

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

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

Thursday, November 16, 1972
28 W. State Street
Trenton, New Jersey

B E F O R E:

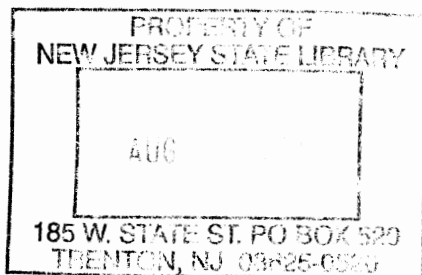
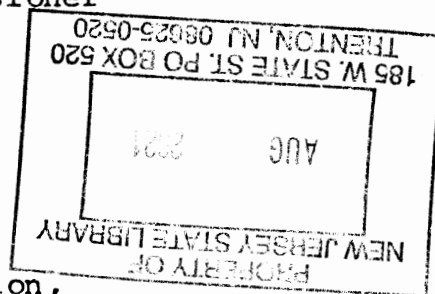
JOHN F. MC CARTHY, JR., Chairman

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:

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I N D E XWITNESSPAGE

HELEN J. MANN

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GEORGE F. KUGLER, JR.

730

ALFRED R. NARDELLI

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EVAN W. JAHOS

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MR. SAPIENZA: Good morning, Mrs. Mann.
I'm Charlie Sapienza. I spoke to you yesterday.

MRS. MANN: Yes, good morning.

THE CHAIRMAN: Mrs. Mann, you have two
members of the State Commission of Investigation
sitting this morning. Mr. Bertini is on my right.

MRS. MANN: How do you do, sir?

THE CHAIRMAN: My name is John McCarthy.
And Mr. Sapienza, counsel to the Commission. Mr.
Francis is special counsel to the Commission. We
have Mr. Corrigan and Mr. Jordan, two of the
investigators, in the room at this time.
In addition, we have the two court reporters.

MRS. MANN: Right.

THE CHAIRMAN: So, you just relax.

MRS. MANN: I'm relaxed.

THE CHAIRMAN: And Mr. Sapienza will ask you
a few questions.

Prior to that, would you stand up to be sworn,
please.

H E L E N J. M A N N, having been duly sworn according
to law by the Officer, testified as follows:

1 MR. SAPIENZA: Mrs. Mann, I am going to
2 read to you certain warnings that we give to all
3 witnesses that appear before us. In part they
4 will be excerpts of our Statute. In other part there
5 will be the more formal warnings that everybody gets.
6 All right?

7 THE WITNESS: Fine.

8 MR. SAPIENZA: You have been asked to appear
9 here and you have done so voluntarily at our request;
10 is that correct?

11 THE WITNESS: Yes, sir.

12 MR. SAPIENZA: This is an executive or private
13 session of the Commission. Your testimony will be
14 taken under oath and transcribed by the shorthand
15 reporter. It may used against you later on in a
16 court of law. Therefore, if you feel that your
17 answer may tend to incriminate you, you may refuse
18 to answer.

19 You have the right to be accompanied by an
20 attorney of your choice. And I note for the record
21 that you appear today without an attorney. This is
22 of your choosing?

23 THE WITNESS: No. I was not advised I could
24 have an attorney. However, I feel perfectly free
25 to appear without one.

1 MR. SAPIENZA: If at any time during these
2 proceedings you desire to have an attorney with you,
3 all you have to do is say, I'd like to consult with
4 an attorney, or say, Please stop, and we will stop;
5 or for whatever reason if you don't want to continue,
6 just tell us to stop and we will stop.

7 Section 52:9M-15 of our Statute forbids disclos-
8 ure by you of the questions asked, your responses,
9 or any other information you may gain at this hearing.
10 The possible maximum penalty is that as if it were
11 a disorderly person's offense.

12 Although your testimony is now being taken in
13 private, the Commission may at a later time make
14 your testimony available to the public, or it may at
15 a later time ask you to come in and give your testi-
16 mony at a public hearing, if upon the adoption of
17 the resolution they decide to.

18 Do you understand that?

19 THE WITNESS: Yes and no. The very beginning
20 of that last paragraph would you repeat that part,
21 please?

22 MR. SAPIENZA: Sure.

23 Your testimony is now being taken at a private
24 session, and everything that is said here will remain
25 among us. But this Commission has the right to

Mann

1 make your testimony available to the public in
2 some form at a later date, if it decides to do so.

3 THE WITNESS: My question is this: Do I under-
4 stand from something you read just a moment ago
5 that I am not allowed to discuss this with anyone,
6 my answers and your questions?

7 MR. SAPIENZA: That's correct.

8 THE WITNESS: With anyone?

9 THE CHAIRMAN: Except with an attorney of your
10 selection.

11 THE WITNESS: In other words, if the press were
12 to approach me, my answer is, no comment?

13 MR. SAPIENZA: That's the most important part
14 about it.

15 THE WITNESS: Fine. I understand.

16 MR. SAPIENZA: And, of course, this Commission
17 has the duty to make the information it gains available
18 to the public in some form, a public hearing or a
19 public report. And that's what I am telling you now.

20 THE WITNESS: Fine, no objection.

21 MR. SAPIENZA: A copy of your testimony of this
22 private hearing may be made available to you if it
23 becomes relevant in a criminal proceeding were you
24 are a defendant or if you are summoned to appear at
25 a subsequent hearing before us, provided but the

1 furnishing of such a copy will not prejudice the
2 public safety or security. I'm reading to you an
3 excerpt of our Statute.

4 You have the right at the conclusion of this
5 hearing to file a brief sworn statement relevant
6 to your testimony for incorporation into the record
7 of this proceeding, if you wish to do so.

8 Are you ready to proceed?

9 THE WITNESS: Yes, sir.

10 MR. SAPIENZA: Thank you.

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1 EXAMINATION BY MR. FRANCIS:

Cpg1 2 Q Mrs. Mann, is it?

3 A Yes, sir.

4 Q In July, 1970, were you employed by the
5 Secretary of State, Paul Sherwin?

6 A Yes, sir.

7 Q And in what capacity?

8 A Confidential Secretary.

9 Q How long had you been there before that?

10 A In that capacity?

11 Q Well, take the whole employment with the
12 Secretary of State. How long had you been there prior
13 to July of 1970?

14 A Actually, I started the day of the inauguration,
15 January 20, 1970, in that capacity. However, I had
16 worked with Mr. Sherwin prior thereto.

17 Q Where were you before that with him?

18 A In the transition office.

19 Q I see. A And that was the day after
20 Thanksgiving until, that would be 1969, until January
21 20, and prior thereto, also.

22 Q I neglected to ask you for your present
23 address.

24 A 27 Colmar, C-o-l-m-a-r, Road, Cherry Hill.

25 Q And now, I understand, you're doing legal

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C-2

1 work, are you?

2 A I'm the deputy surrogate of Burlington County.

3 Q Of Burlington County?

4 A Yes, sir.

5 Q And how long have you been there?

6 A December 29, 1970 was my starting date.

7 Q Do you remember writing a memorandum on
8 July 20th, 1970, headed "From Paul J. Sherwin, Secretary
9 of State, to Joseph McCrane, State Treasurer"?

10 A Yes, sir, I recall that.

11 Q I show you a memorandum, which we have
12 marked here C-2, and ask you if that is the memorandum
13 that you prepared.

14 A Yes, sir.

15 Q I notice at the bottom of that the initials
16 H.M. appear. Whose initials are they?

17 A They're my initials and I put them there.

18 Q And would you mind telling us how this
19 memorandum came about?

20 A Not at all. I received a telephone call from
21 a Mr. William Loughran regarding the information there,
22 and that, I would say, is about verbatim.

23 Q The information that he gave you in the
24 telephone call? A Yes, sir.

25 Q And when you say "verbatim," did you take

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it down in shorthand? A Yes.

Q Or, at least, the substance of it in shorthand? Or exactly as he put it, in shorthand?

A Do I have anything in quotes, I think you will find--

Q Some in quotes, yes.

A Yes, that will be verbatim. I was a court reporter, so that should be fairly accurate.

Q I would think so.

And then after you took whatever notes you took during this conversation, you transcribed them and put them in this memorandum which was dated July 20th?

A Yes, sir.

Q I notice that it is addressed to Joseph McCrane. How did that come about?

A Mr. Loughran stated that he had spoken with Joseph McCrane concerning this, and that's the reason why I followed up with Mr. McCrane at Mr. Loughran's request.

Q I gather, then, that the Secretary of State was not in at the time of this telephone call?

A He may or may not have been and I have no recollection of that.

Q Well, in any event, you took the telephone call and the information; you did not turn the call over to the Secretary of State? A Oh, no. No, I did

Mann

1 not. He knew nothing about this.

2 Q I see. Did you know Mr. Loughran before that?

3 A Yes, sir.

4 Q And where had you seen him?

5 A He made arrangements for the Inaugural Ball, which
6 was held January 20, 1970.

7 Q Did you--excuse me.

8 A And that was the contact I had with him. I knew
9 him very slightly before that. I believe I had seen
10 him once.

11 Q I see. And after the Inaugural Ball had
12 you seen him seldom or often?

13 A From time to time he would stop in Mr. Sherwin's
14 office, yes.

15 Q And would that be by appointment--

16 A No.

17 Q --that you made? A No.

18 Q He would simply walk in?

19 A Simply walk in. He may have had one or two
20 appointments, but he was in Trenton frequently and he
21 just stopped in.

22 Q I notice that in your memorandum of July
23 20th you call him "Bill Loughran"?

24 A Yes.

25 Q Did you know him well enough to call him

C5 1 "Bill"? A Oh, yes; oh, yes.

2 Q And before you typed this out and sent it to
3 Mr. McCrane did you talk to Mr. Sherwin about it or
4 did you simply send it over?

5 A I simply sent it over.

6 Q And did you ever tell Mr. Sherwin that
7 you had sent this memorandum over to Mr. McCrane?

8 A No, sir, not until sometime later when something
9 came in the mail and Mr. Sherwin asked me what it was
10 about.

11 Q Do you have a recollection as to how long
12 afterward that piece of mail came?

13 A It seems to me it was a matter of months, but I
14 have no date.

15 MR. FRANCIS: Perhaps we can refresh your
16 recollection. Off the record.

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

18 Q I show you two pages, that we have marked
19 C-9. One, the top one, is a memo dated October 29th,
20 Sherwin to Kohl. Attached to that is a note of October
21 5th, Sherwin to Kohl, that makes some references to
22 Florence and Bill. Will you look at both of those
23 and see if they will refresh your recollection as to the
24 first time you talked to Mr. Sherwin about the contents
25 of the July 20 memorandum?

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A I recall the October 5, 1970 memo.

Q Is that the piece of mail or the memorandum that occasioned your discussion of the July 20th memorandum with Mr. Sherwin?

A I believe so.

Q I see. Well, that's your best recollection now?

A Yes, sir.

Q And when that memorandum came, what did Mr. Sherwin do, come out of his office and say, how about this?

A He was sitting at his desk and he called me and he said, "Helen, what's this all about?"

Q And then did you--

A I recalled this memo which I had typed.

Q And did you show it to him at that time?

A I showed it to him the day he had this in his hand.

Q I see. A But I notice it was received by the Secretary of State October 26th.

Q And then what you're saying is that it was probably sometime after the day he received it that--

A Yes.

Q --he had it in his hand and spoke to you about it? A Yes, sir.

C7 1 Q And you showed him this July 20 memorandum?

2 A And I might add that we had a volume of mail and
3 it was not unusual for Mr. Sherwin not to see his mail
4 for a week at a time.

5 Q I see. Well, I gather, then, that matters
6 such as this one, which is the subject of the July 20th
7 memorandum, you didn't consider important enough to
8 bother Mr. Sherwin about and you thought you could
9 take care of it yourself; is that right?

10 A Strictly routine. He was not in the office very
11 much.

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1 Q You mean Mr. Sherwin was not in the office

2 very much? A That's correct, and everything

3 had to be kept moving.

4 Q And that was why you did this and sent it

5 over on to Mr. McCrane? A That's right. I did

6 many of these things of necessity.

7 Q After this July 20th memorandum, do you have

8 any recollection of Loughran being in your office?

9 A He was in our office, as I say, from time to time.

10 Q After that and before; is that it?

11 A Yes.

12 Q Do you have any specific recollection of any

13 of the subjects of his visit, or visits? Did he ever

14 discuss with you why he was there on those occasions on

15 July 20th? A He had many reasons for

16 visiting.

17 Would you like to know the reasons for

18 visiting? Is that your question?

19 Q Generally, that's it.

20 A Generally. He was in the area and hoped to see

21 Mr. Sherwin when he came in. Many times he came in just

22 to bring buns and go on his way.

23 Q Buns? A Yes. It was not a bit

24 unusual. He brought us buns from the special bake shop

25 very often.

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1 There were times when he stayed a few minutes.
2 There were other times when he stayed and he discussed his
3 home, his children.

4 I just can't be more specific, except to say
5 that he was friendly, and he hoped to see Mr. Sherwin,
6 and there were times he did, usually without an appointment.

7 Does that answer your question?

8 MR. BERTINI: Were there times that he didn't?

9 THE WITNESS: Did not what, sir?

10 MR. BERTINI: Did not see Mr. Sherwin.

11 THE WITNESS: Oh, many, many times.

12 MR. BERTINI: Did he visit with other people
13 in the office on these occasions?

14 THE WITNESS: Yes, with the other young lady
15 with whom I worked, the two of us.

16 BY MR. FRANCIS:

17 Q Did he always ask for the Secretary of State
18 when he came in? A No. He would glance at the
19 door to see whether or not the door was shut or open or
20 if the light was on; and he would often ask was Mr. Sherwin
21 in, was he expected back, where was he?

22 Q I gather from what you said, you didn't take
23 him in too frequently? A That's correct.

24 Q After Mr. Sherwin was given this July 20th
25 memorandum, did he say anything to you about it?

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1 A He was very unhappy about my memorandum.

2 Q Did he give you the reasons for it?

3 A I believe his words, were, "You shouldn't have done
4 that, Helen." And he had never corrected me before.
5 I had full authority to run the office.

6 Q When he said that you shouldn't have done that,
7 having in mind your position of full authority, did you
8 say to him, Why, what is the matter? A No.

9 Q You simply accepted what he said about it
10 that you shouldn't have done it and let it go at that;
11 is that it? A Do you want my thoughts
12 when he said that?

13 I concurred.

14 Q You did? A Yes, sir.

15 Q Well, why did you concur?

16 A Why did I concur?

17 Q Yes. A Well, I'd like to state
18 my background. Eleven years with Congressman Cahill before
19 he became Governor. And there wasn't a day when the
20 telephones didn't ring with complaints. But you only
21 heard one side of the story; and you always knew that
22 when you delved into it there was the other side. And
23 I realized that this was only side of the story.

24 Q And you thought that rather than put it down
25 and immediately dispatch it to somebody else, it would

1 have been better to wait and talk to Mr. Sherwin and
2 get the whole picture before anything was done; is that
3 it? A Not really. It would be quite possible that
4 I wouldn't get a chance to speak with Mr. Sherwin for
5 a week or ten days. Many times I didn't see him two
6 minutes a day. He just was unavailable for this routine
7 work.

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1 Q And for that reason you felt in this situation
2 you just put it down on paper and sent it over to Mr.
3 McCrane, since Mr. Loughran said he had mentioned it
4 to Mr. McCrane earlier?

5 A I just handled it routinely, like anything else
6 that came in the office.

7 Q I gather from that that it didn't make
8 too much impression on you one way or the other?

9 A No, I couldn't care less.

10 Q Well, then, I gather you were in Mr.
11 Sherwin's office on October 8th, 1970, also, weren't
12 you?

13 A Yes.

14 Q We have a letter here, Mrs. Mann, which we
15 have marked C-5 at these hearings, on Mr. Sherwin's
16 stationery, addressed to Mr. Kohl dated October 8th.
17 Did you write that? A Yes, sir.

18 Q And at Mr. Sherwin's dictation?

19 A Yes, sir.

20 Q Who took care of sending it out?

21 A I did. I signed his name on it, too. That's
22 my signature.

23 Q The name Paul was written by you?

24 A Yes, sir.

25 Q And where was it sent?

D2-2 1 A To Mr. John C. Kohl, at his apartment in Trenton.

2 Q Was there any reason that you can recall
3 why you sent it there rather than to his office?

4 A No, I don't know why it was sent there, but it
5 was not unusual. We had sent numerous correspondence,
6 not only to Commissioner Kohl, but to other commissioners
7 to their homes from time to time for various reasons.

8 Q Do you remember whether or not you had
9 a direction from Mr. Sherwin to send this to Commissioner
10 Kohl's home rather than to his office?

11 A I would just assume that he told me to send it
12 there, unless I knew Mr. Kohl was sick. But, of course,
13 we are going back October 8th, 1970, and I can't
14 honestly recall. But I would assume it was at Mr.
15 Sherwin's direction that it was sent to this address.

16 Q But you do say that you sent mail on other
17 occasions to Commissioner Kohl's home from Mr. Sherwin?

18 A Yes, sir.

19 Q Was there any particular kind of mail you
20 sent there, or was it run-of-the-mill mail?

21 A It was no particular kind.

22 Q Did you have any direction from Mr. Sherwin
23 that this kind of mail should go to Commissioner Kohl's
24 home and this kind to his office?

25 A Oh, no. Usually it was at my discretion. And

1 this could have been at my discretion, too, I don't
2 know.

3 Q I was just about to ask you, what makes
4 you think that you had a direction from him to send
5 this one to his home rather than to his office?

6 A I just say I assume I did. I don't know that I
7 did or I didn't.

8 Q You don't have a clear recollection as to
9 how it happened?

10 A No. But the fact that the letter is dictated,
11 and dictated by Mr. Sherwin, makes me assume that he
12 directed me to mail to his apartment.

13 Q In other words, he either before or after
14 dictating it said, Well, send this to his home?

15 A I would assume that was the case.

16 Q And that's the reason I think you have his
17 address on the bottom of the letter, do you?

18 A Yes.

19 Q Beyond what you have told us, you have
20 no recollection of any specific reason that he gave
21 for sending it to his home, if he did give any?

22 A No, no specific reason. I think I would remember
23 if there were a specific reason given to me.

24 MR. FRANCIS: Gentlemen, would you like to
25 ask Mrs. Mann anything?

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MR. BERTINI: I have one or two questions.

3 Did Mr. Sherwin actually dictate this letter
4 to you or did he say to you, Write a letter to
5 Mr. Kohl and tell him so-and-so, and then you
6 drafted the letter?

7 THE WITNESS: In this particular instance?
8 October 8th?

9 MR. BERTINI: Yes.

10 THE WITNESS: That was dictated.

11 MR. BERTINI: You have a way of knowing that
12 from the letter?

13 THE WITNESS: From the phraseology. Not
14 only that, but I was not familiar with this at all,
15 not at all familiar with it. I wouldn't have
16 the information contained in this to write the
17 letter.

18 MR. SAPIENZA: You indicated before that
19 you sent it to McCrane because Loughran had
20 already mentioned it to Mr. McCrane?

21 THE WITNESS: That's right.

22 MR. SAPIENZA: Would you have mentioned it
23 to McCrane if Loughran did not indicate that?

24 THE WITNESS: I would have questioned him
25 as to where he wanted his inquiry directed.

MR. SAPIENZA: Did Mr. Loughran ask you to

D-5 1 send that to Mr. McCrane?

2 THE WITNESS: Oh, yes.

3 MR. SAPIENZA: In other words, he was asking
4 you then to be his secretary, so to speak?

5 THE WITNESS: Oh, yes.

6 MR. SAPIENZA: He didn't specifically intend
7 that this information should come to Mr. Sherwin,
8 but rather he was merely asking you to perform
9 a secretarial function of sending this to McCrane?

10 THE WITNESS: That is correct. There was
11 no indication I should give this information to
12 Mr. Sherwin. The phone call was directed to me
13 personally. The information was given to me,
14 and I was requested by Mr. Loughran to contact
15 Mr. McCrane concerning this because he had
16 already spoken with Mr. McCrane.

17 MR. SAPIENZA: He didn't ask Mr. Sherwin
18 to call Mr. McCrane?

19 THE WITNESS: No. He knew us well enough
20 that Mr. Sherwin just couldn't handle things
21 like this. He was too busy. I handled all these
22 matters.

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1 MR. SAPIENZA: Actually, you were just forwarding
2 a complaint to where the person told you to forward it?

3 THE WITNESS: That's correct.

4 MR. SAPIENZA: Do you know whether McCrane is
5 the person that normally receives complaints like
6 this?

7 THE WITNESS: I don't know. I don't know what
8 Mr. McCrane receives in the office. I know what
9 I sent to Mr. McCrane, routine matters.

10 MR. SAPIENZA: I take it, the reason why
11 you helped Mr. Loughran out in this particular
12 chore insofar as typing it and sending it out was
13 because Mr. Loughran had been in the office before
14 and had been friendly, so to speak; is that right?

15 THE WITNESS: The reason I did it?

16 MR. SAPIENZA: Yes.

17 THE WITNESS: I did this for Mr. Loughran
18 the same as I would do for any person who walked
19 into the office with a request. I handled their
20 request to the best of my ability.

21 MR. SAPIENZA: Well, you don't normally post
22 people's mail? If a person came into the office
23 and said, Will you mail a letter to Governor for me,
24 you wouldn't normally do that, would you?

25 THE WITNESS: I have mail delivered to me for

1 Governor Cahill addressed to Mr. Sherwin, please
2 see that the Governor gets this.

3 MR. SAPIENZA: All right, thank you.

4 THE CHAIRMAN: Mrs. Mann, when you say in
5 the first sentence of the intercommunication memo,
6 "I spoke with Florence about ^{above} / Friday." Are
7 you referring to Helen Mann?

8 THE WITNESS: I signed it, yes. I myself
9 spoke with Florence.

10 THE CHAIRMAN: And Florence is the secretary
11 to the Treasurer?

12 THE WITNESS: That is correct.

13 MR. BERTINI: This is really a memo from
14 you?

15 THE WITNESS: Yes.

16 MR. BERTINI: Carrying a message from Loughran
17 to the Treasurer, and it's really not anything from
18 Sherwin? It just happens to be done on his
19 stationery?

20 THE WITNESS: That is correct. I had no
21 other stationery to use.

22 THE CHAIRMAN: Did you do this really to,
23 say pacify Mr. Loughran?

24 THE WITNESS: I will be perfectly frank, to
25 get him off my back.

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Does that answer your question?

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1 THE CHAIRMAN: Did you testify generally to
2 what you have told us this morning in Freehold?

3 THE WITNESS: The questions were a little
4 different. I haven't changed my testimony.

5 THE CHAIRMAN: No. No. But, I mean, did they
6 cover the point that this memo really came from
7 Mrs. Mann and not from the Secretary of State?

8 THE WITNESS: I'd have to think about that.

9 No. My questions in Freehold dealt more with
10 who worked in the office; what was my position;
11 procedure in the office. And then, I believe,
12 the jury was sent from the room, at which time
13 the prosecuting attorney and the defendants'
14 attorneys discussed this at the bench with Judge
15 Crahay.

16 THE CHAIRMAN: You say "discussed this."
17 You mean this?

18 THE WITNESS: Yes. And the Judge asked
19 me questions, but the jury was not present at
20 that time.

21 THE CHAIRMAN: About the July 20th memo?

22 THE WITNESS: Yes, sir. And I believe a
23 motion was made and it was not admitted in.

24 THE CHAIRMAN: In evidence?

25 THE WITNESS: In evidence. The jury was not

E1-2 1 aware of this memo.

2 EXAMINATION BY MR. SAPIENZA:

3 Q When you say in the memo "You spoke to
4 Florence," did you merely tell Florence that this was
5 coming through, that you had a call from Mr. Loughran
6 and you were going to send a letter to her which Mr.
7 Loughran requested you to send?

8 A I must have received twotelephone calls from
9 Bill Loughran. After the first call, I, no doubt,
10 called Florence.

11 Q Why did you call Florence?

12 A I imagine to find out if she was aware of this
13 or if Mr. Loughran had been in to see her or Mr. McCrane.

14 Q In other words, you were trying to find out
15 whether, in fact, you should send this to--

16 A Whether I was wasting my time on something that
17 somebody else had already put in the works probably.

18 Q And did she tell you to send it on down?

19 A Oh, I don't recall.

20 MR. SAPIENZA: Thank you.

21 EXAMINATION BY THE CHAIRMAN:

22 Q So, really what you were doing, to sum
23 it up, you were assisting Mr. Loughran in his request
24 to get some information in to Mr. McCrane's office
25 about a Mr. Manzo?

E1-3¹

A Yes. I'd never heard of Mr. Manzo. He meant nothing to me. Still doesn't. I've never met the gentleman.

Q If you'll excuse the expression, you were acting as a conduit to get whatever information he had given to you on the telephone over to Treasurer McCrane?

A Yes, and the reason was to be a buffer between Mr. Sherwin and people like Mr. Loughran who came in asking for favors daily by the score.

Q ON any other occasions did you send memos of this type to other cabinet members at the request of some person like Mr. Loughran?

A Member--memos of this type you say?

Q Well-- A Everybody wanted something.

Q Where a citizen comes in and says, you know, can you get me four copies of some particular law or some document?

A I would pick up the telephone--

Q Yes. A --and call someone and say, a Mr. so-and-so is here and would like to have so-and-so. Can you accommodate him?

COMMISSIONER BERTINI: Your real job, then, was to keep the public satisfied?

THE WITNESS: I had a public relations job.

E-4 1 COMMISSIONER BERTINI: And that's what you
2 were doing when you transmitted this memo from you to
3 the Treasurer?

4 THE WITNESS: Yes.

5 THE CHAIRMAN: Does that cover it, Mr.
6 Francis?

7 MR. FRANCIS: I've just run across another
8 matter in Mrs. Mann's testimony that perhaps
9 I should mention.

10 EXAMINATION BY MR. FRANCIS:

11 Q Did you diaryhead that letter of October 8th?

12 A I can't tell by this copy, Mr. Francis.

13 Q I see. Do you remember when you were on
14 the stand in Freehold being asked about additional
15 entries appearing on the file copy of that letter, and
16 you were asked, "Who made the entry on the top of the
17 page?"

18 "ANSWER: I did.

19 "QUESTION: What does the entry say?

20 "ANSWER: D, D-13."

21 A Are you referring to this?

22 Q I'll find out from you.

23 A I need your help.

24 Q Yes. A The exhibit shown me in
25 Freehold had my notations across the top.

E-5

1 Q Yes. A This is a--

2 Q That's a copy of it that apparently came
3 from--

4 A Without my notations on my file copy.

5 Q Yes. See, here's the record of your testimony,
6 and I notice that they've made a mistake here. They say
7 it's dated October 18th. But look at the letter. You
8 see that it has to be that letter, so you understand it.

