

REPORT FOR THE YEAR 1973

of the

COMMISSION OF INVESTIGATION

of the

STATE OF NEW JERSEY

to

THE GOVERNOR AND THE LEGISLATURE

of the

STATE OF NEW JERSEY

THE COMMISSION OF INVESTIGATION
OF THE STATE OF NEW JERSEY

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March, 1974

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

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

Respectfully submitted,

Joseph H. Rodriguez
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FOREWORD

This Annual Report marks the completion of the first five years of service rendered by the New Jersey State Commission of Investigation (S.C.I.).

The Commission believes the record as set forth in summary and in detail in this report demonstrates that the service has been productive and useful. One need glance only at the summaries of past investigations conducted by the Commission to appreciate the breadth and substance of the Commission's work to date. Throughout the years new, varied and significant investigations have been developed in the areas of organized crime, corruption, effective enforcement of the laws, and failings in and abuses of laws and governmental operations. In 1973 alone, the Commission's public hearings dwelled on subjects of the magnitude and variety of the Workmen's Compensation system, the distribution by the state of federal surplus property, public school purchasing practices, and narcotics distribution and related law enforcement programs.

Each investigation has been arduous. In each, the Commission has striven to maintain standards of fairness, dignity, due deliberation and vigor. A constant stress by the Commission has been and will be to carry out its statutory mandates to keep the public informed of the effectiveness of the enforcement of the laws of the state and to recommend improvements in laws and governmental procedures.

The Commission's self-expressed beliefs and policies are, of course, no recommendation. That can come only from the expressions of others. During 1973 the Commission received the most gratifying and challenging expression of support to date, namely the bipartisan enactment by the Legislature of the bill which extended the Commission for an additional five years.

Victor Riesel, the nationally syndicated columnist, took note of that extension by stating in his column that the S.C.I. is a "hard-hitting Commission which could well be emulated by other states." The Asbury Park Press commented in pertinent part as follows on the extension of the Commission:

The Commission has rendered important, perhaps vital service to the state. The series of investigations into the operation of underworld crime in New Jersey has extended into areas of organized crime and corruption . . .

Extension of the term of the Commission gives hope that the excellent work of the group will continue unabated with five years ahead of it, during which it can enter into more investigations with full confidence that there is enough time to bring other malefactors to justice.

The Commission considers these and other expressions of support as challenges for establishing an even broader and more significant record of accomplishment in the years ahead. With this Annual Report, the Commission dedicates itself to that goal.

ORIGIN AND SCOPE OF THE COMMISSION

Despite the Commission's work being generally known throughout the state, inquiries continue to be made about its origin and its jurisdiction. The Commission believes this important information should be conveniently available, and, accordingly, the pertinent facts are again summarized here.

The Commission was an outgrowth of extensive research and public hearings conducted in 1968 by the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey. That Committee, whose chairman was then Senator but now Congressman Edwin B. Forsythe, was under direction from the Legislature to find ways immediately to correct a serious and intensifying crime problem in New Jersey.

The Forsythe Committee found that a crisis in crime control existed and that the expanding activities of organized crime could be attributed to "failure to some considerable degree in the system itself, official corruption, or both."

Concerned over a lack of new and meaningful developments which would help alleviate the problem, the Forsythe Committee offered a series of sweeping recommendations for improving the administration of criminal justice. The two major priority recommendations were for a new State Criminal Justice unit in the executive branch of government and an independent State Commission of Investigation (S.C.I.), patterned after the high-level New York State Commission of Investigation then in its 10th year and nationally recognized for its probes into organized crime, official corruption and other matters.

The Committee envisioned the assignments of the proposed Criminal Justice unit and the proposed Commission of Investigation to be complementary in the fight against crime and corruption. The Criminal Justice unit was to be a relatively large organization with extensive manpower and authority to coordinate and press forward criminal investigations and prosecutions throughout the state.

The Commission of Investigation, like the New York Commission, was to be a relatively small but highly expert body which

would conduct fact-finding investigations, bring the facts to the public's attention, and make recommendations to the Governor and the Legislature for improvements in State laws and the operations of government.

The Forsythe Committee recommendations prompted subsequent legislative and executive action. New Jersey now has a Criminal Justice Division in the State Department of Law and Public Safety and an independent State Commission of Investigation which is structured as a Commission of the Legislature.

The bill creating the New Jersey Commission of Investigation was introduced April 29, 1968 in the Senate. Legislative approval of that measure was completed September 4, 1968. The bill created the Commission for an initial term beginning January 1, 1969 and ending December 31, 1974. It is cited as Public Law, 1968, Chapter 266 N.J.S.A. 52:9M-1 et seq.* As previously noted, the Legislature on November 12, 1973 completed enactment of a bill (S 2067 which is cited as Public Law 1973, Chapter 238) which renews the Commission for another term ending December 31, 1979.

To insure the integrity and impartiality of the Commission, no more than two of the four Commissioners may be of the same political party. Two Commissioners are appointed by the Governor and one each by the President of the Senate and the Speaker of the Assembly. It thus may be said the Commission by law is bipartisan and by concern and action is non-partisan.

