, given good advice in many matters. I relied
10 on Mr. Biederman for a great deal of information. I was
11 relatively new yet at that time and lacked background in
12 a great many of the departmental activities.

13 Q While Biederman was in your department, did
14 you have a hearing respecting the disqualification of
15 the Mal-Bros., a construction company, as a bidder?

16 A Yes, we did.

17 Q And who conducted the hearing for you?

18 A Mr. Biederman represented the department in the ques-
19 tioning.

20 Q And at the conclusion of that hearing what
21 was your determination and order with respect to Mal-Bros?

22 A Recommended disqualification.

23 Q And was there a specific ground?

24 A Yes. The moral integrity that stemmed from the
25 involvement of this contractor in the so-called Newark

1 cases.

2 Q In other words, you ordered that Mal-Bros.
3 be disqualified because, in your judgment, after hearing
4 the testimony the company lacked the moral integrity,
5 that you felt was necessary to qualify as a bidder on public
6 contracts? A The principal officers.

7 Q And you knew that after that it was appealed
8 to the Appellate Division from your order?

9 A Yes.

10 Q And who handled that for the State?

11 A Mr. Biederman, I believe, as far as the department
12 was concerned.

13 Q Just to make the record clear as to that,
14 I show you the Mal-Bros. contract against Kohl, appearing
15 in 113 New Jersey Superior, page 144, Opinion of the
16 Appellate Division.

17 Who appears as argued the cause for your
18 department? A Mr. David A. Biederman.

19 Q Do you remember that the Appellate Division
20 in its Opinion which came to you said that, "We conclude
21 that there was substantial competent and relative evidence
22 in the record to support the Commissioner's finding of
23 lack of moral integrity on the part of Mal"?

24 A Yes, I do.

25 Q Now, after Mr. Biederman left your department,

1 did you receive letters from him on behalf of Mal-Bros.
2 stating that -- strike that for the minute.

3 After Mr. Biederman left the department, were
4 you aware that he formed a law firm that was known as
5 Biederman & Mulligan?

6 A Yes, I was.

7 Q And in March of 1972 did you receive a letter
8 from Mr. Biederman to that effect that he represented the
9 Crescent Construction Company, which was the Mal-Bros.
10 successor, successor of Mal-Bros., asking for a hearing
11 seeking the reinstatement of Mal-Bros. as a qualified
12 bidder?

A Yes, I do.

13 Q I show you the letter dated March 22, addressed
14 to you, and signed David A. Biederman.

15 A Yes, I recognize the letter.

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1 Q You remember the letter, do you, without
2 reading it?

3 A In general, yes.

4 Q Without reading it all, would it be fair to
5 describe it as a brief to you in behalf of Mal Bros. for
6 reinstatement as a bidder?

7 A Yes, it was pleading their cause.

8 THE CHAIRMAN: Would you like that marked,
9 Mr. Francis?

10 MR. FRANCIS: Yes, I'm going to mark it.

11 Will you mark just the letter, please,
12 because it's attached to another document.

13 [Photocopy of letter from Mr. Biederman to
14 Commissioner Kohl, dated March 22, 1972,
15 received and marked Exhibit C-11.]

16 Q Did you, when you received this letter,
17 Commissioner, note that it was marked "Copy to Judge
18 Garven"?

19 A I don't recall.

20 Q Subsequent to the receipt of that letter,
21 did you have another one from Mr. Biederman about the
22 hearing?

23 A I communicated with Mr. Nardelli,
24 who had succeeded Mr. Biederman as Deputy Attorney
25 General for the Department, and we had concluded that
in fairness to Mal Bros., it would be desirable to hold

I-2

1 a rehearing so that -- or hold a hearing for reinstatement,
2 I think is the proper, and there was some communications
3 with respect to arrangements for that hearing.

4 Q During the course of those arrangements,
5 did you talk to Mr. Biederman?

6 A I believe that he came into the office and talked
7 to me and also talked to Mr. Nardelli, if I'm not
8 mistaken.

9 Q Did you have any discussion with him
10 before the actual hearing date as to whether it was
11 proper for him to appear for Mal Bros., having been
12 in your department?

13 A I don't recall any discussion with Mr. Biederman.
14 We did discuss between Mr. Nardelli and myself, and I
15 believe that Mr. Nardelli communicated to Mr. Biederman
16 that it would be inappropriate for him to represent his
17 client in this instance.

18 Q And later, on March 27th, did you receive
19 another letter from him?

20 A Yes, indicating that they were substituting counsel.

21 Q And the letter also indicates that his
22 representation may constitute conflict of interest?

23 A Yes.

24 Q Here again, do you notice on the bottom of
25 that a copy to Pierre Garven and copy to Alfred Nardelli?

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1 A Yes.

2 Q Do you have any recollection as to whether
3 that was on there when you received it or not?

4 A I presume that it was but I--

5 Q You have no independent recollection beyond
6 the letter?

7 A No.

8 MR. FRANCIS: Will you mark that letter,
9 also, please.

10 [Photocopy of letter from Mr. Biederman to
11 Commissioner Kohl, dated March 27, 1972,
12 received and marked Exhibit C-12.]

13 Q You held a hearing after that, did you?

14 A Yes, we did.

15 Q And was Mr. Biederman there? A Mr.
16 Biederman arrived during the course of the hearing.

17 Q And what kind of a hearing room do you have,
18 one like this or--

19 A Yes, very much like this with a large conference
20 table, and those directly involved in the hearing
21 are seated around the table.

22 Q Where did Mr. Biederman sit?

23 A Mr. Biederman sat at a chair along the wall, as
24 I recall.

25 Q The attorney who was substituted for him

I-4

1 was named Okin, was it?

2 A Yes.

3 Q How close to Mr. Okin did he sit?

4 A I don't recall, but I don't think they were
5 adjacent. They were across the room, as I recall. He'd
6 come in late and, I believe, was near the entrance.

7 Q Well, remember when you and I talked
8 about this before?

9 A Yes.

10 Q And we made a stenographic record?

11 A Yes.

12 Q I asked you how close Okin and Biederman
13 sat and you said, "Well, across the table," and I said,
14 "Well, seven or eight feet?" and you said, "Well, not
15 that much." What do you think about that as your
16 recollection?

17 A Well, probably be the distance from here across
18 the table to about the position of the table over there,
19 behind those that were seated at the table.

20 Q Well, a very good engineer such as the kind
21 I think you are would not estimate the distance between
22 us as only seven or eight feet, would he?

23 A No, I meant this side of the table.

24 Q Oh, that side?

25 A Yes.

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Q That distance? A Yes, just behind the chairs.

Q Three and a half or four feet?

A Just behind the chairs that were lined up at the table.

Q Did you notice any activity during the hearing on the part of Mr. Biederman before it concluded?

A Toward the close of the hearing, at the suggestion of our attorney, I recognized his presence for the record and specifically asked him whether he was--I noted that he had been involved representing the Department in the prior hearing and requested that he state the reason for his presence there.

1 Q I don't think that we fixed the date of that,
2 this hearing we're talking about now, the hearing for
3 removal of the disqualification. Can you tell us when
4 that was? A I'm not precisely sure. I
5 believe it was early April.

6 Q Correct. I think that the last time we talked
7 about it we had a record that showed the hearing was on
8 April 5th, 1972. Does that square with your recollection?

9 A Yes, that would.

10 Q You have told us what you said to Mr. Biederman
11 at the close of the hearing. Did you say to him, "Would
12 you like to make some comment about this case?"

13 A No. I believe I asked him to indicate whether he
14 was there as a participant or as an interested observer.

15 Q Let me show you this stenographic record
16 of what took place. On page 57 of that record do you
17 notice your comment? Is that what you said?

18 A Yes, that is correct. I said, "Are you here as an
19 interested observer or in some other capacity?"

20 Q And then he said.

21 A "I'm here as an interested observer, but I would like
22 to make a comment for the record."

23 Q All right. Now, you didn't ask him for a
24 comment for the record, did you?

25 A No, I did not.

1 Q And did he make an extended comment for the
2 record?

A Yes, he did. We were quite
3 surprised that he did so, but he did.

4 Q Well, could you describe the nature of that
5 comment?

A It was almost a character
6 reference for the Appellant.

7 Q Would you say that it represented an argument,
8 also, in their behalf?

A Yes, I would
9 say it was a pleading.

10 Q By the way, during the course of his comment
11 did he make any statement about Herbert Stern, the United
12 States Attorney, the United States Attorney for New
13 Jersey, and his connection with the Malanga case and use
14 it in any way as a fact to influence you in Mal-Bros.?

15 favor? A Well, there was some reference
16 to it.

17 Q Using this record to refresh your recollection,
18 will you tell us if you can recall, using the record,
19 what it was he said about Mr. Stern?

20 A Yes. I believe that his -- what he said, that
21 suggesting that I call Mr. Stern and find out for myself
22 whether the District Attorney's Office had given the Malangas
23 a clean bill of health as Mr. Biederman had claimed.

24 MR. FRANCIS: May we mark this stenographic
25 record.

I2-3

1 (Photocopy of stenographic record of Department of
2 Transportation hearing received and marked Exhibit C-13.)

3 Q Shortly after that hearing were you made aware
4 that a complaint had been filed with the Union County
5 Ethics Committee against Mr. Biederman arising out of his
6 participation in the Mal-Bros. case?

7 A Yes, I was.

8 Q How did you find that out?

9 A Mr. Biederman came, well, literally barging into my
10 office one morning and storming about it and advising,
11 the first word I had of it.

12 Q And was there any comment at that time with
13 respect to the Attorney General or Mr. Nardelli?

14 A Not with respect to Mr. Nardelli, but with respect to
15 the Attorney General, whom I understood had filed the
16 complaint and Mr. Biederman had indicated that he was going
17 to take some action, in substance, to get even. He felt
18 it was a highly unjustified complaint.

19 Q I didn't ask you this, but to come back, you
20 didn't reinstate Mal-Bros. after that hearing?

21 A No, we did not.

22 Q Now, how long was that, would you say, after
23 the end of the hearing in the Mal-Bros. case?

24 A Oh, a week or ten days. It was along toward the middle
25 of April, as I recall.

1 Q Well, when he came in, I gather from what you said
2 that he had indicated that the complaint to the Ethics
3 Committee had just been filed a few days before?

4 A Yes. I know that he came in very -- it was even
5 before office hours. Came storming right on in, right
6 past the secretaries and closed the door and he was
7 furious.

8 Q Did you see him after that at another place,
9 another public building? A Yes.

10 Q When and where was that?

11 A I saw him in the cafeteria in the State House some
12 weeks after that.

13 Q Did you have an appointment with him there?

14 A No. I was there purely by accident because a meeting
15 had lasted a long time and it was late in the lunch hour
16 and I had gone across there to get a bite and he happened
17 to be there and came across the room.

18 Q Was there any discussion at that time about
19 Mal-Bros.?

20 A Not particularly about
21 Mal-Bros., but about his predicament and the fact that he
22 was still trying to find some way to get himself cleared of
this and get even with people. He was --

23 Q Well, did he mention any particular people or
24 person he wanted to get even with?

25 A Well, primarily the Attorney General.

1 Q Can you probe your recollection a little more
2 and tell us whether when he came over, among other things
3 he asked for consideration for the Mal-Bros.?

4 A He asked what we were going to do with it.

5 Q Well, was it in terms of simply an inquiry or
6 did he by his language promote the Mal-Bros.' cause?

7 A Well, I don't recall promotion, but his position of
8 favoring Mal-Bros. certainly was evident..

9 Q I see. I just want to look, if you don't
10 mind, at the statement you made when you were here before
11 about that to see if my recollection and yours -- read this
12 off the record for a minute.

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

14 Q May I call your attention to page 59 of the
15 statement at the bottom. Does this refresh your recol-
16 lection: "He was there with someone else and came across
17 and commented a little about hoping we would see fit to
18 reinstate Mal-Bros. and so on and that he was still mad
19 at the Attorney General."?

20 A Yes, that's --

21 Q Does that refresh your recollection?

22 A Yes.

23 Q That's the substance of the conversation that
24 you had at --

25 A Yes.

1 Q -- that day with Mr. Biederman?

2 I think that's about all I'll want to bother
3 you with. Is there anything that I did not permit you to
4 say that you would like to say?

5 A No, I think the whole framework of the situation in
6 October of 1970 was one where the Department recognized a
7 serious Highway situation; was anxious to get on with the
8 job and was doing its level best to get a contract that
9 would meet the need, and the request from Mr. Sherwin would,
10 as it came to me, would have -- was treated just as any
11 other request from an interested citizen or official
12 raising a question about the size of the bid over the
13 engineer's estimate, and we wanted to make double sure,
14 as I think I used the phrase before, that we had a contractor
15 who could perform the work within the required time
16 schedule.

17 Q And then when you had the recommendation from
18 Mullen to reject all of the bids and you gave consideration
19 to all of the facts given to you by Schuyler and by Mullen,
20 did you feel that you then had reasonable ground on which
21 to reject all of the bids if you reached that decision?

22 A Yes, I did.
23
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1 Q And was there any doubt in your mind then
2 that, if you had stood on your rejection of those bids,
3 that you could have sustained your action as a reasonable
4 action?

5 A Yes, that was my understanding and feeling.

6 Q And then when you asked Schuyler later to
7 firm it up a little bit more because of your conversation
8 with Mr. Biederman and you changed your mind, was the
9 fact that you wanted to get the work going, even if you
10 had to take some chance as to whether it would be
11 considered in time, an influential factor in making you
12 change your mind?

13 A That was the dominant factor.

14 Q One other thing that I don't know whether I
15 asked you this or not. Did Mr. Sherwin's request
16 to you in any way influence your judgment one way or
17 the other as to whether you should accept or reject
18 the bids? A No, it did not. I didn't like
19 the request. I felt that it was improper and I did not
20 feel that it should have been made. But we attempted
21 to make our best judgment on the facts at hand and not
22 on the basis of any such request.

23 MR. FRANCIS: All right. I guess that's
24 all.

25 THE CHAIRMAN: Should we take a two-minute

break?

MR. FRANCIS: All right, fine.

[Whereupon, a recess is taken.]

Kohl -

1 J O H N C. K O H L, resumed the stand, and
2 testified further as follows:
3

4 EXAMINATION BY MR. FRANCIS:

5 Q Commissioner Kohl, one thing I asked you
6 about when you and I talked about this before and then
7 I overlooked today. You will remember you told us that
8 when you got the message from Mr. Sherwin on October 8th,
9 the next day, October 9th, you were out in the field
10 and you called and you talked to your secretary, was
11 it?

12 A I don't recall. I tried to get Mr. Mullen, but
13 I left word for him.

14 Q I show you a memorandum that has your
15 initials on it, dated October 9. Do you recognize that?

16 A I do. Subsequently, yes, that was apparently the
17 interpretation of my telephone instruction.

18 Q In other words, the language--the instruction
19 appearing on this paper is not your language?

20 A No.

21 Q What makes you think it's not your language?

22 A Well, the term "freeze everything" is not a
23 characteristic phrase that I use.

24 MR. FRANCIS: May we mark this.

25 [Memorandum, dated October 9, 1970, received
and marked as Exhibit C-14 in evidence.]

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1 Q And I gather when you called in your telephone
2 message to either your secretary or Mr. Mullen's
3 secretary, what you said was to hold up everything
4 until we get a chance to look into this?

5 A Right.

6 Q And the language here, "Freeze everything,"
7 was not your expression?

8 A No.

9 Q One other thing. At any time between October
10 8th and November 2nd, or November 5th, when Mr. Schuyler
11 assigned the formal award of the contract to Centrum,
12 did you speak to the Attorney General personally?

13 A I don't recall any conversation with him about
14 this.

15 Q I suppose if you had a conversation with
16 him about it, you probably would have remembered it,
17 do you think?

18 A I understood that Mr. Biederman had talked with--

19 Q No. Your conversation--

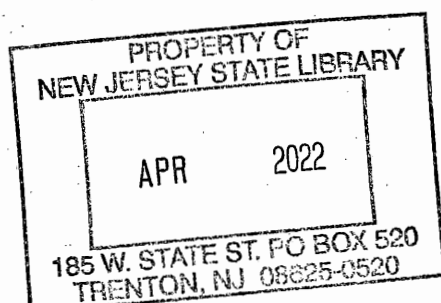
20 A --briefly with him, and the Attorney General
21 indicated that perhaps I should talk to Mr. Sherwin
22 about it.

23 Q But as far as you're concerned, you have
24 no recollection of talking to him yourself?

25 A No.

MR. FRANCIS: I guess that's all.

[Witness excused.]



1 [Russell H. Mullen enters the room.]

1J-4 2 THE CHAIRMAN: Mr. Mullen, this afternoon
3 there are two members of the State Commission
4 of Investigation sitting: Mr. Charles Bertini
5 is on my right, and my name is John McCarthy.
6 We are sitting in executive session. Mr. Francis
7 and Mr. Sapienza are handling the questioning.
8 I would ask at this time that you stand up and
9 be sworn by the Court Reporter.

10 R U S S E L L H. M U L L E N, sworn:

11
12 MR. SAPIENZA: Mr. Mullen, before we begin,
13 every witness that appears before us receives
14 certain warnings. I am going to give them to you.

15 I know you are appearing here voluntarily
16 at our request. Still, there is going to be a
17 stenographic record made of your comments. You
18 are under oath. Therefore, if you feel that your
19 answers to any of the questions posed to you might
20 tend to incriminate you, you have the right to
21 refuse to answer. Do you understand that?

22 THE WITNESS: I do.

23 MR. SAPIENZA: Anything you do say will be
24 taken down and may be used against you in a court
25 of law. Do you understand that?

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THE WITNESS: I do.

MR. SAPIENZA: You have the right to an attorney present at this hearing. I note that you do not have one. Is that by your choice?

THE WITNESS: Yes.

MR. SAPIENZA: If at any time during the questioning you would like us to stop in order that you might obtain counsel, or for any other reason, just say you would like us to stop and we will discontinue the proceedings. Do you understand that?

THE WITNESS: I do.

MR. SAPIENZA: This is an executive hearing. However, this commission has the right to make the transcript available to the public at a later time or call upon you to give the same testimony at a public hearing and request the same information. Do you understand that?

THE WITNESS: I do.

MR. SAPIENZA: We have a rule on confidentiality, that rule being that any information you may gain as a result of this private executive hearing should be held in confidence by you. Do you understand that?

THE WITNESS: I do.

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MR. SAPIENZA: Mr. Chairman.

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THE CHAIRMAN: Mr. Francis.

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1 EXAMINATION BY MR. FRANCIS:

2 Q Where do you live, Mr. Mullen?

3 A Pennington-Titusville Road, Pennington, New Jersey.

4 Q What is your present employment?

5 A I am employed as Special Assistant to the Municipal
6 Service Administrator of the City of New York.

7 Q When did you start there?

8 A I began working on a consultant basis late last
9 year and went on a full-time basis I think about the end
10 of March.

11 Q And part of that time you were with the
12 Department of Transportation of New Jersey?

13 A I was.

14 Q What was your official title at the time you
15 left? A Assistant Commissioner for
16 Highways.

17 Q And you were there for how long? How long were
18 you with the Department?

19 A From January, 1961 until February, 1971.

20 Q So that, of course, you were there during the
21 period we are concerned with primarily, from July, 1970
22 through December, 1970? A Yes.

23 Q Were you familiar with the Route 46 resurfacing
24 project in Warren County?

25 A I was.

1 Q And you were aware that an advertisement was
2 put in the paper soliciting bids for that project?

3 A Yes, sir.

4 Q And the bids were opened on September 24 of that
5 year, do you remember?

6 A Yes, sir.

7 Q Do you remember who was low?

8 A Centrum Construction I believe is the official name.

9 Q And the second one? A Manzo
10 Contracting Company.

11 Q Did you know the Centrum Construction Company
12 before that time? A No, I do not
13 believe so.

14 Q Did that company, to your knowledge, ever have
15 any substantial contract with the State before then?

16 A I wasn't aware that they had any substantial business
17 with the State under that name. At the time the bids were
18 opened I wasn't aware that they had done any business.

19 Q Did you know anything about Centrum Construction
20 Company with respect to experience as a road builder
21 or resurfacers? A Well, after the
22 bids were opened I learned that they had done business with
23 us, or the principals had done business with us under
24 another name, I believe, Halecrest.

25 Q But as far as Centrum Construction Company was

1 concerned -- A I had no personal knowledge
2 of their experience.

3 Q Do you know that Halecrest was a separate and
4 distinct corporation from Centrum?

5 A That was my understanding, yes, sir.

6 Q I gather, you were the chief administrative
7 officer in connection with the consideration of bids and
8 the award of contract, were you?

9 A Well, I think that needs a little definition, if I
10 may.

11 Normally, in fact, almost always, in a situation such
12 as an awarding of a contract for construction of part of
13 the State Highway system, all of the activity would be
14 carried on, almost all of it, by units of the organization
15 under my jurisdiction. But I did not have any kind of
16 final authority on what they did. I was sort of a
17 coordinator of those areas, engineering and right of way,
18 for the Commissioner.

19 Q Well, who was the chief highway engineer at the
20 time? A Mr. James Schuyler.

21 Q Would it be fair to say that he was the principal
22 person in engineering matters and Highway projects?

23 A Absolutely.

24 Q And you were, next to Commissioner Kohl, top
25 man in the administration of the affairs of the department,

1 and particularly with respect to road projects?

2 A Yes, sir.

3 Q Now, after bids are opened, at this time and
4 generally, was it the practice immediately to award the
5 contract to the low bidder?

6 A No. The practice was that the bids would all be
7 reviewed to determine if there were any arithmetical errors
8 or anything wrong with any of the computations or if any
9 of the bids appeared unbalanced or if there were any other
10 engineering or technical flaws in any of the material.
11 Following that, in most cases there wasn't, then a
12 recommendation would be made by the engineering side of
13 the division over the signature of the State Highway
14 Engineer and others in the organization, which, generally
15 speaking, I would initial and pass on to the Commissioner
16 for his approval.

17 Q In other words, after the bids were opened,
18 an investigation would be made as to the competency of
19 the bidder to do the job and as to whether in the language
20 of the statute he was the lowest responsible bidder?

21 A Right. Although, I believe most of the investigation
22 as to competency to perform the job and the financial
23 responsibility was performed before the bids were opened,
24 because we have a prequalification statute. Normally, a
25 bidder was assumed to be qualified.

Mullen

1 Q Well, the qualification primarily concerned
2 itself with the establishment of the financial responsi-
3 bility -- A Yes, and with equipment and
4 so forth.

5 Q With respect to equipment, and prequalification,
6 your department didn't require any specific amount of
7 equipment generally, did you?

8 A No, I don't believe so. I believe the contractor
9 had to furnish us some information on that with his
10 questionnaire.

11 Q For example, when the September 24 bid of
12 Centrum appeared, do you recall in the course of the
13 investigation that there was some question about Centrum's
14 equipment? A No, I don't recall that.

15 Q You don't remember that there was at least
16 one meeting Mr. Stelljes had and some of the other members
17 of the department had with Mr. Hale inquiring as to what
18 equipment Centrum had, whether it had adequate equipment
19 to do this job?

20 A No, I don't recall that. My recollection is that
21 we received the bids and until a period of about two weeks
22 later I was under the impression that we were making
23 arrangements to award the contract.

24 Q And you don't remember that there was any
25 inquiry at all on the subject of Centrum's equipment?

1 A I do not recall being advised that there was a
2 problem.

3 Q After the bids were opened, on October 9,
4 did you receive word, a telephone message, from Commissioner
5 Kohl to hold up further consideration of the award of the
6 contract to Centrum? A I believe I received
7 a typed note to stop all activity.

8 Q And was it your secretary who typed that
9 note, or was it Commissioner Kohl's secretary?

10 A My impression was that it came from Commissioner
11 Kohl's office and it was received in my office and my --

12 Q The reason I make that inquiry is that
13 Commissioner Kohl has indicated to us that he was out on
14 the road and he called in -- and frankly, I'm not clear
15 whether he called in to your secretary or his own -- and
16 left a message to hold up everything until he could come
17 in and look into this. A That's right.
18 The note is available somewhere.

19 Q Yes, we have marked it here already.

20 A I was under the impression that it was to his
21 secretary, who brought it in and gave it to mine.

22 Q In any event, you got the word to hold up
23 everything? A Yes.

24 Q And you did that? A Yes, sir.

25 Q After that Commissioner Kohl talked to you and

1 Mr. Schuyler about the problem, did he?

2 A Yes, he did.

3 Q And did you and he have discussion about the

4 asphalt shortage problem? A Yes, we did.

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1 Q Did you know about that prior to this
2 time prior to-- A Yes, I did.

3 Q Was there a shortage? A Well, I had
4 received information basically from the State Highway
5 Engineer there may have been one or two articles in the
6 paper--I can't recall--that there was this potential
7 of a rather widespread asphalt shortage during that
8 particular period.

9 Q And did you look into that or was that Mr.
10 Schuyler's part of this proceeding?

11 A Mr. Schuyler looked into it. I did not look into
12 it personally other than I may have had a casual
13 conversation with the gentleman who represents the
14 Associated General Contractors. I may have talked to
15 a couple of people, but I made no deliberate investigation.

16 Q Well, then, your situation is that you were
17 aware of the shortage?

18 A Yes.

19 Q But you didn't go into the specifics; you
20 relied on Mr. Schuyler for that? A That's correct.

21 Q Now, did you talk to Mr. Sherwin on the
22 telephone after you talked to Mr. Kohl?

23 A Yes, I did.

24 Q That same day or later?

25 A Well, it wasn't the day I received the stop order,

1K-2

1 which, I think, was at the tail end of the week.

2 I don't believe I talked to Mr. Sherwin until the following
3 week. Tuesday I think it was.

4 Q Yes. The letter from Mr. Sherwin to Mr. Kohl
5 was October 8th, which was a Thursday, suggesting that
6 Mr. Kohl call Mr. Sherwin on Tuesday, which he did,
7 and according to his statement to us today.

8 A Right.

9 Q After talking to Mr. Sherwin, then he talked
10 to you? A Right, and I talked to Mr. Sherwin
11 thereafter, either that day or the following day.

12 Q And did you tell him, Mr. Sherwin, that you
13 were, at Commissioner Kohl's request, looking into the
14 contract award?

15 A Well, I told Mr. Sherwin I was speaking to him
16 because I had been advised to do so by the Commissioner,
17 and I wound up the conversation by saying I would look
18 into the situation involving award of that contract.

19 Q Well, I gather that there was conversation
20 prior to this end of the conversation about the contract.

21 A Oh, yes.

22 Q Well, what was your conversation?

23 A Well, Mr. Sherwin indicated that he understood
24 we had received these bids, and that he understood they
25 were over the engineering estimate and he--the substance

1K-3

1 of the conversation was that he would prefer us to reject
2 and readvertise that contract so that the second low
3 bidder could have another opportunity to bid it, the
4 rationale for this being that we would get a lower bid.

5 Q Do you recall that he specifically used that
6 language, that you'd get a lower bid if you rebid?

7 A I don't think he specifically used that language.
8 I can't recall the exact language he used. I do believe
9 he said something to the effect that if the Manzo
10 concern had another opportunity to bid, why, they
11 would bid lower.

12 Q Well, yes. You remember testifying in
13 Freehold. A Yes, sir.

14 Q At the Sherwin case. And at that time you
15 were asked by Mr. Boylan, you will remember, "Did the
16 Secretary of State tell you why he wanted the bids
17 rejected and Manzo given another opportunity to rebid?"
18 And your answer--I'll come over so you'll be sure I'm
19 reading it correctly-- "The Secretary of State said
20 that to the best of my recollection that he felt that"--

21 A Right.

22 Q -- "we" -- it has "he" but it's obviously
23 "we"?

24 A We.

25 Q "We would get a better price and that he

Mullen

1k-4 1 would like us to consider this" --

2 A That is quite accurate.

3 Q And I'd better finish this sentence --

4 A Yes, yes.

5 Q --so nobody says I didn't finish it all.

6 "He would like us to consider this because

7 Manzo had been a good friend of theirs"?

8 A Yes, sir, that is true.

9 Q And that was the sum and substance of
10 the first conversation-- A Yes, sir.

11 Q --you had with Mr. Sherwin?

12 And you did tell Mr. Sherwin in that
13 conversation that you would check out--

14 A Right.

15 Q --the situation? A Right. If I may,
16 with a request of this kind the only possibility was,
17 the only thing to do under any of the circumstances,
18 was to determine whether or not there was a basis for
19 rejecting and readvertising, and the only possible
20 basis, which normally would not occur but did occur
21 in this particular case, was the prospect of the oil
22 shortage.

23

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2K-1 1 Q Well, in that conversation with Mr. Sherwin
2 was there anything whatever to indicate that his request
3 was other than for a political favor?

4 A No, sir.

5 Q Any doubt in your mind about that at all?

6 A No, sir.

7 Q In that conversation, or in any other one
8 that you had with him, did he ask you to do anything
9 other than look into the actual facts for the purpose
10 of rejecting all of these bids and giving Manzo another
11 opportunity to bid?

12 A Well, in the second conversation that I had with
13 Mr. Sherwin, the substance of that conversation was,
14 I indicated to him I had not received a definitive
15 report from the State Highway Engineer, but that the
16 few conversations I had with Mr. Schuyler led me to the
17 impression that there might, in fact, be a problem with
18 this oil shortage, and at that time Mr. Sherwin indicated
19 that he was aware of this. I can't recall whether he
20 said that it was himself personally, but he indicated
21 one way or another that he had been in contact with
22 the Manzo people and that they were aware of this problem
23 and they had no problem with supplying the asphalt nor
24 obtaining the asphalt supply.

25 I believe I had told him we were seeking a guarantee

Mullen

2K-2

1 from Centrum that they would be able to obtain the
2 necessary asphalt. He told me that Manzo would be able
3 to give us any kind of a guarantee that we wanted and
4 requested that we consider the possibility of disqualifying
5 Centrum on this particular bid opening and awarding the
6 contract to Manzo directly without rebidding.

7 Q Well, did you make any comment to him about
8 that suggestion?

9 A My best recollection is that I hemmed and hawed
10 and said, no, I don't think so, but of course I'll
11 look into it.

12 Q By the way-- A There was no
13 possibility of doing that whatsoever.

14 Q You think you indicated that to him?

15 A Well, I tried, but I don't know how well I succeeded.

16 Q Well, in any event, you never suggested
17 to anybody within your Department that--

18 A No, there was no possibility.

19 Q --you simply reject Centrum and give this
20 contract-- A No, there was absolutely no
21 possibility of doing that under any circumstances whatever.

22 Q In your position in the Department did you,
23 with some frequency, receive requests from outside
24 people to look into a particular matter in the Department
25 because some contractor or some citizen was not getting

2K-3 1 fair treatment?

2 A Oh, when you include citizens, I received requests
3 like that with great frequency.

4 Q And did you get requests from public
5 officials, the mayors of towns?

6 A Yes.

7 Q And Assemblymen and Senators? A Yes, I
8 got requests from municipal officials, from members of
9 the Legislature, and I would say that they were, by far,
10 the bulk of such requests that came into the Department.

11 We would get requests from the Governor's office
12 wherethey had received a letter or a complaint from
13 someone; we would get requests from members of the
14 Legislature; we would get requests from the private
15 citizens themselves.

16 Very infrequently did we get such requests from
17 members of the Governor's Cabinet. We would occasionally
18 get some from the Governor's Counsel, which he merely
19 passed on to us.

20 Q I see. And-- A The request from the
21 Secretary of State was unusual.

22 Q And when did you get requests and complaints
23 from the outside, did you always look into them?

24 A Oh, yes, sir.

25 Q And you never considered that there was

2K-4

1 any undue or improper interference because you had
2 gotten a complaint or request, did you?

3 A No. I might have considered that it was a waste
4 of my time, but I didn't consider that it was improper.

5 Q Did you and Schuyler then look into this
6 entire matter of shortage and--

7 A Yes.

8 Q --reach some conclusion about it?

9 A After talking to Mr. Sherwin the first time, I
10 advised the Commissioner that there was nothing wrong
11 with the bids as submitted, in other words, no lack of
12 documentation and no item unbalanced, all the documents
13 were in order, all the figures added up and so forth,
14 and that there was certainly no reason to feel that in
15 the bidding Manzo had been discriminated against or
16 that anyone else had had any advantage of any kind;
17 that as far as I knew there was no basis for no awarding
18 the contract except for the fact that there was this
19 potential shortage of asphaltic materials, and, of course,
20 it was being compounded by the time of the year, and
21 I reminded the Commissioner, I believe, that Mr.
22 Schuyler had been complaining about this and said the
23 only thing I can see to do is have Schuyler, you know,
24 check it out completely, which was then my instruction to
25 Schuyler.

Mullen

1 Q You knew, did you, that demands had been made
2 on Centrum or assurances that an asphalt supply, an
3 adequate asphalt supply, would be available for this job?

4 A I didn't know they had been. It was my understanding
5 what
6 that that was/Schuyler then did.

6 Q And did you see the letters of October 14th
7 from Hale? A No.

8 Q That is, the President of Centrum?

9 A No. I was advised by Mr. Schuyler that we had
10 received promises or assurances of some kind from Centrum,
11 but my recollection is he said he wasn't completely satis-
12 fied with them.

13 Now, at one point we discussed whether or not it would
14 be necessary or desirable to require them to have sufficient
15 asphaltic materials actually in their storage tanks.

16 Q And did you know that prior to the time of
17 the September 24th opening of the bids, Schuyler had issued
18 instructions to the staff with respect to an asphalt
19 shortage and what they should do if one appeared?

20 A I believe he advised me that he had put out some
21 general instructions. I was not aware of what they were.

22 Q And when Mr. Schuyler told you that he was not
23 satisfied with Centrum's asphalt situation, did he tell
24 you that Mr. Hale in his letter of assurance of the 14th
25 said, "Considerable effort has been made to obtain a

K3-2

1 definite commitment during this severe asphalt cement
2 shortage from the major refineries and suppliers in New
3 Jersey"? Did Mr. Schuyler give you the substance of that?

4 A I recall that he quoted that language to me.

5 Q But he did indicate to you that he wasn't
6 satisfied with so-called commitment --

7 A Right.

8 Q -- of Centrum? A The dis-
9 satisfaction, if I may say so, stemmed from the fact that
10 we felt that naturally the apparent low bidder would
11 endeavor to give us the strongest commitment and assurance
12 that he could, and probably in good faith. What bothered
13 us insofar as that aspect of the matter is concerned is,
14 you know, was the matter wholly within the contractor's
15 control?

16 Q Well, in that connection did you know that the
17 letter of so-called assurance that Mr. Hale, the President
18 of Centrum, provided to Mr. Stelljes was a letter of the
19 Edison Asphalt Company which was signed by Mr. Hale, the
20 secretary of that company?

21 A No, I didn't know that.

22 Q So that would you gather from that an indication
23 that Mr. Hale was guaranteeing Mr. Hale?

24 A Yes. But I didn't know about any of that correspondence
25 at the time.

1 Q You don't recall having seen these two letters
2 from -- A No, I certainly do not.

3 Q -- Hale and from Edison?

4 But, in any event, around October 26th, by that
5 time had you reached any conclusion with respect to Centrum
6 and the bids that had been opened?

7 A October 26th.

8 Q Let me give you a quick start on October 26th.

9 A The figure 26th is a -- oh, oh, oh, 26th, yes.

10 Q Just prior to October 27th?

11 A Yes. October 26th was Monday, I believe.

12 Q Well, if you wait just a second -- off the
13 record.

14 (Whereupon, there is a discussion off the record.

15 Q October 26th was a Monday?

16 A Right. Well, on the previous Friday, which, I believe,
17 was the 23rd --

18 Q 23rd?

19 A Right. This followed up my second conversation with
20 Mr. Sherwin by a day or two, I believe, the conversation
21 in which he had suggested that we award to Manzo directly
22 without rebidding. We were nearing the end of the thirty-
23 day limit in which we were supposed to award the contract.
24 I had received no formal written report from Mr. Schuyler.
25 I got ahold of Mr. Schuyler and said, "I think we need to

1 make a decision. Bring what you have and come down to my
2 office and we'll go over it," and he did and he gave me
3 pretty much the set of facts that are set forth in my
4 memorandum of October 26th.

5 Q Did you have a lengthy discussion with him
6 at that time? A Oh, I think it took half
7 an hour or so, forty-five minutes, perhaps.

8 We went over the entire matter, and the way we felt
9 about it at that time was that the work on the road, the
10 road needed the improvement and we'd gone to a lot of trouble
11 to find the money for it. Therefore, we ought to do the
12 job, in other words, we shouldn't simply reject the bids
13 and forget it and say we were going to wait until some other
14 time to do it.

15 Certainly there was no consideration at all given
16 to the idea of disqualifying Centrum and awarding to Manzo
17 directly, because Manzo could under no conceivable circum-
18 stances that I could think of, give us any kind of
19 guarantee that Centrum wasn't willing to give us.

20 The problem wasn't that we couldn't get a commitment
21 or assurances. The sole problem there was, did they really
22 mean anything?

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4Kpg-1 1 Q Well, at that time, just to get to the bottom
2 of it, did you and Schuyler reach a decision?

3 A Yes.

4 Q With respect to the accepting or rejecting
5 of the bids? A We decided--we decided to
6 recommend rejection and readvertising on the basis of
7 amending the contract to take care of some changes of
8 plan that were necessary.

9 Q I'll go over that with you in a minute.

10 A Yes, right.

11 Q But, in any event, when you reached that
12 decision, on that day--

13 A When I reached that decision, I then called--

14 Q Let me stay with that for a minute.

15 Did you rely on Schuyler? A Oh, yes, for the
16 technical information, absolutely.

17 Q And you had known Schuyler for a long time,
18 had you?

19 A Yes, sir.

20 Q What can you tell us whether as to
21 your confidence in Schuyler?

22 A Well, I had--I had and have the utmost confidence
23 in him

24 Q Did you have any question in your mind as
25 to the good faith of his recommendations to you with

Mullen

4K-2

1 respect to the rejection of all the bids?

2 A No. But I should make one thing clear. Mr. Schuyler
3 did not make a specific recommendation to me in terms
4 of saying, "I recommend we do this."

5 Q Well, was it a joint decision that you reached?

6 A I believe you would call it a joint decision.
7 Mr. Schuyler indicated that he could, while he wasn't
8 entirely satisfied with any of the options, that he
9 felt that either one of two of them was supportable,
10 award to Centrum despite the problems, which he felt
11 were real problems, and he just, as State Highway
12 Engineer, he'd just live with them and try to correct
13 them as best he could, or reject and readvertise only
14 on the basis of changing the plans so that the problems
15 would be taken care of that way.

16 Q And then-- A Then I--

17 Q Between you you resolved all of these
18 questions-- A Right.

19 Q --into a unified decision? A Right.

20 Q Representing both points of view that the
21 best course was to reject and readvertise?

22 A Right, reject, change and readvertise.

23 Q And, so, as far as your participation in that
24 was concerned you exercised--did you exercise your
25 best judgment?

4K-3

1 A Oh, yes, sir.

2 Q And your participation in it was or was not
3 in complete good faith? A Well, now--

4 Q Let me put it this way: Was your participation
5 in that decision an honest one?

6 A Well, I think it was honest. I think that either
7 one of the alternatives that we confronted was an honest
8 alternative and each of the options had its own problems.

9 I determined that I would contact the Commissioner
10 and suggest or tell him that I thought we had a sufficient
11 basis for rejecting and readvertising if we changed the
12 contract to eliminate some of these problems.

13 Q Now, let me put a question at that point.

14 A All right.

15 Q Was your telephone conversation with Sherwin
16 in any way the inspiration of your decision?

17 A I don't think my telephone conversation with Sherwin
18 was the inspiration of my decision. I think that in
19 some degree my decision was influenced by the fact that
20 I felt that the Commissioner would prefer to readvertise
21 this contract if there were a basis for so doing.

22 Q Well, so far as you were concerned, now.

23 A Personally.

24 Q I'm talking about your conversations with
25 Sherwin. A Yes.

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Q Were they your inspiration? Were they in any way the basis of your decision with Schuyler that these bids should be rejected?

A I want to be very careful in how I answer this, if I may.

Q Yes, I think you should be.

A I'm not trying to evade you at all.

I was not concerned with what Mr. Sherwin wanted. I was, to some extent, concerned with what the Commissioner wanted.

Now, of course I thought then, and think now, that he wanted to reject and readvertise if there were a justifiable basis for so doing, because he had been contacted by Mr. Sherwin.

Q Did he say-- A Therefore, the fact--

Q Did he say anything to you that gave you that impression?

A Well, he did not say to me, "I would like to do this because Sherwin has bothered us about it," or "Sherwin has intervened." He did not say to me, "Well, we've got to satisfy Sherwin." ON a couple of occasions he may have said, asked, you know, what are we going to do about Sherwin.

I felt that the Commissioner wanted from me, to get from me whatever basis for rejecting and readvertising

4K-5 1 that contract existed from a point of fact.

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1 Q Well, did you get the impression that he wanted
2 any dishonest opinion from you?

3 A No, no; no, no, absolutely not.

4 Q Was he, in your judgment, always asking you
5 for a fair, honest opinion and one from you representing
6 your good faith judgment as to what should be done?

7 A Yes.

8 Q You always felt that he wanted your fair judgment?

9 A Yes. I don't feel that he wanted either Mr. Schuyler
10 or I to distort the facts as we saw them. And I don't think
11 that we did distort the facts as we saw them. It was a some-
12 what marginal situation. Both Mr. Schuyler and I were un-
13 happy, factually, quite unhappy with the idea of awarding
14 that contract as it then stood. It was one of those things,
15 that the Commissioner wanted from me, I felt, the basis for
16 rejecting and advertising, if such a basis existed; certainly
17 not, if it didn't exist.

18 Q In other words, I understand what you under-
19 stood was that he wanted you to uncover all of the facts and
20 uncover them honestly on the subject of accepting or
21 rejecting the bids and giving those facts to him so that
22 he could render the ultimate decision on rejection or

23 acceptance? A Oh, absolutely. I felt he
24 wanted a recommendation from me. That's the way we did
25 things. The Commissioner never acted without a recommendation.

1 Q So to bring all of this into focus, you did
2 study the facts fairly and honestly and report them to
3 him?

4 A Yes, absolutely. I gave him the
5 facts as I received them from Mr. Schuyler.

6 Q As you received them from Mr. Schuyler. And
7 they were given in good faith and represented his honest
8 findings?

9 A Yes, sir.

10 Q And as far as you were personally concerned,
11 your attitude was the same: I'm giving you the facts,
12 the true facts, and recommend that you reject these bids,
13 but you have the last say, it's up to you. Is that a
14 fair appraisal of what took place?

15 A Yes, yes, absolutely.

16 Q Did you talk to the Commissioner before you
17 wrote this 10/26 memorandum?

18 A Yes, sir.

19 Q Did you tell him about your conversation with --

20 A Yes, I repeated basically to him what you see in the
21 memorandum, up to the point of the specific written
22 recommendation part. I told him that I thought that pro-
23 vided a sufficient basis for rejecting and readvertising,
24 and I was prepared to so recommend.

25 Q And did he concur or --

26 A He concurred. And I certainly believe that he concurred,
27 and I thereupon either that same afternoon or over the

1 weekend I dictated the memorandum.

2 THE CHAIRMAN: Was this at a meeting between
3 the three of you, Mr. Schuyler --

4 THE WITNESS: No. The Commissioner was not
5 present. He was not in the building.

6 THE CHAIRMAN: Telephone call?

7 THE WITNESS: Yes. I spoke to him by telephone
8 after I met with Schuyler in my office.

9 BY MR. FRANCIS:

10 Q And you dictated this memorandum on the 26th?

11 A I don't know when I dictated it. It could have been
12 Friday night, it could have been over the weekend, it
13 could have been the morning of the 26th. It was not typed
14 until the 26th.

15 Q And you sent a copy of it to Mr. Schuyler?

16 A I undoubtedly did. It would be my normal habit.
17 I ordinarily would, anyway.

18 Q Let me just run over the grounds, if you don't
19 mind, for a minute.

20 You noted here, did you not, that the asphalt
21 shortage had become more acute?

22 A Yes, during the same time interval, right, during the
23 interval mentioned up above.

24 Q And now the facts you note of the situation on
25 which you base the recommendation are then set forth. They

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1 are in six separate paragraphs.

2 A Yes. I got all that information from Mr. Schuyler,
3 except for the bids, which I think I knew, anyway.

4 Q Let me just run through them.

5 The first fact that you presented to Mr. Kohl
6 was that the low bidder was some five percent over the
7 engineers' estimate and the second low was eight percent
8 over the engineers' estimate.

9 Second, the best rate of progress in good
10 weather is estimated at approximately nine hundred feet
11 per day.

12 Three, the low bidder did supply the department
13 with a written statement regarding the availability of
14 material which, in the opinion of the State Highway
15 Engineer, did not represent the type of commitment he
16 had requested.

17 Number four, although the original contract
18 called for the completion of the entire project by
19 Memorial Day, 1971, it was contemplated that by far the
20 major portion of the work would be accomplished before
21 winter. This is no longer possible.

22 Did that come from Schuyler, too?

23 A Yes, sir.

24 Q You were both satisfied that that was so?

25 A He told me, and I certainly believed it. It made

1 sense.

2 Q You accepted that as his best opinion as to
3 the prognosis for the completion of the work?

4 A Absolutely.

5 Q The fifth, "Some verbal conversations with
6 other bidders have indicated that all bidders are inclined
7 to give the department almost anything that might be
8 requested in the way of verbal assurances, but it is
9 extremely unlikely in view of our own information regarding
10 the materials problem that the department can get a solid
11 written commitment." That was again from Schuyler, and
12 you knew something about that yourself?

13 A Yes.

14 Q And you were satisfied that that was the
15 situation at the time? A Right.

16 Q "State Highway Engineer advised that even if
17 the contract was awarded to the low bidder, it would be
18 necessary to process a change of plan to alter the time
19 schedule since it is now impossible to handle it according
20 to the strict contract language."

21 Those were the six grounds that you gave to
22 Commissioner Kohl.

23 What was this change of contract that you talked
24 about in the sixth paragraph?

25 A Mr. Schuyler, of course, can give you much better

1 information on that than I can.

2 Actually, I think it's a matter of record now,
3 because there was a change of plan put through, in fact,
4 a series of change orders, it is my understanding.
5 Route 46 in that area is a two-lane highway. In order
6 to qualify it for resurfacing, we had no resurfacing money.
7 In order to qualify it for federal aid, we had to do some-
8 thing other than merely resurface, because there is no
9 federal money for work they consider to be maintenance.
10 Therefore, the contract was developed which, as I recall,
11 included some work on the shoulders and probably some
12 drainage work -- and I'm not certain. But in any event,
13 the contractor had to excavate out the shoulder and then
14 backfill before he paved. That's my understanding.

15 The concern that we had was that the contractor would
16 have a sizeable stretch of the road, with the shoulder on
17 one side excavated, leaving a drop for the pavement. I
18 think it's concrete pavement, where the concrete pavement
19 ended. I'm certain you are familiar with it. You have a
20 row of drums there, and then the pavement just drops off.
21 And then if he wasn't able to get the asphalt before it
22 snowed or something else, that wouldn't get backfilled and
23 it would create a hazard. That was one of the problems.

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Q Was that a serious problem in connection with this contract?

A Well, that was one of the--it had to do with the sequencing. There was also--

Q I want to talk about the hazards for a minute, because to me that's something that we ought to mention.

If a contractor did not have an adequate supply of bituminous concrete available when he excavated, he would leave open trenches along the sides of the road that really would present a traffic hazard?

A This is the way it was presented to me.

Look, let me just go fast here for a moment and then we will go back. The original contract language, as I understood it, called for the contractor to be able to excavate a sufficient distance to be able to go back the next day and cover up that distance. And what actually happened, for whatever it's worth, is that they changed it so that he had to fill it up every night.

Q And, of course, that emphasized the importance of an adequate supply of asphalt on hand at all times?

A Well, I don't know for a fact whether all the material that had to go to cover the trench was asphalt or not. But my belief was that he had to do the

2L-2 1 excavation, then he had to backfill, and then he was
2 supposed to come along and pave, and he had to pave it
3 bit by bit.

4 Q Wasn't he supposed to pave to whatever
5 extent had excavated in any particular day?

6 A I think the following day. I am not certain.

7 Q Not the same day?

8 A Not originally. But they changed it so that my
9 understanding is--well, I guess I was still there,
10 but I didn't know about it. But I understand now that
11 one of the changes they made was that he had to fill up
12 the trench at the end of every day.

13 Q Do you know whether or not as the result
14 of request by the Federal Government after the bids
15 were advertised for that there were some substantial
16 changes made in the project?

17 A We were already working on a change of plan, I
18 know that.

19 Q That was after the bids had been made and
20 opened?

21 A I don't know whether it was after the bids had
22 been made and opened or not, but I know it was almost
23 immediately, there was almost immediate concern that we
24 had not done this contract just the way it should have
25 been from a specification point of view and that a change of

2L-3 1

plan was being prepared. I believe it had gotten to the point where it was just about completed when we finally got around to awarding the contract.

2

Q Well, just to fill in there--

3

A I don't know that they had requested it.

4

Q There were some proposed changes?

5

A Absolutely.

6

Q And they came along after the advertisement or bids had gone out and were in the paper?

7

A I can't recall, I don't know that.

8

Q Well, let's see if we can put it this way.

9

Do you know whether these changes would represent a material difference in the contract, in terms of cost, for example?

10

A Well, I was under the impression that they might-- the only thing I can say to you is I understand that the contract ultimately came in for more than \$100,000 over the bid was the final adjusted contract price. It was not because the contractor was late, because he did a good job.

11

Q Did that arise because of changes in the specifications ultimately?

12

A That's my understanding. I am not too sure about that. But very frankly, when all of this started, that was one of the questions that was in my mind, how did it

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2L-4

1 really work, we were concerned what happened.

2 Q Assuming that it cost \$100,000 more to
3 finish the job, how would that come about with respect
4 to Centrum? Would they get an order for extra work, or
5 would there be a change order?

6 A A change order, a change of plan, change order.

7 Q And when you use the term change order,
8 technically, that means a departure from the specifica-
9 tions?

10 A Yes, sir, asking them to do something different
11 or to do it in a different way.

12 Q What is your best recollection as to where
13 the \$100,000 figure came from? Is that something you
14 just remember from the circumstances of that plan?

15 A No. As I said, when the various investigations
16 began, of course, one of the things that I recalled
17 was that we had been concerned about this change of plan.
18 One of the things that I believe Mr. Schuyler and I
19 discussed was if we rejected and readvertised, what
20 we'd be readvertising would be a change of contract,
21 with a change of plan already in it. Would it cost
22 more to do it that way or the other way. And then I
23 inquired as to what problems the contractor had run
24 into, because we had been concerned about what happens
25 if there is bad weather and if this trench is open,

2L-5

1 and so forth.

2 I was told, number one, that the contractor did
3 a good job and didn't run into problems; and number two,
4 that the final adjusted contract price was \$702,000 or
5 something like that. I believe the bid was \$580,000,
6 I forget. But I think there was a difference of one hundred
7 thousand and change.

8 Those records are certainly available. I know you
9 gentlemen have that. You don't have to rely on my
10 memory.

11 Q We have the figures.

12 The Centrum bid was \$603,871. And you think
13 that the total cost when it came in was--

14 A I think the adjusted contract value was in excess of
15 seven hundred.

16 Q \$700,000?

17 A Yes.

18 Q Can you tell us whether the need for these
19 changes, which you talked about in your October 26th
20 recommendation, was known and apparent?

21 A I think it was known at about the time when we
22 took the bids. And I think further--

23 Q The bids. But at the time you advertised
24 for bids.

25 A I think they may have been.

2L-6

1 I was about to say that they might very well have
2 been known at the timewe advertised for bids, and the
3 main reason--and there is nothing to support this,
4 except my recollection and my knowledge of the time--
5 the main reason we advertised the contract, knowing there
6 were things that would have to be corrected, was that
7 this job itself was a political commitment to Senator
8 Wayne Dumont, and we were behind with it and it was a
9 rush to get it out before winter started.

10 Q So that instead of withdrawing the notice
11 of advertisement for bids, you simply took the chance
12 and went on with the plans and specifications as
13 appeared in the advertisement?

14 A Right, as of the day that Mr. Sherwin wrote to
15 the Commissioner, the day before that our only question
16 was how soon can we award this contract.

17 Q I don't know the relevance of that at the
18 moment.

19 A What I am saying is that we were aware of the
20 problem, but we were going to correct it by this change
21 of plan.

22 Q And the additional cost didn't figure in
23 this decision at all? You were just going to do it
24 because you wanted to get the job done?

25 A Right. We didn't know what the additional cost

2L-7

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1 would actually be.

2 Q On the basis of your experience in the
3 department, would you consider an excess of \$100,000 a
4 substantial change in the original plans and specifications?

5 A On a contract of that size, yes.

6 Q When you reached your determination and
7 put it on paper recommending rejection of all of these
8 bids, did you consider that the failure to have a full
9 and complete specification of this job in the original
10 advertisement for bids as a significant factor requiring
11 rejection?

12 A I don't think we discussed it in that light.
13 I think that my recollection is that--and this is
14 probably my fault--I tied the change of plan in my
15 mind not to faulty specifications, which is probably
16 the case, but to the fact that so much time had elapsed
17 and now we would have to change. That was the thing
18 on my mind.

19 Q On the basis of your experience, you have
20 seen awards of contracts overturned, have you, when there
21 has been a substantial change in the nature of the
22 contract as against the contract referred to and called
23 for in the specifications that were in the newspaper?

24 That's not very clear.

25 A It hasn't happened.

3L-8

1 Q On the basis of your experience--let me make
2 this inquiry: Supposing there was an advertisement for
3 bids, bids came in at the time the advertisement for bids
4 was put in the newspaper. The public agency, whatever
5 it was, knew that it really was going to cost \$100,000
6 more to do the job than the specifications put in the
7 newspaper seemed to require, and the bids came in on the
8 basis of the specifications in the newspaper and then the
9 agency awarded a contract that was going to produce
10 \$100,000 more for the bidder without any notice to other
11 bidders that this much was involved?

12 A That would be unfair.

13 Q You think on the basis of your experience--

14 A I would think the other bidders would have a right
15 to contest that. I must say that I don't think that anyone
16 was aware when this change of plan was initiated what
17 it would cost.

18 Q Even if they weren't aware, assuming that
19 everybody acted in perfectly good faith, but supposing
20 they withheld this additional part of the plan from
21 the public advertisement--

22 A That would be wrong.

23 Q And then later found out that it was going
24 to cost \$100,000 more--

25 A You're in a very marginal area. That sort of thing

3L-9

1 does happen quite often. Usually, the extra cost is
2 primarily just that, a cost. It's not a profit-making
3 feature of the work. But quite often in contracts you
4 do see extra work and extra costs, particularly when--
5 I'm not sure, because I haven't seen the actual documents--
6 the change is restrictive in nature. And I understand
7 this was somewhat restrictive in nature.

8 Q Do you distinguish it, talking about this,
9 between situations which arise after the award of
10 contract, new situations which call for a change,
11 and which are made the subject of a change order,
12 and a situation which was already in existence, parties
13 were aware of before--

14 A It would have been a better procedure to clean
15 that contract up first and then advertise it.

16 Q And do you think that by not doing that
17 whereas it turned out \$100,000 greater cost was involved,
18 it would have been the part of wisdom to have avoided--

19 A Had I known that in fact it would entail an
20 extra cost of \$100,000, which I understand to be the figure,
21 because that's what I was told, there would have been
22 absolutely no hesitation whatsoever in making that
23 recommendation.

24 Q For rejection of all the bids?

25 A Absolutely.

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Q We have been talking about--

A I would have been on much sounder ground, believe me.

Q Let's go down the scale a little bit.

Supposing only \$50,000 extra were involved.

Do you think that that still--

A It's still worth thinking about. I don't know that it would have been compelling, but it would certainly be another item for consideration.

Q It certainly would have been one of the factors that you would feel compelled to take into consideration in deciding this question?

A Absolutely. If I had known those kinds of figures, you may be sure I would have put them in that memorandum because I would have considered them very important.

Q Just to finish this, if we can.

I gather that you were aware of the need for change, but it didn't occur to you to put specifically that need for change in this respect that we have been talking about in your 10/26 memorandum?

A I indicated that the contract should be readvertised only after the change of plan was incorporated in it.

Q When you speak of change of plan, you mean the subject we have been talking about?

3L-11

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A Absolutely.

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THE CHAIRMAN: Is that on Number 6?

3

THE WITNESS: I think it's in language--

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if I can see the memorandum, I can read you the relevant portion.

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Absolutely, that was the basis of the recommendation. "I further recommend that the engineering staff be directed to rearrange the contract--" that's what I meant, where I used that language "--that the engineering staff be directed to rearrange the contract immediately."

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BY MR.FRANCIS:

Q On the basis of your experience, do you have

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1 an opinion as to whether any other bidder on this contract
2 would have a reasonable basis for attacking an award
3 to Centrum if he found out that it was going to cost
4 \$100,000 which was not made known in the advertisement
5 for bids?

6 A I don't really know. On the face of it, it looks
7 like yes. But I have a suspicion that the answer is no,
8 because it happens quite frequently.

9 This was an unusual contract. It was a tricky part
10 of the state, tricky time of the year, and tricky work.

11 Q Well, the fact that it was tricky work or
12 difficult work does not alter the fact that it was going
13 to cost \$100,000 more and known before the advertisement
14 for bids.

15 A Except I must say to you again, I want to make it
16 clear that it was in fact going to cost \$100,000 more,
17 otherwise, as I said before, there would have been no
18 doubt; and number two, I don't know whether those items
19 of cost might not have been in some part caused by the
20 fact that the contract was delayed in its execution by
21 the department's own shilly-shallying back and forth.
22 You would have to look at the change orders themselves
23 to know that.

24 MR. FRANCIS: Could we have a 5-minute recess.

25 [A short recess was taken.]

1 (After recess.)

2 BY MR. FRANCIS:

3 Q I don't recall that we covered this. In any
4 event, you did deliver the 10/26 memo to Commissioner Kohl
5 a couple of days later, within a couple of days.

6 A I delivered it, as far as I know, 10/26. I spoke to
7 him that Friday, the 23rd and the memo was in his office
8 the day it was dated. I'm sure of that.

9 Q Well, it doesn't matter. The notation --
10 I didn't note the page of your testimony that you delivered
11 this to Kohl on Monday, October 26th and you waited a
12 couple of days and then on Wednesday or Thursday he told
13 you to go ahead. Is that --

14 A Well, --

15 Q That may not be an accurate recollection.

16 A Of course, of course, that same Friday, I believe,
17 I spoke to Mr. Sherwin once before and told him that this
18 was the recommendation, and then the memorandum back to
19 the Commissioner's office and then I waited probably until
20 Wednesday or Thursday and then reminded him that if it
21 was going to be reject and readvertise, we would have to
22 take official action. We'd have to pull the papers back
23 from the Federal people and we'd have to file a news
24 release announcing what we were doing. He said, go ahead.

25 So, I then drafted a news release, which actually

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1 repeated most of the stuff in the memorandum in terms of
2 the underlying factors; had some quotes up at the top
3 about Senator Dumont. I called back and forth to him and
4 the Commissioner two or three times to get the release
5 prepared, and I believe it was called up to the local
6 area radio stations on Thursday and sent out over the
7 weekend.

8 Q By the way, in connection with that news
9 release, after you prepared it, did you read it to the
10 Commissioner and get his approval?

11 A Oh, yes, certainly the parts that quoted him.
12 I may not have read all the rest of it to him but simply
13 told him what it said.

14 Q Well, in any event, the actual quotes here
15 are Commissioner Kohl's quotes?

16 A Well, I made them up, but I checked them with him.

17 MR. FRANCIS: I see.

18 Let us mark this news release.

19 (Photocopy of news release Re: U.S. Route 46 received and
20 marked Exhibit C-15.)

21 Q Did you on October 26th have conversation with
22 Mr. Biederman in which you told him that Schuyler had told
23 you that he was not satisfied with Centrum's assurances
24 about asphalt? A On the 26th on Monday?

25 Q Yes, on the day your memorandum recommending

1 the rejection is dated. Did you talk to Biederman that
2 day and tell him that Schuyler --

3 A I don't recall whether I did or not. It's not an
4 event that sticks in my memory. I could very easily have.

5 Q Well, regardless of the day, around that time
6 do you recall whether you talked to Biederman, told him
7 that Schuyler told you they can't produce or --

8 A I don't recall having any set conversation with Mr.
9 Biederman in which I related this. I could have said it
10 to him any number of occasions. I don't recall having any
11 kind of a formal meeting with him until after the news
12 release was prepared and out.

13 Q Well, let me straighten this out. Let me show
14 you a memorandum of Mr. Biederman's marked "To the file,"
15 dated October 26th, and ask you to look at that and see
16 if that refreshes your recollection.

17 A I have a feeling -- I have a feeling that that's
18 based on my memorandum to the Commissioner, although I could
19 very easily have told Mr. Biederman that, you know, in
20 passing.

21 Q Either before or during the time you were pre-
22 paring the memorandum? A Yeah. Would

23 have been, I would think, prior to the end of that
24 week. I don't think it was on a -- on Monday. I don't
25 recall talking to Biederman after. I don't recall any

1 contact with Biederman between the time I sent the memor-
2 andum and the time the news release was done.

3 Q Or before you sent the memorandum?

4 A No, I don't recall, though he had the office practically
5 next to mine. We saw each other. I could have mentioned
6 it.

7 Q I gather, then, that you can't say yes or no
8 as to whether you had the conversation with Mr. Biederman?

9 A I can't say yes or no. It does look to me like --
10 I did not advise him in any formal sense or send him a
11 memo or call him into a meeting or anything of that sort,
12 that I recall.

13 Q All right.

14 A Does he say that I advised him?

15 Q Yes.

16 A "Advised me"?

17 Q You advised him that Schuyler was not satisfied
18 with the -- A Did the --

19 Q Do you want to see it again.

20 A Does it say "Advised me"? "Mullen advised me"?

21 Q Yes. Well, wait a minute. I'll
22 look at that again just to make certain of it.

23 A I'm sorry I asked.

24 Q Here it is. He says, "Assistant Commissioner
25 Mullen advised today, October 26th, that our Highway

1 Engineer Schuyler has advised that he was not satisfied
2 with the assurance." So, it sounds as though you advised
3 him that you had been advised by someone else?

4 A You know, the language that Schuyler was not satis-
5 fied, that's almost a quote from my memorandum.

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1 Q He says also in this memorandum that you had
2 told him that the job was to be amended, in any case, and
3 for both of these reasons the contract would be rebid.

4 In other words, he's saying that you told him that on
5 October 26th. A Can I -- I hate to make --
6 "The Commissioner."

7 Q Right, but he means you. "Assistant Commissioner
8 advised the Commissioner stated that the job was to" --

9 A Well, I told him this but I think I told him --

10 Q This is the point I'm interested in, now.

11 A Yes. But I think I told him all of this. If I told
12 him all at the same time, I told him this Friday; Thursday
13 or Friday.

14 Q Thursday or Friday. All right. You told us
15 that you communicated to Mr. Sherwin --

16 A Yes.

17 Q -- that there was to be no rebidding?

18 A No. I told him that the contract would be rejected
19 and readvertised. I told him that was my recommendation.
20 I understood the Commissioner had concurred.

21 Q I see. Did you have any discussion with Mr.
22 Schuyler or Stelljes between October 26th and November 4th?

23 A Not that I recall.

24 Q Now, did you receive the memorandum of November
25 4th from Mr. Biederman for Commissioner Kohl --

1 A Yes.

2 Q -- countermanding the decision to reject all

3 the bids? A No, that was consummating the
4 decision to award. Oh, countermanding. Yes, sir. Yes, sir,
5 I did.

6 Q I show you a memorandum from Biederman to
7 Mullen, dated November 4th. You received that, did you?

8 A Yes, I believe I did. I guess it's the one I
9 transmitted to Schuyler. Yes, it is. That's it. I'm
10 laughing at the figure there, \$750,000.

11 MR. FRANCIS: Well, mark this one, will you
12 please, the Biederman-to-Mullen memorandum.

13 (Memorandum from Mr. Biederman to Mr. Mullen, dated
14 November 4, 1970, received and marked Exhibit C-16.)

15 Q Did this surprise you? A What?

16 Q Did this surprise you, the November 4th,

17 memorandum? A No. Mr. Biederman had told
18 me that it was coming, so --

19 Q That he had talked to Commissioner Kohl.

20 A Right, right. That happened, that conversation with
21 Mr. Biederman happened the day after I put out the press
22 release saying we were going to reject and readvertise.

23 Q Well, you notice in this November 4th,
24 memorandum Biederman says, "The Commission has discussed
25 the matter with me on Monday, November 2nd, and due to his

1 illness asked me to confirm his decision in the matter to
2 you by this memorandum"?

3 A Right.

4 Q I notice that the memorandum says as one of
5 the reasons for change of decision, "In addition, some
6 progress in building the road is better than no progress.
7 Since the Department made a public commitment to begin
8 this project in September, the Commissioner felt that we
9 should fulfill that commitment regardless of the technical
10 objections you raise in your memorandum"?

11 A Yes, that's what it says.

12 Q I gather that you did not think they were
13 technical, the ones that you raised in your memorandum?

14 A Well, I considered that they were technical. I
15 didn't feel that they were without merit.

16 Q Well, in any event, you were instructed, then,
17 to proceed immediately to arrange for the award of the
18 contract to Centrum?

A I was and I did.

19 Q And then you sent a copy of the Biederman
20 memorandum to you to Mr. Schuyler?

21 A Right.

22 Q And on the same day?

23 A And told him to award.

24 Q And this is your memorandum?

25 A It is.

1 MR. FRANCIS: May we mark that, too.
2 (Memorandum from Mr. Mullen to Mr. Schuyler, dated November
3 4, 1972, received and marked Exhibit C-17.)
4 (Whereupon, there is a discussion off the record.)