9 Now, follow it from here with your copy.
10 You see this. Although this is referred to as October
11 18th in Freehold, actually, it's the letter of October
12 8th.

13 Now, supposing we go along and see if we
14 can refresh your recollection. See, they're still
15 talking about that letter, and you notice you were
16 asked about the additional notes made on the file copy
17 and you were asked, "Who made the entry on the page?
18 I did"?

19 A All right. Then I did diary this.

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Mann

1 Q "And what does the entry say? D10-13."

2 And what would that mean?

3 A Exactly what my answers says there.

4 Q Fine. Well, you see--

5 A Diary to follow through on the 13th --

6 Q I don't mean to push you.

7 A --October.

8 Q But, these gentlemen don't know what you and

9 I are looking at. A I understand.

10 Q That meant that you diaried to look at it

11 on the 13th of October? A Yes.

12 Q And were you told to diary?

13 A No.

14 Q Or do you do that on your own?

15 A No.

16 Q You do what had to be done automatically?

17 A I knew what had to be diaried and I followed through,

18 and that which did not have to diaried.

19 Q Then what did you have, some kind of ticker

20 system and then on the 13th you would go and look and

21 then on the 13th pull it out? A I had a

22 Lawyer's Diary, Legal Manual.

23 Q Then when the 13th came, you noticed this

24 letter was diaried to that date and you would pull it

25 out or make some inquiry as to what had happened?

1 A That was our system. But it didn't always work
2 because we were so far behind there would be times when
3 it would sit for a week or two before I would get to
4 call my pending matters and follow through.

5 Q Well, the probability is, that your system
6 was not any more unique than some of ours. But, in any
7 event, do you have the recollection as to what you did
8 on the 13th with this one? A No, sir.

9 EXAMINATION BY
10 THE CHAIRMAN:

11 Q You diaried it for the 13th, presumably, because
12 in the last paragraph it indicates "If you will call me
13 Tuesday" and that corresponds with the 13th of October,
14 does it not? A But, no. This I did not
15 connect with this,--I'm referring to C-5 and C-2--simply
16 because this is U.S. 46. This I was not at all familiar
17 with. So when I diaried this, I had no idea it was
18 connected with this.

19 Q No, no. I say this: The last paragraph of
20 the letter of October the 8th, 1970, indicates, "If you
21 will telephone me on Tuesday." I say to you again--

22 A Yes, sir.

23 Q --isn't the reason you diaried it because
24 presumably you were to remind someone as to whether or
25 not a phone call would be coming in that following Tuesday,

Mann

1 which turned out to be the 13th?

2 A That's correct.

3 Q And that's the reason you diaried it ~~for~~ the

4 13th? A Yes.

5 COMMISSIONER BERTINI: I want to get the record
6 clear. You said this was not connected with this?

7 THE WITNESS: Not in my mind.

8 COMMISSIONER BERTINI: By that you meant C-5--

9 THE WITNESS: Right.

10 COMMISSIONER BERTINI: --was not connected
11 with C-2?

12 THE WITNESS: Not in my mind. They did not
13 tie in at all. One was Manzo, one was U.S. 46.

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EXAMINATION BY MR. FRANCIS:

Q Now, we don't have your file copy with the notations we have been talking about here, but do you have a recollection that in addition to the entry we have talked about you had another entry, "Handwriting, my handwriting," which you read? Do you remember that note that you put on?

A I recall that note.

Q I see. And what other note did you put on your copy of this October 8th letter?

A In addition to my answer here?

Q Yes, yes. In addition to what you have told us you noted on previously, "Diary for 9/13."

A Yes.

Q Did you have another notation?

A According to my testimony in Freehold I did, but it doesn't show on your copy.

Q Yes. A And I do recall this.

Q All right.

A I do recall this.

Q Well, can you tell us what your other notation was?

A You'd like me to read this?

Q Yes, because, see, these gentlemen don't know what we're looking at.

E3-2 1 A I'm very sorry, gentlemen. I didn't understand.

2 "Marge Smith checking with Comm.,' meaning a
** 3 Commissioner, 'on this. Will get an answer 10/9/70.
4 My initials, H. period, M as in Mary, period."

5 Q And by the way, who is Marge Smith?

6 A She is employed in the Department of Transportation
7 by Commissioner John Kohl.

8 Q All right. Do you remember that you did
9 call Marge Smith after that?

10 A I don't recall that I did or didn't.

11 Q I see. Do you remember whether you engaged
12 in any other follow-up of the October 8th letter
13 after that?

14 A I have exhibits here after October 8th.

15 Q Ones that we have showed you before marked
16 C-9. I gather that those--do you think that they are
17 related to the October 8th letter? Don't you think that
18 the notation here indicates that this is related to
19 the July 20th memorandum of yours?

20 A Oh, yes.

21 Q I see. So these two that are clipped
22 together marked C-9, they are unrelated to the letter
23 of October 8th, are they?

24 A In my mind they were.

25 Q Yes. Well, here's how perhaps we can make

E-3

1 it decide for you, or have you decide certainly.

2 You notice the inquiry, "Who is Florence and who
3 is Bill Loughran?"

4 A Yes, sir.

5 Q Again over here, the answer, "Florence is
6 Secretary to Joseph McCrane. Bill Loughran is merely
7 a friend"?

8 A Yes, sir.

9 Q So that these two are related to each other?

10 A Yes, definitely.

11 Q And unrelated to the letter of October 8th
12 because this one refers to the letter of July 20th?

13 A 20th, yes, sir.

14 Q Memorandum of July 20th, which was long
15 before that? A Yes.

16 Q All right. Do you have any further
17 recollection of any more diarying of the October 8th
18 letter? A No.

19 Q You had it diaried for the 13th and with a
20 notation "Marge Smith"?

21 A "Checking on this."

22 Q "Checking." Well, when the 13th came,
23 do you remember whether you called Marge Smith or--

24 A No, I don't recall. Probably that was just a
25 dead file at that time. There was no need for me to do

E-4

1 anything further on it.

2 MR. FRANCIS: I see.

3 EXAMINATION BY MR. SAPIENZA:

4 Q Mrs. Mann, was your diary available to the
5 attorneys that questioned you in Freehold?

6 A No. They didn't ask for it and I don't have it.
7 I have Mr. Sherwin's diary for that year, but I don't
8 have my own.

9 Q It's lost?

10 A Discarded.

11 EXAMINATION BY MR. FRANCIS:

12 Q Let me call your attention a little farther
13 on to a memo in this connection which you may recall.
14 Will you look at your testimony in this record on Page
15 393 about another entry marked "Manzo File." And do
16 you remember that you made that notation for the file?

17 A Yes, I did.

18 Q Did you make that on October 13th?

19 A I wouldn't know when I made the notation.

20 Q Well, you see, this is being quoted.

21 See, "All right. Now, will you read the memo?"

22 And, so, you're reading your quote, are you?

23 A Yes.

24 Q Would you read that and then tell us what
25 the message was that you wrote and made a memorandum of?

E-5

1 A Surely. "Notation for File: October 13, 1970.
2 Spoke to John Kohl today and he indicated some need
3 to complete Route 46 this autumn inasmuch as there has
4 been a great deal of pressure about the matter. However,
5 he intended to talk to Centrum Construction to determine
6 whether this firm could guarantee a sufficient amount
7 of asphalt to perform the work and further guarantee
8 the construction by this fall. If such a guarantee
9 could not be given, the work would be rebid and Manzo
10 Construction would have another opportunity to bid."

11 Q Is that the end of your memo?

12 A "Mr. Sherwin once to call Kohl. Diary for 10/22,
13 quotation. No initials on this."

14 Q Well, does that mean that you did not
15 or did make this memorandum?

16 A I did not.

17 Q Oh, you did not?

18 A I believe that was established that that was done
19 by someone else, in Freehold.

20 Q You mean in the testimony in Freehold it
21 was established that this memorandum was made by
22 someone in your office other than you?

23 A Yes, sir.

24 Q Who was that?

25 A Betty Haggerty.

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Q I see. Is she a secretary of Mr. Sherwin's?

A She was confidential aide.

Q To Mr. Sherwin?

A Yes.

Q And the memorandum that you read, then,
was made by her in the course of her duties for Mr.
Sherwin and put in the file?

A Correct.

Q I see.

A You will note at the end I say, "No initials on
this."

Q Yes.

A And I was questioned in Freehold.

"No initials at all?" My answer was, "No initials.
It isn't mine."

E-4-1

Mann

1 Q I see. But now you do know that it was Mrs. or
2 Miss Haggerty? A Mrs. Haggerty's.

3 Q How can you say that? Do you know?

4 A Yes. She knows she did it. I believe you will
5 find it's established there further on.

6 Q Oh, she testified that she did?

7 A I'd rather you check the testimony. I know she
8 did it and she knows she did it, but whether or not
9 it actually came out or not I don't know.

10 Q Were you there when she testified?

11 A Yes.

12 THE CHAIRMAN: Mrs. Mann, does that indicate
13 that Mrs. Haggerty talked to Commissioner Kohl or
14 the Secretary of State Sherwin talked to Commissioner
15 Kohl on the 13th?

16 MR. FRANCIS: You want to look at that?

17 THE WITNESS: Please.

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

20 THE WITNESS: Your question was what, sir?

21 THE CHAIRMAN: My question was: From the
22 entry that you just read--

23 THE WITNESS: Yes, sir.

24 THE CHAIRMAN: --does that indicate that Mrs.
25 Haggerty spoke to Commissioner Kohl or Secretary of

1 State Sherwin spoke to Commissioner Kohl on the
2 13th of October?

3 THE WITNESS: Secretary of State Sherwin.

4 BY MR. FRANCIS:

5 Q You gather that this notation that Mrs. Haggerty
6 made, then, was the result of dictation from Mr. Sherwin
7 to her? A Yes, sir, and I think you will
8 find that further on in the testimony.

9 Q Were you there when she was shown this memo
10 you read to us, when Mrs. Haggerty was shown at the trial
11 the memo? A I was at the trial.

12 Q Do you remember, did you hear them say that
13 she typed the memo the date it was dictated?

14 "Question: Dictated?

15 "Yes, sir.

16 "What did you do with the memo after you typed it?

17 "Well, as pointed out, it was diaried for October 22nd,"
18 and then she talked about the procedure?

19 A Which is incorrect.

20 Q Is it? A Absolutely.

21 Q But, in any event-- A That is not
22 the procedure.

23 Q Well, we are not so concerned with that at
24 the moment. Simply trying to find out, if we can, whether
25 Mrs. Mann, I mean Mrs. Haggerty wrote that because of a

1 conversation she had with the Commissioner or whether it
2 was dictated to her by Mr. Sherwin. And at that trial
3 you heard her say that it was dictated to her, didn't you?

4 A Yes, and I just read it there.

5 MR. FRANCIS: Anything more that you gentlemen
6 have?

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1 MR. FRANCIS: Anymore that you gentlemen have?

2 THE CHAIRMAN: Do you have anything further to
3 add, Mrs. Mann--

4 THE WITNESS: Plenty.

5 THE CHAIRMAN: That would be essential to what
6 we have reviewed?

7 THE WITNESS: Not just feeling, facts.

8 That's a good case in point. Mr. Francis just
9 showed me this testimony here, from Mrs. Haggerty,
10 and I say it's incorrect concerning office procedure.
11 It may not mean a thing to you folks, but it was not
12 normal office procedure to pull this particular item
13 and return it to Mr. Sherwin's desk for his attention.
14 That's a quote. We followed through on our own
15 diaries, unless it was something highly unusual.
16 Nothing was given to Mr. Sherwin for his attention.
17 He wasn't there that much.

18 Therefore, when it says in the testimony,
19 on page 423:

20 "Question: And what happened on October 22 if
21 it was put in the pending file and diary?

22 "Answer: Normal office procedure to pull this
23 particular item and return it to Mr. Sherwin's
24 desk for his attention." That is not correct. We
25 ourselves handle this. This was all routine, is what

1 I am saying, strictly routine.

2 MR. FRANCIS: The only circumstance in which
3 that would happen then, I gather, is that if Mr.
4 Sherwin came out and said, Let me have that memo-
5 randum on this day, October 22--

6 THE WITNESS: Which he would not do.

7 MR. FRANCIS: Which he would not do?

8 THE WITNESS: No way.

9 THE CHAIRMAN: Just one more item to bring out,
10 Mrs. Mann. This Commission operates under what we
11 call the Code of Fair Procedure promulgated by the
12 State Statutes of New Jersey. And under Section 5
13 thereof any witness who testifies before us at a
14 hearing has the right at the conclusion of his or
15 her testimony to file a brief sworn statement relevant
16 to the testimony for incorporation in our record of
17 this particular investigatory proceeding. I just
18 call that to your attention. Mr. Sapienza I believe
19 mentioned it in the original introductory warnings.

20 THE WITNESS: I recall.

21 THE CHAIRMAN: If you feel you would like to
22 file a sworn statement, we will accept--

23 THE WITNESS: I notice it says "relevant." In
24 other words, I must stick to the facts, not feelings.

25 THE CHAIRMAN: That's correct.

1 THE WITNESS: I would like to make a statemet.

2 MR. SAPIENZA: By all means. Regarding the
3 testimony you have given us today; is that right?

4 THE WITNESS: That's the only thing I can
5 testify on, what I spoke about today?

6 MR. FRANCIS: Well, anything that is relevant
7 to your testimony today in the sense that it will
8 explain it, elaborate on it, so long as it is material
9 to the inquiry that we are trying to make here.

10 THE CHAIRMAN: Do you understand, Mrs. Mann,
11 that this Commission is investigating how the Attorney
12 General of New Jersey handled what is commonly
13 referred to as the Sherwin matter based upon the
14 papers that were referred to as the Biederman memos.
15 And that is our function, to see what the Attorney
16 General did in that particular matter.

17 Do you understand our function?

18 THE WITNESS: Yes, now that it's over, you have
19 told me the purpose of this.

20 THE CHAIRMAN: Pardon me, ma'am?

21 THE WITNESS: Now that I have given my testimony,
22 you have told me the purpose of my being here.

23 THE CHAIRMAN: Off the record for a moment.

24 (Off the record.)

25 THE CHAIRMAN: Why don't you compose your

Mann

statement in your own words as to what you would like to give to the Commission?

THE WITNESS: It's difficult.

I would like to refer to refer to the testimony given by Commissioner Kohl, where he stated that in his one telephone conversation with the Secretary of State concerning this file, his interpretation of that phone call was that Manzo Construction Company was a friend, supporter and contributor.

Neither Mr. Sherwin nor I had ever heard of Manzo.

MR. SAPIENZA: Is there anything else, Mrs. Mann?

THE WITNESS: I think that's it.

MR. FRANCIS: Did you or Mr. Sherwin, to your knowledge, at any time after the letter of October 2 from Mr. Sherwin to Mr. Kohl received a telephone call from the Attorney General about that letter?

THE WITNESS: Not to the date of my leaving.

MR. FRANCIS: And that was when?

THE WITNESS: Roughly, Veteran's Day 1970, which at that time I believe was still November 11, I am not certain. It was a dead file.

MR. FRANCIS: And you had no conversation

1 with the Attorney General, as far as you know?
2 You never took a call and put it through to Mr.
3 Sherwin from the Attorney General about this matter?

4 THE WITNESS: No. Completely dead file.

5 MR. FRANCIS: That I think belongs in the
6 record, and thank you very much.

7 THE WITNESS: Thank you.

8 (Witness excused.)
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1 [Attorney General George F. Kugler, Jr., enters
2 the room.]

3 THE CHAIRMAN: General Kugler, we have two
4 members of the State Commission of Investigation
5 sitting this morning. Mr. Bertini is on my right.
6 My name is John McCarthy.

7 As you know, you have been asked to come
8 here to testify pertaining to our direction which
9 we received from you dated August 1st, 1972,
10 in which we were requested by your office to
11 investigate your office's handling of what is
12 commonly referred to as the Sherwin matter.

13 ATTORNEY GENERAL KUGLER: That's right.

14 THE CHAIRMAN: And we have Mr. Francis
15 here this morning, as special counsel to the
16 commission. Mr. Spienza is regular counsel to the
17 commission. And Mr. Corrigan and Mr. Jordan,
18 two of our investigators. And we have two
19 court reporters, who will alternate taking down
20 the testimony. Okay, sir?

21 ATTORNEY GENERAL KUGLER: All right.

22 THE CHAIRMAN: Would you stand up to be
23 sworn by the reporter.
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1 G E O R G E F. K U G L E R, J R., sworn:

3-2 2 MR. SAPIENZA: Mr. Attorney General, before
3 we start, I am going to read to you certain
4 warnings that we have read to all witnesses that
5 appear before us. In part they are excerpts of
6 our statute.

7 As Chairman McCarthy noted, you are appearing
8 before us voluntarily at our request. This is
9 an executive or private session of the commission.
10 Your testimony will be taken under oath and
11 transcribed by the shorthand reporter. It may
12 be used against you later on in a court of law.
13 For that reason, if you feel that your answer
14 may tend to incriminate you, you may refuse to
15 answer. You understand that?

16 THE WITNESS: I understand what you're
17 saying.

18 MR. SAPIENZA: You have the right to be
19 accompanied by an attorney of your choice. Of
20 course, you are an attorney.

21 I note for the record that you are appearing
22 today without an attorney. Is that of your
23 choosing?

24 THE WITNESS: Yes, sir.

25 MR. SAPIENZA: If you desire to have an

G-3 1 attorney present today or want to consult with
2 one at any time during the proceedings, just
3 merely tell us to stop, that you would like
4 to discuss this matter with an attorney, and
5 we will stop. Or for any other reason, if you
6 would like to discontinue the hearings you may.

7 Section 52:9M-15 of our statute forbids
8 disclosure by you of questions asked, your
9 responses, or any other information that you may
10 gain as a result of this hearing today. The
11 penalty for such is as if it were a disorderly
12 persons offense.

13 Although your testimony is now being
14 taken in private session, the commission may
15 make it available to the public at a later
16 time or call upon you to give the same testimony
17 at a public hearing upon adoption of a resolution
18 to that effect, if they should desire.

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

G-4 1 or security.

2 That's simply an excerpt of our statute.

3 As apractical matter, we will make your testimony
4 available to you immediately afterward.

5 You have the right at the conclusion of
6 this hearing to file a brief sworn statement
7 relative to your testimony for incorporation in
8 the record, if you would like to. Okay?

9 THE WITNESS: All right.

10 MR. SAPIENZA: Very good, sir.

11 EXAMINATION BY MR. FRANCIS:

12 Q General, you are a member of the Bar of the
13 State of New Jersey?

14 A I am, since 1954.

15 Q And you were appointed attorney general
16 when?

17 A January 1970.

18 Q And you have been the attorney general
19 ever since?

20 A I have.

21 Q By the way, before you were appointed
22 were you at all active politically?

23 A No, I was not. I never engaged in any politics
24 of any kind, except perhaps you might say that I made
25 a speech for two minutes on television to answer an

-5 1 editorial in Governor Cahill's campaign. I got a
2 hurry-up call one day and went over to Philadelphia
3 and answered an editorial of a television station.
4 That's the only polticking I have ever done.

5 Q Now, as attorney general, you are head of
6 the Department of Law and Public Safety, are you not?

7 A That's correct.

8 Q Can you give us a general outline of the
9 nature of your authority and your function as attorney
10 general so far as it relates to all of the departments
11 in the state?

12 Is that too broad a question?

13 A No, I don't think so, Justice--
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1 Q Before you go any further, let me give you
2 a caution, or to do me a favor. No one is allowed to
3 address me as Justice in any public hearing, under the
4 rules of the Supreme Court. Once a man leaves the
5 bench or any public office he is mister, just the same
6 as everybody else. Not that I don't enjoy being called it,
7 I think it's kind of nice. But we are not allowed to do
8 it, to have it happen at a public hearing.

9 A All right.

10 My duties as Attorney General, we are the legal
11 advisors to all of the state government through the Division
12 of Law. We handle all of their legal matters. We handle
13 their suits. We make legal opinions. We are the exclusive
14 legal advisors of every agent of state government.

15 In addition to that, we advise all the voting
16 boards and certain of the other county offices. Of course,
17 we represent all state offices in court, all state agencies
18 in court; unless with the exception of the New Jersey
19 Turnpike, the Garden State Parkway and Atlantic City
20 Expressway. Most all other agencies, however, we are
21 the counsel for. That's done through the Division of Law.
22 And of course, that's in my department. The First Assistant
23 Attorney General is head of that division.

24 We also represent the judiciary when they are
25 sued. In addition to that, we now have the Division of

1 Criminal Justice, that act was passed in I think May or
2 April of 1970. That's a supervisory function over all of
3 the prosecutors; supervise and handle the State Grand
4 Jury and their prosecutions. We do supervision of approved
5 wiretapping, witness immunity, up through that Division
6 to me. And that's our criminal law function, you might say.

7 We do most of the Appellate work now and that's
8 all as a result of the Criminal Justice Act of 1970.

9 Administratively, the other you might say regu-
10 latory or enforcement agencies under the Attorney General
11 as head of the department are the Alcoholic Beverage
12 Commission, which is a regulatory agency, as you know.
13 We now have the Division of Consumer Protection, which
14 takes in former weights and measures; Bureau of Securities;
15 Office of Consumer Protection; and all the professional
16 boards. Twenty-one of them are in that division.

17 The State Police are in the Department of
18 Law and Public Safety. In addition to that, the Division
19 of Motor Vehicles and recently, I think maybe nine or ten
20 months ago we formed the Division of Data Processing,
21 telecommunications, which takes in the communications of
22 the State Police and Motor Vehicles and all our other
23 agencies. It's quite a large division now.

24 We have the Racing Commission. I am chairman
25 of the State Law Enforcement Planning Agency, which is

1 in, but not of, my department; the Housing and Finance
2 Agency. I am a member of that board. The Public Broadcast
3 Authority; Sports Authority; and for the moment that's all
4 I can think of.

5 They have put the registration of legislative
6 agents in our department, and the Racing Commission came
7 in in 1970. Now the registration of employment agencies
8 and regulation of them, games of chance, that was all
9 put in our department.

10 That's basically what we do. Our budget
11 is about fifty million dollars, and there are almost
12 five thousand employees.

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Hlpgl 1 Q And I gather from that general description
2 of the nature of your duties that you don't do all
3 that by yourself?

4 A Oh, absolutely not.

5 Q Let me ask you again for a minute about the
6 Division of Criminal Justice. That division was
7 established by a separate statute, was it?

8 A Yes, sir.

9 Q In 1970. And I gather you have that
10 before you. Your recollection is that became effective
11 in May 1970, is it?

12 A Yes, sir.

13 Q Now, that Division as created by the
14 statute was to be, or was it not, under the immediate
15 supervision of a director who would be appointed by
16 you?

17 A That's correct.

18 Q And he, under the statute, was required to
19 perform all of the functions and powers of the Attorney
20 General pertaining to the criminal business of the state,
21 under your supervision?

22 A Yes, except for a couple. I don't think he
23 has the power to sign wiretap authorizations; I don't
24 think he has the power to sign witness immunity
25 petitions unless he's acting in my stead and I'm out

H-2 1 of the state and his name is registered in the Secretary
2 of State's office. I think in those two exceptions,
3 he has power to sign indictments and act in my place,
4 but, of course, he reports to me.

5 Q And is the attorney general required to
6 submit to the Governor and the Legislature annually
7 a report setting forth the activities of the Division
8 of Criminal Justice?

9 A He is.

10 Q And also together with suggestions and
11 recommendations for change of operation. The information,
12 you send the report in under your name, but the informa-
13 tion comes from where?

14 A It comes from the Division director or through
15 his staff work. We file a report of the whole
16 department annually. In March, normally, we try to get
17 it out.

18 Q And so far as the day-to-day operation
19 of the Division of Criminal Justice is concerned,
20 you leave that to whom?

21 A To the director of the Division of Criminal
22 Justice.

23 Q Do you recall when you made the first
24 appointment after May of 1970 to the office of
25 director of that division?

Kugler

H-3

1 A I believe that I brought Evan Jahos on as director
2 in June, I think, of 1970, but I don't know. That may
3 not be accurate, but it's pretty close. I can get that.

4 Q In any event, it's around that time?

5 A I believe so, yes, sir.

6 Q AND did you hunt around for a man before
7 you appointed Mr. Jahos?

8 A Oh, I certainly did, yes.

9 Q Did you know when you appointed Mr. Jahos
10 what, if any, experience he had in the area of criminal
11 investigation and enforcement?

12 A Yes. I had, before I was sworn in as attorney
13 general, I had discussed generally with Evan Jahos
14 the problems. After my name was announced and it was
15 all right to talk about it, I talked to him about the
16 problems of the attorney general's office with
17 particular reference to criminal enforcement problems.
18 He had had considerable experience, having been head
19 of the CIS, which was then a part of the Attorney
20 General's Office. Criminal Investigation Section, I
21 think, is what they called it. He had been head of
22 that under Arthur Sills. He had served in the
23 Attorney General's Office for some time. He had also
24 been head of, or had run, at least two prosecutor's
25 offices on a supercession basis either because--

H-4 1 appointed by the Attorney General either because the
2 prosecutor's term came up or--I don't know just what
3 the circumstances are, but I recall him having run
4 the Atlantic County Prosecutor's office. I think that's
5 where I first met him when I was a practicing lawyer.
6 And I knew he had considerable law enforcement experience,
7 and I discussed with him coming with the department.
8 And at that time he said that he didn't think he would
9 because he was concerned with the terrible hodge-podge
10 of criminal law enforcement that the Attorney General's
11 office had, and I told him that I was going to attempt
12 to get a Criminal Justice Act passed and I outlined
13 it to him and he said, "If you ever get that passed,
14 I'll come with you. But you don't have a chance of
15 getting that through the Legislature."

16 And after we did get it through unanimously I
17 called him up on the phone and said I'm calling the
18 bet and he said, I guess there's not much I can do
19 about it. I'll come with you. So, that's how he got
20 it.

21 Q I gather from what you said that you were
22 fairly satisfied before you appointed him that he
23 had adequate experience in the criminal law enforcement
24 field to justify his being named head of this division?

25 A Absolutely.

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1 Q And I suppose you felt that from that time
2 on, so far as the day-to-day operation of that
3 division was concerned, you could rely on his judgment
4 and his ability in that area?

5 A Oh, I had complete confidence in Mr. Jahos.

6 Q Now, with respect to your general operation,
7 did you say a moment ago that you had 5100 employees?

8 A Somewhere around there, yes.

9 Q And how many deputy and assistant attorneys
10 general did you have in 1970?

11 A Well, in that period, let's see, early 1970 -
12 middle 1970, we were recruiting, and of course I
13 could get probably a more accurate estimate for you,
14 but I would--

15 Q We don't need it to the man. You know,
16 generally.

17 A I would judge that at the time we had maybe
18 fifty or sixty deputies in the civil area, and we had
19 one or two in the criminal area in the old CIS.
20 Clint Cronin was there, and I think one other one.
21 And then there were two assigned out to state police,
22 Ed Stier and Peter Richards. And that was about it.
23 And we probably had authorization for seventy-five
24 or eighty deputies.