The Commission's statute was drafted so as to insure that this agency would not be a "crime commission" alone but that it additionally would have broad civil jurisdiction to probe irregularities and shortcomings not involving criminal processes or implications. Indeed, while the Commission concentrated its initial efforts on organized crime problems, it has since then endeavored to widen the scope of its inquiries under its broad jurisdiction and intends to continue emphasis on breadth of scope in the years ahead.

The primary and paramount statutory responsibilities vested in the Commission are set forth in Section 2 of the statute. It provides:

2. The Commission shall have the duty and power to conduct investigations in connection with:

* The full text of the Commission's statute is included in the Appendices section of this annual report.

- (a) The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering.
- (b) The conduct of public officers and public employees, and of officers and employees of public corporations and authorities.
- (c) Any matter concerning the public peace, public safety and public justice.

The statute provides further that the Commission shall conduct investigations by direction of the Governor and by concurrent resolution of the Legislature. The Commission also shall conduct investigations of the affairs of any state department or agency at the request of the head of a department or agency.

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

One of the Commission's prime responsibilities when it uncovers irregularities, improprieties, misconduct, or corruption, is to bring the facts to the attention of the public. The objective is to insure corrective action. The importance of public exposure was put most succinctly by a New York Times news analysis article on the nature of Investigation Commissions:

Some people would put the whole business in the lap of a District Attorney (prosecutor), arguing that if he does not bring indictments, there is not much the people can do.

But this misses the primary purpose of the State Investigation Commission. It is not to probe outright criminal acts by those in public employment. That is the job of the regular investigation arms of the law.

Instead, the Commission has been charged by the Legislature to check on, and to expose, lapses in the faithful and effective performance of duty by public employees.

Is sheer non-criminality to be the only standard of behavior to which a public official is to be held? Or does the public have a right to know of laxity, inefficiency, incompetence, waste and other failures in the work for which it pays?

The exact format for a public action by the S.C.I. is subject in each instance to determination by the Commission which takes into consideration factors of complexity of subject matter and of conciseness, accuracy and thoroughness in presentation of the facts. In the course of its conduct, the Commission by law adheres to and is guided by the State Code of Fair Procedure * (Chapter 376, Laws of New Jersey, 1968, N.J.S. 52:13E-1 to 52:13E-10, printed in full on Pages 228 to 230 of this Annual Report). That code sets forth those protections which the Legislature in its wisdom and the judiciary by interpretation have provided for witnesses called at private and public hearings and for individuals mentioned in the Commission's public proceedings. Section Six of the Code states that any individual who feels adversely affected by testimony or other evidence presented in a public action by the Commission shall be afforded the opportunity to make a statement under oath relevant to the testimony or other evidence complained of. The statements, subject to determination of relevancy, are incorporated in the records of the Commission's public proceedings. The Commission in statements at the opening and close of its

* The Commission's adherence to the Code of Fair Procedure's provision for individuals feeling adversely affected by S.C.I. proceedings to make statements under oath on their own behalf was referred to by the United States Court of Appeals for the Third Circuit in *U.S. Ex Rel. Catena v. Elias*, 465 F 2d 765 (3rd Cir., 1972) in which that Court held that the Commission's proceedings comport with due process.

Both in *Catena* and in another decision by the New Jersey Supreme Court in *In Re Zicarelli*, 55 N.J. 249, 261 A 2d 129, 1970, the Commission was found to be an investigative and fact-finding arm of the Legislature, with no power to adjudicate or impose sanctions and penalties. Both courts held conclusively that a full panoply of judicial procedures, among which are strict evidentiary rules and right to cross examination, is not Constitutionally required by a legislative commission such as the S.C.I. Both courts relied in large part on the United States Supreme Court decision in *Hannah v. Larche*, 363, U.S. 420 80 S Ct. 1502 (1960).

The majority opinion in *Hannah*, written by then Chief Justice Earl Warren, not only found that a full panoply of judicial procedures was not required for purely investigative arms of legislative bodies but also warned that "the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings." Chief Justice Warren wrote further that a right of cross examination in particular at investigative proceedings "would make a shambles of the investigation and stifle the agency in its gathering of facts."

It may be stated, therefore, that the highest courts of state and nation have found consistently and conclusively that the Commission's statute and procedures comport with Constitutional requirements of due process, with the Code of Fair Procedure providing individuals an opportunity to make statements on their own behalf and defense.

public hearings and in its public reports issues reminders that the opportunity to make statements on one's own behalf is afforded by the Code.

The Commission believes the true test of the efficacy of its public actions are not any indictments which may result from referral of matters to other agencies but rather the corrective actions sparked by public exposure of deplorable conditions detrimental to the public interest. The Commission takes particular pride in actions which have resulted in improved governmental operations and laws and in more effective protection for the taxpaying public through safeguards in the handling of matters involving expenditures of public funds and maintenance of the public trust.