5 MR. FRANCIS: Supposing you make this note on
6 the record. C-17 is a memorandum from Mr. Mullen to
7 Mr. Schuyler advising him of the decision to award
8 the contract to Centrum, attached to which is the
9 memorandum from David A. Biederman to Mr. Mullen
10 advising him of the Commissioner's decision to award
11 the contract to Centrum.

12 BY MR. FRANCIS:

13 Q Did you report to Mr. Sherwin the ultimate
14 decision to award the contract? A No.

15 Q Did you ever talk to Biederman about his
16 association with Mr. Hale, the President of Centrum?

17 A I did not. I didn't know about it until it came out
18 in the recent inquiries.

19 MR. FRANCIS: Well, do you gentlemen have any-
20 thing?

21 THE CHAIRMAN: Should we take a two-minute
22 break?

23 (Whereupon, a brief recess is taken.)

24 (After recess.)

25 MR. FRANCIS: Well, Mr. Mullen, thank you very

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much.

(Witness excused.)

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1 R U S S E L L H. M U L L E N, resumed and testified
2 further as follows:

3 THE CHAIRMAN: Mr. Mullen, I would want to
4 call this to your attention. We operate under the
5 code of fair procedure, and we didn't let you
6 know, except possibly Mr. Sapienza touched upon
7 it in the beginning. I will reiterate it now.

8 Any witness who testifies in any hearing
9 shall have the right at the conclusion of his
10 examination to file a brief sworn statement
11 relevant to his testimony for incorporation in
12 the record of the investigatory proceeding. So
13 that if you do want to get together a statement
14 dealing with your testimony and have it sworn to,
15 you can present that to us.

16 THE WITNESS: I don't have to do it now?

17 THE CHAIRMAN: No. But Mr. Francis has
18 finished with the questioning.

19 THE WITNESS: Am I entitled to see a
20 transcript?

21 MR. FRANCIS: Of this?

22 THE WITNESS: Of what I said.

23 MR. FRANCIS: Yes, sure.

24 THE WITNESS: I would appreciate that. And
25 then if there is something that I think that I

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1 should add, I will. Fair enough.

2 THE CHAIRMAN: Sure.

3 MR. FRANCIS: May I make this one request:

4 As soon as you get it, I would like you to read it
5 as quickly as possible and decide what, if anything,
6 you want to add.

7 THE WITNESS: Immediately.

8 MR. FRANCIS: Because we want to complete
9 the hearings as soon as we can.

10 THE WITNESS: I won't hold you up more than
11 ten minutes.

12 MR. FRANCIS: We will get a copy of your
13 statement to you. We are having daily copy.
14 We may get it to you tomorrow or the next day.

15 THE WITNESS: I appreciate it. You will mail
16 it to me.

17 THE CHAIRMAN: Your home is nearby?

18 THE WITNESS: In Pennington.

19 THE CHAIRMAN: One of the investigators
20 can deliver it to you.

21 THE WITNESS: Right. They know where I am.

22 [Witness excused.]

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ln-3 1 [Ralph Stelljes enters the room.]

2 THE CHAIRMAN: Good afternoon, Mr. Stelljes.

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4 R A L P H S T E L L J E S, sworn:

5 THE CHAIRMAN: We have two members of the
6 State Commission of Investigation sitting this
7 afternoon, Charles BERTINI, on my right, and
8 my name is John McCarthy. I think you have
9 previously met Mr. Francis.

10 MR. FRANCIS: No, we haven't met before.

11 THE CHAIRMAN: Mr. Francis is acting as
12 special counsel to the commission. He will ask
13 you the questions.

14 MR. SAPIENZA: Mr. Stelljes, my name is
15 Charles Sapienza. I am an attorney with the
16 Commission. We give certain warnings to all
17 witnesses that appear before us.

18 Number one, there is a stenographic record
19 being made. You are under oath. Therefore, you
20 do not have to answer any of our questions that
21 we ask you today. You understand that, don't you?

22 THE WITNESS: Yes.

23 MR. SAPIENZA: Anything you do say will be
24 taken down and, of course, may be used against you
25 later on in a court of law. Do you understand that?

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THE WITNESS: Yes.

MR. SAPIENZA: You have the right to have counsel present at this hearing. I note for the record that you have no counsel. Is that of your choosing?

THE WITNESS: Yes, sir.

MR. SAPIENZA: If at any time during the questioning you would like us to stop because you would like to retain counsel, or for whatever reason, you just say stop and we will discontinue the hearings. You understand that?

THE WITNESS: Yes.

MR. SAPIENZA: In addition, this is a private hearing. However, the Commission has the right to make your testimony public at a later date, if it so wishes.

In addition, it has the right to take your testimony at a public hearing and repeat the same testimony, if it so desires. You understand that?

THE WITNESS: Yes.

MR. SAPIENZA: In addition, we are governed by a rule on confidentiality. It means that any information you may gain from us at this hearing you should keep confidential to yourself. It is punishable by a disorderly person's violation,

1N-5 1 maximum six months in jail or \$500 fine.

2 Simply stated, everything that happens in this
3 room you are to keep confidential, except if you
4 want to discuss it with your attorney. You under-
5 stand that?

6 THE WITNESS: Yes.

7 MR. SAPIENZA: And you want to proceed today?

8 THE WITNESS: Yes.

9 MR. SAPIENZA: You are appearing voluntarily,
10 by the way?

11 THE WITNESS: Yes.

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EXAMINATION BY MR. FRANCIS:

Q Mr. Stelljes, you are with the Department of Transportation?

A That's right.

Q What is your title now?

A Right now it's Regional Engineer.

Q And did you have a different one in 1970?

A Yes. I was Director of Construction.

Q And in that capacity did you supervise, generally, all the construction contract work?

A That's right.

Q In the summer of 1970 did you become familiar with asphalt shortage?

A Yes.

Q Do you remember where you first heard the rumblings of it?

A It was probably in June. The Department and ADC had joint meetings, not the whole ADC and the whole department, but there is a committee of each to work out problems between the contractors and the department. It seems to me that at that time the contractors were talking about -- it hadn't hit us yet, it was an impending shortage of asphalt. It hit the middle west first.

Q And it had already hit the middle west?

A It had already hit the middle west along about in May or June. It didn't hit here, really, until about

1 September.

2 Q And did it appear in September that some
3 contractors were having trouble getting asphalt, some
4 getting a little and some not getting any?

5 A We had one contractor, Sam Braen, who took a maintenance
6 resurfacing job on one of the two locations, Route 63 and
7 Route 9W, and he had been getting asphalt from the Shell
8 Oil Company. Shell Oil Company went out of the asphalt
9 business. So we permitted him to postpone the start of
10 that contract until the following spring.

11 On another job where Braen was a subcontractor to
12 Zimmerman, they substituted Canadian asphalt for the normal
13 asphalt.

14 Q And was that because they couldn't get it
15 around here? A That's right. The other
16 suppliers were rationing their customers to about seventy-
17 five to eighty percent of what they had used the year
18 before.

19 On most of our construction contracts, aside from
20 those I mentioned, we were able to get enough bituminous
21 concrete, sometimes a little bit more slowly than usual,
22 to do all the work that is going on.

23 Q Are you familiar with the type of construction
24 job that was called for on the Route 46 operation?

25 A Yes.

Stelljes

1 Q What were the dangers of a shortage of asphalt
2 in connection with that kind of work?

3 A This job called for digging out, digging a trench
4 two feet wide, eight inches deep on each side of the
5 concrete pavement and refilling with bituminous material.

6 Now, as each day the amount of trench that was dug
7 was to be refilled with the bituminous concrete. This is
8 a very heavily traveled road, lots of trucks on there.
9 The road was twenty feet wide and it was too narrow for
10 the traffic. We were very anxious to get the two foot
11 widening on each side prior to resurfacing so that we
12 eased the traffic situation a little bit and then as soon
13 as that was thoroughly compacted, and the next thing we
14 would put the top on the whole thing, so we would now have
15 a twenty-four foot roadway.

16 The other thing was the Commissioner promised the
17 people up there that this job would be done almost
18 immediately, which, of course, is never done because you
19 have to prepare plans and everything on them.

20 Q When these trenches were dug, if there were
21 not an adequate supply of asphalt to fill them in, would
22 there be serious hazards --

23 A You couldn't leave them there. We only permitted him
24 to dig what he could refill that day. But there is a time
25 limit on this job, too, so that he had to do quite a bit of

1 digging per day, digging and refilling, in order to get the
2 job done in the time specified.

3 Q And if he didn't have the asphalt, the
4 bituminous asphalt, he couldn't refill?

5 A That's right.

6 Q So that it was entirely essential, I gather,
7 for this job that whatever contractor got the bid would
8 have asphalt fill material available day by day by day?

9 A That's right. This was a lot more critical than the
10 one I mentioned, where we permitted the contractor to go
11 until the next year. That road was just a little bit rough
12 and needed a new top on it. This one was a matter of
13 improving the road so that traffic could move safely.

14 I don't know whether you're familiar with Buttzville
15 out to Columbia. There is rather a lot of sharp bends out
16 there and we have been having an awful lot of accidents,
17 which is why the pressure was put on the department initially.

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1 Q Prior to the time that the newspaper
2 advertisement for bids on this Route 46 project
3 appeared, had Mr. Schuyler consulted you about the concrete
4 or bituminous concrete shortage?

5 A Sometime in July or August--

6 Q Let me show you a memorandum from Mr. Schuyler
7 to Mr. Freidenrich, copy to you, dated September 18,
8 1970, and ask you if that--

9 A Somebody showed me that once before. I didn't
10 remember it. I had looked into it prior to this time,
11 probably on a verbal from Freidenrich or because of my
12 own concern, and I had canvassed all the jobs on which
13 we were using bituminous concrete and knew the situation.

14 Q Even prior to September 18, 1970 on your
15 own you had canvassed this shortage and had no doubt
16 found it to exist?

17 A That's right. But we knew there were producers
18 that had capacity because, as I said, it was based
19 on the work they had done in the previous year. And
20 if they hadn't done too much work, they wouldn't have
21 had asphalt coming to them.

22 Q Did you know what the situation was with
23 respect to any particular contractor around this time
24 in early September of 1970?

25 Let me be more specific--

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1 A The producers I had a pretty good idea of because
2 I knew what they had done previously.

3 Q Did you know Centrum Construction Company?

4 A They were a brand-new company.

5 Q I gather, you didn't know anything about their
6 capacity to get bituminous concrete?

7 A That's right.

8 Q Did you prior to September 24, 1970, when
9 the bids on this Route 46 contract were open, have
10 instructions from Mr. Schuyler as to your method of
11 operation in the event of shortage of bituminous concrete?

12 A No.

13 Are you talking about this particular contract or
14 any contract?

15 Q Any contract, before the bids were opened
16 in this case.

17 For example, you said you may have had some
18 oral instructions from Mr. Freidenrich or Mr. Schuyler.
19 Did those instructions include such statements as,
20 "On all contract construction, reconstruction and
21 maintenance the department will give consideration to
22 extensions in time for performing work when it is clearly
23 documented that the fuel crisis has in essence been
24 responsible for noncompliance with contract provisions"?

25 A Well, that I knew. That I was aware of.

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1 Q And were you told to get information
2 relating to the contact between the prime contractor
3 and the subcontractor if appropriately relating to
4 performance of bituminous paving work?

5 A As I said, I had already done that.

6 Q Was there a suggestion to you, also, that
7 you were to find out, you were to look at the contract
8 between the bituminous concrete supplier, that is,
9 "plant" and prime or subcontractor or furnishing of
10 material together with certified statements from the
11 plant ownership that they are unable to comply with the
12 provisions of the contract because of shortage of
13 asphalt?

14 A We didn't have that on any of them, except Sam
15 Braen.

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1 Q Were you advised, also, that in order to
2 minimize the impact of the shrinking asphalt supply the
3 Department will give consideration to requests for
4 changes of plan when initiated by the contractor in those
5 areas where asphalt pavement or base is specified?

6 A We didn't have any. As I mentioned earlier, I had
7 canvassed all the jobs that had any amount of bituminous
8 concrete and there were--at the time there was no
9 problem at all and we never did develop any.

10 Q Well, looking toward the future and to
11 minimize the impact of the shrinking supplies, were you
12 aware that the Department in the future, for example,
13 on the 46 contract, if it developed, that you would
14 give consideration to requests for changes of plan when
15 initiated by the contractor in those areas where asphalt
16 pavement or base is specified? In other words, I don't
17 know whether that's clear to you or not, but if--

18 A I know what you're saying and--

19 Q See, looking ahead, for example, to the
20 Route 46 contract, because of this asphalt shortage,
21 if it developed that the shortage was affecting the
22 operation you would give consideration to extensions
23 of time or delaying the work?

24 A We would have probably substituted stone base,
25 what they call quarry processed or Type 5 stone, and

B-2 1 which has been used a lot as a base except that it is--
2 it wouldn't have done quite the same thing that--
3 wouldn't have been possible to run traffic on it without
4 at least a little cap of bituminous concrete to hold it
5 in place.

6 Q By the way, you were familiar with the
7 Centrum bid on the Route 46 contract, were you?

8 A Well, I sat there when we took the bids.

9 Q I see. And did you have any personal concern
10 with respect to the equipment that was shown by Centrum
11 for the doing of the job?

12 A We take bids on Thursday. Now, I sit there, but
13 I don't look at the bid sheets as they come in. As one
14 fellow that opens the bids, he glances through, looks
15 for certain things to see whether the information is
16 there. One of our Deputy Attorneys looks to see whether
17 all the things are signed in the right places, and
18 the county is in there and everything else to make it
19 legal, and Kilpatrick sits next--sat next to me,
20 and if there was anything wrong with the submission one
21 or the other of the two people that I mentioned previously
22 would talk to Kilpatrick. Then they'd pass it over and
23 I would look at it.

24 In this case, all the sheets were there. They were
25 all filled in, so that the bid was read without any

O-3 1 question. Now, the following, I think it was, Monday,
2 one of Kilpatrick's men, in going over what they call
3 the plan and equipment sheet, noted that they had very
4 little equipment here. They had a backhoe, which
5 wouldn't be sufficient to dig the trenches we were talking
6 about at the speed we're talking about, and they also
7 had no real paving equipment. They had a toe type
8 paver that you would--might use for a driveway or the
9 Department uses for paving a short piece of shoulder or
10 something like that. But you wouldn't use that for
11 paving like this contract called for. That's when I
12 became aware that their equipment on the sheet was--
13 that they--which is supposed to show what they propose
14 to use.

15 Q And as a result of that did you raise a
16 question as to where they were going to get this
17 equipment from or whether they had--

18 A Well, we called them in and had a meeting with them.

19 Q And the meeting was October 2nd, was it?

20 A I believe so.

21 Q Do you remember who was present at that?

22 A Yeah, I remember Richard Hale and their, I guess
23 he's their engineer, Booram.

24 Q Booram?

25 A Rice, myself. Freidenrich may have been there

O-4 1 or may not. I think that's all.

2 Q And at that time you discussed or you
3 pointed out to Hale?

4 A We talked about two matters; one, the equipment,
5 and the other the asphalt, or bituminous concrete,
6 really.

7 Q Now, did Hale at that time on the basis of
8 what you had in your sheets concede that there wasn't
9 enough equipment shown in those sheets to do the work?

10 A That's right. He said that all of the equipment
11 owned by Halecrest, which was another company that
12 Hale was in, was available to Centrum for this job.

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Q In other words, even though he hadn't set forth in these sheets that you talk about--

A That's right.

Q --that the equipment to do the job--

A Was available.

Q --was available through some other corporation that he controlled.

A That's right.

Q But he did say that that equipment would be available?

A This is right.

Q In other words, then, what he was doing was saying Halecrest will guarantee that Centrum will have enough equipment to do the work? A That's right.

Q Now, did you learn later that actually Centrum in doing of the work leased the equipment it used from the Warren Paving Company?

A That's right.

Q In other words, even though they had assured you on the basis of your complaint about inadequacy that Halecrest would supply the equipment, they actually leased the equipment from some other company?

A This is right.

Q Now-- A Which is fairly common.

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Q Is it? A I suspected at the time that Hale--we talked about, and you haven't asked the question yet, but we talked about the bituminous concrete supply.

Q Yes, I'm going to ask that.

A And Hale didn't want to commit himself at that time about the bituminous concrete.

Now, I happen to know Warren Paving, a number of jobs that they did. I know that they have equipment. So that if their equipment is available, it could have been cheaper for them to rent the equipment than to bring their own up to the job.

Q Well, with respect to his comments about the bituminous concrete, did you have any feeling as to what he was doing about that?

A He wouldn't commit himself. He said he was shopping, basically.

Q And did he mean by that that he was shopping for a better price?

A That's it.

Q Or a good price? A That's it.

Q And he did not commit the Edison Asphalt Company at that time? A No.

Q Now, did he mention the Edison Asphalt Company, do you remember, at that time?

A No. I knew that was their outfit, though, Halecrest's

O-3 1 outfit.

2 Q Did you realize why, or did he say why, he
3 did not want to use Edison Asphalt if he could avoid it?

4 A It's along haul.

5 Q Was it the fact that the haul of the bituminous
6 concrete, if it came from this source, Edison Asphalt
7 Company, would have been a forty or fifty-mile haul?

8 A Yeah, easily.

9 Q Do you think it might have been more than
10 that?

11 A I think so.

12 Q Well, at least 40 to 50 miles?

13 A That's right.

14 Q In any event, after that meeting--oh, withdraw
15 that for a moment.

16 For your people, did you tell Hale that he
17 had to have some firm commitment with respect to the
18 asphalt requirements?

19 A We wanted to know where he was going to get it
20 in order that he could do the job before we awarded it.

21 Q And he said he would get it for you?

22 A I don't remember him committing himself at all.

23 Q Well, subsequently on October the 14th--

24 A Then he wrote a letter.

25 Q He wrote a letter? A That's right.

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1 Q And I just wanted to ask you about that
2 letter. There were two letters, were there not?

3 A Right.

4 Q Both dated the same date, October 14th. One
5 letter is on the letterhead of the Centrum Construction
6 Company?

7 A Right.

8 MR. FRANCIS: May we mark that one.

9 [Photocopy of letter from Centrum Construction
10 Company to Department of Transportation, dated
11 October 14, 1970, received and marked Exhibit
12 C-18.]

13 Q This letter is signed by Richard Hale,
14 the president of Centrum, isn't it?

15 A Right.

16 Q In this letter does Mr. Hale recognize a
17 severe asphalt cement shortage? A That's right.

18 Q In other words, he-- A "During this
19 severe asphalt cement shortage from the major refineries" --

20 Q In other words, he and you were in agreement
21 that there was this severe shortage?

22 A That's right.

23 Q And then he says that he feels that Centrum
24 will be granted at least equal opportunity for available
25 supply. Did you consider that statement a firm commitment

O-5

1 of-- A No.

2 Q In this other letter he produced, they both
3 didn't come the same time, did they?

4 A I don't remember. I might have gotten them at
5 the same time, because when you're in an office, I mean,
6 when a secretary brings things in you don't know how
7 you get them.

8 Q Then on the same day you received another
9 letter, this time on the letterhead of the Edison Asphalt
10 Company?

11 A Right.

12 Q And that's signed "Richard M. Hale," also?

13 A This case he's secretary of that, and he's president
14 of that one.

15 MR. FRANCIS: May we mark this letter.

16 [Photocopy of letter from Edison Asphalt
17 Company to Department of Transportation
18 dated October 14, 1970, received and
19 marked Exhibit C-19.]

20 Q In this letter he says to you that "The
21 purpose is to confirm the availability of Edison
22 Asphalt to supply material for the subject job to
23 Centrum"?

24 A Right.

25 Q And for the years 1970 and 1971?

O-6

1 A Yeah. Well, they were going to do that widening
2 that I mentioned the one year, because we're getting late
3 in the season here, and then there were eight miles to
4 be resurfaced. With the shoulders, it would have been
5 40-feet wide, which is a major operation.

6 Q Did you consider this letter of October 14th
7 on the letterhead of the Edison Asphalt a firm commitment?

8 A Yes, I did.

9 Q You did? A Yes.

10 Q And-- A Because they have been
11 in business for a long time. It's a reputable outfit.
12 Halecrest is a reputable outfit. Never had any problems
13 with them.

14 Q Well, this situation was that Hale of Edison
15 was giving assurance for Hale of Centrum?

16 A That's right.

17 Q Just to pursue a little further, did you
18 consider that this 14th letter of Edison was a guarantee
19 that the asphalt would be available?

20 A That's right.

21 Q For the 46 job? A That's right.

22 Q You did? A Yes.

23 Q Did you, Mr. Stelljes, recommend to Mr.
24 Freidenrich that we hold off on the job because you were
25 not sure that Centrum could get the bituminous concrete?

O-7

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A That was after the--right after the first meeting.
At the meeting of the 2nd I think it was.

Q And that was before you got the letter of
October 14th? A That is right; that is right.

Q Just to come back to how you felt about that
14th, do you remember when you testified in Freehold?

A Uh-huh.

Q At that time did you put it, according to your
recollection, in these terms: that the promise from
Hale was not a commitment, but you thought Hale's
assurance ought to be accepted?

A I don't remember saying that, but I would agree
that this is true.

Q Well, I may have made an improper note,
and I don't want to mislead you.

A I would say that would be right.

Q Just let me make sure.

Well, I thought I read this all pretty
carefully. I have notes of your testimony, but I don't
find that you said precisely--

A I don't remember saying it, but basically a great
many of the contractors, you rely on their word, so--

Q The note I have, and now I can't find it,
that the promise from Hale was the best; it was not a
commitment, but you accepted Hale's assurance. But I

0-8 1 can't find it now and I--

2 A Oh, I know how that came about. Somebody asked
3 whether one company--when you have separate companies,
4 whether one can be committed to another one without
5 a formal contract, in other words, under the law and so
6 forth whether Hale--if Centrum didn't do the work
7 properly, whether you could go after Halecrest or Edison
8 Asphalt.

9 Q Oh, yes.

10 A And the answer, of course, would be, no, which is
11 where I would have said--

12 Q The suggestion was--

13 A --something like that. I mean, the promise
14 was good enough.

15 Q In other words, from a legal standpoint
16 the suggestion was that a statement by Hale that he--

17 A Was committing.

18 Q That Edison would supply it, was not binding
19 on Edison if they didn't want to supply when the time
20 came? A That's right; that's right.

21 Q But you felt that that was the best you could
22 get and you considered that a commitment?

23 A No. From experience, these people honor. In that
24 letter from Schuyler it said something about looking
25 at the contracts between the prime contractor and the sub.

O-9

1 Most of the time there are handshakes. They don't have,
2 in many cases, written contracts between them even though
3 it's for a lot of money.

4 Q You do know that eventually the contract was,
5 in fact, awarded to Centrum as the low bidder?

6 A That's right.

7 Q And did you see Schuyler's signature on the
8 award as of November 5th?

9 A I believe so. They showed it to me down in Freehold,
10 which is the first time I had seen it.

11 Q Now, in connection with your activity, did
12 anybody ever ask you to do anything other than look at this
13 fairly and honestly with respect to whether Centrum could
14 do this job?

15 A No, no.

16 Q Did anybody ever--

17 A The whole question from my standpoint was whether
18 they were capable of doing the work in reasonable time.
19 I mean, we were interested in time, also.

20 Q Did I ask you how long you've been in the
21 Department? A I started in 1931, but we had a
22 layoff in '33. I was off from '33 to '36, so it's
23 about thirty-eight, thirty-nine years.

24 Q During that period had you had any requests
25 from public officials, mayors, assemblymen, senators and

1 others to look into complaints of their constituents?

2 A Many times.

3 Q And did you always investigate?

4 A That's right.

5 Q And if the complaint was found to be reasonably
6 grounded, you would do something about it, would you?

7 A This is right.

8 I'm still getting them as regional engineer up here.

9 A lot of people feel that they have to go to some
10 political figure in order to get attention, in other
11 words, that if they go directly, that nobody will pay
12 any attention to them, which normally isn't true.

1 Q I see. You don't pay anymore attention to a
2 complaint that comes from a taxpaying citizen than you do
3 to a public figure? A You should have
4 said it the other way.

5 Q All right. I prefer to take it whatever way
6 you want to put it.

7 A No, we would investigate all of them.

8 Q Fairly and honestly?

9 A That's right. We will turn down a public official
10 if it's not warranted.

11 Q I see. But you did not as a matter of policy
12 consider or a request or a complaint by a public official
13 as unwarranted interference with the operation of your
14 department? A No. In this particular

15 case I had no requests from a public official at all.

16 Q In other words, there was nothing about your
17 activity in connection with this contract that was out of
18 the run-of-the-mill operation?

19 A No, except that you're dealing with a brand-new
20 company, which is not usual. I mean, we do get new companies
21 all the time. Usually they start in on a less controversial
22 job. Like, say, a jughandle or something, maybe has been
23 waiting for a long time and if it takes two extra weeks,
24 well, it takes two extra weeks.

25 Q Well, as a result of this situation in this case

Stelljes

1 you looked at it a little more closely; is that it?

2 A Because of the two things; because there was an awful
3 lot of bituminous concrete, and I've forgotten what the
4 amount was. It was a lot of it. It was an important part
5 of the job. And also from the equipment standpoint.
6 Now, equipment. If you have money, you can always get
7 equipment. So it isn't too bad as long as a fellow realizes
8 what he needs.

9 MR. FRANCIS: Well, I think that's all I want
10 to ask you about, Mr. Stelljes.

11 THE CHAIRMAN: I just wonder, Mr. Stelljes,
12 would you be familiar with any of these change orders
13 that might have gone through?

14 MR. FRANCIS: I don't know.

15 EXAMINATION BY MR. FRANCIS:

16 Q Were you familiar with the bidding process
17 in the beginning? A Uh-huh.

18 Q Do you know -- A He's talking change
19 orders, which would come after the contract is in operation.

20 THE CHAIRMAN: Yes.

21 Q Yes. Were they change orders in this case?

22 A I would presume so, because almost every contract
23 has them.

24 Q Do you know whether or not prior to the time
25 of the advertisement for bids that it was recognized in

1 the Department that changes had to be made, but because
2 of the hurry to get the work done it was decided to adver-
3 tise on the basis of the specifications already available
4 and give a change order for whatever changes had to be
5 made? A I wasn't aware of it on this
6 contract particularly, but it is not uncommon. We have
7 had -- well, I can think of one job where we had 25 change
8 orders before the contract really got started, the plans
9 were that bad.

10 Q Do you know, were there substantial change
11 orders in this case?

12 A I couldn't tell you.

13 Q Do you know how much more than the bid the
14 Centrum Company was actually paid at the conclusion of the
15 work? A No.

16 Q Do you know whether there was a substantial
17 amount more paid? A I have no idea. I'd
18 have to look it up. I mean, we have records in the office,
19 but I never thought to look that up. I don't even know
20 that they were paid more. Frequently we may have had a
21 reduction.

22 EXAMINATION BY MR. SAPIENZA:

23 Q Those letters that you got from Mr. Hale,
24 what did you do with those letters?

25 A Well, my secretary apparently put them in the file,

1 because when I asked for the correspondence that had come
2 in on this contract, she dug them out.

3 Q You didn't give those letters to anyone else
4 up above you? A No.

5 Q Are you aware that Mr. Schuyler recommended to
6 Mr. Mullen the contract not be awarded to Centrum because
7 they did not ostensibly have the bituminous concrete?

8 Are you aware of that? A No.

9 Q Are you aware that Mr. Mullen recommended to
10 Mr. Kohl, Commissioner Kohl, that the contract not be
11 awarded to Centrum because there was not enough asphalt,
12 bituminous concrete to do the job; that Centrum didn't
13 have enough or there was a request whether they had enough?

14 A No. There was a question, as I say, until the
15 letters came in, and they are dated on the 14th and I don't
16 even know how they were delivered. In other words, they
17 could have been hand-delivered or they could have been
18 mailed.

19 Q Do you mind --

20 A After the letters came in I advised either Freidenrich
21 or Schuyler that the letters had come in committing
22 Edison Asphalt. So it would depend on -- what you're talking
23 about, it would depend on just which, what time it was.
24 In other words, if it was prior to the, say, 15th maybe,
25 it could have been good grounds for it.

1 EXAMINATION BY MR. FRANCIS:

2 Q Well, to stay with that a minute, after the
3 14th, would you have considered it unreasonable for Schuyler,
4 for example, upon reading those two letters of the 14th
5 to conclude that they did not represent a firm commitment
6 of an adequate supply of bituminous concrete for this

7 job? A Well, considering that Edison
8 Asphalt is, was an established -- is and was an established
9 company, and I had talked to Hale about this at the time
10 we had that meeting on the 2nd, and they had a goodly amount
11 of asphalt yet to come because they had had a big year the
12 year before, so there's no question in my mind that they
13 could have supplied it.

14 Q Did you know how many jobs they had open at
15 the time they bid, Centrum bid for the Route 46 job?

16 A No, except that Hale said they had plenty of capacity
17 for this job if they had to.

18 Q Was any check made of that?

19 A No.

20 Q To see how many contracts they had open?

21 A You'd have an awful time doing that, because there's
22 not only State contracts, there's county, municipality.

23

24

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P-1

1 Q Well, for example, somebody could have asked
2 Centrum to list the contracts that they had outstanding.

3 Did anybody do that? A Centrum?

4 Q Yes. A I thought we were
5 talking about Hale. Centrum didn't have very much work
6 because they were relatively new. They had been doing
7 small paving jobs in little towns, maybe a block or two.

8 Q Well, when they got this contract and they had
9 to have substantial amounts of bituminous concrete for
10 this job, didn't they?

11 A That's right.

12 Q 38,000 tons?

13 A Somewhere around there.

14 Q And whether they were going to get enough
15 bituminous concrete to do that job depended upon Edison
16 Supply? A Except I still didn't believe

17 it after the letters, but I was satisfied if they didn't
18 get it where I suspected they might get it, which is what
19 it turned out to be, Warren Paving. If you're in this
20 business, you know pretty well who is working and who
21 isn't, what plants are working. You have a pretty good
22 feel for everything.

23 I could tell you up in North Jersey which plants are
24 doing quite a bit, which are doing practically nothing.
25 I knew Warren Paving didn't have any real commitment.

1 Q Well, Hale didn't give you any commitment from
2 Warren Paving? A No.

3 Q In fact, what Hale did was rent equipment from
4 Warren Paving to do the job?

5 A He also got the bituminous concrete from them.

6 Q But you had no commitment --

7 A I had no commitment at all. I just had a suspicion.

8 Q And what you did have was an assurance from
9 Hale that his other company, the asphalt supply company,
10 would supply -- A That's right,
11 if worse came to worse.

12 Q If worse came to worse.

13 A That's right.

14 Q And you said, I think, that Edison had a great
15 many jobs open at the time?

16 A They have three plants at the one location, so that
17 they have a lot of capacity.

18 Q And you don't know that by actual knowledge
19 as to the drain that existed at that moment or would exist
20 over the period of Centrum's performance of Route 46 --

21 A No, except I think you mentioned a figure. I was
22 going to say 40,000 tons on this job. There was only,
23 I think about 8,000 of this tonage was what we were
24 interested in for the fall, to refill the trenches. That
25 would probably take them at least twenty days, or maybe a

Stelljes

1 little longer, to use this up, because this was over five
2 and a half miles on both sides of the roadway, eleven miles
3 of trench. So they have to go like the devil to do a half
4 a mile in a day. So that we are actually talking about
5 400 tons a day.

6 Now, a great many of these plants will turn out
7 300 tons an hour. And when you have three plants, you have
8 a lot of capacity.

9 Q All this adds up to your feeling that when
10 Hale said when Edison would supply that that was enough
11 assurance for you? A That's right.

12 Q Even though Edison couldn't supply, he would
13 then get it from Warren?

14 A Even though Edison didn't supply.

15 Q Didn't supply or couldn't supply.

16 A That's right.

17 THE CHAIRMAN: How did you satisfy yourself
18 with the equipment shortage, or the lack of it?

19 THE WITNESS: Well, Halecrest we knew had
20 plenty of equipment. I mean, they're an established
21 outfit. And in addition to being in Edison asphalt
22 or in Halecrest, and then they got into Centrum,
23 there is two of them I believe were officers of
24 Centrum.

25 THE CHAIRMAN: But you have a letter in your

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1 file from Edison Asphalt as to the bituminous
2 concrete. Did you get something pertaining to the
3 equipment?

4 THE WITNESS: At the meeting on the 2nd,
5 Dick Hale, who was there, assured me that all the
6 equipment, any equipment of Halecrest was available
7 to Centrum.

8 BY MR. FRANCIS:

9 Q But the fact was that it was not used?

10 A That's right.

11 Q Instead of using Halecrest, they went out and
12 rented some from Warren Paving Company?

13 A That's right.

14 Q So the assurance to you that Halecrest equipment
15 would be available -- A At least if they
16 needed it, it was there.

17 Q But you regarded it as an assurance that
18 Halecrest equipment would be used?

19 A No. That it was available. And the job could be
20 done is what I was interested in.

21 Q I don't want to push that too far, but we are
22 playing with words.

23 When he said that, as you want to put it, that
24 the Halecrest equipment was available for this job, you
25 took it to mean that it was there and ready and available

1 and could be used for the job?

2 A Could be used, that's right.

3 Q But do you know why it wasn't used?

4 A It was probably cheaper for them to use somebody
5 else's.

6 Q And if they said to you at the time you had
7 this conference with them, well, the Halecrest equipment
8 is available, but if it isn't, we will use somebody else's,
9 would that have satisfied you?

10 A I'm trying to remember how you phrased that.

11 Q I said if they said to you, well, the Halecrest
12 equipment is available to do this job, but if it isn't,
13 we will get somebody else's, would that have satisfied
14 you?

15 A No. That's not the same thing. You are not saying
16 the same thing.

17 Q I will take it any way you want to put it.

18 A Because you said if it isn't available, so then it
19 isn't committed.

20 Q Well, but the fact is that Halecrest equipment
21 was not used on this job. A This is right.

22 Q And he told you not to worry about it, but the
23 Halecrest equipment was available?

24 A Right.

25 Q Why wasn't it available?

P-6

Stelljes

1 A It was available.

2 Q But it wasn't used. A That's right.

3 Q So the suggestion of availability wasn't
4 worth very much, was it? A Yes, it was;
5 yes, it was.

6 Q Did you have any discussion with them as to
7 why they didn't use Halecrest equipment?

8 A No.

9 Q All you were interested in was having some
10 equipment out on the road and getting the job done?

11 A The proper equipment.

12 Q And you didn't care where it came from?

13 A That is right.

14 THE CHAIRMAN: Mr. Francis, do you want to
15 put into evidence the memo from Freidenrich on
16 the 18th of September, 1970? You referred to it.

17 THE WITNESS: That was from Schuyler to
18 Freidenrich, I think.

19 MR. FRANCIS: My note is to put it in with
20 Mr. Schuyler.

21 MR. BERTINI: I have a question.

22 Besides the economics of the situation where
23 it was advantageous to get the asphalt from the
24 closer organization, is there any problem with
25 dragging asphalt 50 or 60 miles in connection with

1 the efficiency of the job?

2 THE WITNESS: No. You're hauling normally
3 21, 22 tons of bituminous concrete in a truck. Now,
4 in the colder weather the trucks are usually
5 insulated. They have paneling on the sides to keep
6 the heat in. Bituminous concrete can be transported
7 for several hours, without losing any appreciable
8 amount of heat. The loads are all covered.

9 The most drop you might have in two hours
10 might be five degrees in the road, and most of that
11 would be right around the edges. Bituminous con-
12 crete doesn't give up heat, which is what you're
13 interested in, in other words, keeping it live until
14 you lay it.

15 We have had jobs that ran -- we will haul
16 35, 40 miles with no problems at all.

17 BY MR. FRANCIS:

18 Q Except that it's more expensive --

19 A It costs more. You're paying so much a mile actually
20 to the trucker.

21 Q That's why it was more convenient to get the
22 bituminous concrete from the Warren Paving Company, is that
23 it? A That's right.

24 THE CHAIRMAN: I might add, under our procedure,
25 which we follow, called the Code of Fair Procedure --

1 maybe Mr. Sapienza touched on it in the original
2 warning -- you can at anytime after the conclusion
3 of your testimony file a brief sworn statement
4 relevant to your testimony for incorporation in the
5 record of this proceeding. If you feel you want to
6 have something incorporated, you can file a sworn
7 statement.

8 Thank you.

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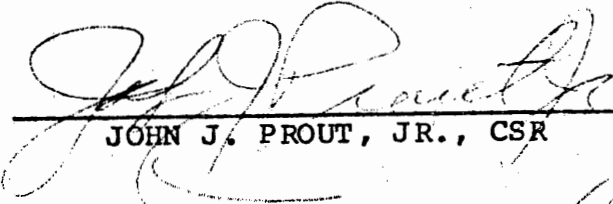
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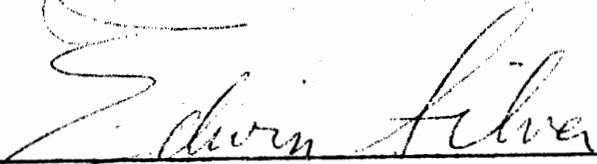
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C E R T I F I C A T I O N

WE, JOHN J. PROUT, JR., and EDWIN SILVER,
Certified Shorthand Reporters and Notaries Public of the
State of New Jersey, certify the foregoing to be a true
and accurate transcript of our original stenographic
notes taken at the time and place hereinbefore set forth.



JOHN J. PROUT, JR., CSR



EDWIN SILVER, C.S.R.

NOVEMBER 13, 1972

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

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

Tuesday, November 14, 1972

28 West State Street
Trenton, New Jersey

B E F O R E:

JOHN F. MC CARTHY, JR., Chairman

CHARLES L. BERTINI, Commissioner
WILFRED P. DIANA, 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.
and
EDWIN SILVER, C.S.R.

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1 THE CHAIRMAN: Mr. Schuyler, we have two
APP-1 2 members of the State Commission of Investigation
3 sitting this morning. Mr. Bertini is on my right.
4 My name is John McCarthy. I think you have already
5 met Mr. Francis, have you not?

6 MR. SCHUYLER: No, I haven't.

7 MR. FRANCIS: No, we haven't.

8 THE CHAIRMAN: Mr. Schuyler, Mr. Francis will
9 handle the questioning, and Mr. Sapienza, one of the
10 regular counsel. Mr. Francis is a special counsel
11 to the Commission in this matter. And I think the
12 other two gentlemen are investigators, Mr. Corrigan
13 and Mr. Jordan, and the other two gentlemen here are
14 court reporters.

15 MR. SCHUYLER: Good morning, gentlemen.

16 THE CHAIRMAN: Mr. Schuyler, at this time would
17 you stand up, sir, to be sworn.

18 J A M E S R. S C H U Y L E R, having been duly sworn
19 according to law by the Officer, testified as follows:
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1Beg1

1 THE CHAIRMAN: Mr. Sapienza, one of the
2 counsel to the commission, will give you the various
3 warnings and explain in preliminary fashion how we
4 go about conducting this hearing.

5 MR. SAPIENZA: Mr. Schuyler, I am going to
6 give you certain warnings we give to all witnesses
7 who come before us in these executive sessions.

8 You have been asked to appear and you have
9 done so voluntarily; is that correct?

10 THE WITNESS: That's correct.

11 MR. SAPIENZA: This is an executive or
12 private session of the Commission. Your testimony
13 will be taken under oath and transcribed by the
14 Shorthand Reporter. It may be used against you
15 later on in a court of law. For that reason if
16 you feel that your answer may tend to incriminate
17 you, you may refuse to answer. You understand that?

18 THE WITNESS: Yes, I do.

19 MR. SAPIENZA: You have the right to be
20 accompanied by an attorney of your choice. And I
21 note for the record that you do not have an attorney
22 with you today. Is that of your choosing?

23 THE WITNESS: That's correct.

24 MR. SAPIENZA: If at any time during the
25 questioning you feel that you would like us to halt

beg2 1 the questioning until you obtain an attorney, or
2 for whatever other reason, all you have to say
3 is please stop and we will discontinue the
4 questions. Do you understand that?

5 THE WITNESS: Yes.

6 MR. SAPIENZA: Section 52:9M-15 of our
7 statute forbids disclosure by you of the questions
8 asked, your responses, or any other information
9 you may gain at this hearing. The possible maximum
10 penalty is that as if it were a disorderly persons
11 offense.

12 Although your testimony is now being taken
13 in private, the Commission may at a later time
14 make your testimony available to the public,
15 or it may at a later time ask you to come in and
16 give your testimony at a public hearing. Do you
17 understand that?

18 THE WITNESS: Yes.

19 MR. SAPIENZA: To do so we would have to
20 adopt the resolution.

21 A copy of your testimony at this private
22 hearing may be made available to you at your
23 expense if it becomes relevant in a criminal
24 proceeding in which you are a defendant or if you
25 are summoned to appear at a subsequent hearing

beg3 1 before us, provided that the furnishing of such
2 a copy will not prejudice the public safety or
3 security.

4 You have the right at the conclusion of this
5 hearing to file a brief sworn statement relative
6 to your testimony for incorporation in the record
7 if you feel that's necessary. Okay?

8 THE WITNESS: Yes.

9 EXAMINATION BY MR. FRANCIS:

10 Q Where do you live, Mr. Schuyler?

11 A Ravine Road, Ewing Township.

12 Q And are you presently connected with the
13 Department of Transportation? A I am.

14 Q And in what capacity?

15 A Regional Highway Engineer.

16 Q What was your capacity in the summer, we will
17 say beginning of June, 1970 and throughout the period
18 to the end of the year? A State highway engineer.

19 Q Is that the same position as you have now?

20 A No, sir.

21 Q How long have you been with the Department
22 in all?

23 We won't hold you to the day.

24 A Approximately twenty-five, twenty-six years,
25 interrupted service.

beg4

1 Q Well, that's a long time, anyway.

2 In the summer of 1970, and beginning with the
3 first of the year 1970, what was the nature of your
4 duties as regional engineer?

5 A I wasn't regional engineer in 1970.

6 Q I mistook your title. Whatever your title was
7 in 1970, what duties were associated with it?

8 A As State Highway Engineer in 1970, I was the chief
9 technical official, in general responsibility for design,
10 construction, maintenance, operation of the state highway
11 system, with also duties related to the grants and
12 aid program to the municipalities and counties.

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Cpp-11

2 Q You were familiar with the Route 46 project in
Warren County, were you, in the summer of 1970?

3 A Is that Route 46, Section 19A and 2B, I believe?

4 Q That's the one that we are concerned with in
5 this inquiry. So I'm not sure what you're concerned with
6 in this import, so--

7 Q Well, we'll get the precise description of it
8 for you.

9 Well, supposing I show you a letter, which has
10 already been marked in the record. And does that identify
11 the job, Route 46, Section 19A and 2B?

12 A I'm familiar with that project.

13 Q All right. Did you have anything to do with
14 the preparation of the plans and the design for that project?

15 A Just in a very general supervisory capacity.

16 Q Do you know when the project was decided upon?

17 A Yes. It was the early part of June, 1970.

18 Q Generally speaking, what was contemplated by
19 the project?

20 A It was contemplated by the divisions of the project
21 to reconstruct approximately eight miles of Route 46 from
22 the vicinity of Columbia, New Jersey, to the intersection
23 of Route 46 with Route 31 at a locality known as Buttzville.

24 Q And can you give us some idea of what it was
25 that was to be done?

Cpp-2 1

2 A Yes. Basically, it was planned to widen the existing
3 traveled way by the addition of two feet on either side of
4 the existing traveled way and then resurface the new
5 dimension of the traveled way plus the shoulders.

6 Q And over that eight mile stretch, did that
7 involve the use of a substantial quantity of bituminous
8 concrete?

9 A Yes, they were the--bituminous concrete was the basic
10 or essential item in the contract.

11 Q And during this period--that isn't very
12 specific, is it?

13 At the time this project was being thought of,
14 was there any problem with the bituminous concrete, the
15 availability of bituminous concrete in this area?

16 A Well, the problem of not bituminous concrete but
17 liquid asphalt, which is an ingredient to manufacture
18 bituminous concrete, was in short supply during the summer
19 and early fall of 1970 on the basis of information that we
20 could discern.

21 Q Now, prior to the time that bids were solicited
22 for this Route 46 project, had you issued any instructions
23 with respect to the shortage of the--give me the technical
24 name for it again.

25 A Asphalt; liquid asphalt.

Q Liquid asphalt. Had you discussed that with

Cpp-31 your department?

2 A Yes. I believe the record will show that on or
3 about September 18th, 1970, over my signature, instructions
4 were issued to our maintenance people and our construction
5 forces concerning procedures that should be employed
6 before either maintenance, bituminous resurfacing and/or
7 construction projects which involved bituminous concrete
8 were utilized.

9 Q Let me show you a document, dated September
10 18th, 1970, and perhaps it isn't as clear as it might be,
11 and ask you if this is the letter that you sent out to
12 your people.

13 A May I take a minute to read it?

14 Q Oh, sure.

15 (Whereupon, the witness examines the document.)

16 Q All right. Well, if necessary, using that to
17 refresh your memory will you give us a somewhat specific
18 idea of what your problem was and what your instructions
19 were to your people.

20 A Well, first of all, the problem was the fact that
21 subcontractors and/or contractors in some cases were not
22 able, during this period of time,--summer of 1970, late
23 spring of 1970--to acquire sufficient quantities of liquid
24 asphalt from either the supplier and/or a plant, a
25 refinery, to meet the requirements of some of the contracts

Cpp-41

that were currently underway for the New Jersey Department of Transportation.

Now, this was manifest by some contractors coming to us and asking for extensions of time; some, not too many contractors, asking for permission to use what they termed Canadian asphalt.

It was further manifest that there was a shortage of liquid asphalt by the facts that both the Associated General Contractors through their executive director and the New Jersey Bituminous Paving Association through their executive director, coming to the Department, and in some cases specifically to me, and pointing these conditions out and asking for every possible consideration to get them through this period of asphalt shortage.

Furthermore, in our own American Association of State Highway Officials we were receiving inquiries from our executive director, Alf Johnson, concerning answering specific questions of just what is the condition in your state, which all added up to the fact that generally people that you talked with in the trade or the industry, who were knowledgeable, confirmed the fact that the summer and fall of 1970 would be a critical time for the production of bituminous concrete, which required liquid asphalt. So much for the manifestation.

1 A [continuing] Basically, this instruction which we
2 referred to here, which was drafted by the writer, dis-
3 seminated to my assistant highway engineer, specifically
4 in charge of construction and maintenance, it gave him
5 alternatives and procedures which to employ to cope with
6 this problem that manifested itself previously.

7 Q And the instructions to your staff, that you
8 have just spoken about, are set forth generally, at
9 least, in that memorandum of September 18 that we have
10 been talking about?

11 A That is correct.

12 MR. FRANCIS: May I have that marked.
13 [Memorandum, dated September 18, 1970, from
14 the STate Highway Engineer to Mr. Fredenrich,
15 received and marked as Exhibit C-20 in
16 evidence.]

17 Q Mr. Schuyler, can you give us any specific
18 illustrations of contractors who had difficulty and
19 who turned to you for help?

20 A It's my recollection--but I feel that this would have
21 to be checked, and I have no reservations mentioning it,
22 but I do want it understood that we are going back
23 two years--

24 Q Well, let me refresh your recollection, if
25 it does.

1 I guess Mr. Stelljes, one of the witnesses yesterday,
2 mentioned Samuel Braen Company. Does that fit into your
3 recollection? A No. But I have no reason to
4 question it.

5 Q I only mentioned it thinking it might help
6 you. You go ahead and give us whatever your recollection
7 is.

8 A My recollection is that there was a contractor
9 performing work in northern New Jersey who specifically
10 came to us, and it may have been through Mr. Stelljes,
11 but the word ultimately reached me, who wanted to use
12 Canadian asphalt, with the reservation--my memory may
13 be wrong--I think it was the Zimmerman Contracting
14 Company, but that's subject to verification and check.

15 Q Whether it was Zimmerman or Braen, you have
16 a definite recollection that it was a contractor who did
17 come to you because of this shortage?

18 A Yes. It could have been Braen supplying the
19 bituminous concrete for Zimmerman.

20 Q What did you do with respect to his
21 claim for mercy about the shortage?

22 A Well, I believe in this particular case, since
23 there was a specific request used for Canadian asphalt,
24 and the specifications not only of Title 27, but other
25 general laws applying to foreign material, we denied the

1D-3

1 request, as I recall.

2 Q To your recollection, did you ever allow anybody
3 to use the Canadian asphalt?

4 A Not to the best of my knowledge.

5 Q Was that because it was of inferior quality
6 as compared with ours?

7 A No. I believe we were more prone to the bidding
8 regulations and the laws. I'm not sure whether the
9 particular project was financed partially with federal
10 moneys, and I am sure they would have some controls
11 on that matter, too.

12 Q Did you ever get a memorandum from Mr. J. C.
13 Reed around July 22, 1970 about this asphalt shortage?

14 A Well, in the early summer of 1970 I probably
15 received reports not only from Mr. Reed, but perhaps from
16 Mr. Freidenrich concerning this matter.

17 Q Well, I have some. If you don't mind, I
18 want to put as much of this into the record as I can on
19 the subject of the shortage. That is the reason why
20 I am asking you about this one.

21 Let me show you a memorandum to you from
22 Mr. Reed on July 22. Will you look at that and tell us
23 if you received it.

24 A I remember receiving this.

25 Q Does that memorandum also present a fair view

D-4

1 of the asphalt shortage generally in this area at that
2 time? A To the best of my knowledge, yes.
3 I had to rely on my staff for this type of information.
4 I had no reason to doubt them.

5 MR. FRANCIS: May we have that marked,
6 also.

7 [Memorandum dated July 22, 1970 from Mr. Reed
8 to Mr. Schuyler received and marked as
9 Exhibit C-21 in evidence.]

10 MR. FRANCIS: Perhaps the record might
11 note that there is a attached just a form of
12 memorandum dated July 23 marked, "For your
13 information," referred to Mr. Schuyler. It's
14 of no real significance. But in any event, I
15 mentioned it for the fact that it is attached.

16 Q Mr. Schuyler, you mentioned Mr. Freidenrich
17 in this connection, also. Let me show you a memorandum
18 dated July 29, which appears to be one to you and Mr.
19 Mullen from Mr. Freidenrich. Would you look at that and
20 tell us if that speaks generally of the asphalt shortage
21 situation.

22 Does that memorandum generally also convey
23 the situation with respect to the asphalt shortage?

24 A It conveys the result of the investigations
25 which Mr. Freidenrich was asked to make, and it certainly
would substantiate the fact that there was a

D-5 1 problem at this time.

2 MR. FRANCIS: May we mark that, also.

3 [Memorandum dated July 29, 1970 from Mr.

4 Freidenrich to Mr. Schuyler and to Mr. Mullen

5 received and marked as Exhibit C-22 in evidence.]

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Epp-1 1 Q Let me just show you a couple of other things
2 for which, I think, deal with this same problem. You are
3 familiar with the Oil Daily, are you?

4 A Not particularly, no.

5 Q Do you remember whether you saw any issues of
6 it which spoke of this shortage?

7 A Not at this time.

8 Q Well, we'll just save that. I think that came
9 from Mr. Freidenrich.

10 Now, come back to the Route 49.

11 A 46?

12 Q 46. Did you have anything to do with the
13 preparation of the plans and design for the work?

14 A In a very general supervisory fashion in this way:
15 number one, certainly issued the verbal work order to start
16 the work, prepare the plans and specifications;

17 Number two, I was advised very shortly after the
18 issuance of the work order that to accomplish the objective
19 that had been established, which I'll speak of in a minute,
20 help was needed in the form of consulting engineering;

21 And, number three, I got approval from my superiors
22 to retain a consulting engineer;

23 Number four, I impressed upon not only our own people
24 but the consulting engineer the criticalness of the time
25 schedule that had been established with Commissioner Kohl's

Epp-2

1 approval and my advice for this project and how important
2 it was to meet this timetable;

3 Number five, I certainly gave general approval to
4 what we call the typical section, which I previously
5 mentioned is the geometry that we used to perform the
6 widening and the thickness of cover for the resurfacing.

7 Q Well, when the plans and the design were
8 completed in the sense that they were ready for public
9 advertising for bids, did you see them then?

10 A Yes. We had set a date for having the design
11 completed around the 1st of August, 1970, and they were
12 submitted to me, the cover sheet and the fact that the
13 plans were ready. Either very late in July or early in
14 August I did see them.

15 Q Now, when the notices are put in the paper
16 seeking, soliciting bids for the job, where are the
17 specifications deposited that the prospective bidders
18 would look at to know what work is to be done?

19 A We have a contract administration and classification
20 section, which keeps a stockpile of plans and specifications
21 and, in essence, turns them over to interested bidders
22 and/or suppliers for a certain fee that they have to pay.

23 Q And in this instance after final approval of
24 the plan and the design of the specifications that
25 procedure was followed and any prospective bidder would

Epp-3

1 look at them and know the various details on which he
2 would compute his bid?

3 A Yes, sir.

4 Q And the notices that were put in the papers
5 soliciting bids were based on these specifications as they
6 were completed by your department?

7 A To the best of my knowledge.

8 Q Now, after they were completed, the
9 specifications completed, as the result of the federal
10 department's suggestion, or for any other reason, was there
11 a request made for change in the plans or the work to be
12 done which was not within those original specifications?

13 A There was. The plans basically as they had been
14 prepared by our consulting engineer with the supervision
15 of our maintenance staff were what we would call
16 preliminarily--everything is preliminary in our business
17 until it's advertised for construction--were submitted in
18 late July or early August and the matter of financing this
19 project was one that was uncertain from the day
20 authorization was given to proceed with the development of
21 plans and specifications and ultimately a contract.

22 So, when I reported the fact that we, the engineering
23 arm, had completed their mission basically on time, it was
24 approximately a month between the 1st of October--1st of
25 August, 1st of September where our commissioners were

1 attempting to find funds to finance this, and ultimately
Epp-4 2 it was established in the early part of August that
3 federal financing would be involved. That then
4 necessitated us submitting these preliminary plans and
5 specifications to the Federal Highway Administration, and
6 as the result of their review and a condition to their
7 concurring in enabling us to advertise for construction,
8 modifications were suggested to the preliminary plans.

9 Q Well, prior to the actual advertsing in the
10 newspaper, were those suggestions for change incorporated
11 in the specifications, or was the advertising done on the
12 basis or the original plans of your department and the
13 other permitted to go until later?

14 A It is to the best of my understanding and knowledge
15 that a condition for advertising would be that these
16 changes the Federal Highway Administration had requested
17 would be immediately made known to the apparent--no, not
18 the apparent--to the contracting firm to whom the contract
19 was awarded and we would accomplish these changes by a
20 technique known as change of plan.

21 Q And that's what took place in this case, in
22 the Route 46; that suggestions for change that came from
23 the federal agency were not included in the advertising
24 for bids but were to be taken care of by a change order?

25 A That is correct.

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Q Do you recall with any degree of definiteness the nature of the changes suggested by the federal agency?

A With a degree of definiteness only to the extent that one was drainage and modifications and the second was a change in profile and cross section to effect better sight distances.

Q Not being an engineer, I'm looking for another description of the change to see if it accords with your recollection of what the change--

A You might find them under Storm Drainage: Changes in Profile.

Q I think that what I'm looking for has to do with changes of profile. Here's what it is. Is this what you understood, also, or at least one of the things: modification of the plans to add super elevation and bituminous pad to make the sight distance longer in this vertical curve?

A That's the one I referred to as a change cross section.

Q I see. And how long, how great a distance was covered by that proposed change?

A I don't know.

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1 Q Do you have any idea at all?

2 A No, I don't.

3 Q Was that a substantial change in the project?

4 A I'm not sure whether it could be classified as a
5 substantial change or not. And let me explain why.

6 From the description you read given by Mr. Peterson,
7 I don't believe there was any excavation involved. That
8 would be removing the existing pavement and perhaps
9 excavating earth on either side of the existing travel way.

10 I mentioned previously that the basic amount of
11 work, or the basic work element associated with this
12 contract was the producing of the bituminous concrete
13 and placing it on the project. So that item of work was
14 the substantial backbone of the contract.

15 So I don't know, specifically coming back to your
16 basic question, whether the magnitude of the bituminous
17 concrete in this particular change of elevation was
18 a considerable portion or a minor portion of the
19 bituminous concrete work throughout the entire job.
20 That's why I can't give you a specific answer.

21 Q Do you know, by any chance, how much the
22 additional cost was that was required by these federal
23 changes? A No, I can't give you specifics on this.
24 It can be very easily established. The department always
25 on completion of a contract makes what they consider--

1f -2 1 or what we classify, rather, as the as-built quantities.
2 And I am sure by now that operation has been completed.
3 So it's a very good possibility, distinctly capable
4 of comparing of estimated quantities of work to be
5 performed at the time we advertised the contract with the
6 quantities of work for which we actually paid for,
7 tonnages of bituminous concrete and the like of that.

8 MR. BERTINI: How about changes in the
9 methodology of performing the work? Was there any
10 of that involved in this project?

11 THE WITNESS: Yes, yes.

12 MR. BERTINI: Wouldn't that affect the total
13 cost?

14 THE WITNESS: Well, it depends upon what time
15 you're talking about, sir.

16 MR. BERTINI: Where would we get that?
17 If we are looking for any change resulting from
18 the method of doing the project, where would we
19 find that?

20 THE WITNESS: Well, all right. Number one,
21 I think I can shed some light on this.

22 The specifications that were utilized for
23 advertising the contract and for which those people
24 who submitted a bid based their bid, among other
25 thing, provided that in the course of excavating on

1f-3 1 either side of the existing pavement for this widening
2 compound that the contractor would not be permitted to
3 form excavation in advance of his bituminous paving re-
4 filling this box more than he could fill up in one day
5 of paving. So in essence, that left a trench immediately
6 adjacent to a substandard travel dimension open for 24
7 hours and a t night.

8 Now, it is my understanding that this technique
9 was employed one or perhaps two days after the contractor
10 started to work, and then a change was effected on the job
11 between the contractor and our staff for forces on the
12 project, which in essence didn't permit him to leave
13 an excavation open overnight, but he had to fill up with
14 bituminous concrete whatever he had opened that same day.
15 BY MR.FRANCIS:

16 Q Was there a connection between the shortage
17 of asphalt and the necessity for handling the exacation
18 on the side of the road promptly?

19 A That was certainly a concern, yes.

20 Q In other words, if there was a shortage
21 of asphalt for immediate use on that job and excavation
22 was made on the side of the road and it couldn't be
23 filled up, automobiles would run a serious hazard of
24 going off into those ditches and injuring the drivers
25 and passengers? A That was certainly of serious

1f-4 1 concern.

2 Q And the need for contemplating the asphalt
3 shortage was directly related to the kind of operation
4 that the contractor was going to do, namely, excavation on
5 the sides of the road, was it?

6 A Yes.

7 Q I suppose you and the members of your
8 department considered that a serious hazard, did you?

9 A Well, I certainly did.

10 Q And was that the reason for the regulation
11 that you had to fill in within the day, you couldn't
12 excavate more than you could fill in in a day?
13 Was that the regulation?

14 A You would have to talk to the resident engineer
15 and our supervisory forces in conjunction with that
16 matter.

17 All I can say is that after one or two days'
18 operation it is my understanding that a change was made
19 which didn't allow that excavation to remain open
20 overnight.

21 This could be elaborated on a little further.
22 From my point of view, my concern was the fact that there
23 was a possibility of this work being done at the worst
24 time of the year and also having an open trench adjacent
25 to the pavement. That's why I mentioned earlier that the

F-5

1 schedule was very critical and tight for completing the
2 plans and getting the work underway.

3 Q You mean by that that at least generally
4 that the approach of the cold weather put greater
5 pressure on the department to get the work done?

6 A That's correct.

7 Q Because you do have problems with use of
8 liquid asphalt as soon as the weather gets cold.

9 Well, do you know whether in addition to the
10 change that you made, or changes suggested by the federal
11 people, that something else had to be added, namely,
12 resurfacing of three bridges?

13 A I am not familiar with that. As I mentioned
14 previously, there were storm drainage modifications.

15 Q Do you remember how much was actually paid
16 to Centrum over the bid at the completion of the work?

17 A No, because that was not calculated until after
18 I changed positions. But it certainly again can be
19 very easily established.

20 MR. FRANCIS: Off the record a minute.

21 [Off the record.]

22 Q Now, the curve change resulted in an additional
23 payment of \$36,000. Does that sound reasonable to you?

24 A That sounds reasonable.

25 Q How would you characterize that in relation

F-6

1 to the bid and the contract? Would you say that that
2 was a substantial change in cost?

3 A Well, it's my recollection that the bid that was
4 submitted was very close to \$600,000. So it would be
5 in the neighborhood of five or six percent of the basic
6 bid.

7 Q Well, in your terms, in Highway Department
8 terms, would you regard an additional cost of \$36,000
9 as a substantial one in relation to the bid?

10 A No.

11 Q Was there any real reason beyond hurry to
12 get the project finished for not including this additional
13 change involved in doing something about the curve in
14 the specifications calling for bids?

15 A I am not aware of any, other than to make this
16 comment, that whenever we submit our plans and
17 specifications to the federal highway administration
18 for their review and concurrence, we generally do find
19 that they have some constructive comments and suggestions
20 and we always try to implement these.

21 Q Well, you didn't consider the federal request
22 unreasonable?

23 A No.

24 Q And I suppose if it were not for the urgency
25 of getting this project finished, you would have withheld

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1 advertising for a long enough time for you to include
2 these changes in the specifications that the contractors
3 would give that in making up their bids, would you?

4 A We don't like to defer, or we didn't at that time,
5 to defer the contracts for making modifications, and
6 we generally use the change order route providing it
7 was not a substantial part of the contract.

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1 Q Well, would you say that in this situation
2 you knew at the time the public notice was given of the
3 advertisement for bids that the federal changes were not
4 going to require a substantial additional cost?

5 A Well, we haven't discussed the other changes at
6 all here in our dialogue.

7 Q Oh, I hope we'll get to all the changes.
8 This is the only one that we seem to know something
9 about, and that came through Mr. Peterson's testimony.
10 That's why I'm inquiring about it now.

11 A Well, as I indicated previously, as far as this
12 superelevation change and, to the best of my knowledge,
13 using the major item or items of work that were incor-
14 porated into the contract, in my judgment that was not a
15 major change. However, there were other changes that
16 were my understanding that the federal government
17 requested, and they involved drainage.

18 Q Well, if you add this elevation change plus
19 the drainage changes, together would you consider them
20 substantial?

21 A Well, I did in this respect: The basic contract,
22 as I recall, had thirteen items of work for which any
23 interested contractor was invited to submit a proposal.
24 Now, it's of those thirteen items of work the
25 bituminous concrete portion, two or three items, were

G1-g2 1 considered the major elements of the contract. They
2 accounted for the bulk of the volume of work and the
3 dollars involved. Thirteen items.

4 I believe, and this can be very easily verified,
5 that at the same time that the contractor was asked to
6 by change order modify this curve and this superelevation
7 situation he was also asked to construct storm drainage
8 facilities, and I believe that these items of work,
9 different sizes of pipe, catch basins, similar appurtenances
10 that go with a storm drainage system, accounted to adding
11 maybe approximately seven or eight more elements of work
12 that nobody had an opportunity to bid.

13 Q I see. On the basis of your experience in
14 the department, can you give us a general idea of what,
15 in terms of money, would be involved in those suggested
16 changes? I don't mean to pin you down to a specific
17 figure, but to give us some idea of what it might involve
18 in additional cost.

19 A I believe those elements ran perhaps in the neighbor-
20 hood of--I'm going to take a--calling from recollection,
21 now, in general, I think those elements ran another
22 25 to \$35,000.

23 Q I see. Here's what I'm trying to get through
24 my head about this. Well, let me just hold that a
25 minute.

G1-3 1 I show you a document, dated September 23,
2 1970, which refers to the bids to be received on this
3 job and outlines a number of items. Is that a list of
4 the things that you have in mind that had to be done on
5 this job?

6 A These were the elements of work that were included
7 in the contract that was advertised for public bids,
8 for which bids were taken on or about the latter part of
9 September, and the thirteen items are shown here on the
10 left-hand side of the page.

11 Q They are the ones you mentioned earlier?

12 A Yes, yes.

13 MR. FRANCIS: All right. May we mark this,
14 please.

15 [Memorandum to Mr. Ralph Stelljes, dated
16 September 23, 1970, received and marked
17 Exhibit C-23.]

18 Q Just to try to make the record clearer in
19 connection with this and the other part of your testimony,
20 the elevation of the highway requested by the federal
21 authorities, and the drainage that you have spoken of,
22 those problems are not covered by the items that appear
23 in the document we have just marked; is that correct?

24 A No, I can't say that is exactly correct. I can say
25 that the elements of drainage are not included--can I

G1-4 1 look at that again just to make sure?

2 Q Yes, sure. A Are not included, are
3 generally not included in the proposal for which
4 contractors were asked to submit quotation.

5 But contrary to the question you asked me, the
6 contractor could effect the changes that the Federal
7 Highway Administration had suggested and for which we
8 concurred with such items that did appear in the contract
9 as Item 2, Item 3 and Item 4. Those quantities were
10 changed as the result of that work.

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1 Q I see. Then in relation to the document you
G2pp-1 2 just looked at listing the various items contemplated by
3 the department's proposal for bids the federal changes
4 could be accomplished except greater quantities would be
5 required in those various items you mentioned?

6 A For the super elevation changes.

7 Q And how about the drainage, the additional
8 pipes and that kind of thing.

9 A There are no items.

10 Q That is not covered by this?

11 A That's right.

12 Q --specification?

13 A Generally speaking, there are no items.

14 Let me explain. For instance, Item 7 says, "Reset
15 heads using new curb piece." Now, that conveys the fact
16 that we were going to change the elevation of an existing
17 catch basin. But it was my understanding that the Federal
18 Highway Administration had requested quite a considerable
19 amount of pipe, or what they had suggested when engineered
20 would have amounted to considerable quantities of pipe
21 and various sizes of pipe, which did not occur.

22 Q I see. Well, so that a prospective bidder
23 looking at the specifications which the department had put
24 out for him would not be aware of additional costs involved
25 in these proposed federal changes both as to drainage and

Schuyler

1 the handling of the super elevation of the curve?