25 We rapidly increased that staff in the civil

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area starting at that time to 120 at the present time.
And in the criminal area I think- the statute gave
us authority to hire probably up to thirty-five,
I believe, in this Criminal Justice Division. So,
we immediately started a recruiting campaign and Mr.
Jahos had charge of that in the criminal area and
proceeded to build a department, a division.

Kugler

1 Q I'm not sure I'm entirely clear. Overall,
2 how many deputies and assistants did you have in, let's
3 say, July through December 1970?

4 A Well, I would say overall, deputy attorneys general
5 and assistant attorneys general from July to December went
6 from about a low of fifty-five to a high of maybe ninety.

7 Q I see. Now, when you appointed assistants
8 and deputies, did you assign them to particular branches
9 and departments in government?

10 A Yes, I certainly did.

11 Q And how did you do that generally?

12 A Well, in the civil division, Mrs. Schauer, who is
13 the First Assistant, and I would discuss the people that
14 were recruited and decide where they best fit, what our
15 needs were.

16 In the beginning, of course, there was a
17 carryover staff that I interviewed everyone personally,
18 looked at his background, made sure they set aside my
19 requirements of no private practice and agreed to certain
20 terms, and they at that time had certain experiences in
21 the government. For the most part, those people that
22 were carryovers stayed in the same areas where they had
23 been. We tried to assign experienced people to cabinets
24 and agencies and departments who had heads who were
25 inexperienced. And those who had some experience, heads of

1 departments who had some experience, we didn't have as
2 much hesitancy of putting new attorneys there.

3 So, we tried to fit them in to this jigsaw
4 puzzle where they were best suited by training and experi-
5 ence.

6 And in the civil division was Marilyn Schauer
7 and I who made those decisions, along with other people
8 in the division. And in the criminal division was Evan
9 Jahos and I, and Dave Lucas and a few others who made
10 those decisions.

11 Q So that you would take a deputy or an assistant,
12 when you appointed him, decide where you thought he could
13 best exercise his talents and assign him to a department
14 or a division? A That's right.

15 Q And then that was the way you handled all
16 of the deputies and assistants, generally speaking, by
17 specific assignments to specific areas over which you
18 had supervision as Attorney General?

19 A That's correct.

20 Q And then did you commit to them the day-to-
21 day supervision of the work that would be incidental to
22 the departments where they were assigned?

23 A Oh, yes. There was a system set up and gradually
24 evolved through a staff of supervisors right on up through
25 Mrs. Schauer in the criminal section, or in the civil

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section, and Mr. Jahos in the criminal section, giving them complete responsibility for their functions?

Q I see. And they would handle whatever the legal matters were in this particular area by themselves without consultation with you or anybody else in routine matters?

A That's correct.

Q Were they required to report to you at intervals?

A No, no one was required to report to me. They only reported--I only got reports from the deputies supposedly through Mrs. Schauer and through the other supervisory staff.

We had four assistants attorneys general, and they would first report to them in their respective areas. One was assigned to Appellate; one to advice to the agencies; one to the trial section, and then we had another one that was a general assistant, and then they reported through Mrs. Schauer.

Only the most urgent or most important matters, or those things that was felt that they couldn't handle, they would send it up through to me.

Q I see. And were there many occasions, let's say, in the year 1970, '69, when these deputies would come to you, would feel that they were required to come up through the ladder and have you make an ultimate decision as to what course should be taken or what legal

1 opinion should be given?

2 A Well, there were a number of occasions. But in
3 relation to the number of problems that each handled
4 and the number of other problems I had, it was relatively
5 small percentagewise.

6 Q Now, with respect to the departments themselves
7 to which under your Statute you were the legal, principal
8 legal advisor, did you in any way interfere with the day-
9 to-day administrative operation of these departments?

10 A No. Not unless something was brought to my attention
11 by the Governor's Office, or by some outside person, that
12 through my mail or phone call, that indicated to me that
13 I should check on something, I didn't interfere with the
14 day-to-day operation. I couldn't. I didn't have time.

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1 Q Well, take the Department of Transportation,
2 for example. That's a big department from what we have
3 heard. A Yes.

4 Q And headed by Commissioner Kohl as the
5 Commissioner of the department. Commissioner Kohl is
6 a Cabinet member, is he?

7 A Yes, he is.

8 Q And you are a Cabinet member?

9 A Right.

10 Q Now, so far as the normal day-to-day
11 operation of that department is concerned, who handled
12 it?

13 A You mean the administration of the department
14 itself?

15 Q Yes.

16 A Oh, the commissioner through his staff. He had
17 a deputy commissioner and he had division directors,
18 just like I do.

19 Q I notice that in one section of your
20 statute, 52:17A-4, subsection b, subsection e, that you
21 are to act as sole legal advisor, attorney and counsel
22 for all officers, departmentns and so on, and commissioners
23 instrumentalities of state government in all matters
24 other than those requiring performance of administrative
25 functions entailing the enforcement, prosecution

H3Q2 1 and hearing of issues imposed by law upon the department.
2 That, I suppose, was the notice to you that you are
3 to leave the departments alone in their routine
4 operation and let them handle all of the administrative
5 affairs?

6 A That's exactly right, yes.

7 Q Now, with respect to the Department of
8 Transportation, in 1970, who was the principal assistant
9 or deputy attorney general assigned there?

10 A David Biederman.

11 Q And had you appointed him or, if this is
12 the proper word, had you inherited him?

13 A Well, we inherited him as a deputy. But, of
14 course, then he was appointed. I think, technically,
15 all of the staff were appointed. I named as the
16 man in charge of the--I believe there were at that
17 time maybe ten or twelve deputies out there, and
18 I put him in charge because of his experience.

19 He was working then on some railroad cases;
20 he'd done quite a bit of condemnation work. He'd
21 had experience, and I felt John Kohl was inexperienced,
22 which he was. He had no prior experience in state
23 government or any government, to my knowledge, in
24 running a department and I--Biederman was the most
25 experienced, probably, lawyer in all the fields.

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They had more other long-time deputies that had been there, older men who had simply done condemnation work. That the Department of Transportation, which evolved from the Division of Highways, or whatever it was called, started getting into the railroad and other transportation problems just about three--two or three years, I think before we took over the reins of government, and there were a few people that had experience, and Dave Biederman was one of them. And he was working in railroad bankruptcy matters and that type of thing, so that's why I put him in there.

Q I see. He had been a deputy attorney general under Governor Hughes' administration, also Governor Meyner, had he not?

A Yes.

Q And--

A I'm not sure about Governor Meyner. He had been there under Governor Hughes.

Q He has testified that he first came under Governor Meyner.

But you knew when you came that he was a Democrat?

A I don't know whether I did or not. I may have assumed it because he was appointed by those administrations. But I didn't ask any of the deputies what their

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politics were.

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Q That's what I was coming to. It didn't

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make any difference to you what he was?

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A Oh, absolutely not.

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Q And did you ever ask him whether he was

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a Democrat or a Republican?

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A No. No, sir, I didn't.

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Q You were satisfied with the man you saw

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and the experience, and regardless of whether he was

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a Republican or a Democrat, to continue him in the

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office and assign him to the Department of Transportation?

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A Yes.

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Q You mentioned earlier that in your

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conversation with prospective deputies and assistants

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before you appointed them you discussed with them

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the matter of private practice?

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A Yes.

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Q Did you discuss that subject with Mr.

19

Biederman?

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A I did.

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Q Was that before you appointed him, or

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rather decided to continue him in office as your

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deputy, or about that time?

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A Well, to be perfectly honest with you, Mr. Francis,

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I interviewed all the deputies before I was sworn in

H-5 1 as Attorney General. It was probably very foolish,
2 but I did it because I figured I had to have a staff.

3 Q Yes.

4 A And I sat down with them and had a resume,
5 which I reviewed, and I had a recommendation on--
6 from the then supervisory staff on each one.

7 I questioned each of them about their private
8 practice. Attorney General Sills was kind enough to
9 loan me his office for that purpose, and he also gave
10 me some evaluation of certain ones. I put all that
11 together. I asked them about their private practice.
12 I broached the subject, do you think I should permit
13 private practice? I also said, "If I do forbid it,
14 will you stay?"

15 I got answers to all those questions from each
16 one. And as far as Biederman goes, it's my recollection
17 that he indicated that he would give up his private
18 practice, such as it was. He had very little, if any.

19 And so, then, I promulgated a rule, and some
20 left and the remainder stayed, and the rule was that
21 by June 1st of 1970 they were to have wound up
22 any practice except for a continuing problem that they
23 specifically brought to our attention and we gave them,
24 that is, Mrs. Schauer or I, gave them permission to
25 continue. And Biederman, in the case of him, he did not

H-6 1 indicate that he had any clients hanging over as of the
2 deadline. As far as I knew, he was devoting his full
3 time to the Attorney General's Office.

4 COMMISSIONER BERTINI: Was that indication
5 in writing or oral?

6 THE WITNESS: There was a written memorandum
7 and they were all told orally, also.

8 Q And the memorandum indicates that the
9 regulation would be effective as of the 1st of June
10 of 1970. Everybody got a copy of that, I suppose.

11 A Yes.

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1 Q Did you ever after that have any conversation
2 with Mr. Biederman about private practice prior to the
3 time he left your department?

4 A No.

5 Q Do you recall the date that he left the
6 department? A Some time in the late
7 fall of 1971, prior to the effective date--supposedly
8 the effective date of the conflict of interest Statute.
9 I believe we set the date. I think he first talked to
10 me about it or wrote to me about it in October, maybe
11 November; and I think we set the date in November, as
12 I recall.

13 Q Well, his testimony so far indicates that
14 he left the department on November 7, officially as
15 of November 14. A He probably had some vacation
16 coming. That's probably accurate.

17 Q Now, while Biederman was in the Department of
18 Transportation, what were his functions with respect to
19 legal advice to the Commission?

20 A Well, he was supposed to be just like any other
21 deputy, other than the fact that he had some administrative
22 duties over the deputy assigned to that department. We
23 were then, at my direction, winding down the outside
24 counsel program in condemnation. He was supposed to take
25 care of that, which he did.

1 In addition, he supervised the outside counsel
2 who were continuing with cases and his own in-house deputies
3 who were full time. He had no --he shouldn't have had,
4 he was not supposed to have, and I drummed into all the
5 deputies, they were not supposed to get involved in
6 policy matters in the department, unless they are asked
7 by the department head to express an opinion. They're
8 to act like a professional lawyer and give legal advice
9 and perform legal functions only. And that's what he was
10 supposed to do, other than his administrative duties,
11 and appear in court when he had to.

12 Q Do you recall on or about August 7, 1970
13 receiving a memorandum from Mr. Biederman, attached to
14 which was an interoffice communication between Mr. Sherwin
15 and Mr. McCrane? A Yes. I do remember receiving
16 a series of memoranda from Mr. Biederman concerning
17 Manzo Construction Company, yes, starting with August;
18 and having refreshed my memory by looking at some of
19 these, I think the other two were in October.

20 Q I will pick those up one by one, if you don't
21 mind.

22 MR. FRANCIS: I have shown the General Mr.
23 Biederman's memorandum of August 7, which we have marked
24 earlier as C-4. And I mentioned another memorandum on
25 the letterhead of Secretary of State Sherwin, to Mr. McCrane,

1 which is referred to in Mr. Biederman's memorandum
2 but is not attached at this moment, but we have
3 marked this.

4 (Off the record.)

5 Q In the memorandum to you, General, he in
6 referring to the July 20th memorandum, ostensibly from
7 Mr. Sherwin to Mr. McCrane, he says that, "What concerns
8 me is the underlined portion of Mr. Sherwin's memorandum."
9 The one that we have before us is not underlined, but the other
10 is, We have one that is underlined. The last three lines
11 are the underlined portion referred to. And those three
12 lines, you will recall from his memorandum to you, referred
13 to what he calls an allegation of collusion among bidders
14 on highway construction projects. And he suggests investi-
15 gation of that allegation. A That's correct.

16 Q And you remember it, at least to the extent
17 about his suggestion of investigation? A I do.

18 Q Do you have any recollection of whether there
19 was any immediate attention given to this memorandum of
20 August 7? A I frequently gave memoranda
21 to people that I wanted to attend to them without sending
22 any buck slip at that time. I now know that I gave that
23 original to Van Jahos, because he had it in his file. And
24 I must have given it to him by hand because he has no
25 stamp showing it received. And I was looking at it the

1 other day. So that's what I did with it. I bucked it
2 to Van immediately.

3 Q I show you another memorandum, which we have
4 marked C-32 here, again from Biederman to you, with a
5 copy to Jahos. Do you remember receiving that?

6 A Yes.

7 Q And that, I suppose, confirms your memory
8 that you had given the earlier one to Mr. Jahos?

9 A Yes. Biederman knew that, having discussed it
10 with Van, that I had discussed it with Van.

11 Q And in this memorandum he advised you and
12 Mr. Jahos that a meeting has been set up with Manzo
13 concerning matter referred to in the July 20 memorandum
14 and the other matters for October 14 and that it might
15 be propitious to invite Manzo to discuss with the repres-
16 entative of Mr. Jahos' office the matter of collusive
17 bidding.

18 Do you have a recollection of speaking to
19 Mr. Jahos about that?

20 A Yes.

21 Q Did you and he reach any decision as to what
22 to do about that? A Yes. Van didn't have too
23 many people available, very few, and none of them knew
24 anything about transportation or condemnation, bidding
25 procedures. And he said, Do you think it's all right?

1 As I recall, we both agreed, at least, that Biederman
2 would be a good person to interview these people. And
3 so Van asked Biederman to talk to them when they came
4 in, and he did, I gather.

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12-1 1 Q When you say talk to them, do you intend
2 to indicate any limitation on the extent of Biederman's
3 activity? What I mean, are you intending to distinguish
4 between talk to them and investigate the matter?

5 A No. They had an investigation section out there
6 at that time. As a matter of fact, they did quite an
7 extensive job for me, under the supervision of Biederman.
8 I can't remember the man's name. He is dead now.

9 Q They did have a number of investigators
10 in the Department of Transportation?

11 A Yes.

12 Q There is some testimony here that around
13 this time there were at least four, and their head--
14 or their supervisor was a man named Picarelli.

15 A Yes, that's the man's name. I had forgotten.

16 Q Do you recall that Picarelli died, and
17 a man was named to succeed him? You do recall that there
18 were a number of investigators attached to that
19 department.

20 Was there any limitation on the nature
21 of the investigation that they were authorized to do
22 or would do at the request of Mr. Biederman?

23 A I didn't put any limitation on it. Whether Van
24 Jahos did, I have no way of knowing. He didn't tell me
25 he did.

I-2 1 We thought they were close to it and they could
2 do whatever had to be done. Picarelli and Biederman
3 did very extensive investigation in a riparian grant
4 problem which had criminal implications. I know that
5 they did do some other work, as I understand it, at
6 least, in alleged bid rigging problems. They did
7 investigations in that area and had done so for a
8 number of years, was my understanding.

9 Q Then it's your understanding that at least
10 part of the function of these investigators were that
11 they were authorized to and would and did engage in
12 matters involving contractors and the giving of bids,
13 any suggestion of collusion with respect to bids,
14 and matters of that sort?

15 A Yes.

16 You have to understand that at this stage of
17 development in state government many of the departments
18 had their own investigative staffs because of the
19 weakness of the attorney general's office in the
20 criminal investigation area. The state police was not
21 geared to much investigation at that time. Their
22 role changed starting about 1969, and they had very few
23 men. There has been a dramatic change since then.
24 As a matter of fact, the departments through their
25 investigative staffs would do a lot of criminal

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1 investigation, and they didn't refer it to the CIS.
2 They referred to the respective county prosecutors.
3 As a matter of fact, they are still doing it to this
4 day. That's one of our big problems. We are trying
5 to break the state agencies of doing it. Even the
6 state police do it, believe it or not.
7 And we are trying to break them of an age-old problem.

8 We do have the staff today. We have 300-and-some
9 state policemen investigating. They're supposed to
10 filter up through the criminal justice division and
11 then down to the prosecutor. That was not the case
12 during this former period when we were making these
13 radical changes, and that's all part of this.

14 Q Well, I gather then that there was a
15 greater activity with respect to investigation of
16 both civil and criminal matters by investigators
17 assigned to the particular department involved itself?

18 A That's right.

19 Q Are you aware of any limitation on these
20 investigators to looking into the matter of when an
21 employee reported in sick that they would go out
22 and investigate and see if the employee was sick
23 and that their activity was limited to routine matters
24 of that sort, as distinguished from a broader investigatory
25 authority of having to do with contractors and bids and

I-4 1 everything else?

2 A They did all types of investigations.

3 Q Well, after Mr. Biederman was instructed
4 to investigate the matters referred to in the July 20th
5 memorandum, did you receive another memorandum from
6 him on October 21st?

7 A Yes, I did.

8 Q And there he told you that he had attended^{ed}
9 the meeting with Manzo and Manzo's representatives
10 to discuss the matters that were referred to in the
11 earlier memorandum?

12 A That's correct.

13 Q And he told you also at that time that he
14 had talked to Manzo about the collusive bidding
15 allegations and he had not been able to get any
16 information from him?

17 A That's correct. He said that Manzo denied
18 that he ever told anybody--that there were any other
19 people engaged in collusive bidding.

20 Q What did he tell you at the end of the
21 memorandum with respect to any further activity in the
22 matter?

23 A He asked me if there was anything further
24 that he felt should be done--that I felt should be done.

25 Q That you felt should be done?

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1 A Yes.

2 Q Did you ever talk to him specifically about
3 this within a short time after that memorandum?

4 A I am sure I talked to him sometime between August
5 7 and, we will say, late October at least once about
6 this problem. I don't recall the specifics of it,
7 except I know that there were several conversations
8 between Jahos and me and Jahos and Biederman and
9 Biederman and me, sort of a round-robin thing.

10 Q About this matter?

11 A Yes.

12 Q By the way, the department over there,
13 with Commissioner Kohl sitting, is empowered to and
14 does conduct hearings in matters of public contracts
15 and with respect to bidding on contracts and
16 qualification of bidders and disqualification of
17 bidders, does it?

18 A They sure do.

19 Q Do you know of any reason why in this
20 kind of matter that we are discussing now that Mr.
21 Biederman could not have asked Commissioner Kohl to
22 call a hearing and call Manzo in at that hearing
23 and have him testify about these allegations respecting
24 collusive bidding?

25 A He could have done that, yes.

I-6 1 Q But he never suggested that to you?
2 And if he did, you never refused to give him permission
3 to do that?

4 A No, he never suggested that to me at all.
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MR. FRANCIS: The memorandum I just handed to the attorney general, the one that we have been talking about, was marked C-35.

THE CHAIRMAN: C-35 or C-33?

MR. FRANCIS: It's 33.

BY MR. FRANCIS:

Q After the October 21st memorandum from Biederman ending, "Please advise me if there is anything further you wish me to do on this matter," did you at a later date give an answer to that memorandum?

A Yes. I told him, as I recall, in a memo that Director Jahos and I didn't feel there was anything further to be done.

Q I show you a memorandum from you to Mr. Biederman, dated November 4th, and ask you if that is the memorandum you sent to him?

A That's a copy of it, yes.

Q Is the appearance of the memorandum that you have in your hand now exactly the way it went out from your office?

A Yes.

Q And then there was no handwriting of any kind on the side or on the top of it?

A No, there was not.

Q In any event, you did not put any handwriting

I-2 1 anywhere on that memorandum?

2 A No.

3 MR. FRANCIS: I think we had better mark
4 that for the record now.

5 [Memorandum from Kugler to Biederman, dated
6 November 4, 1970, received and marked as
7 Exhibit C-30A in evidence.]

8 Q I show you another copy of that memorandum,
9 marked C-30. On the top of that there are notations,
10 "Route 46, Route 35," and on the right-hand side in
11 handwriting, "Centrum Construction Company award of
12 contract."

13 Did you ever see that--

14 Well, first of all, let's deal with that
15 expressly.

16 Did you put that there?

17 A Absolutely not.

18 Q Did you ever tell anybody to put that there?

19 A No.

20 Q Have you ever seen it before?

21 A It seems to me I have seen this copy with some
22 of these notes on it of recent vintage since this
23 investigation started. Somebody showed it to me.
24 I don't know whether it was you, at our interview,
25 or Stier and Richards, or Van Jahos, or Herb Stern.

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Q But in any event, from the time you issued the November 4th memorandum until you saw it in the course of the present investigation, you were never aware of any handwriting on your memorandum?

A No. I think my secretary used the same caption, Manzo Contracting, as Biederman did in his original memorandum to me, Manzo Construction Company.

Q In other words, all of these memorandums we have been speaking about from July 20 down through your memorandum of November 4th are entitled Manzo Construction Company?

A Yes.

Q Is there any doubt in your mind that all of those relate to the single subject of Manzo Construction Company and the subject matter of the July 20th memorandum, written memorandum, which was sent to you by Mr. Biederman?

A No question whatsoever.

I should point out that one of them--I don't know what your marking is--October 21st one says, Route 35, Section 9B. But I have no question in my mind that they are all relating to whatever Route number it was, which I wasn't familiar with, known as I call it the bid-rigging problem, alleged.

MR. FRANCIS: The general was referring to

I-4 1 the memorandum of October 21, marked C-33.

2 Q After that memorandum of November 4th,
3 did you ever have any memorandum from Biederman or
4 discussion about the subject covered in those memorandums
5 we have been talking about?

6 A No.

7 Q Now, somewhere along the way did you
8 become familiar with the Route 46 project which called
9 for the resurfacing, reconstruction of Route 46 in
10 Warren County for a distance of about eight miles?

11 A Yes.

12 Q Now, do you have a recollection as to
13 when you first heard about that?

14 A Well, the first that I ever heard of any problem
15 in that area was when Herb Stern walked in my office
16 in 1972. I didn't then identify it as Route 46, but
17 I have since learned that was what the route was.

18 Q It has been testified here that at some
19 time between October 21st and prior to October 26th,
20 1970 that Mr. Biederman called you on the telephone
21 and, in substance, he told you this:

22 "On Tuesday, October 20, 1970, I received
23 Mr. Richard Hale, President of Centrum Construction
24 Company. Mr. Hale, who represented that he has been
25 the moving spirit in the Citizens Highway Committee

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recently established as a citizens aid to this department,
2 wished to know why the contract upon which he was
3 the low bidder for Route U. S. 46 in Knowlton and
4 White Townships, Warren County, had not been awarded.
5 I investigated the matter.

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"Our chief engineer, Mr. Schuyler, advised me
that the contract would not be awarded until the
contractor had assured the Department that he had
a sufficient supply of asphaltic material with which to do
the job. Mr. Hale replied that he already supplied
to the Department a letter from the supplier guaranteeing
same. I advised him to contact Mr. Schuyler to meet
whatever requirements this Department had and he
later represented to me that he did so.

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"I later discussed this matter with you and
you advised me--" and the "You" in this context
refers to Commissioner Kohl "--that you had been
requested by the Secretary of State, Mr. Sherwin, not
to award the contract and to reject all bids so that
the second bidder, Mr. Manzo represented by John E.
Dimon, State Republican Chairman, would have another
shot at this contract. While the low bidder was above
this Department's estimates he was within the narrow
percentage above said estimates usually used by
Department as its criteria--"

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Let me stop for a minute there and take another one of these for you to follow along with me, if you will.

"--he was within the narrow percentage above said estimates usually used by Department as its criteria in awarding bids and would, therefore, if this were a normal matter, receive the contract. In addition, the Department both publicly and privately (see newspaper articles attached) represented that the project would be built and construction to start over a month ago. After discussion with you--" meaning Commissioner Kohl "--you advised that the award would--" underlined, statement being made for emphasis purposes by Mr. Biederman "--that the award would be made to the low bidder--Centrum Construction Company and that Mr. Sherwin's request would be rejected."

Do you recall having that conversation over the telephone with Mr. Biederman?

A No, I do not.

1 Q Let me finish that paragraph. "Later that day
2 I discussed this matter with the Attorney General and
3 advised him that in my view Mr. Sherwin's action was
4 in derogation in policy of the bidding statutes. I
5 further advised the Attorney General to take the matter
6 up with Mr. Sherwin. His reply was that he would not do
7 so, but that my Commissioner could do so."

8 Q Do you have a recollection of that?

9 A No, I do not.

10 Q Well, the last part of it in which Mr.
11 Biederman says in this memorandum, stating generally
12 the substance of these matters to you, you said in
13 response to his request that you should take the matter
14 up with Sherwin that you would not do so, but you thought
15 that Commissioner Kohl would do so.

16 Q Does that ring a bell at all so far as the
17 kind of language you might use in the face of a conversa-
18 tion like this?

19 A There were occasions when people would bring things
20 to my attention that I didn't feel that I should interfere
21 in, and I would tell other people to let someone else do it.
22 It would be characteristic of me.

23 Q I have no recollection of ever talking to
24 Biederman about this matter or telling him that I would
25 not talk to Sherwin. As a matter of fact, I have no

1 recollection of his talking to me and telling me what
2 he wanted me to tell Sherwin. So it's very unlikely at
3 all that he talked to me.

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1 Q It's very unlikely, you say, that he did?

2 A Yes. I just don't have any recollection of it.

3 Q Now, the reason I read that to you was because
4 of the nature of the message set out in there, and partic-
5 ularly the latter part of that paragraph that I read to
6 you in which he said that after discussion of this matter
7 with the Commissioner, the Commissioner had told them that
8 he would disregard Secretary of State Sherwin's request
* 9 to have the bids rejected and would, emphasized, "award

10 the contract to the low bidder Centrum. If you did
11 receive a message such as that in this situation, would
12 you have considered that there was anything further for
13 you to do in the matter? A No, not as I read
14 that memorandum, no. It indicates that everything was
15 all right; that a request had been made for some consider-
16 ation, and for reasons for Commissioner Kohl's, he said
17 he was going to deny the request. I had no reason--I
18 would have no reason to do anything about it myself or
19 to take the matter up with Mr. Sherwin, as I read it now,
20 if it had been referred to me. And I would have probably
21 have said, well, let the Commissioner take it up with him
22 if--but I just don't have any recollection of doing that.

23 Q In your judgment and on the basis of the practice
24 that you followed generally, would you consider that part
25 of the memorandum that I read to you a matter within the

1 normal administration of the Department of Transportation?

2 A Oh, absolutely, yes.

3 Q And as you say, you would see no basis or
4 no reason why you should intervene or interfere in the
5 face of that message? A No, there is nothing in
6 that memorandum that indicates to me, or would have indi-
7 cated to me as I read it now, that I should take any
8 action on it.