RESUME OF THE COMMISSION'S MAJOR INVESTIGATIONS FOR THE PERIOD JUNE, 1969 TO DECEMBER, 1973

This is a summary of the Commission's major investigative efforts completed and made public from June, 1969 when the Commission became staffed and operational to the end of the year 1973 covered by this fifth annual report. In describing them as major investigations, it is meant that they required considerable time and effort and, where appropriate, resulted in a public hearing or a public report or both.

Since the following investigations have already been discussed fully in separate reports or in previous annual reports or in the subsequent sections of this report, only a brief statement about each will be set forth.

1. ORGANIZED CRIME CONFRONTATIONS*

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

The Commission believes that once individuals have been granted witness immunity, a proper balance has been struck between protection of individual rights and the right of the public to know as much as possible about the underworld's operations. This philosophy and approach has met with the approval of the highest courts of the State and the United States.

During the past four years nine individuals, all identified by law enforcement authorities as either leaders or ranking members

* See State of New Jersey Commission of Investigation, Annual Reports for 1970, 1971 and 1972 and pages 33 to 35 of this report.

of organized crime families, have declined to testify responsively before the Commission relative to organized crime activities. In the instances of eight of those individuals, they continued to refuse to answer questions even when granted witness immunity. Each was judged by the State Superior Court to be in civil contempt and ordered by that Court to be incarcerated at the State Correctional Center at Yardville until such time as they purged the contempt by being responsive witnesses before the Commission. The ninth individual was incarcerated by the Court for civil contempt when he refused to be sworn as a witness at a private session of the Commission.

Civil contempt has been found by the courts to be a coercive measure designed to force an individual to do what the law requires of him. During 1973 the policy of coercion began to produce results. Three of the individuals incarcerated at Yardville notified the Superior Court they wished to testify responsively before the Commission, and each was freed on \$25,000 bail. One of the three subsequently changed his mind and elected to return to Yardville rather than testify. The other two have testified on several occasions at private sessions of the Commission and continue under subpoena.

2. RECOMMENDATIONS ON THE GARBAGE INDUSTRY*

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

An investigation was subsequently undertaken by the S.C.I. of certain practices and procedures in that industry. The investigation ended with two weeks of private hearings, concluding in September, 1969. A public report was issued in October of that year.

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

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

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

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

The subsequently enacted laws for state control of the solid waste industry encompassed the substance of these recommendations. Those laws have inhibited the vicious and costly cycle of price gouging by previously unregulated monopolies.

3. ORGANIZED CRIME INFLUENCE IN LONG BRANCH*

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

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

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

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

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

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

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

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

Also, during the Commission's probe of the Long Branch area, the Commission's special agents developed detailed fiscal information and records relating to corporations formed by Russo. Copies of that information were sent to the United States Attorney for New Jersey in Newark and were used in obtaining a 1971 federal indictment of Russo on a charge of failure to file corporate income tax returns. He pleaded guilty to that charge and received a three-year prison sentence.

4. THE MONMOUTH COUNTY PROSECUTOR'S OFFICE*

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

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

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

The Commission, after the hearings, made a series of recommendations to reform the county prosecutor system. A principal recommendation was for full-time prosecutors and assistants.

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

A state law, since enacted, has established full-time prosecutorial staffs in the more populous counties of New Jersey, thereby providing the citizenry with better administrated and more effective law enforcement. The Commission in subsequent pages of this Annual Report recommends to the Governor and the Legislature, on the basis of facts presented at the Commission's narcotics hearings during 1973, that a bill be enacted providing for full-time prosecutors in all counties, so that all will have the expertise and concentrated effort needed to operate effectively amid the complexities of modern law enforcement.

5. PRACTICES OF THE STATE DIVISION OF PURCHASE AND PROPERTY*

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

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

After the investigation, the state buyer was dismissed from his job. Records of the investigation were turned over to the State Attorney General's Office which obtained an indictment charging the buyer with misconduct in office. He pleaded guilty and was fined and placed on probation for three years.

This investigation met with immediate correctional steps by the State Division of Purchase and Property to change several procedures so as to prevent reoccurrences of similar incidents. The Commission commended officials of that Division for moving so rapidly to tighten procedures and to better protect the public purse.

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

6. THE BUILDING SERVICES AND MAINTENANCE INDUSTRY*

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

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

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

The hearings served to alert legitimate people and firms, directly and indirectly involved in the building maintenance industry, to the unscrupulous and unsavory elements in those areas. Also, the information developed in the probe was forwarded to the United States Congress' Select Committee on Commerce in response to that panel's request for aid in investigating the infiltration of organized crime into interstate commerce.

Counsel and special agents of the Commission testified at length before that Committee at public hearings in Washington in June, 1972. Senator Warren G. Magnuson, the committee chairman, later wrote the Commission that the testimony by S.C.I. personnel, plus the cooperation of the S.C.I. staff in assisting the Magnuson Committee's research, greatly enhanced the effectiveness of his Committee's hearings.