2 A Not from the official record.

3 Q I see. You recall that Centrum was the--let
4 me get it. You remember that the bids for the project were
5 opened on September 24th of that year. Do you remember the
6 low bidder?

7 A The apparent low bidder was a firm by the name of
8 Centrum Contracting Corporation.

9 Q And the second low bidder?

10 A I believe it was Manzo Contracting.

11 Q Do you remember that there was a spread of only
12 \$3800 between those two bids?

13 A No, I don't recall that.

14 Q Now, let me show you this C-23 that we marked.
15 At the top it has the bids; Centrum first, or low, apparent
16 low, Manzo second and Stamato, D. Stamato & Company.

17 A Yes.

18 Q Looking at those two bids you can see that
19 there is less than \$4000 spread between Centrum and Manzo?

20 A That's correct.

21 Q In view of that spread between the two bids,
22 do you think that in fairness these proposed federal
23 changes should have been made known to the bidders before
24 the advertising?

25 A Well, that's a debatable question. I'm sure that

1 you could find opinions both ways. Certainly that spread
G2pp-3 2 between the apparent low bidder at that time and the second
3 low bidder was not unusual for that size contract.

4 Q I suppose it's equally reasonable to suppose,
5 or let's say argue--I'll take out the words. It's reasonably
6 arguable that if all of the specifications including the
7 federal suggested changes had been laid out for contractors
8 who proposed to bid, who planned to bid on this project,
9 either one of the two might have been low as against the
10 other.

11 A Well, I'll go back to previous discussions we've had
12 and say that, in my judgment and opinion, that when you
13 take a contract that contains thirteen items of work for
14 which quotations were to be submitted and increase that to--
15 and this can be checked very easily--and I say it's
16 approximately twenty items of work, then in my judgment and
17 opinion there is a basis for giving very serious
18 consideration to not using the change-of-plan or change-
19 order technique but getting all bidders the same opportunity
20 to bid.

21 You see, this drainage work, to the best of my
22 recollection, added a new dimension to this contract, items
23 of work which had no relation to what we had seen in this
24 Exhibit C-23.

25 Q And when you add specifically in mind the

G2pp-4

1 thirty-eight of the thousand-dollar extra costs for the
2 taking care of the super elevation and the drainage,
3 which you thought might run from \$25 to \$35,000, you've
4 got roughly 53 to \$63,000 overage on the ostensible costs
5 of the project about which the possible bidders were unaware
6 of?

7 A I'm more concerned with the drainage work that the
8 bidders were not aware of than I am with the super
9 elevation.

10 Q Well,--

11 A It could change--those quantities, in my judgment and
12 opinion, the super elevation and the drainage, might
13 possibly have changed the unit prices. You certainly were
14 going to increase the total value of the contract, there
15 is no question about that, the changes that the Federal
16 Highway Administration had suggested and for which we
17 concurred. The total cost was going to increase. But now
18 the debatable point is, will we get the same unit prices;
19 will we get better unit prices; or, will we get higher
20 unit prices? That's also something that we are, in the
21 engineering arm--

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Schuyler

G3pg1

EXAMINATION BY COMMISSIONER BERTINI:

Q Can I go one step further. Were you getting unit prices that were fixed by competitive bidding?

A We were getting unit prices that were fixed by competitive bidding on thirteen items.

Q Right. As to seven items, you were not getting competitive bidding at all; is that so?

A That was my concern.

THE CHAIRMAN: Will the record show that Mr. Diana entered the room, Mr. Prout, please.

EXAMINATION BY THE CHAIRMAN:

Q I've got one question, while I'm thinking of it, Mr. Schuyler. Among your bidders in this project, and knowing that there were probably aware that the Federal Highway Administration was to review your plans-- I'm sure they were aware of that, right?

A Mr. McCarthy, I can't specifically answer that. I don't know. Alls I can do is tell you that I believe it was not common knowledge up until the day that we advertised this contract or this work that was going to be done. Now, I could be wrong there because the Commissioner had gone up to the area where this work was to be performed in early June and he publicly had made a commitment to the public officials in the area that there would be a reconstruction. Now, how closely--

g3-2 1 but he didn't commit himself, to the best of my knowledge,
2 to the funding. So, then, it's a speculation of whether
3 the contracting profession would have known that the
4 Federal Highway Administration were involved in financing.
5 I didn't even know it myself until Assistant Commissioner
6 Mullen gave me the word very early in August.

7 Q Well, generally speaking, the bidders know
8 that this is going to be funded partially by Washington?

9 A At the time it's advertised.

10 Q Yes. If they know it at the time, say
11 in a hypothetical case, are they then putting much in
12 knowledge that there's going to be some change of plan
13 and procedure? A Well, I can say that, generally
14 speaking, on any contract--

15 Q Any contract. A --there will be
16 changes of plan. There's no doubt about that, because,
17 going back again to this C-23, there are a certain number
18 of items of work and we make it very clear that those
19 quantities of work, regardless of what the contract is,
20 are our best estimate of what's to be done. But before
21 the contract is completed, those estimated quantities
22 will change based on unforeseen conditions and changed
23 conditions. But a contractor doesn't know how many
24 items that we may have to ask supplemental prices
25 for.

G3-3¹

Now, the definition of a supplemental price is the fact that it doesn't appear in the contract and you have to negotiate for it, and I don't know whether contractors had any knowledge of there would be supplementary items in this work or not. I can't answer that.

Q And you refer to these other seven items as supplemental? A Yes. And that's approximately, Mr. McCarthy. I'm recalling from memory. There may be more.

1 BY MR. FRANCIS:

Hlegl 2 Q Well, with respect to these extra items
3 that we have been talking about, did your feeling as to
4 the overall substantial nature of those changes figure
5 in your decision that we are going to talk about later
6 of October 26 to recommend rejection of the bids?

7 A Certainly.

8 Q Was it one factor? A It certainly
9 was.

10 Q Was it a substantial factor, in your judgment,
11 or was it one of--shall I put it this way: Was it one
12 of the material important factors in the formulating of
13 your judgment? A Well, again I would say it
14 was a material reason. I think the record will show that
15 I was responsible for providing the information and
16 drafting a letter to the Federal Highway Administration
17 which, in essence, recommended that we reject all the bids,
18 modify the contract, and subsequently readvertise for
19 prices.

20 Q And at least one of the elements in that
21 connection was-- A One of these elements that we
22 have discussed was this problem of the changes, very
23 definitely.

24 Q Now, you remember, generally, I think you
25 said when the bids were opened September 24 of '70--

H1-2

1 A Yes, sir.

2 Q --and Centrum turned out to be the apparent
3 low bidder. Did you know the Centrum Contracting Company?

4 A Not by that name.

5 Q Had you ever dealt with the Centrum Contracting
6 Company on any major project in the Highway Department
7 prior to that time? A Not to my knowledge, either
8 as a prime contractor or a subcontractor.

9 Q When these bids were opened, did you have any
10 reservations as to whether their performance could be
11 completed by Centrum within the year, that year, that
12 is, by the end of the year 1970?

13 A Yes, I had two concerns. One was the asphalt,
14 the ability to gain deliveries on liquid asphalt,
15 manufactured bituminous concrete; and the second one
16 was that Centrum Construction Corporation to me
17 personally was not known and in view of the ramifications
18 associated with approaching winter, this open trench
19 along the highway, their ability to perform.

20 Q I gather from what I have heard so far that
21 you don't routinely give a contract to the low bidder
22 as soon as the bids are opened?

23 A That's correct.

24 Q You do make some investigation, particularly
25 if you don't know the contracting company which is the

Schuyler

H1-3

1 apparent low bidder; is that correct? A Well, I
2 considered it part of my position and my function to fully
3 apprise our Commissioners, both the Assistant Commissioner
4 and the Commissioner, about the details concerned with
5 any bid. And in view of the fact that Centrum, per se,
6 was not readily known what their capabilities were,
7 it was not apparent to me, I had some reservations.

8 Q As a result of the reservations, did you
9 ask for an investigation into their capacity?

10 A Yes. I asked somebody to get some facts on who
11 they were, what experience they had, and their capability,
12 and also, likewise, their ability to supply or get
13 deliveries and be able to produce the bituminous concrete
14 that was required.

15 Q Did you talk to Mr. Mullen about this problem,
16 too, say, shortly after the bids were opened?

17 A I certainly did. It was my custom to receive the
18 tabulation of bids. When I say tabulation, it's been
19 used here as an exhibit, Centrum so many dollars,
20 Manzo so many dollars, and within hours, if I was in the
21 building after the bids were opened, get a verbal report:
22 Were there any irregularities, were there any bids not
23 read in public, or for what reasons, this kind of details,
24 so I'd be apprised of what had transpired. And then
25 I would at the earliest convenient opportunity on all

h1-4

1 of our contracts notify Assistant Commissioner Mullen,
2 and if I had an opportunity, whoever the Commissioner
3 was.

4 Q Do you recall whether in addition to the
5 asphalt and the other factors there was any question
6 raised or whether you had any question with respect to the
7 apparent sufficiency or insufficiency of Centrum's
8 equipment to do the job?

9 A I just mentioned their ability to perform the work,
10 which would be do they have the equipment, their
11 capability, their knowledge, supervision in their
12 organization to handle a project like this.

13 Q Did you make these inquiries yourself or
14 members of the staff about Centrum?

15 A My recollection is that I directed the staff to go
16 to work on this problem. And I think, if I recall
17 correctly, Mr. Freidenrich was assigned the investigation
18 on ability to supply the bituminous concrete contingent
19 upon the availability of liquid asphalt.

20 I believe Mr. Ralph Stelljes was directed to look
21 into their capability of performing, equipment, manpower.
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H2ep-1

1 Q Did you early in October sometime have a
2 telephone conversation with Mr. Mullen about these bids and
3 the general question of whether they should be accepted or
4 rejected?

5 A I did. Let me put it this way: I am sure that
6 sometime before early October I notified him of the
7 pertinent facts concerning the proposals that had been
8 submitted and indicated to him, number one, that Centrum
9 didn't mean a thing to me at that particular time; and two,
10 I was having the liquid asphalt capability researched to
11 make sure that they could perform the work.

12 Q And then after that did you have a telephone
13 call with him having to do generally with acceptance or
14 rejection of this bid or all bids?

15 A Well, the next milestone in this story on this contract
16 is the fact that early in October, I believe it was sometime
17 around the end of the first week, or early in the second
18 week, a telephone instruction was delivered, a message was
19 delivered to my office by Commissioner Mullen's secretary,
20 which in essence said, stop everything on this particular
21 contract, stop the award.

22 Q That was a message that came through Commissioner
23 Kohl to you and to Commissioner Mullen to hold up everything?

24 A Well, at the particular time I didn't know what the
25 source, the basic source was. I have subsequently seen an

1 exhibit in previous testimony that was used in the court
H2ep-2 2 case which would indicate that to me Commissioner Kohl
3 did issue the instruction to Mr. Mullen.

4 Q We have that here. I won't bother to repeat it
5 again. It was a short memorandum.

6 (Off the record.)

7 Q Just to keep the record straight, I will show
8 you a memorandum, which we have already marked C-14.

9 Is that the memorandum you received?

10 A I didn't receive this memorandum. As the note
11 indicates, it was telephoned to me by Mr. Mullen's secretary.

12 Q Well, you got a message, the purport of which
13 is represented by this document marked C-14?

14 A Yes.

15 Q Was it after that you talked to Mr. Mullen?

16 A Well, my immediate reaction to that was, in view of
17 the desire to get substantially all the work done before
18 winter and everything was to call Mr. Mullen and find out
19 what was going on.

20 Q And you did that?

21 A Yes, sir.

22 Q What did you find out?

23 A Basically, I found out that downtown, quote unquote,
24 which was a term we used, being removed from central
25 government operations situated out in Ewing Township,

1 didn't want the contract awarded.

H2ep-2

2 Q Well, let me suggest that I get a little shudder
3 every time I hear the word downtown in this proceeding.

4 Do you mean a particular person?

5 A At that particular time I could not--there was no
6 indication given to me that a particular person was
7 involved.

8 Q So that in this telephone conversation with
9 Mr. Mullen the indication was that downtown wanted something
10 done with these bids?

11 A The indication was downtown didn't want the contract
12 awarded.

13 Q At all?

14 A Well, that's my understanding and interpretation of
15 it.

16 Q You mean by that that they wanted all the bids
17 rejected and rebidding for the project?

18 A No, I don't believe that was it.

19 Q Well, the first impression that you had then
20 was that downtown did not want the contract awarded period?

21 A Right.

22 Q And then did you talk to Mr. Mullen subsequently
23 about it, or did you talk to anybody else about it?

24 A Well, I talked to Mr. Mullen subsequently about it
25 right then and there. My recollection is that I tried to

H2ep-4

1 convey to him that, number one, we had lost approximately
2 one month in dealing with the Federal Highway Administration
3 and financing this contract, and now here was another
4 restraint being imposed on the contract which was acknowledged
5 to have a critical time element from its very beginning.
6 And I tried to impress upon him the importance of if we still
7 had a valid objective in getting substantially all of the
8 work done prior to winter, which is an arbitrary date of
9 December 15, that we better get moving, and I wasn't very
10 successful.

11 Q Well--

12 A Now, the second part of your question, did I talk to
13 other people.

14 As a result of that conversation, he said, well, give
15 me a recommendation as to what we should do.

16 Q When he asked that of you, I would like to have
17 your impression when he said, look into this and give me a
18 recommendation as to what we should do. Was there anything
19 to indicate that he did not want an honest recommendation
20 from you?

21 A No.

22 Q And you had no impression to give other than
23 an honest and fair recommendation, did you?

24 A That's correct.

25 Q I mean no insinuation, but I am making a

H2ep-5 1 record. I want the record to show as clearly as possible
2 what the situation was.

3 Then you say you spoke to some other people in
4 order to get facts to enable you to make a recommendation,
5 is that it?

6 A That's correct.

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Q Who were those people?

A Well, I can't give you specific times, dates, and places.

Q In general. A But I am sure I went back to Mr. Freidenrich and said, What is the story on the asphalt availability?

I'm positive I went to Mr. Stelljes and said, How are you coming along with the report on the capability of Centrum?

I went to people who had not had a part in intimately developing the plans and specifications to get a confirmation on my judgment of production rates to see how we had been coming out and meeting the basic objective now that we were along into the month of October and getting substantially all of the pavement constructed. I went to the regional engineer in that territory at that time and asked him for some advices and opinions of what he thought we ought to do.

Q Did you finally reach a point at the end of your investigations and inquiries where you made up your mind to make a recommendation to Mr. Mullen or jointly with him? A Well, this investigation period, along with the other things that were transpiring in the Department at that time, brought about the date of October 23, which was 30 days from the date we had received the bids.

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Q And under the statute, as I recall, you are supposed to award the contract, if you're going to, within thirty days. A There is a provision in Title 27 that says we should award a contract within 30 days after we receive the bids.

So, at this time, or about this time, I know Assistant Commissioner Mullen and I had another discussion concerning this matter. We discussed all the ramifications, alternatives, options that we had, that were apparent to either me or he in this particular matter. And it was at this time where I believe I first became aware of a specific name being involved in this matter. And as a conclusion to this quite lengthy discussion, I made the recommendation that with all the facts that were available to me, knowing that there was a specific individual in state government that had an interest in this matter--

Q This specific individual was Mr. Sherwin, the Secretary of State? A Yes, Mr. Sherwin, Secretary of State.

Q In any event, after this detailed discussion with Mr. Mullen, you and he, primarily you, because you were the engineer, reached the conclusion that there should be a recommendation to reject all the bids; is that correct? A Reject all bids, subsequently

H3-3

1 readvertise a contract which would have additional items
2 of work involved in it, specifically those drainage
3 elements.

4 Q Generally, the things that we have talked
5 about here a little earlier?

6 A That is correct.

7 Q Now, the mention that you made of the
8 Secretary of State, what have you to say as to whether
9 the judgment that you formed and advanced later through
10 the Mullen memorandum, that I will show you in a minute,
11 was that a fair and honest and independent judgment on
12 the basis of the facts that you had discovered?

13 A On the basis of all the facts that were available
14 to me, it was a fair and honest judgment.

15 Q Would you have made the same--let me see how
16 I should put this.

17 Did the fact that you knew that the Secretary
18 of State was involved play any material or important
19 or significant part in the good faith of the recommendation
20 that you made for the rejection of all of these bids and
21 the readvertising?

22 A Let me put it this way: I was the so-called chief
23 engineer in the Department of Transportation involved
24 with those elements that were discussed very early in this
25 testimony. And as chief engineer, I felt that it was my

13-4 1 position to march to the cadence that was called by
2 my superiors, whether they be assistant commissioner,
3 commissioner, or the interpretation I felt the assistant
4 commissioner or the commissioner was placing on policy
5 matters, wherever they came from. And it was my function
6 to translate these policy matters into the steel,
7 reinforced concrete, bituminous concrete, whatever other
8 components there were that created highways, bridges,
9 lighting, signs, and all that go with it. And so in that
10 respect, I responded and reacted the way I did.

11 Q I am not entirely clear in my mind as to the
12 significance of "I marched to the cadence."

13 Should we interpret that to mean that you would
14 not have made this recommendation based on the facts
15 that you have spoken about if Secretary of State Sherwin
16 had not been involved at all?

17 A Well, there are these elements involved--

18 Q All right, go ahead.

19 A Comes October 7, you're asking me what I would have
20 done had there not--as I interpret it. You see, there
21 is this time element in here. Bids were taken on
22 September 24.

23 Now, everything I did from September 24 through the
24 stop order is a matter of record. And I am sure that
25 people can tell you that I informally encouraged them

H3-5 1 to expedite the award of the contract. But the element
2 of time started to manifest itself. And between October
3 7 or 9, whatever the time it is, and October 23, there
4 were these elements that we have discussed here which
5 took on added significance from my point of view.

6 Now, when I say called to the cadence, I think it
7 should be very clearly understood by anybody that the
8 chief engineer does not make policy matters concerning
9 awards or rejections or of route locations or these
10 elements associated with our business. It's his
11 responsibility to translate those policy matters again
12 into components that are involved in the State highway
13 system, the truck public transportation, improvements
14 that we make, the parking lots, these things, whether
15 they're done now or later. The financing doesn't
16 become a matter for the chief engineer to establish policy
17 on.

18 So what I am saying is to call the cadence, these
19 are the policy matters that are established. And if we
20 are talking matters pertaining to advertising a contract
21 two weeks ago and rescinding the receipt of bids tomorrow,
22 that's an element that comes in to the Assistant
23 Commissioner, the Commissioner and higher authority in
24 state government.

25 It was my interpretation as a result of the facts

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that were available to me, and my discussion with the Commissioner--Assistant Commissioner Mullen, that the basic policy was a desire to reject all bids and subsequently readvertise. And I did not trump this up. The record will show from prior to even the date that the contract was advertised for bids that there were really certain elements that were a part of this particular contract.

Ilpp-1

1 Q Well, in terms of policy, the statute under
2 which the department operates really sets out the policy and
3 you are required to follow it, doesn't it? More specifi-
4 cally, let me put it this way: that statute says you are
5 to award--by you, of course, I mean the department is to
6 award the contract to the lowest responsible bidder. You
7 recognize that as a basic obligation?

8 A That's one obligation.

9 Q And you would not allow anybody on the outside
10 to come in and say to you, look, it's true that this outfit
11 is the lowest responsible bidder, but I don't like him and
12 I don't think you ought to give him the contract. I think
13 you ought to give somebody else another crack at it. Would
14 you not regard that kind of request as violative of the
15 policy to award the contract to the lowest responsible
16 bidder?

17 A Well, your definition of an outsider, I assume you
18 mean a citizen and somebody that isn't associated with the
19 operation of state government.

20 Q Well, now, you do not suggest, do you, that the
21 Secretary of State has any authority over you or your
22 department?

23 A By Title 27, he doesn't.

24 Q He does not. And supposing a taxpayer or
25 citizen came to you, or came to your department, and said,

Ilpp-2 1 now, you don't know Centrum; I think you ought to look into
2 this and see what the situation is, and you decided that
3 you ought to, since you didn't know Centrum or its capacity,
4 you ought to have your department look into it and the
5 investigation was made and all of the facts that you have
6 spoken of here, excluding Mr. Sherwin, were presented to you
7 at the time they were presented. Would you have made the
8 recommendation to reject all bids and readvertise?

9 A At what specific date?

10 Q As of the date of October 26th, when you made
11 the recommendation.

12 A I'd have to discuss that with my superior, like I did.

13 Q Well, you did discuss it with Mr. Mullen. Is
14 he the man you mention as your superior?

15 A Yes.

16 Q Well, include in the question I put to you on
17 that investigation for a citizen or a taxpayer all of the
18 facts that you have spoken about were produced and presented
19 to you and you discussed them with your superior, those
20 facts alone. Would you have reached the same result,
21 namely a recommendation of the rejection of all bids and
22 for advertising?

23 A See, you're asking me a very difficult question
24 because subsequent to that time I've gone through hours and
25 hours of discussion like this, and each time more facts

Ilpp-3

1 become available to me than were available to me at that
2 time, and it's a hypothetical situation and I don't know
3 how I could specifically answer the question. I'm not
4 trying to evade it, but--

5 Q Well, it's a pretty important question, as you
6 realize.

7 A I realize it's a very important question.

8 Q And, you see, any other circumstances that have
9 come to your knowledge since could not have played a part
10 in your decision on October 26th, so for the present,
11 anyway, we will exclude them from the question that I've
12 been asking you. And what I'm trying to find out is: Were
13 the facts that were disclosed by your investigation into
14 whether this contract should be awarded to Centrum at that
15 time, and which were discussed with your superior Mr. Mullen,
16 sufficient to bring you to the judgment you exercised?

17 A Absolutely.

18 Q The judgment you made?

19 A Absolutely.

20 Q That the contract--the bids should be rejected.

21 A Absolutely.

22 Q So is it fair to conclude, then, that on the
23 facts you then knew and then discussed with Mr. Mullen,
24 putting aside Mr. Sherwin's intervention to the extent that
25 you knew it, would have resulted in the very same decision

1 that you made?

Ilpp-4

2 A I think I'm going to have to say on that one that I
3 had better seek counsel and advice before I would answer
4 that, because I--for the reasons I've told you.

5 Q Well, should I conclude from your answer that
6 you are in doubt as to whether the decision you made on
7 October 26th was a completely honest one?

8 A There is no question in my mind that the decision I
9 made was a completely honest decision from the engineering
10 viewpoint and all the ramifications involved.

11 Q You see, when we talk about--

12 A But when you ask me would I have done it if I hadn't
13 been aware of the fact that Secretary Paul Sherwin was
14 involved, and the gist of my recollection of the conver-
15 sation that we had with Commissioner Mullen, I really don't
16 know.

17 There is no question about the validity of the
18 engineering aspect of it. But here's a policy situation
19 where, in essence, my interpretation was that my superiors
20 wanted this contract rejected; they wanted to find a way
21 to reject this contract, and I had found a way, which
22 started long before I was aware they became involved in it.

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1 Q Well, it's a little difficult for me, and
2 perhaps we can reach common ground on this, to draw a
3 conclusion other than this from what you have said:
4 that at least in part you subordinated your duty as the
5 state highway engineer to an outsider's request to find a
6 way of rejecting these bids. Am I correct in that
7 conclusion?

8 A Well, of course, your definition of an outsider is
9 a little difficult for me to agree with.

10 Q Well, the head of your department is
11 Commissioner Kohl? A That is correct.

12 Q And in the last analysis, he has the ultimate
13 authority over the whole department, including you?

14 A I'm not so sure that he does have the ultimate
15 authority as far as the department is concerned.

16 Q Well, if Mr. Sherwin called you up on the
17 telephone and said, "I want you to make plans, prepare
18 plans and design to put a bridge over the State House,"
19 would you respond to that kind of an order?

20 A I would certainly relay that message as quickly
21 as possible to the higher authority that was available
22 at the minute.

23 Q Well, you certainly-- A Being very
24 polite to Mr. Sherwin.

25 Q You certainly would not bow to any kind of an

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order like that, would you, and go ahead and do it?

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A No, I would certainly not immediately initiate plans to do that. I would, as I said, call my immediate superior and disclose in the most accurate way possible the information I had received.

THE CHAIRMAN: I wonder if it would be an opportune time to take a break. We've been going about two hours.

MR. FRANCIS: All right, fine.
[Whereupon, a brief recess is taken.]

Jlegl

1 JAMES R. SCHUYLER, resumed, and
2 testified further as follows:

3 BY MR. FRANCIS:

4 Q Mr. Schuyler, did Mr. Mullen ever tell you
5 that he wanted all these bids rejected?

6 A Not per se, not per se.

7 Q Are you indicating that you got an impression--

8 A I am indicating that as a result of the conversation
9 I had a distinct--I made a distinct interpretation that
10 it was the desire of Commissioner Kohl and Commissioner
11 Mullen, for whatever reasons, which were unknown to me,
12 that they didn't want the contract awarded, they wanted
13 to find a way not to award it.

14 Q You say for reasons which were unknown to you.
15 You did in conversation with Commissioner Mullen learn
16 of Mr. Sherwin's interest? A That is correct.

17 Q Did anybody tell you that as a result of his
18 interest you were to find reasons for recommending
19 rejection of these bids?

20 A No, sir. It was an interpretation I had.

21 Q In other words, you had an impression and an
22 interpretation, but you had no direct language ordering
23 you to find a basis for rejecting these bids?

24 A That is correct. Not at the time of this conversation
25 that I referred to with Commissioner Mullen and myself.

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Q Well, on October 26, when the formal recommendation was made, were you answering to a conscientious judgment that you had made on the facts disclosed by your investigation?

A I think the records will show that there was a conversation between Commissioner Mullen and I sometime around the 23rd, I think that was a Friday, I don't remember exactly. At that time I made the recommendation to reject all bids, subsequently readvertise with distinct modifications to the contract.

At that time, Commissioner Mullen advised me, he says, I will see how Commissioner Kohl feels about this, and I will let you know what to do. And I got my instructions subsequently, which indicated that we were to proceed with the administrative details necessary to reject all bids and subsequently readvertise.

Q And that squared with a judgment which you had formed which you felt was warranted by the facts disclosed by your investigation?

A My investigation apparently at this time, which was subsequent to around the 23rd, in my judgment was confirmed by the apparently--I don't know, but Mullen told me he was going to go and get Commissioner Kohl's concurrence in this. And sometime within the next seven days, or thereabouts, and it was around October 30th,

J1-3 1 when I directed and prepared the basic details for the
2 letter that went to the federal highway administration.
3 So sometime between our conversation and that letter to
4 the federal highway administration, approximately a week
5 later, it was confirmed to me by Commissioner Mullen
6 that my judgment and interpretation was approved by
7 Commissioner Kohl, because he told me he was going to
8 take it up with the Commissioner and see how he felt.

9 Q Well, when you say "my interpretation," are
10 you referring now to what you mentioned a moment ago,
11 impression and interpretation? Is that the same thing?

12 A Yes.

13 Q I am still trying to find out, if I can,
14 the relative parts, if any, that your investigation
15 played in your ultimate recommendation that you made
16 jointly with Mr. Mullen to reject all of these bids
17 and the reference to Mr. Sherwin and his letter to Mr.
18 Kohl. Can you separate those two?

19 A Could I make a comment here?

20 Q Sure. A I was not aware at this time,
21 or any time, until late spring of '71, that there had
22 ever been any correspondence between Secretary of State
23 Sherwin and Commissioner Kohl.

24 Q Didn't Mr. Mullen in conversation tell you--

25 A To the best of my recollection, he never indicated

Schuyler

1 to me that Secretary of State Sherwin had written to
2 Commissioner Kohl.

3 Q Did Mr. Mullen tell you in conversation that
4 he had talked to Mr. Sherwin?

5 A Yes.

6 [Off the record.]
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J1-4

1 BY MR. FRANCIS:

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J2ep-1

3 Q Mr. Schuyler, let me show you a document which
4 was marked yesterday C-6, memorandum from Mr. Mullen to
5 Commissioner Kohl, with a copy to you. Do you recognize
6 that?

7 A I recognize this.

8 Q That is the memorandum to Mr. Kohl from Mr.
9 Mullen in which he recommends that all of the bids be
10 rejected and readvertising be engaged in for this project.
11 Now as I recall it, there are six separate specific bases
12 set forth on which the recommendation is based; is that
13 correct?

14 A That's right.

15 Q And they are matters of fact that you reported
16 to Mr. Mullen as the engineer?

17 A There are matters of fact that I reported to him.

18 Q All honest, good faith recommendations?

19 A Absolutely.

20 Q And on the basis of all the circumstances and
21 facts set forth in that letter, regardless of anything
22 else, would you have recommended the rejection of these
23 bids?

24 A At this time that was my recommendation.

25 Q Well, you say, "at this time." You mean
October 26th, the date of that?

1 A That's right.

J2ep-2 2 Q Now, you testified in Freehold, did you not, in
3 the Sherwin case?

4 A Yes, sir.

5 Q And in connection with the impression that you
6 have mentioned here earlier, on cross-examination there
7 were you asked this question about that and did you make
8 this answer?

9 "Did you ever say that you were getting this--"
10 meaning the investigation that you asked of your employees
11 or your supporters to look into "--because you construed
12 something you had heard as being a direction to reject as
13 all bids?"

14 And you answered, "No."

15 A That is my interpretation of the question at that time.

16 Q When you say "at that time--"

17 A I am talking Freehold now.

18 Q This question relates to the impression that we
19 have been talking about here. You were asked whether
20 anything that we said to you, obviously by Mr. Mullen or
21 anybody else in this connection, was construed by you as
22 a direction to reject all the bids, and you said, "No."

23 A That's correct. And that pertains prior to our
24 meeting on or about October 23.

25 Q Then prior to that time, which of course would

J2ep-3

1 be prior to October--nothing happened between the 23rd and
2 the 26th which altered the situation, did it?

3 A I think it was a weekend, to the best of my knowledge.
4 No.

5 Q Nothing happened to change the situation?

6 A No.

7 Q So between the time of October 23 and this
8 memorandum, nothing had been said to you by anybody which
9 you construed as being a direction to reject all the bids?

10 A That's correct.

11 Q Now, after--

12 A Other than downtown didn't want the contract awarded.
13 This came out very early in October.

14 Q I think about all I can say at the moment is,
15 this is where we came in.

16 A That's right, that's right.

17 Q From the--

18 A I didn't convey that to anybody else when I asked
19 questions.

20 Q Well, you mean that you wanted all of them to
21 give you honest information?

22 A That was the basic objective and motive.

23 Q Was it your intention that regardless of the
24 information you got you were going to recommend rejection
25 of the bids?

J2ep-4

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A If we are talking October 7, or thereabouts, to the best of my knowledge no papers had come to my office which would have motivated me one way or the other or my mind at that particular time, the time of the stop order had been altered in conjunction with this contract. And as I previously said here, up until that particular time, about October 7 or 9, the stop order, so to speak, I think the record will show that I informally encouraged everybody to get this contract on the road awarded.

Klpgl

1 EXAMINATION BY COMMISSIONER BERTINI:

2 Q That despite the fact that I understand your
3 testimony to be correcting it by change order was, in
4 your judgment, probably illegal?

5 A I didn't know whether I--I would like to rehear the
6 testimony if I used the word "illegal."

7 MR. FRANCIS: No.

8 Q No, you didn't use the word "illegal."
9 But that's a question of legal opinion.

10 A All right.

11 Q Wrong? A At that particular time
12 I encouraged the award of this contract. Now--

13 Q But in your judgment at that time changing
14 this award by change order was--let's take it word by word.
15 You don't say illegal?

16 A Illegal?

17 Q Was it illegal to do it by change order?

18 A I don't know.

19 Q All right. A In my judgment, I
20 think it would have to take a court to determine.

21 Q All right. Second, would it be in the public
22 interest to award this contract with the intention of
23 changing it by change orders as was done?

24 A Well, all right. If you want to discuss that
25 further, I certainly would--

K1-2

1 Q I don't want to discuss it further. I would
2 like a yes or no answer to that.

3 A Well, would you repeat the question, please?

4 COMMISSIONER BERTINI: Would you read the
5 question, please?

6 [Whereupon, the pending question is read by the
7 Reporter.]

8 A There was reasonable doubt about it. But if I may
9 qualify this, I would like to, please, sir.

10 You see, I had not been called upon as of
11 October 7th to make a formal determination. And I'm not
12 trying to hedge the question with you, sir, but we have
13 a routine, and we still have, where other people make
14 certain investigations and make recommendations to the
15 chief engineer on a certificate of award, and to the
16 best of my knowledge that certificate of award had not
17 reached my desk on or about October 7th.

18 Now, the stop order came around the 11th. Shortly
19 after that, I called Commissioner Mullen concerning
20 the stop order and it was at this time after protesting
21 to him delays that he started, or gave me the direction,
22 "Give me a recommendation." Now, this is the first time
23 that I have had to sit down and stop the reasoning
24 process that we discussed with you and the rest of these
25 between September 24th and October 7th. Other people

K1-3

1 were doing things, and these thoughts occurred to me,
2 and for which I did say I manifest a concern, really
3 didn't come into focus until Commissioner Mullen said to
4 me, "Give me a recommendation."

5 Q But had you exercised a judgment on October
6 the 7th before you were aware of anything else but the
7 mere facts that you had, and one of them is that there
8 was an intention of changing this contract by change
9 orders, that in your judgment, I think, was substantial,
10 would you have awarded the contract with only that before
11 you? A With the recommendations of my staff,

12 and this is a fact, on the certificate of award which you
13 can recommend--

14 Q Let me put it this way.

15 A --which you can get someplace, that will include
16 Mr. Freidenrich's signature; that will include Mr.
17 Stelljes' signature, and that will include Mr. Kilpatrick's
18 signature.

19 I believe at that particular time, and this is
20 hypothesis, had that reached my desk and there was no
21 stop order, that contract would have been awarded.

22 Q I reach this opinion from your testimony:
23 that in your judgment on October 7th, if you were
24 presented with this work to be done and you were aware,
25 which you were on October 7th, that there was an intention
to bring on seven items--

Schuyler

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A No, no.

Q I'm adding that fact now.

A All right.

Q Whether you knew of that or not, I'm adding the fact that if it were within your knowledge at that time that there were seven items that were going to be changed by change order, and the particular items that, in your judgment, you would have rejected the contract. Am I correct or wrong, am I right or wrong in that assumption?

A I think you're wrong in that assumption because something hasn't been brought out here.

Q Then I have to say I don't understand your testimony.

A Well, all right. I think it's, with the permission of the gentlemen here, it's up to me to clarify this.

I had to start, really, to bring this whole thing into focus on or about October 7th. The record will show, and I'm not sure whether those seven or odd items were a known--additional items for drainage were a known fact at that time, because when the Federal Highway Administration gave its tentative approval, or its approval to us to award, or to advertise the contract, we had to turn around and tell our staff, "You prepare the changes of plans necessary to effect these

K1-5

1 modifications." And I'm not sure on October 7th or
2 thereabouts that the fact that seven items of work for
3 drainage were known to me, but it did--I did know the
4 fact that additional drainage work was needed. There
5 is no question about that. But whether seven items
6 of additional drainage work would be negotiated as
7 supplementary items with the contractor, the record from
8 Mr. Peterson would have to indicate when that work was
9 done.

10 When I started digging into this thing around the
11 7th or 11th of October, whenever that stop order came
12 back, and prior to October 23rd, I then became aware of
13 the fact. I knew there were thirteen items in the
14 contract, but I didn't become aware until this time that
15 those thirteen items would require approximately, as I
16 have indicated in my testimony here, seven additional
17 more, and perhaps more items.

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1 EXAMINATION BY MR. FRANCIS:

K2pp-1 2 Q After the memorandum of October 26th did you
3 have anything to do with the preparation with the letter of
4 October 30th to the federal office?

5 A I did.

6 Q The letter that you're looking at is directed
7 to the Federal Highway Administration?

8 A That is correct.

9 Q And it relates to this Route 46 project, does
10 it not?

11 A Yes, Route 46, Section 19A and 2B, that is correct.

12 Q And the letter is signed by Mr. Malloy of your
13 department?

14 A Yes. He was a man on my staff who was designated to
15 handle all liaison with the Federal Highway Administration.

16 Q And this letter, I gather, was dictated by you
17 for him?

18 A That is correct.

19 Q And I suppose that is the indication intended
20 to be given by the initials on the bottom of the letter.

21 A That is correct.

22 Q And on October 30th and when the letter was
23 dictated by you, you were still of the opinion that the
24 bids should be rejected and readvertising should occur?

25 A Yes, sir, with further apparent substantiating

1 information that Commissioner Kohl concurred in it.

K2pp-2

2 Q Well, we might as well put that in this record,
3 too. What was that?

4 A Subsequent to or on or about October 23rd and prior
5 to that October 30th letter, after having been in
6 consultation with Commissioner Mullen and left that meeting
7 it was my understanding that Commissioner--Assistant
8 Commissioner Mullen was going to advise Commissioner Kohl
9 of the recommendation and nothing was to be done until he
10 heard further from Commissioner Kohl.

11 Q I gather from that that you intend to indicate
12 that he did hear further from Commissioner Kohl and that
13 he had concurred in the viewpoint that the bids should be
14 rejected and readvertising occur; is that correct?

15 A I had to make that interpretation and assumption.
16 I did not talk with Commissioner Kohl.

17 Q Well, then, when you dictated this letter of
18 October 30, you did it on the statement of Commissioner
19 Mullen that he had talked to Commissioner Kohl and had
20 obtained his concurrence in the viewpoint that the bid
21 should be rejected?

22 A That is correct.

23 MR. FRANCIS: May we mark this letter.

24 (Letter to Federal Highway Administration, dated
25 October 30, 1970, received and marked Exhibit C-24.)

K2pp-3 1 Q Well, what was the next thing that happened
2 after that letter of October 30th?

3 Perhaps the best way of approaching that is:
4 that determination to reject all the bids didn't stand, did
5 it?

6 A All right. I believe that October 30th is a Friday,
7 and my recollection is that--

8 Q It is a Friday.

9 A My recollection is that a telephone call came to my
10 secretary and she made an entrance that morning, I think,
11 I can't be sure, but very shortly after that letter to the
12 Federal Highway Administration was written, a telephone
13 call came to my secretary which indicated that I was to be
14 present early that afternoon, 1:30 or two o'clock, in the
15 Commissioner's office for a meeting.

16 Do you want me to follow on?

17 Q Let me interrupt there for a moment.

18 Prior to the time you got that message had
19 Commissioner Mullen asked you to look into this further,
20 the recommendation to reject, with the idea of firming up
21 the facts?

22 A No.

23 Q No. All right.

24 A Not to my recollection.

25 Q All right. Then go ahead. You went to this

1 meeting with Commissioner Mullen. Would you tell us who
K2pp-4² were there.

3 A Well, it was in the Commissioner's suite, and present
4 at that meeting--and it was a very, very short meeting and
5 I don't even think I even got seated. Present was
6 Assistant Commissioner Mullen, Special Counsel to the
7 Commissioner David Biederman and myself. And the words were
8 very short and brief, which I don't intend to quote now,
9 but, in essence, they conveyed the opinion to me, and which
10 I interpreted, in view of what has transpired you have no
11 other course of action but to award the contract for Route
12 46, Section 19A and 2B, to Centrum.

13 Q Were you shocked at that?

14 A I was shocked.

15 Q Who used that language?

16 A Who used that language?

17 Q Yes.

18 A David Biederman, Special Counsel to the Commissioner.

19 Q And I notice that as you said that you
20 emphasized it by hitting the arm of the chair with--

21 A Well, I didn't mean it. It was a very short--the
22 thing I'm trying to make is, it was a very short meeting.
23 It was in his small office in the Commissioner's suite.
24 It lasted less than two or three minutes and that was the
25 end of it.

1 Q In other words, you took that to be an order
K2pp-5 2 that you were to change the decision and award the contract
3 to Centrum?

4 A There is no question about that.

5 Q And no explanation by Mr. Biederman as to why
6 he gave that order?

7 A No. I recall that I might have said, "Well, holy
8 smokes. What's going on?" And perhaps might have said,
9 "Well, look, give that to me in writing, will you, please?"
10 But beyond that, I don't even think Commissioner Mullen,
11 or Assistant Commissioner Mullen got seated. That was it.

12 And if you still want me to continue--

13 Q Let me stop you there for a minute. Was there
14 any statement made that this--oh, you haven't given us the
15 date. Do you remember the date of that conversation?

16 A I thought I interpreted it or I implied--

17 Q On that Friday.

18 A I'm sorry. On October 30th. I believe it was
19 October 30th. A Friday, let me put it that way.

20 Q Yes, Friday, October 30th. The only one who
21 said anything, then, at that meeting was Mr. Biederman?

22 A Well, I indicated just a second ago that I made some
23 comments about--

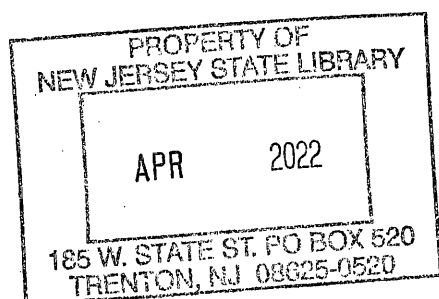
24 Q Yes, outside of your comments, I mean.

25 A My recollection is I don't think Commissioner Mullen

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made any comment at all.

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Q Do you have a firm recollection that this was on a Friday and not on a Monday?

A The only reason that I can be positive as I can about this, there is an entry in my appointment schedule to that time, that date, and that place.

Now, recalling back, I don't know where that appointment schedule is now. I think the federal people had it last. Maybe the Special Prosecutor Boylan has it. You may have it now, I don't know.

Q No, I have not seen it, and I certainly don't have it.

Do you remember Election Day? That was the Monday after this Friday we are talking about?

A That particular Election Day has no significance to me.

Q I'm still thinking in terms of date and time of this conversation, whether there was any doubt about it.

Do you remember if Mr. Kohl was sick at that time?

A At that particular day?

Q Yes. A I have a vague recollection of that particular day seeing Commissioner Kohl moving about his suite. But I do and can make this statement: that there was a period in October where Commissioner Kohl's

L1-2 1 whereabouts or absence from the department was
2 apparent to me. And the only reason I can do that is
3 because hearsay and gossip indicated that he was taken
4 ill in his office I believe sometime during the month of
5 October, and it is alleged that he was taken to Mercer
6 Hospital. I do know this in personal discussions with
7 him, that he was, according to his conversation to me,
8 suffering from New Jersey weather and ear trouble, or
9 something like that.

10 Q Mr. Kohl has indicated to us that on the
11 30th in the office he was taken ill and he was taken
12 home.

13 A On the 30th?

14 Q On the 30th.

15 Do you remember what time of the day you were
16 in his office?

17 A I previously stated it was 1:30 or 2:00 p.m.

18 Q Mr. Kohl also indicated that on the 30th,
19 that on that day he had talked to you, not in the presence
20 of Mr. Biederman, and asked you to, in his words, firm
21 up, in other words, make a final check of the reasons
22 that you had given as the basis for rejecting of the bids
23 and report to him and that you had reported on that day,
24 on the 30th and recommended on the basis of new
25 information or further information that the contract ought

1 to go to Centrum. Do you have a recollection of that?

2 A No, sir. The only recollections I do have that
3 on or about the latter part of October--and I can check,
4 because I gave this information to the federal people,
5 and I gave this information to the gentlemen that were
6 making the investigation for the State Grand Jury, and I
7 believe I gave it to Mr. Boylan--that in the latter part
8 of October, I got an inquiry from Commissioner Kohl
9 relating to a question pertaining to liquid asphalt
10 shortage.. He asked me to check into it and give him a
11 report. And I think the record will show that that
12 report was submitted to him on or about sometime in the
13 first week of October--or November.

14 Q For purposes of dates again, will you look
15 at this memorandum marked C-7, dated November 4th, from
16 David A. Biederman to Russell Mullen. Do you want to look
17 at that and see if that has any bearing on your
18 recollection of what took place.

19 Does that play any part in your recollection?

20 A We wound up just discussing whether I had had a
21 meeting with Commissioner Kohl on or about October 30th,
22 and the references I made as a result of your questions
23 concerning bituminous shortages, which I think I can
24 document that Commissioner Kohl asked me for early in
25 October has no relationship in general to this.

L1-4 1 I did receive this along with a little note from
2 Commissioner Mullen on or about November 4th, which
3 says here, in essence--

4 Q I will withdraw this Exhibit C-7 for the
5 moment and show you the same exhibit marked November 4,
6 it's marked here C-16, which apparently is a duplicate
7 marking, but attached to that is a memorandum to you from
8 Mr. Mullen. That's the one you're talking about, I
9 think, is it?

10 A That is correct.

11 Q So that on November 4th then, the same date
12 as the Biederman to Mullen memorandum, Mr. Mullen sent
13 a copy up to you indicating for the various reasons set
14 out that the Commissioner changed his mind, the contract
15 was to go to Centrum, and you were to proceed with whatever
16 formalities were necessary to accomplish that purpose?

17 A That is correct. When I received this, this was
18 my interpretation in writing of a comment I made.

19 Q And this you thought was in response to the
20 comment you made when? At that meeting on the 30th?

21 A Yes.

22 Q Do you have a rather definite recollection
23 that Mr. Biederman was there?

24 A Mr. Biederman, no question about it.

25 Q And you are reasonably certain it was on the

L1-5

1 30th? A The only reasonable certainty I can give
2 you is that my appointment schedule shows a meeting from
3 between 1:30 or 2 o'clock, I have forgotten the exact
4 time, on Friday, October 30. And I correlate it coming
5 almost instantaneously after my October 30th letter that
6 I dictated for Malloy's signature that went to the Federal
7 Highway Administration.

8 Q Let me again, in connection with everybody's
9 recollection here, read to you from Mr. Kohl's testimony
10 taken here yesterday.

11 A My gracious, they did a good job in getting that
12 out.

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Schuyler

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1 Q "Now, between Friday, the 30th and the 2nd
2 and before you had this conversation with Biederman,
3 had you talked to Schuyler again?

4 "ANSWER: Yes, I recall talking with Schuyler
5 in the corridor to my office that morning of the 30th.

6 "QUESTION: And did you talk to him again
7 on the phone or otherwise or on Monday morning of the
8 second before you talked to Biederman?

9 "ANSWER: I believe I talked to Mr. Mullen,
10 not to Schuyler.

11 "QUESTION: Well, in that conversation with
12 either Mullen or Schuyler, or both perhaps, had you reached
13 any decision with respect to the October 26th--"

14 And Commissioner Kohl interrupted and said,
15 "Yes, I had.

16 "QUESTION: --recommendation?

17 "ANSWER: I advised Mr. Mullen that I wanted
18 to reverse that decision; that I was convinced that
19 Centrum could do the job, and that we would suffer
20 even further delay and run the risk of higher prices
21 if we were to reject all the bids and call for new
22 submissions."

23 The indication here is that the only conversa-
24 tion Mr. Kohl had, Commissioner Kohl had with Mr.
25 Biederman was on the telephone that day, and that on the

L2-2 1 2nd of November with Mr. Kohl at home he talked to Mr.
2 Biederman on the telephone and reached his final
3 conclusion to change his mind, change the decision and
4 award the contract to Centrum and instructed Mr. Biederman
5 to prepare this November 4th memorandum that you had just
6 looked at to Mr. Mullen and to yourself and with any
7 of the directions to award the contract to Centrum.

8 I am trying to get a consensus of recollections
9 here of what took place.

10 A I can see your point.

11 Well, it was my interpretation from that testimony
12 then that on the morning of October 30th, Commissioner
13 Kohl had stated that he met me in the corridor. Now,
14 I can't deny that we didn't pass in the corridor and talk
15 business or over coffee and these things. But he was
16 clear on October 30th, I asked that question.

17 The next thing I want to be sure of, is it my
18 interpretation of that testimony that he told me at that
19 time that he was going to reverse his opinion?
20 Because I am leading up to the fact that October 30th
21 letter to the Federal Highway Administration if I had
22 received word of it then I would have stopped it.

23 [Off the record.]

24 Q My recollection, and I certainly don't want
25 to bind you on my recollection, is that on the 30th in

L2-3 1 the conversation with you Commissioner Kohl indicated that
2 you had given him some further information on this point
3 because he had not yet actually authorized the issuance
4 of the final recommendation to reject the bids.

5 A Well, I can either substantiate or refute that
6 we might have met in the corridor on the morning of
7 October 30th.

8 The only thing that I can say is this--and maybe
9 I made a misinterpretation of that testimony you read,
10 but if Commissioner Kohl had given me instructions which
11 would have in any way, shape or form been contrary to
12 making the recommendation to the Federal Highway
13 Administration, I can assure you that I would have done
14 everything within the power of my office to not let
15 it go.

16 Again, I have no way of knowing, because my
17 recollection was later in that day--I have no way of
18 knowing what transpired between David Biederman and
19 Commissioner Kohl, and when it transpired.

20 Q I think it is fairly plain from what
21 Commissioner Kohl did say that it was on November 2nd,
22 the day before Election Day, Mr. Biederman called him
23 at home and talked about the substance of the October
24 30th memorandum Mr. Biederman prepared for Mr. Kohl,
25 but which Mr. Kohl apparently didn't get until he came

L2-4 1 back. And in that conversation Commissioner Kohl said
2 that he made up his mind with Mr. Biederman to change
3 his decision and direct the awarding of the contract to
4 Centrum.

5 But it's your recollection that on the 30th as
6 the result of Mr. Biederman's flat statement you were
7 told it had to be changed?

8 A I base my recollection on an entry in my appointment
9 schedules.

10 Q And doesn't the same criticism apply, mainly
11 in your letter to the Federal Authorities, which is
12 dated on the 30th, you would not have said that if you
13 had any indication that the Commissioner was going to
14 reverse his decision?

15 A That's correct.

16 Q What about Biederman's direct order to you
17 on the 30th?

18 A It had already gone by that time, to the best of
19 my knowledge.

20 Q It had gone before 1:30 in the afternoon?

21 A Let me put it this way: It's my recollection that
22 I drafted or dictated, either drafted and dictated the
23 basic elements contained in that letter to the Federal
24 Highway Administration very early in the morning of the
25 30th. My recollection is it was before working hours.

L2-5 1 At last, it had left my desk, and I had discussed it with
2 Mr. Malloy so that he was aware of what had transpired,
3 the reasons behind it, and other questions that he may
4 have asked or had.

5 Now, to me, that's my definition of gone.
6 Physically, whether it had really gone into the mails
7 yet and was signed by Mr. Malloy and delivered to the
8 Federal Highway Administration, I can't answer that.

9 The best way would be to--again, this can be
10 determined, I would assume very easily: when did the
11 Federal Highway Administration receive it.

12 Q That's a problem, too.

13 A Yes. I have subsequently found out about that.

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Q Well, I gather from what you said after you indicated your shock at getting this sudden reversal of a decision from Mr. Biederman saying, "What is going on here," that was the end of it, nothing further happened there that day at that time?

A My recollection is after that meeting I immediately turned around and went back to my office and put the wheels in motion to withdraw the request to the Federal Highway Administration and I believe went out only that morning.

Q Even before you got this November 4th memorandum?

A Yes. And set the wheels in motion to award the contract to Centrum.

Q Did you ever talk to Biederman after that as to his imperious direction to change the decision?

A I don't recall a specific discussion in great length or detail with Dave Biederman concerning this.

Q I gather from what you have said, you have no recollection of any matter that we should know about substantially now?

A That's correct. From this point on, the wheels were set in motion.

I can paraphrase very quickly. To the best of my knowledge, I signed--and this can be checked--the official award of the contract on or about--or the certificate of award on or about the 4th of November, I believe.

Schuyler

L3ep-2

1 Q I show you what appears to be an award form,
2 with your signature on the bottom, dated November 5th. Is
3 that it?

4 A That's it.

5 Q Incidentally, that's the first time that you
6 ever signed a certificate of form of award in this matter?

7 A To the best of my knowledge, yes.

8 Q The reason I ask that is you will notice Mr.
9 Peterson signed on October 2nd and Mr. Andrews signed on
10 October 2nd.

11 A That's right.

12 Q But because of your investigation and what was
13 going on, you actually never decided to sign this thing
14 until the 5th of November?

15 A I'm not sure, sir, whether that document ever reached
16 my office on or about the 2nd of October.

17 Q Well, in any event, it didn't come to you in
18 such form that you were impelled to sign it before
19 November 5th?

20 A This I can't be sure of, only to say this: that if
21 it did come to my office subsequent to the stop order,
22 naturally, I can do nothing further until I get authori-
23 zation from higher authority.

24 Q Well, when you reached the decision to recommend
25 the rejection of the bids, you certainly would not sign

L3ep-3

1 this at that time, would you?

2 A No.

3 Q So that when you finally decided to put your
4 signature on here, it was after Mr. Biederman said to you,
5 Look, this decision is changed and now we have got to give
6 the contract to Centrum; and you had in your possession
7 then the November 4th memorandum, and so it was right and
8 proper at that time, you decided to put your signature on
9 this award form at that time?

10 A Yes.

11 I might add that there are some more documents that
12 accompanied that, too.

13 MR. FRANCIS: The document we have been
14 referring to was already marked as C-10. I want to
15 have you make sure it's the same one.

16 Q This C-10 is the same thing that we have been
17 talking about?

18 A Yes. But there is something that accompanied this,
19 also, which is known as the certificate of award, which
20 would be signed by Mr. Kilpatrick, Mr. Stelljes, Mr.
21 Friedenrich, and Mr. Bridegum.

22 Q In any event, this document we have just looked
23 at was the thing that marked the finality of the
24 determination to give the contract to Centrum?

25 A Right.

(A luncheon recess was taken.)

L3ep-4

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[After recess.]

THE CHAIRMAN: Okay, we'll go back on.

EXAMINATION BY MR. FRANCIS:

Q Did I ask you whether after November 4th, that memorandum, and your signature on November 5th, you ever talked to anybody again about this affair? I don't mean the United States Attorney. I mean any of the Biederman, Kohl, Mullen, those three. Did you ever talk to them again about it?

A Well, the answer is yes. Now, specifically when and where--

Q Anything of any significance in this matter?

A No. Any conversation would add nothing to the record which you tried to bring out in your questioning, to the best of my knowledge.

Q During the time that you were in--during your term in office in the Department did you get complaints from people on the outside about your being unfair to this contractor or something wrong about this work?

A Well, the answer is yes, quite a number of complaints. But when you say "something wrong about this work," I can only say that the complaints were of the nature of an abutting property owner, inconvenience that may have been caused to him; to the motorist, inconveniences he may have encountered; right-of-way

M1-2

1 procedures, negotiations; allegedly price wasn't right.

2 But I had nothing to do with that, and they were
3 passed on to the proper people.

4 Q Well, more specifically, did you have
5 complaints or requests from public officials such as
6 local mayors, or assemblymen or senators about unfair
7 treatment of contractors or unfair treatment of bidders,
8 and, if so, would you investigate those?

9 A Well, I recall one specifically during the summer
10 of 1970, which didn't come from a property owner, a
11 motorist or a--it came from public officials, say, from
12 within, so to speak.

13 Q And did your department look into things like
14 that? A Well, I made a very strong recommendation
15 that a rather vigorous, thorough, prompt investigation
16 be made.

17 Q But I take it you did not regard that as
18 improper political interference with the operation of
19 your department?

20 A I took it to mean that somebody was criticizing
21 our operation in an area, the way it was put, that did
22 warrant thorough, prompt, vigorous investigation.

23 And I might add for the record, in view of the fact
24 that I have made a professional career with the Department,
25 that I may possibly have been more sensitive to

M1-3 1 allegations and accusations than perhaps some of my pre-
2 decessors who were in office for some length of time
3 and then went elsewhere; didn't stay with the Department.

4 Q Well, in this one that you just mentioned
5 that you checked out--

6 A I didn't check it out.

7 Q You had it checked out?

8 A I recommended that it be checked out.

9 Q And did you get a report later?

10 A Not to my knowledge.

11 Q So, you can't tell us whether the complaint
12 turned out to be justified?

13 A I really don't know.

14 Q Well, in any event, you didn't resent the
15 complaint or the request, or whatever it was, to the
16 point where you were going to ignore it?

17 A I didn't--I did resent it and I didn't ignore it.

18 Q And you did ignore it?

19 A I didn't ignore it.

20 Q Well, you had it-- A Did not.

21 Q --looked into? A I made a recommenda-
22 tion again to my superior, you see, that a very thorough,
23 vigorous, prompt investigation be made of this
24 allegation.

25 Q I see. A I resented the allegation.

M1-4 1 But, by the same token, I know that we're a big enough
2 family that I couldn't possibly know everything that was
3 going on, and I was very proud of the fact that our
4 department had managed to conduct an operation that didn't
5 shed too much publicity as far as the propriety of the
6 operation is concerned.

7 We had, which was created, to the best of my
8 knowledge, back in the '50's, a special staff,
9 theoretically had the training and background to look
10 into such allegations, and the experience. That was not
11 under my direct control or supervision. So, those
12 kind of allegations were--when I thought to the best
13 of my judgment that there was a problem associated with
14 potentially as far as the reputation of the department
15 is concerned, I recommended it be investigated.

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Q Well, in this case that you're talking about involving, as I think you said, someone important within the family.

A State government.

Q State government. Did you have the impression that that person was asking you to do something?

A I'd have to see the document from which I got my information before I could answer that.

Q Well, we're talking in generalities. Do you have a recollection of what that was?

A My recollection is it was an inter-office communication. I'm not sure whether the from or to--it was from somebody to somebody, and I believe those two names were McCrane who, I believe, at the time was and still is Secretary of Treasury, or Treasury Commissioner, and Secretary of State Sherwin.

It dealed--it dealt--pardon me. It dealt, to the best of my recollection, with alleged treatment of the Manzo Contracting Company, and the thing more than anything else, as I recall, that prompted my response and my reaction was a handwritten note, as I recall it, across the bottom or one corner of the document which alleged that we in the department were not treating the officials or the officers of the Manzo Contracting Company in the same way that we would treat other contractors with the same type of

1 problem.

2 Q We know about that.

3 A And there was a name mentioned in this scrawling or
4 in the basic part of the document which I had never heard
5 of, or was aware of or knew anything about, and because I
6 wasn't aware of this, why, this further prompted me to
7 recommend an action be taken..

8 Q Well, let's see if we can cover that very
9 quickly, the very thing.

10 On July 20, 1970, there was a memorandum
11 ostensibly from Sherwin to McCrane voicing a complaint that
12 he had heard, or his secretary, Helen Mann, had heard about
13 unfair treatment that the Manzo Contracting Company was
14 being given by your department, and that was in connection
15 with a bid that the Manzo Company had just made on a job on
16 Route 22, and the Manzo bid was low. At that time within
17 the department there had been a criticism of the Manzo
18 Company in connection with a Route 12 operation, the
19 allegation being that he had a subcontractor do the whole
20 job in violation of your regulations. You had written to
21 Manzo saying, "This allegation against you has not been
22 answered. We will give you some time to answer it. In
23 the meantime, if it stands this way we will probably reject
24 your low bid"?

25 A I don't know whether I said "reject." I said I would

M2pp-3

1 be forced to make recommendations to the Commissioner to
2 the Manzo--in my letter to Manzo.

3 Q "In accordance with the record as it now stands,
4 your performance in connection with Route 12 project would
5 dictate a recommendation to the Commissioner"--

6 A Okay.

7 Q --"that your bid be rejected." That's
8 substantially your recommendation.

9 Well, you did, in fairness, check this out,
10 I understand that so I had my staff question or had it
11 checked on.

12 A I had my staff.

13 Q And the result of that investigation indicated
14 such a sufficient explanation for this so-called
15 subcontracting that you then, or the department then,--

16 A I recommended--

17 Q --actually awarded.

18 A I recommended the award.

19 Q You recommended the award?

20 A Yes.

21 Q So the intervention of Mr. Sherwin in that
22 situation was a just and proper intervention, didn't you
23 think?

24 Or shall I put it this way: it produced a just
25 and proper result?

M2pp-4
1 A You know, we as a public agency have to take
2 everything that comes to us, and we have to evaluate and
3 decide what the course of action is. And everybody that
4 writes to us with even the anonymous letter that's not
5 signed, we do turn over to the proper people to look at.
6 So, until there is some kind of a determination made we--
7 I make the assumption that they're all just and proper.

8 Q Well, in any event, you didn't think that
9 Sherwin was doing anything wrong in speaking up for Manzo
10 on this occasion, did you?

11 A I welcome anybody that gives us some kind of
12 information from which we can make an investigation to try
13 and keep the operation of the department as ethical and the
14 highest standards possible.

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2 Q Well, what I'm trying to say is, you're
3 satisfied that you did what was right and fair in awarding
4 the Route 22 contract to Manzo after this investigation,
5 that company being the low bidder?

6 A Yes. When the certificate of award and that
7 commission action that we discussed previously came to
8 me, my recollection is I again called staff and said,
9 "Hey, I have a letter of record that's been sent to the
10 Manzo Contracting. Has this been thoroughly investigated
11 and has it been established that he satisfied our
12 requirements?" And my recollection is the response was
13 yes, as further indicated by the signatures on the
14 documents, and I proceeded to sign my name recommending
15 the award.

16 Q That's the only such situation that you can
17 recall is it?

18 A Would you--

19 Q The only such situation that you can recall?

20 A What period of time are we talking about, now?

21 Q Well, I give you a broad area. A couple of years
22 before 1970 and since then.

23 A I'm not trying to imply there was, but any time
24 there was something similar to this or even when people
25 walked in the office and conveyed an impresssion that there
was impropriety, or alleging that there was any unethical

13-2 1 operations, we attempted to immediately get it into the
2 open to the extent of either making a memorandum of
3 record of the meeting and/or even calling the Commissioner
4 or the Assistant Commissioner and advising him.

5 Q Well, just to finish that last one arising
6 out of the July 20th memorandum, you were upset, were
7 you not, at the allegation of collusive bidding among
8 contractors for your jobs and you asked that that be
9 investigated? Do you remember that?

10 Well, to refresh your recollection, let
11 me show you Exhibit C-3. This is a memorandum from
12 you to Commissioner Kohl. Do you recognize it, having to
13 do with this Manzo bid?

14 A This is a memorandum I wrote. It was my understanding
15 of the last question that you put to me you made a
16 comment about collusive bidding.

17 Q Yes. A I don't recall anything
18 dealing with collusive bidding in the Sherwin-McCrane
19 letter.

20 Q Well, I think you're right that those words
21 were not used.

22 Let me call your attention to another exhibit,
23 that being the July 20th memorandum, Sherwin to McCrane,
24 the last paragraph, "Per Loughran, Manzo refuses to
25 join a group of road contractors who agree among

M3-3 1 themselves to only bid certain jobs. The other contractor,
2 whose name he will not divulge, is going to get the
3 job when they get rid of Manzo." That's the thing that
4 disturbed you, was it? A Yes, sir, very definitely.

5 Q And it has been spoken of here as an
6 allegation of collusive bidding. And that's the reason
7 why I put it in those terms to you.

8 But however you interpret it, these last
9 two lines that I read to you of that July 20th memorandum
10 or the reason why you referred to--the reason why you
11 suggested vigorous investigation in your memorandum?

12 A Let me read this all, now.

13 Q Surely. A I would say that the last
14 paragraph of my letter or memo to the Commissioner
15 on August 4th certainly was prompted and motivated by
16 the last two sentences in the July 20th Office of Secretary
17 of State Inter-Communication.

18 EXAMINATION BY MR. SAPIENZA:

19 Q Mr. Schuyler, very briefly, I'm going to
20 show you a memo, dated October 22nd, to you from Mr.
21 Herbert Englishman. Do you recognize that particular
22 document? A Yes, I do.

23 Q In that document does Mr. Englishman tell
24 you that he's satisfied that Centrum Construction
25 Company, I believe, has satisfied him that they have the

M3-4

1 asphalt to do the job on Route 46?

2 A I'll take a minute to read it.

3 [Whereupon, there is a brief pause.]

4 A Would you repeat the question, please?

5 Q Well, I'll rephrase it for you.

6 This particular memo to you from Mr. Englishman,
7 does this indicate to you that Mr. Englishman is saying
8 that Centrum Construction Company would seem to have a
9 reasonable assurance from the Edison Asphalt that it will
10 be supplied with the asphalt necessary to do the Route 46
11 job?

12 A I think he states that in there, no question about
13 that.

14 Q This memo is dated October 22nd, 1970; is that
15 correct? A That is correct.

16 Q Did you receive this prior to making your
17 October 30th recommendation to Mr. Mullen?

18 A I did.

19 Q And did you consider this in making your
20 recommendation to Mr. Mullen? A I did.

21 Q But your recommendation did not note this,
22 did it? A I now must go back to September the

23 18th, when I drafted a memorandum of instructions to
24 my Assistant State Highway Engineer outlining those
25 details which I felt, in my best judgment, should be

1 followed and used to evaluate commencing work, extensions
2 of time related to the bituminous concrete as reflected
3 in the supply of liquid asphalt.

4 I also had, in addition to this letter,--

5 Q What letter? A --a letter that Mr.
6 Hale had furnished--now, I don't know who it was--
7 either Mr. Englishman, or Mr. Stelljes or Mr. Freidenrich,
8 which my recollection was two or three sentences, and
9 again which I used in discussing this matter with
10 Commissioner Mullen on or about October 23rd.

11 Did I leave you hanging fire?
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1 Q Well, do you recall my question to you?

2 A You asked me whether I had that at the time I discussed
3 it with the Commissioner, in my discussion with Assistant
4 Commissioner Mullen. Yes, I had that letter, plus some
5 other information.

6 Q And you had this memorandum from Mr. Englishman?

7 A That had been received by me.

8 Q Did you bring this before Mr. Mullen on October
9 25?

10 A I don't know whether I specifically showed it to him,
11 but it was used--the background source was used as a basis
12 for the discussions I had with him.

13 Q I just take it then that you weren't impressed
14 by Mr. Englishmen's representation to you because on
15 October 26 you gave Mr. Mullen a memo that in fact you
16 didn't believe Centrum could satisfy the asphalt require-
17 ment?