9 Q This may sound a little repetitious, but
10 let me put it in hypothetical form.

11 Assuming that you had received the precise
12 message that I read to you in that memorandum of October 30th,
13 would you have taken any action with respect to it or would
14 you have left it where it was with the Commissioner of
15 the Department of Transportation?

16 A I would have left it to the Commissioner of Department
17 of Transportation, as I interpret what was said there as
18 I look at it now; Biederman saying he's telling me that
19 Sherwin asked Kohl to do a favor for someone if he could,
20 Kohl had decided that he couldn't and therefore, it would
21 seem to me that Kohl ought to tell him that he couldn't.
22 That's as simple as that, and it's none of my business.

23 Q That memorandum, you notice, is dated October 30th.
24 The drawer of that memorandum, Mr. Biederman has said that
25 that is a chronological record of events, and the next

1 paragraph of it, you will notice, refers to a date of
2 October 26th and some matter that happened later, after
3 the conversation that the portion of the memorandum
4 that you and I have been discussing up to now. Would
5 you read, beginning--I don't mean out loud, but to
6 yourself--the last part of that memorandum saying
7 "You reversed yourself on October 26th" and from that
8 point on. A Yes.

9 Q Have you ever seen--did he ever give you any
10 such memorandum as that? A Absolutely not.

11 Q Ever by telephone or conversation or anywhere
12 tell you that message, give you that message, give you
13 that message? A Absolutely not, nor did
14 anyone else.

15 Q I think the General anticipated that. And
16 no one else gave you that message?

17 A Absolutely not.

18 Q You have become aware of the content of
19 the full memorandum? A I sure have.

20 Q And when did you first become aware of it?

21 A The first time I ever saw that memorandum was
22 in--when Herb Stern came to--called me up and asked me
23 for an appointment and came down. My diary--well, it
24 was late April. My diary shows that I met him on April
25 26th at 10:30 a.m., and it was an appointment not made

1 in advance because it's in my red ink.

2 I have red. I put red in there, my red pen,
3 when I make the appointment myself by telephone and I
4 give it to my secretary and she adds it to the master
5 diary. She knows then that I have made a change. And
6 that's when he came to see me and he showed me this
7 memorandum for the first time.

8 Q I see. And you have a definite recollection
9 that he simply walked in without a prearranged --making
10 an arrangement in advance with you for this meeting?

11 A No. I think he called me on the telephone that
12 morning and said that he would like to see me; it was
13 important that he see me, I believe.

14 Q Yes, that's what I inquired about.

15 A I put the red mark in there. I said, "I can see you"
16 I guess he needed time to get to Trenton, and I said 10:30,
17 I suppose, and that's the time I put in there. What I
18 meant by that, he didn't make a prearranged date the date
19 before or write.

20 Q I see. Did you give us the date that he
21 came in? A April 26th.

22 Q Mr. Stern? A Yes.

23 Q Did he come alone? A No. He
24 came with Jonathan Goldstein.

25 Q You were alone in your office, were you?

1 A Yes, I was.

2 Q And you say at that time he showed you the
3 October 30th memorandum that you have?

4 A That's correct.

5 MR. FRANCIS: I wonder if we could have five
6 minutes?

7 THE CHAIRMAN: I think we might even break
8 for lunch. We'll break for lunch.

9 (Whereupon, a luncheon recess is taken.)

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(After recess.)

BY MR. FRANCIS:

Q General, you told us that when Mr. Stern came in and had the conference with you he showed you the October 30th memorandum? A Yes.

Q Which, you say, was the first time you had ever seen that? A Yes.

Q And did he show you any other documents?

A Yes, it is my recollection that he showed me the October 30th memorandum; that he showed me a copy of a letter from Sherwin to Kohl. He noted that it was sent to his home, I think he pointed out to me, and--

Q Let me take that for a moment. I show you a letter, dated October 8th from Sherwin to Kohl. Did he show you that one? A Yes, that's a copy of it.

Q We're referring to C-5? A Yes.

Q And had you ever seen that before?

A No, sir.

Q Ever heard any discussion about that before?

A I had not.

Q Now, will you continue with your recollection of what other documents? A Then I believe he showed me a memorandum which went from Biederman

1 to Mullen, Biederman to Mullen, something about--
2 oh, telling him to proceed and award the thing to the
3 lowest bidder, or something like that.

4 Q Yes. Well, --

5 A That Kohl was absent and--

6 Q Kohl was sick?

7 A Something like that. As I recall it, that's what
8 he showed me.

9 Q I show you a memorandum we had marked C-7,
10 marked November 4th, from Biederman to Mullen, and ask
11 you if that's one of the ones you saw.

12 A Yes, that's my recollection that he showed me that
13 one.

14 Q And this November 4 memorandum contains an
15 instruction from Biederman to Mullen to proceed with the
16 award of the Route 46 contract to the low bidder, Centrum
17 Construction Company? A Yes.

18 Q Had you ever seen that before?

19 A No, I had not.

20 Q Had you ever had any discussion about that before?

21 A No, I had not.

22 Q With anybody? A Not with anybody.

23 Q Now, can you remember any others?

24 A Well, he--it's possible that he showed me some
25 others at that time, but those are the three that stand

1 out in my mind. I could be inaccurate in that
2 recollection because I've seen so many of these memorandums
3 so many times since.

4 MR. FRANCIS: Excuse me a minute. Off the
5 record.

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

8 Q I show you another memorandum, which we
9 have marked C-35, dated April 20, 1972, from Bruce
10 Goldstein, Assistant United States Attorney to Mr.
11 Stern. Did he show you that memorandum?

12 A No.

13 Q Well, supposing we take that--

14 A I've never seen that before.
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1 Q You have never seen that before?

2 A No.

3 Q Did he show you a letter--when I say "he,"
4 I mean Mr. Stern -- did he show you a letter from
5 Commissioner Kohl to Mr. Sherwin dated October 5,
6 1970?

7 A I'm not sure. I'd have to look at it. It may
8 refresh my recollection.

9 Q I show you another document, which is
10 really two memorandums, marked C-9, and ask you if
11 Mr. Stern showed that to you?

12 A I don't believe so, no, I don't think so.

13 Q You don't recall seeing a document dated
14 October 29 and attached to a memorandum of October 25,
15 with some handwriting on the bottom left-hand side of
16 the memorandum?

17 A No. My recollection is the first time I saw that
18 memorandum with this material on the left bottom corner
19 was when John Kohl showed it to the Governor and the
20 Governor gave it to me.

21 MR. FRANCIS: We are referring to document
22 marked C-9.

23 Q You have given us the extent of your
24 recollection of the documents that Mr. Stern showed you
25 that day?

A Yes.

Q Do you remember if he handed them in a batch to you or if he handed them to you one by one?

A I believe that he handed them one by one to me, and I handed them back.

Q Did you read each one?

A I scanned each one, yes.

Q At that time did you say to Mr. Stern with respect to one of the documents that Biederman had spoken to you about it and that this was the only time they had any difficulty with Sherwin that Garven, he said, had stopped it?

A I'm sorry, I don't--

Q The sentence is really a little broken up.

A There was no discussion about Garven. He wasn't even mentioned in any conversation that I had with Stern at any time, I can tell you that. But I don't understand the question you asked me, really.

Q As a matter of fact, the sentence is broken up. I will break it down in its proper sense, I think.

In connection with one of the documents, did you say to him with respect to the subject matter of the document, that this was the only time that they, he said, meaning the administration, had any difficulty with Sherwin and that that difficulty ~~Gaven~~ had stopped?

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A Absolutely not, I never said anything like that.

Q Your recollection is clear about that?

A Very clear.

Q Was there a discussion with him then about how the investigation of this matter was to proceed?

A Yes.

Q And did you and he come to any understanding about it?

A Yes, we did.

Q Whether the state was to proceed or whether he was to proceed? What was that?

A We didn't have a final understanding. He kept saying that, I just have to investigate this. And I said, Well, of course, if you feel that you do, you go ahead and investigate it, Herb. About three times I recall I said that to him, because he kept protesting in a sense that he would have to investigate it. I didn't really know what he was driving at, why he kept telling me that. But I said, Of course, you have to investigate it. And he said, We should investigate it, meaning the U. S. Attorney's Office, and that you should not. And I said, I'd have to think about it. You could be right because it's a fellow cabinet officer and another department involved and maybe it would be best, but I'd like to think about it.

L-4 1 That was our discussion in that connection at that
2 time.

3 Q And did you tell him that you would let
4 him know?

5 A Yes.

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1 Q And did you let him know that day?

2 A Yes, I did. I don't know about that day, but
3 I let him know.

4 Q By the way, in that conversation did you
5 tell him that as part of your thinking about it, you
6 would have to discuss with somebody else?

7 A Yes. When I first walked in they said, "Well,
8 now, this has to be completely secret between us. You
9 can't talk about this. I want your word you will not,
10 what I am about to tell you," and I said, "That sounds
11 all right to me, Herb. I don't know what you want to
12 talk to me about, but if that's the way you want it,
13 assuming I can, that will be all right."

14 But then after he told me and showed me
15 these memos and we discussed it a little while, I said,
16 well, obviously I have to go talk to the Governor about
17 this. He's my boss. This involves his administration,
18 and I intend to talk to him about it and I am sure the
19 first thing he will do will call John Kohl and Sherwin
20 in and ask them about the matter. And I said I can't
21 control that and I wouldn't blame him if he did. This
22 was in connection with our conversation about who should
23 investigate it.

24 He said, "Well, I can understand that you have
25 to talk to the Governor." He said, "Don't discuss it

1 with anyone else." And I said I wouldn't.

2 Q Was there any particular reference or reference
3 to another person involved and a request that you do not
4 discuss it with him? A No, not that I
5 recall.

6 Q Well, more specifically, Mr. Sherwin?

7 A No.

8 Q Did he ask you not to discuss it with him?

9 A No, he didn't ask me not to discuss it with
10 any particular person. He asked me not to discuss it
11 with anyone when he first asked me about it and then
12 we had that conversation.

13 Q Was there a specific agreement by name
14 reference that you would not discuss it with Mr. Janos?

15 A No.

16 Q After you called him, called the Governor,
17 you did communicate with Mr. Stern, whatever it was that
18 same day or a later day? A Yes, I did.

19 Q And what did you tell him?

20 A I told him that the Governor had called in first
21 Commissioner Kohl who had shown us some memorandums that
22 he had. The Governor called him on the phone in my
23 presence and asked him to come down. And John Kohl
24 brought with him a file. He asked him what it was
25 all about, and I asked the Governor not to tell him that

1 U.S. Attorney Stern had been to see me and the
2 Governor did not tell him, and he just merely asked him
3 what this matter was all about as if someone else--
4 probably as if I was requesting what it was all about.
5 And he did tell us he did have some memorandums. He
6 had a file he showed us. And Judge Garven was there,
7 I believe. I'm not certain of that, but I think he was
8 in the room. And he told us what he recalled of it and
9 what he refreshed his memory by looking at the documents.
10 And he said, "Incidentally, I have been asked to come up
11 to the U.S. Attorney's Office to discuss this matter."

12 Q Judge Garven said that?

13 A No.

14 Q Or Commissioner Kohl?

15 A Kohl.

16 So then he directed Kohl to cooperate in any
17 investigation, and then he got Paul Sherwin in. We went
18 through the same procedure with him.

19 Q You were present? A Yes, I was.

20 Q When Sherwin came in? A Yes, I was.

21 And his recollection was much hazier of the matter. He
22 didn't have any material because, as I recall, the
23 Governor didn't tell him what it was about when he called
24 him on the phone. And as I recall now, I don't think
25 Secretary of State Sherwin found his records on this for

1 some time after that. But his recollection was
2 rather hazy, but he did recall something about doing
3 a favor for Loughran and something about an asphalt
4 shortage, and that he talked to, and he had written to,
5 Kohl and so forth.

6 Nothing sounded out of the ordinary from
7 either of their stories. It looked like the Secretary
8 of State trying to do a favor for someone and Kohl
9 having made a decision to throw the bids out and then
10 for, as I recall, I think he said because of the asphalt
11 shortage at the time and the inability of the contractor
12 to satisfy him that he could produce the asphalt, or
13 his staff, really. And then he was--they were satisfied
14 there, as I recall, and Kohl said that they did award
15 the contract to the lowest bidder.

16 The Governor told Sherwin to cooperate if he
17 were asked to come up to the U.S. Attorney's Office.

18 I then thought about the matter, and I'm
19 not sure--

20 Q May I try to fix the time--

21 A Yes.

22 Q --with a little more definiteness. That
23 was within a day or two of your conversation with Mr.

24 Stern? A Oh, yes. I think it was the
25 same afternoon.

1 Q And all of these conversations that you have
2 just related with Commissioner Stern--Commissioner Kohl
3 and Mr. Sherwin took place the same time, the same day?

4 THE WITNESS: May I hear that again, please?

5 (Whereupon, the pending question was read
6 by the reporter.)

7 A I believe it was that afternoon, yes.

8 Q And then you started to tell us what you did
9 after that? A Well, then either that
10 day or the next day, or somewhere very close, I called.
11 I thought about the problem of whether or not we should
12 investigate it, and that is, I mean, Division of Criminal
13 Justice in my office, and I decided it would be best to
14 let the U.S. Attorney do the exclusive investigation.

15 I also wanted to inform him of what happened
16 in the Governor's office, so I called him on the phone
17 and I told him that the Governor had directed them both
18 to cooperate and that Sherwin would be glad to come
19 up and talk, be interviewed. And he said to me, "Do
20 you want me to arrange the interview through your office
21 and notify you"? And I said, "Well, I guess that would
22 be a good way of doing it."

23 So, I told Sherwin that he would be notified
24 by me when he was to go and be interviewed by the U.S.
25 Attorney.

1 Q Had you talked to Jahos before that time?

2 A I talked to no one else about this at all other
3 than the Governor, Commissioner Kohl, Sherwin, and I
4 think, as I said, Judge Garven was there at the time.

5 Q Did you, more specifically, now, and I
6 asked you about this at least in part before, did you
7 say or indicate to Mr. Stern that "This matter had also
8 been brought to the attention of Mr. Pierre Garven,
9 counsel to the Governor, and that Mr. Garven had spoken
10 to Mr. Paul Sherwin and had stopped Mr. Sherwin's activi-
11 ties in this matter"? Did you say that to Mr. Stern?

12 A Well, absolutely not. No, definitely not.

13 Q Did he specifically ask you not to communicate
14 any information about his investigation, the investigation,
15 to Mr. Sherwin, who was clearly the target of the investi-
16 gation? A No, he did not, other than
17 the general request that I not discuss it with anyone
18 when he first came in the office.

19 Q Did you give your word to him that you would
20 not apprise Mr. Sherwin either of the commencement of
21 the Federal investigation or as to any details which
22 that investigation disclosed? A No, I did not,
23 except in the beginning until I found out what it was
24 and then I told him, as I told you before, that I
25 would have to tell the Governor and I was sure the

1 Governor would call those two individuals in, knowing
2 him, and there was no way of keeping it from Paul Sherwin
3 or John Kohl because the Governor would insist that he
4 talk with them. These were his cabinet officers.
5 And he did insist.

6 Q When you called Stern back--

7 A Yes.

8 Q --and told him that you had talked with
9 the Governor,--it skipped my mind for the moment--you
10 told him that you and the Governor talked to Sherwin?

11 A Yes.

12 Q Then when you called back you did not again
13 give Stern his assurance that Mr. Sherwin would not be
14 apprised of any of the details of the Federal investigation
15 or, indeed, of the investigation itself?

16 A I did not say that to him and we did not discuss
17 that at that time. I did not know the details of
18 the Federal investigation. No one told me what they had.

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2 Q When you called him back that time, did you
3 say to him that based on your conversation with the
4 Governor it was your decision, yours and the Governor's,
5 that Stern should go ahead alone, and did you specifically
6 use this expression: "It would be kind of a civilian
7 review board"?

8 A I don't recall using that expression, and I don't
9 recall saying that the Governor had agreed. And I don't
10 know that he did agree. I don't even know that I
11 discussed it with him.

12 I do know that I told Herb Stern that I agreed with
13 his suggestion and that since it was a fellow cabinet
14 officer, I think he should conduct the investigation
15 and we would stay out of it.

16 Q I use that expression to you because--
17 and I want to put it in quotes--that you said, "It would
18 be kind of a civilian review board." You say you
19 didn't say that?

20 A No, I did not say that.

21 Q I think you did tell us that it was a day or
22 so after your conversation with Mr. Stern that you called
23 him back and told him you had talked to the Governor?

24 A Yes, it could have been that same afternoon,
25 or the next day, or the next day. It was very soon after
that, I know that.

N-2 1 Q Well, Mr. Stern puts it the same afternoon.

2 A It could have been.

3 Q It could be?

4 A Yes, sir.

5 BY THE CHAIRMAN:

6 Q Do you recall calling his Trenton office
7 rather than the Newark office and reaching him that
8 afternoon?

9 A I could have. I remember one time--and I don't
10 know whether it was this occasion that I did call his
11 Trenton office, because somehow I found that he was
12 down in the Trenton office. I don't know whether it
13 was this occasion or some other time that he came down
14 to see me. He was going to argue a motion, or something,
15 and they told me he was in the Trenton office, and I
16 may have called him there. But I do not recall it was
17 this occasion.

18 BY MR. FRANCIS:

19 Q His recollection, as he stated it, was that
20 on leaving you he went to his office in Trenton and
21 that that same afternoon you reached him.

22 A Could be.

23 Q Well, I will read it to you and see if it
24 refreshes your recollection, because it's not quite
25 as clear as that:

N-3 1 "In my Trenton office I frankly don't recall
2 whether or not Attorney General Kugler had called my
3 Newark office and they had told me that he wanted to
4 reach me, or whether he placed a call into the Trenton
5 office. But I did have a telephonic conversation
6 with Attorney General Kugler that day while I was in the
7 Trenton Office and he told me that he had gone to
8 see the Governor to tell him about our conversation."

9 A That could be. I could have reached him in
10 Trenton. I recall that on one occasion. Whether that
11 was it, I don't know.

12 THE CHAIRMAN: General, I just want to,
13 if I could, ask a question while Mr. Francis--

14 MR. FRANCIS: Go ahead.

15 BY THE CHAIRMAN:

16 Q Do you recall when you were looking over
17 these documents on the 26th of April making the statement,
18 "that David Biederman had spoken to me about this and I
19 am aware of the subject matter"?

20 A No, I did not make any such statement. I told
21 Stern that I knew nothing about this problem that he
22 was showing me. But I did recall discussing with
23 Biederman at some time prior, and I didn't know when at
24 that time, a Manzo matter which involved something
25 about alleged bid-rigging; and we had some memos on it,

N-4 1 as I recall. They were my words to Stern. I recall
2 talking to him on the phone about it. I did not recall
3 anything about this particular instance, and I did
4 not tell him that I recalled anything about this
5 particular instance.

6 Q Well, at this time you weren't even aware
7 that Route 46 was involved, were you?

8 A No. Route numbers meant nothing to me. I didn't
9 look at the route numbers. I don't recall whether there
10 was any reference to any of the route numbers on any
11 of the memos he showed to me. It's like reading a
12 caption of a case. I don't look at the top unless I
13 am specifically directed to.

14 Q Did you discuss anything with Mr. Goldstein
15 and Mr. Stern during this conference on the 26th of
16 April prior to seeing these memos?

17 A I don't know. We discussed--

18 Q You don't have to tell us what you discussed.
19 But were some topics or subject matters mentioned?

20 A We discussed disqualification of a bidder--
21 or of a consultant in the Transportation Department
22 who was supposed to be one of the witnesses in the
23 Tonti case, we did discuss that. He asked me not to
24 have him disqualified and that he was a witness for
25 him.

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We have had many discussions on that subject. That came up. Now, whether that was before this matter or after it, I just can't remember at the moment.

Q Can you recall the two gentlemen when you first started off, was it Mr. Goldstein or Mr. Stern saying, Would you look these over, General? Or was there a conversation prior to that that led into this forwarding of papers?

A My recollection is when they went into this, he just started handing me papers first and said, Would you read these, after telling me that he didn't want me to talk with anyone about it, not to discuss it.

Q You did have some conversation about other matters before you got into these memos, didn't you?

A Yes. I think the conversation about the witness was before this, but I can't be certain of that.

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BY MR. FRANCIS:

Q Was there some conversation with Mr. Stern as to whether the originals of the memos that he had shown you and the letter were still in existence?

A I don't recall discussing anything about originals or copies or anything else. I can't now remember whether he showed me originals or copies, Mr. Francis.

Q Well, part of that conversation, did he say to you at that time that he would be seeking the files of the Department of Transportation and perhaps the Department of Law, as well?

A No, he didn't discuss the Department of Law at all.

Q During the conversation, generally, was a question raised as to whether these original memos were still around, at which Mr. Stern suggested, It would be very well if they were still around?

A No, no, absolutely not.

Incidentally, I gave Mr. Stern--I told him about my problems with David Biederman, and I said beware of information that you got. He told me where he had gotten this information, from David Biederman. He mispronounced his name, I believe. And I told him beware of Mr. Biederman because I just cited him to the Supreme Court; and I gave him, before he left, a

N-2 1 copy of my material that I sent to Mr. McConnell. I
2 asked my secretary to copy it. I gave it to him.

3 Q When did you first discuss the matter with
4 Mr. Jahos?

5 A My recollection of the first discussion that I had
6 with Mr. Jahos about this problem was after I got back
7 from Europe. I did ask him--I looked in my files for
8 anything that there might be on the bid-rigging
9 problem after Stern left. I found, I think, one of the
10 memos, a copy of one of the memos, as I recall it.
11 Maybe two of them, I don't know. But obviously, it
12 wasn't a complete file. The memos, obviously, referred
13 to a prior memo which wasn't there.

14 So I asked him at one point, and I think this was
15 before I went to Europe, Would you please check and
16 see what you have on a bid -rigging problem with Manzo,
17 and he had my original--

18 Q November 4th memorandum?

19 A No, no, sir. I don't think he had a copy of the
20 November 4th memo. He had the original memo of August
21 the 7th, which I had received from Biederman. He had
22 it, and he had some notes on it. I still have it.
23 I had handed that to him, apparently, because it wasn't
24 stamped received by Criminal Justice. He had put some
25 notes on the side, Biederman to investigate, or something

N-3 1 like that, and filed it, apparently, because he had it.
2 I didn't tell him why I wanted it. I just said, I would
3 like to look at it.

4 Q And you had no further conversation him
5 about the Route 46 or this Sherwin matter after you came
6 back from Europe?

7 A No, sir, I did not.

8 THE CHAIRMAN: Did you have any discussion,
9 General, with Mr. Stern at the same meeting of
10 April 26 indicating that Biederman took the papers
11 to Mr. Stern's office because of the ethics
12 charge and I guess he had to do it, or words to
13 that extent?

14 THE WITNESS: Well, let me tell you what I
15 did say about Biederman.

16 Stern told me that Biederman had come into
17 his office, given him some papers, and this was
18 the source of the things that he showed me,

19 whatever they may have been. I don't know
20 right at the moment. But at least during the
21 conversation I said beware, you should know of
22 anything that Biederman says, beware of it,
23 don't put too much faith in it because I am sure
24 that he is irritated that I have cited him to the
25 Supreme Court for unethical practices. And I asked

N-4 1 my secretary to copy that file. I picked up the
2 phone and asked her to have it copied. I wanted
3 to give it to Mr. Stern on the way out. She did,
4 and I gave him a copy of everything that I sent
5 to Ed McConnell.

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COMMISSIONER BERTINI: Can you identify the

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secretary?

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THE WITNESS: Beg your pardon?

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COMMISSIONER BERTINI: Can you identify her,

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the secretary?

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THE WITNESS: My secretary?

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COMMISSIONER: Yes. If you have no recollection,

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why--

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THE WITNESS: I had two secretaries that I

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inherited from Attorney Sills when I came here and

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then I later changed their assignments and brought

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in another girl. I think she was there at the

13

time Mr. Stern came in, but I'm not certain. Her

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name was Miss Havard. The records will disclose

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which ones. Barbara Havard. I believe she was

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there in April of 1962.

17

THE CHAIRMAN: Can you tell us anymore that

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you said to Mr. Stern at that time about Biederman's

19

ethics charge?

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THE WITNESS: We discussed what it was briefly.

21

I just told him that he appeared on both sides of

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a case and I was having a lot of trouble with him and

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we warned him on one occasion, I said, and then I

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got tired of it and I figured the only way to

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stop them from turning up in our files on the

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Kugler

1 other side of the case all the time was to file
2 against him, and I did. And I said I had just
3 done it recently. In April it was. So, I gave
4 them--

5 THE CHAIRMAN: How recently do you think
6 prior to the conference of April 26th?

7 THE WITNESS: Well, I jotted down the date
8 before I came down here. I wrote to the Supreme
9 Court on April 6th and I sent Biederman a letter
10 indicating that I had written to the Supreme
11 Court about him, and that letter is dated April 7th.

12 MR. FRANCIS: Well, I have those. I am
13 going to mark them. Would you like me to do it
14 now?

15 THE CHAIRMAN: Yes, sir.

16 BY MR. FRANCIS:

17 Q All right. I show you a copy of your
18 memorandum of April 6th, 1972, to Edward McConnell,
19 Administrative Director of the Courts. Is that the
20 memorandum you have been talking about?

21 A That's it, yes.

22 MR. FRANCIS: May we mark that.

23 (Copy of letter to Edward McConnell from
24 George F. Kugler, Jr., dated April 6th, 1972,
received and marked Exhibit C-32.)

25 Q And I show you another letter, or a letter

1 dated April 7 to Mr. Biederman. Is that the letter you
2 have referred to? A That's it, yes, sir.

3 MR. FRANCIS: May we mark that, also.

4 (Letter to David A. Biederman from George
5 F. Kugler, Jr., dated April 7, 1972,
received and marked Exhibit C-39.)

6 Q You said a few minutes ago, you had had some
7 previous trouble with him about conflicts of interest
8 problems before the Mal-Bros. Case, which is referred to
9 in the memorandum. Do you remember what that was?

10 A Yes, I'm trying to think of the name of the
11 case.

12 Q Barisi? A Barisi, yes. There's a
13 poor fellow that put up a motel on a piece of property,
14 and some years ago, and like ten now, and that was known
15 as the Barisi Case. The Department of Transportation
16 came along and knocked the motel down and paid him
17 nothing and indicated to him that it was state-owned
18 land, riparian land, so they didn't owe him anything.
19 Before I became Attorney General I think, they took
20 that position that riparian land they didn't have to
21 pay for.

22 So, there was a lot of files on it out there
23 in Transportation. That case was assigned to Mr. Biederman
24 under his charge, and, it came to my attention after
25 Biederman left, shortly thereafter, that he was saying--

1 he wrote a letter to the Department of Transportation
2 saying something to the effect that, you know, you owe
3 my client a lot of money after all these years you've been
4 sitting on this case, and here he was the man who was
5 charged with the responsibility of it.