The Senator wrote the S.C.I.: "It is only through the assistance of organizations such as yours and the professionals associated with them that progress can be made in the effort to expose the cancer of organized crime in interstate and foreign commerce."

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

7. THE HUDSON COUNTY MOSQUITO EXTERMINATION COMMISSION*

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

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

One result of this investigation was abolition of the Hudson County Mosquito Extermination Commission which served no valid Governmental function and whose annual budget, paid for by the taxpayers of Hudson, was approaching the \$500,000 mark.

Additionally, records of the investigation were turned over to the Hudson County Prosecutor's Office which in 1971 obtained conspiracy and embezzlement indictments against the Mosquito Commission's executive director, his two sons, the Commission's secretary, the Commission's engineer, and a Commission foreman.

The executive director pleaded guilty to embezzlement and in June, 1972 was sentenced to two to four years in prison. His sons pleaded guilty to conspiracy and were fined \$1,000 each. The other three indictments were dismissed.

8. MISAPPROPRIATION OF FUNDS IN THE GOVERNMENT OF ATLANTIC COUNTY†

The Commission in 1970 was asked to make a thorough investigation of the misappropriation of at least \$130,196.00 in public funds that came to light with the suicide death of a purchasing agent in Atlantic County government. The Commission in De-

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

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

ember of that year issued a detailed public report which documented in sworn testimony a violation of public trust and a breakdown in the use of the powers of county government.

That purchasing agent, through a scheme involving fraudulent vouchers, endorsements and other maneuvers, diverted the money to his own use over a period of 13 years. The sworn testimony showed that for years prior to 1971, monthly departmental appropriation sheets of many departments contained irregularities traceable to the agent but that no highly placed county official ever tried to get a full explanation of those irregularities.

The testimony also disclosed that after county officials were first notified by the bank about the false check endorsement part of the agent's scheme, an inadequate and questionable investigation was conducted by some county officials and that for the better part of three months thereafter, nothing further was done to try to determine the true amount of public funds involved.

Copies of the Commission's report were sent to Freeholder Boards throughout the state for use as a guide in preventing any further instances of similar misappropriations of funds. As a result of fiscal irregularities uncovered in the probes not only of Atlantic County government but also of county agencies in Monmouth and Hudson counties, the Commission has recommended that licensed county and municipal auditors be mandated to exercise more responsibility for maintaining integrity in the fiscal affairs of government, with stress on review on an on-going basis of the internal controls of county and local governments.

9. DEVELOPMENT OF THE POINT BREEZE AREA OF JERSEY CITY*

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

The investigation showed that that particular development, undertaken by the Port Jersey Corporation, could offer a classic

* See State of New Jersey, Commission of Investigation, 1971 Annual Report, issued March, 1972.

and informative example of how a proper and needed development project could be frustrated and impeded by improper procedures.

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

The Commission concluded from this investigation that recommendations for possible corrective legislative actions were in order. Bills have been readied for introduction in the Legislature for carrying out the Commission's proposals for amending the statute on brokerage fees in sales of public lands to bar more effectively payment of those fees to purchasers of the lands, changing the urban blight and urban redevelopment plan laws, and studying ways of making more effective the existing tax abatement law.

During the course of this investigation the Commission heard testimony from an official of the Port Jersey Corporation that he had to make a payment of \$1,200 to a city official prior to issuance of a building permit for a warehouse in the waterfront development project. After the public hearings, the Hudson County Prosecutor's Office was given access to the Commission's files in this investigation. A Hudson Grand Jury subsequently returned a bribery-extortion indictment against the man who was building inspector for Jersey City at the time of the alleged payoff. Trial of this matter was still pending when this report went to press.

10. TACTICS AND STRATEGIES OF ORGANIZED CRIME*

Although not a sworn member of an organized crime family, Herbert Gross, a former Lakewood hotel operator and real estate man, became during 1965-70 a virtual part of the mob through involvement in numbers banks, shylock loan operations, cashing of stolen securities and other activities.

In order to free himself from a State Prison term for extortion, he did during 1971 cooperate fully with the Ocean County Prosecutor's Office in prosecutions that office was pursuing. That office made Gross available to this Commission in December, 1971.

Gross' testimony during two days of public hearings by the S.C.I. in February, 1972 pinpointed the character and the relentless and ruthless modes of operations of crime figures in the Ocean

* See State of New Jersey, Commission of Investigation, 1972 Annual Report, issued February, 1973.

County area and their ties back to underworld bosses in the northern part of the state and in New York City. His testimony was corroborated by a number of witnesses, including officials of the Ocean County Prosecutor's Office, the City-County Organized Crime Task Force for Essex County, and the Organized Crime Section of the New York City Police Department.

One of the highlights of Gross' testimony was his account of how a New York City crime family consigliere adjudicated a dispute involving two underworld groups at a meeting at a storefront type social club in New York City.

The hearings also showed how mobsters completely encircled and infiltrated a legitimate motel business in Lakewood. The former restaurant concessionaire at that motel testified that through shylock loans arranged by organized crime figures, he lost assets of about \$60,000 in six months and had to leave town a broken and penniless man.