18 A I was not impressed by this memorandum, nor was I
19 impressed with Mr. Hale's letter to one of my staff when I
20 compared that with the instructions that were submitted for
21 written on September 18.

22 (Memorandum from Mr. Englishman to Mr. Schuyler,
23 dated October 22, 1970, received and marked C-25
24 in evidence.)

25 Q Now, I think previously in your testimony you

Nlep-2 1 told us that at some point in time you became aware of the
2 October 8th letter from Mr. Sherwin to Mr. Kohl, addressed
3 to Mr. Kohl at his residence; is that correct?

4 A No. I disagree with you. I think I made the statement
5 that at no time was I aware up through November 4th, or
6 even subsequent to November 4th, probably till March or
7 April, that I was ever aware of a letter that Secretary of
8 State Sherwin had written to Commissioner Kohl at his home.

9 Q How did you become aware of that letter in March
10 or April of 1971; is that correct, is that the year?

11 A Yes.

12 Q How did you become aware of that?

13 A My recollection is I read about it in the newspaper.

14 Q That is the only time you became aware of it
15 is when you read about it in the newspaper in 1971?

16 A Yes.

17 THE CHAIRMAN: Let's clarify the year.

18 Q November 5, 1970 the award was made to Centrum.
19 We can use that as a starting point, all right?

20 A Yes.

21 Q Approximately how many months after that did
22 you become aware of the correspondence, the letter of
23 October 8th between Mr. Sherwin and Mr. Kohl, addressed to
24 Mr. Kohl?

25 A I think the best way to approach this right now is to

Nlep-3 1 say I am not sure whether there ever was any letter,
2 because I don't have any knowledge of anybody telling me
3 about it or what letter you're talking about. I have never
4 seen it in any exhibits or in sessions like this, it's
5 never been shown to me, so I don't know what letter you're
6 talking about.

7 Q I show you what has been marked C-5 in evidence,
8 which is a letter from Mr. Sherwin to Mr. Kohl, addressed
9 to Mr. Kohl. Have you ever seen that before?

10 A To the best of my knowledge, I don't think I have
11 ever seen this before.

12 Q Did you after November 5, 1970, but prior to
13 April of '72, 1972--do you have those two time periods in
14 mind?

15 A Yes.

16 Q Did you discuss Mr. Sherwin or the Route 46
17 project with any law enforcement officer?

18 A To the best of my knowledge, no.

19 Now, when we say April, I am assuming that you're
20 talking about April of '72, when I think I first became
21 aware of an investigation because of the federal people.

22 Q How did you first become aware that this
23 matter was being investigated?

24 A I think I first became aware of it, that it was
25 being investigated, was Assistant Commissioner Mullen

1 called me.

Nlep-4 2 Q Do you have a recollection of when this took
3 place?

4 A So soon prior to my receiving a call from some federal
5 officials to appear in Newark. You know, the time span
6 wasn't months, it wasn't years, it wasn't weeks. It was
7 a very short time.

8 Q What did Mullen say to you?

9 A He told me that he had been called before the federal
10 attorney in Newark and reminded me that there had been a
11 contract such as Route 46, Section 19A and Section 2B. He
12 said, They're looking into it. He said, You're going to
13 get a call. He said, I don't think there is any problem as
14 far as we are concerned.

15 Q Did he recount with you his conversations
16 regarding Mr. Sherwin?

17 A He may have. I can't be specific about that.

18 Q Up until that point in time, did you ever speak
19 to any member of the Attorney General's office of this
20 state, or any of their investigators, or any of their
21 attorneys, relative to Mr. Sherwin's interference in your
22 department?

23 A I think Dave Biederman and I traveled on a couple of
24 occasions, and I might have talked with him, just a brief
25 comment about it. But other than that, no.

1 Q You never spoke to any member of the Attorney
Nlep-5 2 General's office other than Mr. Biederman about this; is
3 that correct?

4 A To the best of my knowledge, that's right.

5 Q When you spoke to Mr. Biederman, what did he
6 tell you?

7 A I think it was the other way around. I tried to find
8 out from him what prompted the sudden change. He was very
9 noncommittal about it.

10 Q Was that the sum total of his comments?

11 A My recollection, it was in the back seat of an
12 automobile on the way to a meeting or something like that.

13 Q Did you ever get an indication prior to
14 speaking to the federal officials that the Attorney
15 General's office of this state was investigating this
16 particular matter?

17 A No.

18 MR. SAPIENZA: I have no further questions.
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1 THE CHAIRMAN: Do you have anything further,
2 Mr. Francis?

3 MR. FRANCIS: No--oh, let me ask you this.

4 EXAMINATION BY MR. FRANCIS:

5 Q Did you know that Hale or Hale Construction
6 Company or Halecrest were or had been clients of Mr.
7 Biederman? A Not until very recently.

8 Q That was never discussed at any time prior
9 to your meeting with him on October 30th in Mr. Kohl's
10 office in which he said you are to reverse this decision
11 and award the contract to Centrum?

12 A No.

13 MR. FRANCIS: I don't have anything further.

14 MR. BERTINI: Am I correct in this impression,
15 that of all the people in the Department, the
16 Commissioner in relying upon his staff would find
17 you to be the most qualified person by
18 education and experience to rely on?

19 THE WITNESS: That depends upon what
20 Commissioner you're talking about.

21 Now, I realize you're directing this question
22 to me. But I have got to in all fairness say this:
23 that the communication between Commissioner Kohl
24 and myself, from my point of view--and I don't
25 know what this stems from--was entirely different

N2-2

1 than the relationship I enjoyed with two previous
2 Commissioners.

3 By law, by statute, Title 27, the answer to
4 your question is, yes. I should think that the
5 Commissioner, in my judgment, would look to the
6 chief engineer. And I don't mean to reflect in any
7 way upon Commissioner Kohl.

8 You must remember that Commissioner Kohl
9 had not lived in New Jersey in recent years, had
10 not served this state in any capacity. Our Governor
11 went outside of the state to pick him to be
12 Commissioner above others in the state. And I
13 don't mean to indicate that I aspired to that job
14 whatsoever. But there was a distinct change so
15 far as I am concerned in the relationship of
16 communications, organization.

17 By that I am saying there developed almost
18 immediately an informal organization, which the
19 State Highway Engineer--it was different than the
20 State Highway Engineer had previously enjoyed or
21 had been accustomed to.

22 I got the impression that Commissioner Kohl--
23 and I think on many occasions, again without
24 being specific, gave me the impression that he
25 wanted to be--he never said this--but I got the

N2-3 1 impression that he wanted to be the chairman of
2 the board, so to speak. And he looked in terms
3 of an executive director for the daily routines
4 of the Department. And I think this was manifested
5 later by his reorganization.

6 He has chosen to--

7 MR. SAPIENZA: Is this necessary to your
8 answer?

9 THE WITNESS: Well, I don't know. He asked
10 me a question.

11 MR. SAPIENZA: Mr. Bertini.

12 MR. BERTINI: I don't want to cut him off.

13 MR. SAPIENZA: All right. Go ahead.

14 THE WITNESS: So as I indicated previously,
15 by law, yes. He would probably look to the State
16 Highway Engineer.

17 I made my services available to him, suggested
18 that we fly over the state, get a look at it,
19 soon after he came into office. He didn't do that.
20 As a matter of fact, our trip on or about June
21 5th to Warren, Sussex and Hunterdon County was
22 one of the first indications from Commissioner
23 Kohl that he turned to the State Highway Engineer
24 for advice.

25 Now, I don't mean to say that he cut me out

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completely. I am not inferring that. But there was
2 a different relationship than I had previously
3 been exposed to for the previous seven years.

4

MR. BERTINI: Thank you.

5

BY THE CHAIRMAN:

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Q After you had this very brief meeting with
7 Mr. Mullen and Mr. Biederman, when Mr. Biederman announced
8 the contract was going to be awarded to Centrum, and you
9 made a remark, Put that in writing, or words to that
10 effect, did you talk to Mr. Mullen subsequent to that within
11 the next day or so?

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A No, sir. I think you will find, Mr. McCarthy,
that the next day was a Saturday, and the meeting
occurred on October 30th, which was a Friday. I have
no details of recollection of any passing remarks.
As a matter of fact, my recollection of that meeting,
Mr. Mullen had a handful of papers in his hand and he
seemed to be preoccupied with going about the next
matter of business, whatever it was going to be.

20

Q Did you ever discuss with Mr. Mullen what he
thought was the reason for the change in Commissioner
Kohl's decision?

23

A Again, Mr. McCarthy, the discussions that would
have now occurred would be subsequent to April, 1972.

25

Q In other words, there was no discussion within

N2-5

1 that next week or two regarding this reversal of the
2 decision with Mr. Mullen?

3 A Not of any great length or passing or anything that
4 would add, in my judgment, any significant contribution
5 to this whole investigation.

6 Q And none with Mr. Kohl? A To this
7 date, even seeing Commissioner Kohl yesterday in the
8 anteroom out here, I have no recollection of any in-depth
9 or passing discussions with Commissioner Kohl in
10 this matter, even in spite of what the record shows
11 his testimony is on the morning of November 1st, or
12 whatever it was.

13 Q October 30th.

14 A Subsequent to some time very early in October of
15 1970. I did not even hear his testimony at Freehold.

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EXAMINATION BY MR. DIANA:

Q Until April of 1972, when you first started to talk to federal investigators, had you any reason to believe that there was indeed any investigation whatever relative to this Route 46 contract and Centrum?

A No, I had no reason to believe that.

Q There was nothing in the conduct of any of your superiors, and, of course, of your own conduct, which led you to believe there was a need for any investigation; is that correct? A That is correct.

Q At any time between October 7, 1970 and continuing through October 26, 1970, those two dates, did you have an intention to recommend rejection of the Centrum bid, regardless of what your staff discovered?

THE WITNESS: Would you repeat the question, please, the last part of the question.

[The Reporter reads the pending question.]

A I don't believe I had really made up my mind completely in this whole matter until I sat and discussed this with Commissioner Mullen on or about October 23rd, even though I was in the course of having asked my staff for certain things, having received that letter from Mr. Englishman, having had two telephone conversations with Richard Hale, of Halecrest, who was one of the officers at Centrum, having talked with other people on

N3-2

1 my staff, getting progress rates and other things.

2 I had not come to a firm decision, to the best of my
3 recollection, until on or about October 23rd.

4 Q At any time between October 7, 1970 and October
5 23, 1970, did you intend to recommend rejection of the
6 bids, regardless of whether or not the input that your
7 staff brought to you suggested to you that that was
8 the proper course of action?

9 A No, I hadn't intended to reject the bids up until
10 that time. As the record shows here, Mr. Englishman's
11 letter came very close to my meeting with Commissioner
12 Mullen.

13 Q And you determined in your mind to recommend
14 rejection only if your staff could give you reasons
15 to substantiate that conclusion? A Naturally,

16 I had to be guided by the recommendations of my staff.
17 And as the record indicates, Mr. Freidenrich on October
18 2nd had committed himself, Mr. Peterson on October 2nd
19 had committed himself, I had the letter from Mr.
20 Englishman, which, in my judgment and opinion, did not
21 say much of anything if you read it very carefully.

22 There was my concern which had developed at
23 different times along the way which all went to be
24 factored into this decision and judgment which I made.

25 Again, I come back and say really I don't think I

N3-3 1 walked into the meeting with Mullen with a predetermined
2 way my judgment would dictate.

3 Q In other words, as of October 23, and immediately
4 prior to your meeting with Deputy Commissioner Mullen,
5 you had not yet in your own mind reached a decision as
6 to what your recommendation would be?

7 A I was still flexible at that time.

8 Q Did you have at that time all the data that
9 you had requested from your staff, all the input you
10 were looking for?

11 A From staff, yes.

12 Q From staff, yes? A From staff, yes.

13 Q Now, as of the time that you had that
14 meeting with the Commissioner, did you feel there were
15 sufficient proper reasons to reject the Centrum bid?

16 A I did.

17 Q And this is prior to your meeting with
18 Commissioner Mullen, although you had not yet reached
19 a decision as to what your recommendation would be?

20 A That's right.

21 THE CHAIRMAN: Thank you very much, Mr.
22 Schuyler. If we need anything further, we will
23 have somebody from the staff contact you.

24 One thing I might have overlooked, and I
25 think Mr. Sapienza touched on it in his original

N3-4

1 warnings. We operate under the code of fair
2 procedure. And in particular, Section 5 thereof,
3 any witness at a hearing shall have the right at the
4 conclusion of his examination to file a brief
5 sworn statement relevant to his testimony for
6 incorporation in the record of the investigatory
7 proceeding.

8 I just call that to your attention. If you
9 feel there is a need on your part to file a
10 sworn statement, you have the right to do so.

11 THE WITNESS: What is the time limit for that?

12 THE CHAIRMAN: I will turn that over to Mr.
13 Sapienza.

14 MR. SAPIENZA: We would like to have it as
15 quickly as possible. We will deliver to you
16 tomorrow, if you wish, a copy of your testimony
17 here today. We would like to have it by Friday,
18 if you can work that up. Is that all right with
19 you?

20 THE WITNESS: I appreciate being advised of
21 this.

22 MR. SAPIENZA: Do you need more time than that,
23 Mr. Schuyler?

24 THE WITNESS: No. I will be very candid with
25 you. Factually, I have made a sworn statement

N3-5 1 concerning this entire affair. And what is going
2 through my mind is that I don't know whether you
3 have this or whether you don't. I could get a copy
4 of that and supply it.

5 MR. SAPIENZA: Where have you made a sworn
6 statement about this?

7 THE WITNESS: I have made this to Matthew
8 Boylan.

9 MR. SAPIENZA: Did that statement concern
10 the State Commission of Investigation's inquiry
11 into the affairs of the Attorney General's Office,
12 or did it concern the prosecution of the three
13 defendants in Freehold?

14 THE WITNESS: Well, I don't know whether the
15 State Investigation Commission was involved. It's
16 a capsule situation, as far as I am concerned,
17 of this entire matter.

18 MR. SAPIENZA: Let me tell you what we want.
19 If you would like to make a sworn statement to us
20 concerning your testimony here today and relevant
21 to your testimony here today, you may. You don't
22 have to. But you can if you want to. Do you
23 understand that?

24 THE WITNESS: I understand.

25 MR. SAPIENZA: If you want to, just let me

N3-61

1 know and I will make arrangement to have someone
2 go over and pick it up and it will be incorporated
3 into the record of this proceeding. Okay?

4 THE WITNESS: All right.

5 MR. SAPIENZA: Fine.

6 MR. FRANCIS: Let me ask you with regard to
7 this other sworn statement.

8 Do you have any recollection that anything
9 that you put in that statement is in conflict with
10 anything you have told us here today?

11 THE WITNESS: No.

12 MR. FRANCIS: Is that the reason why you
13 would like to think over, in any event, your
14 testimony here and decide whether you want to file
15 a statement relative to your testimony?

16 THE WITNESS: Well, there is no conflict.
17 It's just that I have no reason to doubt that the
18 record isn't transcribed properly or anything like
19 that. It's just that I go back to the fact that
20 sometimes with previous experience the testimony
21 gets so voluminous and the record so great with
22 words that sometimes it's to the benefit of all
23 concerned, from my point of view, my knowledge,
24 that it be put in capsule form and broken down into
25 pertinent information, issues and facts.

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MR. FRANCIS: I gather, what you would like to do is read what you said here today and think about it and see if it really expresses all of your thoughts and all of your recollections and all of the statements of known fact that you have in your mind about this affair.

THE WITNESS: That's right.

MR. FRANCIS: We will get that to you.

THE WITNESS: Thank you.

THE CHAIRMAN: Thanks very much.

THE WITNESS: You're welcome.

[The witness was excused.]

1 J O H N C. K O H L, having been previously sworn
Olpp-1 2 according to law by the Officer, resumed the stand and
3 testified further as follows:

4 EXAMINATION BY MR. FRANCIS:

5 Q Mr. Kohl, do you remember when you were here
6 yesterday I showed you a memorandum that was dated October
7 29th, on the side of which there was some handwriting?

8 A Yes.

9 Q You identified that handwriting as your
10 handwriting?

11 A Yes.

12 Q Do you remember that the note was "Biederman
13 discussed with Garven 11/4"?

14 A Yes.

15 Q And "Garven to speak to Sherwin"?

16 A Right.

17 Q After that time did you say to Mr. Mullen that
18 you were told that the people downtown, or "the boys
19 downtown told me not to worry, there was not going to be
20 any investigation; that they didn't see any conspiracy,"
21 or other words of that general nature?

22 A I don't recall any such discussion as that. I do
23 recall that I had word either directly or indirectly that
24 Judge Garven had spoken to Sherwin and had advised me that
25 we would hear nothing more of it and as far as--and that

1 there would be no further interference, if that's the
Olpp-2 2 proper word, with any of our contracts.

3 Q Did you give that message, or relate that
4 conversation, to Mr. Mullen?

5 A I probably did.

6 Q Do you have a recollection as to how soon after
7 November 4th that was?

8 A No, I don't. We were involved in a lot of other
9 problems and I felt we had this one behind us and was off
10 on other areas of activity.

11 Q You said that you were told directly or
12 indirectly that Judge Garven had spoken to Sherwin. Do
13 you remember, what's your best recollection as to whether
14 Judge Garven told you that or somebody else told you that?

15 A Probably Judge Garven may have mentioned it. We had
16 numerous meetings. We were involved at that time with one
17 of the recurrent crises on the Jersey Central, and the
18 Governor's office was very much involved in that. I was
19 meeting with Garven at frequent intervals, and he may have
20 mentioned it casually to me that he had talked with Sherwin
21 and there would be no further discussion nor comment on any
22 of our contracts.

23 Q Well, is it fair to say that your best
24 recollection is, then, that--

25 A Yes.

Olpp-3

1 Q --you had this conversation with Judge Garven?

2 A Yes.

3 Q And that that was the conversation that you
4 later had, in substance, with Mr. Mullen?

5 A I undoubtedly mentioned it to Mr. Mullen because he
6 was intimately involved in the administration of the
7 highway end of the business.

8 Q Have you ever discussed Mr. Sherwin's inter-
9 ference in your department, or his October 8th, 1970 letter
10 to you, or Mr. Biederman's October 30th, 1970 memo to you
11 with anyone before April 20th, 1972?

12 A No, not at all.

13 Q Do you have any knowledge as to whether the
14 Attorney General, or any members of his staff, made any
15 investigation into the circumstances of Sherwin's
16 interference in your department prior to April 20th, 1972?

17 A No, I do not.

18 Q The conversation you spoke to us about yesterday
19 that you had with Biederman in connection with the filing
20 of the ethics complaint in Union County, I'm not sure that
21 the record shows your full recollection of that conversation.
22 Would you tell us exactly, to the best of your recollection,
23 what it was that he said to you when he stormed into your
24 office a few days after the complaint had been filed.

25 A Well, he mentioned that a complaint had been filed

Olpp-4

1 regarding his ethical performance and that he felt it was
2 highly unjustified and that certainly someone was going to
3 pay for this.

4 Q And did he indicate who that someone was?

5 A The Attorney General, I think, was the focus of his
6 anger.

7 MR. FRANCIS: That's all I want to ask

8 Commissioner Kohl.

9 EXAMINATION BY MR. SAPIENZA:

10 Q Commissioner, did you ever discuss the matter
11 with the Attorney General yourself?

12 A No.

13 Q Did you ever discuss the matter with Mr. Jahos,
14 his Director of Criminal Justice?

15 A No.

16 MR. FRANCIS: Is that all?

17 THE CHAIRMAN: I believe that's all,
18 Commissioner Kohl. Thank you very much for
19 returning.

20 (Witness excused.)

21 THE CHAIRMAN: Mr. Hale, you may sit right
22 there, please.

23 MR. HALE: Here?

24 THE CHAIRMAN: That's fine.

25 You have two members, rather three members of

Olpp-5

1 the State Commission of Investigation sitting this
2 afternoon. You have Commissioner Diana on my left;
3 Commissioner Bertini on my right. My name is John
4 McCarthy. Special counsel, Mr. Francis, and regular
5 attorney for the Commission, Mr. Sapienza, and you
6 have two of the investigators, Mr. Corrigan and Mr.
7 Jordan here, together with Mr. Prout, the court
8 reporter. Okay, sir.

9 THE WITNESS: How do you do, gentlemen.

10 THE CHAIRMAN: Would you stand up at this time
11 to be sworn, please.

12 R I C H A R D M. H A L E, having been duly sworn
13 according to law by the Officer, testified as follows:
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1 EXAMINATION BY MR. SAPIENZA:

2 Q Mr. Hale, before we begin, I'm going to read
3 to you certain warnings that we give to all witnesses who
4 appear before us. I note, first of all, that you are
5 appearing at our request voluntarily. Is that correct?

6 A Yes, sir.

7 Q This is an executive session of the Commission.
8 Your testimony will be taken down under oath and
9 transcribed by the Shorthand Reporter. It may later
10 be used against you in a court of law. For that reason,
11 if you feel that your answer may tend to incriminate you,
12 you may refuse to answer. Do you understand that?

13 A Yes, sir.

14 Q You have the right to be accompanied by
15 an attorney of your choice, and I note for the record that
16 you do not have an attorney today. Is that of your
17 choosing?

18 A Not knowing any more about it than the call, I didn't
19 know whether or not there was any need to have one.

20 Q Suppose we do it on this basis: If at any
21 time during the questioning you feel that you ought to
22 consult with an attorney, just say to us "I think I'd
23 like to consult with an attorney about that," and we will
24 discontinue the questioning and you may consult with one.

25 Do you understand that? A Yes, sir.

02-2 1 Q You are under no compulsion to stay here
2 in any regard. You can leave at any time.

3 Our statute forbids disclosure by you of
4 the questions that we ask, or the responses that you
5 give, or any information you may gain from this interview.
6 The penalty is as if it was a disorderly persons' offense.
7 That means that everything that happens in this room
8 should stay in this room. Of course, you may discuss it
9 freely with your attorney, if you decide to retain one.

10 Although your testimony is now being taken at a
11 private session, the Commission has the right to call
12 upon you to give the same testimony at a later time
13 in a public forum or to make your testimony today available
14 to the public in some other form. You understand that,
15 don't you? A Yes.

16 Q That would be by resolution.

17 A copy of your testimony at this private
18 hearing may be made available to you at your expense,
19 if it becomes relevant in a criminal proceeding in which
20 you are a defendant, or if you are summoned to appear
21 at a subsequent hearing before this Commission, providing
22 the furnishing of such a copy will not prejudice the
23 public safety or security. It's part of our statute.

24 Do you understand that? A Yes, sir.

25 Q Okay. You have the right to, at the

02-3

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conclusion of this hearing, file a brief sworn statement relevant to your testimony for incorporation into the record of this proceeding, if you feel it's necessary. Do you understand that?

5

A I think so.

6

MR. SAPIENZA: Fine. These are, as I said, the warnings that all witnesses receive.

7

8

EXAMINATION BY MR. FRANCIS:

9

Q Where do you live, Mr. Hale?

10

A I live on Talmadge Road in Edison Township, New Jersey.

11

12

Q And you in September-October-November 1970, were president of Centrum Contracting Company?

13

14

A Yes, sir.

15

Q And you were an officer of Halecrest Corporation, also?

16

17

A Yes, sir.

18

Q And an officer of Edison Asphalt Company?

19

A Yes, sir.

20

Q What office did you hold in Halecrest?

21

A I was president.

22

Q And what was your office in Edison Asphalt?

23

A I believe I was secretary at that time.

24

Q Well, your recollection seems to be correct, because you signed a letter as secretary of Edison

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02-4 1

Asphalt Company.

2

Centrum made a bid, did it not, on the

3

Route 46 project in September of 1970?

4

A Yes, sir.

5

Q And when the bids were opened on September

6

24th, Centrum was the low bidder, you recall, do you?

7

A Yes, sir.

8

Q And the second low bidder was Manzo Construction

9

Company? A Yes, sir.

10

Q Now, after the bids were opened, did you

11

become aware that the Department was engaged in some

12

investigation of Centrum to decide whether the contract

13

should be awarded to you?

14

A Shortly thereafter I understood they were, yes, sir.

15

Q Were you aware at that time of an asphalt

16

shortage in your profession? A Yes, we had

17

discussed the word, I would rather state it, an alleged

18

asphalt shortage because we didn't actually have any

19

shortage in our companies, that I knew of at that time.

20

Q Well, do I take what you have just said to

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indicate that you did not think that there was an asphalt

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crisis at the moment which in any way affected the

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Centrum operation or the Edison Asphalt operation?

24

A There's considerable discussion of it and knowledge

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of it, knowledge of a problem, though if you want me to

02-51 elaborate a little on it, we, up to that time during that
2 year had covered most all of our jobs, both public and
3 private and industrial, with sufficient asphalt cement,
4 which makes the bituminous concrete though there was
5 discussion of an asphalt shortage.

6 Q Well, are you indicating you did not recognize
7 that there was any such shortage in the trade, in your
8 business?

9 A I presume there was some kind of a shortage.
10 I know that one of the major companies was having trouble
11 getting material tankers, I understand, from overseas,
12 although I think we had gotten all the material through
13 that summer. I think it started in maybe May, or June or
14 July that this alleged shortage--although it may have
15 hurt others more than it did us. For example, I'm not
16 too aware of how hard some may have been hurt, if at all.

17 Q Well, shortly after your bid were you advised
18 by Mr. Stelljes or anywhere in the Department that the
19 Department wanted assurance from you of your source of
20 supply? A Yes, sir.

21 Q And that you did write two letters, dated
22 October 14th, 1970, having to do with the asphalt
23 shortage and your situation? A Yes, sir.

24 Q Do you remember that? A Yes, sir.

25 Q One of those letters was from Centrum and the

02-6 1 other was on the letterhead of Edison, do you remember?

2 A Yes, sir.

3 Q I show you the one letter dated October 14th,
4 on the letterhead of Centrum, which we have marked
5 here C-18. In that letter you say, "Considerable effort
6 has been made to obtain a definite commitment during
7 this severe asphalt cement shortage from the major
8 refineries and suppliers in New Jersey"?

9 A Uh-huh, yes, sir.

10 Q Well, had you made a considerable effort to
11 obtain a definite commitment?

12 A Yes, my recollection is that I had called some of
13 the upper echelon representatives of the majors, not
14 only in connection with this job but probably others,
15 to find out what the picture was or was going to be,
16 and because there was a lot of, maybe, concern at that
17 time on some of our part.
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03pp-1

1 Q Well, this letter that we're talking about now,
2 of October 14th was written by you in answer to a request
3 for assurance that you were going to have enough asphalt--

4 A Yes.

5 Q --to do the Route 46 job?

6 A Yes.

7 Q And was it your view when you wrote this letter
8 that this represented a guarantee of sufficient asphalt?

9 A Yes, sir. I thought this satisfied the request. It
10 went as far as anyone could go at that time.

11 Q You mean this went as far as anyone in your
12 business could go in stating that a supply would be
13 available?

14 A Well, I thought it was what was asked of me.

15 Q Well, then, you said that "due to this effort
16 I firmly feel that Centrum Construction Corporation will
17 be granted at least equal opportunity for available supply"?

18 A Yes, sir.

19 Q That was your understanding of your status in
20 the industry with respect to sources of supply of asphalt,
21 was it?

22 A Yes, sir, I felt that was a safe statement on my part,
23 to the DOT.

24 Q And then on that same day, I presume later in
25 the day, you sent another letter on the letterhead of the

03pp-2

1 Edison Asphalt Company, signed by you as secretary, which
2 we have marked here as Exhibit C-19?

3 A Yes.

4 Q And by this letter you indicate, do you not,
5 that its purpose was to confirm the availability of the
6 Edison Asphalt Company to supply material for this job
7 during the years '70 and '71?

8 A Yes, sir, if needed.

9 Q Well, I don't see the two words "if needed"
10 there. Is that a qualification you intended to put in the
11 letter but did not put in?

12 A Did--just--

13 Q Do you want to see it again?

14 A --a chronological point. The date on that was what?

15 Q October 14th, the same date as the other one.

16 A Okay. And this was after we met with Mr. Stelljes and
17 Mr. Rice.

18 Q Apparently so. I notice on the Edison letter
19 copies were sent to Mr. Rice and Mr. Booream.

20 A Yes.

21 Q Does that have any significance to you?

22 A Yes, but I--my question is, I have this memorandum,
23 which, if I may, I would like to refer to.

24 Those letters--okay. This letter is written on the
25 14th?

03pp-3¹

Q Yes.

A Oh, yes, we had met with Mr. Stelgis and Mr. Rice before that and we had had some discussion about Edison Asphalt's availability, it's distance from the job and the fact that it was controlled by us, the fact, also, if all of this is not--

Q Go ahead.

A --erroneous, the fact, also, that it was some distance from the job, but if worse came to worse we could use Edison Asphalt to supply the job, and that's the reason I said "if needed." It was not quite as convenient to the job as a closer supplier was.

Q But when you were asked for a definite assurance or a guarantee of a source of supply and you sent this letter on the letterhead of the asphalt corporation, you did not intend to have the department draw the conclusion that you were giving the Edison Asphalt as the guarantee of your supply of concrete for this job?

A Not that it would be used, but if worse came to worse it is there under our control to use.

Q Well, I wonder, if the department was looking for a guarantee of a source of supply for this job, why you didn't give them a guarantee from the source that you expected to use rather than Edison Asphalt which, I gather by your expression "if needed," was a standby company.

03pp-4

1 A Well, yes, this was the intention.

2 Q It was the intention, your intention, then,
3 when you wrote this letter to indicate that you had a
4 standby company, Edison Asphalt, which you controlled, which
5 would make its full supply available to you, if necessary.

6 A Sure.

7 Q But was it your idea that that satisfied the
8 department's request for a guarantee as a source of supply?

9 A Yes, sir, it was.

10 Q Even though you had no intention of using
11 Asphalt at that time, did you? Edison Asphalt I mean.

12 A I didn't expect to use them. We had had other
13 commitments, which at that time before the award I couldn't--
14 I felt strongly that they could be used, but it would have
15 decreased my negotiating power with them before we were even
16 awarded the job to state that they would be the supplier.
17 We'd had quotations from them within the areas of the bid.

18 Q Then, actually, I gather that you didn't
19 consider it expedient to advise the Commission of the source
20 that you actually expected to use?

21 A I didn't know, sir, for sure at that time.

22 Q Well, how could you be sure, then, that you
23 could get a supply from another source?

24 A Well, we had had bids from at least two or three
25 others within the prices which we bid.

03pp-5

1 Q Well, had you told those sources the quantity
2 of asphalt you were going to need on the Route 46 job?

3 A Yes, sir. They knew the plans and specifications.

4 Q And my recollection is that under the plans and
5 specifications as advertised you needed 38,000 tons--

6 A Yes, sir.

7 Q --of liquid asphalt to do this job?

8 A Yes, sir.

9 Q And had you talked to these other sources of
10 supply in terms of 38,000 tons?

11 A Oh, yes, sir, absolutely.

12 Q And you say they had assured you that they
13 would supply that amount to you?

14 A Yes, sir.

15 Q Were you at that time bickering around with
16 people for a price on liquid asphalt?

17 A Yes. This is common practice.

18 Q Well, you will pardon my inexperience in that
19 area. That's why I'm inquiring about it.

20 You were bickering for prices of asphalt and
21 that's why you did not want to actually commit Edison
22 Asphalt on a guarantee?

23 A Exactly. Well, yes, and I didn't want to--I guess
24 this better explains it: at a time like this before the
25 award of a contract we don't know that we really for sure

03pp-6

1 have the contract until we're officially awarded it. And
2 we can officially then give the subcontract for materials
3 or services to someone else. This is common practice.

4 We did, also, and this probably is the most important
5 part of this, is that if we before, at this stage of the
6 game, had told Warren Paving, for example, who was closer
7 to the job and would very much have liked to have done the
8 job, that they had the bid without--it would hurt our
9 negotiating position.

10 Q You mean you might have to pay a higher price
11 for it?

12 A Yes, sir.

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04-1 1 Q I see. So that, in any event, you made a
2 deliberate decision not to indicate to the Department that
3 you had a firm commitment from any specific source of
4 the 38,000 tons of asphalt?

5 A I'm not sure that I fully understand that, sir.

6 Q Well, in view of what was going on with your
7 company with respect to making liquid asphalt available
8 for this job, you decided that rather than hurt your
9 bargaining position with some other companies around
10 you would not tell the Highway Department that you had
11 a fixed commitment from any source for the bituminous
12 supply?

13 A Well, the question wasn't specifically put that way.
14 If it were specifically asked, I don't know what my answer
15 would have been.

16 But I assured them, I thought it was to my
17 satisfaction that we had the asphalt situation covered
18 if not one way, in another way. I think they realized
19 that you don't.

20 Q Now, was there some question raised, also,
21 about the Centrum equipment, whether it had sufficient
22 equipment available to do the job?

23 A Shortly after the bidding a Mr. Oswald called me
24 on the telephone and asked for some answers to the
25 financial statement submitted with the bid, and, also,

Hale

01-2

1 concerning the equipment, and I sent a letter to him,
2 which I thought answered those, and I asked if there was
3 any other information that he wanted, to please ask me,
4 and I didn't--I don't think I heard from him again
5 concerning those.

6 Q Let me just go back to the asphalt for a
7 minute. A Right.

8 Q The asphalt that you used ultimately on the
9 job you got from the Warren Paving Company, did you?

10 A Yes, sir; yes, sir.

11 Q And I gather that you had not indicated
12 to the Department that that would be your source of
13 supply; you simply started to use the asphalt that you
14 got from Warren, is that it?

15 A Well, I think the Department knew that that was one
16 of the sources. I don't remember how much we discussed
17 them as a source at that time in Mr. Stelljes' office.

18 Q Well, to come back to the equipment for a
19 minute.

20 A Yes.

21 Q When the question was raised about the
22 availability of equipment in the hands of Centrum to do
23 the job, it was suggested that your bid papers didn't
24 indicate enough equipment of this type to do the job;
25 is that correct?

04-3 1 A I think that was the reason probably for Mr.
2 Oswald's call. I assumed it was.

3 Q And then when you discussed the matter with
4 him, you indicated that Halecrest equipment would be
5 available?

6 A Yes, sir.

7 Q Halecrest is your company? A Yes, sir.

8 Q And you were satisfied Halecrest did have
9 enough equipment available to do this job?

10 A Yes, sir.

11 Q And you satisfied the Department, did you,
12 that Halecrest equipment was sufficient and was available?

13 A Yes, sir.

14 Q Did you use Halecrest equipment?

15 A We may have used some. I doubt that we used very
16 much. I just don't recall.

17 Q Well, did you rent the equipment from the
18 Warren Paving Company, too?

19 A I think we rented some from them. Centrum used
20 some of its own, and we may have used some of Halecrest.
21 We may have rented some--we may have rented some outside
22 equipment. In a project like that, very often you do.
23 I'm sure we did. We rented some outside equipment, also,
24 yes, sir.

25 Q Well, was that because there wasn't enough

Hale

1 Halecrest equipment available?

2 A No. Renting equipment for a specific job is pretty
3 common. This job was essentially a resurfacing job,
4 and there was one particular type of excavation equipment,
5 that I remember our renting, that we contractors don't
6 normally use because we don't have enough of that kind of
7 work. And we may have used a Halecrest roller, I believe,
8 when there was a breakdown one time, and we may have used
9 equipment from some other people, other suppliers.

10 Q After you sent those October 14th letters
11 about the availability of Edison Asphalt as a source of
12 supply, did you receive a call from Senator Dumont?

13 A The dates, now, I have to check on.

14 Q Let's see if I can refresh your recollection.
15 Did Senator Dumont call you and tell you that he had
16 seen Commissioner Mullen, who had not received your
17 October 14th letters? A Yes, sir.

18 Q Or hadn't seen them? A He did not
19 call me. He called the Centrum office, who called me.
20 And I'm referring to a memorandum that I guess you have
21 a copy of.

22 Q No, I don't have a copy. But it's a memorandum
23 that you made yourself to refresh your recollection?

24 A Yes. Well, I made it and I just assumed that you had
25 a copy of it, and you're welcome to use this.

04-5 1 Q Well, no. If you want to use it to refresh
2 your recollection, you go right ahead.

3 A Yes, sir; yes, sir.

4 The letter we received, as I recall this, now,
5 I received a call in my Halecrest office from Centrum
6 stating after having sent these letters, I think to which
7 you refer, down to Trenton, about seven days later,
8 apparently, they had not been received in Mr. Mullen's
9 office, according to Senator Dumont who apparently had
10 talked to Mr. Mullen and he had called the Centrum
11 office and the Centrum office called me. And I immediately,
12 I guess, took the carbon copy and recopied it and sent it
13 down. But this was seven days, approximately, after the
14 first letter.
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Plegl

1 Q That was either October 20th or 21st?

2 A That's right.

3 Q Was-- A That was October 22nd,
4 according to my memorandum.

5 Q Senator Dumont, I gather, had interested
6 himself in your behalf in this project?

7 A I understand that his constituents up there were
8 very concerned about this. There had been some picketing
9 or something up at the upper end of the job, and he
10 was concerned about the job itself, and he went down--
11 I don't know whether he talked to our people up at the
12 Centrum office. I had never talked to Senator Dumont
13 myself about any of this.

14 On the 22nd, which was about seven days later,
15 according to my memorandum, I sent this letter again to
16 the Department of Transportation, which I guess was a copy
17 of the first letter.

18 Q Well, now, two days before that, on October
19 20, had you come down to the Department and talked to
20 Mr. Biederman?

21 A Let's see. On the 20th. I talked to Mr. Biederman,
22 I don't think the date would have been the 20th.
23 I don't have the date.

24 MR. FRANCIS: Could I have Mr. Biederman's
25 memorandum of October 30th.

P1-2 1 [Off the record.]

2 Q Let me show you a memorandum of Mr. Biederman
3 to Mr. Kohl, dated October 30th, which we have marked
4 here Exhibit C-8, and call your attention to his statement.

5 "On Tuesday, October 20, 1970, I received
6 Mr. Richard Hale, President of Centrum Construction
7 Company," and so on.

8 A On my memorandum, I called Mr. Stelljes on Tuesday
9 morning, the 20th, who stated that he would get--it must
10 have been the same day. I thought it would have been a
11 different day.

12 MR. FRANCIS: Supposing I just mark that
13 so we will have a record of what you have been
14 referring to.

15 [Memorandum of Mr. Hale dated October 30, 1970,
16 received and marked as Exhibit C-26 in evidence.]

17 Q You came down to Mr. Biederman's office that
18 day?

19 A Yes, sir.

20 Q And did you tell him that you had made this
21 low bid and that you were concerned as to why the
22 contract had not been awarded to you up to that time?

23 A Yes, sir.

24 Q And that was two days before you sent in
25 this, the copies of the October 14 letter?

A I was thinking that it was a different time. but

P1-3

1 apparently it was the same day.

2 Q Did Mr. Biederman at that time tell you that
3 whatever Mr. Schuyler wanted in the way of assurances
4 about asphalt that you ought to get it to him right away?

5 A He may have. I don't recall that, he probably did.

6 Q Let me show you this memorandum of his office
7 of October 30th, in which, to refresh your recollection,
8 if it does, "I advised him to contact Mr. Schuyler to
9 meet whatever requirements this Department had, and he
10 later represented to me that he did so."

11 Does that indicate to you that you probably
12 went back then and on the basis of what Senator Dumont
13 told you and this statement you recopied those letters
14 and sent them down to the Department?

15 A Exactly, yes. I have here, because of Senator
16 Dumont's inquiry, the original letter was rewritten and
17 hand-carried to Mr. Schuyler's office by Mr. Booream
18 on October 22nd at 11:45 a.m.

19 Q After that visit, within a few days after that
20 visit of yours to Mr. Biederman, did you have a telephone
21 call from him saying that he had talked to Commissioner
22 Kohl and that the contract was going to be awarded to you?

23 A He had told me on the telephone--I don't have it
24 here, and I don't remember the date, maybe you have the
25 date. I had talked to him on the telephone at some time

Pl-4 1 and I think after I had met him for lunch on I think it
2 was the 22nd.

3 Q The reason I am making this inquiry is that
4 I want to find out if after you saw him on the 20th
5 and before you got a later notice on the 26th that all
6 of the bids were being rejected, Mr. Biederman had called
7 you and said, Well, I have talked to Commissioner Kohl
8 and you are going to get the contract.

9 A This was made on the 30th. On the 30th, when I
10 dictated this--this doesn't get ahead of the story, and
11 maybe it helps answer that one. I did not know that the
12 bids were going to be awarded to us, because I dictated
13 this. That was the reason I dictated this memorandum
14 on October 30th.

15 Q Yes. What I am trying to find out is whether
16 you got a second message that you were not going to get
17 the contract, that all the bids were going to be rejected.
18 What I am trying to find out is after you talked to Mr.
19 Biederman and he said he would look into it for you
20 and then he called you back, if he did, and said, I have
21 talked to the Commissioner and I think I have straightened
22 it out and you are going to get the contract as the low
23 bidder. A This could have been, but it must

24 have been then after the 30th.

25 Q No, no. This was before. It had to be

P1-5 1 before the 30th, if it happened.

2 A He may have.

3 Q Let me see if this will refresh your
4 recollection.

5 A If he did, then I was--because it was in the paper
6 that the bids were rejected.

7 Q See, I am talking about a time now prior to
8 October 26, when the decision was reached to reject all
9 the bids.

10 Now, in this memorandum that we looked at
11 before, which is marked C-8, it's from Mr. Biederman to
12 Mr. Kohl telling him of your visit, and he said:

13 "I later discussed this matter with you
14 and you advised me that you had been requested by the
15 Secretary of State, Mr. Sherwin, not to award the contract
16 and to reject all bids so that the second bidder, Mr.
17 Manzo represented by John E. Dimon, State Republican
18 Chairman, would have another shot at this contract. While
19 the low bidder was above this Department's estimates
20 he was within the narrow percentage above said estimates
21 usually used by Department as its criteria in awarding
22 bids and would, therefore, if this were a normal matter,
23 receive the contract. In addition, the Department both
24 publicly and privately....represented that the project
25 would be built and construction to start over a month

P1-6 1 ago."

2 This is what I want to specifically call your
3 attention to. "After discussion with you, you advised
4 that the award would--" and the would is underlined
5 for emphasis "--would be made to the low bidder -- Centrum
6 Construction Company and that Mr. Sherwin's request
7 would be rejected."

8 Does that refresh your recollection that Mr.
9 Biederman, after you visited him and before you got the
10 notice that all of the bids were going to be rejected,
11 called up and said, It's going to be all right, you were
12 going to get this contract?

13 A I think so, I think so. And if he did, it would
14 have to have been before the 30th. I think you're right.

15 Q Well now, let's talk about the 30th for a
16 minute.

17 A I can remember something here--

18 Q Let's go on a little farther.

19 "Apparently on Monday, October 26, 1970,
20 you reversed your decision to reject Mr. Sherwin's request."

21 So this conversation, assuming it occurred,
22 would have happened sometime between your visit on the
23 20th and the 26th, when there was a new decision that was
24 reached to reject. Does that refresh your recollection
25 at all?

P1-7 1 A Not specifically. But something else does, what
2 I do have--

3 Q Well, if you think that's helpful, let's
4 have it.

5 A It might be, although it gets a little ahead of--
6 or after your story, subsequent to. After I sent this
7 letter down to Mr. Schuyler's office and Mr. Schuyler
8 called me about it and said the bids would be rejected
9 for certain reasons, this was the 30th. And then I
10 dicated this and called Mr. Biederman, apparently, a day
11 or two after this because I was quite perturbed.

12 Q You had been especially perturbed if you had
13 already been told by Mr. Biederman that you were going
14 to get the contract and to suddenly get a notice that
15 it's not so, that it's going to go the other way?

16 A Yes. And also having lived with this thing now
17 for a couple of weeks and tried to supply everything
18 that I thought was asked of me, and then having the
19 same excuses.

20 I think by Friday afternoon I was quite upset.
21 I called Biederman. I don't think it was this Friday
22 afternoon, but if it wasn't, it was probably that Monday,
23 and I told him that I was going to send this. And I sent
24 him a copy of this. I didn't make this up to send to
25 Biederman necessarily. I didn't know how I was going to

Pl-8 1 use it, but I wanted to refresh myself of some of the
2 important points here.

3 Q Then I gather after you sent these letters,
4 copies of the original October 13 letter, you next
5 heard from Schuyler on October 30th, and in that
6 conversation he said all the bids were going to be
7 rejected?

8 A Yes, sir.

9 Would you like me to read my recollection of that
10 in the memorandum?
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P2ep-1

1 Q Yes, you go ahead.

2 A On the 22nd, 11:45, I asked Mr. Booream to take this
3 letter, which was retyped, down to Mr. Schuyler--

4 Q Mr. Booream is one of your engineers?

5 A Mr. Booream is general manager of Centrum Construction
6 Company, vice president and general manager. I will give
7 you his copy of my memorandum.

8 "Mr. Schuyler met with Mr. Booream for ten minutes
9 and stated that his people probably didn't understand what
10 he wanted. He was concerned with the major oil companies'
11 commitment. He suggested that Richard Hale call him to
12 get a definite idea of what would be practical insofar as
13 a commitment of this type was concerned.

14 "Richard Hale called Mr. Schuyler on or about 1:15
15 p.m. that afternoon and Mr. Schuyler called back at about
16 3:00 p.m. Mr. Schuyler expressed his reasons for wanting
17 no delay in the job - its importance etc. Richard Hale
18 stated that all measures were being taken to see that this
19 would have top priority since there were no other
20 Department of Transportation jobs by our companies at this
21 time, and gave other reasons for this job's receiving
22 proper service. Mr. Schuyler said, 'You've been most
23 helpful'. The phone conversation ended with the statement
24 by Richard Hale 'If any other information is needed, please
25 contact me'. There was again no discussion other than

1 reasonable assurance of an asphalt supply."

P2ep-2 2 Then on Friday--

3 MR. SAPIENZA: What date are you referring to,
4 sir?

5 THE WITNESS: That was the 22nd.

6 BY MR. FRANCIS:

7 Q The Friday you're talking about now is October
8 30th.

9 A Yes. That was the end of the October 22 conversation.

10 "On Friday morning, October 30th, Mr. Richard Hale
11 was informed by a supplier that the bids were rejected."
12 I think it was the Centrum office who called me on this, too.
13 "Richard Hale immediately called Mr. Schuyler who then
14 stated that the bids were rejected. In essence the reasons
15 were:

16 "(1) The bids were over the estimate.

17 "(2) There was to be a change in the vertical profile
18 which would require negotiation of a substantial nature.

19 "(3) They wanted to have a calendar date completion
20 rather than 70 working days as in the specifications."

21 MR. SAPIENZA: Do you have a date or time on
22 that day of your conversation with Mr. Schuyler, when
23 that took place? Does your memorandum reflect a time
24 of your telephone conversation with Mr. Schuyler on
25 October 30th?

P2ep-3

1 THE WITNESS: No. But I think it was in the
2 early afternoon.

3 MR. SAPIENZA: What do you mean by the early
4 afternoon?

5 THE WITNESS: I would guess it was 1:30 to
6 three o'clock, because I dictated this I think after
7 that, and on a Friday, because I was then quite upset
8 because I had not heard anything.

9 Do you want me to read just a little bit further
10 as to what was in my mind at that moment?

11 BY MR. FRANCIS:

12 Q Well, let's talk about the suggestion of Mr.
13 Schuyler that some additional work was necessary.

14 When ultimately you got this contract you did
15 have some additional work to do, did you not?

16 A Yes. But this is not what was referred to.

17 Q Did you have to install, make some additional
18 provisions for drainage, for example?

19 A There was some drainage work, yes, sir.

20 Q And was there some additional work that had to
21 do with the super elevation of curves?

22 A In one spot I think there was.

23 Q Your low bid was \$603,871.

24 A Yes, sir.

25 Q What ultimate amount were you paid for the job,

P2ep-4

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if you remember?

A I'm not sure.

Q Could you give us your best recollection of the amount over the \$603,000 bid?

A I would say within ten percent, but I am just not sure.

Q Well, maybe to start off your recollection, let's begin with: do you think it was one hundred thousand dollars over the original bid?

A No, sir.

Q Between fifty and a hundred?

A We can find this out.

Q I'm sure we will before we are finished.

A I would have thought less than that.

Q Less than fifty?

A Well, in the fifty area.

Q Is it fair to say from some of our conversation earlier that you do now have a recollection of Mr. Biederman calling you sometime between the 20th and the 30th, we will say between the 20th and the 30th, telling you that he had talked to the Commissioner and that you would probably get the contract?

A I don't recall that specifically, except I recall talking to him after our luncheon meeting, and it was probably between those dates, but I don't know the date. I don't know whether I called him or he called me,

P2ep-5

1 specifically. But I think we did talk. But I do know
2 specifically that when I had made this memorandum I called
3 him.

4 Q Well, if you didn't talk to him in the connection
5 that I have mentioned, do you remember whether or not you
6 felt better after the conversation about getting the job?

7 A I must have, because I was particular upset when I
8 found out that the bids were rejected.

9 Q Well, your recollection is between the time you
10 had this conversation with Mr. Biederman and the time you
11 got the 10/30 notice of rejection that your mind was pretty
12 well at ease about your getting the contract?

13 A I don't recall it that way.

14 Q All right. I don't want to push you hard in that
15 connection.

16 I really am trying to find out if you did have
17 some assurance from Mr. Biederman after the 20th and before
18 you got the notice everything was going to be--

19 A I may have, but I didn't put anything in here on that,
20 or I don't recall anything in my memorandum. But I recall
21 talking to Mr. Biederman.

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Hale

Pm3-1

1 Q By the way, Mr. Biederman's memorandum of
2 October 30th that I went over with you, that we have marked
3 C-8, did he send you a copy of this memorandum?

4 A No, sir. I think I had seen part of a copy of one
5 of his in the paper.

6 Would this have been the one?

7 Q It might have been.

8 But you do know that he did not send you a
9 copy of this at any time?

10 A Absolutely, yes.

11 Q By the way, was Mr. Biederman your attorney?

12 A Mr. Biederman had done some legal work for us over
13 the years. I knew him relatively well in the past, yes;
14 not well, but--

15 Q You knew him as an attorney, and to some extent
16 as a friend? A Yes.

17 Q How long before October of 1970 was the last
18 time he had done any legal work for you?

19 A I'm not sure. There was a case with IBM, it was
20 around that time, it was a bankruptcy case that he had
21 started sometime before that. I don't remember when it
22 finished, but I think it was prior to that time.

23 Q Was that the last piece of legal business he
24 did for you prior to October of 1970?

25 A I think so.

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Q At the time of October 1970 did you or

one of your companies still owe a bill for legal services

to him? A I believe so. I do have copies of

the bills. I didn't bring them. But I think that this

bankruptcy case was not completed at that particular time,

on that date of October 1970, but I think it was shortly

after that.

Q You remember at the trial in Freehold there

was a reference to, I believe, a \$600 check?

A I don't remember it.

Was it when I was a witness, sir?

Q While I looked in this record for it, you

do remember that you did send him a check to clean up

whatever bill was outstanding? It was before the trial

at Freehold, anyway, wasn't it?

A Well, we probably sent him checks before, and we

may have sent him checks afterwards. This was a continuing

matter, this bankruptcy case, with the IBM plant. It was

something that he had handled sometime before that, and

it dragged on and on. It was not substantial, but he

was handling it for us.

Q You mean he was sending bills occasionally in

that matter and you would pay them when you got around

to them? A Yes. I think at that time I don't

recall any other matters that he was handling. He had

P3-3

1 handled some matters prior to that time.

2 Q Did he call you after you received the
3 word on October 30th about the rejection of all of the bids
4 and tell you that that had been reversed and that you
5 were going to get the contract?

6 A After the 30th?

7 Q Yes. A No, I don't think he did
8 after the 30th. My first official notice was a letter
9 from Commissioner Kohl's office, I'm pretty sure, stating
10 that the bids would be awarded, and I would say that would
11 be on something like the 5th or the 6th, or something
12 like that, of October. That was all I knew.

13 Q Of November, you mean? A Of November.
14 I beg your pardon.

15 Q Do you remember whether you talked with
16 Mr. Biederman around that time? A I talked to
17 him. I talked to him the time that I was sending this
18 down to him. That would have been like--if this were
19 Friday, the 30th, that would have been probably the 3rd
20 or 4th I talked to him, and I told him that this was
21 coming down.

22 Q Did you prepare that at his request?

23 A No, sir.

24 Q Did he suggest to you, either on the 20th
25 or at a later time, that it would be a good idea for you

Hale

P3-4

1 to set down a chronological summary of your recollection
2 of the events?

3 A No, he did not.

4 Q You're sure about that now?

5 A Yes, sir. He told me to make sure that we give
6 Mr. Schuyler the information needed. This was right
7 after--I think you alluded to that, too, after I had
8 been down to see Biederman.

9 [A short recess was taken.]

10 - - -

11 R I C H A R D M. H A L E, resumed, and testified

12 further as follows:

13 THE CHAIRMAN: Okay, Mr. Francis.

14 BY MR. FRANCIS:

15 Q Mr. Hale, my recollection may be correct.

16 Let me call your attention to this and see if it refreshes
17 your recollection.

18 Mr. Biederman said:

19 "QUESTION: Did he tell you he had written
20 letters to that effect? Did he show you the letters?"
21 Meaning you.

22 "ANSWER: Well, what he did say was I told
23 him you go back and give me a chronology, you know, put
24 everything down so I can look at it, which he did.
25 He brought back to me a memorandum unsigned, typed in

P3-5 1 green, which I later turned over to the United States
2 Attorney."

3 Does that refresh your recollection, do you
4 think?

5 A Yes. This must be the one that he is talking about,
6 because the original color was green of this. So it
7 must be the one. But I sometimes write memoranda, and
8 I thought the reason in this case--maybe I just thought
9 I was upset because of the reasons for rejection given
10 to me, but maybe it was that.

11 Q Well, you see, this would have been before
12 the rejection, probably. So that you undoubtedly supplemented
13 the memorandum, don't you think, after you got word of the
14 rejection, because this was in the conversation of
15 October 20 in Biederman's office.

16 A Oh, that was?

17 Q Yes. He told you to make a chronology of
18 the events, which he says you did, and I will go back a
19 little bit if you want.

20 THE CHAIRMAN: Excuse me.

21 Are there then two memoranda by Mr. Hale?

22 THE WITNESS: No, sir. This is the only one.
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P4ep-1 1 MR. SAPIENZA: Do you recall when you gave that
2 to Mr. Biederman?

3 THE WITNESS: This was written on the 30th, and
4 I think I sent it to him maybe within a day or two
5 after this, so that he must have had it on Monday or
6 Tuesday.

7 MR. SAPIENZA: November 1st or 2nd?

8 THE WITNESS: Yes. This is the only memorandum
9 I think I wrote.

10 THE CHAIRMAN: Just to clarify, Mr. Francis,
11 this memorandum of October 30th does talk on page 2
12 of it about the rejection of the bids, and a telephone
13 conversation to MR. Schuyler.

14 MR. FRANCIS: Well, we are not talking about
15 that. We are talking about when--the question that
16 started this was when I asked Mr. Hale if in his
17 conversation at Mr. Biederman's office on October 20
18 Biederman suggested that he put down a chronology of
19 events up to that time and send it to him.

20 BY MR. FRANCIS:

21 Q Apparently, I gather now, that you do have some
22 recollection that he told you to do that?

23 A If he was that certain, he must have, I guess.

24 Q Well, is it your recollection that you didn't
25 complete it in any event until the 30th and then sent it to

1 him?

P3ep-2

2 A Possibly this is what happened.

3 Q Now, one further thing, coming back to your
4 recollection as to whether after the 20th and before you got
5 the word about rejection Biederman had called you and said
6 he talked to the Commissioner and that the Commissioner said
7 the contract was going to go to you as the low bidder.

8 Does this refresh your recollection? Mr.

9 Biederman speaking now, question by me to him: "

10 "Question: But is it your recollection that you talked
11 to the Commissioner after Hale spoke to you?

12 "Answer: Right.

13 "Question: And the Commissioner assured you that he
14 was going to give the contract to the low bidder?

15 "Answer: Well, he indicated that to me, that's right."

16 A That would have been what date, sir?

17 Q All you can say is it was between October 20
18 and October 30th when you got the notice of rejection.

19 A So I must have had a conversation with Biederman then
20 between the 20th and the 30th, which could have been--
21 because I think I talked to him sometime on the telephone
22 after I was down to see him on the 20th. That's when it
23 was. And then I probably talked to him on the telephone.
24 That's maybe what he mentioned to me. But it was certainly
25 contrary then to the information I got later on.

P3ep-3

1 Q Oh, yes. That's why we are talking about my
2 inquiry to you. After you talked to him and you got the
3 word that you were going to get the contract, whether you
4 felt better about it until the boom was lowered on you on
5 the 30th.

6 A I think you're correct, yes, because I certainly was
7 quite upset. Maybe that's the reason I would have been
8 upset about this.

9 Q Well, anyway, you did get the contract and you
10 did the work.

11 When was the next that you heard anything about
12 this matter?

13 A This April, I think. It was early this spring that I
14 received a call from a special investigator here, I think.
15 And at the same time--

16 MR. SAPIENZA: When you say special investigator,
17 do you mean of the federal government?

18 THE WITNESS: No. At the same time, within a
19 twenty-four hour period, I believe I received also a
20 phone call from Mr. Goldstein's office. But this
21 call, I think from the Superior Court, came from here
22 within a few hours.

23 MR. SAPIENZA: Do you mean the Attorney
24 General's office, when you say from here?

25 THE WITNESS: I guess it was.

P3ep-4

1 MR. SAPIENZA: Not this Commission?

2 THE WITNESS: No, not this Commission, no, sir.

3 I guess not this Commission.

4 BY MR. FRANCIS:

5 Q Do you by any chance recollect the name?

6 A From here? Or from the Attorney General's office?

7 Q Yes.

8 A I don't. But if you--

9 Q Jahos?

10 A It might have been.

11 Q Let's try a couple others.

12 Jordan?

13 A Yes.

14 Q It might be Jordan. All right. It's really not
15 that important.

16 A I think Mr. Jahos may have called. Then the next day
17 Mr. Jahos called, I believe, and I had a bank meeting to
18 attend that was very important that particular day. And
19 when I got back and 5:30 in the afternoon I had received a
20 call from Newark from Mr. Goldstein's office--it was not
21 from Mr. Goldstein, but it was from another attorney--and he
22 requested, in a very nice manner, my coming in the very next
23 morning, a very rainy day.

24 Q Like today.

25 A And I did that. And then I received a subpoena from

P3ep-5

1 the Superior Court I think that same morning.
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Q1pg1

1 COMMISSIONER BERTINI: Was that in Morristown?

2 THE WITNESS: No, sir. No, sir, the Superior
3 Court in New Jersey from a -- I believe it was a
4 State Trooper from the Superior Court of the State
5 of New Jersey, and then I think the following day
6 I testified here in Superior Court.

7 BY MR. FRANCIS:

8 Q Well, do you have any fixed recollection of
9 time, that is as to whether it was April or May, that you
10 got this call?

11 A May I refer to my notes?

12 Q Sure, sure.

13 Maybe we can pinpoint it a little bit this
14 way. Shortly after you got that notice did you appear
15 before either the State or the Federal Grand Jury?

16 A Yes, sir. I wasn't subpoenaed and I went in the
17 next morning.

18 Q Oh, after you got this call for the first time?

19 A Yes.

20 Q I think we can probably give you the date.

21 A Yes, sir.

22 MR. CORRIGAN: June 14th or June 16th.

23 THE WITNESS: Oh, June.

24 MR. CORRIGAN: I believe it's June 16th in the
25 Federal, June 19th in the--

Q1-2

1 EXAMINATION BY MR. SAPIENZA:

2 Q Let me ask you this, Mr. Hale: You said that
3 you recall that you got a telephone call from Mr.
4 Goldstein's office of the federal attorney in April of
5 1972?

6 A I haven't found it, sir. My recollection was April,
7 but it was at the same time, within a twenty-four-hour
8 period, that I received a call from the Superior Court.

9 EXAMINATION BY MR. FRANCIS:

10 Q Well, when you got that message from Mr.
11 Goldstein, did you go to the Grand Jury the next day,
12 too, or shortly afterwards?

13 A No, I think that was the day following the Grand
14 Jury was held.

15 Q I see. So that both the--

16 A I--you must have the information.

17 Q The Grand Jury record, Mr. Hale, shows that
18 you appeared before the State Grand Jury in Trenton on
19 June 22nd. Do you want to look at that record?

20 A Oh, I have it right here. June the 21st, 10:00 a.m.,
21 Federal Building in Newark; on June 21st, 10:00 a.m.,
22 Federal Building in Newark.

23 BY MR. SAPIENZA:

24 Q Does that refresh your recollection on when
25 you got the phone call--

A Yes.

Hale

Q1-3

1 Q --from the Attorney General's Office of this
2 state, Mr. Jahos?

3 A Yes, sir, it does, because I was at the Edison
4 Bank at a meeting and when I got back that night before
5 there was a message for me to call another attorney,
6 not Mr. Goldstein. I called him and he had wanted to know
7 if I could come in, I guess, the next morning.

8 Q Come in to where? A In to Newark.

9 Q Okay. And-- A And I, did at 10 o'clock,
10 apparently, at the Federal Building.

11 Q Now, can you tell us what day you got the
12 phone call from Mr. Jahos or some other representative
13 of the-- A I think it was--

14 Q Now--Attorney General?

15 A It was the same day. I think it would have been the
16 same. I think it would have been the 20th, also.

17 Q Of June? A I think it was the same day.
18 I don't have a record of it on my--

19 Q In other words, it wasn't April?

20 A Oh, no. I'm sorry. I don't know where the April
21 came from.

22 EXAMINATION BY MR. FRANCIS:

23 Q By the way, has Mr. Biederman done any
24 legal work for you since he left the Department?

25 A Since he left?

Q14

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Q Yes. A I think there's a matter that he was working on. I think this spring he was working on a matter, a small matter for--I don't remember. I thought it was Halecrest Company, but it may have been one of the other corporations.

Q Was it a highway matter, to your knowledge?

A I think so, yes. It had to--

Q Did it require dealing with the Highway Department, to your knowledge?

A Yeah. It had to do--I think it was in the spring, but my April was so far off I don't know when.

Q Well, we won't hold you to the day, but general time.

A Well, it had to do with putting up a plant, an asphalt plant facility, and contacted--I contacted this-- Mr. Biederman had left the DOT at this time, yes. Oh, yeah, because of--

Q He left November 4th, 1971?

A Right, he was well gone. And we asked him about a bituminous concrete, a blacktop plant facility going up on a right-of-way, and he and another attorney, a Mr. Stein from Denville, were contacted to find out whether or not--this was the gist of the case, if you want me to tell you what it was--find out why another asphalt plant should be put on a state right-of-way on Interstate Route

Q1-5 1 80. That was the case.

2 Q Did he handle the matter for you?

3 A Well, he and this other attorney handled it, yes.

4 Q Do you know what branch of the Highway
5 Department he dealt with?

6 A Yes. He and I and Mr. Stein, the other attorney
7 with whom he's working, met with Commissioner DePhillips
8 and Mr. Freidenrich in the DOT offices and, in essence,
9 we investigated the feasibility of it, and the outcome
10 was, we thought the DOT might have been wrong since this
11 was just an unusual case, but they didn't feel that they
12 were. So we--I guess we accepted it. And that was
13 essentially the only work that I think that he's done for
14 us, that I can recall.

15 Q In other words, his effort in your behalf
16 didn't produce results for your plant?

17 A Well--

18 Q I don't mean to be critical of him. I mean,
19 he didn't get the result that you wanted?

20 A Well, to be more fair, I think it was our decision
21 not to proceed any further probably.

22 Q And the matter is closed now, is it?

23 A Yes, sir.

24 Q You were billed for services from Mr.

25 Biederman? A I'm pretty sure, and I can find that

Q1-6

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out, I'm almost sure.

2

Q And I suppose paid by this time?

3

A Yeah, I guess so. That was last spring.

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Q That's the only matter, legal matter, in which
he appeared for you, that you can recall now?

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A That's the only one, yes, sir.

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Q2pp-1

1 Q Well, to come back to the period of time between
2 your notification that you were being awarded the contract
3 and the message to appear before the Grand Jury in June.

4 A Yes.

5 Q Did anybody else in the state government contact
6 you about this matter?

7 A No, sir.

8 Q Did you ever talk to anybody specifically in the
9 Attorney General's office or from the Attorney General's
10 office between the award of the contract on November 5th and
11 the time you appeared before the Grand Jury?

12 A I'm almost positive not, sir.

13 EXAMINATION BY THE CHAIRMAN:

14 Q How about Mr. Biederman; did you ever talk to
15 him about it?

16 A Oh, I probably did, I think. I don't think I saw very
17 much of him after that.

18 Q Can you tell us, in essence, what the conver-
19 sation was.

20 A Mr. Biederman--I think we saw each other at a football
21 game. I don't even--in the course of this last case that
22 you referred to, I don't ever remember talking to him at all
23 about this. I guess we both assumed it was just an item of
24 the past. But I didn't see him very much during this two-
25 year period.

Q2pp-2 1 Mr. Biederman and I were not great friends. We were
2 friends. He did a small amount of legal work for us. The
3 reason I contacted Mr. Biederman when I went down to
4 Trenton at this time was that I knew him; I felt I could
5 trust him. If he were not there, I don't know what I would,
6 right now, what I would have done. We were not great
7 friends in any great sense of the word. He and I had
8 enjoyed sports together and we went to some ballgames a few
9 times. He's a great advocate of sports. And this was more
10 or less our connection even more than in a business type
11 association.

12 Just further on that, and I don't want to, I knew him
13 first when he was, I think, with the Wilentz office, but
14 certainly when he was with the Jorgenson office in Edison
15 Township and they had done some of our legal work. And this
16 is when I first met Dave Biederman.

17 That's in essence the--and then, so, that really to
18 try to answer your question more specifically, I don't
19 recall discussing this matter with him. I don't recall
20 discussing it with the Attorney General. I did not discuss
21 it, go around discussing it with too many people because,
22 well, I had suspicions, but I frankly was not aware of
23 apparently what may have actually happened. We were awarded
24 the contract.