6 I believe it was Al Nardelli came to me,
7 and Mort Greenberg, both. They were all upset, and I
8 said, "Well, there is no question about that he can't
9 get into that case, and tell him that." And they did
10 tell him that. And I don't know whether they wrote to
11 him or what, but they told him in no uncertain terms
12 that he was assigned to that case and he couldn't get
13 on the other side of it. And even if he wasn't assigned
14 to it, he was in charge of all the litigation files in
15 the Department of Transportation.
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1 Q You used the expression "he can't get into
2 that case." Was he already in?

3 A Oh, yes. He said he represented them and talked
4 about the long delay and so forth and so on. But, so, he
5 did out of that, apparently.

6 Q Well, you say he was already in it. Had
7 there been conversation, I mean correspondence between
8 Biederman and your department and other attorneys in-
9 volved in connection with that Barisi case?

10 A Oh, yes, that's my understanding.

11 Q But, in any event, Nardelli through
12 you told him that he had to get out of it?

13 A I, through Nardelli, I would say, told him he had
14 to get out of it, yes. They had no question in their
15 minds, but they just wanted to bring it to my
16 attention. And I was quite angry about it, so I told
17 them to tell him immediately to get out of that case.

18 Q In the-- A Quite valuable case,
19 incidentally, I should say, to any attorney who had
20 it.

21 Q Do you know what his retainer was?

22 A No, I have no idea.

23 COMMISSIONER BERTINI: Probably he would.

24 Q I think we'll have some information about
25 that. I want to go over some more of the Mal-Bros. case

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1 that you referred to Mr. McConnell, but a few minutes
2 later if you don't mind.

3 When Biederman was in the office, did he have tenure?

4 A No.

5 Q And at some time in 1971, did he communicate
6 with you about tenure? A Yes. I had six tenured
7 positions, and I think four of them were filled, so that
8 left me two. And then I believe one person resigned
9 and I think I now have three available. He wrote to me
10 about it. He wanted tenure shortly before he left.

11 Q I show you a letter to you from David A.
12 Biederman, dated July 1, 1971, and ask you if that is
13 the letter he wrote to you about tenure.

14 A Yes.

15 MR. FRANCIS: May we mark that.

16 THE WITNESS: What's the date on that?

17 MR. FRANCIS: July 1, 1971.

18 THE CHAIRMAN: C-40?

19 MR. JORDAN: Correct.

20 [Letter to George F. Kugler, Jr., from David
21 A. Biederman, dated July 1, 1971, received
22 and marked Exhibit C-40.]

23 Q In this letter, among other things referring
24 to the department itself, he said that, did he not,
25 that "The deputies assigned to the Department have

Kugler

0-3 1 performed very well and they work well together.

2 The esprit de corps in the office is quite remarkable"?

3 A Yes.

4 Q By the way, at any time before he actually
5 departed from the office did he ever say to you that he
6 did not trust Commissioner Kohl?

7 A No, no. He was, I always thought, quite fond of
8 Commissioner Kohl. I think the reverse was beginning
9 to be true.

10 Q I gather you did not grant tenure as he
11 requested in that letter?

12 A I did not grant tenure. I denied it, and I think
13 I told him that I was going to hold the tenured positions
14 until right before I left. I was not going to give
15 any to anyone.

16 I had a bill in the Legislature, which he knew
17 about, to give me, I think, additional twenty-five.
18 But it had been languishing there since 1970 and the
19 county leaders unanimously opposed it, so it didn't
20 get anywhere.

21 Q After this letter was--you say you had a
22 conflict-of-interests bill in the Legislature at the
23 time. Did you in July of 1971, when he wrote for tenure?
24 Was your bill in then?

25 A The bill I was talking about was for tenured

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positions.

Q Oh, I beg your pardon. Were you aware, or did you have anything to do with the introduction of the conflict-of-interest bill?

A I didn't have anything to do with the introduction of it, but I'd had a lot to do with it, yes, and a lot of discussions on it, a lot of discussions with my staff on it, with Judge Garven, with members of the Legislature. It was quite a controversial bill. And my staff, many of them, were very much concerned about its effect on them if and when they left my office, and, I think, quite understandably so.

1 Q Did you have specific conversations with
2 Biederman about it? A I don't believe I did,
3 no. I had a staff meeting when the whole staff was
4 there, on, I think at least two occasions, and gave them
5 my views and told them what I was going to try to do.

6 No. I'm sorry. I also did discuss with
7 Biederman and other administrative deputies the problem
8 of the conflicts bill at several other meetings. But
9 I don't think I ever discussed it with him privately.

10 Q Do you recall an instance in which he had
11 a press conference about the conflicts bill and stated
12 his views on it and after which you criticized him saying
13 that this is a department matter and you should not be
14 having individual press conferences about it?

15 A Yes. I read in the paper that a story indicating
16 that he had been talking to the press, and I checked on
17 it and found that he and, I think Bob Mulligan, who was
18 then a deputy, was going to go into practice with him,
19 had had a press conference. They told me, at least,
20 out there at Transportation, or wherever I checked. And
21 I wrote to Biederman to remind him that he was still a
22 deputy and that he wasn't leaving and he shouldn't be
23 having press conferences. I had no idea at that point
24 that he was that upset about the conflicts bill.

25 Q When you told him or you wrote to you that

you would not give him tenure, after that did you ever
talk to him about the tenure, and, if so, did he indicate
any animosity at you because of the failure to get tenure?

A No, he had never indicated any animosity.

I talked to him on another occasion. I think there was a judgeship open in Union County, and asked me to help him get that judgeship. This was an oral conversation in my office, and I believe it was after he asked for tenure.

Q Now, sometime after his letter of July 1st, he wrote to you again with respect to his resignation, did he not?

A Yes.

Q I show you a letter to you from him dated September 1, and ask if you received that?

A Yes.

MR. FRANCIS: May we mark this?

(Letter to George F. Kugler, Jr., from David A. Biederman, dated September 1, 1971, received and marked Exhibit C-41.)

Q And without reading all of this letter, he suggests that he reads the conflict-of-interest bill as one which will be liberally construed by the courts?

A Yes.

Q. And--

A He was talking about the conflicts bill that was then passed before amendments which was a lot stronger

1 than the one that finally was passed; more restrictive.

2 Q And in the letter he suggested that he wanted
3 to make his resignation effective January 10th or earlier.
4 And did you write to him on September 8th?

5 A Yes.

6 Q And that accepted his resignation and you
7 told him that he wouldn't have to worry about the
8 conflict-of-interest statute? His resignation would be
9 accepted prior to the effective date of the bill?

10 A Yes.

11 MR. FRANCIS: Will you mark that.

12 A (Continuing.) He was worried about that two-year
13 provision that was then in the statute and he wanted
14 to beat the effective date of it so that he could come
15 back and, as we interpret the statute, anyway, and
16 practice condemnation law.

17 (Letter to David A. Biederman from George
18 F. Kugler, Jr., dated September 8, 1971,
received and marked Exhibit C-48.)

19 MR. FRANCIS: Did you get the two figures
20 forty-one and forty-two?

21 COMMISSIONER BERTINI: I have them.

22 Q Now, shortly after he actually left--withdraw
23 that.

24 When he left the office, did you ever get
25 a report that he had taken a lot of consultations along

1 with him when he left?

2 A No, no, I did not.

3 Q I take it he didn't ask,ask you for permission
4 to take anymemorandums out of the office, did he?

5 A No, he did not.

6 Q Within a short time after he left, actually
7 left the office, did you have two letters from him
8 in connection with Trap Rock Case?

9 A Myself, I don't recall that he sent them to me.
10 It was brought to my attention that he was interested in--
11 excuse me, no. Trap Rock Case, yes. Yes, yes, yes.
12 I was thinking of Mal-Bros.

13 Q I show you two letters, the first one dated
14 September 29, 1971.

15 A Yes.

16 Q You received that from him?

17 A Yes, I did.

18 Q And that has to do with the Trap Rock Case
19 which had just been decided in favor of the State?

20 A Yes.

21 Q And that had to do with the disqualification
22 of the bidder for lack of moral responsibility?

23 A That's correct.

24 MR. FRANCIS: May we mark, please.

25 (Letter to George F. Kugler, Jr., from

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David A. Biederman, dated December 29,
1971, received and marked Exhibit C-43.)

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1 Q And another letter dated January 5th, apparently
2 amending that letter of December 29. Did you receive
3 that one on the same subject?

4 A Yes, that's correct.

5 MR. FRANCIS: May we mark this one, also.

6 [Letter from Mr. Biederman to Attorney General
7 Kugler dated January 5, 1972, received and
8 marked as Exhibit C-44 in evidence.]

9 Q Did you note particularly in the letter of
10 December 29 that he said he concurred specifically
11 in the second phase of the--he concurred "...completely
12 in your policy in this matter vis-a-vis, the state
13 doing business with contractors who lack moral
14 responsibility"?

15 A That's what he said.

16 Q He went on to say that, "I would hope
17 that the Trap Rock matter is completely finalized."

18 A Yes, that's what he said.

19 Q He suggested also in this letter, did he
20 not, that he wanted to assure you that despite his
21 resignation, his regard for you as a lawyer and a
22 man has not, and shall not, diminish in any respect
23 whatsoever?

24 A That's what he said in the letter, yes.

25 Q Did he suggest to you, also, that, "The

P1-2 1 Governor knows and I am sure this letter will make it
2 plain that my partner and I have complete loyalty
3 to the administration"?

4 A That's what he said.

5 [Off the record.]

6 Q General, in this letter he said to you,
7 after having spoken in the previous paragraph of how
8 well the deputies worked, that, "The esprit de corps
9 in the office is quite remarkable." And then he
10 continued, "Much of the above, of course, is due to
11 the excellent personnel you have given me and the
12 virtual free hand I have had in operating my Section."

13 A Yes, he did.

14 Q I gather, there was nothing to indicate
15 that he was excluding Commissioner Kohl from the
16 excellent personnel that he was talking about?

17 A No, no. He had a high regard for Commissioner
18 Kohl's professional ability, he told me many times.

19 Q Now, I would like to come back to the
20 Mal-Bros. situation.

21 You did learn after he left that he had
22 entered the Mal-Bros. case. In that case, he had
23 prosecuted the hearing before Commissioner Kohl in which
24 the issue was whether the Mal-Bros. Construction Company
25 would be disqualified as a bidder because of lack of

P1-3 1 moral integrity. Do you recall that?

2 A Yes.

3 Q And you remember that Biederman actually
4 handled that hearing?

5 A Yes, I do.

6 Q In fact, he argued the appeal in the
7 Appellate Division, also?

8 A Yes, he did.

9 Q Then later after he was out did you see
10 the correspondence that he had with the department in
11 which he notified the department that he now represented
12 Mal-Bros. in connection with an application for removal
13 of the disqualification and reinstatement as a bidder?

14 A Yes. It was brought to my attention, either by
15 Nardelli or Mort Greenberg, particularly Al Nardelli.
16 He was very much concerned with it because he knew
17 of my interest in the matter. He knew that he was
18 involved in it. He knew he had to argue it. He just
19 couldn't understand how Biederman could get on the other
20 side of it; and, of course, neither do I.

21 Q And, of course, I show you your memorandum
22 to Mr. McConnell, which we have marked C-38. Attached
23 to that you attached a copy of a letter of March 22,
24 1972 to Commissioner Kohl indicating that he represented
25 Mal-Bros.

P-4 1

A Yes.

2

Q The heading on the letter is Crescent

3

Construction Company.

4

A Yes. I remember that. I found out that that

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was just the same company with a different name.

6

Q I was wondering, did you find out whether

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or not Mr. Biederman had dissolved the Mal-Bros. Company

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and formed the Crescent Construction Company as a new

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principal?

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A Yes. I was told that. We made a check into it

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and found out it was the same principals that he had

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handled the transaction for.

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Q The letter of March 22, attached to your

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memorandum, of roughly two and a half pages, would

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you characterize that as more than just a letter notifying

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that he represents a client?

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A Well, yes. He went into quite a lengthy argument

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with the Commissioner why they should be reinstated,

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and so forth. He seemed to be taking the exact

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opposite position that we took for the state through

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him.

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P2-1 1 Q After that letter and his appearance in the
2 matter, do you remember whether you or anybody in your
3 department had discussion with him about it?

4 A I did not. I gave orders to tell him, in no
5 uncertain terms, to get out of that case immediately;
6 and they did. I was told they carried out my
7 instructions. I believe Bob Mulligan called me on the
8 telephone. I got a note from my secretary coming
9 back in from someplace that he had called and he was
10 calling about Mal-Bros.

11 I said, You call him back and tell him that I
12 am not talking to him or his partner about Mal-Bros.
13 and they have been directed to get out of this case.
14 So I assume she did what I told her. At any rate,
15 I did not talk to either one of them about it.

16 Q You also attached to the memorandum to
17 Mr. McConnell Biederman's letter of March 27 about that
18 matter. In the first paragraph of the letter he says
19 that, "This letter supplements our letter to you of
20 March 22, 1972, requesting the reinstatement of
21 Crescent Construction Company as a qualified contractor
22 for the Department of Transportation. We now request
23 a formal hearing on this matter. Please schedule
24 same at your earliest possible convenience."

25 A Yes.

Kugler

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Q And then the second paragraph he says,
"The undersigned is being substituted for in this
matter by Jack Okin, Esq., of the firm of Okin, Okin,
and Samnick, Newark."

A Yes. The same man he got for the Barisi case.

Q And he says that his representation of
Mal-Bros. may constitute a conflict of interest, and
so he is going to withdraw.

A That's what he said.

Q There was a hearing later on, the Mal-Bros.
application for reinstatement.

A Yes, there was.

Q You weren't present at that?

A No, I was not. But I was kept constantly advised
of it and talked by telephone during the hearing to
Deputy Nardelli and to Commissioner Kohl.

Q And in that way you learned that Mr.
Biederman was present at the hearing?

A I heard the day before, I believe, or the Friday
before, if the hearing was on a Monday, that Biederman
was still trying to confront Kohl. Kohl told me I
think he saw him in the cafeteria, he saw him some
other place, and he was still talking to him about it,
and he said that he was going to be at the hearing.

So I left instructions with Nardelli to be

P-3¹ careful and to keep me advised, and he did.

2 Q And then you learned later about his
3 activity at the hearing before Commissioner Kohl?

4 A I learned of it that day. I talked to John
5 Kohl on the phone. John Kohl--or I talked to Nardelli.
6 Nardelli says that this guy is passing notes up to
7 Okin and he is in the back of the room.

8 So I said, Well, let me talk to Commissioner Kohl.
9 And so I did. I asked him if he wouldn't have
10 him state for the record why he was there. I said,
11 Let's smoke this guy out, John, and see what is going
12 on here. And then he did. He said he did, and I
13 later read the record.

14 Q You did read the record?

15 A Yes.

16 Q I show you the record of that point, anyway,
17 of the proceedings. Commissioner Kohl noted the
18 presence of--wondered whether he was there as an
19 observer or in some other capacity. And Biederman said
20 he was an interested observer, but then that he
21 would like to make a comment for the record.

22 A Yes. I am well familiar with that.

23 Q And the comment he made was--how would you
24 describe that?

25 A Incredible to me.

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Q Well, the subject of it was what?

A Well, to serve the interest of his client.

Q Was it unfair, would it be unfair to characterize what he said differently from the way he characterized it, namely, that he was being a character witness?

A Well, I think he was in combination. I think he was advocating the position of these people. He knew he couldn't be their lawyer, so he was disguising himself as a friend, supposedly.

MR. FRANCIS: May we mark this stenographic transcript of that discussion.

[Stenographic transcript received and marked as Exhibit C-45 in evidence.]

Q Is my recollection correct that you sent a copy of this also with the papers to Mr. McConnell?

A Yes, I did.

Q The Ethics Committee hearing hasn't been held yet, has it?

A Yes, it has.

Q It has been held? A Yes, it has.

Q And completed all of the testimony?

A I am told it is completed. I did not participate. But Morty Greenberg was up there, and I understand that they completed it.

1 Q For purposes of fixing time a little more
2 definitely, when Mr. Stern came to see you, you calculate
3 that it was about seventeen months after Mr. Biederman
4 had left the department. He left in November in '71 and
5 this was March 26th, 1972.

6 THE CHAIRMAN: April 26.

7 THE WITNESS: April.

8 Q Yes, April 26th. Well, it wasn't quite
9 seventeen months.

10 A Yes, it was, it was just about --wait a minute
11 he left in November of '71 and April of '72 would be
12 five months. I beg your pardon, I'm sorry, not seventeen.

13 Q It was seventeen months from November 4th,
14 1970, when the contract was given to Centrum and the
15 time that Mr. Stern came into your office?

16 A Yes, that would be true.

17 Q Have you talked to Judge Garven about this?
18 Well, you told us that you thought Judge Garven was in
19 on the conversation that you had a few days after your
20 visit from Mr. Stern.

21 Do you recall what Judge Garven said to you,
22 if anything, as to whether he had had a conversation with
23 Mr. Biederman on November 4th of 1970?

24 A No, I do not recall discussing with him at all.
25 The only thing I knew about Judge Garven, in reference

1 to Judge Garven--I don't even have a strong recollection
2 of Pete Garven being in the room with the Governor, but
3 I think he was there. I do remember the note that Kohl
4 had on one of his memos. I remember that very distinctly,
5 in which it said, Biederman to talk to Garven. But I
6 didn't discuss with Garven at that time about it at all.
7 It just never occurred to me.

8 Q We have a memorandum of C-9 with a note on
9 the side, "Biederman discuss with Garven on November 4th,
10 Garven to explain to Sherwin." You think that is the
11 note you saw? A Yes, sir, that's it.
12 John Kohl had the original of that memo.

13 Q Did he tell you whose handwriting that was?

14 A He said it was his.

15 Q When you came back from Europe had Mr. Jahos
16 been doing anything in connection with this investigation?

17 A Yes. I found that he had been investigating this
18 matter. I was told shortly before I left for Europe to
19 get--I have jotted these dates down. I left on June 8th
20 of 1972. I was to leave from New York Airport, John
21 F. Kennedy, in the late evening, and I had a lot to do
22 to get ready. So I cut off all appointments and everything
23 I think in early afternoon, said I was going to go home
24 and get ready to go.

25 Shortly prior to that, and I don't know exactly

1 when, by checking we have found that Judge Stamler
2 called Van Jahos on May 31st, but I didn't know it at the
3 time. Shortly thereafter, Van told me that he had had
4 a brief conversation with Judge Stamler and said that
5 there was some guy up there--he gave the name, and I
6 now know it was Perrucci, I don't know whether he told
7 me at the time--saying that he had given a campaign
8 contribution to the Republican Party and they were having
9 some kind of a civil suit in chancery and it was to do
10 something or other--I have forgotten what he told me--
11 it didn't sound good, at any rate. He said, You better
12 get somebody up here.

13 I said, We have sent Bob Cowan up. I didn't
14 connect it up with the Sherwin Case at the moment. He
15 didn't say anything more to me. Apparently, they were
16 investigating it, as I now know, from May 31st when
17 Stamler called up, until I went to Europe on June 8th.
18 That day when I got back from Europe I note that my
19 secretary told me that there was a call from U.S. Attorney
20 Stern on Wednesday afternoon. It's on my incoming call
21 list. Apparently, he was calling me about this matter,
22 but I don't know. I never talked to him again after that.

23 Q I suppose you learned when you came home from
24 Mr. Jahos that he and Mr. Stern had agreed that any
25 grand jury indictments in this would come down the same

1 day, from the State Grand Jury and the Federal Grand Jury?

2 A He told me he had quite a set-to with the U.S.
3 Attorney and that the U.S. Attorney had told him that I
4 had agreed that we would stay out of it and that I had
5 gone back on my word, and he now knew that they were
6 investigating it. Of course, I didn't know that they
7 were investigating it. And as Jahos told him, until I
8 hear that from the Attorney General I am going to continue.
9 And then they agreed to conduct a more or less joint
10 investigation.

11 Q Well, you had not told Mr. Jahos that you
12 had agreed with Mr. Stern that you would not investigate--

13 A I had not told him that, no.

14 Q The indictment did come down then shortly
15 after that from both Federal and State Grand juries against
16 Mr. Sherwin and others?

17 A Yes.

18 Q Did you do something with respect to a
19 speedy trial?

20 A Oh, yes. We moved for a quick trial. And, of
21 course, after this thing broke I asked the Chief Justice
22 to appoint a special prosecutor.

23 Q And then after that you asked this Commission,
24 following some newspaper publicity and letters from other
25 public figures, you requested this Commission to investi-

1 gate the operation of your office in connection with
2 the Sherwin matter?

3 A That's correct.

4 Q That's why we are here.

5 A That's why we are here.

6 MR. FRANCIS: Would you gentlemen like to
7 inquire.

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1 EXAMINATION BY THE CHAIRMAN:

2 Q I think it may be repetitious, but I want
3 to know, if I can, General, exactly your recollection
4 of what documents Mr. Stern and Mr. Goldstein on April
5 the 26th gave to you. Now, I hand you a pile of papers
6 it's been indicated in the past were given to you on
7 April 26th, and I would ask if you would give us a
8 yes or a no as to what items you received that day, to
9 the best of your recollection, and those that you did
10 not receive that day.

11 A Well, as to the first memorandum, C-35 I guess it is.
12 Is that what that is?

13 Q Yes. A I have never seen that
14 before in my life. I'm positive of that.

15 The second memorandum, the letter from Sherwin
16 to "Dear John," dated October 8th, John Kohl at his
17 home, I remember seeing that. He showed it to me.

18 COMMISSIONER BERTINI: We better get the
19 record identified a little bit better than that.
20 That first memorandum is marked --

21 THE CHAIRMAN: C-35.

22 COMMISSIONER BERTINI: C-35. The second
23 memorandum is marked C-5, right?

24 THE WITNESS: There is no marking on that
25 particular copy.

Kugler

Q-2 1 MR. FRANCIS: It has been marked . It's
2 the letter of October 8th.

3 THE WITNESS: That's all right, whatever
4 you say.

5 MR. JORDAN: C-5.

6 MR. FRANCIS: And I'm not sure the record
7 is clear. You never saw that before? You mean
8 before Mr. Stern showed it to you that day at
9 the conference?

10 COMMISSIONER BERTINI: No, no.

11 THE WITNESS: No. I've never seen it
12 before today. That's the memorandum, inter-office
13 memo between Goldstein and Stern.

14 MR. FRANCIS: I beg your pardon.

15 THE WITNESS: What's the date of that?

16 THE CHAIRMAN: April the 20th, 1972.

17 THE WITNESS: It couldn't have been shown to
18 me, I don't think, but I don't know. Maybe it was.
19 Maybe the dates are right, but I did not see that.
20 I have never seen it until today.

21 MR. FRANCIS: The General said that to me
22 earlier. I showed it to him.

23 THE CHAIRMAN: Well, you see, what I'm after,
24 Mr. Francis, is in this particular--and not to
25 be repetitious, but in this memo from Bruce

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Goldstein to Herbert Stern there is listed various exhibits, and I want to tie in those exhibits with our ones that we have marked in and have the General indicate whether or not he's seen these before.

MR. FRANCIS: Yes, you go ahead. And I had that and went over it as I showed him the exhibits. But, anyway, it's better if you make certain that you know that that's so.

BY THE CHAIRMAN:

Q Now, the next one is a memo from John Kohl to Secretary of State Sherwin, 10/5/70.

A Does that have a number?

MR. FRANCIS: It does have a number. It's the one that's clipped together. It's marked--

THE CHAIRMAN: No, no, that's not the one.

MR. FRANCIS: 10/5.

THE CHAIRMAN: 10/5/70.

MR. FRANCIS: From Kohl to Sherwin, sure.

THE CHAIRMAN: What we're looking for is our exhibit number.

MR. FRANCIS: Here it is. It's marked as one exhibit, C-9, clipped together.

MR. CORRIGAN: It's marked on the front page of the exhibit, C-9.

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MR. SAPIENZA: Did we get an answer?

Q Did you answer that. You have seen it?

A I believe that I--that Stern did not show that to me on that day, but I'm not positive of that. I've seen that memo before today, however.

Q No. My question, going back, General, is, which of these have you, in the best of your recollection, recalled being given to you by Mr. Stern on the 26th of April?

A Not that one I don't recall.

THE CHAIRMAN: Okay.

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

A [Continuing] No, did not show me those. I'm sure of that.

Q All right. Letter from Centrum Construction Company marked C-18 and letter from Edison Asphalt marked C-19 were not shown to you, General, by Mr. Stern that day?

A I don't believe so, no. No.

Q 10/30, the big one.

COMMISSIONER BERTINI: I think it's C-8.

A C-8. Yes, he did show me that one.

Q C-8. That's the memo from Mr. Biederman to Mr. Kohl on October 30th, 1970, marked C-8.

Press release?

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MR. JORDAN: C-15.

Q [Continuing] Did you recall seeing the press release marked as C-15 in our records?

A It's possible that I have a vague recollection of seeing some press release. I'm not sure it was that one. It seems like it was a shorter one. Newspaper article rather than a press release. Maybe a copy of that.

C-7 I do not believe he showed me.

1 Q Now, C-7 is the letter or memorandum from
2 Mr. Biederman to Mr. Mullen, dated November 4th, 1970?

3 A I believe he showed me that; Stern showed me that.

4 MR. FRANCIS: With a copy to somebody.

5 MR. SAPIENZA: There's another marking for
6 this second document.

7 Q Now, do you recall whether or not the
8 memo from you to David Biederman, dated November 4th,
9 1970, was attached to the Biederman-Mullen memorandum
10 marked as C-7? Do you recall, this is your memo to
11 Mr. Biederman? A I never was shown the November
12 4th memo by Herb Stern. I'm certain of that.

13 Q And if you were, General, you would probably
14 very easily recall that, because, you know, like the
15 original one that was sent out to Mr. Biederman by you,
16 there is some handwriting in various portions of this
17 showing. A Well, it depends, you know,
18 how it would have been shown. If somebody had shown
19 that to me I would have recognized immediately that that
20 wasn't my handwriting, and I know he did not show that
21 to me. The first time I saw the memorandum afterwards
22 was when I looked in my own file to find a copy, and
23 after I was looking for the bid-rigging thing, bid-rigging
24 file with Manzo.

25 And I never knew, incidentally, I can tell

1 you this very definitely, that I never knew that that
2 November 4th memo had any handwriting on it until somebody
3 showed me. I think it was Ed Stier showed me a copy of
4 it that he had gotten from Stern at a later time, or gotten
5 from somewhere. So, I knew mine didn't have any markings
6 on it and I asked Al Nardelli just--I don't know why I
7 hadn't thought of it before. The reason I never thought
8 of it before, because I didn't know that was even connected
9 with this matter until somebody indicated in the newspapers
10 or a newspaper reporter told me that I wrote him a memo,
11 and I asked Stier about it and he said, "I think they're
12 talking about a November 4th memo." And he showed it to
13 me.