Records of the S.C.I. on this investigation were made available to federal authorities who during 1973 obtained an extortion and conspiracy indictment against nine men identified as organized crime figures in New Jersey and New York, including the individual reputed to be acting as leader of the Genovese crime family. The indictment covered a dispute over a shylock loan which culminated with an underworld "sitdown" or "trial" in New York, all as first described by Gross in his 1972 testimony before the S.C.I. Trial of the nine individuals was still pending when this report went to press.

The hearings generated some of the most extensive news media coverage of any of the Commission's public actions and that helped to achieve a principal purpose of this particular investigation, namely to add to the public's knowledge and awareness of organized crime's strategies and tactics and to help maintain a high level of public fervor for a bold fight against crime by all arms of government.

Indeed, New Jersey law enforcement officials testified that the public hearings were a valuable contribution to the task of constantly demonstrating the need for vigilance against organized crime. The hearings showed further how organized crime follows population growth in areas undergoing rapid suburbanization. The hearings, therefore, served as a warning and example to other areas of the state now undergoing or about to undergo that type of growth.

11. PROPERTY PURCHASE PRACTICES OF THE STATE DIVISION OF PURCHASE AND PROPERTY*

The Commission during 1971 received information that the state may have overpaid for land for the site of the new Stockton State College in Galloway Township, Atlantic County. Subsequent field investigations and private hearings extending into 1972 showed that the state's purchase of a key 595-acre tract for \$924 an acre was indeed an excessively high price.

Substantially the same acreage had been sold only nine months earlier by two corporations headed by some Atlantic City businessmen to a New York City-based land purchasing group for \$476 per acre, which was about double the per acreage price of two comparable large-tract land sales in the Galloway area. The Commission in public report, completed during June, 1972, cited two critical flaws as leading to excessive overpayment for the land by the state:

Inadequate and misleading appraisals of land that had recently changed hands at a premium price at a time when the college's site search was common knowledge in Atlantic County.

Lack of expertise and safeguards in the procedures of the State Division of Purchase and Property to enable the Division to determine the faults in the appraisals and correct them.

The report stressed a number of recommendations to insure that future instances of faulty appraisals would not go undetected. The key recommendation was for post-appraisal review of all appraisals received by the Division of Purchase and Property. The review would be done by experts in the Right-of-Way Division of the State Transportation Department, with provision for the Purchase and Property Division to hire expert outside reviewers in cases of emergency. Another principal recommendation was that no appraisers be listed as eligible to do work for the Division until those appraisers have been pre-qualified as meeting rigorous standards.

The Commission's recommendations were implemented by executive orders in the Division. As a result, the taxpaying public is assured of proper protective procedures in the state's purchase of many millions of dollars of properties now and in the years ahead.

* See Report and Recommendations on Property Purchase Practices of the Division of Purchase and Property, a Report by the New Jersey State Commission of Investigation, issued June, 1972.

12. SECURITIES AND BANK FUNDS MANIPULATIONS IN MIDDLESEX COUNTY*

Investigative activities by the Commission during 1971 in Middlesex County directed the Commission's attention to Santo R. Santisi, then president of the Middlesex County Bank which he had founded. The resulting full-scale probe by the Commission's special agents and special agents/accountants concentrated on Santisi-controlled corporations, in particular the Otnas Holding Company, and ultimately broadened to investigation of certain transactions at the Middlesex County Bank.

The probe uncovered schemes by Santisi and his entourage involving the use of publicly invested funds in Otnas solely for their own personal gain, apparently illicit sale of stock publicly before required state registration, and misapplication by Santisi of hundreds of thousands of dollars of funds of the Middlesex County Bank. Those funds went in the form of loans to members of the Santisi entourage who either personally or through their corporations acted as conduits to pass on the funds for the benefit of Santisi and some of his controlled corporations.

The Commission as part of this investigation held a series of private hearings which extended into 1972. At the request of federal bank examiners, who were fearful about the effects of adverse publicity on the bank's financial position, the Commission did not as intended proceed to a public hearing state on this investigation in the Spring of 1972. Instead, the records of the investigation were made available to the examiners, and the Commission referred the matter to federal authorities for any prosecutorial action they might deem in order. Federal authorities later arrested Santisi on charges of misapplication of bank funds while he was chief executive officer of the Middlesex County Bank. Santisi has since pleaded guilty and was sentenced to three years in prison.

Since by the end of 1972 Santisi's arrest had made public some of his manipulations, the Commission found it in order to report publicly for the first time on this investigation in its 1972 Annual Report. That report stated that the S.C.I. investigation may fairly be said to have rendered public service by protecting the investing public from further exploitation by Santisi and his cohorts.

* See State of New Jersey, Commission of Investigation, 1972 Annual Report, issued February, 1973.

13. THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY*

In the Summer of 1972 the then Attorney General of the State of New Jersey, George F. Kugler Jr., requested that the Commission investigate relative to his office's handling of the matter which ultimately resulted in the State's indicting and obtaining a conspiracy conviction of Paul J. Sherwin, then Secretary of State, in connection with a campaign contribution made by a contractor who had bid on a state highway project. The Attorney General thereby invoked the provision of the S.C.I.'s statute which provides that the Commission shall investigate the affairs of a state agency at the request of the agency's head.

The investigation was a major undertaking which the Commission commenced to carry out in August, 1972. In the course of the full and thorough investigation which extended into early 1973, the Commission took from 22 witnesses sworn testimony consisting of more than 1,300 pages of transcripts and also introduced and marked 60 exhibits consisting of more than 300 pages.

The Commission in January, 1973 unanimously adopted a resolution to make a public report which included in their entirety the transcripts of testimony and the exhibits. This was pursuant to the Commission's desire and obligation to make full and complete public disclosure of the investigation to the people of the state and their elected and appointed officials.

The report, replete with all transcripts and exhibits, was forwarded to the Governor and all members of the Legislature and to all news media. In addition, copies of the report were supplied to individual citizens on request until the supply was exhausted. The more than 1,600 pages of the public report continue to be available for public scrutiny, with 12 copies on file at the State Library and additional copies on file at the Commission's office.

In issuing the report, the Commission expressed publicly its gratitude to John J. Francis Esq., the former Justice of the New Jersey Supreme Court, who served, without compensation, as Special Counsel to the Commission in the investigation and report preparation. The Commission's report concluded as follows:

* See Report on Investigation of the Office of the Attorney General of New Jersey, A Report by State of New Jersey, Commission of Investigation, issued January, 1973.

An overriding factor in the background of this unfortunate affair and in the many similar ones which are constantly appearing on the public scene is the political contribution. It is common knowledge that altruism is rarely one of its characteristics. In our judgment the political contribution, direct or indirect, by individuals, associations or corporations holding or aspiring to hold contracts for public work, supplies or services, and the acceptance of the contribution by appointed or elected officials or by political parties, is a malignant cancer rapidly metastasizing through the blood stream of our political life. Unless the giving and the receiving of such contributions are made criminal under a statute which provides a reasonable mechanism for discovering and preventing them, our governmental structure is headed for most unpleasant erosion.

14. THE WORKMEN'S COMPENSATION SYSTEM

The New Jersey system for compensating individuals for employment injuries had by early 1970's become the object of another period of intense scrutiny and analysis. Much of the concern appeared to be attributable both to revoicing of past criticisms and to statistical indications that the system had gone awry and strayed from the goals and concepts envisioned for it. One such indication was that only 41 cents of each dollar paid for Workmen's Compensation insurance coverage was going to the injured worker in the form of award dollars.

In addition to old arguments and statistical trends, there were persistent reports and allegations that the atmosphere of the system had reached a point where irregularities, abuses and even illegalities were being ignored or tolerated, all to the detriment of the goal that the system operate in the best interest of the injured worker.

The mounting hue and cry over the ills of the system prompted the State Commissioner of Labor and Industry to request an investigation, with that task eventually going to the S.C.I. The probe commenced with inquiries which by late 1972 demonstrated the need for a full investigation not only of the Workmen's Compensation system but also of certain related heat treatment abuses in the liability or negligence field. The facts amassed

during this comprehensive investigation of all levels of the system were presented at nine days of public hearings in the State Senate Chamber in Trenton in May-June, 1973.

The Commission just recently made its final report and recommendations to the Legislature and the Governor in a 338-page public document which covered the full range of the investigation. Briefly, the Commission notes in this summary section that the hearings and final report documented a number of abuses which included the costly practice of making unwarranted allegations in compensation claims, a pervasive atmosphere conducive to lavish gift-giving and entertaining and to questionable conduct by some judges, and the use by some law firms of favored treating doctors or "house doctors," an abuse which lends itself to over-treatment of patients and even outright bill padding. Three judges were given disciplinary suspensions because of facts brought out at the S.C.I. hearings, with one eventually being dismissed from office.

The final report of the S.C.I. presented in detailed statutory and/or regulatory language 13 priority proposals for immediate actions to halt abuses and 15 additional recommendations all designed to improve the atmosphere and the mode of operation of the Workmen's Compensation system.

15. THE DISTRIBUTION OF DONATED FEDERAL SURPLUS PROPERTY AND SCHOOL PURCHASING PROCEDURES

A citizens' complaint was received by the S.C.I. in January, 1973 via reference from a Federal law enforcement agency and prompted the Commission to make inquiry into the handling and distribution by the state of federal surplus property donated for use in schools and other institutions. The inquiry resulted in additional citizens' complaints being received and a consequent full investigation which extended to questionable procedures relative to the business affairs of the Passaic County Vocational and Technical High School in Wayne. The investigation was capped by five days of public hearings conducted at the Passaic County Courthouse in Paterson.