25 EXAMINATION BY MR. FRANCIS:

1 Q Which made all well that ended well?

2 A Well, it took a lot more effort on our part, because
3 it was quite a bit later and I wanted to make sure that we
4 performed it well, not only for our own economics but I
5 knew that all of this had gone on and I didn't want to be
6 vulnerable after our getting the job to undue criticism,
7 either, because this was quite irregular.

8 Q I gather that you made a special effort to do
9 this job and do it well and get it finished in time, did
10 you?

11 A We certainly didn't want any, you know, recourse.
12 We never do, as a matter of fact, but this one was rather
13 irregular.

14 EXAMINATION BY THE CHAIRMAN:

15 Q When you went to Trenton on the 20th to have
16 lunch, a luncheon appointment with Mr. Biederman, that was
17 done by prearrangement, wasn't it?

18 A I called him, yes.

19 Q And it was arranged that you would meet him?

20 A Oh, yes.

21 Q I thought you said that when you went to Trenton
22 you wouldn't know what you would do if he weren't in.

23 A I'm sorry. I meant if Mr. Biederman were not in
24 Trenton as chief counsel or deputy attorney general I don't
25 know what I would have done.

Q2pp-4

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Q I see.

A Maybe I was suspicious. Don't misunderstand. The reason I was suspicious was that I just heard--there's a lot of rumor in our industry--that there was some attempt made to throw out the bids and I didn't--it was just hearsay. Of course, when I heard this, you know, you think, well, if it does have some credence, I better be careful. This is one of the reasons. It wasn't that I was so smart, because, you know, this had come up before I went down to see Biederman.

Q Where did you go to lunch that day with him?

A I went to a restaurant, oh, three, four, five miles from the DOT building, a rather nice restaurant that I just don't recall. If you can name a few, I might remember the name.

THE CHAIRMAN: It's immaterial.

Do you have any other questions?

MR. FRANCIS: I have no other questions.

EXAMINATION BY COMMISSIONER BERTINI:

Q Ultimately you used the asphalt from Warren Paving Company; is that right?

A Yes, sir.

Q Can you tell me why you didn't use the asphalt from your own company, Edison Asphalt Corp.?

A Yes, sir.

22pp-5 1 Q Will you explain the reason for that?

2 A Yes, sir. Warren Paving had a plant in Stewartsville,
3 New Jersey, which was quite close to the job, to Route 46,
4 which was in Buttzville, and going around.

5 Q How far would that be from the job?

6 A Oh, that would be--

7 Q Approximately.

8 A I would say eight or ten miles.

9 Q And your place was how far away?

10 A Thirty some odd.

11 Q All right. Now, what's the advantage?

12 A Beg your pardon?

13 Q What's the advantage or disadvantage?

14 A The advantage of having it from Warren is that this
15 hot bituminous concrete, this hot blacktop in haulage, in
16 long haulage, it's feasible to take it this long distance,
17 but it's much more practical to take it from a short
18 distance. The transportation cost is less, though you can
19 keep the temperature up.

20 And Mr. Stelljes said, "Well, you could take it from
21 Edison Asphalt. We've taken in the state longer than that."
22 And I said, "Yes, we could, but this was a closer supply,
23 more practical probably for them and more practical for us."

24 Q Well, is distance a consideration?

25 A Yes.

Q2pp-6

1 Q What distance would be too far?

2 A Gee, I have to hedge on that. It depends on the
3 price, the unit price per ton, you know. If you've got
4 enough per ton, you can haul it quite a long distance.

5 Q Forget the ton. The useability.

6 A Useability.

7 Q I imagine if you traveled too far it hardens
8 before you get there?

9 A That's right.

10 Q And it will not do a good job?

11 A That's true.

12 Q So eight miles is a safe distance to haul
13 asphalt; is that right?

14 A Yes.

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Q3-1 1 Q And you say thirty miles is a safe distance
2 to haul asphalt? A Yes. Temperature has something
3 to do with that, you know, outside temperature.

4 Q You have to take special precautions?

5 A Well, sometimes. The outside temperature sometimes
6 is a factor.

7 Q Well, at what distance would you say it
8 would be impractical to cart asphalt?

9 A Well, fifty, sixty, seventy miles, even though
10 it's been hauled those distances. But I don't--
11 we don't like to do it. When you get up to sixty or
12 seventy miles, it's an awful long distance.

13 MR. FRANCIS: Thank you very much.

14 THE CHAIRMAN: Thank you very much.

15 [Witness excused.]

16 THE CHAIRMAN: Good afternoon.

17 MR. FREIDENRICH. Good afternoon.

18 THE CHAIRMAN: We'll begin right away.

19 Mr. Sapienza and Mr. Francis are here to handle
20 the questions. You are appearing today before all
21 three members of the State Commission of Investigation.

22 At this time, sir, would you stand up to be
23 sworn.
24
25

Q3-2

1 JACK FREIDENRICH, having been duly sworn
2 according to law by the Officer, testified as
3 follows:

4 EXAMINATION BY MR. SAPIENZA:

5 Q Mr. Freidenrich, I'm going to read to you
6 certain warnings we give to all witnesses that appear
7 before us. Number one, you have been asked to appear
8 here and you have done so voluntarily. Is that correct?

9 A Yes.

10 Q This is in a private session of this
11 Commission. Your testimony will be taken under oath and
12 transcribed by the Shorthand Reporter. It may be used
13 against you later on in a court of law. If you feel that
14 your answer may tend to incriminate you, you may refuse
15 to answer. Do you understand that?

16 A Yes.

17 Q You have the right to be accompanied by an
18 attorney of your choice, and I note for the record that
19 you have no attorney with you. Is this of your choosing?

20 A Yes.

21 Q If you desire to have an attorney present
22 today, or if you wish to consult with an attorney at
23 any point during these proceedings, you just have to tell
24 us to stop and we'll stop. Do you understand that?

25 A Yes.

Q3-3 1 Q You are under no compulsion to stay here,
2 anyway. You can leave at any time.

3 Section 52:9M-15 of our statute forbids
4 disclosure by you of the questions asked, your responses
5 or any other information ou may gain from this interview,
6 except, of course, you may discuss it with any attorney
7 you may retain in the matter. You understand that?

8 A Yes.

9 Q Although your testimony is now being taken
10 in private, the Commission may make it available to the
11 public at a later time, or may even call upon you to
12 come and give the same testimony again in a public
13 hearing if it so chooses upon the adoption of a resolution.
14 You understand that, don't you?

15 A Yes.

16 Q A copy of your testimony of this private
17 hearing may be made available to you at your expense
18 if it becomes relevant in a criminal proceeding in which
19 you are a defendant, or if you are summoned to appear
20 again before this Commission at a subsequent hearing,
21 providing the furnishing shall not endanger or prejudice
22 the public safety.

23 You have a right to, at the conclusion of this
24 hearing, file a brief sworn statement relative to your
25 testimony for incorporation in the record of this proceeding,

Q3-4

1 if you feel it's necessary.

2 Do you understand that? A Yes.

3 Q You would like to proceed today? A Yes.

4 MR. SAPIENZA: All right, Mr. Francis.

5 EXAMINATION BY MR. FRANCIS:

6 Q Where do you live?

7 A 21 Rutledge Avenue in Ewing Township.

8 Q During the year 1970 you were with the
9 Department of Transportation? A Yes, sir.

10 Q What was your official capacity at that time?

11 A In 1970, I was Assistant State Highway Engineer.

12 Q And I gather you have been promoted since that
13 time? A Yes, sir.

14 Q You are now what? A State Highway
15 Engineer.

16 Q And how long have you been in the Department
17 in all? A November 1 was my twenty-third anniversary.

18 Q I see. Now, in the early summer of 1970,
19 did you make a study of the problem of asphalt shortage
20 in the state? A Yes, sir.

21 Q And do you remember at whose request you made
22 that?

23 A I would have to go look back into the file, but I
24 suspect it was either at former Assistant Commissioner
25 Mullen's request or the then State Highway Engineer Mr.

Freidenrich

Q3-5

1 Schuyler's request. I couldn't say for certain.

2 Q Well, in any event, you did make an investigation?

3 A Yes, sir.

4 Q And you made a report, did you,
5 about your investigation? A Yes.

6 Q I show you a memorandum, which we have marked
7 here C-22, dated July 29th, 1970, directed to Mullen,
8 copy to Schuyler, apparently the original signed by you.
9 Do you recollect that that's the report of your
10 investigation? A Yes, sir.

11 Q And I'll leave it there so you can look at it,
12 if you would like to.

13 Generally speaking, will you tell us what the
14 results of your investigation were?

15 A Well, as indicated in my memorandum, I determined
16 that apparently the major producers had placed their
17 bituminous customers on an allocation to varying degree
18 of their previous year's purchases.

19 At the time of this investigation, again with
20 reference to my memorandum, I did not find that at that
21 time the so-called asphalt shortage had manifested
22 itself in any manner in our projects; in other words,
23 none of our projects had been stopped at that point in
24 time or delayed at that point in time because of this
25 shortage.

Q3-6 1 Q Do you recollect that prior to that time
2 on September 18th, 1970, Mr. Schuyler sent you and other
3 members of the department a memorandum which laid down
4 some procedures to be followed because of the asphalt
5 shortage?

6 A Excuse me. I believe you said prior to that time.
7 This is subsequent to.

8 Q I beg your pardon. You're right about that.

9 MR. CORRIGAN: C-20.

10 MR. FRANCIS: You have that one marked?

11 MR. CORRIGAN: Yes, we have.

12 Q Did you also have a memorandum of July 22,
13 1970, from Mr. Rice to Mr. Schuyler, copy also to you,
14 about the asphalt shortage?

15 A Yes, sir.

16 Q And can you tell us generally what the
17 problem was that is described?

18 A Again, you said "Mr. Rice." But this is from Mr.
19 Reed.

20 Q Reed? A Yes. We do have a Mr. Rice
21 in the department, also.

22 Q I see. I must have been thinking of him.

23 For the record, the original of that document
24 is marked C-21 here.

25 Just generally, if you will, --

Freidenrich

Q3-7 1 A Yes. Apparently--

2 Q This is a little broader study.

3 A Mr. Reed, who was then our Director of Division
4 of Materials, met with representatives of one of the
5 major suppliers of asphaltic oil and found from his
6 discussion with them that the shortage was a function
7 of seasonal demands, international politics and the
8 world-wide concern with pollution.

9 Q Well, was there a finding that the shortage
10 was aggravated by seasonal demands that at that time
11 were up 20 to 30 percent above normal?

12 A Yes, his memorandum stated that, that seasonal
13 demands were up 20 to 30 percent above normal for asphaltic
14 materials.

15 Q And did you agree with the suggestion of Mr.
16 Reed in the memorandum that there was then an emergency
17 present? Will you look on Page 2 in the next-to-last
18 paragraph?

19 A There seemed to be, from my recollection of the
20 investigation, my investigation into the so-called
21 asphalt shortage, everybody seemed to agree that there
22 was an asphalt shortage. But it's further my recollection
23 that I had a pretty difficult time in trying to really
24 pin it down other than the general statements that there
25 was a shortage and that the international situation,

Q3-8

1 the Suez Canal had something to do with it, and some
2 import quotas had something to do with it.

3 The department did take the position, though, that
4 there was a shortage apparently either already existing
5 or imminent and should it manifest itself in delays to
6 any of our projects, we needed to be prepared to,
7 with some ultimate alternate means of completing our
8 construction projects.

9 Q Let me show you a couple of newspaper
10 clippings, one from the Oil Daily, dated July 14th,
11 another from the Wall Street Journal, dated July 15th,
12 1970. They refer generally to the reason for the
13 shortage and the shortage itself?

14 A Yes, sir.

15 Q You will excuse my ignorance in this area,
16 but the clippings, for example, talk about problems
17 of crude oil. What was the relationship between the
18 shortage of supply of crude oil and the shortage of
19 bituminous concrete? Was the crude oil used for mixing
20 purposes or what?

21 A I'm by no means an expert on, you know, the
22 refinery processes. But it's my understanding that
23 there are certain -- in the refinery process there are
24 certain parts of this that gets refined out of the crude
25 oil, that is then delegated to asphaltic oils and in

Q8-9 1 manufacture of bituminous concrete.

2 Q So that in the trade there is a necessary
3 relation between the existence of an ample supply of
4 crude oil and the ability to get bituminous concrete--

5 A Oh, yes.

6 Q --for this kind of work?

7 A Yes.

8 MR. FRANCIS: May we just mark those newspaper
9 clippings, for the record.

10 [Photocopies of newspaper clippings received
11 and marked Exhibit C-27.]
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Q4pp-1 1 Q The document I mentioned to you before with the
2 incorrect date, the memorandum from Mr. Schuyler to you,
3 that is dated September 18th, 1970. In response to the
4 asphalt shortages, did Mr. Schuyler lay down any regulations
5 or procedures to be followed to meet that shortage?

6 A Yes, sir, he did.

7 Q Without reading it all, can you just tell us
8 generally what his restrictions were; what the procedures
9 were that he laid down.

10 A Well, for one thing, if one of our projects was
11 delayed as a result of the asphalt shortage he established
12 as departmental policy that this would be considered a delay
13 beyond the control of the contractor and under the terms
14 of our contract would then justify a suitable extension of
15 time to completion date originally specified.

16 Q Did you apply that regulation in practice?

17 A It is my recollection that when I received this
18 memorandum from Mr. Schuyler that I then transmitted copies
19 thereof to all of our construction people. At the time we
20 weren't fully decentralized as we are now. We had two
21 regional engineers at the time, and the other two areas of
22 the state were reporting directly to a director of our
23 division of construction, and it is my recollection that I
24 sent a copy of this memorandum to each of the people who were
25 responsible for those areas and instructed them to be guided

1 in accordance with this memorandum.

2 Q Now, as the result of this memorandum or other
3 procedure that you followed, was it the department's or
4 your procedure at this time, or after that memorandum of
5 Mr. Schuyler's, not to allow work to commence if asphalt
6 was not sufficiently available at the time?

7 A No,--if there were any situation which would preclude
8 a project from proceeding to completion, which would leave
9 it in a condition which was totally unsatisfactory, and if
10 we could foresee such a condition being potential, you
11 know, we would do what we thought needed to be done to avoid
12 such a circumstance.

13 Q Is there a paragraph in that memorandum which
14 came to you which--I think you have testified in Freehold?

15 A Yes, sir.

16 Q In this case. Which you read on work for which
17 bids have been taken and not awarded, and "it is apparent
18 with proper justification, and especially on maintenance
19 resurfacing projects, that a supply of asphalt is not
20 available, work should not be allowed to commence unless
21 there is a reasonable chance that a particular phase of
22 paving being completed and available to traffic," do you
23 remember that? Where did that come from?

24 A That's in the last paragraph of Mr. Schuyler's
25 memorandum.

Q4pp-3

1 Q That was the regulation that he laid down
2 generally--

3 A Yes.

4 Q --for the handling of this kind of work?

5 A Yes, sir.

6 Q Did you apply that to any contractors that you
7 can recall? You personally. Or were you aware of any?

8 Does the name Samuel Braen mean anything to you?

9 A Yes, Samuel Braen & Sons, I think, is one of the
10 contractors in the state that does--has done work for the
11 department.

12 Q Do you remember whether you gave them some kind
13 of lenient treatment as a result of the shortage?

14 A I seem to recall that for one contract we agreed to
15 allow the contractor, and I believe it's Samuel Braen we're
16 talking about now, to receive a shipment of oil from Canada,
17 which under normal circumstances we would not permit.

18 Q And do you remember on another occasion that you
19 allowed him to suspend work on a contract because of a
20 shortage?

21 A I don't recall that offhand.

22 Q Well, in any event--

23 A However, if the records indicate it, I would say we
24 did.

25 Q Well, we have some testimony here from one of

Q4pp-4 1 the members of your department that that happened. I won't
2 press your recollection about it.

3 You were aware of the advertisement for bids
4 for the Route 46 project in Warren County?

5 A Yes, sir.

6 Q And did you have anything to do with the
7 preparation of the plans and design for that work?

8 A No. As Assistant State Highway Engineer at that time
9 I had responsibilities for the divisions of construction,
10 materials and maintenance, so that I had--I played no part
11 in the design nor the preparation of the plans.

12 Q After you knew that the bids were made and
13 opened on September 24th, after that date did you participate
14 in any investigation of the Centrum Company with respect to
15 its capacity to do the job?

16 A No, sir.

17 Q Were you made aware that some investigation was
18 going on?

19 A You know, at this point in time it becomes difficult
20 to recall what I was aware of then or what I have become
21 aware of since all of this has been going on, and to really
22 separate the two. But I do, and I believe I testified to
23 that information in Freehold, I do recall Mr. Schuyler at
24 the time, at some point in that time frame, expressing his
25 concern to me as to whether the successful bidder for that

Q4pp-5

1 project, Centrum, would be able to have available the
2 necessary materials so that he could complete the project
3 and not be caught in a situation where he had made the
4 excavations and would not be able to build the pavement and,
5 therefore, conceivably we could wind up with a very
6 hazardous situation over the wintertime.

7 Q In other words, if the asphalt material was not
8 available to fill in the excavations, you would have a very
9 bad road hazard in existence?

10 A That's right. That essentially was his concern, as
11 I remember him expressing it to me in just a conversation.

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Q Well, shortly after the bids were opened did you review them, review the Centrum bid for propriety of form and the question of whether it met all of your procedural steps for sufficiency?

A No. I, as Assistant State Highway Engineer, I didn't do any of those things unless there was something about a particular bid that would lead me to look into it. I did participate in the certification of award. As Assistant State Highway Engineer I used to--

Q That's what I want to inquire about.

A Oh, yes. I used to sign the certificate of award which recommended award to the State Highway Engineer.

Q And in this case on October 2nd you put your signature on that form of award, did you not?

A Well, I assume the date you mention is the one.

Q I'll just check.

A But I did sign the certificate of award, yes.

Q Well, I ask you that because your signature on that, assuming it was, for the moment, October 2nd, that was not the result of any in-depth investigation of Centrum, but it was rather a more formal recognition that, generally speaking, the bid was in proper form, was it?

A It was more or less an indication that I had no reason to recommend other than to award the project.

Q5-2 1 Q It was not. Was it any indication that Centrum
2 had a sufficient supply of asphalt available to do the
3 job?

4 A Not necessarily, no.

5 Q Did you give any consideration at all before
6 you signed that to the matter of asphalt?

7 A Generally speaking, the review of the bid and the
8 unit prices was made by the staff. If it was a regular
9 roadway design project, it would be by the design staff
10 and signed by the director-division of design, then
11 the director-division of construction, and when it came
12 to me with those two signatures on it, I would then sign
13 it unless I had any other reasons to recommend otherwise.

14 In this particular case it was a maintenance
15 project, and so rather than the director of design being
16 involved in the awarding procedures, it was the director
17 of the division of maintenance.

18 Q I see. Well, in testifying down in
19 Freehold--let me refer the question and answer to you
20 just to refresh your recollection. See, this is your
21 testimony.

22 A Yes.

23 Q And it refers to your recommendation on
24 October 2nd of the award to Centrum. "In other words,
25 when you made the recommendation on October 2nd to award

Freidenrich

25-3 1 the contract to Centrum, you were satisfied that Centrum
2 was able to comply with the requirements of that last
3 paragraph?"

4 You said, "ANSWER: I would doubt very much if
5 I, you know, if I thought specifically about this last
6 paragraph, of this last paragraph. When I made that
7 recommendation, I had no reason to believe that he would
8 not be able to perform the work of the contract."

9 Is that correct?

10 A I would say that now again, yes.

11 Q And that is what your signature on October
12 2nd was meant to indicate, more a formal recommendation
13 of award of the contract and a signature based on the
14 personal study or on reports of Centrum's capacity with
15 respect to equipment or asphalt or anything else?

16 A That's exactly right. I signed many certificates
17 of award such as that for projects which didn't have
18 any bituminous concrete in them, so--

19 Q I think you said that Schuyler did talk to
20 you about his concern with respect to Centrum because
21 it was a newly-qualified contractor?

22 A Here again, I believe I testified to this.

23 I don't remember the exact testimony. But that periodically
24 during the week two or three times I would drop into Mr.
25 Schuyler's office after hours to discuss various and

Q5-4 1 sundry things that I needed to discuss with him and which
2 we didn't have a chance to discuss during the normal
3 working hours, and it was my recollection that he did
4 express some concern about the ability of Centrum to get
5 an adequate supply of bituminous materials because it was
6 a relatively newly-formed contractor at the time.

7 Q Well, in any event, in any of your conversa-
8 tions with Schuyler did he ever ask you to go out of your
9 way to find reasons for not awarding the contract to
10 Centrum?

11 A No, sir.

12 Q Well, putting it affirmatively, did he ever
13 suggest to you that you go in search of reasons for
14 rejecting the contract?

15 A No, sir.

16 Q I would like to show you a memorandum, dated
17 October 21st, 1970, apparently signed by you, with
18 copies to a number of people in your department, and
19 marked "Memorandum of Record." Looking at that to
20 refresh your recollection, will you tell us whether you
21 attended a meeting with Mr. Biederman on October 20th
22 of 1970?

23 A Yes, sir.

24 Q And what was that about?

25 A At this point in time, in addition to my other

Q5-5 1 functions in the department, I was also chairman of the
2 department's claims committee. Mr. Manzo of Manzo
3 Contracting Company, and his attorney, requested a
4 meeting to discuss a claim which the contractor had
5 in connection with a contract on Route 35.

6 Now, as the chairman of the department's claims
7 committee, that was the capacity in which I sat in on that
8 meeting and--

9 Q You were there at that meeting?

10 A Yes, sir.

11 Q And Manzo was there, and his attorney and
12 Mr. Biederman?

13 A And two--yes. It's Mr. Manzo and two people
14 from his company, a Mr. Rinaldi and a Mr. Fallon, his
15 attorney, Mr. Dimon, and from the department were
16 Miss Smith, Mr. Stelljes, myself and Mr. Biederman.

17 Q And the object of the meeting was to discuss
18 problems that the department had with Manzo arising out
19 of his work on a Route 35 project?

20 A Well,--

21 Q Or that and others? A It was to
22 discuss alleged problems that Mr. Manzo thought he had
23 with the department. In other words, he was objecting
24 to certain actions that the department took in the
25 administering of the contract with Mr.--on Route 35,

Q5-6 1 which actions our people who supervised that contract
2 took under the terms of the contract.

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Freidenrich

Q6pp-1

1 Q How long a meeting was it, if you can remember.

2 A I wouldn't--I'm just guessing, but it was maybe a
3 half an hour.

4 Q Do you remember whether it took place in the
5 morning or the afternoon?

6 A It took place at 1:00 p.m. My memorandum so states.

7 Q The date that is in the memorandum is the time,
8 at least, that the meeting began?

9 A Yes, sir, that's the time when the meeting was
10 scheduled, that's right.

11 MR. FRANCIS: May we mark this memorandum.

12 (Memorandum of record, dated October 21, 1970, received
13 and marked Exhibit C-28.)

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

15 THE CHAIRMAN: Under our Code of Fair Procedure
16 under which we operate, you can make a brief sworn
17 statement, if you like, at the conclusion of your
18 testimony, and I just point that out to you. If you
19 think there is something that would be essential to
20 us, that we have not brought out in the questioning,
21 I say, you have the opportunity to make a brief sworn
22 statement, if you would like, and Mr. Sapienza can
23 work out any details with you on that.

24 MR. SAPIENZA: You don't have to if you don't
25 want to.

Q6pp-12

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MR. FRANCIS: If there is anything further you
would like to say.

THE WITNESS: I don't know. Without questions
being put to me, I really have no idea of what the
nature of such a statement would be.

THE CHAIRMAN: Fine.

(Witness excused.)

1 [Marian Lyons enters the room.]

2 THE CHAIRMAN: We are sorry, Mrs. Lyons,
3 to keep you waiting so long, but we apologized.

4 MRS. LYONS: I have never had so much free time
5 on my hands.

6 THE CHAIRMAN: Your free time is about to
7 end.

8 Would you stand and be sworn by the Reporter,
9 please.

10 MARIAN LYONS, sworn:

11
12 THE CHAIRMAN: Now, Mr. Francis and Mr.
13 Sapienza have certain questions they would like
14 to ask you. Mr. Sapienza has to give you certain
15 warnings before you answer questions.

16 MR. SAPIENZA: Is it Miss or Mrs.?

17 THE WITNESS: Mrs.

18 MR. SAPIENZA: Mrs. Lyons, I give these
19 warnings to all witnesses that appear before us.
20 I am going to read them to you.

21 First of all, I notice you are appearing
22 voluntarily upon our request; is that right?

23 THE WITNESS: Yes.

24 MR. SAPIENZA: This is a private session
25 of the Commission. Your testimony will be taken

R1-2

1 under oath and transcribed by the Shorthand
2 Reporter. It may later be used against you in
3 a court of law. Therefore, if you feel that your
4 answer may tend to incriminate you, you may refuse
5 to answer. You understand that?

6 THE WITNESS: Surely.

7 MR. SAPIENZA: You have the right to be
8 accompanied by an attorney of your choice. I
9 note that you have no attorney here with you today.
10 Is that of your choosing?

11 THE WITNESS: I knew nothing about this.

12 MR. SAPIENZA: Do you wish to proceed today
13 without an attorney present?

14 THE WITNESS: Yes.

15 MR. SAPIENZA: If you desire at any time
16 during the questioning that you would like to
17 consult with an attorney, you just have to say I
18 think I'd like to consult with an attorney and
19 we will stop. In any respect, you don't have
20 to stay here. You can leave at any time.
21 You understand?

22 THE WITNESS: Yes.

23 MR. SAPIENZA: Our statute forbids disclosure
24 by you of the questions asked, your responses to us,
25 or any information you may gain from being here

R1-3 1 today. Do you understand that?

1-3 2 THE WITNESS: What was that?

3 MR. SAPIENZA: Our statute forbids disclosure
4 by you of the questions that we ask or any information,
5 everything that happens in this room should stay
6 among us.

7 Although your testimony is now being taken in
8 private, the Commission has the right to release
9 your testimony at a later point at a public forum
10 or even take your testimony again at a public
11 hearing. Do you understand that?

12 THE WITNESS: Yes.

13 MR. SAPIENZA: A copy of your testimony at
14 this private hearing may be made available to you
15 later on if it becomes relevant in any criminal
16 proceeding or if you have to appear again before
17 us at another time. Do you understand that?

18 THE WITNESS: Yes.

19 MR. SAPIENZA: At the end of your testimony
20 you have the right to file a brief sworn statement
21 relevant to your testimony for incorporation
22 into the record of this proceeding, if you would
23 like to do so. All right?

24 THE WITNESS: Yes.

25 MR. SAPIENZA: What I have read to you is

RI-4 1 really excerpts of our statute. Thank you.

2 MR. FRANCIS: Before I ask Mrs. Lyons any
3 questions, I would like to mark for the record
4 a newspaper article that appeared on August 9,
5 1972 in the Newark Ledger and written by Leonard
6 J. Fisher for the paper.

7 [Newspaper article, written by Mr. Fisher,
8 received and marked as Exhibit C-29 in evidence.]

9 MR. FRANCIS: May I also say for the record
10 with regard to this newspaper clipping that it
11 refers to the memorandum about which I am going
12 to ask Mrs. Lyons, and it specifically refers
13 to some handwritten notations on the side and makes
14 some inquiry as to how they got there, and we
15 want it explained how these notations got there.

16 EXAMINATION BY MR. FRANCIS:

17 Q Mrs. Lyons, you're with what department?

18 A New Jersey Department of Transportation.

19 Q And you have been there for how long?

20 A Thirty years.

21 Q Long enough.

22 A Off and on.

23 Q What was your position there in November--
24 let's begin earlier, say, October of 1970?

25 A Secretarial Assistant II.

R¹⁻⁵
1 Q And are you still there? A Yes.

2 Q And in the same capacity? A Yes.

3 Q Did you have anything to do with making
4 notations on documents for filing and filing them?

5 A Yes. I index our papers to go to file.

6 Q I show you a memorandum dated November 4th,
7 1970 from Attorney General Kugler to David A. Biederman.
8 Do you recognize that?

9 A Yes.

10 MR. FRANCIS: May we mark that for the record.

11 [Memorandum from Attorney General Kugler
12 to Mr. Biederman dated November 4, 1970,
13 received and marked as Exhibit C-30 in evidence.]

14 Q In the upper right-hand corner and on the
15 right-hand side of that paper that we have now marked
16 C-30 are some ink notations. Do you know who made them?

17 A I made the ones at the top, but not on the side.

18 Q Now, the one on the top, can you tell us
19 when that was made, or about when it was made?

20 A I couldn't tell you when it was made, no.

21 Q Is this date notation on there too unclear
22 for you to--

23 A That's not my writing.

24 Q Well, in any event, the notation on the
25 right-hand portion, upper right-hand portion, is your

RL-6¹ handwriting? A Correct.

2 Q And the writing is, "File Route 46, Section
3 19-A."

4 A "And 2-B."

5 Q And then it's ICI or XCI--

6 A CI, cross-index.

7 Q Route 35.

8 A That's right.

9 Q You put that on yourself?

10 A Yes.

11 Q Can you tell us why you put that on, what
12 significance it had for you or for anybody connected with
13 the department?

14 A Well, at that time there were two files, Route 46
15 and Route 35, Manzo Contracting Company. As far as I
16 knew, of course, I knew nothing was going on at the
17 time. I was holding the two files. So in order to have
18 all papers together at one place, I filed this under
19 Route 46 because it says here, "Re: Manzo Contracting
20 Company." And at that time I was keeping everything.

21 Other papers coming through besides this particular
22 piece of correspondence, some would deal with Route 46,
23 some would deal with Route 35, and others with Manzo
24 Contracting Company.

25 In order for me to have everything in one spot

R1-7 1 together, I would cross-index and have a piece of
2 correspondence dealing either with Route 46, Route 35,
3 Manzo, or Centrum. I would cross-index it in those
4 respective places.

5 Q And that was the only reason why you put
6 the notation there?

7 A That's right.

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R2ep-1

1 Did anyone instruct you to make a note indicating that
2 Route 46 or Centrum Contracting Company had any relation at
3 all to the subject matter of that memorandum?

4 A No, not at all.

5 Q It was simply a matter of your judgment for the
6 purpose of making your records understandable to you and
7 available if anybody was interested in anything relating to
8 the Manzo Contracting Company?

9 A As well as Route 35, Route 46.

10 Q Has anyone ever asked you about those notations,
11 until someone from the Commission came over to see you about
12 them?

13 A No. Only Mr. Corrigan, when he came up to the office.

14 Q No one else ever came to you and said Did you
15 do this, or What does this mean?

16 A No, not at all.

17 MR. FRANCIS: Do you gentlemen have anything?

18 THE CHAIRMAN: Yes.

19 BY THE CHAIRMAN:

20 Q Mechanically, you got the original of this paper;
21 is that right?

22 A I couldn't answer that correctly, because this has been
23 a couple years ago.

24 Q What did you get, a copy of it then?

25 A It was addressed to whom? Mr. Biederman?

1 MR. FRANCIS: Mr. Biederman.

2 THE WITNESS: I really couldn't answer that
3 correctly. In all probability it was a copy.

4 Q What I am trying to ascertain, if you get a
5 copy and then you put this notation on the upper right hand
6 corner and you had various files that you wanted to put
7 this paper in, would you if you had more than one file make
8 duplicates of them?

9 A That's right, and I would have it Xeroxed.

10 Q Did you do that in this case?

11 A I do not do that. The file clerk does that in the
12 office. The only thing I do is write this up, index it,
13 as you would call it; then as she receives it, she cross-
14 indexes it or makes copies.

15 Q So in order to recapture this particular paper,
16 you could look in two folders, 46 or 35?

17 A I wouldn't say this exact paper. It could be a copy
18 of it or it could be a pink sheet. We have a pink sheet
19 which indicates a paper is cross-indexed.

20 Q And that also might be cross-indexed under
21 Centrum or Manzo?

22 A Yes. It should show up here, though, if it were.

23 Q In this case it would probably not?

24 A Well, it doesn't show on this sheet.

25 THE CHAIRMAN: Okay.

R2ep-3 1

BY MR. FRANCIS:

2 Q Did anybody ever come to you and ask for that
3 whole Route 46 file?

4 A When? At any time?

5 Q Any time from, let's say, October 1st till the
6 present time, October 1st, 1970 till the present time, that
7 you can recall.

8 A Well, Mr. Freidenrich got the file from me, asked for
9 the file.

10 Q How long ago was that?

11 A I can't accurately say.

12 Q What is your best recollection?

13 A This year.

14 Q 1972?

15 A Right.

16 Q Did he give it back to you?

17 A No.

18 Q He still has it?

19 A I do not know.

20 Q You don't know whether it came back or not?

21 All you know is--

22 A I do not have it back, I do not have it.

23 BY MR. BERTINI:

24 Q Would it be the spring of this year, or the
25 summer?

R2ep-4 1 A I'd rather not say.

2 Let's see. I'd say within the past six months, to be
3 certain.

4 Q Is there any record of that request?

5 A No.

6 In writing?

7 Q Yes.

8 A No.

9 Q No record kept, file moved?

10 A There is a record in our files, but that would have
11 been done by the file clerk, not me.

12 Q If you wanted to ascertain when that occurred,
13 is there a record in the department?

14 A You would have to ask the file clerk about that?

15 THE CHAIRMAN: Is she coming in?

16 THE WITNESS: Mrs. Carnival.

17 THE CHARIMAN: Thank you very much.

18 (Witness excused.)

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R3ep-1

1 (Mary Carnival enters the room.)

2 THE CHAIRMAN: Mary Carnival?

3 MRS. CARNIVAL: Carnival, C-a-r-n-i-v-a-l.

4 THE CHAIRMAN: Would you stand up please to be
5 sworn.

6
7 M A R Y C A R N I V A L , sworn:

8 MR. SAPIENZA: Mrs. Carnival, my name is
9 Charles Sapienza. I am an attorney with the
10 Commission.

11 Before we start, I am going to read to you
12 certain warnings that we read to all witnesses that
13 appear before us.

14 First of all, I note that you are appearing at
15 our request voluntarily; is that correct?

16 THE WITNESS: That's right.

17 MR. SAPIENZA: This is a private session. Your
18 testimony will be taken under oath and transcribed by
19 the shorthand reporter. It may later be used against
20 you in a court of law. So that if you feel that your
21 answer may tend to incriminate you, you may refuse to
22 answer. You understand that?

23 THE WITNESS: Yes, I do.

24 MR. SAPIENZA: You have the right to be
25 accompanied an attorney of your choice. And I note

R3ep-2

1 for the record that you have no attorney today. Is
2 that of your choosing, that you have no attorney?

3 THE WITNESS: I have no attorney, that's right.

4 MR. SAPIENZA: If at any time during the
5 questioning you feel that you would like to consult
6 with an attorney, you just tell us to stop and we
7 will stop the questioning. Okay?

8 THE WITNESS: Okay.

9 MR. SAPIENZA: Our statute forbids disclosure
10 by you of the questions that we ask or the answers
11 that you give or any other information you may gain
12 from being here today. In other words, everything
13 that happens here is supposed to remain here. Okay?

14 THE WITNESS: Yes.

15 MR. SAPIENZA: Although your testimony is now
16 being taken in a private session, the Commission has
17 the right to release your testimony to the public in
18 some form, or perhaps even call you at a later time
19 to testify at a public hearing on the same questions.
20 Do you understand that?

21 THE WITNESS: Yes.

22 MR. SAPIENZA: Copy of your testimony at this
23 private hearing may be made available to you at your
24 expense if it becomes relevant at a later proceeding.
25 If you would like a copy, you can just ask for it.

R3ep-3

1 You have the right at the conclusion of this
2 hearing to file a brief sworn statement relevant to
3 your testimony of incorporation into the record of
4 these proceedings, if you desire. Okay?

5 THE WITNESS: Okay.

6 EXAMINATION BY MR. FRANCIS:

7 Q Is it Miss or Mrs.?

8 A Mrs.

9 Q Mrs. Carnival, you are with the State Highway
10 Department?

11 A That's right.

12 Q How long have you been there?

13 A It will be twenty years in January.

14 Q What is your connection with the department?

15 A I am a principle file clerk.

16 Q And generally, what are your duties in that
17 connection?

18 A Well, I sort the correspondence that comes in, and
19 it's coded, and I check it. And then I type index cards.

20 In other words, if the correspondence is to Mr. Smith,
21 I make a card out for Mr. Smith; and if it's from Mary
22 Brown--I'm a little nervous.

23 Q Just take your time.

24 A If it's in reference to the letter, I file the card
25 and then I file the correspondence.

R3ep-4

1 Q We are trying to find out who made some
2 notations on a couple of documents. That's why we have
3 asked you to be here.

4 Let me show you first one which we have already
5 marked C-30 here, memorandum dated November 4th, from Mr.
6 Kugler to Mr. Biederman. Do you notice some handwriting on
7 the right hand side of that halfway down the page?

8 A Yes.

9 Q Can you tell us whose handwriting that is?

10 A That is my handwriting.

11 Q Why did you put that on? Do you remember?

12 A Well, evidently, I am not too sure, but evidently I
13 didn't know what that letter or memo referred to. We may
14 have had previous correspondence which may have mentioned
15 this and made it easier for me to keep the correspondence
16 together.

17 Q And the note that we are talking about which
18 appears to be, "Centrum Construction Company Award of
19 Contract," That is your handwriting?

20 A Yes.

21 Q Did anyone direct you to make that notation?

22 A No.

23 Q Or did you just decide to do it yourself?

24 A No, I did it for my own--in other words, it's easier
25 for me when I combine the correspondence and when I put it

R3ep-5

1 into the files, and when I retrieve the correspondence it's
2 easier for me, too.

3 Q You notice at the top of that page, the upper
4 right hand corner there, there are some handwritten notes
5 which we now know were put there by Mrs. Lyons, who was
6 just here before you.

7 Is there any relation between her note and your
8 note of Centrum Contracting Company?

9 A Well, she coded this, and then she put it in the file
10 basket; and I take it out of the file basket and I can check
11 with the previous correspondence and that's how I happened
12 to get this.

13 Q Then what you did when you got this paper is
14 that you looked at her note at the top right hand corner--

15 A Yes, and I looked for the Route 46 file and evidently
16 I got the previous correspondence and that's where I
17 probably got that from, the previous correspondence that
18 had been in the file.

19 Q So that you looked at this at the top, the first
20 notation is Route 46, and you went and got Route 46 file and
21 you saw some reference in there to Centrum Construction
22 Company and you made a note of it on the side of the page;
23 is that it?

24 A Yes.

25 Q No other reason beyond that?

R3ep-6

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A No.

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Q Do you remember how long, have you any idea how long after this November 4th date that you put that handwriting there? Have you any idea?

5

A This was put in at the same time this date was marked.

6

7

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Q Can you make out that date?

We are going to come to this next one, but that appears to have a date, too. Is it the same date?

9

A The same date, November 4, 1970.

10

11

Q This is the same date?

A Yes.

12

13

Q And you think that's November 4th, also?

A It should be the same date, November 4, 1970.

14

15

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Q Do you know with any certainty that this memorandum came to you the very same date it was made, November 4th?

17

18

19

A No. It may have gotten to me later after this was made. This is my marking, which makes it easier for my filing, the date that I marked up here.

20

21

Q That would be your date, but it's indistinct.

A I don't know what happened.

22

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THE CHAIRMAN: Here is a clear one.

Q Here is a copy of that same C-30. Do you see the date up there?

25

A Yes.

R3ep-7 1

Q And that is what?

2

A That is November 4th.

3

Q So that you saw that the same day, the date

4

that appears on the memorandum?

5

A I put this marking here to correspond with this, but
6 it doesn't mean that I got the correspondence on that day.

7

Q The date that you put here does not mean that

8

you filed it on that day or made that notation?

9

A No. It's easier--see, we keep it according to dates,
10 the latest date on the top, and our correspondence is put
11 together.

12

Q I apologize. Sometimes I'm a little slow.

13

A Maybe I'm a little slow.

14

Q No. You're doing very well.

15

So you really can't tell us when in point of
16 time in relation to November 4th you wrote those notations?

17

A No.

18

Q And you have told us that nobody told you to
19 put Centrum on the side?

20

A No.

21

Q Has anybody come to you since that time and
22 asked you anything about the Centrum note on the side?

23

A Not that I recall.

24

Q Until the gentlemen from the Commission came to
25 see you, had anybody ever asked you about it?

R3ep-8 1

A About this one particular memo?

2

Q About your notation on the side.

3

A No.

4

Q Somebody from the Commission was the first one
5 who ever asked you about it?

6

A Yes. These gentleman, the two gentlemen there.

7

Q Well, you describe them accurately.

8

I have another memorandum, also dated November
9 4th, and it's directed to Robert I. Kellum, apparently from
10 James J. Malloy. Do you recognize that?

11

A Yes.

12

MR. FRANCIS: Let me mark that first.

13

(Memorandum from Mr. Kellum to Mr. Malloy dated

14

November 4, 1970 received and marked as Exhibit C-31

15

in evidence.)

16

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Regl

1 Q This document which is now marked C-31
2 also has some handwriting on the right-hand side and
3 apparently a date. Whose handwriting is that?

4 A My handwriting.

5 Q And that says, "Award of contract Centrum
6 Construction Corporation resurfacing."

7 A That's my handwriting, too.

8 Q That's all your handwriting?

9 A Yes.

10 Q And will you tell us again why you wrote
11 Centrum on the side there?

12 A I may have gotten this before I got this, or the
13 other way around, I don't know. I must have gotten the
14 idea from this one, or this one from that one.

15 Do you see what I mean?

16 Q Well, let's explore that a little bit.

17 A And then I got--

18 Q Centrum Construction Company mentioned in the
19 letter, the one marked C-31. So you think that when
20 you saw this C-31 and the note in there, the low bidder
21 Centrum Construction Company, that impelled you to
22 put the note on the side?

23 A No. I didn't notice this part. All I paid attention
24 to was Centrum Construction Company, which I marked up
25 here. When I make the index cards, it helps.

R2-2

1 Q In any event, your best recollection is that
2 you put Centrum there because you were inspired by this
3 letter?

4 A I got this, Centrum Construction Company, in reference
5 to award contract, and I wrote this.

6 Q Has anybody ever come and asked you about that?

7 A No.

8 Q Except these two gentlemen over here?

9 A Yes.

10 Q Can you tell us whether you made that
11 notation the same day as the memorandum, or when?

12 A I must have gotten this before this, because this
13 doesn't mention Centrum. And I got this--this handwriting
14 comes from this, the Centrum Construction Corporation.
15 So I must have gotten this from that. See?

16 Q Let's see if we can tie those in together,
17 then.

18 The first of these two documents, which we
19 will now refer to as C-31, is the one that has the name
20 Centrum Construction Corporation in there, and that was
21 the reason why you think you put, "Award of Contract to
22 Centrum" on the side there; is that it?

23 A I don't now what you mean.

24 Q Well, I probably was not very clear about it.

25 This memorandum you have of November 4, which

R2-3

1 is now marked C-31, was the first of these two, you think,
2 that you received?

3 A Gee, that I can't remember, you know. There is
4 more correspondence.

5 Q You are unable to tell us now, give us any
6 idea as to when you put that handwriting on the side?

7 A I put this handwriting--

8 Q I mean how much later.

9 A No, I don't remember.

10 Q Do you notice on the bottom of it, "Distribution
11 November 5." So you probably wouldn't have gotten it
12 before the 5th of November, anyway, would you?

13 A I don't pay any attention to that, and I'm the file
14 clerk.

15 Q Well, in any event, it's not so important.
16 We are primarily interested in that handwriting. And that
17 is yours?

18 A Yes, that is my handwriting, which makes it easy for
19 me when I file. We are to keep the correspondence
20 together. We may have gotten this the day before we got
21 this, and it's easier for me to keep it together.

22 Q I am very glad that you recognize that as
23 yours, because sometimes the next day I can't even
24 recognize mine, something that I wrote the day before.
25 So yours is pretty good.

R2-4

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Do you think this other one marked C-30

with Centrum on it, you think--

A C-what?

Q This is marked C-30, just for identification.
When you wrote Centrum on the side of this one, the one
from the Attorney General Kugler to David Biederman,
you think you probably put Centrum on there because you
had marked this one Centrum?

A Yes, just to make it easier for me.

Q To make it easier for you to file?

A Yes.

MR. FRANCIS: I think you have cleared that
up for us.

That's all I want to inquire about.

Do you gentlemen have anything?

R5egl

1 BY THE CHAIRMAN:

2 Q You make up little index cards?

3 A Yes.

4 Q And that makes it easier to go from the
5 index card, and from there you go to the file?

6 A Yes.

7 Q When somebody removes a file, do you make
8 a notation on the index file?

9 A Not on the index file, no.

10 Q Is there a notation made in the drawer?

11 A Yes. We make out cards, and we put them right in the
12 files.

13 Q Did anybody obtain these files on Route 35
14 and Route 46, to your knowledge?

15 A Some correspondence was taken out.

16 BY MR. BERTINI:

17 Q Do you know who did that?

18 A They took some correspondence out a few months
19 ago, and the out card is still in there. I gave them
20 to Mrs. Lyons, and evidently she gave them to Mr.
21 Freidenrich, and I think Mr. Freidenrich gave them to
22 Mr. Kohl.

23 Q And they're still out of the files, you say?

24 A I imagine.

25 Q At least, the out card indicates it's still

R2-2 1 A Yes.

2 MR. SAPIENZA: That out card identifies the
3 document that was taken out?

4 THE WITNESS: Yes.

5 Q And the date?

6 A The date I don't remember.

7 MR. SAPIENZA: But at least it identifies
8 the document that was taken out?

9 THE WITNESS: Yes.

10 MR. DIANA: Do you remember the date that
11 Mr. Freidenrich had obtained the document in the
12 file?

13 THE WITNESS: I don't remember.

14 THE CHAIRMAN: Do you know approximately
15 when they might have been?

16 THE WITNESS: No.

17 MR. BERTINI: Didn't you say a couple months
18 ago?

19 THE WITNESS: I imagine.

20 MR. DIANA: May or June?

21 THE WITNESS: I don't remember, to tell you
22 the truth, to be honest with you.

23 BY MR. SAPIENZA:

24 Q That out card that you have over there
25 which shows which documents were taken out of the Route 46

R2-3

1 file, would you be able to photograph that out card for
2 us and send that to us?

3 A I guess so.

4 Q Do you have a photocopy machine there?

5 A Yes.

6 Q Would you do that and send it to Mr. Jordan
7 over there?

8 A Am I allowed to do that?

9 Q Yes, you are allowed to do that.

10 MR.FRANCIS: Would you feel better if one of
11 the men from the Commission went over and did it
12 in your presence?

13 MR. JORDAN: Or I will speak to the state
14 engineer and get his authority.

15 MR. SAPIENZA: Mr. Jordan will visit you
16 tomorrow or the next day and have a look at that
17 card.

18 THE CHAIRMAN: Thank you very much.

19 [The witness was excused.]

20 [Whereupon the matter was adjourned.]

21

22

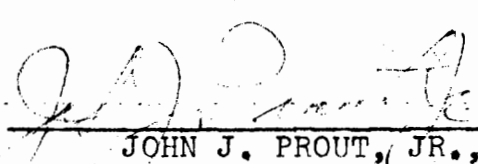
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24

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C E R T I F I C A T I O N

WE, JOHN J. PROUT, JR., and EDWIN SILVER,
Certified Shorthand Reporters and Notaries Public of the
State of New Jersey, certify the foregoing to be a true
and accurate transcript of our original stenographic
notes taken at the time and place hereinbefore set forth.



JOHN J. PROUT, JR., CSR



EDWIN SILVER, CSR

NOVEMBER 14, 1972

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

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

Wednesday, November 15, 1972

28 West State Street
Trenton, New Jersey

B E F O R E:

JOHN F. MC CARTHY, JR., Chairman

CHARLES L. BERTINI, Commissioner
WILFRED P. DIANA, Commissioner

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

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

Reported by:

JOHN J. PROUT, JR., C.S.R.
and
EDWIN SILVER, C.S.R.

I N D E XWITNESSPAGE

DAVID A. BIEDERMAN

446

BRUCE GOLDSTEIN

575

HERBERT J. STERN

606

RUSSELL H. MULLEN

670

JONATHAN L. GOLDSTEIN

667

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C-32 Memo dated 10-9-70

487

C-33 Memo dated 10-21-70

487

C-34 Memo dated 10-26-70

535

C-35 Memo of B. Goldstein
dated 4-20-72

585

C-36 Four-Page Memo, 6-14-72

644

A-1

1 THE CHAIRMAN: I guess we're all set to go.
2 You can sit down for a moment, Mr. Biederman.

3 MR. BIEDERMAN: Thanks very much.

4 THE CHAIRMAN: This morning you have two
5 members of the State Commission of Investigation
6 sitting. I don't know if you met us before.

7 MR. BIEDERMAN: I know Mr. Bertini.

8 THE CHAIRMAN: Mr. Bertini on the right. My
9 name is John McCarthy.

10 MR. BIEDERMAN: How do you do?

11 THE CHAIRMAN: And I think maybe during the
12 time that you're being questioned Mr. Diana will
13 probably appear.

14 MR. BIEDERMAN: Fine.

15 THE CHAIRMAN: But we'll start off with the
16 two members that are present.

17 We have Mr. Francis--

18 MR. BIEDERMAN: Yes.

19 THE CHAIRMAN: --Special Counsel to the
20 Commission.

21 MR. FRANCIS: We've met.

22 MR. BIEDERMAN: We have.

23 THE CHAIRMAN: And Mr. Sapienza.

24 MR. BIEDERMAN: Of course.

25 THE CHAIRMAN: Mr. Cy Jordan and Mr. Joe

A-2

1 Corrigan, the investigators, will probably be in
2 the room, together with the two court stenographers.
3 Okay, sir.

4 MR. BIEDERMAN: Right.

5 THE CHAIRMAN: Would you stand up at this
6 time to be sworn, please.

7 MR. BIEDERMAN: Yes.

8 D A V I D A R N O L D B I E D E R M A N, having
9 been duly sworn according to law by the Officer,
10 testified as follows:

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BE-1 1

2 MR. SAPIENZA: Before we begin, I am going to
3 read to you certain warning that we read to all the
4 witnesses that appear here.

5 Number one, I note that you're appearing volun-
6 tarily at our request?

7 THE WITNESS: Yes.

8 MR. SPAIENZA: This is an executive session of
9 the Commission. Your testimony will be taken under
10 oath by the Shorthand Reporter. It may be used against
11 you later on in a Court of Law. If you feel that your
12 answer may tend to incriminate you, you may refuse to
13 answer. You have the right to be accompanied by an
14 attorney of your choice. And I note for the record
15 that you appear today without an attorney. Is that
16 of your choosing?

17 THE WITNESS: Yes.

18 MR. SAPIENZA: If at any time during the
19 questioning you decide that you would like to consult
20 with an attorney--I know you are an attorney--but if
21 you would like to consult with another one, just
22 tell us that and we will discontinue the hearing;
23 or for any reason if you feel that you would like us
24 to stop questioning you at any time, just say, I'd
25 rather discontinue it, and we will discontinue.
You are under no compulsion to stay.

1 Section 52:9M-15 of our Statute forbids
2 disclosure by you of the questions asked, your
3 responses, or any other information you may gain
4 at this hearing. Possible maximum penalty for that
5 is as if it were a disorderly person.

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

12 THE WITNESS: Right.

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

21 THE WITNESS: All right.

22 MR. SAPIENZA: You have a right at the conclusion
23 of this hearing to file a brief sworn statement rela-
24 tive to your testimony for incorporation into the
25 record of this proceeding. Okay?

1 THE WITNESS: Thank you.

2 MR. SAPIENZA: In addition, I note for the
3 record Mr. Biederman was interviewed previously.

4 Did you have a chance to look over the trans-
5 cript of the previous interview?

6 THE WITNESS: I didn't finish. I got as far
7 as I think page fifty-nine, but I haven't finished.

8 MR. SAPIENZA: Would you like to finish reading
9 that before you start now?

10 THE WITNESS: No, not necessarily.

11 MR. SAPIENZA: You have it with you. If you
12 feel you ought to refer to it, you may.

13 THE WITNESS: All right.

14 MR. FRANCIS: If we have any problems at
15 all about it, we will just suspend for awhile and
16 let you finish it if you want.

17 THE WITNESS: Fine.

18 EXAMINATION BY
19 MR. FRANCIS:

20 Q Mr. Biederman, you are a member of the bar
21 of New Jersey? A Yes, sir.

22 Q You were admitted when?

23 A In 1959.

24 Q And you were a Deputy Attorney General of
25 New Jersey? A Yes, I was.

BE-4

1

Q Until November 14, 1971?

2

A Yes. The 13th, I think it was.

3

Q And you first became a Deputy Attorney General

4

when? A In August of --let's see,

5

when was that? It's a long time. August of 1961, I

6

think.

7

Q Your previous record indicates August of 1961.

8

A Right.

9

Q At that time Governor Meyner was in office.

10

A That's correct.

11

Q And you remained then until September 1963;

12

is that correct?

13

A Yes, sir.

14

Q And during that period--well, part of that

15

time you were assigned to the office of the Governor,

16

were you?

A Yes, sir.

17

Q Then you went back to private practice?

18

A Yes.

19

Q And you returned again as a Deputy Attorney

20

General in May of 1966?

A That's correct.

21

Q At that time Governor Hughes was in office.

22

A That's correct.

23

Q And then you were assigned to the new division

24

of Railroad Transportation?

A Right.

25

Q And later you became counsel to the Commissioner

1 of the Department of Transportation?

2 A Yes, sir.

3 Q And in May of 1970 the present Attorney General
4 appointed you Chief Counsel to the Department of Transpor-
5 tation?

6 A Yes, he and Commissioner Kohl.
7 That was my title in the department. My title in the office
8 of the Attorney General was Deputy Attorney General.

8

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Cppl 1 Q Yes. There was no actual change in your basic
2 title? A Right.

3 Q It would still be deputy attorney general?
4 A Right.

5 Q And I gather you were in the Attorney
6 General's Office under two Democratic administrations
7 and then you remained in the Attorney General's Office
8 under Governor Cahill, a new Republican administration?

9 A Yes, sir.

10 Q And I gather you were a Democrat or are a
11 Democrat? A No, I was a Democrat.

12 Q I see. A I'm not really a Democrat.
13 I was a pretty independent voter. But I knew from my
14 service in Trenton certain Democrats, and when they were
15 running for office I voted for Democrats. That didn't
16 include my presidential politics, which were quite the
17 contrary.

18 Q Well, we're not--

19 A I'm a registered Republican, just for the record.

20 Q We're not very much concerned with that.

21 A Yes.

22 Q In any event, when Governor Cahill came
23 into office and Attorney General Kugler became the
24 Attorney General, you remained on his staff?

25 A Yes, sir.

C-2

1 Q And did he ever ask you at any time whether
2 you were a Republican or a Democrat?

3 A No, sir.

4 Q Or did he just continue you in office?

5 A No, sir. I thought the practice instituted was,
6 to be frank, wonderful because politics didn't enter
7 into it at all.

8 Q That's fine.

9 A As a matter of fact, the politics had previously
10 entered into qualifications for being a deputy attorney
11 general. I went through that myself. This administration,
12 that was removed and I thought that was a terrific
13 achievement, frankly.

14 Q Now, during your period in the office of
15 the Department of Transportation you had a number of
16 assistant deputy attorneys general, did you?

17 A Yes, on becoming chief counsel --

18 Q Well, when you came there, how many
19 assistants did you have?

20 A No one, really, until I became chief counsel.
21 Then they became--

22 Q When you became chief counsel, how many
23 did you have at that time?

24 A At that time, I think that was in May of 1970,
25 I think about eleven. I'm not sure.

C-3

1 Q And at the time you left, how many?

2 A We had eighteen. We were up to full strength.

3 Q Eighteen? A Right.

4 Q And sometime in--withdraw that for the
5 moment.

6 A Surely.

7 Q When you first came to the office, first
8 became a deputy attorney general, --

9 A Right.

10 Q --were you permitted to practice law on the
11 side?

12 A Oh, absolutely.

13 Q And that continued until when?

14 A The summer of 1970. Let me--

15 Q Well,-- A All right. I'm sorry.

16 Q I won't cut you off. We'll get into the
17 record. A I'm sure.

18 Q Just, you and I are both lawyers --

19 A Of course.

20 Q --and we understand the nature of the
21 questions. A Right.

22 Q And the responsiveness of the answers.

23 A Of course.

24 Q And how valuable it is to get responsive
25 answers in order to get a clear record.

C-4

1 Well, you say in the summer of 1970?

2 A Either in July or August it was. The Attorney
3 General had told the staff that he was going to change
4 the system; the deputies were going to be no longer
5 permitted to practice privately. And that's the reason
6 we were understrengthened in the Department. We had lost
7 several people, and he put that rule into effect that
8 summer.

9 Q Well, July or August, you think, in 1970?

10 A Yes, sir, that's right.

11 Q You have a firm recollection as to that?

12 A It could have been June 1st. It was the summer of
13 1970.

14 Q It was the summer. It may have been as far
15 back as June?

16 A It could have been.

17 Q But not any farther back than that?

18 A No, sir. He had designated a specific cutoff
19 date.

20 Q Then when you were chief counsel, were
21 there investigators assigned, attached to the department?

22 A There was a division of investigation.

23 Q And how many investigators were there?

24 A I don't recall the exact number.

25 Q Well, was it more than four?

C-5 1 A It could have been. I think it was about four.

2 Q And originally there was a chief
3 investigator? A Yes, sir.

4 Q And he was--let's see. His name was Piccarelli?

5 A Yes, sir.

6 Q And then he died? A Yes, sir, he did.

7 Q And he was succeeded by Manfred Manrot?

8 A Yes, sir.

9 Q At about that time were these investigators
10 put under your supervision?

11 A I was their liaison with the commissioner's office.
12 They weren't under my supervision, so to speak. It was
13 rather a loose arrangement. Whenever there was something
14 that the Commissioner was concerned with, they were
15 under my supervision.

16 Q Well, the reason I ask that is because I
17 understood, and you can tell me, --

18 A Yes.

19 Q --but there was some personality problem
20 in that area at the time and for that reason they
21 were passed over to your supervision?

22 A Yeah, the department-- I don't think it was a
23 personality problem per se. The department was in a state
24 of change. The commissioner was going to reorganize
25 the place, and for a certain period of time they were

C-6

1 put under me sort of for housekeeping, I guess, or whatever.

2 Q And those investigators had the duty, did they,
3 of investigating any alleged wrongdoing that affected the
4 department?

5 A I would think so.

6 Q Now, as chief counsel to the department,
7 I assume that you were familiar with the statutes
8 relating to bidding on public--

9 A Yes.

10 Q For public contracts. And you were also
11 familiar with the commissioner's authority with respect
12 to the competitive bidding and with his authority to
13 accept or reject--

14 A Yes, sir.

15 Q --bids that were made?

16 You were aware, I'm sure, of New Jersey
17 Statute 27:7-30 dealing with bids, and particularly
18 you were aware that under the statute the Commissioner
19 was authorized to reject any and all bids not in
20 accordance with the advertisement of specifications,
21 or for any other irregularity, or may reject any or all
22 bids if the price for work or materials is excessively
23 above the estimated cost, or for any other cause?

24 A Yes, sir.

25 Q You were familiar with that? A Uh-huh.

C-7 1 Q And you knew, also, that as part of that
2 section it was the obligation of the State Highway
3 Engineer to prepare a list of the bids, including any
4 bids rejected and the cause of the rejection, and, also,
5 that the commissioner was obliged to award the contract
6 to the lowest responsible bidder?

C3P-11 A I knew that. About the engineer's responsibility,
2 we really didn't get into that too much because--

3 Q Well, all right. You were aware--

4 A --that was mechanical.

5 Q You were aware that language was in the Statute.

6 A It had never been brought to my attention before
7 today, but, you know, it's there.

8 Q All right. A I was familiar with the
9 Statute.

10 Q I assume you knew, also, that the Commissioner
11 had the right to reject a bid where developments occurred
12 subsequent to classification of the bidder which, in the
13 Commissioner's opinion would affect the responsibility of
14 the bidder?

15 A Oh, yes, sir, I'm very familiar with that Statute.

16 Q Well, for example, if subsequent to prequalifi-
17 cation a lack of equipment to do a job appeared, the
18 Commissioner could use that as a basis for rejection of
19 a bid? A I would assume so

20 Q And you think that you would agree, would you,
21 that a prequalification of a prospective bidder would not
22 vest in him any right which would derogate from the
23 primary right of the State through the Commissioner to
24 do business with the lowest responsible bidder?

25 A Yes, I would agree with that.

C3P-2

1 Q You agree, also, do you, that the mandate of
2 this Statute of the Legislature that the bidder be respon-
3 sible embraces moral integrity as well as capacity to
4 supply labor and materials? A Yes, absolutely.
5 The Courts has said so and the department took that
6 position, although prior to the State of cases indeed,
7 one of which your Honor served on, there was a real
8 question of that.

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DE-1

1 Q Now, will you do me a favor. During the examination
2 don't call me your Honor or Judge or Justice. When we leave
3 the bench, under the Supreme Court Rules all men are
4 created equal, and no one is allowed to be addressed by
5 a title, and that's primarily aimed at the law courts,
6 particularly because of the presence of the juries. But
7 it is a requirement of all hearings that you're a lawyer
8 and I'm a lawyer and mister is the top.

9 A I will say counsel. How is that, Justice Francis?

10 Q That's the New York practice.

11 A Okay.

12 Q After bids are made and opened and the lowest
13 bidder is determined, that doesn't mean, does it, that
14 the award automatically goes to the lowest bidder?

15 A Absolutely.

16 Q Before the award is made, I assume that some
17 investigation is made by the department about the bidder
18 as to his capacity in the various areas we have talked
19 about and a determination made as to whether he is the
20 lowest responsible bidder?

21 A Yes, sir.

22 Q Would you say that there is emphasis on the
23 duty to investigate the capacity of the lowest bidder if,
24 for example, it appears that he was not known to the depart-
25 ment or had no previous or at least substantial jobs with

1 the State? A Well, in addition to
2 the requirements of our Statutes, there are Federal
3 regulations which govern the department's behavior and
4 what they do with bidders.

5 Q If the department didn't know a man or if
6 he hadn't had any substantial work with the State before,
7 you take a little closer look at him, wouldn't you?

8 A Absolutely, I would assume so.

9 Q On the basis of your experience in the department
10 would you say that was a practice that was followed?

11 A Sir, until this matter, the matter of the Centrum-
12 Manzo-Sherwin thing came along, in all my years with the
13 department the subject of a big contract never crossed
14 my desk and I never investigated or never even got into
15 it. It was so routine, it never crossed my desk. This is
16 the only time a bid contract ever did.

17 Q But you were aware that investigations were
18 made of the apparent low bidder before the contract was
19 given to him? A Yes.

20 Q To come back to the Commissioner's authority
21 over the bids, the Statute that we talked about and the
22 cases with which I am sure you are familiar, so, do they
23 not, that the Commissioner is vested with a broad area
24 of discretion? A Broad. The only way you could
25 overturn the Commissioner's decision is show he was

1 arbitrary in his discretion.

2 Q Or if he acted in bad faith?

3 A Well, bad faith, arbitrary.

4 Q In the consideration of who is the lowest
5 responsible bidder, you would consider his financial
6 condition, the department would consider the financial
7 condition of the man who was the apparent low bidder?

8 A I assume so. I never really went into that, but
9 I assume so, financial, equipment, whatever.

10 Q Equipment, experience?

11 A Oh, I would think so.

12 Q Materials that he had available to do the job?

13 A I would think so.

14 Q And, as I think you helped establish, his moral
15 integrity? A Yes, sir.

16 Q Suppose, for example, there was a shortage of
17 necessary materials to do the job that was involved and
18 that was discovered after the bids were opened and the
19 Commissioner decided to wait until the shortage, whatever
20 it was, cleared up or was alleviated, do you think his
21 authority to reject all the bids and wait for the condition
22 to clear up and readvertise for bids?

23 A Would you let me have that again, please.

24 Q Suppose there was a shortage of necessary
25 materials to do the particular job that was the subject

1 Q I thought you said that you wouldn't want
2 to freeze the money in the budget.

3 A That's the other reason. Why freeze the money
4 when you could use it elsewhere. Who knows how long
5 it might last.

6 Q In other words, that would enter into the
7 propriety of the use of his discretion?

8 A Yes, and any other factors that there might be.

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1 of the bidding, and the shortage was discovered
2 after the bids were opened and the apparent low bidder
3 appeared and the Commissioner then decided in view of
4 this shortage of materials to wait until the shortage
5 cleared up before going ahead with the job, and so he
6 rejected all the bids and said, I will readvertise later.
7 You wouldn't see anything wrong with that, would you?

8 A Well, he would have two options. He could either
9 just leave the bids until the shortage was met and just
10 hold everything in status quo and award it to the low bidder
11 when the shortage was satisfied, or he could throw the bid
12 back.

13 Q And say, I will wait until the shortage clears
14 up because I didn't know how long it is going to be before
15 we readvertise? A Yes, because to hold the money
16 for this particular job in abeyance when the money could
17 be used in another project, it could be used--

18 Q Well, on the basis of what you say, it would
19 make reasonable sense for him to say, I will readvertise
20 when this condition clears up? A He would need a little
21 more than that. He would have to have a reason, like the
22 first--

23 Q Well, shortage of materials.

24 A Well, he could freeze the bids, he could aware the
25 contract when the shortage was solved.

D2egl 1 Q Well, to come back to something I mentioned
2 a moment ago, supposing the apparent low bidder didn't
3 have adequate equipment to do the particular job in the
4 judgment of the commissioner, you wouldn't question his
5 exercise of his discretion to reject that bid, would you?

6 A No, if the facts backed it up there would be
7 no reason to, absolutely.

8 Q And the same rule would apply, I suppose,
9 if he had an inadequate labor force or if he didn't
10 have access to sufficient materials to do the job?