14 And I said, well, then the message has nothing
15 to do with this matter. And then it occurred to me we
16 ought to check the files out at Transportation. That
17 original had to be there somewhere. So, I had Al Nardelli
18 check the files and he sent me back a note with a complete
19 Attorney General's file out there, and the original was
20 in there and it was just as clean as a whistle. So, ob-
21 viously that was not a copy, and it was Biederman's file
22 that he was sending me. So, that's how I know I never
23 saw that before.

24 MR. FRANCIS: Well, we marked here as an
25 exhibit the newspaper clipping, which I made some inquiries

1 as to what that writing meant and who put it there and
2 we traced down that writing and we have proved here,
3 put into the record here who did it and why.

4 THE WITNESS: Oh, I see.

5 A Well, we have the original back in the files there.
6 It has no markings on it at all.

7 BY THE CHAIRMAN:

8 Q In summary, then, General, you received to
9 the best of your recollection, from Mr. Stern three
10 documents and a press release which you believe came
11 from the newspaper and either a press release or a
12 photostat of a newspaper clipping concerning this project
13 A. I saw, I think. I think those were the documents he
14 showed me.

15 Q Now, about how much time did you spend
16 examining the documents that Mr. Stern handed you?

17 A A very short time.

18 Q And can you summarize what was the thrust of
19 Mr. Stern's conversation after you had looked at these
20 three documents? A He just kept saying, "I have
21 to investigate this. I have to look into it."

22 And I said, "Well, of course you do. If you
23 think you do, go ahead."

24 And I said I--on the face of these memorandums
25 I don't see anything, any problem, but by all means,

1 you satisfy yourself.

2 I saw that he had quite a file there with him
3 and I didn't know what else he had. He never indicated
4 to me that he thought I knew about it, had known about it.
5 He never indicated to me that anybody had known about it.

6 The only thing we discussed was David Biederman,
7 and he asked me wasn't--he said something about, wasn't
8 that stupid for Sherwin to write to Kohl's home or something
9 like that, and that's the first that I had noticed that
10 the bottom of the letter contained an address at home.

11 I think I said, "Well, there was a period
12 where John Kohl was sick, as I recall. Maybe that's
13 the reason." I remember him pointing that out to me,
14 and he then said, I think he--now I'm not sure.

15 Q Did he leave you any of the documents that
16 he showed you? A No.

17 Q Did he ask you if you wanted to make any
18 copies of the document? A No, he did not,
19 and I didn't ask him to make any copies.

20 Q And at all times, you were there it was
21 only Mr. Goldstein, Mr. Stern and yourself in the room,
22 the except perhaps when secretary came in to deliver some
23 photostats to you? A Yes. I'm not sure that
24 she delivered the photostats. She may have given them
25 to him on the way out. I just called her, buzzed her on

1 picked up the phone.

2 Q Did Jonathan Goldstein enter into the conversation
3 at all? A No, I don't think he had
4 much to say, really. He may have discussed the witness
5 problem with the Tonti Case. I'm not certain about that.
6 But as to this, I don't think he got involved in it at
7 all.

8 Q You don't recall making any statement to
9 Mr. Stern that "Regardless of the motives of Mr. Biederman,
10 you still have to proceed on this"?

11 A No, I don't recall making anything, a statement like
12 that, no.

13 Q You sort of warned him about Biederman and--
14 A Yes. Obviously, they interviewed Biederman. He
15 told them a lot of things in addition to these memos,
16 and I said, "You be careful of what Mr. Biederman tells
17 you. He's not--I think you should know that I have cited
18 him to the Supreme Court and he may have an axe to grind."
19 That's what I said.

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Q3-1 1 Q At the meeting that took place first with
2 the Governor, and Mr. Kohl and, you believe, Judge
3 Garven, was there any conversation from Judge Garven
4 that he knew anything about the matter?

5 A No.

6 Q How about the conversation--

7 A Not with me.

8 Q How about the conversation that took place
9 between the Governor and Mr. Sherwin and Judge Garven,
10 if he was there, and yourself; was there any indication
11 that Judge Garven had talked to Mr. Sherwin?

12 A No, we didn't discuss that. It didn't -- at least,
13 I didn't discuss it. Whether the Governor and Judge
14 Garven did later I don't know. I didn't think it was --
15 you know, it just didn't mean anything to me at the
16 moment that it was important or--

17 Q Getting back to the conversation with Mr.
18 Stern and Mr. Goldstein, was there ever any indication
19 of any money or any other type of consideration being
20 involved in the various documents that he had presented
21 to you?

22 A No, absolutely not. When I called Stern on the
23 phone and told him of my talk with the Governor and
24 Kohl, he said at that time that he was going to subpoena
25 the records of Manzo Contracting Company and he--

Q3-2¹ incidentally, he indicated to me that he would keep me
2 advised of the investigation, and I never heard from
3 him again except that I learned that I had a call from
4 him the day I left for Europe when I got back. Of
5 course, then he was dealing with my staff after that
6 and I never talked to him directly. He never called me
7 and I did not call him. And I learned that he didn't
8 get anything in his subpoena from the records, because
9 they were all, the crucial records were up in the
10 civil trial. I learned that later. At least, that's
11 what I was told.

12 Q Based upon what was presented to you by
13 Mr. Stern, and you only had a short time to read those
14 items, I realize, was it your considered judgment that
15 you need not proceed any further in this matter?

16 A I had no reason to proceed at all at that point,
17 that I saw, and particularly in view of the fact that
18 he asked me not to give into the matter. And I made
19 a judgment shortly thereafter that it would probably
20 be the best thing for him to look into it. I really
21 didn't think there was much to it at that point.

22 Q Was it your opinion at that time, General,
23 that this was a case of a cabinet officer trying to do
24 a favor for a constituent?

25 A My definite opinion. I thought Paul Sherwin

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Q-3 2 was trying to do a favor for someone and had called a
3 cabinet officer, and that's the impression John Kohl
4 gave me when we were over there; that he was asked to do
5 it if he could, and first he thought independently that
6 they were going to, anyway, and then he discovered that
7 he could not and would not and they awarded it to the
8 lowest bidder. I thought that would be the end of it.
9 I, of course, had no idea there was any money connected
10 with it at all at that time. I don't think anybody
11 did.

11 Q So, when you used the expression earlier
12 that you felt that that was none of your business,
13 you meant that a review of what you had seen would
14 indicate that there wasn't any potential crime being
15 committed and, therefore, it was your opinion that
16 a department head could take care of it on his own if
17 he was aware of it; is that your feeling?

18 A Yes. I don't have a recollection of discussing
19 it, but if that memorandum had been shown to me,
20 or if that information had been given to me and I knew
21 it had gone to the lowest bidder, I wouldn't have
22 seen any reason to conduct any criminal investigation
23 at that time, I don't believe, without some other
24 factors present. But I really was never presented with
25 that problem, so it's hard to say.

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THE CHAIRMAN: Mr. Sapienza and Mr.

Francis.

EXAMINATION BY MR. FRANCIS:

Q Another matter that Mr. Sapienza and I have just been discussing. I think it's at least indirectly covered. You told us that the Governor had sent for Mr. Sherwin and that you and the Governor talked to Mr. Sherwin about this matter. Did anybody ask Mr. Sherwin at that time if there was any money involved in this transaction?

A No.

Q Did anybody suggest to him that there was any money involved and, if so, what did he say about it?

A No one suggested to him at all, no.

Q Did you talk to Mr. Sherwin again and learn at that time, a short time after that, that he had discussed the matter with Mr. McCrane?

A I talked to Sherwin. He was having trouble with his records, and I think he changed secretaries, as I recall. There was a woman named Helen Mann at one time and some other woman now at a later time. I can't remember her name now at the moment, unfortunately, although I've seen her a million times and talked to her. He had two secretaries, but his main secretary was Helen

Q-5 1 Mann and this lady that--

2 COMMISSIONER BERTINI: Betty Haggerty was that?

3 THE WITNESS: Yes, Betty Haggerty.

4 A [Continuing] And he was having trouble locating his
5 files on it, and I think he said he talked to Treasurer
6 McCrane about it because I think he told me that he
7 was in one of the memos, and then a later time, and--
8 boy, I can't -- I can't place this, but it was later --
9 he came over and he was much relieved that he had
10 found a folder. When he first looked for it, I think
11 he found some of the material on the bid-rigging thing
12 and he said to me, "I recall this because I didn't
13 write these memos, and I remember that's the only time
14 I gave Helen Mann hell." She wrote some memos in
15 connection with that bid-rigging thing. And he says,
16 "That's all I can find."

17 And he later found a copy of his letter to Kohl,
18 and he found a memo that was on a yellow page, sheet,
19 very heavy yellow paper that some people use for carbons,
20 not the lined paper. And it was some memo to the
21 file indicating what he had talked to Kohl about and
22 had to do with asphalt shortage. I just told him,
23 "Well, hang on to that and when you go up when Stern
24 calls you, you take your stuff up with you."
25

1 Q Did he tell you in connection with his information
2 to you about his conversation with Mr. McCrane that he had
3 learned from him about ^a ten-thousand-dollar contribution by
4 the Manzo Contracting Company? A I don't
5 know when we first learned of a possible contribution. I
6 just can't tell you that. I don't know when it was. I
7 know it was not in the early stages.

8 MR. SAPIENZA: Was it before you went to
9 Europe, General?

10 THE WITNESS: I don't know, Charles. I don't
11 know. I just don't remember when that was.

12 COMMISSIONER BERTINI: Well, I get the
13 impression that it had to be after you returned
14 from Europe, because in May, Judge Stamler called.
15 But then you didn't talk with Van Jahn about this
16 matter until you came back from Europe, except that
17 you had asked him to look into something one day,
18 so that you only had a sketchy--while you're looking
19 for that, may I ask a couple of questions?

20 MR. FRANCIS: Sure.

21 THE WITNESS: I don't think I know of any
22 contribution before I came back from Europe.

23 Sometime, I know this, consistently all the
24 way through our investigation Mr. Sherwin and Mr.
25 Loughran said that Sherwin knew nothing about a

1 campaign contribution, so--and they so testified
2 in our grand jury, which I was familiar with, after
3 I got back from Europe. So, I know Sherwin didn't
4 tell me about it in the beginning. He could have
5 learned that there allegedly was one, and I think
6 they did learn later. But I think that was when we
7 conducted our investigation and had a Mrs. Haggerty
8 down and they were getting the records down to
9 the grand jury and that type of thing. So, it was
10 some time around there that I believe I learned
11 about it.

12 I think the first that Mr. Jahos and his
13 staff knew about it was, I'm sure, when they heard--
14 they started looking into the Stanler information
15 up there.

16 BY MR. FRANCIS:

17 Q Did he talk to you/^{the}about ten-thousand-dollar
18 contribution at some time after that and before he testified
19 before either the Federal or State Grand Jury?

20 A Sherwin?

21 Q Yes. A I think he did, Mr. Francis,
22 yes.

23 Q Before the State Grand Jury he said that after
24 the meeting with you and the Governor he learned--
25 page 186 or about that--he learned from McCrane of the

1 ten-thousand-dollar contribution. The note that I made
2 of that testimony, maybe I overlooked, but I don't have
3 a date. But, in any event, it was after. It's clear
4 from his testimony that it was after your conversation,
5 the conversation that you and the Governor had with him.
6 And then before the Federal Grand Jury, again he said
7 after the discussion with you and the Governor he did
8 find out from Mr. McCrane there was a ten-thousand-dollar
9 contribution, and then he said he was very upset because
10 you were upset in the discussion and he talked to you
11 about it, and he said he satisfied you that he did not
12 know about the contribution at the time--well, at that
13 point he said when Loughran came to see him, and he went
14 on to say, "The Attorney General seemed to give the
15 impression that he was satisfied with my explanation."

16 Do you recall that? A Yes, sir, yes,
17 I definitely talked to him about it, and I remember him
18 saying that he didn't know it at the time, that he was
19 talking to Kohl or closely thereafter, or at the time
20 that he was talking to the Governor and me. But I'm
21 not sure when that conversation was, whether it was before
22 I went to Europe or after I came back.

23 Q In any event, you know that it was after
24 your conversation or the conversation that you and the
25 Governor had with him after Stern had been to visit you?

Kugler

1 A Oh, yes, definitely, certainly was.

2 EXAMINATION BY
3 MR. SAPIENZA:

4 Q At that conversation you and the Governor
5 had, and perhaps Mr. Garven, with Mr. Sherwin-I'm referring
6 now to Mr. Sherwin's testimony before the Federal Grand
7 Jury --he said that you interrogated him rather intensely
8 with regard to certain documents, those documents being
9 the letter of October 8th that Mr. Sherwin had written
10 to Mr. Kohl at his home and a memo of July 20th and
11 went from Mr. Sherwin's Office to Mr. McGrane. Does that
12 correspond with your recollection of that meeting?

13 A I don't know. I know that we took a copy of Kohl's--
14 I think Garven had --I believe Garven had a copy, or some-
15 body had a copy made of Kohl's folder, and whatever was
16 in there, I think the Governor asked him some questions
17 about, and I know I asked him some questions about, and
18 I'm not sure/^{just} which memos were in there at the moment.
19 I don't know what Kohl had in his file except that I
20 can tell you he certainly had --you know, he certainly
21 had the letter.

22 Q It would appear from his testimony before
23 the Federal Grand Jury --

24 A Whose testimony?

25 Q Mr. Sherwin's. That he said he found out

1 through Mr. McCrane of the ten-thousand-dollar contribution
2 six-seven weeks prior to his testifying before the
3 Federal Grand Jury. Now, he testified before the Federal
4 Grand Jury on June 15th, and six or seven weeks would be
5 approximately the end of April, that at that time, Sherwin
6 now testified to the Grand Jury, he found out about
7 the ten-thousand-dollar contribution and notified you about
8 the ten-thousand-dollar contribution. Does that help in
9 your recollection of when he notified you? Or is that
10 accurate? A No, it really isn't. I can't
11 say it's accurate or inaccurate. At one point we discussed
12 the contribution, but I can't tell you exactly when it
13 was and I can't tell you whether it was before I went
14 to Europe or after I came back.

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Q5 -1 1 Q When you found out about the contribution
2 of \$10,000, did you notify Mr. Stern?

3 A I didn't talk to Mr. Stern at all other than the
4 two conversations that I related to you.

5 EXAMINATION BY THE CHAIRMAN:

6 Q Getting back to the April 26th conversation,
7 did Mr. Stern indicate to you that he would keep you
8 advised as to whether or not he uncovered other crimes?
9 Do you recall any words like that?

10 A He said that he would keep me advised of the
11 results of his investigation periodically.

12 Q And do you recall--

13 A And he did say--the only time he did keep me
14 advised was when I called him, the first telephone
15 call, and he said he was subpoenaing Manzo's books.

16 Q Do you recall him indicating to you that
17 he thought it would be better if the U. S. Government
18 proceeded with the investigation rather than your
19 office because your office hadn't done anything for a
20 year and a half with this matter?

21 A No, definitely he didn't put it that way. He
22 said that he thought it would be better that they do
23 it and not us because this is your fellow cabinet
24 officer and it's your administration, in effect.

25 EXAMINATION BY MR. FRANCIS:

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Q Maybe we can fix a little closer time.

In Mr. Sherwin's state grand jury testimony--that was what you showed me a minute ago, the state grand jury?

MR. CORRIGAN: Yes, sir, 187.

MR. FRANCIS: Yes, 187. That's the note

I have here.

Q [Continuing] Mr. Sherwin in his testimony talked about knowing around June 1st of the ten-thousand-dollar contribution. When was it, according to your recollection, that Mr. Stamler, or Judge Stamler called Mr. Jahos and told him about the testimony respecting the ten-thousand-dollar contribution.

A The Division of Criminal Justice Records show it was May 31st

Q And the testimony of Perrucci before Judge Stamler which disclosed that fact was on May 30th, was it not?

A Yes, that's right.

Q And that was just a couple of days before Sherwin testified, or referred to in his testimony before the state grand jury?

A As you just related, yes. I'm not--

Q General, you probably know better than any one of us here why we're here, and I have finished asking you everything I can think of in connection with

Q-3 1 this inquiry. Is there any further statement that you
2 would like to make, that you consider material to our
3 inquiry?

4 A Well, the purpose of this inquiry, of course,
5 is to address itself to the charge, which, of course,
6 quite concerned me, that I was covering up this investi-
7 gation and knew about problems that needed investigation
8 for some time and did nothing about it. And, of course,
9 I think the record indicates that that's not so, and
10 I have tried to answer your questions fully.

11 But I think, in addition to that, I think it's
12 incredible that anybody could believe that if I knew of
13 all the things that Biederman apparently says I knew,
14 and that I knew that there was some criminal problem
15 and that he knew about it, it doesn't make much
16 sense to me that I would blow the whistle on him,
17 and I'd be doing everything that I could to curry
18 his favor. So I think that stands out, stands by
19 itself. If anyone's going to cover anything up, they're
20 not going to make people angry that know that they're
21 covering it or think that they're covering it up.
22 However--

23 Q Excuse me, General. I notice you looking
24 in that direction. The gentleman who just came in is
25 a substitute reporter who is going to take over in a

Q-4 1 few minutes. I didn't mean to interrupt you. I wanted
2 to identify the man because I saw you looking that way.
3 Go ahead.

4 A The other thing I want to make crystal-clear
5 is that no one in my department, no one, covered this
6 matter up and as soon as my criminal investigative
7 staff had any reason as they felt to go ahead, they
8 didn't even consult me about it. They went ahead.
9 They heard Judge Stamler's call was the thing that
10 triggered that off and, as a matter of fact, in my
11 opinion, they were the ones that developed the
12 investigation and did the job and worked very hard on
13 it.

14 THE CHAIRMAN: Mr. Bertini?

15 EXAMINATION BY MR. BERTINI:

16 Q This memorandum of November 4th, 1970,
17 marked C-30A, when you wrote that memorandum, did
18 that clearly relate to the rigged bidding situation?

19 A Absolutely.

20 Q And at that time had you and your department
21 all reached the conclusion that there was nothing to
22 the bid-rigging situation, to the best of your then
23 knowledge?

24 A That's true, yes.

25 Q Now, it does not in any way relate to

Q-5 1 Centrum Construction Company as marked on Exhibit C-30?

2 A Absolutely no connection with it at all.

3 Q And you do not know how Centrum Construction
4 Company got onto this sheet?

5 A No, I do not. I can understand the mistake
6 somebody, some clerk might make, because of them are
7 connected with Manzo Construction and they're around
8 the same date. A file clerk could have done that,
9 but I don't know how it got there.

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1 Q Am I correct in concluding that until the
2 visit by U.S. Attorney, which was on April the --wait
3 a minute. I think it was April 20th.

4 MR. FRANCIS: 26th.

5 Q April 26th, 1972, you, nor anyone else in
6 your department b4/5 possibly Mr. Biederman, had any
7 idea that a possible crime may have been committed?

8 A That is absolutely correct.

9 COMMISSIONER BERTINI: That's all.

10 MR. FRANCIS: Anything more?

11 THE CHAIRMAN: No, sir.

12 Do you have any other thing further to
13 mention, General?

14 THE WITNESS: No.

15 THE CHAIRMAN: Let me read one thing to
16 you so we will close it out. We operate under
17 the Code of Fair Procedure, and I believe Mr.
18 Sapienza mentioned this earlier, but I'll just
19 repeat it so we don't forget it.

20 Any witness who testifies at any of our
21 hearings shall have the right at the conclusion
22 of his examination to file a brief sworn statement
23 relative to his testimony for incorporation in
24 the record of this particular investigatory proceed-
25 ing. I just call that to your attention. If at

1 any time you want to file a brief sworn statement
2 you have the right to do so under our procedure.

3 THE WITNESS: All right. Of course, I've
4 just been answering your questions today, and
5 I have no idea what other people are saying
6 about my conduct, except I assume that everyone
7 covered today what was said to me, about me rather,
8 and I have had a chance to answer it. If a later
9 reading of the transcript indicates that it was
10 not all covered, you shall certainly hear from me.

11 MR. FRANCIS: Yes. Well, we've been following
12 it carefully, and you will notice we asked you speci-
13 fic questions relating to what this one said, and
14 this one said and this one said. Nobody is perfect.
15 It's conceivable that we might have overlooked some
16 statement about somebody. I don't think so, though.
17 But certainly you can examine the record.

18 THE CHAIRMAN: I just thought of one further
19 question. Mr. Jakes never indicated to you that
20 he had received any so-called package on November 4th
21 from Mr. Biederman?

22 THE WITNESS: No, no, he did not.

23 THE CHAIRMAN: Because we do--

* 24 THE WITNESS: He says he did not receive
25 a package from Mr. Biederman.

THE CHAIRMAN: I don't believe we covered that

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point specifically.

MR. FRANCIS: Well, see, we have Mr. Jahos.
We're going to cover that.

THE CHAIRMAN: Okay.

THE WITNESS: I mean, he tells me now in
the last weeks I'm talking about that he understands
that Biederman is saying--I think he was down here
for an interview, an investigation, or he read it
in the paper or something, --that he got a package
or something. He said that's absolutely not so.

THE CHAIRMAN: Okay.

MR. FRANCIS: We'll go over that with him.

THE CHAIRMAN: Thank you for coming over.

(Witness excused.)

1 [Alfred R. Nardelli enters the room.]

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2 THE CHAIRMAN: Mr. Nardelli, you are
3 appearing today before two members of the
4 State Commission of Investigation. Mr. Bertini
5 is on my right. My name is John McCarthy.

6 I understand you are here voluntarily to
7 testify in connection with our investigation
8 into the Attorney General's Office, in particular,
9 the office's handling in what we call the Sherwin
10 matter.

11 MR. NARDELLI: Yes, I am here voluntarily.

12 THE CHAIRMAN: At this time would you be
13 sworn.

14 ALFRED L. NARDELLI, sworn:

15 MR. SAPIENZA: Mr. Nardelli, prior to beginning,
16 I am going to read you certain warnings we read
17 to all witnesses that appear before us.

18 This is an executive session of the
19 Commission. Your testimony will be taken under
20 oath and transcribed by the Shorthand Reporter.
21 It may be used against you later on in a court
22 of law. If you feel that your answer may tend
23 to incriminate you, you may refuse to answer.

24 You have the right to be accompanied by
25

R2 1 an attorney of your choice. I note for the
2 record that you do not have an attorney with you.
3 This is of your choosing; is that correct?

4 THE WITNESS: Yes, sir.

5 MR. SAPIENZA: If you desire to have an
6 attorney present, tell us and we will stop.
7 If at any time you wish to discontinue the
8 questioning, just tell us.

9 Section 52:9M-15 of our statute forbids
10 disclosure by you of the questions asked, your
11 responses, or any other information you may gain
12 at this hearing. Possible maximum penalty is
13 that as if it were a disorderly persons offense.

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

20 Copy of your testimony at this private
21 hearing may be made available to you at your
22 expense. If it becomes relevant in the criminal
23 proceeding in which you are the defendant or
24 summoned to appear at a subsequent hearing
25 before the Commission, provided that the

R3 1 furnishing of such a copy will not prejudice
2 the public safety or security.

3 You have a right at the conclusion of
4 this hearing to file a brief sworn statement
5 relative to your testimony for incorporation
6 in the record, if you feel that is necessary. Okay?

7 THE WITNESS: Yes, sir.

8 EXAMINATION BY MR. FRANCIS:

9 Q Mr. Nardelli, where do you live?

10 A In East Orange, 60 Southmont Avenue.

11 Q And you are a Deputy Attorney General of
12 New Jersey?

13 A Yes, I am.

14 Q And have been for how long?

15 A Since July of 1970.

16 Q Are you familiar with the application of
17 the Mal-Bros. for reinstatement as bidders in the
18 Department of Transportation?

19 A Yes, I am.

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1 Q Was there a hearing held by Commissioner
2 Kohl in the Department on the application for ~~reinstatement~~
3 statement?

4 A Yes, there was.

5 Q Do you remember the date?

6 A Yes, I do, April 5th, 1972.

7 Q Prior to the time of the hearing, did you
8 know David Biederman?

9 A Yes, I did.

10 Q A former Deputy Attorney General assigned
11 to the Department of Transportation?

12 A Yes, sir.

13 Q Did you know prior to the time that the
14 hearing was actually held what attorney had appeared for
15 Mal-Bros. on the application for ~~reinstatement~~ reinstatement?

16 A I'm not so sure I understand the question.

17 I know that Mr. Okin was going to appear on
18 April 5th, yes.

19 Q Had there been another attorney involved
20 in the matter before Mr. Okin appeared?

21 A Yes.

22 Q Who is that?

23 A Mr. Biederman had been involved before Mr. Okin.

24 Q And when you say "had been involved,"
25 what can you say as to whether or not he formally

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1 appeared as an attorney, in the capacity as an
2 attorney for Mal-Bros. prior to the time Mr. Okin
3 appeared?

4 A Well, prior to the hearing Mr. Biederman wrote
5 a letter to Commissioner Kohl, if I recall correctly,
6 the date of the letter was March 22nd. And in that
7 letter he was obviously representing Mal-Bros., now
8 known as Crescent Construction. He asked for reinstatement
9 of Mal-Bros.

10 Q You saw that letter?

11 A Yes, I did.

12 Q And is it your recollection that ^{he} concluded
13 the letter by saying, "That we respectfully request
14 immediate reinstatement as a qualified contractor with
15 The Department of Transportation of Crescent Construction
16 Company"?

17 A Yes.

18 Q What connection did Crescent have with
19 Mal-Bros. and the Mallanga Brothers?

20 A It was, I guess you call it, a successor
21 corporation. Mal-Bros. was a partnership and Crescent
22 Construction was a corporation with the partners
23 now as stockholders.

24 Q Do you know who formed the corporation?

25 A Who the incorporator was?

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Q Yes. A Offhand, I don't.

Q Now, did you have any conversation with Mr. Biederman prior to entering into the case of Mr. Okin with respect to whether he should appear in the case?

A Yes, I did.

Q How long before the actual hearing was that?

A The principal conversation, the major conversation occurred on March 27th, about a week before, week, ten days before the hearing.

Q And what was that conversation?

A That conversation was to the effect that I had talked to Assistant Attorney Greenberg who was in charge of the litigation for the Attorney General, and that that Assistant A. G. Greenberg that I concurred, it would be a conflict of interest for Mr. Biederman to represent Mal-Bros. at this reinstatement hearing.

Q And how did you put that to him?

A Unfortunately, I did not put it in writing. He had on the morning of the 27th, he had dropped by my office. I had been out at the time.

MR. SAPIENZA: Who is "he"?

THE WITNESS: Mr. Biederman.

A [Continued] He left a note, he dictated a note to my secretary which is in the file asking whether

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I could get back to him on the question of whether it was a conflict or not, and I talked to Mr. Greenberg and then I went back to my office and I called Mr. Biederman.