The S.C.I.'s final report and recommendations on this investigation are presented on subsequent pages of this Annual Report. Suffice it to state here that facts brought out at the hearings showed a woeful lack of attempts by the school's purchasing agent, who

also was its business manager, to obtain truly competitive prices for many goods purchased, the purchasing of substantial amounts of goods and services for the school through middlemen with one middleman's markup exceeding 100 per cent, and testimony that one middleman had made regular payoffs to the school's purchasing agent. Additional facts presented at the hearings showed the purchasing agent had converted the services of school employees to do jobs at his home and that the school had become a virtual dumping ground for millions of dollars of federal surplus property, much of which was trucked by school employees in school trucks and on school time to the barn on the private residence grounds of the then Director of the State's Surplus Property Agency.

The recommendations of the S.C.I. detailed later in this report offer corrective steps to achieve an independent, well-run state agency for distribution of federal surplus property, to direct Boards of Education throughout the state to establish procedures for in-depth overseeing of all school purchasing, and to mandate that there be compliance with the competitive bidding procedures.

16. THE DISRIBUTION OF NARCOTICS AND LAW ENFORCEMENT PROGRAMS

Narcotics and their relationship to law enforcement in New Jersey are a natural area of concern for the Commission since the huge profits to be made from illicit narcotics trafficking are an obvious lure to criminal elements. As a result of an increase in the S.C.I.'s intelligence gathering during 1973 relative to narcotics, the Commission obtained considerable information about certain criminal elements in Northern New Jersey. A subsequent investigation provided a wealth of detail about trafficking in heroin and cocaine, replete with high risks, high profits, violence and death.

The Commission in December, 1973 held three days of public hearings on this investigation. Those hearings, and the recommendations resulting from them, are presented in detail on subsequent pages of this Annual Report. Briefly, two witnesses, testifying under aliases and wearing veils to conceal their faces, told about their involvements in actual heroin and cocaine trafficking, their testimony including accounts of one killing and an at-

tempt by criminal figures to get one of the witnesses to kill another individual. Expert witnesses were called to detail the international and interstate flow of heroin and cocaine into New Jersey and the programs and problems of law enforcement agencies responsible for the fight against narcotics distribution.

As reviewed on subsequent pages of this report, this investigation had significant collateral results which led to the S.C.I. playing an important role in solving a gangland style killing and a stolen jewelry fencing operation.

The S.C.I.'s final recommendations flowing from this investigation include proposals for new legislation and expansion of existing avenues and modes of law enforcement, with emphasis on inter-county capabilities by law enforcement officers, larger amounts of "buy money" and "flash rolls" essential to further penetration of the upper levels of narcotics operations, full-time prosecutors and staffs for all counties to attain greater attention and expertise in the narcotics fight, and revision of narcotics laws, including sterner penalties for the non-addict pusher.

COLLATERAL RESULTS FROM INVESTIGATIONS

A HOMICIDE IS SOLVED

On April 17, 1972 the decomposed body of a man was found floating in the recently thawed waters of Tardosky's Pond in Greenfield Township, Lackawanna County, Pennsylvania. A Lackawanna County Coroner's report found that the individual had been shot four times in the head. The report estimated the body had been in the pond four to six months. Pennsylvania law enforcement authorities believed the pond froze over shortly after the body was dumped into it.

Initial attempts to identify the body were unsuccessful, and until 1973 the body remained listed as that of an unidentified white male. During the Summer of 1973 the S.C.I. was increasing its intelligence gathering in the narcotics area as part of the preliminary stages of its narcotics investigation. One result of that continuing effort was the reference of data to the S.C.I. by Essex County Prosecutor Joseph Lordi's Organized Crime Strike Force, John A. Matthews III, Project Director. That agency in a probe prompted by receipt of information from Carlo Boccia, regional head of the Federal Drug Enforcement Agency (DEA), came across matters which were beyond its jurisdiction and venue and which were appropriate for reference to the S.C.I. under its statutory mandates to cooperate with, aid and assist law enforcement officials within and outside the State of New Jersey.

Using the reference of the data as a starting point, S.C.I. Special Agents developed information which made it apparent that the body of the unidentified white male in Lackawanna County, Pennsylvania, was that of one Jed Feldman, who was 21 and last known to reside at 311 Mount Prospect Avenue, Newark, when in late 1970 he disappeared. Feldman was known to law enforcement authorities in Essex County as an individual engaged in alleged burglary ring activities in Northern New Jersey and who, immediately preceding his disappearance, was wrongly fingered as a police informant.

The investigation leading to positive identification of Feldman's body was carried out by S.C.I. Special Agents Cyril T. Jordan

and Anthony N. Rosamilia. After obtaining opinions on the nature of the dental work done on Feldman's teeth by interviewing some Newark dentists, the agents checked records of the Essex County Sheriff's Office and Probation Office. That check determined that Feldman had served time in a state reformatory for violation of parole.