11 A Yes. I would agree in that hypothetical situation.

12 Q Now, one step farther. Supposing the
13 second low bidder did have adequate equipment, did have
14 adequate labor force, and had assured supply of the
15 necessary materials, when the commissioner rejected the
16 low bidder for the reasons we have mentioned, would

D-2

1 the second low bidder would the lowest responsible bidder?

2 A Yes, absolutely, and I think it could be justified.

3 Q In August of 1970 you saw memorandum dated
4 July 20, 1970, ostensibly from Mr. Sherwin, the SEcretary
5 of State, to Mr. McCrane, Secretary of the Treasury,
6 apparently written by H. M., who turned out to be
7 Mr. Sherwin's secretary, which Mr. McCrane had sent to
8 Commissioner Kohl concerning the Manzo Construction
9 Company?

10 A Yes.

11 Q I show you that memorandum, which we have
12 marked here Exhibit C-2. You may keep that. I want to
13 go over a little bit of it with you.

14 A Thank you.

15 [Off the record.]

16 Q That memorandum, I gather, you saw for the
17 first time on August 4th?

18 A That's my recollection.

19 Q Just so that we will be certain of that,
20 I show you a memorandum which apparently you sent to the
21 Attorney General Kugler on August 7 and which we have
22 already marked C-4.

23 A Yes.

24 Q You note there that you first learned of that
25 memorandum on August 4th.

A Right.

D-3

1 Q I will leave this one that's marked with you
2 just so that you can have it before you.

3 A Thank you.

4 Q Now, in that memorandum, and as a result of
5 any inquiry you made, you learned that Manzo Construction
6 Company had made a low bid on a Route 22 project?

7 A Yes. That's what the memorandum says.

8 Q And Mr. Schuyler, the State Highway Engineer,
9 had indicated that he was inclined to recommend
10 rejection of the bid because Manzo Contracting Company
11 had subcontracted the whole job that it had been awarded
12 on Route 12 at an earlier date?

13 A Yes.

14 Q However, Mr. Schuyler indicated that he
15 would give him several days to explain, if he could,
16 that he had not subcontracted the whole job and that
17 if he could explain then his low bid on the Route 22
18 bid, it would be given consideration.

19 A That's my understanding, looking at these documents.

20 Q Mr. Schuyler had told Manzo, as the memorandum
21 indicates-- A Excuse me, Counsel. In the

22 August 7 memorandum I refer to an underlined section of
23 this memorandum. Do we have a copy of that underlined
24 portion?

25 Q It's the last three lines are what you had

Biederman

D-4 1 underlined. I will find a copy , if you would like.

2 A No, it's all right. It's the last three lines,
3 okay.

4 Q But, as I started to say, the engineer
5 Schuyler had told Manzo that his low bid would be
6 rejected unless he could demonstrate that he had not
7 violated the department's regulations about subcontracting
8 the whole job?

9 A Right.

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1 Q Then Manzo explained, apparently, to the
2 Department that that violation had not occurred; he
3 had not subcontracted the whole job, but that the
4 apparent subcontractor was really an employee of his
5 company?

6 A Yes, that's what I think the fourth paragraph of
7 the memorandum says.

8 Q You have your memorandum of August 7th here,
9 have you? A Yes, that's what I'm looking at.

10 Q Yes. And in that memorandum you explain it
11 in better fashion than the question is raised in the
12 July 20th memorandum and--do you have the August 4th
13 Schuyler to Kohl in this?

14 MR. JORDAN: Yes, sir.

15 Q Before your August 7th memorandum had you
16 seen a memorandum on this subject from Mr. Schuyler to
17 Mr. Kohl, which we have marked C-3?

18 A I--well, from the fourth paragraph. I have no
19 recollection of my--my fourth paragraph in August 7th
20 says I saw it, so I must have seen it.

21 Q Yes. And, in fact, you suggest in your
22 memorandum of August 7th that Mr. Schuyler didn't
23 articulate too well the nature of the problem, and you
24 explain it in the fourth paragraph of your memorandum
25 by saying that he was able to prove that he did not

E-2

1 subcontract the whole job and as a result of that--

2 A Let me interrupt you just for a second.

3 Q Yes. A I think it says that he
4 did subcontract the whole job, but it was by one single
5 subcontractor for the whole thing, and it was, in effect,
6 to his own company.

7 Q It was, in effect, to his own company?

8 A That's what Manzo said, yeah.

9 Q And that satisfied you and the department
10 that there had been no violation of its regulations?

11 A It satisfied me to the extent that the object
12 of the regulations was that there shouldn't be a sham;
13 general contractors shouldn't be a sham and then bid a
14 job and sub it completely to a different outfit. He
15 or Manzo said that it was his own company and he paid
16 the withholding taxes for all the employees of the
17 other company, and it was simply his company under
18 another trade name. So, substantively he met the
19 department's requirements even though technically,
20 as a matter of form, he did not, and I believe that
21 substance counted over the technicality.

22 Q Over form?

23 A Of course, because the object of the regulation
24 was a policy objective and the policy objective had
25 really been met even though the form was incorrect.

E-3

1 Q So, then, the department awarded the Route 22
2 contract to the Manzo Contracting Company?

3 A I don't know whether they did or not.
4 I guess they did, but I had no further knowledge after
5 this.

6 Q Well, would you look at--

7 A I don't think.

8 Q --Mr. Schuyler's memorandum of August 4th,
9 second paragraph, which says, "By Commission action
10 initiated" --

11 A Yes, there is, right. I guess they did.

12 Q So his status, then, as the lowest responsible
13 bidder on the Route 22 job was accepted?

14 A Right.

15 Q And the contract was awarded to him?

16 A Yes, sir.

17 Q Now, I assume that you felt that was a fair
18 and a just result, did you not?

19 A Yes, I did. As I said, in substance he complied,
20 I thought, with their requirement even though
21 technically he didn't.

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E2P-1

1 Q And the fact that this inquiry, this investigation,
2 was initiated by Mr. Sherwin did not, in your judgment, con-
3 stitute improper political interference with the department,
4 did it? A The fact that it was initiated?

5 Q Yes, by Mr. Sherwin, and produced what you say
6 was the just result. You don't consider that Mr. Sherwin
7 did anything wrong? A No.

8 Q All right. Now, these last three lines that
9 you talk about, they have to do with what you consider to
10 be an allegation of collusive bidding on the part of con-
11 tractors? A Yes, I did.

12 Q Is that correct? A Uh-uh.

13 Q And I think, as the memorandum you have there
14 from Mr. Schuyler indicates he was concerned about the allega-
15 tion of-- A Yes, he was.

16 Q --collusive bidding, also?

17 A Yes.

18 Q And in the memorandum you wrote to General
19 Kugler you drew that particular thing to the General's
20 attention? A Yes, those last three lines,
21 that's right.

22 Q And you recommended at that time that the
23 matter of the allegation of collusive bidding be investigated?

24 A Yes, I did.

25 Before we finish with this memorandum, I would like

1 to draw your attention to the second paragraph because
2 it shows how much you forget when you have been away
3 from something for a long time.

4 I think I previously gave the Commission an
5 answer with respect to counsel's question as to whether,
6 on a shortage of something, whether the bid could be awarded
7 to the second bidder and whether that would have been
8 all right. Obviously the answer I gave, my memory lapsed
9 because while I was counsel, it's very clear on this
10 point, second paragraph says, "When a bid is rejected,
11 for whatever reason, the contract must be rebid. It cannot
12 be awarded." And that's in accordance with the Department's
13 procedures. I believe that I had checked that at the time
14 and that's why I wrote that.

15 Q Well, do you stand on that as a flat legal
16 prop-- A What?

17 Q Do you stand on that as a flat legal proposition
18 what you said? A At this point in time
19 I would like to go back and research it again. What I
20 said at the time, I was Chief Counsel, I would stand by.

21 Q To take an extreme case, what do you suppose
22 would be the result if the apparent low bidder dropped
23 dead and the second low bidder was a competent low bidder
24 had all the integrity and the equipment; do you think that
25 the Commissioner could not accept him as the low bidder then?

1 A As a matter of logic and practicality, it would
2 appear to me that he could. But logic and practicality, if
3 you have been in government working for any State or
4 Federal department, does not always apply. And I have to
5 look at the regulations, because what I wrote to the
6 Attorney General, who was my legal boss, I don't think I
7 would have made a statement which was going to be legally
8 erroneous in his eyes, especially in August after he had
9 just promoted me and given me a fantastic increase in salary.

10 Q Well, all right.

11 A I would rather stand on the first statement that
12 I put in the memo.

13 Q We will accept the revision of your answer--

14 A --right.

15 Q --that whatever your view then was--

16 A --right.

17 Q-- that whenever a bidder, an ostensible low bidder
18 is rejected, and no matter what the reason, the contract
19 had to be rebid?

20 A That's what it says, paragraph 2.

21 Q You will remember in connection with before
22 the contract was awarded to Manzo Construction Company
23 on this Route 22 job-- A Yes.

24 Q --that Commissioner Kohl sent the matter to
25 Schuyler for investigation and received that report that

1 you have before you from Mr. Schuyler?

2 A Yes, I guess he did. Yes, I think he had to.

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E3-1 1 Q And the memorandum that you sent to the
2 Attorney General, which made reference to the allegation
3 of collusive bidding, you sent a copy of that to
4 Commissioner Kohl, also, did you not?

5 A Yes, it's cc to him.

6 Q In addition, you suggested to the Attorney
7 General, did you, that you thought that the cabinet
8 should be instructed that "any information alleging,
9 inferring, implying any type of wrongdoing concerning
10 any state agency should immediately be brought to your
11 attention or, at least, to the Deputy Attorney General
12 assigned to the agency"?

13 A Right.

14 [Whereupon, Commissioner Diana enters the
15 room.]

16 Q And you were the Deputy Attorney General
17 assigned to the Department of Transportation at that
18 time?

19 A Yes, I was.

20 Q And if a matter which required investigation
21 came to the fore, I gather from that that you would
22 expect that it would or could be assigned to you
23 for investigation?

24 A No, not for investigation, for attention.

25 Q Is there a difference between attention and

Ee-2 1 investigation?

2 A Oh, yes, quite a bit.

3 Q Well, all right. A We'll get to that.

4 Q Then your answer is that in a situation of
5 the kind that you contemplated in that memorandum that
6 you felt that such a matter should at least be brought
7 to the attention of the Deputy assigned to the agency,
8 but that it should be brought only to his attention, not
9 that he should do anything about it?

10 A Well, it depends on what was brought to his
11 attention.

12 Q Then it would make a difference as to what
13 was brought to his attention?

14 A Surely, surely.

15 Q Well, for example, an allegation of
16 collusive bidding among potential bidders, would that
17 be only brought to your attention or would it be
18 proper to direct you to investigate that?

19 A No, I think just to my attention. The proper thing
20 would be to do what I did, and that was refer it downtown.
21 We had a standing instruction that anything--

22 Q Well, all right. Let's just stay with the
23 questions, if you will.

24 A Sure.

25 Q It's your view, then, that in the matter of

E3-3

1 allegation of collusive bidding it should only be
2 brought to your attention, but you should not be
3 requested to investigate it?

4 A Well, that would depend on my superiors.

5 Q Well, if you were called by your superior
6 and told to investigate it, would that be improper?

7 A When you're subordinate, nothing your superior
8 does is improper, especially in state government.

9 Q Then I take it your answer is that if you were
10 instructed to investigate the allegation of collusive
11 bidding--

12 A Yes.

13 Q --you would investigate it?

14 A Absolutely.

15 Q And you wouldn't consider that there was
16 anything improper in the suggestion by your superior
17 that you do investigate it?

18 A I wouldn't say improper. I would say unusual.

19 COMMISSIONER BERTINI: I didn't hear that
20 last answer.

21 [Whereupon, the pending answer was read by the
22 Reporter.]

23 Q Did you send a memorandum again to the
24 Attorney General on the subject of collusive bidding
25 that was referred to by Mr. Manzo? I show you a

E3-4

1 memorandum of October 9, 1970, from you to the
2 Attorney General.

3 A Right, yes, that's --

4 Q I don't know that we have marked--
5 we haven't marked that yet.

6 A No.

7 Q And you in that memorandum advised the
8 Attorney General in connection with the collusive
9 bidding allegation that a meeting is being arranged with
10 Mr. Manzo for the 14th of October and you ask whether
11 a representative of Mr. Jahos--

12 A Yes, sir.

13 Q --should be or wanted to be present?

14 A Right.

15 Q And who is Mr. Jahos?

16 A He is the Director of the Office of Criminal
17 Investigation, the Division of Criminal Investigation.

18 Q Now, that meeting of October 14th was held,
19 was it not?

20 A I believe so.

21 Q And before it was held, did you have any
22 instructions from Mr. Jahos in answer to your suggestion
23 that a representative of his be present?

24 A My recollection is that they asked me to look into
25 it and he didn't supply a representative.

E3-5 1 Q I see. The situation was that, when Mr.
2 Jahos got this, he got in touch with you and told you
3 to look into it for his office?

4 A I believe so; I believe so.

5 Q And did you actually attend the meeting of
6 October 14th?

7 A I don't believe I did. That was, as it says here,
8 on several other matters. I think I may have walked
9 into the room at one point, but I don't think I attended
10 the meeting. My recollection is vague on that point.

11 Q When you received the word from Mr.
12 Jahos to undertake whatever investigation was to be
13 had in connection with the allegation of collusive
14 bidding, you undertook that by walking casually into
15 the meeting and walking out?

16 A No. I walked in--

17 Q What did you do?

18 A Mr. Manzo was at the meeting with his attorney,
19 Mr. Dimon, and I wanted to make sure that before they
20 left the building I saw them. So, I asked that when
21 they finished the meeting, that they step in my office,
22 which was right next to the conference room.

23 Q Did they do that?

24 A Yes, they did.

25

1 Q And how long did you spend with them?

2 A Oh, a very short time.

3 Q And what happened?

4 A I asked them about the allegations that Mr. Manzo
5 or Mr. Loughran had made and I asked him if he would
6 supply me with the names of the contractors that were
7 referred to in those allegations.

8 Q And what did he say? A He said--
9 he looked at his attorney and he said he didn't remember
10 or he didn't want to comment on it. I don't think he
11 said he didn't remember. He said he didn't want to
12 comment on that without discussing with his attorney.

13 Q And did that end the discussion?

14 A No. And I said, "Well, fine." Then I asked Mr.
15 Dimon to get back to me.

16 Q And did Mr. Dimon come back to you?

17 A Nope.

18 Q And did you go back to him?

19 A Nope.

20 Q Did you go back to Mr. Manzo?

21 A Nope.

22 Q And that was the sum total of your investigation
23 as suggested by Mr. Jahos?

24 A Yes. I reported what happened at the meeting to
25 Mr. Jahos or Mr. Kugler in a memo and that closed it as

1 far as I was concerned.

2 COMMISSIONER BERTINI: Do you have the
3 memo with you?

4 THE WITNESS: I think counsel has it.

5 MR. FRANCIS: I have it.

6 BY MR. FRANCIS:

7 Q But, in any event, you didn't feel that when
8 you got the direction to investigate you should do anything
9 other than have this short conversation in your office at
10 the end of their meeting and that was enough to satisfy
11 your then obligation to investigate?

12 A Well, we had a naked allegation of a, quote,
13 group of road contractors, and there was one specific
14 contractor that was supposed to get the job after Manzo
15 was knocked down and I thought the starting point would be
16 to get his name, and we didn't get past that.

17 Q Well, your department while you were there--

18 A Yes.

19 Q --held hearings on various matters, did it
20 not? A We held hearings on various matters.

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1 Q Well, let's take a specific illustration, the
2 Trap Rock Case.

3 A Yes, sir. We held hearings on the moral respon-
4 sibility, or the irresponsibility, as it were.

5 Q You were authorized under the Statute, the
6 Commissioner was authorized to hold hearings relating to
7 any matters involving bidders who were suspected of any
8 kind of wrong doing and have a hearing conducted by you,
9 with you asking the questions?

10 A No, sir, the Statute did not so provide. The
11 Statute was completely silent on that. In fact, we were
12 in a new area. We thought that cognizant with due process
13 that a hearing should be held. But there were no rules
14 and regulations governing the subject, and there was
15 no Statute providing for a hearing.

16 Q You don't suggest that the head of an
17 administrative agency has to have in black and white
18 and in ~~straitjacket~~ form an outline of all of the
19 authority he can exercise, do you? A Oh, absolutely,
20 you're absolutely correct.

21 Q In an administrative agency you're assigned
22 to run a department like this, he would have general
23 authority, would he not, to conduct hearings, make
24 inquiries into any matters affecting the potentiality
25 of bidders? A Right. I so advised him. That's

1 why we had the hearing in the Trap Rock Case.

2 Q Is there any reason why in the face of this
3 allegation of collusive bidding that you could not have
4 suggested a hearing before the Commissioner?

5 A I could have.

6 Q That's all I'm trying to find out.

7 A Certainly.

8 Q But did you suggest that to the Commissioner?

9 A No, I didn't.

10 Q And did you talk to the Commissioner at all
11 about what you should do, if anything, further, in the
12 matter of investigation?

13 A No, I didn't discuss the investigation with him.
14 I just discussed it with downtown.

15 Q You know, I have heard that expression downtown
16 a number of times. A Right.

17 Q And in this instance, specifically when you
18 talk about downtown, you're talking about Mr. Jahos?

19 A The Attorney General's Office was downtown geographic-
20 ally.

21 Q So when you use the term downtown, you're speaking
22 geographically of the area downtown around the State House
23 as distinguished from where you were out in the Township?

24 A Yes, sir.

25 Q By the way, did you have a second meeting on

F1-3

1 October 20 with Manzo and Dimon at which this same subject
2 was discussed? A I don't recall.

3 Q I show you a memorandum of yours to the Attorney
4 General, copy to Mr. Jahos, dated October 21st, 1970, and
5 ask you if you remember sending that?

6 A Yes, I do.

7 Q And while it doesn't specifically mention
8 October 20th, it is dated October 21st and says, "Yesterday."
9 So it is your recollection then, that you had another meeting,
10 one on the 14th and one on the 20th?

11 A No. My recollection was that we had one meeting.
12 When we said the 14th before, we took that there was a
13 meeting tentatively scheduled for the 14th. That meeting
14 may not have come off, or it may have come off. In any
15 case, I had one meeting with them and it was after they
16 came out of the conference room and I assumed that was the
17 meeting.

18 Q In this memorandum of October 21st, when you
19 speak of a meeting yesterday, you really had in mind the
20 meeting of the 14th, if it occurred on that day, or the
21 meeting of the 20th, if it occurred on that day?

22 A Yes.

23 Q In this memorandum you say that you weren't
24 able to get any information from Mr. Manzo about it, that
25 he could not recollect anything about the statement, and

1 Mr. Dimon promised to discuss the matter and advise you.

2 A Right.

3 Q And you conclude that memorandum by saying,
4 "Please advise me if there is anything further you wish
5 me to do on this matter."

6 A "Wish me to do on this matter."

7 Q Yes. And a copy went to Mr. Jahos, who is
8 the man who asked you to investigate it?

9 A Yes, in the first place.

10 MR. FRANCIS: May I mark the memorandum of
11 October 9, for Mr. Biederman to Mr. Kugler.

12 (Memo dated October 9, 1970, from Mr. Biederman to
13 Mr. Kugler, received and marked as Exhibit C-32
in evidence.)

14 MR. FRANCIS: And memorandum of October 21,
15 Biederman to Kugler.

16 (Memo dated October 21, 1970 from Mr. Biederman to
17 Mr. Kugler, received and marked as Exhibit C-33
in evidence.)

18 Q To make the record perfectly clear, the October
19 21st memorandum, the October 9 memorandum, your memorandum
20 of August 7 all relates to the allegation of collusive
21 bidding? A Yes, sir.

22 Q And the next thing you heard was a memorandum
23 of November 4? A That's the next memo I received,
24 that's right.

25 Q That was a memorandum from the Attorney General

Fl-5 1 to you entitled Manzo Contracting Company?

2 A Right.

3 Q And in that memorandum the Attorney General
4 advised you that neither Mr. Jahos nor he feels that there
5 is any further action required in the above matter?

6 A That's right.

7 Q And this was in answer to your last memorandum
8 of October 21st, in which you say, "Please advise me if
9 there is anything further...?"

10 A It could have been.

11 Q Well, let's not have any doubt about it.

12 Was it? A It's my impression that it was.
13 But the reason I say it could have been is because there
14 was an intervening Manzo matter between--

15 May I have the other memo? What is the
16 date on the other memo?

17 Q The 21st.

18 A There was an intervening Manzo matter between the
19 first and November 4th, but I assumed it was related to
20 this.

21 Q Well, you assumed it was related to the collu-
22 sive bidding allegation? A Yes.

23 Q And in answer to that--

24 A Yes, I did, I assumed that.

25 Q Remember I asked you about that when we--

1 A Yes, you did.

2 Q And you said, Well, a reporter asked me about
3 that and you told him that this same thing related to
4 the collusive bidding situation? A No. I told
5 him the same thing, that I assumed it did. And the
6 reason it was is because I didn't bring the other Manzo
7 matter, at least in detail, to the attention of Mr. Jahos
8 until November 4th, So this was the same day. I didn't
9 think they would ask that quickly. That's the reason
10 for that. They could have been, but I doubt it very much.
11 It's possible, but not probable, because unfortunately,
12 it doesn't have a caption.

13 Q Well it has a caption, Manzo Contracting Company,
14 doesn't it? A Yes, it does.

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1 Q How about those other memoranda, don't they
2 have the caption Manzo Contracting Company?

3 A Yes, except this one.

4 Q By your answer now, are you intending to
5 indicate any doubt that that November 4th memorandum
6 related to the Manzo Contracting Company collusive
7 bidding?

8 A The only doubt arises when I saw this originally
9 in the office of the United States Attorney somebody
10 had marked it in ink and it had both Route 46 and
11 Route 35 marked in ink on it, and that's where the doubt
12 comes in.

13 Q If it were not for those notations you
14 saw on the copy of the memorandum, you would have had
15 no doubt that this one related to the collusive bidding
16 allegation of the Manzo Contracting Company; is that
17 correct?

18 A I assumed it related to collusive bidding, I
19 really do. It's possible. But, you know, I assumed it
20 related to the Route 35 because of the date.

21 Q Supposing you learned beyond all doubt
22 that a file clerk in the highway department looking for a
23 place to file the November 4th memorandum, two file
24 clerks--

25 Did you know Mrs. Lyons and Mrs. Carnival, did you

F2-2

1 know those two?

2 A If I saw them, I probably knew them, but I don't
3 know their last names.

4 Q Well, if you knew that without word from
5 anybody for purposes of filing this November 4th
6 memorandum, which was perfectly blank when they got it,
7 wrote on the side or put on the top of it Route 46,
8 Route 35, cross-index Manzo Contracting Company,
9 and on the side wrote Centrum Contracting, that would
10 eliminate any doubt in your mind?

11 A It certainly would to me. I assumed from the
12 very begging it was Route 35. That's what I said
13 previously.

14 Q While we are on the subject, let me show
15 you the memorandum, copy of it, that you probably saw,
16 with a notation on the top of Route 46 and Centrum on
17 the side, and those are the memoranda that you--

18 A That's the one I saw in Mr. Stern's office. In
19 fact, I asked him who put that on there, but he
20 wouldn't tell me.

21 Q We now have been referring to Exhibit C-30.

22 A As a matter of fact, I asked him who put that
23 on there, and he said, I ask the questions, I don't
24 answer them.

25 THE CHAIRMAN: I wonder, Mr. Francis, before

Biederman'

F2-3

1 we move on if I could get one question in.

2 MR. FRANCIS: Go ahead, sure.

3 BY THE CHAIRMAN:

4 Q I am not sure of what Mr. Manzo said when
5 you asked him who are these other contractors. You
6 indicated that he looked at his attorney. What did he
7 say, to the best of your recollection?

8 A Well, my recollection is refreshed by counsel
9 showing me the memo I wrote to the Attorney General
10 on this. And he didn't recollect the statement. He
11 didn't recollect making that statement. He didn't
12 recollect saying what was in the July 20th memo to
13 anybody at any time.

14 Q Which you had underlined?

15 A Which I had underlined, that's right.

16 Q Did you get the impression from that that
17 he didn't want to involve other contractors any further
18 than what he had?

19 A I got the impression that he didn't want to talk
20 about it, not at that time, not without consulting
21 with his attorney. After all, it was a serious
22 matter, and Mr. Dimon was with him. And as my memo
23 says, refreshing my recollection, Mr. Dimon said
24 he would discuss the matter with him and would advise
25 him.

F2-24

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Q

To this date he never has?

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No.

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F3-1

1 BY MR. FRANCIS:

2 Q One further little thing about that November
3 4th memorandum.

4 It was filed in your Manzo Route 35 file
5 in your office or in the Highway Department Office?

6 A I assume it was. I don't know where the girl put
7 it. I tell the girl to file something, I assume she
8 knows enough to file it.

9 Q You know Mr. Nardelli?

10 A Oh, yes.

11 Q Would it strengthen your recollection with
12 respect to the file that if you knew that Mr. Nardelli
13 looking into this memorandum found it in your Route
14 35 Manzo file?

15 A If that's what he said, I am sure that's where he
16 found it. Although, let me say this, Counsel, Mr.
17 Stern I believe found it. So wherever they found it,
18 they found it. I wouldn't have any knowledge of where
19 it was filed, actually.

20 But as I said from the beginning, I assumed it did
21 go to the collusive bidding thing, Route 35.

22 Q Let's come to the Route 46 project.

23 A Before we leave 35, there are two points I would
24 like to raise on questions you previously asked me.

25 Q Go ahead.

A One, you asked me with

F3-2

1 respect to Mr. Sherwin bringing this matter to the
2 Commissioner's attention, whether that was "wrong", and
3 I responded I didn't think so.

4 I would like to know what counsel means by "wrong"
5 so I can give you a proper response to that question.

6 Q What did you think I meant when I asked the
7 question? You said you didn't think it was wrong.

8 A Well, my original reaction was that one cabinet
9 officer providing information to another cabinet officer
10 which he could use or which he wanted him to take up,
11 there is nothing wrong in a criminal sense; interference
12 of one cabinet officer with another in an area in which
13 he has no jurisdiction at all, none whatsoever, to me
14 is wrong.

15 Q Do you think if one cabinet officer runs
16 into a public official, whether he be a mayor of a
17 town or an assemblyman or senator and the public official
18 says to him, I think this man is getting a bad deal
19 from the Highway Department, will you look into it for
20 me; and the cabinet member says, I will get in touch
21 with the highway department and tell them what you have
22 told me and ask them to look into that, do you think
23 there is anything wrong in that, wrong in whatever
24 sense you want to give the word?

25 A Oh, that, no.

F3-3

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Q Then to come to this particular July 20 memorandum, I think we agreed that the result that was achieved by the memorandum for the Manzo Construction Company was a fair and just result.

A Let me put it this way, Counsel: Mr. Loughran had dealings in our department--

Q Just answer my question, please.

Before when you said that as a result of this memorandum Manzo Contracting Company, which had been the low bidder on Route 22, and investigation dissipated the objections and the contract was in fact awarded to Manzo, that was a fair and just and proper result, wasn't it?

A In my legal opinion, it was.

Q Well, do you distinguish between--you add the adjective "legal opinion." Is there another qualification?

A I will put it on the record. I never made any bones about it before at the time and I won't now.

Mr. Manzo was represented by Mr. Dimon. He had counsel. Mr. Loughran was in and out of the department at various times. They could have come directly to Commissioner Kohl. But instead it was put to McCrane and Mr. Sherwin, who by his own admission is the second

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F3-4

1 most powerful man in the state. In my opinion, they
2 were pressuring the commission to give Manzo favorable
3 consideration.

4 Q On this?

5 A On the July 20. What in the world does the Secretary
6 of State have to do with matters of the Department of
7 Transportation that he should take time out to go over
8 something like this?

9 Q Did anybody in your term of office as
10 counsel to the department stop you on the street and say,
11 This fellow is getting a bad deal from the department,
12 will you look into it for me? Anybody ever ask you to do
13 that?

14 A No, nobody ever asked me, stopped me on the street.

15 Q Well, don't limit it to the street. Anybody
16 call you on the telephone or write you a letter and
17 say, So-and-so complains that he has gotten a bad
18 deal, will you look into this for me, see what is going
19 on?

20 A Oh, sure.

21 Q Were you wrong in investigating it for him
22 and giving him an answer?

23 A Not wrong in that sense.

24 The wrongness, understanding the situation in
25 Trenton at the time, and the commissioner came from out

F-5 1 of state, he was a professional engineer who was given this
2 cabinet post not on any political basis, but because he
3 had a nationwide reputation, and indeed was recommended
4 for the job by Mr. Sherwin. It was my opinion, knowing
5 the situation in Trenton and the gossip that goes through
6 Trenton, when two members of the cabinet, number two
7 and three men of the government, asked that something
8 be done, that's not wrong; of course, it isn't wrong.
9 It's just saying, Gee, we'd like to have it done.
10 To think anything else would be absolutely naive.

11 Q Was this request anything other than,
12 will you look into this, because here is a man, a contracting
13 company who says that he hasn't been getting a fair
14 deal, don't you think the Commissioner--

15 A That wasn't wrong. What was wrong would be the
16 exerting of the pressure. That was what was wrong.

17 Q You mean the mere fact that the memorandum
18 came from a cabinet member to another cabinet member
19 asking him to look into it, that puts pressure on him?

20 A Depending upon which cabinet member is asking.

21 Q Let's take these two. Do you think from
22 the nature of that memorandum, the fact that it originated
23 from Sherwin's office and was sent to Mr. McCrane's
24 office by him, because he had no knowledge of it, of
25 what the situation was, sent it to the man who would

F-6

1 have knowledge or could get knowledge, that there was
2 some pressure being exerted on the commissioner by that?

3 A But you see, Counsel, he didn't send it to the man
4 who could get knowledge in accordance with your
5 question. He sent it to Mr. McCrane, with no knowledge
6 of what goes on in the Department of Transportation.
7 Why did he do that?

8 Would you read Counsel's question back, because I
9 think that's particularly relevant.

10 Q I remember the question I asked, and we
11 will get--

12 A Mr. Sherwin--

13 Q Then you think if a senator or an assemblyman
14 communicated with you or made a complaint that some
15 contractor was not getting a fair shake in the
16 department, that would constitute undue pressure on you?

17 A I would consider it pressure.

18 Q Simply by saying, Would you look into that,
19 that constituted pressure?

20 A Yes, depending again upon who--

21 Q When did you become so sensitive about
22 pressure?

23 A I think any deputy attorney general who has ever
24 worked in the deputy attorneygeneral's office that's
25 been asked by a senator to vote on the budget and by

F-7

1 State Chairmen to look into something for a particular
2 client, I think that's why we have a conflict bill.
3 I think that's pressure, of course it's pressure.

4 Q I assume that you have great respect for the
5 conflict bill.

6 THE CHAIRMAN: I wonder if at this time
7 we could take a two-minute break.

8 [A short recess was taken.]
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1 (After recess.)

2 THE CHAIRMAN: Are we all set to resume, then,
3 sir?

4 BY MR. FRANCIS:

5 Q To go back for a minute to that July 20th
6 memorandum--

7 A Yes, sir.

8 Q --you were interested in the copy of it that
9 had the three lines underlined?

10 A Yes.

11 Q Let me show you--

12 A Right.

13 Q --another copy of it.

14 A Thank you.

15 Q I ask you if that's the underlining you had
16 in mind? A Yes, that's the one I think
17 we looked at last time.

18 Q Well, it's the same as Exhibit C-2 except--

19 A Right.

20 Q --the last three lines begin "Per Loughran,
21 Manzo refuses" -- A Thank you.

22 Q --are underlined on this copy?

23 A Yes.

24 Q And that's the one you had in mind?

25 A Yes, sir. I think that's the one that was attached

1 to my memorandum of August 7th, 1970, which is Exhibit C-4.
2 Yeah, it notes attachments. That was what was attached.

3 Q And one further thing with respect to the
4 meeting with the Manzo people and people of your department
5 on October 20th. Let me, for purposes of further refreshing
6 your recollection, if I can --

7 A Certainly.

8 Q -- show you a memorandum dated October 21st
9 from Mr. Freidenrich, copy to you. A Here we go.

10 Q And you remember that, do you?

11 A Yes, yes, that refreshes my recollection.

12 Q And the memorandum says there was a meeting
13 on Tuesday, October 20th, 1:00 p.m.?

14 A Right, that's it.

15 Q But it does say, also, that you were present
16 at the meeting?

17 A Yes, it does. It indicates that.

18 Q Does that refresh your recollection that
19 you had more participation in it than just calling them
20 to come in to see you at the end of the meeting?

21 A I really don't recall. It doesn't refresh my
22 recollection that much. I must have been there, though.
23 Liquidated damages is what they were talking about, right.

24 Q And the apparent or the actual subject matter,
25 principal subject matter of that meeting, was the Route 35

GLP-3

1

contract Section-- A 9B.

2

Q --9B.

3

A Right. The nature of the subject matter is something that I usually wouldn't get involved in; I wouldn't get involved in. But I guess I was there. Maybe he put me down because I stepped in.

4

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7

Q Well, you think you were called in as counsel to the department because Mr. Manzo's attorney was there?

8

9

A That's possible. That could very well be the reason.

10

11

Q We've been referring to--

12

A And that could be, sure.

13

14

Q Just to make the record, we have been referring to Exhibit C-28, just so there will be no doubt about it.

15

A Well, I think that's correct.

16

Q C-28?

17

A Right.

18

Q We were looking at a copy of it before.

19

A Right, that does. That probably was the reason.

20

Q To come back once more for a minute to the July 20th memorandum and the question of pressure that you and I were talking about--

21

22

23

A Oh, yes.

24

Q --a few minutes ago, in your expression

25

respecting pressure, would it make any difference to you

GLP-4 if you knew that that memorandum had been written by
2 Mrs. Helen Mann, Mr. Sherwin's secretary, when he was out
3 of the office, as the result of a stopping into the office
4 of that man named Loughran and saying to her whatever is
5 there about Manzo and she typed it up and on her own sent
6 it over to McCrane? A Oh, of course it would,
7 in one sense. The essential sense, though, is what is
8 communicated in this memorandum obviously concerns the
9 Department of Transportation. It was not sent to Commissioner
10 Kohl. There are allegations of collusive bidding. It was
11 not sent to the Attorney General. It was sent to the Treas-
12 urer, who has no concern with any of these matters. Why?
13 That's the question.

14 Q Do you know whether or not the young lady
15 who drew that-- A Yes.

16 Q --had any awareness or believed that the
17 Secretary of the Treasury McCrane signed all such contracts
18 or had some relation to the contracts?

19 A Possible. That could very well be. But the
20 reason--

21 Q --In any event--

22 A The reason I raised the question was, is, because
23 on the face of it, you know, these matters shouldn't be
24 brought to the Treasurer's attention, they should have them
25 brought directly to the Commissioner's Kohl's attention and

GLP-5

1 to the Attorney General's attention. It was cabinet
2 officer writing another cabinet officer.

3 Q And you don't like that?

4 A Well, it should have been brought to the attention
5 of Kohl and Kugler, not to McCrane. He's got nothing to
6 do with either of these areas. Not only that, but Bill
7 Loughran was known to me as a fund raiser and political.

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G2pg1 1

COMMISSIONER BERTINI: For how long did you

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know that?

3

THE WITNESS: Oh, I knew that for some time.

4

Commissioner Kohl's executive secretary, Miss

5

Marjorie Smith, had come to us directly from

6

Republican State Headquarters. She was a secretary

7

there, and she was made the Commissioner's

8

executive secretary. And when anybody came into

9

the department who I didn't know, she was kind

10

enough to introduce me. She introduced to me

11

Bill Loughran. She introduced me to a lot of

12

Republican Assemblymen. Pete McDonough was in

13

frequently, Assemblyman McDonough. Other people

14

in the party who I didn't know.

15

THE CHAIRMAN: Okay, fine.

16

THE WITNESS: You know, just as a matter of

17

course.

18

Q Now, we had just started on Route 46.

19

A Okay.

20

Q I gather the first knowledge that you had

21

of a Route 46 project occurred on October 20th, when Mr.

22

Hale came in to see you? A Right.

23

Q In your memorandum you say you, quote,

24

received Mr. Hale? A Yeah, he came into the office.

25

Q Is that all that means?

G-2-2 1 A Oh, sure. When you receive a visitor, you receive
2 a visitor.

3 Q Well, did you receive a visitor--

4 A Yes.

5 Q --you expected to come or did he just walk
6 in without word in advance?

7 A No, he called and said he wanted to come down..

8 Q So you knew he was coming?

9 A Oh, sure. I knew him for a long time. He wanted
10 to come.

11 Q In any event, you knew he was coming.
12 You knew what he was coming about?

13 A No, he didn't tell me on the telephone.

14 Q He didn't tell you he was coming about being
15 the low bidder on a contract?

16 A No. He told me when he got there. He said he
17 would like to see me on a matter and I said, "Come on
18 up."

19 Q I assume he called you because you had
20 represented him?

21 A Oh, I had, yes.

22 Q And you knew him, aside from representing
23 him? You knew him socially, did you?

24 A Primarily, I knew him as a Rutgers football fanatic
25 which I happen to be, also. But I had known him

G2-3 1 since '63. The firm I was with in '63 after I left
2 state government represented his companies, or his
3 father, anyway, and we maintained primarily our football
4 relationship for some years. He also gave me during the
5 course of the seven years I knew him about three and a
6 half small matters to handle.

7 Q Well, with respect to the small matters,
8 had you represented him within--were you representing
9 him at the time he came in?

10 A Oh, no.

11 Q What about the bankruptcy proceeding;
12 wasn't that still pending?

13 A Oh, yes. Let me--

14 Q That was--

15 A That was--

16 Q Let's just stay--

17 A Let me clarify the record on that.

18 Q Never mind, now. Just a minute, please.

19 You had represented him in this IBM
20 bankruptcy situation?

21 A No, the IBM was not the bankruptcy situation.
22 It was connected to it. I'll explain that.

23 Q All right. You were representing him in
24 some matter that was related to an IBM bankruptcy matter?

25 A To clarify the record, he had a suit against IBM

G-4 1 and F. W. McGraw Company on a contract he had performed
2 for them. McGraw had gone into a Chapter 11 proceeding
3 in the District Court in Philadelphia. IBM was the owner
4 of the property on which the contract took place.
5 The IBM matter closed out in December of '69.
6 The bankruptcy was still pending.

7 Q You know, all I want to know is whether
8 you represented him as his lawyer in connection with
9 that proceeding?

10 A At one time.

11 Q Well, how long before he came to see you--

12 A February.

13 Q --in October?

14 What's that?

15 A February of that year.

16 Q February of that year?

17 A Yes.

18 Q Of course, you were in the department
19 then?

20 A Yes. We prepared a proof of claim for him.
21 I say "we" because I was associated with another attorney.

22 Q Well, when you use the word "we," do you do
23 that to distinguish between your handling the matter
24 personally and somebody else in the office handling
25 it? A No.

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Q You handled it? A I handled it,
absolutely.

Q So "we" means you?

A Oh, absolutely, in this connection.

Q All right. Then at the time he came in to
see you, did he owe you some money?

A Well, we had--as I say, we had never billed out
the case. He did owe us some money.

1 Q Well, did he owe you some money?

2 A Yes, he did.

3 Q And that was for legal services?

4 A Absolutely.

5 Q How much was still owing, do you remember?

6 A Well, \$600.00.

7 Q I see. And has it been paid?

8 A Yes, it was.

9 Q When? A In '71.

10 Q And about when in '71?

11 A Early in '71.

12 Q That was--had you--no, I'll withdraw that.

13 A Sure.

14 Q Well, now, when Mr. Hale came into see you,
15 he told you then that he was the apparent low bidder on
16 the Route 46 project? A His company was.

17 Q I mean his company. A Right.

18 Q And in that discussion did he tell you
19 that there was a question about an asphalt shortage?

20 A No, he didn't say there was a question about an
21 asphalt shortage. What he said was what I put in my

22 memo; that the department had asked him for assurances

23 with respect to being able to supply the material for

24 the job.

25 Q Was that asphalt? A Yes.

1 A Yeah.

2 Q And they were asking for assurances because
3 there was an asphalt shortage and they wanted assurance
4 that he would have a sufficient supply to do this job?

5 A Certainly, that's so.

6 Q Then we're talking about an asphalt shortage,
7 aren't we? A Well, yes and no, you see.

8 Q All right, all right.

9 A There is some question as to whether or not--
10 and I say this because it's a matter of record--there is
11 some question as to whether or not, indeed, there was an
12 asphalt shortage.

13 Q You think that there was doubt about an asphalt
14 shortage, do you? A Yes.

15 Q Well, I won't take the time to go over that
16 with you now, but-- A Let me say why for the
17 record, counselor.

18 Q Just a minute. Did he tell you that--you know,
19 I have trouble understanding the superior smile that you
20 give me. Do you do that deliberately?

21 A No, sir, we went over this.

22 Q Yes. I still don't understand it and I would
23 like to know why you do it. A I'll tell you why.

24 In connection with Assistant Commissioner Mullen's memoran-
25 dum of October 26th to the Commissioner on the so-called

1 asphalt shortage, we discussed this on our earlier meeting.
2 Commissioner Mullen when he testified in the Sherwin case,
3 said under oath that there was never an asphalt shortage,
4 so the whole thing, your question--

5 Q Who said that? A Commissioner Mullen.
6 Assistant Commissioner Mullen.

7 Q I see. A What he said--

8 Q You heard him say under oath there was no
9 shortage? A I was sitting in the courtroom.

10 Q All right. We'll go on from there.

11 A What he said was that there were recurrent rumors
12 of an asphalt shortage; that he had never told anyone in
13 his life anything else.

14 Q Now, did Mr. Hale tell you that the department
15 wanted assurance from him that he would have a sufficient
16 asphalt supply? A Yes, he did.

17 Q And did he discuss with you letters dated
18 October 14th that he had sent to the department?

19 A No. He said--well, he said he had sent a letter
20 to Mr. Schuyler, or letters, --I don't know--on the
21 assurances. I don't know what was in the letters.

22 Q I see. Did he tell you what you have indicated
23 here, that there was no asphalt shortage?

24 A He didn't say.

25 Q Well, when he told you that the department wanted

1 assurances of his supply of asphalt--

2 A Right.

3 Q --was there no discussion as to whether there

4 was assurance on that? A No, not to my

5 recollection. I just said give Schuyler--you should give

6 Schuyler what he wants. The department wants it, you

7 give it.

8 Q Did Mr. Hale in conversation with you mention

9 that he had made considerable effort to obtain a definite

10 commitment during this severe asphalt cement shortage

11 from the major refineries and suppliers in New Jersey?

12 Did he tell you that? A No, he didn't tell

13 me that.

14 Q Ever? A No. He said that he --

15 Q You-- A No, never.

16 Q Did he ever tell you that?

17 A No, no, never did.

18 Q And, so, that at no time did you find out

19 from him whether he knew or was aware of any asphalt

20 shortage? A To my recollection.

21 Q When he told you the department wanted assurances

22 from him, you told him to give the department whatever he

23 wanted? A Sure, that's right.

24

25

G4-1

1 Q And do you know the Edison Asphalt Company?

2 A I don't know them.

3 Q Well, you know of such a company?

4 A I do now.

5 Q And did you know then, or did Mr. Hale tell
6 you, that the Edison Asphalt Company was his company?

7 A No, he didn't mention Edison Asphalt Company to
8 me.

9 Q Did you know at any time that the assurance
10 of an asphalt supply was given on the letterhead--
11 or should I say, the suggested assurance of the supply
12 was given on the letterhead of the Edison Asphalt
13 Company signed by Mr. Hale--

14 A No, I didn't.

15 Q --as the secretary of that company?

16 A Never knew that.

17 Q What would you think about that as Hale
18 guaranteeing Hale?

19 A Well, I think it's a little self-serving, to say
20 the least.

21 Q Well, you didn't see those letters that day?

22 A No, sir, I did not.

23 Q Did Hale tell you later that he had given
24 further assurances to the department?

25 A Yes.

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Q Do you remember when that was done? When he told you he had done that?

A It was before the 26th, because on the 26th, my recollection is I wrote a memo to the files and that included a conversation with Schuyler where Schuyler said he wasn't happy with the assurances, so it was before the 26th.

Q So it was sometime between--

A The 20th and the 26th.

Q --October 20th and the 26th that he--

A Right.

Q --told you that he had given further assurance?

A Yes.

Q Did you talk to Mr. Schuyler either while Hale was there about the assurance with respect to the asphalt supply or after Mr. Hale left?

A I did speak to Schuyler about it at some point, because that appears in my memo of the 26th, and he said he wasn't happy with it.

Q Well, do you remember what time of the day of October 20th this visit was from him?

A I really don't.

Q Well, if the meeting that we have talked about, that you attended with Dimon, Manzo and so on occurred on the same day at 1:30 in the afternoon, --

Biederman

A Right.

G4-3 1 Q --was it likely that your meeting with Hale
2 was in the morning?

3 A It could have been either then or later in the
4 afternoon, much later in the afternoon.

5 Q You don't remember?

6 A No.

7 Q And you don't recall whether you talked
8 to Schuyler that day or later, but you know you talked
9 to him and Schuyler said that he was not satisfied--

10 A That's right.

11 Q --with the assurances that Hale had
12 given-- A Yes.

13 Q --about the supply of asphalt?

14 A Absolutely, right.

15 Q By the way, did Mr. Hale in the October 20th
16 conversation with you make any mention that the department
17 also wanted assurance with respect to whether Centrum
18 had adequate equipment to do this job?

19 A No, never mentioned equipment at all.

20 Q In any of your contacts with this matter
21 did you find out from anybody, for example, Stelljes,
22 that there had been an inquiry as to whether Centrum
23 had enough equipment to do the job of its own?

24 A No, I never discussed the matter with Mr. Stelljes
25 at all in any way or in any particular.

G4-4 1 Q Now, did you talk to anybody else after you
2 talked to Hale and Schuyler about this?

3 A The Commissioner.

4 Q In your memorandum of October 30th--did we
5 mark that? I guess we did with Commissioner Kohl.

6 After Mr. Hale left you, you investigated the
7 matter, did you?

8 A That's right.

9 Q And after you had made whatever this
10 investigation was, then you went to see Mr. Kohl?
11 Or Commissioner Kohl.

12 A No. The investigation was, going to see Commissioner
13 Kohl.

14 Q Well, what about Schuyler?

15 A What?

16 Q What about Schuyler? Was that part of your
17 investigation?

18 A Oh, I don't know whether I had spoken to him
19 before I went to see the Commissioner or afterwards.
20 I really don't recall that, but I did call for the
21 newspaper clips.

22 Q Well, let's get that settled.

23 A I don't recall.

24 Q You don't know now whether you talked
25 to Schuyler first and then Commissioner Kohl?

G4-5

1

A Yes.

2

Q Or Commissioner Kohl first and then Schuyler?

3

A My impression is that I spoke to Schuyler later

4

because the October 30th memo was taken from the memo

5

written on October 22nd.

6

Q Well, let's look at the October 30th memo

7

marked Exhibit C-8.

8

A Right.

9

Q And in the second paragraph of that memo

10

you say, do you not, "Schuyler advised me that the

11

contract would not be awarded until the contractor had

12

assured him"?

13

A Right.

14

Q Then you said, "I later discussed the matter

15

with you"? A Then I did speak with him before

16

I spoke--

17

Q The "you" referred to there is Commissioner

18

Kohl? A Yes, it would be.

19

It might be helpful if you have the October 22nd

20

memo, because that's closer in time.

21

Q I've got that. I'll get to it.

22

A Okay. Yes, that refreshes my recollection. I did

23

speak to Schuyler.

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Q Then did you discuss it at some length with

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Commissioner Kohl that day?

G4-6 1 A No great length. We discussed it.

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1 Q At that discussion the Commissioner told you
2 that he had been requested by the Secretary of State not
3 to award the contract and to reject all bids so that the
4 sectioned bidder represented by John E. Dimon, State
5 Republican Chairman, would have another shot at this
6 contract? A Yes.

7 Q And you also noted in this memorandum to
8 Kohl of October 30th that in that conversation you
9 discussed, also, while the low bidder was above this
10 department's estimate, he was within the narrow percentage
11 above said estimates usually used by the department as
12 its criteria in awarding bids and would, therefore, if
13 this were the normal matter receive the contract.

14 A Yes.

15 Q And also you discussed in addition the
16 department, both publicly and privately--see the newspaper
17 article attached-- represented that the project would be
18 built and construction to start over a month ago; that
19 was discussed? A Yes.

20 Q And then after discussion with you, then
21 you advised that the award would--and underline would--
22 be made to the low bidder, Centrum Construction Company,
23 and that Mr. Sherwin's request would be rejected?

24 A That's true.

25 Q Is that clear in your mind, no doubt about that,

H-1-2 Biederman

1 he told you that at that discussion that the
2 award would be made to the low bidder and Centrum would
3 get the bid and that Sherwin's interference would be
4 rejected? A That's what he told me.

5 Q You believed that?

6 A Yes.

7 Q And I suppose that set your mind at rest about
8 this matter at that moment, in any event, didn't it?

9 A At that moment, yes.

10 Q And did you go back to your office from
11 there? A I assume so.

12 Q I suppose you had faith in the Commissioner's
13 word at that time, didn't you? A Well, the
14 Commissioner was known--

15 Q Just say yes or no for the moment. Did you
16 have faith in his word? A Yes.

17 Q Did you believe him then when he told you--

18 A I believe that's what he was going to do at the
19 time, yes.

20 Q And did you go back to your office and call
21 Mr. Hale and tell him it's all taken care of, that--

22 A No, I didn't call Mr. Hale at any time.

23 Q Are you sure about that?

24 A Yes. He called me one time to tell me about the
25 assurances, but I don't recall calling him at all.

H-1-3

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Q We discussed that at some length yesterday with Mr. Hale as to whether he had gotten a telephone call from you sometime before the 26th, when he got another word that there had been a reversal of the bids, that the bids had been rejected, and he was unclear about it. He thought that he may have had a telephone call from you about it, because he said that on October 26th -- or he got the word on October 30th that the bids were going to be rejected, it came as quite a distinct shock, he said.

Does that refresh your recollection at all as to whether you talked to him on a telephone again to tell him, Well, it's all over, you don't have to worry anymore, the Commissioner has told me that you are the low bidder and he is not going to pay any attention to Sherwin?

A When he called to tell me about the further assurances, if that was after the meetings with the Commissioner, it would have been natural for me to call him, but I don't recall it.

Q You then had no further conversation with Mr. Hale until after the Commissioner had reversed himself and decided that all the bids would be rejected; is that it?

A I don't think I had any further conversation with him.

Q No more at all about it before you left the department?

A I think he called to

H-1-4

1 Biederman
2 tell me he was sending me a memorandum, and that's the
3 only call I got. I don't know the date on his memorandum,
4 I don't recall it. But it would be before the date on
5 that. He said he called up to tell me he was sending me
6 a memorandum.

7 Q The date on the memorandum is October 30th?

8 A Then he called before October 30th to say he was
9 sending this to me.

10 Q I show you C-26, which apparently his memorandum.

11 A Yes.

12 Q And you think he called you before that, and
13 as the result of that call you told him to prepare this,
14 prepare a memorandum?

15 A No. I think at our initial meeting I told him--
16 He made some serious allegations. I said, I want you to
17 put them in writing to me.

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H2egl 1 Q In the second conversation did you tell him
2 then--you see, this was before the commissioner had
3 decided to change his mind and reject all of the bids.
4 I'm trying to find out to the best of your recollection
5 whether you relieved his mind--this is your former
6 client and football companion--by telling him that the
7 commissioner told you that he was going to get this
8 contract?

9 A No. I think the contrary is the case. Actually,
10 he called to say he was sending that thing to me, and
11 he was quite agitated and steamed up because he indicated
12 Schuyler told him the bid was going to be thrown out.

13 Q Yes. But you think he may have been agitated
14 and upset on October 30th, when he prepared this
15 memorandum, when he talked with you, because he had
16 been told that the bids were going to be thrown out and
17 the agitation came from the fact that he was upset at
18 the changes, since somebody had told him that he was going
19 to get the contract?

20 A All I know is he was upset at that point in time.
21 That was, I guess, after the 26th. I knew the bids were
22 going to be thrown out.

23 Q Well, on the 26th you knew the bids were
24 going to be thrown out?

25 A Sure.

H2-2

1 Q But between October 21st which is the day
2 after Hale came to see you, when you talked to the
3 Commissioner and he assured you Centrum was going to
4 get it, between that day and October 26th, you were
5 satisfied, were you not, that everything was happy?

6 A Well, I wouldn't say everything was happy. I was
7 satisfied that the commissioner had told me what he
8 told me.

9 Q And you were very happy to believe that
10 what he said was true and that you didn't have to worry
11 about it?

12 A I don't think happiness entered into it at all.

13 Q Well, maybe I shouldn't use the felicitous
14 word for you.

15 Anyway, you believed between October 21st
16 and October 26th that Centrum was going to get the
17 contract as the low bidder and Sherwin's efforts, whatever
18 they were, were going to be rejected?

19 A In a sense that's so.

20 Let me put it this way--

21 Q Well, let's --

22 A I haven't finished my answer.

23 Q I know. But I don't want you rambling
24 around. I'd like to have responsive answers, if you
25 please.

H2-3

1 A This is responsive.

2 Q We will get to it in a minute.

3 A Since we are all here to find the truth, I would
4 like to put this in the sequence it belongs.

5 I gave my client advice, and I recorded that advice
6 in the November 4th memorandum. The October 22nd, that
7 same advice did not change. The memo of the 30th is the
8 same as the 22nd, as I indicated to the Commissioner.
9 When a client takes your advice, I guess counsel is supposed
10 to be satisfied that the client listens to him.

11 Q What you're saying to us now is that you told
12 the commissioner that he ought to do what you considered
13 to be right and give the contract to Centrum, and he said,
14 All right, that's what I'm going to do?

15 A To the contrary. My memo doesn't read that way at
16 all, Counsel. Let's be very clear about this, very clear.
17 My memo poses to the commissioner what the true facts
18 of the matter were. I gave him an alternative, and he
19 alone knew what the facts were, because in Mr. Sherwin's
20 memorandum to him Mr. Sherwin does not state the reasons
21 for his request. He says call me on the 13th and I will
22 tell you what those reasons are. And the Commissioner
23 never told me what the reasons were. He alone knew what
24 the reasons were.

25 Q Do you--

H2-4

1 A Can I finish my answer, please, Counsel?

2 Q No, because I am not going to let you wander
3 all over the world to finish the answer.

4 You're talking about a memorandum of October
5 22. Are you talking about the October 22 memo or October
6 30?

7 A October 22 memo was shown to me at the trial, that's
8 when it was shown to me and marked as an exhibit.

9 THE CHAIRMAN: We will take a lunch recess
10 now.

11 [A lunch recess was taken.]

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(After recess.)

BY MR. FRANCIS:

Q Let's see if we can't reasonably straighten out this problem of the 10/20--October 22nd memorandum--

A Right.

Q --and its relation to the October 30th memorandum. A Right.

Q You looked at the October 30th memorandum, did you not? A Yes, sir.

Q And the last two paragraphs of it speak of October 26th events? A Yes.

Q So that I think we agree that the October 30th memorandum couldn't possibly be a duplicate of the October 22nd memorandum? A No.

Q Certainly as far as those last paragraphs are concerned? A I think the last two paragraphs were added. I think, but I have to take a look at the other one. I'm pretty sure. Certainly the first paragraph you said, no question about it.

Q But you want to look at the other one?

A I would like to look at the other one.

Q How could a reference to October 26th and what happened on October 26th possibly be in your memorandum of October 22nd? A Oh, it couldn't.

That paragraph is all right. I don't know about

1 whether the last one was in the October 21st--2nd
2 one or not.

3 Q Let's go on from there.

4 A Right.

5 Q I think the fact is, is it not, that the October
6 30th memorandum was a chronology of the events down
7 to that time? A Yes, sir.

8 Q Because as I recall, you probably recall, that
9 that's what you said in the trial in Freehold?

10 A I think so.

11 Q Let me refresh your recollection about that.

12 "Question: Now in the memorandum of October 30th do
13 you set forth --what do you set forth in that memorandum of
14 October 30th to the Commissioner?

15 "The Witness: It was a chronology."

16 So, now, let's take the 30th memorandum for a minute.
17 You will recall I inquired of you as to your conversation
18 with the Commissioner on October 21st or after you had
19 talked to Hale--

20 A Yes, sir.

21 Q --was the next day and at that time you said
22 that he was going to award the contract to Centrum, the
23 low bidder, and disregard what Sherwin's request was?

24 A Yes.

25 Q And I gather we probably mentioned this before,

I-1-3

1 but in the October 30th memorandum, you referred to
2 that conversation with the Commissioner, do you not?

3 A Yes, I did.

4 Q And you say that the Commissioner told you then
5 that he would award the contract, and you have underlined
6 that? A Yes.

7 Q You did that for emphasis?

8 A I guess so.

9 Q I presume. So that sounds as though you were
10 pretty well convinced then that you had convinced the
11 Commissioner that he should do what he agreed to do, namely,
12 award this to Centrum? A Now, that's not
13 what I originally told him verbally and that's not what
14 I say in the memorandum.

15 Q Now, let's just look at the memorandum.
16 "After discussion with you, you advised that award would
17 be to the low bidder, Centrum Construction Company, and
18 that Mr. Sherwin's request would be rejected"?

19 A Right.

20 Q Is that correct? A Absolutely.

21 Q And that's what he said to you?

22 A That's what he said to me.

23 Q All right. That's all I want to know.

24 And then continuing with the 30th memorandum,
25 down to the end of that paragraph, the subject matter

1 deals with your October 22nd memorandum?

2 A I believe so, yes. I believe so. I'll have to
3 look at that.

4 On the previous answer when I said, "No," that
5 wasn't to that question. That was to the fact that I
6 convinced him of something, that the memo doesn't speak
7 in those terms.

8 Q Well, whether you convinced him or not,--

9 A Yes.

10 Q --he indicated that he had reached a decision
11 to award--

12 A That's right.

13 Q --to the low bidder Centrum.

14 A That's right.

15 Q And to ignore what Sherwin's request was?

16 A That's what he concluded.

17 Q And what we now say about it is consistent
18 with your underlining of the word "would" for emphasis?

19 A Yes, sir.

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Jegl

1 Q After the conversation with the commissioner
2 that we have been talking about, did you talk to Mullen,
3 for example, any further? When, if ever, did you talk
4 to him, or when next?

5 A I talked to him I think on the 25th or 26th.
6 It's contained in my October 26th memo what we said.
7 That's about the only time I spoke to him, I'm pretty
8 sure.

9 Q I show you your memo of October 26th for the
10 file. Is this the memo that you talk about?

11 A Yes, that was the 26th.

12 Q And then on October 26th, Assistant Commissioner
13 Mullen advised you that day that Schuyler was not
14 satisfied with the contractor's assurance regarding a
15 sufficient supply of asphaltic material?

16 A Yes.

17 Q And then he said that the job was to be
18 amended in any case and that for both of those reasons
19 the contract would be rebid?

20 A No. The Commissioner said that.

21 Q When you talk about Assistant Commissioner
22 Russell Mullen, and then in the next sentence you say the
23 Commissioner stated, you were talking about two different
24 persons?

25 A Yes. Mullen is Assistant Commissioner. When I said

J-2

1 then, I meant the Commissioner Kohl, the commissioner
2 stated, that's Kohl.

3 Q Then did you talk to him after you talked
4 to Mullen?

5 A Yes. I talked to them both that day.

6 Q Both that day.

7 Also, in this memorandum, at the bottom of it,
8 do you remember that you said you "advised the Commissioner
9 that at our meeting with the Governor on Tuesday, October
10 27, 1970, we should straighten Sherwin out about the entire
11 matter"?

12 A That's right.

13 Q Did you have that meeting?

14 A I didn't attend that meeting. There was a meeting,
15 but I didn't attend. It was on an unrelated subject.

16 Q Who told you there was a meeting?

17 A The Commissioner did.

18 Q The Commissioner told us yesterday there
19 was no meeting. Now, how clear is your recollection?

20 A I know I didn't go to the meeting. He went downtown.

21 Q So because he went downtown, you think that
22 he did have this meeting?

23 A We had a scheduled meeting. Whether it came off
24 or not I don't know. I know I didn't go.

25 Q Was it a scheduled meeting to discuss routine

Biederman

J-3 1 department matters at which you--

2 A Yes. We thought we would use that occasion to bring
3 the Sherwin matter up because it related not only to
4 this but to the previous, the July 20 letter.

5 Q In any event, you didn't go there, and you
6 don't know what happened there?

7 A I have no idea.

8 MR. FRANCIS: May we mark this October 26
9 memorandum.

10 [Memorandum dated October 26, 1970, from Mr.
11 Biederman, received and marked as Exhibit
12 C-34 in evidence.]

13 THE WITNESS: I don't know what the date
14 was, whether it was a Tuesday. Whatever the memo
15 says, that's my best recollection.

16 Q After the talk of the 26th with Mullen
17 and, as you say, with the Commissioner, did you get
18 in touch with Hale and tell him that Schuyler wasn't
19 satisfied with his assurance and he better give him anything
20 else?

21 A No.

22 Q Then on the 26th when you had the conversation
23 with Mullen, how did that come about? Did he call you
24 or did you drop in on him? Up to this point you expected
25 the award was going to go to Centrum.

J-4

1 A Yes, until the 26th, when the commissioner told me
2 the thing was--

3 Q Did you talk to Mullen first or the commissioner
4 first?

5 A I don't really recall.

6 Q Now, to come back for a moment to the October
7 30th memorandum, in chronological order, the top of the
8 second page, where the underlined word would be, continuing
9 in that paragraph, after the underlined word would,
10 "Later that day I discussed this matter with the
11 Attorney General and advised him that in my view Mr.
12 Sherwin's action was in derogation of policy of the
13 bidding statutes. I further advised the Attorney General
14 to take the matter up with Mr. Sherwin. His reply was
15 that he would not do so but thought the commissioner
16 could do so."

17 That's what happened?

18 A That's what happened.

19 Q And then the same day that the commissioner
20 agreed with you to award Centrum as the low bidder,
21 you talked--or later that same day, you talked to the
22 Attorney General, told him what appears in chronological
23 order in the first part of this memorandum and that you
24 thought he ought to speak to Mr. Sherwin about it?

25 A Yes.

J-5 1 Q And he said--because I think we have discussed
2 a little more elaborately earlier--he said, well, that's
3 Kohl's department, it's his problem, tell him to talk
4 to Sherwin about it?

5 A Those were not in his very words. But he indicated
6 Kohl could discuss it with him.

7 Q Did he indicate to you that he felt that this
8 was Kohl's department?

9 A That's the impression I got. I don't think he
10 specifically said that. He said your commission could
11 do that, could do so.

12 Q Was his language limited to that?

13 A Pretty much, yes. He said, I think John Kohl
14 could do that.

15 Q Did you ever speak to the Attorney General
16 again?

17 A On this, no.

18 Q Now then, between the 22nd, when you dictated
19 this memorandum, and the 26th nothing further happened
20 as far as you were concerned?

21 A No.

22 Q Then on the 26th you learned from both Mullen
23 and the commissioner that the commissioner changed
24 his mind and he was going to reject all the bids and award
25 the contract?

J-6

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A Right, for the reasons I think he stated to me
which appear in the memo of the 26th.

K-1-1

1 Q The conversation that you had with him, with
2 the Commissioner on the 26th, was that in person or by
3 telephone? A By telephone.

4 Q I see. And in that conversation that's when he
5 told you he was going to have the bids rejected?

6 A Well, I'm sorry. You're talking about Commissioner
7 Kohl?

8 Q Commissioner Kohl.

9 A No, in person.

10 Q In his office?

11 A I think either in his office or as he was coming
12 past mine.

13 This meeting with the Governor was scheduled
14 for the next day, and I caught him and reminded him that
15 we were going to go down tomorrow and discuss this with
16 the Governor, you know, after the other meeting was over,
17 or the meeting on the other subjects was over. And that's
18 when it came up and he said he'd decided to reject the bids;
19 to reject the bids, to throw them all out.

20 EXAMINATION BY
21 MR. SAPIENZA:

22 Q Is that all he said in that conversation?

23 A Yes, pretty much. He said, "I changed" --he didn't
24 say "I've changed my mind." He said, "I've decided to
25 reject all the bids," and for these reasons, what I put

1 in the memo.

2 He said in any -- I said, "Well, you know, are
3 we going to discuss this tomorrow at the Governor's office?"

4 He said, "Oh, yes, and I've decided to reject all the
5 bids because--"and there are the reasons. You know, that
6 was that.

7 EXAMINATION BY
8 MR. FRANCIS:

9 Q Did you see Commissioner Mullen's memorandum
10 outlining the reasons for rejection?

11 A Not until the 2nd or the 30th or whenever, after
12 I had talked to him with my memo of the 30th. I hadn't
13 seen it until that point in time.

14 Q Did you go over the memo with him?

15 A No, no.

16 Q You were aware of the reasons set out in
17 the memo?

18 A When I read it, I was
19 aware of the reasons. Some of the reasons were used by
20 the Commissioner when he spoke to me. Others were not.
21 And still others were in the press release which, you
22 know, the department was telling the world why it was
23 rejecting the bid. Some of those reasons were there and
24 some were not. In other words, we had three different
25 points at which the bids were being thrown out and we
had different reasons on each occasion. Some were the

1 same, but a couple of different--a couple were
2 dropped and a couple were added. It's all there.

3 Q Did you know Mullen and Schuyler pretty well from
4 your connection, association with them in the department?

5 A Oh, yes. I've known them since I've gone to the
6 department. In fact, Mullen interviewed me when I first
7 came to the department. He was Acting Commissioner at the
8 time.

9 Q Were they good men in their field?

10 A Well, for a lawyer to judge the qualifications,
11 of engineers, is a little difficult.

12 Q Well, let's put it in different light. Did
13 you trust them? Did you think--

14 A When you say "trust,"--

15 Q Did you think the statements in Mullen's
16 memorandum were made by in good faith?

17 A Frankly, I did not.

18 Q You did not? A I did not.

19 And I'll tell you the reason why. Both --

20 Q Well, I simply asked you whether--

21 A Now, I did not, not at that time.

22 Q And when Schuyler said to you that he
23 wasn't satisfied with the assurances that Hale had
24 given about the availability of a supply, did you believe
25 that?