Frankly, I can't swear that I talked to Mr. Biederman himself, it may have just been his secretary.

Q And you left a message for him, did you then?

A Yes. To the effect I--he could not represent Mal-Bros., that we had determined that it would be a conflict of interest.

Q And then, after that, did you receive or did the Department receive a letter from him saying that he was substituting for Jack Okin?

A Yes, we did.

Q Now, had you had any conversation with him before the actual hearing on the day it was held?

A Before the hearing?

Q Yes. A On the day it was held?

Q Yes.

Did we fix the day it was held?

A Yeah, April 5th.

Q You came to the hearing on April 5th?

A Right.

Q You represented the Department in that

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hearing?

A Yes, sir.

Q Was Mr. Biederman there?

A Yes, he was, sir.

Q Alone or with someone else?

A He was there along with Mr. Okin and his clients.

Q And when the hearing began where did Mr. Biederman sit?

A Mr. Biederman was present in the hearing room and he sat on a chair, among a group of chairs, which were along the side of the room. He did not sit at the counsel table.

Q How far away from Mr. Okin was he?

A He was across the table from Mr. Okin.

Q Across the kind of table you are sitting at?

A Right, just about maybe a little wider than the table right here.

Q What do you think about that, about five feet?

A Right, yes, sir.

Q When you saw him that morning, did you have any conversation with him then?

A As I recall, only perfunctory like, good morning.

Q Nothing further about your message to him that he had to get out of the case?

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A No.

May I say--

Q Yes. A I did relay to Mr. Okin in much clearer terms prior to the hearing the position of the Attorney General's office.

Q Was Biederman with him at that time?

A Not that I know of. It was done over the phone.

Q Oh, I see.

Well, when the hearing got underway, you say Biederman was sitting at the distance you have described?

A YES.

Q And at the conclusion did Biederman take any part in the hearing itself?

A Not on the record, sir.

Q Was his name noted on the record at the opening of the hearing or not?

A At the opening of the hearing; no, sir.

Q Did you see him do anything that appeared to be related to the conduct of the hearing?

A Well, yes. On at least one occasion I saw Mr. Biederman pass a note to one of the -- one of the party that came in with him who was sitting opposite from Mr. Okin nearer to Mr. Biederman. And that note in turn was relayed from, whoever that party was, it may

S-7 1 have been one of Mr. Mallanga's brothers, it may have
2 been a Mr. Fratkin who was the accountant connected with
3 the case. And that note was relayed from, perhaps,
4 Mr. Fratkin to Mr. Okin. And it was a question.
5 And Mr. Okin read that question to the witness, whoever
6 it was at that time.

1 Q To your knowledge, did Mr. Biederman hand up
2 any other question? A Not to my own
3 personal knowledge. I was told by another deputy attorney
4 general that he did.

5 Q Someone who was there with you representing
6 the department? A Yes.

7 Q And he said to you that other pieces of
8 paper with questions on them were being handed up--

9 A Yes, not only questions, but some consultations
10 were taking place, Mr. Biederman was whispering suggestions,
11 and so forth.

12 Q At the end of the hearing did anybody say
13 anything about Mr. Biederman's presence there?

14 A Yes. Commissioner Kohl noted Mr. Biederman's
15 presence for the record.

16 Q After that, did Mr. Biederman make a statement?

17 A Yes, he did.

18 Q You heard that, of course?

19 A Yes, I did.

20 Q How would you characterize it, if you can?

21 A The statement appeared to me as a closing argument
22 for the reinstatement of Mal-Bros.

23 MR. FRANCIS: I think that's all, unless
24 you gentlemen have something.

25 THE CHAIRMAN: I have no questions. Mr.

1 Bertini doesn't have any.

2 Thank you very much for coming down.

3 (Witness excused.)

4 (Evan Jahos enters the room.)

5 THE CHAIRMAN: Mr. Jahos, we have two
6 members of the State Commission of Investigation
7 sitting this afternoon. I think you know both
8 of us. Mr. Bertini and my name is John McCarthy.
9 I think you also know special counsel, Mr. Francis.

10 MR. JAHOS: I do, indeed.

11 THE CHAIRMAN: And Mr. Sapienza. And Mr.
12 Corrigan and Mr. Jordan are two investigators
13 you know, I am sure. And we have two court steno-
14 graphers who are alternating. You are here volun-
15 tarily to testify in connection with our investi-
16 gation of the handling by the Attorney General's
17 Office pursuant to his request of August 1st, 1972,
18 in connection with what we label it as the Sherwin
19 matter?

20 MR. JAHOS: Yes.

21 THE CHAIRMAN: Would you stand up and be
22 sworn.

23 E V A N W. J A H O S, sworn.

24 MR. SAPIENZA: Mr. Jahos, before we begin,
25 I'm going to read to you certain warnings that

1 we read for all witnesses that appear here.

2 This is an executive or private session of
3 the Commission. Your testimony will be taken
4 under oath and transcribed by the shorthand
5 reporter. It may be used against you later
6 on in a court of law. Therefore, if you feel
7 that your answer may tend to incriminate you,
8 you may refuse to answer.

9 You have the right to be accompanied by
10 an attorney of your choice. We know that
11 you're an attorney. However, do you feel today
12 that you would like to proceed without an
13 attorney present?

14 THE WITNESS: I do.

15 MR. SAPIENZA: If you desire to have an
16 attorney present today at any time, just merely
17 tell us and we will stop the proceeding. Or if
18 you wish to discontinue the questioning at any
19 time, just say so and we will stop.

20 Section 52:0M-15 of our Statute forbids
21 disclosure by you of the questions asked, your
22 responses or any other information you may gain
23 at this hearing. The possible maximum penalty
24 is that as if it were a disorderly person's offense.

25 Although your testimony is now being taken

1 in private, the Commission may, at a later time
2 make your testimony available to the public, or
3 it may at a later time ask you to come in and
4 give your testimony at a public hearing, upon
5 the adoption of a resolution to that effect.
6 Do you understand?

7 THE WITNESS: I understand.

8 MR. SAPIENZA: A copy of your testimony at
9 this private hearing may be made available to
10 you at your expense if it becomes relevant in
11 a criminal proceeding in which you are the defen-
12 dant or if you are summoned to appear at a sub-
13 sequent hearing before us, provided that the
14 furnishing of such a copy will not prejudice the
15 public safety or security.

16 I think we have already agreed, Mr. Chairman,
17 that witnesses wanting a copy of their testimony,
18 will be furnished to them immediately.

19 THE CHAIRMAN: Yes, sir.

20 MR. SAPIENZA: You have the right to
21 at the conclusion of this hearing file a brief
22 sworn statement relative to your testimony for
23 incorporation into the record of this proceeding,
24 if you should desire.

25 Thank you very much.

T-1-5

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EXAMINATION BY MR. FRANCIS:

1

2

Q You're a member of the bar of New Jersey?

3

A I am, sir.

4

Q And have been for how long?

5

A Since 1959.

6

Q And you are a Deputy Attorney of New Jersey?

7

A I am Assistant Attorney General.

8

Q And have been for how long?

9

A Since June 15, 1970.

10

Q You are director of the criminal division?

11

A That is correct.

12

Q Of the Attorney General's Office?

13

A That is correct.

14

Q And that means you are the top man of that division, does it?

15

16

A Yes, sir.

17

Q And the division itself is of relatively recent origin?

18

19

A Yes, sir. It was created by the Criminal Justice Act of 1970, which was passed in March of 1970. I am the first Director of it.

20

21

I was charged with the responsibility of bringing it into existence.

22

23

Q And you became active as head of it around May,

24

1970? A June 15.

25

Jahos

1 Q You were appointed by the Attorney General?

2 A That is correct.

3 Q And the Statute which created the separate
4 division gave you the immediate supervision of the
5 functions and powers of the Attorney General pertaining
6 to the criminal business of the State?

7 A That's correct.

8 Q Prior to your appointment, would you tell us
9 what experience you had in the criminal law field?

10 A My clerkship was for the summer while I was in
11 law school, I was the clerk to then Attorney General David
12 Furman. I was admitted in late '59, and I was sworn in
13 immediately as Deputy Attorney General and stayed on
14 for approximately three years as a deputy. During that
15 period I was assigned to the old CIS, which was the
16 agency which was responsible then to discharge whatever
17 criminal responsibility the Attorney General had, which
18 was very limited. But nevertheless, we did what he had.

19 During that period, I tried criminal cases
20 throughout the state; and also during that period I
21 was assigned for about seven or eight months as prosecutor
22 of Ocean County, acting prosecutor, because there was a
23 vacancy in that office, and one of the attorney general's
24 responsibilities even then was to fill those vacancies.

25 I left and went back into private practice

1 for two or three years and then returned under General
2 Sills as Director of CIS for approximately two years,
3 and that bureau was, as it had been, mainly a small bureau
4 of two or three lawyers who were responsible for handling
5 the criminal responsibilities of the attorney general.
6 I was in charge of that the second time I returned.

7 During that period I was responsible at one
8 time or another for the prosecutor's office in Somerset
9 County, and then the last seventeen or eighteen months
10 that I was Assistant Attorney General then, I was in
11 charge of the Atlantic County Prosecutor's Office during
12 the vacancy there.

13 After that tenure, I returned to private practice.

14 Q And you were in private practice then until
15 you were appointed director of this division?

16 A That's correct.

17 Q I gather, you didn't have too many assistants
18 in the beginning? A When I came there were
19 two or three lawyers.

20 Q How many do you have now?

21 A Fifty-one.

22 Q From June through the end of the year of 1970
23 about how many did you have? A I would say
24 that during the first six months we spent most of our
25 time looking for leadership people. I hired Rich McGlynn

1 during that period, who became chief of the trial section.
2 And he had one, maybe two lawyers working for him during
3 that period. He came in October.

4 Barry Evanchik I recruited and hired during
5 that period. He became Chief of the Appellate Section.
6 And he had two, maybe three lawyers before the end of
7 the year. I cannot remember the dates that they were
8 hired.

9 Clint Cronin was with the Attorney General
10 and he was placed in charge of the prosecutor's supervisory
11 section and he was alone. He had no help. And he has
12 just recently developed his staff.

13 The organized crime section was in existence
14 at the time of the creation of the Division of Criminal
15 Justice. That section was created in conjunction with
16 the passage of the State Grand Jury Act, which preceded
17 the Division of Justice by about a year and a half. It
18 was a unit that was situated out at the Division of
19 State Police working closely with the State Police.
20 I incorporated that unit into my division. It had at
21 that time two lawyers who were the co-chiefs of the
22 section. And there may have been one other, perhaps
23 two that were recruited during that period. They're up
24 to ten or twelve lawyers. So I would say that by the
25 end of '70 we had in the entire division ten or eleven

1 lawyers.

2 MR. BERTINI: Are those two lawyers Stier
3 and Richards?

4 THE WITNESS: That's correct, sir.

5 Q From the time you became director of the
6 division you ran the division, didn't you?

7 A Yes, sir.

8 Q And in the day-to-day operation in the
9 criminal law field at the state level, you were in
10 charge of that and you ran it? A Yes, sir.

11 Q From that time on was the Attorney General
12 looking over your shoulder every day in the ordinary
13 course of your operation? A No. Quite the
14 contrary, Mr. Francis. The Attorney General was a colleague
15 and friend professionally of mine before he became Attorney
16 General, and certainly before I came back into public life.
17 He has never--I dislike using the word interfere--he has
18 left to me the responsibility of discharging the criminal
19 aspects of his office. Of course, I am close to him. I
20 talk to him frequently. But he does not look over my
21 shoulder, he does not make my decisions.

22 Q And in any situation in which you feel that
23 you should have the Attorney General's advice as to a
24 problem, you would go to him and talk it over with him?

25 A Yes, sir, no question about that.

1

Q You knew David Biederman, didn't you?

2

A Yes, sir.

3

4

Q He was Deputy Attorney General assigned to
the Department of Transportation--

5

A Yes.

6

7

Q --in 1970 when you came to the office
Division of Criminal Justice?

A Yes, sir.

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Q I show you a memorandum from Mr. Biederman to Mr. Kugler, Attorney General Kugler dated August 7th, 1970 and ask you if that came to your attention?

A I have seen this before. I don't remember when.

Q I show you another memorandum on our stationery, the Secretary of State, apparently addressed to Joseph McCrane marked C-2 here, and I ask you if this is the document, if you could remember if that's the document referred to by Mr. Biederman in here about the part, the last three lines in which he was interested?

A I believe that it was.

I don't recall seeing this August 7th memorandum contemporaneous with its distribution, I do remember the Sherwin-McCrane memorandum.

Q You don't remember whether you got both of these from the same time from the Attorney General?

A I do not recall that. I do not recall that I got this into my files in July of '70 or not. I believe just discussed it with the Attorney General.

Q All right. Let me show you the next memorandum in sequence marked C-32 here. The memorandum is from Biederman to Kugler, headed, "Manzo Construction Company," and referring to his earlier memorandum in connection with the allegations of Manzo and collusive

Jahos

U2

1 bidding, a copy, on the bottom, you notice, is to you.

2 You received that one, I guess?

3 A I believe so.

4 Q And in that memorandum he pointed out that
5 a meeting has been arranged to discuss the Manzo
6 problems for October 14th?

7 A YEs.

8 Q And he suggested that perhaps you might want
9 to send a representative to attend that meeting?

10 A Yes.

11 Q And when you received that, did you send
12 a representative or did you sign, make another assignment?

13 A I made another assignment.

14 Q Who was that?

15 A David Biederman.

16 Q You told him to investigate this matter
17 himself, did you?

18 A I didn't exactly tell him that, Justice Francis.
19 What I did, I had some conversation with Mr. Biederman
20 regarding the allegation of collusive bidding. He
21 indicated to me that Manzo who was interested in state
22 business was apparently willing to cooperate with regard
23 to the collusive bidding aspects which were contained
24 in the July 20th memorandum from Sherwin to McCrane.
25 It occurred to me at that point that Biederman was

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1 at least experienced enough to feel out Mr. Manzo and
2 in the context of his attempt to get something from the
3 state. In other words, to negotiate with Mr. Biederman
4 that Mr. Biederman would be in a far better position
5 to feel out Mr. Manzo than would I, swooping down upon
6 him with state grand jury subpoenas or something of
7 that sort.

8 In other words, it seemed likely to me that
9 Mr. Biederman would be more successful in gauging the
10 degree in whether Mr. Manzo would cooperate. And I
11 explained to Mr. Biederman and I told him exactly why
12 I wanted him to find out what information Mr. Manzo
13 had. And that's what he did, and did it.

14 Q I show you another memorandum from him
15 dated October 21, to General Kugler with a copy to
16 you and ask you if you received that?

17 A Yes, sir, I did.

18 Q This memorandum is marked C-33, and in
19 that one he tells you that he did talk to Manzo and was
20 unsuccessful in getting any information from him?

21 A That is correct.

22 Q And that was at the meeting that was
23 referred to in his earlier memorandum marked C-2?

24 A Yes, sir.

25 Q At the bottom of that memorandum he concludes,

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U4 1 "Please advise if there is anything further that you
2 wish me to do."

3 Now, after that, did you and the Attorney General
4 discuss that problem and decide on the course --

5 Let me put it this way, maybe it will be a little
6 clearer for you. Did you reply or send a memorandum
7 in reply to that request to Mr. Biederman?

8 A I did not.

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Q Well, did you have a discussion with the Attorney General as to what reply should be given for that memorandum?

A I did not discuss with the Attorney General a reply to Biederman. I did advise the Attorney General the results of Mr. Biederman's interrogation of Mr. Manzo. I was not aware that the Attorney General was going to respond in writing or otherwise to Mr. Biederman.

Q Did you find out later that he did in fact--

A Recently.

Q Recently. You didn't know until recently about that?

A That is right.

Q When you found out recently, did you find the date of that response?

A I believe it was November 4th. I have seen that memorandum.

Q I show you a memorandum dated November 4th, Attorney General to Biederman saying, "Neither the Director of Criminal Justice or I feel any further action is required in the above matter."

Is that your recollection of the message that went back to him in answer to the question at the end of the October 21 letter saying, "Please advise if

V-2

1 you want anything further"?

2 A I have learned since, that's what happened. That
3 is, the posture that the Attorney General and I were
4 in at that time, I did not know he sent the memorandum.

5 Q Let me put it this way: The advice that
6 you gave to the Attorney General was--

7 A Exactly.

8 Q --nothing further is needed to be done?

9 A Exactly.

10 Q You say you did see this letter? I'm talking
11 now about the memorandum of November 4th, I have a copy
12 of it here.

13 Did you see the November 4th memorandum as
14 it was in the attorney general's file or your office
15 or some other department?

16 A I believe that I saw it first in the sheaf of
17 materials that we had gotten from Mr. Stern.

18 Q I see.

19 A That's to the best of my recollection. It may
20 have been that I saw it in the attorney general's
21 files recently during this investigation, but I think
22 I first saw it in Mr. Stern's office during the course
23 of the investigation.

24 Q The copy that you saw in Mr. Stern's office,
25 did that have some handwriting on it or did you see

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a blank copy?

A I'm sorry, Justice Francis, I just do not recall whether--

Q I imagine we covered that sufficiently.

A --whether one of them had or not, I just don't recall.

Q In any event, when that memorandum of November 4th, whenever its contents went out, did you consider that that had settled the matter of the investigation of the Manzo Construction Company which was covered by these three earlier memorandums?

A At the time that that went out, I considered that we had done all that we were going to do at that time. I communicated that to the attorney general. I didn't know that he sent out the memorandum. If I had known it, I would have concurred in it.

Q You will notice that these memorandum speak of Manzo Construction Company, Route 35, Manzo Construction Company and this July 20th, speaks of Route 22, Route 12 and Route 12.

Whatever the nature of the conclusion that you reached and recommended to the attorney general, it was related only to the subject matters in these memorandum, was it not?

A Well, let me answer that this way: I was

V-4

1 concerned with the possible criminal fact of collusive
2 bidding to the extent that I related to Route 35 or
3 Route 22, I would be interested in it, but I did not
4 characterize it in my mind as Route 35 or Route 22
5 project or matters, it was a collusive bidding matter
6 and it turned out that they related, according to these
7 memoranda. But I did not characterize them or
8 categorize them in that sense.

9 Q The reason why I'm trying to be specific
10 about the inquiry is this: At that time, any of the
11 times covered by those memorandums, did you know, too,
12 on November 4th, did you know anything about a Route 46
13 bid or Route 46 project involving the Centrum
14 Contracting Company?

15 A To November 4th?

16 Q Yes. A I have no recollection
17 of Route 46 down to November 4th or really at this
18 time. Thereafter, I would say that I had none to
19 November 4th. Reconstructing, there is a possibility I
20 had some on November 4th.

21 Q Did you receive a telephone call from David
22 Biederman sometime between November, between October
23 30th, 1970 and November 4th, 1970 telling you that he
24 was coming over to deliver some material to you?

25 A I have no recollection of it; my diary does not

Jahos
1 indicate any either.

vt 5 2 Q Did you receive any material, any documents
3 from Mr. Biederman on November 4th?

4 A I have no recollection of receiving documents
5 from Mr. Biederman on November 4th. During this period
6 I received a number of documents from Mr. Biederman
7 relating to various matters. I have since found in my
8 file a document which came at around that time along with
9 other documents not related to the Route 46 matter, but
10 related to the problem that Mr. Biederman and I were
11 concerned with during this period, and namely the
12 difficulty that the state and the Department of
13 Transportation was having in qualifying people to bid
14 on state contracts.

15 Q I show you a memorandum dated October 30th
16 from Mr. Biederman to Commissioner Kohl relating to
17 a Route 46 contract. It has attached to it some
18 newspaper clippings and which bears on the top, "BCC
19 Evan Jahos," with some handwriting in the upper right-
20 hand corner. Is that the document which you received
21 from Mr. Biederman?

22 A This is a document that I found in my files
23 when this investigation was underway. I have no
24 recollection today of having received this around
25 October 30th or November 4th. The writing at the top

V6 1 is mine.

2 Q And the notation in your writing is an
3 indication of where it was to be filed and was filed?

4 A That is correct.

5 Q What is the note there?

6 A It says, "Filed Bid Procedures."

7 Q Do you have any recollection that along
8 with that was another memorandum of also dated, or
9 dated November 4th from Mr. Biederman to Mr. Mullen,
10 telling him that a decision had--instructing Mullen that
11 the Commissioner had reversed his decision to reject
12 all the bids on the Route 46 contract and instructing
13 him to set in motion the procedure to award the contract
14 on that Route 46 to the low bidder, Centrum Construction
15 Company?

16 A I have no recollection of receiving that or
17 reading that at that time.

18 Q I show you that memorandum which we have
19 marked Exhibit C-7.

20 Do you want to take a look at it?

21 And tell us if you could say with any
22 certainty that you did or did not receive that?

23 A I have no recollection of reading it or receiving
24 it at the time that it's dated, and namely November of
25 1970. And I have not been able to find a copy of this

V7

1 in my files.

2 Q Was it your custom and practice when you
3 receive memorandums from Mr. Biederman to file them in
4 what you consider to be the appropriate file or place?

5 A It was.

6 Q And you have made a search, have you, for that
7 memorandum we have been talking about?

8 A Yes, sir.

9 Q You haven't been able to find it anywhere
10 in your office?

11 A No, sir.

12 Q Your definite recollection is, the only
13 document or documents that you received were the
14 October 30th memorandum with the newspaper clippings
15 attached to it?

16 A That is the only one I have been able to find
17 in my file. I have no specific recollection at this
18 time of having received it at that time.

19 Q Now, you will notice--would you look at
20 the October 30th memorandum?

21 A Yes, sir.

22 Q You will notice that in it Mr. Biederman
23 first points out, that points out first, Mr. Sherwin
24 had undertaken to suggest that the bids on Route
25 46 project be rejected and the matter be rebid, that

V8 1 he, Biederman, after talking with the Commissioner
2 obtained his agreement to disregard Sherwin's request
3 and to award the contract to Centrum. And then it goes
4 on to say that on October 26th the Commissioner
5 reversed himself and decided to reject all of the bids
6 and readvertise more bids.

7 Now, do you remember reading that?

8 A I do not in November of 1970.

9 Q Assuming that you had read that, on the
10 basis of your experience as a criminal law enforcement
11 officer, in your opinion, was there any reason indicated
12 there for you to pursue a criminal investigation?

13 A Without some indication of quid pro quo, my
14 first reaction would be, no. Additionally, if the
15 attempt was unsuccessful, that would be another
16 factor in my determination, among others.

17 Q It has been testified here that the
18 November 4th memorandum was given to you also at the same
19 time. Now, would you look at that November 4th
20 memorandum of Biederman to Mullen?

21 A This is--

22 Q In that memorandum Mr. Biederman tells
23 Mr. Mullen that he has talked to Commissioner Kohl
24 who is ill and Commissioner Kohl has reconsidered the
25 matter of rejection of all of the bids and has

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decided to reverse himself and to direct , to disregard Sherwin's recommendations and to direct the awarding of the contract to Centrum Contracting Company.

Assuming that you had that memorandum along with the October 30th memorandum, in your opinion, would the two memorandums together give you any reason to start out on a criminal investigation?

A The November 4th memorandum would have made it less likely.

Q And the reason for that is, because whatever the efforts were to persuade the commissioner to reject the bids, they had been frustrated and the commissioner had now directed the award of the contract to the low bidder?

A Yes, sir.

1 Q And would that have been an influential
2 factor in your judgment or inconsequential one?

3 A No, I believe it would have been significant.

4 Q If you had those two memorandums together
5 and nothing more in exercising your discretion as an
6 experienced prosecutor, would you have done anything
7 more than what you did? A I do not believe I would.

8 Q Did you ever talk over those two memorandums
9 with the Attorney General at any time, well, say, before--
10 let's fix a date--April of 1972?

11 A I don't believe that I ever spoke specifically
12 with the Attorney General about these two specific
13 memorandums. I think the question of the extent of the
14 use of influence in State Government is one that we
15 had discussed at a number of times, it is a very
16 difficult problem. And it's one that we have discussed
17 academically, certainly many times.

18 I think that's what is raised in this
19 memorandum also.

20 Q And on the basis of your experience in that
21 discussion in applying that to these two memorandums,
22 it is your opinion, is it, that no action in the way
23 of criminal investigation would have been ordered by you?

24 A Strictly on the face of these memoranda, that is
25 correct.

1 Q I take it that neither memorandum indicates
2 any unlawful interference with the bidding process?

3 A I don't read them as doing that.

4 Q You don't read them that way.

5 Does the fact that the November 4th memorandum
6 indicates that whatever **interference** had been made in the
7 Manzo Contracting Company's behalf had come to nothing
8 and that the statutory request had been fulfilled in that
9 the contract had been awarded to the lowest responsible
10 bidder play an important part in your consideration?

11 A Mr. Francis, in any consideration--now, I am
12 theorizing here, because I have no recollection of what
13 went through my mind. I am telling you what goes through
14 my mind, what I say would go through my mind in a situation
15 such as this--

16 Q I am putting it to you on a hypothetical basis.

17 A An attempt to commit a crime, if there is a crime,
18 certainly is prosecutable. If the attempt is unsuccessful,
19 there may still have been a crime committed. But the
20 likelihood of success of prosecution may be practically
21 nil, and that the prosecution would have to keep in mind
22 that there would have to be some relevance in these
23 memoranda. Certainly, the fact that there was no influence
24 that was effective, that the bid was properly awarded in
25 accordance with Mr. Biedeman's instructions, would seem

1 to me to be a very important factor.

2 Q Let me take you back for a minute. Would you
3 look at the October 30th memorandum again and take the
4 first three paragraphs, or four paragraphs of it, down
5 to the paragraph beginning, You reversed yourself on
6 October 26th.

7 A Yes.

8 Q Would you look at the first part of that
9 memorandum, particularly the paragraph immediately
10 preceding the paragraph referring to October 26, in which
11 the statement is made that, "I talked to you and you said
12 you were going to reject Mr. Sherwin's suggestion and you
13 would award the contract to the lowest responsible bidder,
14 Centrum." If you had only that before you, would there
15 be any basis whatever for a criminal investigation?

16 A I would not have proceeded on the basis of that
17 alone, in my judgment.

18 Q In other words, hypothetically, if someone
19 called up the head of a department and said that so and
20 so is a friend of mine, will you have a look at these bids
21 he was the second low bidder, and give consideration to
22 the possibility of rejecting them and ordering a rebid;
23 and the head of the department, after looking into it,
24 said, I am going to ignore this request and I am going to
25 award the contract to the low bidder, you see nothing

1 there, would you, in the opinion of an experienced
2 prosecutor, that would require criminal investigation?

3 A It's, of course, very difficult to speak in hypo-
4 theticals, but purely on the basis of what you have
5 stated, the answer is yes, I would see nothing to
6 proceed on.