A Yeah, that, you know, I did.

1 Q But you mean you believed his opinion and
2 trusted him when he told you that, but you did not feel
3 the same way about Mullen? A It was an opinion
4 I couldn't question. It was a subjective opinion based
5 upon his professional expertise.

6 Q Yes. But did you--

7 A Supposedly.

8 Q But did you know that the six reasons set
9 out in the Mullen memorandum came from Schuyler?

10 A No, I did not know that.

11 Q If you knew that, would it change your
12 opinion as to whether those grounds stated by Schuyler
13 were trustworthy? Stated by Mullen, I beg your
14 pardon, were trustworthy.

15 A Well, some were and some were not, and I'll go into
16 each reason if you would like because it's--

17 Q The question--

18 A Yes.

19 Q The question I put to you was: If the six
20 reasons came from Schuyler--

21 A Yes.

22 Q --whom you said you trusted, you would accept
23 them, would you?

24

25

K2-1

1 A If they pertained to an engineering judgment,
2 I would accept them. If they pertained to a legal
3 judgment, I would not because for some reasons the
4 engineers in our department frequently made legal judgments.
5 I think we discovered forty-two copies of Title 27 in
6 the department when I took over as chief counsel, all
7 of them in possession of engineers who apparently
8 frequently referred to them without troubling counsel
9 about it. We removed those copies and from thence forth
10 they consulted a deputy with respect to legal decisions.
11 But on engineering decisions, absolutely. On non-
12 engineering decisions, no, definitely not.

13 Q Now, in the memorandum of October 26th--

14 A Right.

15 Q --that you saw--by the way, it is the fact
16 that the first time you knew that the commissioner had
17 changed his mind and that the bids were going to be
18 rejected was when you either saw a news release about it--

19 A Right.

20 Q --or saw Mullen's memorandum?

21 A Oh, no. The first time was either the news release
22 or when he told me on the 26th. I always thought it was
23 the news release, but I don't remember the day I saw
24 it.

25 Q I know. But my question is: Now, was the

K2-2 1 first knowledge of the change in decision that came to
2 you your seeing the news release?

3 A I believe so.

4 Q All right. A That's my best
5 recollection.

6 Q Well, then, you saw the news release and
7 knew of the decision to reject all of the bids before
8 you talked to Mullen on the telephone?

9 A That may be. I don't know. I don't recall that.

10 Q Well, I won't spend the time looking through
11 these records.

12 A I really don't recall.

13 Q But you recall saying--

14 A Yes.

15 Q --that the first thing you knew about it
16 was when you saw the news release?

17 A Yes, that's my impression, that was the first time.
18 It crossed my desk as a matter of routine.

19 Q Did you talk to Kohl? You said you talked
20 to him on the 26th after you found out about the
21 rejection.

22 A I spoke to him. I spoke to him on the 26th.
23 I still don't know the date I found out about the news
24 release. I'm unsure about that, because it wasn't dated.
25 The release I saw, it had "For Release," and then they

K2-3 1 had the news release.

2 Q It had a little more than that.

3 It had "For Immediate Release," didn't it?

4 A "For Immediate Release," right, right.

5 Q And-- A I don't remember what day
6 it was.

7 Q And Schuyler's memorandum was dated the 26th,
8 of course, wasn't it? Mullen's memorandum was dated
9 the 26th?

10 A Yes, it was. That turned out to be dated the
11 26th.

12 Q After you talked with Mullen that day
13 and Kohl-- A Right.

14 Q --did you do anything between then and October
15 30th?

16 A Well, I had expected the next day to see the
17 Governor on this thing, but between that period we didn't.
18 Did absolutely nothing.

19 Q There was no further discussion about it
20 with anybody that you had?

21 A Not that I recall.

22 Q The next positive action that you took
23 was the preparation of the October 30th memorandum;
24 is that correct? A Yes.

25 Q And that memorandum amounted to a completion

K2-24 1 of the chronological events down to that date?

2 A Yes, yes.

3 Q And the memorandum was directed to Commissioner
4 Kohl, was it?

5 A Yes, it was.

6 Q And I show you the copy that we have marked
7 Exhibit C-8 here and ask you if this is your recollection
8 of the form in which that memorandum appeared.

9 A It looks like it to me.

10 Q Well, what I'm really trying to find out
11 is if that's the form in which you delivered it to the
12 commissioner.

13 A Well, of course it was an original I delivered to
14 him, you know, with the blue type.

15 Q Well, except for the fact that this is a
16 photocopy, or a Xerox copy or whatever, it's the same
17 document that you submitted?

18 A Yeah. It's dated October 30th. It looks like it
19 to me.

20 Q The original, then, had no copies to anybody
21 on it?

22 A Oh, no, absolutely not.

23 Q Had not? A No, it had not.

24 Q You notice that the copy that you have
25 been looking at, for example, to aid you while we

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were going through this questioning, has cc to Evan Jahos?

A "bcc."

Q "bcc"? A Right.

Q "bcc" means blind copy?

A Yes, it does.

Q Is the significance of blind copy this: that when you send out an original and you don't give any indication, either deliberately or inadvertently, to the named receiver of it that copies are going anywhere, you just don't put anything on, but when you send a copy to somebody else later, then you mark "bcc" meaning blind copy--

A That's right.

Q --to the receiver?

A Yeah. It indicates to him that the person who received it doesn't know that he's getting it.

K3-1

1 Q I see. And in this case did you have any
2 particular reason for not indicating to the Commissioner
3 that you were going to send copies to anybody else?

4 A Yes, I did.

5 Q What was that? A Well, there are
6 several reasons. First, during this time, this point
7 of time, the department, as counsel knows, had just
8 inaugurated a policy of requiring contractors to have
9 moral integrity as well as something else. This had
10 come on the heels of Mr. Stern's conviction of, I guess,
11 the Newark City government, and the department was very
12 aware of that because the Commissioner originally did not
13 want to do that. He was quoted in the newspapers on
14 a Friday as saying, as far as he was concerned anybody
15 named in the Addonizio trial that did business with the
16 department, that had nothing to do with the department
17 and that would be the end of it. On Monday he reversed
18 himself after a call from downtown, and, indeed, a memo,
19 and we prepared to proceed in this new area of law. So,
20 we were acutely aware of contractors and payoffs and
21 corruption and everything else.

22 Now, right on the heels of all of this we get
23 this situation where the Commissioner gets an instruction
24 from the Secretary of State, for reasons he wouldn't
25 divulge to me. Mr. Sherwin's memo to the Commissioner

1 at his house, said, "Call me and I'll tell you the
2 reasons on the telephone." He never put the reasons in
3 writing and the Commissioner for the first time in my
4 experience with him, the only time in my experience with
5 him, refused to divulge the reasons Mr. Sherwin gave to
6 him. In fact, I never learned the reasons until the Sherwin
7 trial.

L1-1 1

THE CHAIRMAN: Did you think of all this at the time you instructed the secretary to put BCC on there?

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BY MR. FRANCIS:

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THE WITNESS: Yes. I had just gone through the Addonizio transcript myself. Mr. Stern was kind enough to send it to me, because we wanted to pick out the names of contractors involved up there. So it was in this frame of mind that Hale walked into my office that day and Hale told me--he gave me a triple hearsay statement. Triple hearsay a lawyer disregards. But nevertheless, he said that one of his employees had said that Manzo had been heard to say that he was having the bid thrown out; and the commissioner tells me the same thing, that Sherwin wants the bids thrown out.

I just wanted to be safe and sure and do everything that should be done. And for that reason I put the BCC on because the commissioner had reversed himself on this thing. He never gave me the reasons Sherwin gave to him, and I sent it to Mr. Jahos, who was in charge of the criminal investigation.

Q All of which is just said is intended to

L1-2 1 indicate you didn't trust Commissioner Kohl?

2 A At that point in time?

3 Q At that point in time you didn't trust him?

4 A That's right.

5 Q And so later, without any word to him,
6 you said you marked a copy of this to Mr. Jahos?

7 A I did more than that.

8 Q Don't worry. I will let you tell it all.

9 Did you deliver the copies of the 30th
10 memorandum to anybody else?

11 A Yes, I did.

12 Q Who?

13 A To the Governor's personal counsel, Mr. Garven.

14 As I have testified earlier, I had expected the previous
15 week to have discussed the whole matter with the
16 Governor, with the Commissioner. And not having direct
17 access to the Governor, I went to Mr. Garven, whom
18 I had a good relationship with at the time.

19 Q The question was, did you deliver the
20 October 30th memorandum to anybody else?

21 A Yes. Judge Garven and to Mr. Jahos's office.

22 Q When did you do that?

23 A On November 4th is my recollection. The only reason
24 I say November 4th, as far as I am concerned, it could have
25 been the 3rd or the 4th, but I did see a notation in Mr.

L1-3

1 Stern's file which indicated again in writing, in ink,
2 that somebody put down that on November 4th I discussed
3 this matter with Judge Garven. So that refreshes my
4 recollection to the extent that I think it was the 4th.
5 That notation was attached to this memo.

6 Q In any event, your recollection with respect
7 to Mr. Jahos is that it was either on the 4th or a day--

8 A It was the same day, because I went from Judge
9 Garven's office to Mr. Jahos's office.

10 Q And that was on November 4th?

11 A That's my recollection. That's why I felt sure
12 that this memo pertained to Route 35, because, you know,
13 it's the same day.

14 Q This memo, you're talking about the November
15 4th, from the Attorney General to you?

16 A That's right.

17 Q As a matter of fact, with respect to the
18 delivery of the memo to Jahos, do you recall the
19 answer you filed in the ethics proceeding in Union County?

20 A Yes, I do.

21 Q And in that you said that the information
22 that you had given to Mr. Stern had been in Mr. Jahos's
23 possession since November of 1970, which means that
24 you delivered this memorandum to him, or to somebody for
25 him, in November and not before that?

L1-4 1 A Yes, sir, in November. November 4th is my best
2 recollection.

3 Q Did you see Mr. Jahos?

4 A No. He wasn't in. So I left it with his secretary.

5 Q Had you called him on the telephone before
6 you went over there?

7 A Yes, I had.

8 Q Did you have any conversation with him?

9 A Briefly. I just said that I have a package that
10 I thought you would find interesting concerning a
11 cabinet officer, and I previously discussed the matter
12 with the attorney general and I was going to send it over
13 to him.

14 Q So when you went over there, he wasn't
15 there. You left it with his secretary?

16 A Yes.

17 Q How many packages did you make up?

18 A I had two, one for Judge Garven and one for Mr.
19 Jahos.

20 Q Did you make the one package up expressly
21 for Judge Garven?

22 A No. It was for Mr. Jim Petrella. Jim was my
23 liaison in the governor's office.

24 Q So when you made this second package,
25 you intended to give that to Mr. Petrella?

L1-5 1 A Originally, yes.

2 Q And in fact, did you have Mr. Petrella's
3 name, BCC, Mr. Petrella?

4 A Yes.

5 Q But you did not actually deliver it to him?

6 A Absolutely not.

7 Q You're sure of that?

8 A Yes.

9 Q Do you remember your conversation with Bruce
10 Goldstein when you first went to the United States
11 Attorney's Office?

12 A Yes.

13 Q Did you tell him you delivered it to Mr.
14 Petrella?

15 A I don't think I did. I said I delivered it to
16 Mr. Garven. This is my recollection.

17 Although, let me clarify that. I told my secretary
18 to send these. And even though I went down and delivered
19 them myself, I don't know whether she actually sent
20 them anyway or not. So I don't know whether that
21 happened or not. But it may have, I don't know.

22 Q Well, that really wouldn't be an answer to
23 my question.

24 Did you tell Mr. Bruce Goldstein that you
25 had delivered the package to Mr. Petrella?

L1-6 1

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A No. My recollection is that I didn't, that I delivered it to Mr. Garven.

3

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Q If he says so in his memorandum of the conversation with you, he was in error?

5

A He would be, in my recollection.

6

Q Would you tell us what was in the package?

7

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A All the memos we have looked at, except the one of the 22nd, and the ones of the--

9

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Q Let's see if we can get the one of October 22--

11

A It was not in there.

12

Q That was not in there?

13

A I don't think it was there.

14

Q The one of October 30th was there?

15

A Yes.

16

Q And what else?

17

A Mr. Mullen's memorandum to the commissioner.

18

Q Recommending the rejection of all the bids?

19

A That's right. And the newspaper clips.

20

21

Q And was Mr. Mullen's memorandum of November 4th--

22

Let's hold this for a minute.

23

A Sure.

24

25

Q Your memorandum of October 30th went to the Commissioner.

L1-7 1 A Yes, sir.

2 Q Did you deliver that one to him?

3 A Yes.

4 Q Yourself?

5 A I walked it over. Our offices are right next to
6 each other. I went in with it.

7 Q I gather then that you did not telephone
8 him and tell him the substance of the October 30 memorandum?

9 A My recollection is that I handed it to him.

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1 Q Do you remember whether or not he was home ill
2 or was he taken home ill on the 30th?

3 A My recollection is that he was. In fact, he was ill
4 when I spoke to him.

5 Q You delivered this to him while he was ill,
6 but before he was taken home? A That's my
7 recollection. He was ill on and off during that whole
8 period. Indeed, he did go to the hospital I think for
9 a week. I am not quite sure on the dates. My recollection
10 is that he was ill on that day, but I am not sure.

11 Q Did you actually hand him a memorandum that
12 day of the 30th?

13 A Yes, sir.

14 Q Now, you talked to him again on November 2nd?

15 A I'm not sure which day I actually spoke to him.
16 The memo was dictated on the 30th, and there is that date.
17 I initialed it that date. I believe it was on Friday.
18 The Commissioner might have gone by then and--

19 Q Your November 4th memorandum to Commissioner
20 Mullen says you discussed it on Monday, November 2nd.

21 A Yes.

22 Q So it was November 2nd?

23 A Yes.

24 Q Was he home then? A I don't
25 believe so. I believe I gave it to him in his office.

1 Q You say you handed the October 30th memorandum
2 to him in his office on Friday? A Yes.

3 Q And then you talked to him again on November
4 2nd? A No. We didn't have two separate
5 conversations. We had the one conversation.

6 Q Well, did you hand him the October 30 memorandum
7 on November 2nd? A Yes. You have refreshed
8 my recollection. That is the day.

9 Q So we have it perfectly clear for the record,
10 that the October 30th memorandum was given to him on
11 November 2nd, Monday? A Yes. That is
12 now my recollection.

13 Q Your recollection being refreshed with respect
14 to that now, do you now remember that he was taken home
15 ill on the 30th? A No. He was taken home ill I
16 thought the same day that I gave him the memo.

17 Q But your recollection now says that it was
18 on November 2nd? A Yes. That's what the
19 memo says, that is the day it happened, I think.

20 Q Then on November 2nd, you discussed the
21 matter again with him at some length, didn't you?

22 A No. We had one--I handed him the memo, he read
23 it, we discussed it and he gave me an instruction and
24 that was it.

25 Q Would you have the conversation on the 2nd

L-2-3

1 Biederman
2 after you gave him the 30th memorandum, you talked to
3 him about his decision to reject?

4 A That's right.

5 Q Did he tell you in that conversation that
6 he had talked to Schuyler and that he had the last few
7 days told Schuyler to dig in, get whatever information,
8 if there was any information, to firm up his decision to
9 reject the bids? A No, he did not, not to my
10 recollection.

11 Q Did he tell you that he had talked to
12 Schuyler at all after the 26th and before you talked
13 to him on November 2nd? A My recollection
14 is that he did not.

15 Q Did he say to you on the 2nd that he had
16 then made up his mind to reverse himself and award the
17 contract to Centrum? A He told me
18 to tell Mullen to award the contract to the low bidder
19 on the 2nd.

20 Q Was that before he read the October 30th
21 memorandum? A No. It was after
22 he read it, and then we discussed it.

23 Q And then reversed himself and directed the
24 contract to be awarded to Centrum?

25 A He didn't say that. He said, I think the contract
should go to the low bidder.

Biederman

1 Q You said your recollection is that that
2 occurred in his office? A That's my
3 recollection.

4 Q In your memorandum of November 4th, you
5 wrote that memorandum to Mullen? A Yes.

6 Q And the reason you wrote it is because the
7 Commissioner, because of his illness, asked you to do
8 that? A That's right.

9 Q Did he do that from home?

10 A My recollection, my best recollection is that
11 he got sick right after we spoken, right in the office,
12 and that he was taken to his home and then to the
13 hospital.

14 MR. SAPIENZA: What date?

15 THE WITNESS: That would be on the 2nd,
16 because that's the day the memo says we spoke
17 about it, I think.

18 Q In the course of his conversation with you,
19 he became sick and was taken home, and he said, Well,
20 now that I have changed my mind and we are in agreement
21 that the contract should go to Centrum you tell Mullen
22 that I have directed you to order him to get the machinery
23 in motion to award the contract to Centrum?

24 A Well, not quite that way. He was ill, he was
25 plainly ill, and he went over to the couch and sat down.

1 As a matter of fact, it's my recollection that he told
2 me, You take care of it, tell Mullen to have the contract
3 awarded to the low bidder.

4 Q Did he take the time in his illness to tell
5 you that after talking about the estimates and so on that
6 the difference was only about five percent over the
7 engineer's estimate, and then did he say, "In addition,
8 some progress in building the road is better than no
9 progress. Since the department made a public commitment
10 to begin this project in September the Commissioner felt
11 that we should fulfill that commitment regardless of the
12 technical objections you raised in your memorandum"?

13 A He didn't say those words quote.

14 Q Did he say the substance of them?

15 A That was part of our discussion.

16 Q Or was this Biederman's interpretation of
17 what he wanted to say to Mullen, that regardless of the
18 objections you raised in your memorandum, you are now
19 instructed to proceed immediately to award the contract--

20 A Yes, that was my translation of what the Commissioner
21 say; let's put it that way, I guess that would be right.

22 Q And your translation, which is reflected in
23 this memorandum--

24 A Yes.

25 Is that November 2nd or November 4?

1 Q November 4.

2 Your translation represents what you have
3 told us was a very short conversation with the Commissioner?

4 A Well, short. I don't know how many minutes it lasted.

5 Q The reason is, we are speaking the truth here.

6 (Off the record.)

7 Q This is the memorandum, November 4th, it's
8 already marked? A Yes.

9 Q I note you sent a copy of that to Commissioner
10 Kohl, also. A Yes.

11 Q When you made up this package, did you include
12 this November 4th memo? A Yes.

13 Q We have the October 30th memorandum; we have
14 the November 4th memorandum; and what else?

15 A October 26th memorandum of Mullen to Kohl; and we
16 had the newspaper clips.

17 Q And the newspaper clippings.

18 Anything else?

19 A Yes. We had Mr. Sherwin's letter to Commissioner
20 Kohl addressed to him at his house; and we had the memorandum
21 from Mr. Kohl to Mr. Sherwin regarding the July 20 memorandum
22 which I think is dated October 8th.

23 Q The memorandum from Mr. Kohl to Mr. Sherwin
24 relating to his October 8th letter to Commissioner Kohl
25 at his home, that was in there too?

1 A Yes. Sherwin's letter to Kohl was in the package,
2 the one addressed to him at his house.

3 Q I show you a letter which we have marked
4 C-5 addressed to, "Dear John" on Secretary Sherwin's
5 letterhead.

A That's the one.

6 THE CHAIRMAN: We will take a five minute
7 break.

8 (A short recess was taken.)
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1 [After recess.]

2 BY MR. FRANCIS:

3 Q The memorandum I just handed you--

4 A Yes, sir.

5 Q --is the letter you have spoken of from
6 Mr. Sherwin to Mr. Kohl?

7 A Yes, sir.

8 Q And it has been marked what?

9 A C-5.

10 Q C-5. That, you say, you included in this
11 package?

12 A Yes, sir.

13 Q And then you mentioned a memorandum of
14 Commissioner Kohl's of what date?

15 A I think early October, sometime in the first week
16 in October, from him to Mr. Sherwin. In fact, it could
17 have been the same day.

18 Q I show you a memorandum, dated October 5th.

19 A Yes, sir, that's the one I was referring to.

20 Q That's the one you were referring to?

21 A Yes.

22 Q And you included that in the packet?

23 A Yes, I did.

24 Q Well, this memorandum of October 5th was prior
25 to the October 8th letter?

ML-2

1 A Yes, it was.

2 Q And the memorandum of October 5th related
3 to the problems that were discussed in the July 20th
4 memorandum?

5 A Quite so.

6 Q And what was the purpose in including that
7 in this package?

8 A The same, the same purpose I indicated in my
9 testimony previously; the fact that the same people
10 seemed to be involved here and again that for some
11 reason Commissioner McCrane was involved in Transportation
12 matters, and I thought that the Governor and Judge
13 Garven should know about it because it was completely
14 alien to his jurisdiction.

15 Q And that's the reason you included the
16 memorandum of October 5th, which, beyond a doubt, related
17 to the July 20th, 1970?

18 A The July 20th matter, sure.

19 Q Manzo situation?

20 A That's right, because, you know, I did testify
21 earlier, I thought, that we used the word "pressure"
22 or whatever, but ~~thx~~ was July and the Route 35 thing,
23 and here the same thing was happening again, that's
24 all, and the commissioner was upset about it.

25 Q You see, I didn't ask you anything about

ML-3 1 whether the Commissioner was upset about anything.

2 A I'm sorry about that.

3 Q I just wanted to know whether you included
4 this October 5th memorandum, which was wholly unrelated,
5 was it not, to the Route 46 problem?

6 A Except for the same people being involved. In that
7 sense, it was related.

8 Q You knew after that that the contract did go
9 to Centrum?

10 A Well, I learned it, sure.

11 Q The package that went to Mr. Jahos--

12 A Yes, sir.

13 Q --contained all these same documents that
14 you say you also gave to Judge Garven?

15 A Yes, sir.

16 Q And looking at those documents both Mr. Jahos
17 and Judge Garven would know that whatever the chronology
18 was the contract had now been awarded to the low bidder
19 Centrum?

20 A At that point in time I don't know, because although--

21 Q Well, you--

22 A --Mullen was going to do that, and I assumed he
23 would do it, but on November 4th, I don't know whether
24 he did it yet. In fact, I doubt it, because he just
25 got the memo that day.

M1-4 1 Q You mean you still had some doubt in your
2 mind after the Commissioner told you to--

3 A I had no doubt in my mind, no.

4 Q That's what I'm trying to find out.

5 A No, I don't think so.

6 Q Is there anything in your documents which
7 would indicate to Mr. Jahos reading them that the
8 contract had not been, or was not going to be, awarded
9 to Centrum?

10 A The documents say what they say. I don't know.

11 Q I know they say what they say. Do they
12 indicate that the contract is going to Centrum?

13 A No, they don't, really, except for my memorandum
14 to Mullen. That indicates that the contract's going to
15 Centrum. But, of course, you know, the Commissioner
16 reversed himself once before.

17 Q Did he reverse himself this time?

18 A NO, he did not.

19 Q And you think that someone reading those
20 memoranda containing the express direction to Mullen,
21 signed by you, Jahos might have some doubt as to whether
22 the contract -- whether that order was going to be
23 filled?

24 A Well, no, I didn't even think about that. Never
25 even occurred to me.

M1-5

1 Q Supposing you got that memorandum. Would
2 you say to yourself, well, Centrum, the low bidder,
3 has gotten his contract?

4 A Oh, sure, absolutely.

5 Q That's all I was trying to find out.

6 A All right.

7 Q And the same would be assuming Judge Garven
8 read all of those documents?

9 A Right.

10 Q The impression you sought to give, and,
11 in fact, your order to Mullen would give, was that the
12 low bidder, Centrum, had now gotten the contract?

13 A Oh, absolutely. My transmission of the commissioner's
14 order. I had no right to give orders to anybody.

15 Q You were the commissioner's agent, then,
16 in giving his order to Mullen--

17 A Yes, sir, that's right.

18 Q --to do that thing--

19 A That's right.

20 Q --that you set out in your memorandum?

21 A Yes, sir.

22 Q And you considered yourself in this respect,
23 anyway, in carrying that order--

24 A Right.

25 Q --a pretty efficient agent?

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A Well, it didn't take much to write a memo saying,
the Commissioner said do it, do it. Being efficient,
I don't know.

1 EXAMINATION BY
2 THE CHAIRMAN:

3 Q Was the November 4th memo--

4 A Yes.

5 Q --in the package? A Yes.

6 Q Well, that was very clearly stated in that
7 memo that Centrum got the award? A Well,
8 he was instructed to award it, but, you know--and I
9 assume he did, absolutely, sure. It didn't say--it's
10 not past tense. It tells him to do it. And I think
11 that was the same day, I guess, November 4th. In our
12 department things were usually don't happen the same day.
13 That's why I say, you know, probably the next day or
14 whatever. I don't know.

15 Q Well, your last paragraph says, "You are, there-
16 fore, authorized to proceed immediately in accordance with
17 the Commissioner's instruction in this matter?"

18 A Right, Commissioner, and I assume he did.

19 Q But certainly a third party reading this--

20 A Oh, absolutely. I agree with you.

21 Q --would, without a doubt, believe that Centrum
22 got this contract? A Oh, absolutely, absolutely.

23 EXAMINATION BY
24 MR. FRANCIS:

25 Q Well, when you got this final decision from

1 the Commissioner on November 2nd, and you did what
2 you told him to do, --

3 A Right.

4 Q --did you call Mr. Hale and tell him?

5 A No. In fact, I don't think I discussed the matter
6 with him until I saw him outside the Grand Jury Room in,
7 I guess, June of this year. And there was a reason for
8 that, too.

9 Q By the way, since you have mentioned Mr. Hale,
10 have you done legal work for him since you left the
11 department?

12 A We have. I have a partner,
13 I had a partner. We had one matter we were called in as
14 consulting attorneys on, and that was the matter we had
for him, for one of his companies.

15 Q That had to do with an application to do with
16 the State for permission to put an asphalt plant on the
17 State right of way? A No. What happened there was,
18 Tri-County Asphalt, which was building, or had the contrac-
19 tor build Route 80 or Route 195, or something in North
20 Jersey, had put a portable asphalt plant in the middle of
21 the State's right of way, and all the producers in that
22 area, because Tri-County wasn't going to buy from them,
23 got very excited, and Hale was one of these producers, and
24 they wondered if there was a legal way that they could
25 stop this from happening and they retained Mr. Stein,

1 who has an office in that area, to handle that for
2 the producers. And Stein called me and he wanted to know
3 whether the department could do that legally. I did a
4 little research, and I requested a meeting in Trenton with
5 Mr. DePhillips on this matter and my conclusion was, is,
6 that the department could and Tri-County could, and that
7 was my opinion. I did two hours research, we had a
8 meeting for two hours and that was the end of the
9 meeting.

10 Q Mr. DePhillips--

11 A Yes.

12 Q --succeeded Mr. Mullen as the --

13 A Yes, sir, he did.

14 Q --Assistant Commissioner of the Department?

15 A Yes.

16 Q And were there other members of the department
17 present?

18 A Oh, yes. Mr. Freidenrich
was present.

19 Q And was Mr. Hale interested in getting a
20 plant of his own for his own company on that right of way?

21 A Oh, no. That contract was Tri-County's contract.

22 Q Well, didn't he want to get, whatever happened
23 to them, didn't he want to get one there for his own
24 company and wasn't that one of the reasons you came down
25 representing him?

A No.

1 Q All right. A What he wanted
2 was to sell to Tri-County.

3 Q What he wanted what? A Sell materials
4 to Tri-County. But they didn't need them because they
5 had their own portable plant.

6 Q And I suppose you sent a billed to Hale
7 for those services? A Absolutely.

8 MR. FRANCIS: Well, shall we take a recess
9 now?

10 THE WITNESS: Right.

11 THE CHAIRMAN: Yes. Let's excuse Mr. Biederman.
12 It's ten minutes of two. You have a four thirty
13 appointment in North Jersey.

14 THE WITNESS: Yes. Thank you, I appreciate
15 the Commission's courtesy.

16 THE CHAIRMAN: Hold on, now.

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

19 THE CHAIRMAN: Counsel will call you and
20 give you as much advance warning as we can possibly
21 give you as to when we shall need you to return here.

22 THE WITNESS: Fine.

23 MR. SAPIENZA: We can try and arrange something
24 right now.

25 THE WITNESS: That will be fine.

1

(Witness excused.)

2

(Whereupon, a brief recess is taken.)

3

(After recess.)

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THE CHAIRMAN: Mr. Goldstein, you have all three members of the State Commission of Investigation sitting here this afternoon, and at this time I would like to ask you to stand up to be sworn.

MR. B. GOLDSTEIN: Certainly.

B R U C E I. G O L D S T E I N, having been duly sworn according to law by the Officer, testified as follows:

THE CHAIRMAN: Mr. Sapienza.

EXAMINATION BY MR. SAPIENZA:

Q Mr. Goldstein, I'm going to just read to you certain warnings and excerpts of our statute which we read to every single witness that comes in. They are that your testimony today is being taken under oath and will be transcribed by the shorthand reporter, so that you do not have to answer any questions if you don't want to. Anything you do say, if it should incriminate you, may be used against you later in a court of law. You have the right to the presence of an attorney at these hearings, and I note for the record that, of course, you are an attorney, but that you are appearing without one. That's of your choosing; is that correct?

A Yes, it is, sir.

Ms- 1 Q If at any time during the questioning you
2 would like us to stop, that you want to consult with
3 an attorney or anyone else, or you just don't want
4 us to question you any further, fine. Just say stop
5 and we'll stop.

6 These hearings are held in private session.
7 However, the Commission has the right at a later point
8 in time to release your testimony publicly, or even to
9 ask you to appear at a public hearing again and give
10 the same testimony. Do you understand that?

11 A Yes, I do, Mr. Sapienza.

12 Q You have the right to a transcript of your
13 testimony here today, if it becomes relevant at some
14 later point and of course if you want it, we'll supply
15 it to you. In addition, at the end of your testimony,
16 if you would like, you have the right to file a brief
17 sworn statement relative to your testimony. That's only
18 if you feel it necessary. As I said, these are parts
19 of our statute.

20 THE CHAIRMAN: Thank you.

21 COMMISSIONER BERTINI: Section 15.

22 MR. SAPIENZA: I'm sorry. Section 15 of our
23 statute provides that you may not disclose to anyone
24 the questions asked, your responses or any other
25 information you gain from this session. It's an

M3-3

1 executive session. Everything that goes on in here should
2 remain between us, except, of course, you may
3 discuss it with your attorney, if you want to.

4 Okay, thank you.

5 EXAMINATION BY MR. FRANCIS:

6 Q Mr. Goldstein, on Friday, April 14th, 1972,
7 did Mr. Biederman come in to see you?

8 A Yes, he did, sir.

9 Q And was that unannounced or had he called
10 you in advance?

11 A I seem to recall, Justice Francis, that he called
12 me in advance.

13 Q And you later made a memorandum of your
14 conference with him?

15 A Yes, I did.

16 Q And when he came in, did he make what you
17 characterize as a formal complaint?

18 A He initially showed me a series of documents,
19 then explained the documents to me and then asked
20 the matter be looked into, yes, sir.

21 Q I see. Do you have your memorandum before
22 you?

23 A Yes, I do, sir.

24 Q And the answer that you just gave, is that
25 what you meant by "He came in and he made a formal

M3-4 1 complaint" in your memorandum?

2 A That's what I meant by that, sir, yes.

3 Q That's what you meant. And then do you
4 remember how many documents he gave you?

5 A Yes.

6 Q Can you refresh your recollection from your
7 memorandum?

8 A I believe so, Justice Francis. He gave me a
9 series of memoranda that he had written; he gave me a
10 letter that was written from Secretary of State Sherwin
11 to Secretary of Transportation-- Commissioner of
12 Transportation Kohl; he gave me a letter that went from
13 Mr. Kohl to Mr. Sherwin; he gave me a memo, more
14 specifically, dated November 4th, 1970, to Russell
15 Mullen from Mr. Biederman; he gave me a memoranda,
16 dated October 26th, 1970, a memo to his file, Mr.
17 Biederman's file; he gave me a memoranda, dated October
18 30, from Mr. Biederman to Commissioner Kohl; and then he
19 gave me some newspaper clippings, I think, Xerox copies;
20 he gave me a memo, dated October 29th, from Mr. Sherwin
21 to Mr. Kohl; he gave me a memoranda, dated October 26th,
22 to Mr. Kohl from Mr. Mullen; he gave me a press release
23 pertaining to the fact that the Department of
24 Transportation had decided not to award the Route 46
25 job, and, of course, he gave me the October 8th letter

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1 from Mr. Sherwin to Mr. Kohl. There may have been one
2 other memo that he gave me from Mr. Hale. Frankly, I
3 just don't recall at this time whether that was included
4 or not.

5 Q Did you mention--if you did, I overlooked
6 it--that he gave you a letter--on Page 2 of your
7 memorandum you noted, did you not, apparently--well,
8 go back to the first page. The bottom of the first
9 page relates to the October 8th letter of Mr. Sherwin
10 to Mr. Kohl?

11 A Yes, sir.

12 Q Which came to his residence. And then on
13 the top of the second page you noted, "Apparently this
14 had been the subject of some discussion prior to the
15 writing of this memorandum since Kohl sent a letter to
16 Sherwin three days before referring to a discussion
17 of the Manzo matter and also referring to a background
18 memorandum which Sherwin had sent to him"?

19 A Right.

20 Q The letter from Kohl to Sherwin, dated
21 October 5th, 1970, is attached as Exhibit B?

22 A Right.

23 Q You have that one with you, have you?

24 A Yes, I do.

25

1 MR. FRANCIS: We have already marked that
2 memorandum here. I just want to make certain that
3 the one that we have, just so I can identify it.
4 Do you want to see if you can find that. It's
5 October 5th, from Kohl to Sherwin.

6 (Off the record.)

7 BY MR. FRANCIS:

8 Q We have that letter marked as part as Exhibit
9 9. I just want to show you our exhibit here to make cer-
10 tain that it's the same one that you have.

11 A Yes, that's the one to which reference I have made.

12 Q On the basis of the context of the material
13 I just read to you, also referring to the background
14 memorandum and the beginning of it, apparently this had
15 been the subject of some discussion prior to the writing
16 of this memorandum since Kohl sent a letter to Sherwin.
17 Was the impression that you got from what Mr. Biederman
18 said that the October 5th letter and this background
19 memorandum related to this same subject that he was
20 drawing to your attention as a formal complaint?

21 A I'm not sure I can answer that affirmatively. At
22 that point I really just did not know. There was obviously
23 some background memorandum, a copy of which I did not have
24 before me.

25 Q Well, in any event, when he gave you that

1 letter of October 5th, which referred to the background
2 memorandum, he did not give you the background memorandum?

3 A No.

4 Q Did you get the impression that what he wanted
5 you to do was believe that the background memorandum related
6 to the same subject as the October 8th letter of Mr.
7 Sherwin to Mr. Kohl?

8 A Well, he gave me a package of memoranda that I
9 assume was related, but he didn't single out this letter
10 and say that this related to this specific project.

11 Q Well, let's try to resolve this, if we can.

12 A Sure.

13 Q You see at the bottom of the memorandum, on
14 the first page, you say, According to Biederman, this
15 letter of October 8th was written from Sherwin to Kohl,
16 and you quote from part of the letter. And the very
17 next thing is, "Apparently, this had been the subject of
18 some discussion prior to the writing of the memorandum."

19 So that is the impression you must have had,
20 don't you think, at the time you continued on in the
21 paragraph was that the October 5th letter and the background
22 memorandum indicated a previous discussion of the matter
23 set out on the October 8th letter?

24 A I clearly had that impression. The only issue I am
25 vague on is whether Mr. Biederman gave me that impression

1 or whether I assumed that from the fact that all of these
2 memos related to the same thing.

3 Of course, at that point I had no idea what
4 Manzo's relationship was to the department and whether he
5 had other business or not.

6 Q You feel that you naturally assumed that the
7 October 5th letter and the background memorandum related
8 to you would not have been given to you by Biederman unless
9 it related to the October 8th letter?

10 A I assume they all related to that.

11 Q Do you remember if he gave it to you?

12 A I don't recall asking for that background memorandum,
13 since we obtained memos from the State thereafter. I
14 suppose we ultimately got a complete set.

15 Q Well, what I am really interested in trying
16 to probe is your impression at that time about whether
17 Mr. Biederman, as you saw it, was endeavoring to give
18 you the impression that the October 5th letter and the
19 background memorandum referred to, but not included, in-
20 dicated some discussion of this very matter which was
21 referred to in the October 8th memorandum, but prior to
22 October 8th.

23 A My answer is that it related to an October letter,
24 Mr. Francis. I cannot say affirmatively that he told
25 me expressly that that memo of the 5th related to this

1 project. They were all, I think, fastened together
2 and I presumed it was one package.

3 Q Whatever, it was, it was simply an examination
4 of the package or resulting from your conversation with him,
5 you did have the impression ~~that~~ the October 5 letter and
6 the missing October 30th letter related to the same subject
7 matter as the October 8 th letter?

8 A Yes, I did.

9 Q And you can't remember just what, if anything,
10 Mr. Biederman said that gave you that impression beyond
11 the fact that he just gave you the documents?

12 A I don't recall him singling that one out and saying
13 it related to it. But he gave me the documents.

14 Q On the third page of your memorandum you
15 indicated that he had given you a copy of his memorandum
16 of October 30, 1970 which you marked Exhibit E.

17 A Yes.

18 Q Did he tell you that he had sent the copies
19 of that memorandum to Mr. Evan Johns and James Petrella?

20 A Yes, at that time he did.

21 He then after advised me, I believe, that the
22 Petrella memorandum actually did not go to Mr. Petrella,
23 but went to Mr. Garven. But at that time I was advised
24 that it had gone to Mr. Petrella.

25 Q Well, in that same conversation then, your

1 last paragraph on page three, you see up above you're
2 talking about what he told you. You noted the memorandum
3 went to Jahos and Petrella. And on the same day, Biederman
4 states he had a discussion with the Attorney General. And
5 at the end you say, "It my understanding that a copy of
6 the Biederman memorandum was sent to Garven." You don't
7 say there that Biederman said to you that he gave a copy
8 of the memorandum to Garven.

9 A I reviewed that last night, and I simply can't
10 answer it, I don't recall.

11 Q You don't recall whether you gathered it from
12 somewhere or that he said he gave it--

13 A I'm really not sure. That's a very ambiguous paragraph.
14 When I saw it in reviewing the memorandum, I kind of wanted
15 to jog my memory, but I'm not sure.

16 Q Maybe we had better correct the date of
17 your memorandum. You notice on page three, the next to
18 the last paragraph, my understanding, it's October 2nd
19 here, it should be November 2nd.

20 A The next to the last paragraph refers to October 2nd,
21 it should be November 2nd.

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1 MR. FRANCIS: I think that's all I have.

2 Perhaps the best way of doing this now would
3 to mark your memorandum.

4 THE WITNESS: Fine.

5 MR. FRANCIS: Rather than have you go through
6 it line by line. This is a copy of your
7 memorandum that we have both been looking at.

8 THE WITNESS: Yes, sir. This is a copy of
9 my memorandum.

10 MR. FRANCIS: May we mark that.

11 [Memorandum of Bruce Goldstein, dated April
12 20, 1972, received and marked as Exhibit
13 C-35 in evidence.]

14 [Off the record.]

15 BY MR. FRANCIS:

16 Q Mr. Goldstein, although it doesn't appear
17 in your memorandum, did Mr. Biederman tell you why
18 he had come to make the complaint? Did he say anything
19 with regard to, as we say, causal relationship between
20 his visits to you and the ethics complaint made to the
21 Attorney General?

22 A No. He did not refer to the ethics complaint.
23 As far as I can recall, the first time I learned of
24 an ethics complaint pending against Mr. Biederman was
25 when I was notified by Mr. Stern. I didn't know about

N2-2 1 it at that time. He said that he had been assigned to
2 the Department of Transportation, that this matter had
3 been referred to the Department of Criminal Justice,
4 that eighteen months had transpired, that he didn't
5 know what had been done. That was about it. There was
6 no allusion to any ethics problem that he had.

7 Q Did he use any adjectives in referring to
8 the Attorney General to show that he had any animosity
9 toward him?

10 A None that I could recall. I was obviously surprised
11 at the fact that he was in my office. But I don't
12 recall him speaking of the attorney general in words
13 of acrimony.

14 Q He indicated to you that he would be
15 available to cooperate with you from that time on?

16 A Yes, he did.

17 Q Did you participate in any investigation of
18 this after that?

19 A Very much so. I was intimately involved in this
20 investigation.

21 Q And what was the first thing you did after
22 you--well, you sent this memorandum to Mr. Stern?

23 A That's correct.

24 Q And then what did you do?

25 A The next substantial thing that we did was subpoena

N2-3 1 the books and records of Manzo. This was done at Mr.
2 Stern's direction. The subpoena was dated April 26.

3 The purpose of subpoenaing the records of Manzo
4 was to determine whether we could determine whether
5 any money was coming out of the Manzo firm and thereafter
6 used for an illicit purpose; and obviously, we couldn't
7 determine that until we subpoenaed the Manzo records.

8 Q Did you get the records?

9 A Yes, we did. We got the records. After we got the
10 records we had agents of the Federal Bureau of Investiga-
11 tion examine those records.

12 Q And did you find anything in your examinations
13 of those records to indicate any payment by the Manzo
14 Company to anybody?

15 A Well, we found many questionable entries on the
16 Manzo books. We also discovered that a considerable
17 number of checks were missing from the records,
18 despite the fact that we had subpoenaed them.

19 Simultaneously, the agents of the F.B.I. were
20 reaching out to individual parties that had been
21 dealing with the Manzo firm to question the propriety
22 of certain transactions: Did he really spend the money
23 the way his books and records reflected the way they had
24 been spent. And in the course of that, we had them
25 interview a party by the name of Perrucci, who owned, I

N2-4 1 think, a trap rock company in Western or northern
2 Jersey. And when they interviewed the Perruccis, they
3 discovered a good number of things, including the fact
4 that the Perruccis had just testified in a civil lawsuit.

5 Q That was about in May of '72?

6 A That's right. Well, of course, this was going
7 on for several weeks that they had been auditing the books
8 for several weeks and in the course of that audit they
9 went on to interview the Perruccis, and once they found
10 that out, of course, the Perruccis came down, and there-
11 after based upon the fact that I had been advised by
12 the agents that there was civil litigation pending
13 before Judge Stamler, I called up the Court and then
14 was advised of the testimony before the Court and then
15 of the \$10,000 check that had been impounded.

16 Q So the first time that you or your office
17 learned of the \$10,000 check was when you got access to
18 the testimony before Judge Stamler in the suit between
19 Manzo and the Perruccis?

20 A Actually, the first time we learned about it was
21 when Perrucci told the agents about it, because he
22 specifically said that the \$10,000 had been paid on
23 these contracts.

24 Q I thought you said that he said to the
25 agents that he had testified that that was the first

N2-51 time that he told them about the \$10,000 check, he just
2 testified about it?

3 A Let me clarify that. He advised them of what he
4 had testified to. He advised them of the fact that
5 a \$10,000 contribution had been made by Manzo for this
6 project. He advised them of the fact that this was
7 at that very time the subject matter of civil litigation,
8 because apparently Manzo was suing him for moneys that
9 had gone back and forth between the companies and the
10 issue was who had to pick up the \$10,000. He advised
11 us of all those things. So that we knew this once
12 the agents spoke to Mr. Perrucci about the \$10,000
13 transaction. Thereafter, I confirmed it by calling
14 Judge Stamler.

15 Q I still haven't pinpointed exactly what I
16 am trying to do.

17 When Perrucci told the agent these things
18 you have just mentioned in the conversation, he said,
19 I have testified to this effect in the civil suit that's
20 pending between Manzo's company and our company, and
21 trying to fix a time, because Perrucci testified on May
22 30 of 1972, before Judge Stamler. I suppose you have
23 that testimony as we have it.

24 A Yes, I do.

25 Q And it was after he testified that he talked

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1 to the agent and told him he testified and told him
2 about these, the check?

3 A That's correct.

4 Q And then did you go up to Judge Stamler's
5 court to make inquiry about it, or did somebody else
6 go?

7 A I spoke with Judge Stamler, I think on more than
8 one occasion, who was very helpful. We got a copy of
9 the \$10,000 check. I think we got it from Judge
10 Stamler. Whether I sent an agent up to Judge Stamler
11 or whether a copy was sent to me, I would have to check
12 my file. I could find that out easily.

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1 Q Let's see if I can refresh your recollection
2 about it.

3 When you went up, or somebody went up from
4 your office, to see Judge Stamler and made an inquiry
5 for the check, and whatever else he could furnish, Judge
6 Stamler had already given the check to Mr. Jahos and
7 had a receipt for it.

8 You know Mr. Jahos, the director of the
9 Division of Criminal Justice?

10 A Yes, sir.

11 Q And it was after that that you got the check?

12 A No question about that. The only issue that I was
13 concerned about was that I think that he impounded the
14 original check and sent a copy to Mr. Jahos, and it
15 was thereafter that we got a copy. Yes, sir.

16 Q The only correction, I don't mean it in
17 terms of correction, that I want to make is someone
18 from Mr. Jahos's office went up to Judge Stamler and
19 signed a receipt there for the three transcripts of the
20 testimony, on three separate days, the last one being
21 of May 30 of the Peruccis, and for the check and took it
22 away.

23 A I know he advised me of the fact that he had conveyed
24 that check to the Attorney General's office.

25 Q And then after that your office got in touch

N3-2 1 Mr. Jahos, and from that point on I gather you proceeded
2 along the same line, or you incorporated, anyway--

3 A What happened thereafter, to the best of my
4 knowledge, he gave me the name of a court reporter who
5 had taken down the relevant testimony, and we ordered the
6 testimony of Manzo and Perrucci. Then I think it's
7 on the 13th day of June we had a meeting in our office,
8 we being Mr. Stern, Jonathan L. Goldstein, Mr. Jahos,
9 Mr. Richards and Mr. Stier, and the subject matter of
10 this investigation was discussed.

11 Q At that time, or later, did both offices
12 agree that the matter would be presented to the Grand
13 Jury and that indictments would come down the same day
14 from the two sovereignties?

15 A Yes. That was the ultimate agreement. I think at
16 that meeting of the 13th Mr. Stern laid out for Mr. Jahos
17 the salient aspects of the investigation that had been
18 conducted so far. I believe he advised them of the fact
19 that until that point he had had an understanding with
20 General Kugler to the effect that the investigation would
21 be conducted by the federal government and that he would
22 keep Mr. Kugler apprised of the developments of that
23 investigation.

24 Q Well, on that subject, when you all got
25 together that first time I gather that there was a little

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1 ill-feeling at the moment between the two offices,
2 because Mr. Stern felt that he had an agreement that the
3 state would not do anything further and that the federal
4 government would be allowed to proceed unhindered in the
5 course of the investigation?

6 A I don't know whether I would characterize it as
7 ill-feeling. I think Mr. Stern was concerned because of
8 the problem that might arise from two law enforcement
9 bodies racing for the same witnesses.

10 Q I don't know whether the explanation was
11 made that day, but were you told that what happened
12 was that Judge Stamler, when he heard this testimony
13 on the 30th, went to Judge Waugh and said, What will
14 I do about this? And Judge Waugh, knowing Mr. Jahos's
15 position here, said, Call Mr. Jahos, which Judge
16 Stamler did. And Mr. Jahos, who didn't know the subject
17 of the earlier conference between Mr. Kugler and Mr.
18 Stern and Mr. Goldstein, immediately sent Cowan,
19 of his staff, the next morning up to see Judge Stamler,
20 and that's when the thing broke. And they proceeded
21 from then on, until your people went up to get the same
22 information, and then your office found out that Mr.
23 Jahos had gotten as far as he had at that time.
24 And that's how the apparent conflict developed.

25 Do you remember whether that explanation was made

N3-4 1 that day?

2 A No. I was unaware of Judge Waugh's referral to Mr.
3 Jahos. I did not know when the investigation began,
4 except that Mr. Jahos did say that it had begun after
5 the referral had been made by Judge Stamler, I believe--
6 and I can check my memo--because I recall referring to
7 that. But I believe, Mr. Francis, that Mr. Jahos
8 acknowledged the fact that he was aware of the fact^o
9 that this investigation was pending, but was unaware of
10 the fact that Mr. Kugler had agreed to refrain from
11 conducting the investigation.

12 Q I think that's substantially what I wanted
13 to develop, that that conversation as you have described
14 it took place.

15 A It definitely did.

16 MR. FRANCIS: I think that's all I wanted
17 to ask.

18 If you gentlemen want to ask Mr. Goldstein
19 anything.
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1 BY THE CHAIRMAN:

2 Q I wonder, on page three of your memo, you
3 stated, "Should be noted that this memorandum was sent to
4 Evan Jahos and James Petrella. Apparently during this
5 conversation Kohl agreed toward the contract to Centrum,
6 despite the request of Sherwin."

7 What conversation do you recall you're referring
8 to?

9 A The conversation to which I had made reference was
10 the conversation which Biederman said he had/Commissioner
11 Kohl. During that conversation Biederman told me that
12 Kohl had told him that he had been called by Mr. Sherwin
13 and that Mr. Sherwin had requested him not to award the
14 contract so that the Manzo firm would have an opportunity
15 to rebid the contract. My understanding was that at the
16 end of that conversation Mr. Kohl, Commissioner Kohl agreed
17 to award the job to the lowest bidder.

18 So that when I say, "Apparently during this
19 conversation Kohl agreed to award the contract to Centrum,
20 despite the request of Sherwin," I'm referring to the conversa-
21 tion to which Biederman said that Kohl advised him of Mr.
22 Sherwin's request.

23 Q So what you're going back to is the October 30th
24 memo of Mr. Biederman? Right?

25 A I'm going back to the subject matter, yes. You're

1 quite right. That sentence in there is disjointed. It
2 doesn't flow naturally.

3 MR. DIANA: Did he fix that date for that
4 conversation between him and Kohl?

5 THE WITNESS: I don't recall that he did, but
6 it must have. As I read through it, I was trying to
7 fix on that date. It must have been sometime between
8 the 20th and the 26th.

9 I say that because Biederman advised me of
10 the fact that he met with Mr. Hale on the 20th. So
11 it has to be some time after the 20th. And you have
12 that Biederman memo dated the 26th indicating that
13 another decision was made not to award the contract.
14 So I presume that the meeting occurred sometime
15 within that six day period but I don't recall
16 Biederman telling me what date it was.

17 BY THE CHAIRMAN:

18 Q Who was present when you talked to Mr. Biederman?

19 A Nobody.

20 Q Just the two of you?

21 A Yes. I had no idea what Mr. Biederman was going
22 to talk to me about. He merely called me up and asked
23 whether he could talk to me, and I said, Certainly.

24 Q And then you dictated this memo to Mr. Stern
25 and the other Mr. Goldstein the same day as--

1 A No. I spoke with him on the--

2 Q The Fourteenth, six days later?

3 A That's correct, sir, yes.

4 Q Is there anything that you would like to
5 tell us about your conversation with Mr. Biederman that
6 you feel is not in this four page memo?

7 A Gee, that's kind of difficult to answer. I had
8 subsequent conversations with Mr. Biederman. Naturally,
9 I would not discuss with him what we were doing on the
10 matter. But it's hard for me to answer that kind of a
11 question in a vacuum.

12 Q What I meant was, in reflecting now, and
13 looking at the memo that you prepared of April 20, did
14 that include, in your opinion, everything to the best of
15 your recollection that Mr. Biederman told you at that
16 time or gave to you at that time?

17 A It included everything that I considered significant.
18 There may have been certain matters that I just didn't
19 include. I was flushing out what I considered to be the
20 substantial elements of that conversation.

21 Now, there may well be something that he
22 mentioned that I did not put in the memo, because I
23 didn't think it was important or--

24 Q Well, did he indicate anything like this
25 all occurred in November, 1970? Now, this is April of

1 1972. Did he give any indication why he took
2 so long to come to see you?

3 A The indication that he gave to me, Mr. McCarthy,
4 was because of that eighteen month delay that he was
5 coming to see me, but he did not indicate any other
6 reason. He did not indicate why he did not come to
7 see us five months earlier, one month earlier. He
8 merely indicated that a long time had transpired, and
9 to his knowledge nothing had ever been done about this
10 and that's why he was in our office.

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EXAMINATION BY MR. SAPIENZA:

Q Mr. Goldstein, you say on the 13th with Mr. Van Jahos, is that right, Evan Jahos?

A Yes, sir.

Q 13th of what month was that?

A The 13th of June.

Q Now, on June 13th when you had the meeting with Jahos, by that time did your bureau agents tell you that there were some entries in Manzo's books that possibly indicated that they were hiding some money, some payments?

A Oh, yes, yes, there had been. There were several items on Manzo's books that were questionable. There was, I can recall, at least one very large check, I think it was, it may have even been \$10,000, that had been cashed by Manzo in July of 1970. He had expensed it out on his books and we had traced the nature of that expense, and we had reason to believe that it was false.

Also, by that time we knew about the ten-thousand-dollar check that was paid for the Route 46 job.

Q All right. Did you have any indication at that point that anybody else had ever looked at Manzo's books besides yourself? Any other law enforcement agency. Maybe I ought to rephrase that question.

A Would you?

01-2

1 Q Did you discuss with Jahos whether they had
2 already seen Manzo's books and records?

3 A Yes. We--well, yes, I'm sure we did, and they had
4 not.

5 Q Okay.

6 A Of course, we had physical possession of the records
7 in the Federal Building.

8 Q So, then, to the best of your knowledge, the
9 Attorney General's Office hadn't seen Manzo's books and
10 records prior to yourselves seeing them?

11 A That is correct. The only reason I was hesitating
12 for a few seconds is that I recall reading through files
13 of the Department of Transportation that he had made
14 complaints before, and I seem to remember--not he being
15 Biederman--I seem to remember the issue of Manzo coming
16 up in prior years, so I'm sure that Manzo was the
17 subject of governmental review.

18 But I had--to the best of my knowledge, it was my
19 understanding that no law enforcement agency had audited
20 these books. Perhaps IRS had conducted an audit in the
21 normal auditing procedure. But my understanding was,
22 this was the first examination that was being conducted;
23 that the State had not examined these books, and, indeed,
24 to the best of my knowledge, they had not discussed this
25 matter with Manzo.

01-3¹ Q Now, at that June 13th meeting, did you ask
2 Mr. Jahos when he had started his investigation?

3 A Yes, we did.

4 Q What did he tell you, do you recall?

5 A He told us that the investigation began after he
6 received the communication from Judge Stamler.

7 Q Okay. Did he tell you, or did you inquire
8 at that meeting, whether or not this investigation was
9 begun by him after consulting with the Attorney General
10 Kugler or not?

11 A I don't remember the specific question being asked.
12 My distinct impression was that he had not discussed with
13 General Kugler, because he said that he was unaware of
14 the fact that the General had made this agreement with
15 Mr. Stern. And I'm sure I assumed, if it was not
16 articulated, that obviously if he had discussed it with
17 Mr. Kugler, this whole subject matter had been discussed.
18 Also, I seem to recall that during this period of time--
19 well, this is sheer speculation. Why don't we strike
20 that, because I don't think you want speculation.

21 Q Yes. So, at least you came out of that June
22 13th meeting with the idea that whatever Jahos had done,
23 he was doing on his own as a result of Judge Stamler's
24 referral to him and not at any direction of General
25 Kugler; is that right? A To the best of my

01-4 1 knowledge, Mr. Sapienza, he in no way suggested during
2 that meeting that this was being done pursuant to the
3 direction or suggestion of General Kugler.

4 May I also add that I recall at the end of the
5 meeting that we had proposed certain suggestions to him
6 that this matter be conducted--that since they had
7 now received a complaint, had received the subject
8 matter from Judge Stamler, that at this point perhaps
9 it was propitious to handle this on a joint basis and to
10 conduct it on a joint basis and we would go so far as
11 to try to obtain an order from a federal court permitting
12 us to exchange grand jury testimony. And I think we also
13 agreed, we being two offices, that we would refrain
14 from interviewing specific witnesses for a period of
15 days because General Kugler was not in the office;
16 was not in New Jersey. Mr. Jahos said that before he
17 could make any kind of a binding commitment on the
18 Attorney General, that he would have to speak with him.
19 And I believe--I don't know whether the 13th was a
20 Monday, or a Tuesday or a Wednesday. I'm not sure.
21 But I believe, I think it was a Monday, and I think that
22 General Kugler was not going to be back until that Sunday,
23 and certainly the latter part of the week, and he had
24 to talk with him.
25

01-5

EXAMINATION BY MR. FRANCIS:

Q Do you remember he told you that the Attorney General was in Europe?

A Yes, I do remember that, sir.

THE CHAIRMAN: Okay.

Q One further thing that just occurred to me. When you did get the check for \$10,000 for the Manzo Construction Company, did you or anybody in your office go back to the stubs of the checkbook and see what was written there with respect to that check and what it noted as to the purpose for which it had been drawn?

A I'm sure that we did.

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Q I suppose that it did not indicate the check

was drawn to the Republican Finance Committee, because your men had examined the books earlier and you said while you saw some questionable items, you did not discover this check or anything that would indicate a payment to the Republican Party of \$10,000 in the books themselves.

A I don't think I could say that, one way or the other. It may have been indicated on the stubs.

The reason I can't, Justice Francis, is there were many, many, many checks that weren't there. There had to have been maybe even a hundred checks that had gone between Manzo and Perrucci because of his complex relationship, and we were trying to get all of these checks. So that there were a lot of things indicated on those stubs, and we wanted to get our hands on the cancelled checks because, of course, once we saw the check and the back of the check and saw how it had been endorsed, then we would know a good deal more.

Q Well, I was really trying to find out if the two things, and if it was made to jibe the two things, the number on the check with the stub of the checkbook, which would bear the same number as the check, I assume, to see what the notation was for that check or a check of that number, what it said about its purpose.

A I'm sure it was, but I really cannot tell you what

B. Goldstein
the relationship was today.

MR. FRANCIS: All right. That's all I have.

THE CHAIRMAN: Just one further point to remind you. Mr. Sapienza touched on it in the beginning.

THE WITNESS: Yes, sir.

THE CHAIRMAN: Under our Code of Fair Procedure, Section 5, if you would like at the end of this testimony to file a brief sworn statement, you may do so. I indicate that to you in case there is something you feel you have been asked a question about. Okay?

THE WITNESS: Thank you. I don't think that will be necessary. If I can be of any further assistance, I'd be happy to.

BY MR. FRANCIS:

Q You can't think at the moment of anything that we haven't asked you about, all of us, that you came here intending to say or that you would like to say?

A No. I don't think I went into the meeting with Mr. Jahos as fully as we might have. I think Mr. Stern would certainly be able to go into those facts in as much depth as you want. I can think of nothing more I should say at this point.

(Witness excused.)

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1 (Whereupon, Mr. Stern enters the room.)

2 THE CHAIRMAN: Okay. Mr. Stern, you are
3 appearing today voluntarily before three members
4 of the State Commission of Investigation. I think
5 you know all three of us.

6 We would like you to be sworn at this time, sir.

7 (Witness sworn.)

8 H E R B E R T J. S T E R N, having been duly sworn
9 by the Officer, testified as follows:

10 THE CHAIRMAN: As you are probably aware,
11 Mr. Stern, we have Mr. Francis here as special
12 counsel to the Commission. I think you also know
13 that Mr. Sapienza is one of our counsel.

14 THE WITNESS: Yes.

15 THE CHAIRMAN: The gentlemen in the rear part
16 of the room, Mr. Corrigan and Mr. Jordan, are two
17 of our investigators--

18 THE WITNESS: Hello.

19 THE CHAIRMAN:--who have been assigned to this
20 matter. Mr. Prout is our court reporter, and he
21 has an assistant who will change back and forth
22 so will get the transcript transcribed as rapidly
23 as possible.

24 THE WITNESS: Oh, that's good.

25 Before we proceed, I have a request to make

1 if you deem it appropriate.

2 As you know, there are certain regulations
3 which govern an employee of the Department of Justice
4 giving testimony. When I received a call from
5 your Executive Director, I think it was, I notified
6 my superiors and they gave me permission to appear
7 here and testify. I wanted to make that part of
8 the record, if you don't mind.

9 And second of all, I would like to respectfully
10 ask, unless it's somehow violative of your procedures,
11 that as such time as you have my testimony and any
12 of the others on my staff typed, we would like to
13 have copies for our files and available for our
14 superiors in the Department as well.

15 THE CHAIRMAN: Yes, sir.

16 MR. FRANCIS: Well, certainly no objection
17 to that.

18 THE CHAIRMAN: Our procedure is that we have
19 the girls typing right after the testimony is
20 transcribed. We can get those to you.

21 THE WITNESS: Thank you very much.

22 THE CHAIRMAN: Now, as part of our procedure,
23 Mr. Sapienza will read to you certain warnings to
24 you Mr. Stern, that are given to everyone that
25 appears before us as a matter of our procedure.

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THE WITNESS: Okay.

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EXAMINATION BY MR. SAPIENZA:

Q Mr. Stern, before we begin, I note for the record that you are appearing at the request of the Commission voluntarily. This is an executive or private session of the Commission. Your testimony will be taken under oath and transcribed by the shorthand reporter. It may be used against you later on in a court of law. For that reason, if you feel that your answer may tend to incriminate you, you may refuse to answer. You have the right to be accompanied by an attorney of your choice. I know you are an attorney. I note for the record that no attorney is with you. This is of your choosing; is that correct?

A Yes. I was advised by the executive director I could bring a lawyer with me, but I declined the honor.

Q If you desire to have an attorney present today at any time during the questioning, you just have to tell us to stop and we will discontinue the proceeding. In any event, if you want us to discontinue the questioning at any time, you can just tell us that and we will. Section 52:9M-15 of our statute forbids disclosure by you of the questions asked, your responses or any information you may gain at this hearing, the idea being that everything that happens in this

03-2 1 executive session is supposed to remain among us.

2 Okay? A All right, with the proviso that I
3 expect, pursuant to my earlier conversation, to be able
4 to tell my superiors in the Department of Justice
5 about it.

6 COMMISSIONER BERTINI: We have granted you
7 that permission and that's been excepted.

8 Q Although your testimony is now being taken
9 in private, the Commission may make it available to the
10 public at a later time, or even call upon you to give
11 the same testimony at a public hearing, if upon the
12 adoption of a resolution they decide to do so.

13 A copy of your testimony at this private hearing will
14 be made available to you within a short period of time
15 following this.

16 You have the right at the conclusion of this
17 hearing to file a brief sworn statement relative to your
18 testimony for incorporation into the record of this
19 proceeding, if you so desire. Thank you very much.

20 A Thank you.

21 EXAMINATION BY MR. FRANCIS:

22 Q Mr. Stern, your official title is United
23 States Attorney for New Jersey?

24 A That is correct.

25 Q You have been there for how long?

03-3

1 A Well, I was Acting U. S. Attorney as of December 1st,
2 1970, when my superior at that time, Frederick B. Lacey,
3 entered the hospital and I was designated as Acting
4 U. S. Attorney by the Department of Justice. I remained
5 in that capacity almost continuously until February 1st,
6 of 1971, when my predecessor assumed his office as
7 United States District Court Judge at which time I was
8 sworn in as United States Attorney by court designation.
9 I remained in that capacity until, I think it was, roughly
10 December of 1971, when I was again sworn in as United
11 States attorney for the District of New Jersey, this
12 time by Presidential designation.

13 Q And, of course, you are still there?

14 A Yes, I am.

15 Q Now, did you, in April of 1972, receive
16 a memorandum from your assistant, Bruce Goldstein,
17 relating to a visit by David Biederman, a former Deputy
18 Attorney General of New Jersey?

19 A Yes. It is my recollection, Justice Francis,
20 that--

21 Q Could I interrupt you for a minute.

22 A Surely.

23 Q Do me a favor-- A Surely.

24 Q --during this inquiry. Under the Supreme
25 Court rules, nobody is allowed to be addressed by a

03-4 1 present or a former title, except, of course, a witness
2 like you. So, I have to be addressed as "Mr. Francis."

3 A Although I do not like that rule, I will certainly
4 abide by whatever you want me to do.

5 Q It's just better for the record. It may be
6 embarrassing. I don't want to have to go down to the
7 Supreme Court and explain why I allowed somebody to
8 call me "Justice" when I'm no longer there.

9 A I'll try to remember. If I slip, please believe
10 me, it's not by design.

11 I do recall there came a time when a
12 report was made to me, I believe first verbally by Mr.
13 Bruce Goldstein, that a former Deputy Attorney General
14 by the name of Biederman, a man whom I had never met
15 before, had been in to see him; had made a complaint
16 to him in reference to the award or the attempt to award
17 a contract in violation of the state bidding statutes,
18 and had conveyed to him certain memoranda, which, it is
19 my recollection, Mr. Bruce Goldstein showed to me on
20 this occasion.

21 I instructed Mr. Goldstein to go back to his office
22 and to dictate a complete memorandum of his conversations
23 with Mr. Biederman and to enclose the memoranda which
24 Mr. Biederman had brought to him as part of exhibits
25 to that memorandum because it was very difficult for me

03-5 1 to follow and I wanted a record made of what had occurred.

2 From the documents I can piece together, I think the
3 dates when these things occurred, I believe that Mr.
4 Biederman came into our offices on April the 14th,
5 which was a Friday, 1972, and I believe that Mr. Bruce
6 Goldstein was able to comply with my request for a
7 typed memorandum with the exhibits by April 20th of 1972.

8 I must tell you flatly, I have no independent
9 recollection of the dates, but from the memorandum
10 themselves I can piece this together.

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1 Q Well, if it reflects any on the quality of
2 your recollection, it would seem quite right to tell you
3 that Friday, April 14th was the date of the conversation
4 and the memorandum of Mr. Goldstein was April 20th.
5 So whether it was a good guess or a very good recollection,
6 the dates are correct.