7 Of course, much depends on the circumstances
8 in which it is said, who the person is, and so on. You
9 have a feel for each matter that comes to you. You have
10 to make a judgment. On the basis of that alone, I would
11 not have proceeded.

12 Q You say on the basis of the circumstances and
13 the persons involved in this memorandum, specifically
14 the references to the Secretary of State asking for a
15 consideration of the matter of rejecting the bids of
16 another cabinet officer and then the rejection of the
17 request and then the statement that the bid was going to
18 be awarded to the lowest possible bidder, with those
19 circumstances in mind, and having no more than what
20 appears in those three paragraphs is it still your
21 opinion that there would be no basis for criminal
22 investigation? A It is.

23 Q After this--let me just stay with that
24 for a minute.

25 You have not in your file, and you have no

1 recollection of Biederman at this time and November
2 4th, 1970 giving to your secretary and receiving from
3 your secretary in addition to the October 30th memorandum
4 and the newspaper clippings a letter of October 8th
5 from Mr. Sherwin to Commissioner Kohl suggesting
6 that he would like him to reject all the bids and if he
7 would call him on Tuesday he, Sherwin, would tell
8 Commissioner Kohl his reasons for suggesting the recommen-
9 dations for the bid? Are you certain in your own
10 mind that you did not get such a letter in an envelope
11 with the October 30th memorandum?

12 A I am certain that I never got an envelope from
13 Mr. Biederman that was handed to me. I do not believe
14 it was handed to my secretary, and I have absolutely
15 no recollection and I am certain I did not receive the
16 October 8th letter of Mr. Sherwin to Mr. Kohl.

17 Q When you say you're certain you did not
18 receive an envelope, when your secretary gave you the
19 October 30th memorandum with the clipping, newspaper
20 clippings attached, she handed them to you just the
21 way they are now, not in an envelope?

22 A It is contained with other memoranda from Mr.
23 Biederman and from other members of my staff, clipped
24 together, and those memoranda pertaining to the question
25 that we had alive at that time, and which is still alive

1 to some extent, on what basis do you disqualify contractors'
2 bidding.

3 Q And that's all that was attached to the October
4 30th memorandum? A That is correct.

5 Q Let me show you specifically the letter of
6 October 8th that we are talking about from Mr. Sherwin
7 to Mr. Kohl. Would you look at that, and specifically
8 with that letter in mind, tell us, did you receive any
9 such letter from Mr. Biederman or your secretary, it
10 having been left there by Mr. Biederman?

11 A I did not, in October or November of 1970. Of
12 course, I have seen it since.

13 Q Did you at that time receive a press release
14 that was said to have been with the October 30th memorandum
15 marked for immediate release, the subject of which was:
16 Commissioner announces the rejection of all of the bids
17 on Route 46?

18 A I did not.
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Y21 1 Q By the way, the memorandum that you did
2 produce, the copy of that is marked copy to you alone,
3 isn't it?

4 A Yes, sir.

5 Q Did you ever see any other memorandums
6 of that date with other persons listed in the copy,
7 as getting copies?

8 A I saw one in the New York Daily News, which had
9 BCC, myself and James Petrella. I had never seen that
10 one, other than in the Daily News, as reproduced in
11 the Daily News.

12 Q After you had this, at least this 10/30
13 memorandum, when did you next hear about this matter
14 again?

15 A I next heard about it on May 31st, 1972.
16 When I heard about it, I don't think I realized
17 that this was this.

18 Q On May 31st, what happened?

19 A Judge Stamler called me and said that he was
20 engaged in a trial of a civil matter, a chancery matter,
21 a matter for accounting, and he had a witness on the
22 stand by the name of Perrucci who was saying that
23 the business venture that they were involved in issued
24 a check for \$10,000 to the Republican Finance
25 Committee in return for the award of a contract.

Y-2 1 He was general, but he indicated that the witness was
2 saying there might have been some illegal activity going
3 on. He thought he ought to advise me of it.

4 Q Before that date, May 31st, 1972, did you
5 have any knowledge that Mr. Herbert Stern and Mr.
6 Jonathan Goldstein, the United States Attorney and
7 Assistant United States Attorney for New Jersey, had
8 been in to see Attorney General Kugler about a Route
9 46 contract problem?

10 A I knew that they had been in to see the Attorney
11 General. I did not know what it was about. They
12 stopped in my office afterwards to more or less
13 pay a courtesy call.

14 Q And they didn't tell you what they had been
15 in to see the Attorney General about?

16 A They did not.

17 Q That day, or between that time and May
18 31st of 1972, did you discuss the matter with the
19 attorney general, or did the attorney general say
20 anything to you about the reason Stern and his
21 assistant came to see him?

22 A He did not, except in general terms. He
23 indicated that Stern had an investigation that he wanted
24 to tell him about and that he decided that Stern
25 should handle it himself. He wasn't giving any facts

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Q And a receipt was given to Judge Stamler for it?

A Yes, sir.

Q I show you a memorandum on Judge Stamler's stationery, dated June 21st, 1972, signed by Mr. Wells, is it?

A Yes, sir. That's probably the trooper that went up.

Q And that's a receipt for the original cancelled check for \$10,000 and three excerpts from testimony of Perrucci, Jr., Michael Manzo, and two excerpts from Michael Manzo on different days; is that right?

A Yes, sir.

MR. FRANCIS: May we mark this.

[Receipt for cancelled check and testimony received and marked as Exhibit C-46 in evidence.]

Q I show you what appears to be a photostat of a check dated October 23, 1970 to the Republican Finance Committee and ask you if that is a copy of the photostat of the check that he received?

A Yes, sir.

Q That is the check referred to in the receipt we have just marked C-46?

A Yes, sir.

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MR. FRANCIS: Will you mark that, please.

[Check dated October 23, 1970, received and
marked as Exhibit C-46A in evidence.]

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Q At the time you got this telephone message from Judge Stamler and sent Mr. Cowan up there, you did tell us that you had no idea that the matter he was calling you about was in any way related to the Route 46, the Manzo Contracting Company?

A I don't think I connected that at that time.

Q I gather, therefore, that you did not know that Attorney General Kugler had agreed with Mr. Stern that he would not pursue an investigation into the Route 46 matter but would leave it in the hands of the federal government?

A That's correct, I did not know that.

Q After you got this material, you started out on an investigation, did you?

A Yes, sir.

Q Howlong was it after that before you spoke to Attorney General Kugler about it?

A Sometime in early June he went to Europe. I think before he went I probably said that Judge Stamler had called and he had someone saying somebody had given a \$10,000 check for a contract award. But I didn't identify it much more than that, and it was just in passing. So I didn't have any serious conversation about it until after he returned. I think he returned somewhere--I think he left on the 7th

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1 and came back the end of the following week. If I can
2 just check my calendar--

3 Q It was still in the month of June?

4 A Oh, yes. He returned on the weekend of the 17th
5 or 18th.

6 Q Of June?

7 A Yes, sir.

8 Q And then you told him about it, did you?

9 A Yes. By that time we were pretty near the end
10 of the line on the investigation and had engaged in
11 some joint activity with the United States Attorney.

12 Q Well, when you found out that Mr. Stern
13 had discovered that you were investigating this matter,
14 did you get a message from him?

15 A Yes. We had an idea where we were going because
16 Judge Stamler said that this particular witness said
17 that a man by the name of Lockwood was the funnel
18 for this \$10,000 check and that he was a highway
19 department employee. Unfortunately for a chap by the
20 name of Lockwood who works in the highway department,
21 we had checked in the personnel files of the department
22 and found a Lockwood and disturbed him at lunch.
23 It, of course, was not the Lockwood.

24 When we ran into that dead end with this Mr.
25 Lockwood, I began thinking and I recalled the July

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20th Sherwin to McCrane, which Mr. Loughran mentioned.

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And we went to see Mr. Loughran on the basis of that.

3

We began to then bump heads with the FBI. We

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knew it and, of course, they knew it.

5

I had a call from Mr. Stern asking me to come up

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to his office. I indicated to him that I was fairly

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busy, could we meet somewhere in between. He said he

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had some important items and he would rather stay in

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his office. So we went up that night, Mr. Stier and

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Mr. Richards and myself. We anticipated that this was

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the matter that he wished to talk about.

12

When we arrived and commenced our meeting,

13

I believe--I am certain Jonathan Goldstein was there,

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and I don't know whether there were any others of Mr.

15

Stern's staff. Mr. Stern seemed to be a bit agitated

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because he said we were talking to his witnesses and

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we were putting pressure on them. This, of course,

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was immediately denied by my people, and we proceeded

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with the meeting. He said that he had been promised

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by the Attorney General that he could investigate

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this matter exclusively, and he wondered why I was

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proceeding with it.

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I indicated to him that I had no instructions

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from the attorney general not to proceed with any

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investigation, because he has never told me not to

Y-4 1 proceed with any investigation. He does not many times
2 know what I am doing because it's left to me.

3 I told him that as far as I was concerned there
4 was no reason why the matter could not be investigated
5 jointly. We had managed to discover the \$10,000 check,
6 which we considered to be the crucial bit of evidence
7 in the case; and that if he had proceeded along the
8 line where he was ready to present the matter to his
9 grand jury, there was no reason why we couldn't continue
10 a joint investigation until the return of the attorney
11 general and perhaps look to a presentation of the
12 matter to our respective grand juries on the same day
13 and an announcement of our action, if, indeed, there
14 was to be an indictment on the same day.

15 He agreed to that. We left, and the investigation
16 subsequent to that was cooperative and I think fairly
17 salutary as far as the relations between the two offices
18 were concerned.
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1 Q In that conversation with Mr. Stern that day,
2 did you tell him that Mr. Kugler had told you of his
3 conversations with Mr. Stern but had never told you not
4 to investigate?

5 Did I make that clear?

6 A Yes.

7 I might have said, just as I have said
8 earlier here, that I knew that Stern and the Attorney
9 General had met, but I did not know what the function
10 of it was. I knew that Stern was involved in an
11 investigation that was supposed to be exclusive with
12 him, but I did not know it was related to this one.

13 Q As to this specific statement, I gather,
14 you did not say exactly, or in any way, exactly what
15 it says, that Mr. Kugler had told you of his conversa-
16 tions with Mr. Stern, but had not told you that he
17 had agreed--or had never told you not to investigate?

18 MR. SAPIENZA: By conversations, I think
19 we are referring to Mr. Kugler's conversation
20 and the substance of the conversations.

21 A I did not say that.

22 MR. SAPIENZA: There would have been no
23 reason for you to tell Mr. Stern that you were
24 aware that Mr. Stern had visited General Kugler
25 back on April 26, 1972, unless you were referring

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Jahos

1 to this Sherwin investigation; is that correct?

2 Does that make sense to you?

3 THE WITNESS: Well, possibly. At that point
4 we knew we were talking about the Sherwin investiga-
5 tion. Mr. Stern was attempting to get me to back
6 off so that he could handle it exclusively. And
7 in effect, he is saying to me that I must be violating
8 my own superior's orders and intruding on his
9 province. And I am saying, my response is, it is
10 possible I knew that you spoke to the General, I
11 didn't know what you spoke about, but I have no
12 instructions not to proceed with any investigation.
13 That could have been a reasonable response on my
14 part.

15 Q And you did tell him, I understand, at that
16 time that your investigation did not begin until after
17 the call from Judge Stamler? A That's correct.
18 I think he knew that. He was talking with my people.
19 Whether I said it then, I don't know. But that was
20 certainly understood and known to everybody.

21 MR. FRANCIS: I think that's all I have.

22 Do you gentlemen have anything?

23 EXAMINATION BY
24 MR. SAPIENZA:

25 Q Mr. Jahos, at any time did you ever

1 receive any indication that the Attorney General knew
2 about the subject matter of the Sherwin interference in
3 the Department of Transportation prior to your filling
4 in the Attorney General when he came back from Europe?

5 A Yes, I probably did, shortly before his return.
6 When the investigation had reached a stage where I thought
7 we were in pretty good shape, I thought it wise that
8 the Governor know about it, and I briefed Judge Garven,
9 and at that time he probably told me the Attorney General
10 knew about it.

11 Q When did you brief Mr. Garven in terms of,
12 let's say, this June 13, 1972 meeting between you and
13 your people and Mr. Stern and his people?

14 A Probably later that week, the 14th, 15th.

15 Q In other words, you briefed Judge Garven
16 shortly after you had this conversation with Stern?

17 A Yes. We knew we would have Sherwin before the
18 Grand Jury.

19 Q In your conversation with Mr. Garven,
20 did Garven indicate that he knew Mr. Stern was investigating
21 this matter? A I don't know that we discussed
22 it. I told him that he was.

23 Q Well, you say that Mr. Garven gave you an
24 indication that he already knew of the circumstances of
25 the Sherwin matter; is that correct? Or am I wrong?

1 A No. You asked me whether the Attorney General
2 knew about it, and I got it from my discussion with
3 Mr. Garven that the Attorney General probably did know
4 about it.

5 Q Did Mr. Garven give you any facts that he had
6 in his head or his file? A Not at that time.
7 We later interrogated him.

8 Q Did Mr. Garven relate to you at this time
9 or at any other time, the subject matter of a conversation
10 which he had with Mr. Sherwin along with the Governor
11 and along with the Attorney General sometime in very
12 late April of 1972? A He did not.

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THE CHAIRMAN: Commissioner Bertini.

COMMISSIONER BERTINI: I have no questions.

BY THE CHAIRMAN:

Q I wonder, Mr. Jahos, when you retrieved from your files, I think you testified, the October 30th memorandum and the press release--

A Not the press release.

Q Well, October 30th memo--

A With newspaper clippings attached.

Q Newspaper clippings.

What file did you find those in?

A I have a file which is about eight inches thick which contains various matters pertaining to bidding procedures in various agencies in the state and qualifications of bidders.

At this time we were concerned with Schiavone, with Mal-Bros., both of which had been in litigation, both of which Mr. Biederman was involved with, and subsequently Trap Rock Industries resulting from our own case, and I believe Ottilio, another contracting firm, all of which were large state contractors. Our concern was to attempt to devise some way that the state could be protected from the embarrassment of contracting with people who were either under indictment or under investigation or had been convicted.

1 It's not an easy job. This is the primary concern in
2 my relationships with Mr. Biederman during this period.
3 This went into that file.

4 BY MR. SAPIENZA:

5 Q Mr. Jahos, I am going to show you a
6 memorandum dated June 29, 1972. Could you identify that
7 for us?

8 A That's a report prepared by Mr. Stier and Richards
9 of my staff. of an interview.

10 Q With Judge Garven on June 20, 1972?

11 A Yes.

12 MR. SAPIENZA: Could we mark that in
13 evidence.

14 [Report of interview with Judge Garven on
15 June 20, 1972 received and marked as Exhibit
16 C-47 in evidence.]

17 Q I notice in this memorandum marked C-47
18 in evidence that in the interview, or very short
19 interview, Mr. Garven said that he had spoken to
20 Biederman on November 4th concerning this particular
21 matter of Mr. Sherwin's interference in the Department
22 of Transportation. Is that correct? Do you recall
23 that?

24 A I was not at the interview. It is correct that
25 that report says he says that.

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Q I'm sorry. I must have made a mistake.

The first paragraph of this memorandum indicates that taking the interview present at all times during the interview were Richards, Stier, Jahos--

A You're right. I was present at that interview. It was in my office, I believe.

Q Do you have a recollection now what Mr. Garven said at that interview back in June?

A Very vaguely. I haven't reviewed that report. He did say that he did speak with Biederman around that time. I can recall that. And he gave them the advice to do what was right.

Q Maybe you can just take a minute to read this report.

[Mr. Jahos reads the report.]

A Yes.

Q During this interview did Mr. Garven indicate to you that Mr. Biederman on November 4th had given him a package concerning several memos and the October 8th letter which Mr. Sherwin addressed to Mr. Kohl at his home?

A He did not.

Q Did Mr. Garven give to you any memorandum or anything else that he had received from Mr. Biederman on November 4th or at any other time?

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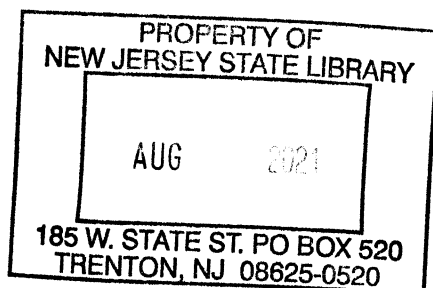
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A He did not.

MR. SAPIENZA: I have no further questions.

THE CHAIRMAN: We will take a two-minute
break.

[A short recess taken.]



1 Q One thing. The sleuth turned up the testimony
2 before Judge Stamler, and which, we might as well, before
3 we begin, mark them. There are three transcripts.

4 You can identify these, can you as the one
5 you received?

6 A Yes, sir, they are.

7 MR. FRANCIS: You want to mark those, please?

8 You might as well mark them separately, there
9 may be some reference to them individually.

10 (Whereupon transcripts were marked C-48, C-49
11 and C-50 in evidence.)

12 MR. FRANCIS: I have nothing further.

13 MR. BERTINI: Could you tell me what the
14 dates are?

15 MR. FRANCIS: C-48, February 29, 1972,

16 C-49, March 27, '72, C-50, May 30th, '72.

17 MR. BERTINI: Thank you.

18 EXAMINATION BY
19 THE CHAIRMAN:

20 Q In the meeting, Mr. Jahos on the 13th of
21 November, 13th of June, correct that, 1972, at the
22 U.S. Attorney for New Jersey, Mr. Stern's office. Do
23 you recall making any remark similar to this: That
24 Mr. Biederman and Mr. Mullen were very close and Mullen
25 had an axe to grind? A I did not make such

1 A I did not make such a remark. It may have been
2 made by Mr. Stier-Richards as their theory of the case.

3 Q Could you give us any more detail about that,
4 as to Mr. Biederman and Mr. Mullen?

5 A That they were antagonistic to each other.

6 Q Now, the indication that I get, Mullen was
7 very close to Mr. Biederman and therefore they were very
8 friendly.

9 A I don't remember making
10 that statement, at that meeting; that was, however, our
11 understanding throughout the investigation that Mullen
12 and Biederman, at least had been at one time close. That
13 would be my understanding of that. Whether they still
14 are or not, I don't know; or whether there was --I really
15 can't elaborate on that except they work together, that
16 was my understanding.

17 Q Do you have anything further you would like to
18 add that maybe we haven't covered in our questioning?

19 A I think not, Mr. Chairman.

20 MR. SAPIENZA: Mr. Jahos, we will get you
21 a copy of your transcript before us, we will try
22 to get that to you for tomorrow. Then if you could
23 think of anything, just write us a statement and
24 send it over; okay?

25 THE WITNESS: Very well.

THE CHAIRMAN: One other question.

1 EXAMINATION BY
2 THE CHAIRMAN:

3 Q Have you talked to your secretary about this
4 so called package of papers that Mr. Biederman supposedly
5 delivered to you or didn't deliver to you, but he left
6 with your secretary when you weren't in the office?

7 A Yes.

8 Q What was her response? A She did not
9 receive any package from Mr. Biederman.

10 Q Does she recall receiving the October 30th
11 memo? A She has no specific recollection
12 of receiving that.

13 Q She does not? A No.

14 Q When do you recall having found these
15 in the file? A When the October 30th memo
16 was publicized--and I don't remember when that was--
17 but when the issue of cover up came out, and the allegation
18 was that I had received the memo from Biederman, I asked
19 my secretary to pull from all of our files, any memorandum
20 that I had from Mr. Biederman. She did that, and that was
21 included. That's the first time I recall seeing it.

22 Q Did you gather from the meeting, again June 13th,
23 '72 in Mr. Stern's office, any indication from the U.S.
24 Attorney, including Mr. Stern, that they felt your office
25 had not proceeded promptly and so forth, with what infer-

Jahos 913
mation you had? A No, not at all, to the

1
2 contrary. On the basis of what we had and what evidence
3 at that time, Mr. Stern thought that --went out of his
4 way to compliment my people and me.

5 Q Was there any conversation as to why something
6 wasn't done regarding these Biederman memos that were
7 supposedly left with you? A I don't believe
8 there was any conversation with me. There probably was
9 with Mr. Stier and Mr. Richards.

10 Q What I am trying to ascertain, you know, what
11 was the atmosphere of that conversation regarding your
12 movements, not so much as to the joint effort that you
13 decided to go along with, but what had happened prior
14 to the May 30th phone call?

15 A The atmosphere was, at first, tense, for as best
16 as I can gather, the two reasons I indicated earlier:
17 one, we were talking to people that Mr. Stern thought
18 he ought to be talking to exclusively, I gather. And
19 two: he thought he ought to be handling the investigation
20 exclusively.

21 Once we weathered that storm and worked out the
22 misunderstanding in that regard, such as it was, and the
23 agreement was to proceed cooperatively, there was no
24 longer any problem.
25

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1 Q Did you get any impression from Mr. Stern
2 that the Attorney General was very, so-called shocked,
3 about the involvement of the Secretary of State in this
4 matter?

5 A I don't think I got that from Mr. Stern. I don't
6 recall discussing with Mr. Stern anything in particular
7 with regard to the attorney general or any other cabinet
8 officer.

9 I know at one point I had gone up--after June 13th
10 there were several meetings, we interviewed Mr. Sherwin
11 together, we interviewed Mr. Loughran together and
12 conducted an investigation together.

13 I'm sure, in the course of those meetings, Mr.
14 Stern said some things that indicated his position
15 with regard to the actions the attorney general took
16 or should have taken. But I did not consider it of any
17 consequence, I did not consider it my job, my job was
18 to investigate the matter. And that's what we were
19 doing.

20 Q Do you recall what he said or anything?

21 A I recall at one point his saying that he thought
22 that the attorney general had violated a confidence by
23 telling the Governor that Mr. Sherwin was the object
24 of Mr. Stern's investigation.

25 That seemed a bit strange to me, because I would

ZQ2

1 have taken exactly the same steps as the attorney general
2 did, as I would with any other employer or any other
3 situation like that. There was nothing that could be
4 covered up from that point on.

5 Q Did he ever indicate to you that, in his
6 opinion, your office knew all about that particular
7 matter?

8 A I'm sure that in Mr. Stern's judgment, at this
9 point looking back on it, he would say that the October
10 30th memo was enough to conduct a massive investigation.
11 In my judgment that would be irresponsible.

12 EXAMINATION BY MR. BERTINI:

13 Q In your judgment, as of October 1970, you
14 did not feel that a crime had been committed that
15 required an investigation?

16 A Commissioner, I don't know what I determined in
17 October 30th, 1970, because I don't recall considering
18 that memorandum. I can reconstruct what my thinking
19 is, and I could tell you what I would do today if I
20 received simply that October 30th memo; I would not
21 conduct an investigation.

22 Q And do you think, as of the telephone
23 call that you received from--did you talk with Judge
24 Stamler?

25 A That is correct.

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Q As of the date prior to the telephone

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call from Judge Stamler, did you have any knowledge which

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would indicate that a crime had been committed that

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required an investigation the day before the call from

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Judge Stamler?

6

A No.

7

Q And were you aware of anybody else in the

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attorney general's office that may have been in

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possession of knowledge that a crime had been committed

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that should have been investigated?

11

A I would say not.

12

Q But after the call from Judge Stamler

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you felt that some fact was brought forward that

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required an investigation?

15

A Well, the Stamler call--yes, it was that someone

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had paid money to get a contract.

17

Q And as soon as you had this information

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you did investigate thoroughly and diligently?

19

A Yes, that is correct.

20

THE CHAIRMAN: I think you said earlier

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you are drawing the distinction between whether

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or not this October 30th memo had a quid pro

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quo in it; in other words, that would indicate

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to you that this was a cabinet member trying to,

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you know, have a favor--

34 1 THE WITNESS: When somebody tries to sell influence
2 in state government for someone, that on its face
3 is a crime, barring that you got real problems.
4 I don't even know today where--well, I'm not sure
5 today what the law is with regard to someone calling
6 someone else up and saying, in your discretion
7 if you could do this, I would like you to do it
8 because he is a friend of mine. If that's, you
9 know, if that's a crime--

10 MR. BERTINI: You don't know the statute
11 that covers it? Neither do I.

12 THE WITNESS: That's exactly right.

13 And I have some problem with that. And in
14 my view the October 30th memo was very close
15 to exactly that. It's a difficult area and there
16 is a thin line and you make judgments on what you
17 have before you.

18 THE CHAIRMAN: This would have been in your
19 position, a judgment decision?

20 THE WITNESS: That's exactly right.

21 THE CHAIRMAN: If you had the opportunity
22 to have made the judgment?

23 THE WITNESS: That is right.

24 THE CHAIRMAN: One further thing before you
25 leave. Let me give you--under our Code of Fair

1 Procedure which I'm sure you are familiar with, I should
2 point out, that any witness who testifies at
3 any of our hearings shall have the right at the
4 conclusion of his examination to file a brief
5 sworn statement relative to his testimony for
6 incorporation in the record of this particular
7 investigatory proceeding.

8 I just point that out in case you'd like
9 to look at it.

10 THE WITNESS: Thank you, Mr. Chairman.

11 MR. SAPIENZA: Mr. Chairman, before we
12 break, this was an April 26, 1972 memorandum
13 made by Herbert Stern of his conference with
14 the Attorney General Kugler; Mr. Stern referred to
15 it repeatedly when he was here testifying and
16 we all had questions about it. But we overlooked
17 to mark it as an exhibit in this case.

18 MR. FRANCIS: Are you sure it wasn't marked?

19 MR. SAPIENZA: I thought we had marked it,
20 but these fine gentlemen tell me we haven't, that's
21 why I bring it up now.

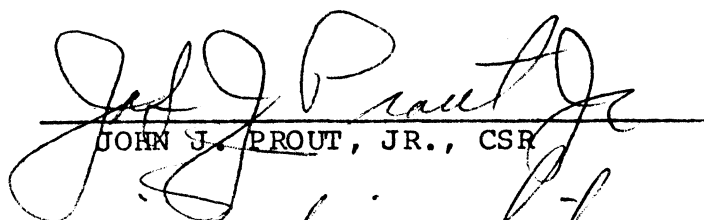
22 Mark this C-51.

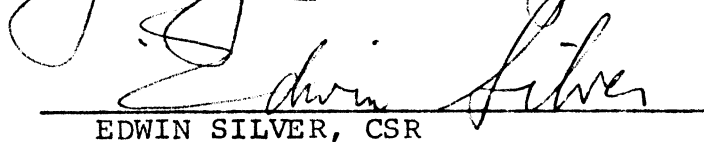
23 [Whereupon, memo dated April 26, 1972 was marked
24 C-51 in evidence.]

25 [Hearing adjourned to November 17, 1972.]

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, and ROBERT RIESE, Shorthand Reporter and Notary Public of the State of New Jersey, swear, 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


ROBERT RIESE
SHORTHAND REPORTER

NOVEMBER 16, 1972