7 A No, I have the memorandum before me. But I'm
8 only indicating, sir, that, in all fairness, I didn't want
9 you to think that I was purporting to give you dates that
10 I just happened to remember.

11 The next step that I took in reference to these
12 materials was to call my superior in the Department of
13 Justice, the Assistant Attorney General who's in charge
14 of all criminal matters in the United States, to report
15 to him this information--I felt it was something that my
16 superiors ought to know about--and obtain from him permis-
17 sion to conduct a Grand Jury investigation into the
18 matter.

19 I also within a day or two of all of this
20 happening notified the Federal Bureau of Investigation.
21 It is my recollection that I spoke with the special agent
22 in charge and asked him to assign agents to assist in
23 this Grand Jury investigation.

24 In the interest of saving time, if you like,
25 I can kind of give this to you rather than forcing you

1 to be asking me questions.

2 Q Yes, go ahead.

3 A In my conversations, with my superior I asked him
4 whether or not it wouldn't be appropriate for me to
5 contact Mr. Kugler, the Attorney General of New Jersey,
6 concerning these memoranda of Mr. Biederman's, as well
7 as to notify him of the possibility of the Federal Govern-
8 ment investigating this matter. My superior gave me
9 permission to do so, and it is my recollection that within
10 a day or two of my conversation with my superior, I called
11 Mr. Kugler, the Attorney General Kugler on the telephone
12 and asked him whether it wouldn't be convenient for us
13 to meet.

14 It is my further recollection that the Attorney
15 General was kind enough to suggest that he'd be willing
16 to come up to my office, but I told him that I would be
17 willing to come to his and we fixed a meeting, which,
18 from my calendar, I have ascertained to be at 10:30 in
19 the morning on April the 26th of 1972 in his offices
20 in Trenton.

21 It is my recollection that I sent copies
22 of Mr. Bruce Goldstein's memorandum and Mr. Biederman's
23 memorandum to the Department of Justice within a day
24 of my--a day or two of my telephone conversation with
25 my superior.

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Stern

1 The purpose of my meeting with Attorney General
2 Kugler was several fold. First of all, I had no way of
3 knowing as to whether or not Biederman's documents were
4 real documents or whether they had been created by somebody,
5 and I wanted to find out whether these were, you know,
6 actual documents. He had with him, in addition to the
7 memorandum of October 30th which he had written, certain
8 documents which purported to be, at least one purported to
9 be a letter from the Secretary of the State of New Jersey
10 written to the home of the Commissioner of Transportation
11 of New Jersey. So, first of all, before conducting some
12 sort of investigation which might result in publicity,
13 I wanted to find out whether or not these were real documents.

14 Second of all, I wanted to ascertain whether or
15 not there had been an investigation by the State, because
16 obviously, ^{if} the matter had been thoroughly investigated,
17 or was in the process of active investigation, there was
18 absolutely no point in duplicating the State's efforts, and
19 I wanted to know the results of that.

20 And the final reason frankly was, it seemed to
21 me as a matter of harmony between jurisdictions that an
22 investigation such as the one we were about to embark on
23 with the Grand Jury, which covered as it did, at least
24 two and possibly three ~~full~~ departments of state government,
25 we ought to give some notification to the responsible

1 state official, which the Attorney General is the
2 chief law enforcement officer of the State, was in my
3 view and in the view of my superior in the Department of
4 Justice.

5 So, for those reasons we went down to meet
6 with them, and it is my recollection it was 10:30 in
7 the morning, roughly, on April the 26th of 1972.

8 EXAMINATION BY
9 THE CHAIRMAN:

10 Q Just for the record, may I interrupt you there?

11 A Certainly.

12 Q What is the name of the superior in Washington?

13 A Henry Peterson, Assistant Attorney General in charge
14 of the Criminal Division in Washington.

15 Q Is he still down there? A Yes, he is.

16 Q Whom did you talk to in the Federal Bureau
17 of Investigation? A It is my recollection that
18 I talked to Mr. Wallace J. Laprade, Special Agent in
19 charge of the Federal Bureau of Investigation.

20 It is my further recollection that I showed
21 him the memorandum which Mr. Bruce Goldstein had prepared,
22 as well as the memoranda Mr. Biederman had brought in.
23 I am not sure as to whether or not I left copies with them,
24 but I am absolutely certain that I showed him those documents.
25 Indeed, I had the recollection that I called him up, he

1 came over to my office. At that meeting, also, was Assis-
2 tant Special Agent in charge Joseph Zeal, (Z-E-A-L). He
3 is no longer -- Mr. Zeal is no longer in New Jersey.
4 He is now an inspector with the FBI in Washington.

5 Q Thank you. A I also have a memo, rather
6 a letter which I sent to my superior in Washington confirming
7 my telephone conversation with him, and, I believe, enclosing
8 Mr. Bruce Goldstein's memorandum and Mr. Biederman's memoran-
9 da. I sent that before I met with Attorney General Kugler.

10 EXAMINATION BY
11 COMMISSIONER DIANA:

12 Q Did I understand you correctly that you had
13 forwarded this packet of documents to Attorney General
14 Kugler prior to the date-- A No, sir; no, sir.
15 Assistant Attorney General Henry Peterson, my superior
16 in the Department.

17 Q Did you forward any documents to Attorney
18 General Kugler prior to the day that you went to visit
19 him? A No, sir.

20 Q Okay. A Indeed, I did not on the
21 telephone tell him the purpose of my visit, nor, might
22 I say, did he ask.

23 COMMISSIONER DIANA: Okay.
24
25

05-1
1 EXAMINATION BY MR. FRANCIS:

2 Q One further thing.

3 A Sure.

4 Q When you went down to see the Attorney
5 General, you brought with you all of the documents that
6 Mr. Goldstein had given you that he said he had gotten
7 from Mr. Biederman?

8 A Absolutely, as well as, sir, --

9 Q Go ahead, as well as.

10 A --Mr. Bruce Goldstein's underlying memorandum,
11 in other words, the thing that kind of explained the
12 exhibits.

13 Q Yes. But that was the total number of
14 exhibits that you brought with you, what you just
15 described?

16 A That's all we had; that's all we had.

17 Q In other words, nothing more? You haven't
18 added anything to that point beyond what you had
19 gotten from Mr. Goldstein and from Mr. Biederman?

20 A Correct. We had not yet begun to investigate.
21 Our first step was to, number one, find out if these
22 were real documents; number two, find out whether or
23 not, you know, the thing had already been explored;
24 and, number three, to give notice in the event that the
25 first two questions were answered in the positive and the

05-2

1 negative, respectively, to give notice to the State
2 authorities that we were going to investigate.

3 THE CHAIRMAN: And just to fix it again,
4 now, at this time when you're going to meet the
5 General, you had already mailed off these particular
6 memoranda to your superior in Washington?

7 THE WITNESS: That is my recollection.

8 THE CHAIRMAN: Okay.

9 THE WITNESS: And a letter confirming the
10 fact that we were going to investigate and that I
11 had his permission to notify the Attorney General
12 of New Jersey of the fact that we were going to
13 investigate.

14 THE CHAIRMAN: Okay.

15 Q Go ahead.

16 A Mr. Jonathan Goldstein accompanied me to meet with
17 Attorney General Kugler.

18 I also--and this becomes perhaps relevant in a
19 moment--set up some appointments in my Trenton office
20 here. As you know, I maintain three offices in the
21 State, or the Department of Justice does, for which I
22 am responsible; one in Camden, one in Trenton.
23 And I had set up an interview with one of my assistants
24 relative to a personnel change in regard to my Trenton
25 office, but I had set it up--rather in my Camden office,

Stern

05-3

1 but I had set it up in the Trenton office so I could,
2 in other words, accomplish several missions in one
3 trip.

4 My recollection is that we met with Attorney General
5 Kugler, that is Mr. Goldstein and myself, in his--

6 Q He was alone, was he?

7 A Yes, he was alone at all times except for one point,
8 which I'll come to in a minute.

9 Q All right, go ahead.

10 A We were in his office, and I would say that we
11 spent a considerable time discussing other matters,
12 which I don't think are relevant to your inquiry here,
13 which he raised with us.

14 At that point when we finished discussing these
15 other matters, I told him that we had not really come
16 to speak to him about these things but to discuss another
17 thing, and I at that point took out all of the documents
18 that I had, and rather than sitting and trying to tell
19 him about it I gave him the package right then, which
20 comprised just everything we had; the Biederman memos,
21 and Mr. Bruce Goldstein's memo to me. And he perused
22 them in our presence.

23 It is my recollection that at a certain point,
24 and I can't at this stage tell you what, at which
25 document this occurred anymore, you know, -- I don't

1 even know that I noticed it at the time--he stated
2 that Biederman had spoken to him about it, but that
3 this--and I remember these words--that this was the
4 only time that they had had any difficulty with Sherwin;
5 that Garven, he said, had stopped it.

6 I then recall that he laid down the package of
7 materials that we had brought in and he, in substance,
8 now, and I'm not trying at this point to quote his exact
9 words, indicated that Biederman had a reason for coming
10 into my offices to show us these materials. He said that
11 he had filed an ethics charge against Mr. Biederman.

12 And then there was some discussion about timing,
13 as to when he had filed the ethics charge and when Mr.
14 Biederman had come in to see us, and we were able to
15 ascertain from Mr. Bruce Goldstein's memorandum that
16 Biederman had come in on April the 14th to see us.
17 And at this point I remember that he called in his
18 secretary and asked her to bring in the correspondence
19 which he had sent to, I think, Mr. McConnell alleging
20 the ethics charge against Biederman, and then we took
21 a look at the date of the correspondence and we were
22 able to determine that he had made the ethics charge
23 against Biederman, it is my recollection, about seven
24 days or more prior to the time that Biederman had come in.
25 As a matter of fact, he was even kind enough to instruct

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1 his secretary to make photostatic copies of the letter,
2 the ethics complaint letter. As a matter of fact, I
3 think there was a series of correspondence between he
4 and Biederman and then from him, finally, to McConnell
5 referring it to the attention of McConnell, and he had
6 her make copies for us.

7 At this point I remember him telling us that he
8 didn't suppose it really made any difference what
9 Biederman's motives were, and I told him that that was
10 right and he agreed with us that in light of the fact
11 that Biederman had come into our office, for whatever
12 reasons or motives he may have had, that at this point
13 my office had a duty to investigate the matter.

14 I remember telling him that we would have to press
15 on. At this point we had satisfied ourselves that the
16 documents were genuine and that there wasn't any
17 question about whether or not we ought to look into it,
18 and there was then some discussion as to how the
19 investigation would proceed.

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Stern

1 I advised Attorney General Kugler that I would
2 prefer that the Federal investigation proceed alone at this
3 point. I told him that if he agreed to do this, that I
4 would keep him apprised of progress that we made. I told
5 him that in the event of any additional State crimes were
6 uncovered, I would notify him about that, too.

7 I remember, in general, there was a discussion
8 as to what my reasons were for that request, and I told
9 him that, in my view, in light of the totality of the
10 circumstances of this matter, that if after Biederman had
11 written that October 30th memo and the State had taken no
12 action, if now a year and a half later he were to come to
13 my office and I merely were to refer it back to the State,
14 that I thought that the whole investigatory processes would
15 be suspect and that, frankly, that I was worried about the
16 reputation of my own office, and that I would appreciate
17 now, a year and a half later, the opportunity to investi-
18 gate the matter alone.

19 It is my recollection that Attorney General
20 Kugler told me that he would not be able to give me
21 a final answer on the matter and that he wanted the
22 opportunity to think about it, and I told him that I
23 could readily understand that; that that was agreeable
24 to me.

25 I remember specifically asking him if he

1 wouldn't agree not to, in any case, no matter what his
2 decision was, not to notify Sherwin about the--
3 excuse me--Biederman's complaint for the Federal investiga-
4 tion for obvious reasons. Attorney General Kugler assured
5 me that he would not do so.

6 I remember--let me just review my file.

7 Q Yes, yes, go ahead. You followed the sequence
8 very well. I've been following it with you. But, go ahead,
9 there's a little bit more farther down.

10 A Yes. There was some additional conversation as well.
11 I have not everything included in this memo, but it
12 does strike recollections in my mind.

13 In the discussion about who would be notified,
14 the Attorney General asked me if I minded him, or if I
15 had any objection to him notifying Mr. Evan Jahos, the
16 Director of Criminal Justice, and at that point I said I
17 did and I didn't want Mr. Jahos notified about the Federal
18 investigation. I pointed out to him that the Biederman
19 memorandum, the copy we had, which apparently was Biederman's
20 personal or private copy, had a bee on it to Evan Jahos
21 and that, under the circumstances, that I might want to
22 be speaking to Mr. Jahos and I didn't want Mr. Jahos
23 informed of either the fact of our investigation or such
24 progress as we reported to the Attorney General in the
25 days ahead. He agreed not to notify Mr. Jahos, at least,

1 for the time being.

2 It was my impression that the issue was
3 still left open as to whether or not the State would go
4 ahead and investigate.

5 THE CHAIRMAN: Excuse me. He was not going
6 to notify him about anything or just about the
7 Federal investigation?

8 THE WITNESS: It was my impression that the
9 conversation that I was having with the Attorney
10 General Kugler would be kept private between the
11 two of us and that he would notify me at a later
12 point as to whether he would exceed to my request
13 that the Federal Government investigate this matter
14 alone or whether he would require the State Govern-
15 ment to immediately launch some sort of an investi-
16 gation. But it was my understanding that the
17 conversation that we were having was not going to
18 be reported to anybody else.

19 THE CHAIRMAN: No. I thought he asked you
20 would it be okay to tell Mr. Jahos about it.

21 THE WITNESS: Yes.

22 THE CHAIRMAN: And you said yes?

23 THE WITNESS: No, I said no.

24 THE CHAIRMAN: Oh, you said no. I thought
25 you said it would be okay, but don't notify him

1 about the Federal investigation.

2 THE WITNESS: No, Mr. McCarthy, that's not
3 what I said.

4 MR. FRANCIS: No.

5 THE CHAIRMAN: Don't tell him about anything?

6 THE WITNESS: That's correct. I pointed out
7 to him the bcc notations on--see, I didn't have
8 the original Biederman memorandum. I only had
9 Biederman's copy, which showed the bcc marks on it.
10 And I did not want at this stage, you know, the
11 most delicate stage when you first begin, I didn't
12 want the information disseminated around, frankly.

13 THE CHAIRMAN: I see.

14 A (Continuing.) There was some conversation as to
15 whether or not the original memos were still in existence.
16 I believe I told him that I would be seeking the files of
17 the Department of Transportation and perhaps the Department
18 of Law as well, and some question as to whether they were
19 still around and I suggested that it would be very well
20 that they should still be around.

21 My recollection the only other thing that
22 happened during the meeting at this point was that Mr.
23 Goldstein, with the Attorney General's kind permission,
24 was able to call our Trenton Office and order some sand-
25 wiches and that at that point I left, went to my Trenton

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1 Office. And there was one further thing I think I
2 should bring out.

3 In my Trenton Office, and I frankly don't
4 recall whether or not Attorney General Kugler had called
5 my Newark Office and they had told me that he wanted
6 to reach me or whether he placed a call into the Trenton
7 Office, but I did have a telephonic conversation with
8 Attorney General Kugler that day while I was in Trenton
9 Office and he told me that he had gone to see the Governor
10 to tell him about our conversation. And I told him
11 that that was all right with me; that even though I said
12 that no one should know, I recognized that he had a
13 superior as I had a superior. I told him that I had told
14 my superiors about it, and that I had no question about
15 it.

16 He told me that based on his conversation
17 with the Governor it was their decision that I should go
18 ahead alone, and I remember him using the phrase, "it would
19 be a kind of civilian review board." I said thank you, or
20 I'm sure I did, but I have no recollection of the parting
21 words, terminated the conversation, returned to the Newark
22 Office and that very day ordered Mr. Bruce Goldstein to
23 issue a subpoena duces tecum for all of the books and
24 records of the Manzo Corporation to be returned to the
25 Federal Building. The subpoena is dated April 26th, and

1 it calls for all the books and records produced by this
2 firm on April 28th.

3 I'm sorry that I have not given this to you
4 earlier, but you may certainly have this Xerox copy.

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07-1 1 Q That's certainly all right. Mr. Goldstein
2 told us about it earlier. That's all right.

3 One item. Do you remember whether on the
4 way out you and Mr. Goldstein stopped in to say hello to
5 Mr. Jahos? I'm not suggesting that you said anything
6 about your visit there or the purpose of it, but did you
7 stop in and say hello to him?

8 A I think we did, as a matter of fact, now that you
9 mention it. I hadn't remembered that. I think we
10 stopped it. I don't believe it was to say hello, though.
11 I think that there had been--that's right. When we went
12 in to see the Attorney General, we were told that Mr.
13 Jahos wanted to see us while we were in the building
14 when we left. I believe the Attorney General's
15 secretary told Jon Goldstein and I, and I believe after
16 we left the Attorney General's office we had a problem--
17 I remember now--trying to find out where he was. I
18 don't believe I--I may have been there before, but I
19 have no recollection of it.

20 We finally did, and then we had some general
21 conversation with him. And if you have any hint as to
22 what it was, maybe you can spur my recollection because,
23 frankly, I don't remember what it was.

24 Q No, except to say that Mr. Jahos recollects
25 that that day you did come down and stop in and he

07-2¹

indicated it was rarely more than a courtesy hello.

2

He does not suggest at all that you said anything at all

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about the nature of your visit to the Attorney General.

4

A Oh, I'm sure he wouldn't.

5

Q Or that he had any indication of why you were

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there to see the Attorney General.

7

A No, sir.

8

Q He simply recalls, now that it is all over,

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that you did stop in that day or that he did say hello

10

to you. Beyond that, nothing of significance.

11

A No, sir, I'm quite sure you're correct, because

12

we would not discuss this matter with him and I do have

13

a specific recollection that we were told as long as

14

we were there, while we were in the building, we should

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stop in and say hello to him.

16

I remember now he has an office in the rear and

17

Jon Goldstein and I sat there, and I think it must have

18

been a matter of formality because I don't think anything

19

of substance was discussed.

20

Q Well, after you got back and issued the

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subpoena for the books and records, I assume you

22

got them?

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A Well, we didn't get all of them. That created our

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first difficulty.

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Q You did get some and you had them examined?

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A Yes, we had, pursuant to my conversation with special agent in charge Laprade. We had the team of FBI agents assigned to the investigation. It is my recollection that they were basically from the accounting squad which runs these kinds of cases for us.

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It is my recollection, and it is based on reports made to me, that we were not furnished all of the books and records of Manzo. In its specific terms certain checks were missing. It later turned out that one of the missing checks was the \$10,000 check to the Republican Finance Committee. And it is my recollection that I told Bruce Goldstein to tell the bureau to get out there and find those checks or go to the bank and see if we could get the records from the bank, because, as you know, the bank takes photographs of checks as they are run through.

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Q Do you remember in the checkbooks from which the checks were missing that anything was disclosed by the stubs?

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A I must tell you, sir, that I never saw the checkbooks. I got a report that certain checks were missing. When I heard certain checks were missing, I said, Go ye hence and get the checks, find out why we

P1-2

1 didn't get them, and get photographs of them.

2 I have a recollection, it's the most natural
3 and common sense thing to ask the one question you asked
4 me, I believe I asked whether we could check them and
5 I believe the answer was no. I never saw the check stubs
6 or the records. I didn't question Manzo.

7 Q Were they successful in getting the missing
8 checks?

9 A No, not immediately. My recollection is now,
10 and this is based on a report that the FBI made to Bruce
11 Goldstein and Bruce Goldstein made to me, my recollection
12 is that the FBI in the course of tracking down the books
13 of the missing checks, and also in the course of the
14 third-party examination, what we call a third-party
15 examination, we found based on numerous investigations
16 like these that you can't always just rely on what
17 the contractor's books and records show. You have got to
18 go to his suppliers and subcontractors and see if they
19 have been raising any cash, because obviously a situation
20 like this what you're looking for is the money.

21 It's my recollection that in the course of that
22 aspect of the investigation as well as trying to hunt
23 down the missing checks, we were notified by the FBI
24 of the lawsuit involving Manzo and a subcontractor
25 by the name of Perrucci. And it is my further

P1-3

1 recollection that I was told by Bruce Goldstein that
2 the FBI had interrogated Perrucci and thus found out that
3 one of the subject matters of the very lawsuit was the
4 \$10,000 check to the Republican Finance Committee.

5 Q May I ask you specifically with respect to
6 that?

7 A Yes.

8 Q The FBI man in talking to Perrucci and
9 finding out about that lawsuit, was he told, to your
10 recollection, or your report, by Perrucci that he had
11 already testified before Judge Stamler at that time
12 about the \$10,000 check?

13 A Sir, I frankly cannot recall that.

14 I do recall, however, that when I found that out,
15 I don't know whether it was a specific direction of
16 mine or simply a natural thing that any law enforcement
17 person would do, I know that Mr. Bruce Goldstein did
18 contact Judge Stamler. I know that Judge Stamler
19 was very kind and cooperative and furnished to Mr.
20 Goldstein a photostatic copy of that check.
21 I know that Mr. Bruce Goldstein was further advised
22 by Judge Stamler that he had notified at least the
23 Attorney General's Office. I don't know whether he
24 told me that it was Mr. Jahos.

25 I know that at about the same time, and this is

Pl-4 1 around now mid-June, I know that at about the same time
2 we began to hear reports from the people who we were
3 interrogating as witnesses that the state was either
4 like one step behind us or had just been there. I think,
5 and I am not 100 percent positive, but I think it was
6 Bruce Goldstein who told me he had gotten a call from
7 Mr. Mullen to the effect that he had just been interviewed
8 by a deputy, I think his name was Cowan. And I became
9 concerned in light of my conversation and agreement with
10 Attorney General Kugler.

11 If I may be permitted to drop back a moment.
12 After we subpoenaed the books and records of Manzo,
13 I have a recollection that in this intervening time,
14 between my conversation with Attorney General Kugler
15 and when I found out the state was investigating, I had
16 several telephonic conversations with Attorney General
17 Kugler. I remember in particular telling him about
18 subpoenaing the books and records of Manzo. I remember
19 at a later point trying to call the Attorney General
20 to alert him as to whatever the next steps had been,
21 but I was unable to reach him. I remember being very
22 amused by the fact that his secretary didn't seem to be
23 able to give me any information as to where he was.

24 Q Did you later on learn that he was in Europe?

25 A Yes, I did. And I learned that on--

P1-5

1 Q You think she was being secretive about the
2 fact that he was on vacation?

3 A No. I often tell my secretary to take a message when
4 I am away, don't tell people where I am going. There is
5 nothing improper in that, and I don't mean to imply that
6 there is. But I am telling you why I have these recollections
7 and why I remember certain things.

8 That left me in a bit of a predicament. I couldn't
9 reach Attorney General Kugler. The state was conducting
10 an investigation. I was concerned about anybody being
11 able to allege that we had, you know, a year and a half
12 later just kind of flipped this thing back to the state.

13 I called on June 13, and I know that date because
14 Mr. Bruce Goldstein made a memorandum of the conversation
15 we had. On June 13, I reached out and called Evan Jahos
16 and I asked for a conference with him. He asked me to
17 meet him halfway, I remember, and I told him that, while
18 I was inclined to do it, I had certain documents which
19 I might have to show him, and I asked him if he would be
20 good enough to meet me in my office, and he was kind
21 enough to accede to my request.

22 It is my recollection that it was somewhat late
23 in the day, five or six, or thereabout, on the 13th.

24 Mr. Jahos came to my office with Deputy Attorney Generals
25 Peter Richards and Edwin Stier.

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Q May I interrupt to ask a couple of questions
relating to fill-in material perhaps within that period.

A Sure.

1 Q Did you subsequently learn how Mr. Jahos came
2 into the picture in apparent violation of the agreement
3 you had with Mr. Kugler? Was that on the 30th of May --

4 A About that, yes.

5 Q The 30th of May Judge Stamler called him on
6 the telephone, because this information, because the Perrucis
7 had testified on that day. Judge Stamler had gone to Judge
8 Waugh and said, What am I going to do with this? And
9 Judge Waugh said, Call Mr. Jahos.

10 He thereupon called Mr. Jahos.

11 Did you learn that later--

12 A I learned that on the 13th.

13 I'm sorry. I didn't mean to interrupt you.

14 We have a memo of this entire conversation.

15 It is my recollection that the first thing that happened
16 in the conversation is that I told Mr. Jahos, Mr. Richards
17 and Mr. Stier about my conversations with the Attorney
18 General.

19 Q And that's the next thing I wanted to ask
20 you.

21 Did you find out then that the Attorney
22 General had actually kept his word with you and had
23 never told Jahos anything about your conversation or that
24 he shouldn't investigate anything, so that when Jahos
✓25 got the word from Judge Stamler he sent Mr. Cowans the

1 very next day up to that trial and that's how Jahos
2 got into the picture and the Attorney General didn't know
3 anything about it for some time after that? Did you learn
4 that, or were you told that by Mr. Jahos?

5 A I was told part of that. I was told that there had
6 been no --

7 May I have a glass of water?

8 Q Sure.

9 (A short recess was taken.)

10 A (Continuing.) If I may be permitted to review
11 the memorandum.

12 I will give you my recollection, subject to
13 revision after looking at the memorandum.

14 MR. SAPIENZA: Why don't you just wait.

15 I will have it right in just a minute.

16 THE WITNESS: All right.

17 (Off the record.)

18 BY MR. FRANCIS:

19 Q I interrupted to try to get that fill in,
20 because I having read your memorandum about the arrangement,
21 the understanding with the Attorney General, I tried to
22 find out myself why Jahos had come into the picture,
23 and I wanted to fill that in for good faith purposes, that's
24 all.

A I know, sir.

25 There is no question that pursuant to my

1 understanding with Attorney General Kugler the State did
2 no investigations as a result of my conversations, and that
3 the State investigation began on or about the 1st of June
4 solely as a result of the independant source of information
5 which was Judge Stamler's referral to apparently Mr. Jahos
6 of the testimony or the check and the circumstances of
7 it.

8 However, upon review of Mr. Goldstein's memoran-
9 dum, I cannot adopt what was in the question because I see
10 here, and it does spark a recollection, that Mr. Jahos did
11 say that Mr. Kugler had advised him of his conversations with
12 me and had not indicated any agreement to refrain from
13 investigating the matter.

14 However, there is no doubt that there was no
15 State investigation at all until such time as Judge Stamler
16 alerted the State to the testimony and the check which had
17 come into evidence before him.

18 Q Then after you got together on the 13th, did
19 you get along as a family after that?

20 A Well, on the 13th the situation, in my judgment,
21 had changed radically. The State now had a legitimate
22 other reason for being in. It would^{not}/now appear, it would
23 seem to me, that we were trying to dump this thing back
24 into the source where the original complaint for failure
25 to investigate began with. I told Mr. Jahos that on

1 the basis of Stamler's referral that he also indicated
2 that he intended to proceed with the investigation. I told
3 him under these circumstances there being an independant
4 source of it that I would be willing at this point to
5 cooperate with him, and he with me, directly in the
6 investigation.

7 At that point I showed him the letter from
8 Sherwin to Kohl, Kohl's home, you know, the one that
9 says, Call me later, and I will tell you why.

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1 Q Could I ask you about that.

2 Was there any indication from Jahos that he
3 had ever seen that before?

4 A No, there is no indication that I remember. As a
5 matter of fact, I was left with the impression not so
6 much from Mr. Jahos, but from Mr. Richards and Mr. Stier
7 that they had ever seen that document.

8 MR. SAPIENZA: That Richards and Stier
9 had never seen it?

10 THE WITNESS: Correct.

11 MR. SAPIENZA: Richards and Stier didnt
12 give you any indication of whether Jahos had ever
13 seen it?

14 THE WITNESS: No.

15 BY MR. FRANCIS:

16 Q But Jahos was there?

17 A He was sitting there.

18 I believe I also showed the October 30th memorandum
19 of Mr. Biederman to Mr. Kohl to the three gentlemen.
20 And it is my impression, without being firmly fixed,
21 that neither Mr. Richards nor Mr. Stier had ever seen
22 that document before. I did not question Mr. Jahos
23 about it, for obvious reasons of civility. His two
24 subordinates were present and I, quite frankly, did not
25 want to embarrass the man.

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Q Did he volunteer anything--

A No.

Q When I say "he," I mean Jahos.

A No.

Yes, I understand. The only thing he said was in looking at these documents--I remember telling him in my view these were the worst documents I have ever seen in my eleven years, the combination of the Biederman October 30th memo and the Sherwin letter written to Kohl's home, with the phrase, Call me later and I will tell you why to throw them out.

He said something about he thought they were so bad maybe they were a good defense.

There is, no doubt, more of the conversation, but you have got the entire memorandum of it. Mr. Goldstein memoed the conversation. I had not reviewed it until quite recently myself.

Thereafter, Mr. Richards and Mr. Stier worked in a close and I would say highest degree of cooperation with Mr. Bruce Goldstein and Mr. Jonathan Goldstein, of my staff, on the investigation. It is my recollection that they interviewed witnesses together and such time as it wasn't convenient they split up chores and reported to each other the results. We immediately sought an order from a federal judge, pursuant to Rule 60--

P3-3

1 MR. FRANCIS: Before you go out, that memorandum
2 that Mr. Stern produced, let me mark it for the
3 record before you go so we can identify it.

4 This is the memorandum dated June 14, from
5 Mr. Goldstein, subject: Conference held on
6 June 13, 1972, headed "United States Government
7 Memorandum," consisting of four pages, and we
8 can mark them as one exhibit.

9 [Memo dated June 14, 1972, received and
10 marked as Exhibit C-36 in evidence.]

11 THE WITNESS: By the way, sir, it was at that
12 meeting I learned Attorney General Kugler was
13 in Holland, I think. That's when I learned he was
14 in Holland.

15 Q Yes. A As I was saying, the
16 two groups worked, in my judgment, very closely, very
17 well. We obtained an order from the federal court, which
18 we had to do under Rule 60 of the Federal Rules of
19 Criminal Procedure, in order to make the grand jury
20 transcript available to the state personnel. There is
21 some question under the law whether you have to or not,
22 but we did.

23 It is my recollection in turn they obtained an
24 order from the state court judge permitting them to give
25 us the benefit of their state grand jury transcripts.

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1 And so things went along, and the investigation proceeded.

2 Then there came a time when I determined that I
3 wanted Paul Sherwin in the grand jury, and I attempted,
4 as a courtesy to him, because he was the secretary of
5 state, rather than just have a federal marshal walk into
6 his office and to subpoena him, I attempted to reach him
7 on the telephone.

8 I can give you, if you will bear with me one moment,
9 the precise date of that.

10 That would be on Thursday, June 15. I placed
11 repeated phone calls to Mr. Sherwin's office on
12 Thursday, June 15, and I was unable to reach him.

13 Mr. Goldstein, at my direction, continued calling--
14 I was calling his office, he was calling his home on the
15 evening of that day, Thursday evening.

16 Friday morning I tried again to reach him by
17 telephone. Then I was told that he had taken an
18 extended weekend, or something. I believe--and this is
19 not from personal knowledge--that Mr. Goldstein continued
20 to call Friday.

21 Mr. Richards and Mr. Stier it is my recollection
22 at some point, I believe it was on Friday evening,
23 were up in our office and we were jointly attempting
24 to kind of find out where Mr. Sherwin was, because now
25 for two full days we had been unable to locate the

P3-5
1 Secretary of State. It is my recollection that finally
2 on Saturday, it would be Saturday before June 19, I think
3 Mr. Goldstein learned where Mr. Sherwin was and attempted
4 to call him there.

5 Finally, Mr. Sherwin returned Mr. Goldstein's
6 call, at which time Mr. Goldstein told him to be in
7 the U. S. Attorney's office on Monday, June 19, that we
8 were going to submit him to the United States Grand Jury
9 for questioning.

10 It is my recollection that the spirit of cooperation
11 we made arrangements for Mr. Jahos, Mr. Richards and
12 Mr. Stier to be in our office on Monday, June 19, to be
13 present and participate in any questioning of Mr.
14 Sherwin prior to the time that he went into the United
15 States Grand Jury. It is my recollection that they did
16 come up. We couldn't allow them to be present in the
17 grand jury, because federal law prohibits that. At
18 least, we could conduct the first interview jointly.

19 It is my recollection that at the start of the
20 interview I apprised Mr. Sherwin of his rights. It is
21 my recollection that one of the first matters on the
22 table was that Mr. Sherwin began to apologize to me
23 for avoiding us for those two or three days. And he
24 told me that he believed that there was some sort of
25 an understanding between myself and Attorney General

1
P-36 Kugler that I was to go to Attorney General Kugler
2 before speaking to any state witnesses.

3 I asked him when he had gotten that understanding
4 of such an arrangement, and he told me--I have my
5 original notes of the conversation. That's the day I
6 had gone down to meet with Attorney General Kugler in
7 Trenton, that thereafter he had sat down with Attorney
8 General Kugler and had gone over the Biederman memoranda
9 and that that was his understanding; that I had told
10 Kugler that I would keep him apprised and, indeed, I would
11 go through Attorney General Kugler in reaching for
12 state witnesses and that's why he had not been responding
13 to my phone calls.

14 It is my recollection that even at this time
15 Attorney General Kugler had not returned from Holland,
16 although he may have over that weekend. But he was still
17 in Europe on Thursday and Friday that I have referred to.

18 I ultimately questioned Mr. Sherwin before the
19 United States Grand Jury, and at roughly Page 51 of the
20 federal transcript he testified under oath to the
21 meeting with Attorney General Kugler and the displaying
22 of the Biederman memoranda to him at that time.

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1 Q Do you remember the date of that?

2 A June 19 was the day of his testimony.

3 Q No, the day he suggested the conversation.

4 A I did not fix it on the Grand Jury transcript.

5 But when he told me in the presence of Mr. Richards,

6 Mr. Stier, Mr. Jahos and Jonathon Goldstein, and perhaps

7 Bruce Goldstein was present, I'm not sure, he told me

8 it was the day I had gone down and met with Attorney

9 General Kugler. That date was April 26th, I know that

10 date.

11 THE CHAIRMAN: This conversation took place
12 in your office in Newark?

13 THE WITNESS: Yes, sir.

14 THE CHAIRMAN: The three from New Jersey and
15 you and your staff?

16 THE WITNESS: Yes, sir. And as I say, I don't
17 know whether this Commission has the Federal Grand
18 Jury transcript. I know the State of New Jersey does.
19 I have a copy with me.

20 Questioning along that line appears on page fifty-
21 one of the Federal Grand Jury transcript of Paul
22 Sherwin on June 19, 1972.

23 MR. FRANCIS: We have the Grand Jury testimony.

24 BY MR. FRANCIS:

25 Q You mentioned page fifty-one, did you?

1 A Yes. The testimony is when he first became aware
2 of the investigation, he states there about seven or eight
3 weeks ago. I asked him how, and he tells me how on the
4 record.

5 Q So that it was seven or eight weeks prior
6 to his appearance before the Grand Jury, which would bring
7 it sometime in April? A That's correct. He told me
8 before he went into the Grand Jury Room, he used the words
9 The day you went down and met with Kugler. But he did
10 not repeat that answer in the Grand Jury. Instead, he
11 fixed it as you have the record there.

12 Q All right, go ahead. A I've been
13 attempting, only for the interest of time, because as
14 you know, I have been here since 9:30, not to go through
15 the Q and A part, but to save time give you my recollection.
16 I don't know what else I might have that might be relevant.
17 If you have any questions, I will be glad to answer.

18 Q To come back for a minute with the original
19 conference you had with the Attorney General, your memoran-
20 dum of that conversation says he indicated to us, meaning
21 the Attorney General, that this matter had also been brought
22 to the attention of Mr. Garven, counsel to the Governor;
23 and that Mr. Garven had spoken to Mr. Paul Sherwin and had
24 stopped Mr. Sherwin's activities in this matter. That was
25 the substance, was it, of what Mr. Kugler told you?

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Stern

1 A Yes. And I frankly at that point did not pursue
2 it with him. It was a very sensitive meeting, I'm sure
3 you will recognize.

4 At a later point we did get copies of certain
5 documents from I believe the Department of Transportation,
6 if my memory serves me, an original document which we got
7 dated October 29 has certain handwritten notations on it.
8 I believe it says--

9 Q We have that handwritten note. I will show
10 it to you. It says, "Biederman discussed with Garven
11 November 4th, Garven to speak to Sherwin."

12 Is that your recollection?

13 A Yes, something like that.

14 Q We will just confirm it.

15 Just for purposes of identification, we have
16 a memorandum marked C-9 for our record. Here is the one
17 we marked for the record. Is that the handwriting you saw?

18 A Yes. That looks to me--I have a copy in my own file.
19 I believe, without being one hundred percent certain, that
20 we got that memo at a later point, subsequent to the
21 conversations with Attorney General Kugler, when simultaneously
22 we subpoenaed Manzo's books and records. We called Commis-
23 sioner Kohl, told him to come down to our office. At
24 the first meeting, or I believe we told him on the telephone
25 we wanted all of the Department of Transportations's files

1 relating to the Manzo contract confirmed, and he brought
2 them with him. And it is my recollection that either on
3 that occasion or a subsequent one this memorandum came to
4 our attention.

5 Q The reason I am interested in it at the moment
6 is that you learned that the discussion with Mr. Garven
7 referred to was held on November 4th of 1970?

8 A Sir, if you will forgive me, I have no way of knowing
9 whether or not there was such a conversation. I never
10 interviewed Judge Garven. I never concerned myself with
11 the matter. All I can say is that notation was on the
12 document at the time it was given to our office.

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Stern

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2 Q I didn't mean to establish the fact of the
3 discussion with you. What I was trying to establish was
4 that the note that you had indicated that a discussion
5 took place with Garven, or at least the note said the
6 discussion took place on November 4th.

7 A Either that, or else the note is dated November
8 4th. Either that, or somebody who wrote that made the
9 notation November 4th as being the date of him noting it.
10 So that's why I can't tell.

11 Q Well, did you learn that this handwriting
12 was that of Commissioner Kohl?

13 A No. You will have to ask Mr. Bruce Goldstein.
14 I directed somebody to find out whose handwriting that
15 is. It is my recollection that they asked Mr. Biederman.
16 I never met the man until I bumped into him this
17 morning, and my recollection was the answer percolated
18 back, Was it Biederman, and I'm under the impression
19 that they asked him and he told them it wasn't, and I
20 have a recollection that it wasn't Kohl's, either.
21 They're here, sir, and they can tell you firsthand.

22 Q The reason I inquired was that the testimony
23 here is by Mr. Kohl that he wrote this.

24 A I have no reason to doubt it. I am just telling
25 you--I think the Commission can appreciate that whatever
crimes were committed were committed prior to November

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P5-2 4th, and I was interested in investigating a crime.

2 I didn't conceive it to be my function to investigate that
3 area which this Commission is now investigating.

4 Q By the same token, for purposes of
5 the investigation that I am engaged in, I am interested
6 in the time when that conversation is said to have
7 been held with Judge Garven. And this memorandum
8 and Commissioner Kohl's testimony indicates that it
9 took place on the 4th of November.

10 A I am not in a position to dispute or acknowledge
11 it. I just know what the memo says.

12 Q One reason why I wanted to refer to that
13 was because in your memorandum there isn't any indication
14 as to when the conversation between Judge Garven took
15 place about this matter which resulted in Judge Garven
16 stopping Mr. Sherwin's activities.

17 A There was a very good reason, because the
18 attorney general did not give us the date. I don't
19 know that he could have. I don't know that he was
20 in possession of that information. This was a year and
21 a half later that we were discussing the matter, and
22 frankly, at that point I didn't ask him. It was a most
23 difficult conversation, sir, and I believe everybody
24 in the room was under a great deal of strain.

25 Q My reason for inquiring is simply to find out

P5-3

1 if you did know a date which was not in the memorandum.

2 A No, because to my knowledge no federal agent has
3 interviewed Judge Garven. My memory is that Mr. Kohl
4 perhaps didn't recognize the notations at the time he was
5 asked by my people, and so the matter really stopped
6 with us and I don't know anything about the conversation.

7 Q The memorandum that you have says that Mr.
8 Biederman had personally brought this matter to his
9 attention, meaning the attorney general.

10 Were there any specifics given as to this matter?

11 A Well, he was sitting there with the memoranda
12 in his hand, and it was quite clear that he was talking
13 about the Sherwin matter, especially when he said it
14 was the only time they had had any trouble with Sherwin.
15 And he went on to say that Garven stopped it. I took
16 this to mean that he was offering me an explanation
17 as to what had occurred.

18 Q At least as to what Sherwin had tried to do
19 before Judge Garven stopped it?

20 A What had occurred on the transaction that we were
21 talking about that we were going to investigate.

22 Q I don't think that I have anything further
23 that I want to ask you.

24 Is there anything more that you would like
25 to add other than you have told us?

P5- 4 1

2 A It's very difficult for me. So many things have
3 happened. You know we went on with further conversations
4 with Jahos in terms of timing once everybody knew that
5 there had to be an indictment and the rest, but I don't
6 know that you're interested in it. Frankly, I don't
7 want to take up a lot of your time. I don't know your
8 focus, and I am available to answer any questions.

9 Q One thing I might mention. When you and
10 the state authorities got together, you agreed that
11 the indictments would come down the same day, did you?

12 A Yes. At a later point I think it was--and I may
13 be wrong about this, as far as the time is concerned.
14 I have a recollection that at some point, I believe it
15 was after--I just don't recall when it was. But at
16 some later point we had numerous conversations. I
17 said we ought to coordinate this thing, just as we
18 coordinated the investigation. And we sat down with
19 a calendar and figured out their grand jury timetable
20 and our grand jury timetable and the like of that.

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1 Q You had no further conversation with the
2 Attorney General himself after that?

3 A About this matter?

4 Q Yes. A Only by telephone.

5 Q Anything of materiality to this investigation
6 that you want to tell us? A My only recollection
7 is I had several conversations with him in which I simply--
8 one time I remember telling him we had gone after Manzo's
9 records, and another time I think I may have told him that
10 we had Kohl down and we got all the records and we did in
11 fact have the original records, because there was some
12 thought of whether they were still around in our earlier
13 meeting.

14 The only recollections I have after that is
15 that I did attempt to call him several times and wasn't
16 able to reach him.

17 MR. FRANCIS: Do you gentlemen have any
18 questions?

19 THE CHAIRMAN: Mr. Sapienza.

20 BY MR. SAPIENZA:

21 Q Referring to the April 26th memo, will you
22 detail your meeting with the Attorney General. I think
23 you told us Jonathon Goldstein and yourself and the
24 Attorney General met, and at some point someone else came
25 in. Were you referring to the Attorney General's secretary?

Stern

1 A When she came in to bring him the file on the
2 Biederman matter, we looked it over and we asked her to
3 make Xerox copies for us.

4 Q So you gave him copies of all the memoranda
5 you had at that time? A I frankly think--now that
6 you strike that bell, I am just not sure whether he Xeroxed
7 it or not.

8 Now that I think about it, I am sure he didn't.
9 As a matter of fact--

10 MR. FRANCIS: Are you saying he did not?

11 THE WITNESS: Did not.

12 A (Continuing.) Gosh, it's awfully tough to
13 remember. I don't think he did make copies. I know he
14 made no copy of Bruce Goldstein's memorandum, and I do
15 not believe any copies were made of the Biederman memor-
16 anda.

17 Q But he read them? A Yes, sir.

18 Q And you say at that point the Attorney General
19 said to you something to the effect that this was the
20 only time that he had had any difficulty with Sherwin
21 and that Garven had stopped it; is that correct?

22 A We.

23 Q We had stopped it? A No. The
24 only time we had had any trouble with Sherwin.

25 Q By that "we," did you take it he was referring

P-6-3

Stern

1 to himself or to himself in the generic sense as the
2 Attorney General, his office, or did you take the "we"
3 to mean other members of Government?

4 A Well, the message that went from his brain at least
5 to mine, I don't know what his intention of saying it was,
6 but the way I took it was that this was the only time the
7 administration had had any trouble with him.

8 Q Is there anything else that he said in the
9 course of that conversation? Have you told us to the
10 best of your recollection what Kugler said in that
11 regard, to the best of your recollection that he said
12 that this was the only time that we had had any difficulty
13 with Sherwin and Garven stopped it? A Correct.
14 And I'm not going to say to you that every word is just
15 as you said it. But that was clearly the substance, and
16 it's very close to the exact words, I believe.

17 BY THE CHAIRMAN:

18 Q How long, at that time, Mr. Stern, had he
19 been looking at those papers that you had given to him?
20 I think you used the word he perused it.

21 A I don't remember what word I used anymore. Frankly,
22 I did not look forward to this meeting, Mr. McCarthy,
23 and in my own mind I didn't know quite how to explain to
24 the Attorney General what I felt our duty was. So perhaps
25 I took an easier way and instead I gave him Mr. Goldstein's

1 memorandum together with what he had then marked as
2 exhibit. There were actually, I think, a letter numbering
3 on the various Biederman memoranda, the stuff he brought
4 in, and he read them, sir. It is my recollection that
5 he read them all. And we sat there in a stony silence
6 for some considerable period of time while he read them.

7 Q Did some of the attached exhibits, to the
8 best of your recollection, deal with Manzo's connection
9 with roads other than Route 46?

10 A I have given to this Commission Mr. Goldstein's
11 memorandum with the attachments, so that you have exactly
12 spelled out in Mr. Goldstein's memorandum, you have exactly
13 the memoranda that was before the Attorney General. There
14 is no doubt in my mind that there was some material about
15 July that had to do with trying to get some dough --I'm
16 sorry, some money back from the State for Manzo and --

17 Q As a result of some retainage that the State
18 had? A That came out in a subsequent
19 investigation.

20 Q Wasn't there also something in one or two
21 of those memos dealing with collusive bidding, and so
22 forth? A I do not recall it. You
23 have exactly what the memo says. There was a later memo
24 that we found, I think dated October 9, or something from
25 Biederman about collusive--either October 9 or thereabouts,

1 I'm not sure of the date-- dealing with collusive bidding.

2 But Mr. Biederman's memorandum of October 30,
3 1970 was quite explicit. It dealt with the award of a
4 contract to Centrum and the attempts by the Attorney General
5 to knock Centrum out and give it to Manzo.

6 MR. FRANCIS: You said the Attorney General.

7 THE WITNESS: Did I say that? Well, I'm
8 sorry. I meant the Secretary of State.

9 A (Continuing.) And it had with it definitely the
10 letter that Sherwin had written on October 8th to Kohl's
11 home.

12 Q I want to get clear in my mind in your
13 opinion, whether Mr. Kugler had seen all the papers in
14 detail, and it wasn't a case of not having an opportunity
15 to have read every one and see what the caption might have
16 been on each of them. A There's absolutely no
17 doubt. And at a subsequent conversation that ensued
18 where I had the unpleasant duty of having to ask him of
19 not having to jump in a year and a half later for the
20 reasons that I have detailed, and I don't think I need to
21 detail them again, the entire conversation which ensued
22 and then the subsequent telephone conversation after he
23 had seen the Governor, using the words like "civilian review
24 board," there isn't the slightest iota of doubt in my mind
25 we were talking about the Centrum-Manzo-Sherwin situation.

27-1
1 BY MR. SAPIENZA:

2 Q You mentioned at one point in your conversation
3 there was some discussion about whether the original
4 memos were still in existence; is that right?

5 A I think he said he didn't know whether or not the
6 originals were in existence.

7 Q Did he indicate to you whether he had ever
8 seen these memos prior to your handing them to him?

9 A No. All he said was that Biederman had spoken to
10 him about it.

11 Q You also mentioned, I believe, that at the
12 June 13 meeting when Jahos told you that Kugler had
13 advised him of his, meaning Kugler's, conversations with
14 you; is that correct?

15 A That is correct. And the notation in Mr. Bruce
16 Goldstein's memo, which I think is dated June 14, 1972,
17 referring to that conversation refreshed my recollection
18 on that. That is so, sir.

19 Q At this point you showed Jahos some memos,
20 you showed him the copy of the October 30th memo. Was that
21 the copy the one which had in the upper right-hand corner
22 a blank carbon copy to Jahos?

23 A I do not know at that point. I think we had by
24 then the original of the Biederman memorandum of October
25 30th.

Stern

1 As you know, Mr. Sapienza, that memo was directed
2 to Mr. Kohl. I believed, and I can't be absolutely
3 certain, that we had the original of it from the
4 Department of Transportation's file by then.

5 I do not know whether I showed them the BCC or not,
6 to Mr. Jahos or not. But I do know that either then or
7 at a later time I showed Mr. Richards and Mr. Stier the
8 BCC to Evan Jahos on the Biederman copy which we had
9 gotten in the office on April 14. I just cannot sit
10 here and swear that as to which one I showed Mr. Jahos
11 on that occasion.

12 See, apparently, there were a number of copies
13 made, from what Biederman says and what the BCC show,
14 and the original to Kohl. One went, purportedly,
15 to Mr. Petrella, but I guess actually not, and one,
16 according to the BCC, went to Evan Jahos.

17 Q That conversation you had with Sherwin,
18 was that prior to his going into the grand jury?

19 A Yes. I will give you my original notes of that.
20 In the presence of Sherwin, Mr. Jahos, Mr. Richards,
21 Mr. Stier, Jonathan L. Goldstein, and perhaps Bruce
22 Goldstein, I am pretty sure he was present. Here they
23 are.

24 There are some private materials on these notes,
25 as well.

p7-3 1

May I state off the record what they are?

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THE CHAIRMAN: Surely.

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[Off the record.]

4

A [Continuing] I remember that it came towards the end

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of the interview, we went through such things as his

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meeting with Loughran, and Loughran asking him to do a

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favor for a friend, asking him to do a favor for a friend,

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and that's what he was saying at that point, anyway.

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He continued to maintain he had no knowledge

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about contribution. I took these notes, because this is

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what I do before I go into the grand jury. I take notes

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and then I'm going to question the witness from them.

13

Q Did he go into any discussions with you

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that he had with the Attorney General about \$10,000?

15

A The Attorney General?

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Q Yes. Did Sherwin say to you in this off-the-

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record conversation that you had with him that he

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ever discussed the fact that there was a \$10,000

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contribution with the Attorney General?

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A You mean discussed it with the Attorney General?

21

Q Yes.

22

A No. But what he said was--and I see I was wrong.

23

A couple days after I spoke with Kugler, those are my

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notes, which means he said to me a couple days after I had

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spoken to Kugler, there was a meeting. Kugler said that

P7-4

1 I was going to investigate it and that he would want to
2 investigate it, also.

3 Then my notes say, Kugler not to speak to anyone
4 about it; meaning Kugler told him not to speak to
5 anybody.

6 He also told me about going over the memorandum,
7 the Biederman memorandum, as indeed he testified in the
8 grand jury. He says that he brought in the file. He
9 was shown the file to refresh his memory. And then he
10 says where the conversation took place.

11 MR. SAPIENZA: Okay, thank you.

12 BY THE CHAIRMAN:

13 Q Just returning for a moment to your Trenton
14 visit. Mr. Kugler, you indicated, stated that David
15 Biederman had spoken to him about this.

16 Did he bring in any discussion he might have had
17 with his assistant, Mr. Jahos?

18 A No, sir. Truly, he made those comments signifying
19 in my mind that he knew about it, that it had been
20 handled in a certain way. And then we left that subject
21 and went into what was going to happen next.

22 Q And he left it with the statement that Judge
23 Garven had taken care of it and stopped it?

24 A I think that was it. That was the message I got.
25 I don't remember the exact words.

P7-5

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Q We know you can't remember the exact words.

I think you testified that the Ethics Committee date, whatever it was, that the papers were sent to Mr. McConnell's office were about seven days spread between the filing and when Mr. Biederman visited your Mr. Goldstein.

A That's my recollection. My recollection is about April 7, and I may be wrong. But I know this to be a fact, that there is no doubt in my mind that Attorney General Kugler made the letter of complaint to Mr. Mc Connell substantially before Mr. Biederman came in- to my offices on April 14, and I so stated I believe in my memorandum about the conversation. There is no doubt about it.

[Off the record.]

1 MR. FRANCIS: If you gentlemen don't mind,
2 since we have a photostatic copy of this, I would
3 rather give Mr. Stern back his original and let us
4 keep our copy for our records. I think it would be
5 better to have our own record and make sure you have
6 got the exhibit you brought with you.

7 (Mr. Francis was referring to Exhibit C-36
8 in evidence.)

9 BY THE CHAIRMAN:

10 Q Mr. Stern, in your conversation of the 26th
11 of April with General Kugler, I take it at that time
12 there was never any mention of this ten thousand dollar
13 check or the passage of any money?

14 A We certainly knew nothing of it, and there was
15 no discussion of it. That is, of course, why we subpoenaed
16 the books and records of Manzo that day. We wanted to
17 look and see if there was any money involved.

18 THE CHAIRMAN: Thank you.

19 THE WITNESS: And, sir,--

20 MR. FRANCIS: Yes.

21 THE WITNESS: If you would like this subpoena,
22 you can have it.

23 MR. FRANCIS: It might be a good idea to
24 mark it for our records.

25 This is Grand Jury subpoena directed to the

Mánzo Contracting Company, dated April 26th, 1972.

(Subpoena dated April 26th, 1972 received and marked as Exhibit C-37 in evidence.)

J O N A T H A N L. G O L D S T E I N, sworn.

THE CHAIRMAN: Mr. Francis, I don't know if this should be formal. Maybe we should give him the various warnings, and so forth.

THE WITNESS: Mr. Chairman, I know them by heart, have no fear.

THE CHAIRMAN: Very well.

BY MR. FRANCIS:

Q Just a few questions.

You, Mr. Goldstein, accompanied Mr. Stern when he had the interview of April 26th, 1972 with Attorney General Kugler? A That is correct, sir.

Q And sometime after you returned to the office and you and Mr. Stern made a joint memorandum as to your recollection of the conversation with the Attorney General? A That is correct, also.

Q And then you went over the memorandum. Did you dictate it or -- A I think Mr. Stern dictated the memorandum.

Q And then you went over it, over the memorandum?

A He and I reviewed the memorandum afterwards.

1 Q And the memorandum squared with your recollection
2 of the conversation? A Yes, it did, sir.

3 Q I suppose you have talked to Mr. Stern
4 off and on about the matter generally ever since?

5 A Yes, I have.

6 Q Do you think that you have anything to add
7 that is of a material nature that our investigation should
8 have here before us? A I don't know what Mr.
9 Stern testified to, what questions were asked of him.
10 But I assume if you explored the entire matter with Mr.
11 Stern, I don't think I could add anything new. I could
12 corroborate exactly what took place.

13 MR. FRANCIS: Let me put it then to Mr.
14 Stern.

15 Do you think from your conversations with
16 Mr. Goldstein that he has information in addition
17 to what you have already given us that would be
18 material to us?

19 MR. STERN: I frankly do not, sir. I do think,
20 adopting the suggesting of Commissioner Bertini, I
21 think it was, since you are, as I understand it,
22 going to make a copy of the transcript available
23 to me, if you will give me permission to show
24 Mr. Goldstein the transcript he will have an oppor-
25 tunity to review it; and I'm certain if there is

1 anything that I neglected to bring out that he's aware
2 of, he will make a forthwith disclosure to you.

3 MR. FRANCIS: We have already agreed to give
4 you the transcript of this record. You can both
5 go over it, and if you think Mr. Goldstein has
6 anything more to add, just let us know and we will
7 be very happy to see him and try not to keep him
8 too long next time.

9 THE CHAIRMAN: We operate, as you probably
10 know, Mr. Stern, under Code of Fair Procedure.
11 Under our Section 5, if at any time after your
12 examination you wish to file a sworn statement,
13 you have the right to do so.

14 MR. STERN: Fine.

15 THE CHAIRMAN: I think Mr. Sapienza might
16 have earlier mentioned that.

17 MR. STERN: May I go off the record for
18 a minute?

19 THE CHAIRMAN: We are all finished.

20 (Off the record.)
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Q1-1 1 RUSSELL H. MULLEN, having been
2 previously sworn according to law by the Officer,
3 resumed the stand and testified further as follows:

4 EXAMINATION BY MR. SAPIENZA:

5 Q Mr. Mullen, you testified here yesterday
6 under oath; is that correct, sir?

7 A Yes.

8 Q You are still under oath. Do you understand
9 that? A Yes.

10 Q The warnings that you got yesterday still
11 carry over to today?

12 A Yes.

13 Q I think you indicated to us yesterday, just
14 in passing while you were leaving, that you had a conversa-
15 tion with Mr. Kohl in the hallway some four to six weeks
16 after November 5th, 1970; is that correct?

17 A Yes. I cannot be certain about the time, but my
18 recollection is that it was a few weeks.

19 Q What did he say to you and what did you say
20 to him, to the best of your recollection?

21 A The substance of his remarks to me were that he
22 had heard from, I believe, the Attorney General's
23 Office that with respect to the communication they'd
24 received from Mr. Biederman, or the information they'd
25 received about the Route 46 contract, it had been

Q1-2 1 determined that, well, that whatever investigation had
2 been made was concluded and that there would be no
3 further activity.

4 Q What was your reply?

5 A I probably said something like, good. I did not
6 make any extended reply that I--

7 Q Now, are you telling us that you recall
8 Kohl saying that he had heard from the Attorney General?

9 A I cannot be certain whether it was from the
10 Attorney General's Office or from the Governor's Counsel.

11 Q Well, did he mention any specific names
12 of people that he--

13 A No, sir, not that I recall.

14 Q Did he indicate how he acquired this knowledge?

15 A Well, that someone had told him.

16 Q And you say this conversation, to the best
17 of your recollection took place four to six weeks after
18 November 5th, 1970?

19 A Yes. I don't want to be pinned down on that time.
20 It was after the decision to award the contract to
21 Centrum. And, if I may, I would like to, you know,
22 paraphrase the whole thing so I am giving you my
23 recollection to the best of my knowledge.

24 At the time the decision was reversed, or at the
25 time the decision was made to award the contract to

Q1-3

1 Centrum after all, it was my understanding on the basis
2 of comments from Mr. Biederman, as well as Commissioner
3 Kohl, that the Governor's counsel and that the office
4 of the Attorney General both had been advised of this
5 situation. I don't recall any specific knowledge as to
6 the details of the knowledge that was given them.
7 My recollection is, and my belief now is, that this was
8 done by Mr. Biederman.

9 Sometime afterwards--it could have been two weeks,
10 it could have been six weeks, I cannot say four to six
11 weeks--I think that was about it--I was advised quite
12 casually by Mr. Kohl, without a great deal of conversation
13 or back-and-forth comment, that there apparently would
14 not be an extended investigation of the type that was
15 going on now.

16 My impression then and the way I understood it
17 then, and the way I recall it now, he was communicating
18 to me that whatever impropriety Mr. Biederman might have
19 suggested, they had not found to be a matter worthy of
20 further investigation.

21 I mean, I'm trying to say that three or four different
22 ways. It was quite a brief conversation. But the end
23 result was, you know, forget it; go on with business
24 as usual.

25 MR. SAPIENZA: Okay. That's all.

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EXAMINATION BY MR. FRANCIS:

Q May I go back to one other question unrelated to this.

On either October 30th--this would be four days after your memorandum recommending the rejection of the bids--or on November 2nd were you at a meeting in Commissioner Kohl's office, attended by Mr. Schuyler and Mr. Biederman, in which Mr. Biederman--the whole conversation was, the decision has been reversed; you're to go out and to get the machinery in motion to award this contract to Centrum?

A There was a conversation with Mr. Biederman. I do not recall whether it was in his office or in Commissioner Kohl's office. I don't even recall whether Mr. Schuyler was present or not. I have been reminded that there was some such meeting between Mr. Biederman and Mr. Schuyler in which I stuck my head in and was present for some time.

What I do remember is this: that on the day after I issued or prepared and ordered issued the original news release, which was on, I think, on a Thursday or a Friday--and if it was on a Friday, that would have been the 30th. If it was a Thursday, it was the 29th -- the very next day I was advised by Mr. Biederman that he had become aware of this situation, and I had assumed that

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he was generally aware of it but I had not been aware that he was involved in it in terms of extended discussions with the Commissioner; that he disapproved of this decision; that he was talking to the Commissioner and that it was going to be reversed. And I believe my response was, well, if the Commissioner reverses it, he reverses it.

And then I received--and then later I was told by Mr. Biederman that the Commissioner had reversed it and I would receive a memorandum to that effect. And I said, fine, and then I got the memorandum. And when I got the memorandum was when the decision was--I considered the decision reversed.

1 Q And that memorandum was from Biederman to you?

2 A Right.

3 Q Telling you that on account of the Commissioner's
4 illness-- A Right.

5 Q --he had been directed to tell you--

6 A Right.

7 Q --that the decision had been reversed.

8 A Right.

9 Q And to tell Schuyler, go ahead and get the
10 contract awarded? A I took no action to
11 reverse what I considered to be the Commissioner's deci-
12 sion to reject and readvertise until I received that memo,
13 and the very instant that I received it, I put the thing
14 in motion to award Centrum.

15 The Commissioner did confirm that memorandum
16 to me very briefly several days later, or two or three
17 days later. Whenever he was in the office, he said to
18 me very briefly, that, you know, Biederman had convinced
19 him that we should award to Centrum, and that was that.

20 Q Do you remember whether Commissioner Kohl
21 was in the office on the 2nd of November? That would
22 be the Monday before Election Day? Do you remember that
23 he became ill in the office and had to be taken home?

24 A He was in and out during this whole period, and
25 I don't remember. It seemed to --

1 Q I'm trying to relate the November 4th memorandum
2 that we discussed yesterday, and you remember, I'm sure,--

3 A Yes.

4 Q -- from Mr. Biederman to you, if you--

5 A Right.

6 Q --in turn transmitted to Schuyler?

7 A Right.

8 Q The first paragraph said, "I discussed this
9 with Commissioner Kohl on November 2nd, and on account of
10 his illness I am directed to transmit the message to you"?

11 A Yes. I don't --my recollection is that the Commission-
12 er was out on the day I had the meeting with Schuyler and
13 talked to the Commissioner by telephone and composed my
14 memorandum. Then he was in the following week and I approached
15 him on the subject of the news release. Then he was actually
16 out when the news release was written, because I believe I
17 had to check with him by telephone as to his quotations.
18 And I don't think he was back on --I don't recall seeing him.
19 He may have been back, but I don't recall seeing him until
20 after I received the memorandum from Biederman, because
21 the discussion with Mr. Biederman, and perhaps Mr. Schuyler
22 was there, too, that you referred to earlier on November
23 2nd, or whenever it was, my recollection is quite clear
24 that that discussion was held in the Commissioner's absence,
25 which is why I did not act, because I had nothing from

1 the Commissioner.

2 Mr. Biederman told me that he disapproved of
3 the decision and he was taking it up with the Commissioner
4 and he was sure he would convince the Commissioner to
5 award to Centrum and that I might as well make provision
6 to do that because that was the way it was going to be,
7 or words to that effect. And I said, fine, you know;
8 when he tells me to do that, I'll do it.

9 And I recall being somewhat irritable that this
10 hadn't happened the previous day, because we were in the
11 soup with that news release.

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Q3-1 1 BY THE CHAIRMAN:

2 Q Do you recall Mr. Schuyler at that meeting
3 saying something like "Holy smokes," or "You better
4 give me that in writing" to Mr. Biederman?

5 A I don't recall, but it sounds very much like
6 him, and I certainly would not deny it.

7 I think that what happened, the way I reconstruct
8 it, is that there was probably a discussion going on
9 on this problem and I was going from one thing to another
10 and I went in when Biederman was talking to Schuyler
11 and he gave me this information and I said, you know,
12 fine. When the Commissioner tells me, I'll do it. I
13 wasn't about to rush right out and reverse the thing,
14 which meant another public reversal, and issue another
15 news release without confirmation from the Commissioner.
16 And Biederman did not tell me that at that time, as I
17 recall it, that the Commissioner had reversed it. He
18 said he was going to.

19 EXAMINATION BY MR. FRANCIS:

20 Q And if the Commissioner had been there at that
21 meeting, he would have told you himself that he had --

22 A Absolutely.

23 Q -- reversed it and for you to get busy
24 executing it?

25 A Absolutely, absolutely. And the Commissioner had--

-2 1 throughout this my actions were responsive to the
2 Commissioner's directions in terms of talking to him
3 before I wrote the memorandum, talking to him before I
4 wrote the news release and so forth. I was not in a
5 position to do this unilaterally.

6 MR. FRANCIS: Well, that's all. Do you

7 gentlemen have anything more?

8 EXAMINATION BY THE CHAIRMAN:

9 Q Just one. You believe, to the best of your
10 recollection, that that meeting with Schuyler, and you
11 were in and out, of course, and Mr. Biederman probably
12 took place on October 30th?

13 A My recollection is clear on one point. I struggled
14 with that news release, which was a--you know, it's
15 a ridiculous thing to try and write, and I got it off
16 my chest and I went home and started worrying about
17 Route 78 or something else, and the very next day there
18 it was all over again. It was the day after the news
19 release went out. That's my recollection.

20 THE CHAIRMAN: Okay. Thank you for returning,

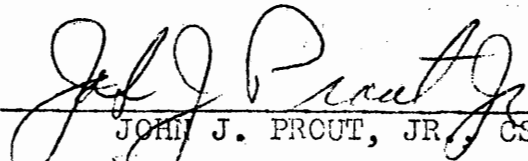
21 Mr. Mullen.

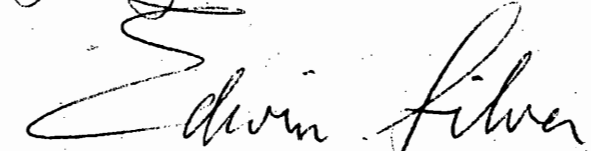
22 [Witness excused.]

23 [Hearing adjourned to November 16, 1972.]
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25

C E R T I F I C A T I O N

WE, JOHN J. PROUT, JR., and EDWIN SILVER,
Certified Shorthand Reporters and Notaries Public of the
State of New Jersey, certify the foregoing to be a true
and accurate transcript of our original stenographic
notes taken at the time and place hereinbefore set forth.


JOHN J. PROUT, JR., CSR.


EDWIN SILVER, CSR.

NOVEMBER 15, 1972