The agents then examined the reformatory records and found that Feldman had had dental work done there by a Newark dentist regularly retained by the institution to treat inmates' teeth. The agents received confirmation from the doctor that it was he who had done the work on Feldman's teeth. Additional confirmation was received from officials of the New Brunswick firm who had made the plate which was involved in that dental work. The agents established a second source of identification of the body from a ring found on that body. The ring bore the initials J.F. Jed Feldman's father, Abraham, when shown the ring, identified it as originally his ring which he had given to his son after having the initials changed from A.F. to J.F.

After identification had been achieved, there followed two weeks of coordinated investigative activities by the Pennsylvania State Police and New Jersey law enforcement authorities. That investigative activity led to the obtaining by Paul Mazzone, District Attorney for Lackawanna County, of arrest warrants from a Pennsylvania magistrate charging three men individually with the murder of Feldman.

Two of the individuals were arrested in the early morning hours of October 25, 1973 as fugitives from the Pennsylvania warrants by Detectives of Prosecutor Lordi's Essex County Organized Crime Strike Force, accompanied by Special Agents of the S.C.I. and Pennsylvania State Troopers. They are Gerald Donnerstag, 46, of Belleville and Gerard Festa, 43, of Newark. The arrest of Festa took place as he attempted to flee from an attic window. Donnerstag and Festa were extradited to Pennsylvania where they have been indicted by a Lackawanna County Grand Jury on charges of murder. They were in the Lackawanna County Jail, having been unable to post \$100,000 bail each, pending trial when this report went to press.

The third individual, one Harold Ellis, 40, was arrested in Florida where he was living at the time and returned to Pennsylvania. He, too, is in the Lackawanna County Jail, having been

unable to raise \$100,000 bail. Ellis' whereabouts in Florida had been determined by Special Agents Jordan and Rosamilia by an investigation involving a canvass of Newark area schools, after the two agents heard talk on the streets in Newark that Ellis had a girlfriend and that they had run away together in 1972. The canvass led to the finding of documents at one school which showed that the girlfriend had children and that she and her family had moved to a certain town in Florida. The S.C.I. transmitted this information to Pennsylvania State Police who arranged for Ellis's arrest and return to Pennsylvania.

The Commission was gratified to receive favorable comment for the S.C.I.'s role in the matter of the Feldman homicide from both Prosecutor Lordi and John R. Bartels, Administrator of the United States Department of Justice's Drug Enforcement Administration. Those comments are printed in the section of this Annual Report entitled, "OTHER ACTIVITIES—Liaison with Law Enforcement Agencies."

JEWELRY FENCING SOLVED

In developing information relative to the Commission's narcotics inquiry, S.C.I. Special Agents also received data about an alleged burglary ring operating in Essex County. The data was turned over to Prosecutor Lordi's Essex County Organized Crime Strike Force, members of which after further investigation arrested on October 5, 1973 the two proprietors of a long-established Newark jewelry store and charged them with receiving stolen property. Strike Force Director Matthews said a Livingston man identified a gold necklace which he purchased at the store as having been stolen from his home and that the Bamberger's store identified some \$28,000 worth of rings and watches as part of the loot taken in a burglary earlier in October.

The two individuals arrested, Frank Martin, 54, and his son, Richard, 28, both of Edison and owners of Martin and Sons Jewelers, Newark, were subsequently indicted by an Essex County Grand Jury on charges of conspiracy and receiving stolen property. Trial was still pending when this Annual Report went to press.

SOME CRIMINAL REPERCUSSIONS

One of the highlights of the testimony of Herbert Gross, the real estate and hotel man who became a virtual part of the

underworld in Ocean County, at the Commission's 1972 public hearings on organized crime was his account of how a \$5,000 shylock loan he incurred became the subject of a gangland rivalry dispute, with Gross being severely beaten in Lakewood by John (Johnny D) DiGilio, the Hudson County-based mobster, and two of his musclemen-enforcers, John (Red) DeFazio and Jerry (Nap) Napolitano. The dispute, Gross testified, eventually led to his being taken to New York for an underworld "sit down" or "trial" held in the back room of a store in New York City. The "judge" was Frank (Funzi) Tieri, said to have assumed leadership of the Genovese crime family. Tieri, according to Gross, ruled that Gross should be under the control or "owned" by John DiGilio via DiGilio's underworld supervisor, Pasquale (Patty Mack) Macchiarole. During the "trial," DiGilio made threatening remarks to Gross.

Following the S.C.I.'s public hearings, the Commission's data developed in this organized crime investigation was made available to federal authorities. After further investigation by the Federal Organized Crime Strike Force, a Federal Grand Jury returned extortion—conspiracy indictments against Tieri and other underworld figures, including DiGilio, Anthony (Tumac) Acceturo, DeFazio, Napolitano, Vincent J. (Jimmy Sinatra) Craparotta, Macchiarole, and Onfrio (Novia) Milazzo, all mentioned by Gross in his testimony before the S.C.I. Trial of those individuals was still pending when this Annual Report went to press.

The S.C.I., during its 1971 probe of the development of the Point Breeze area of Jersey City as a containership port by the Port Jersey Corporation heard testimony alleging that an official of that corporation had to pay \$1,200 to a Jersey City official in connection with the issuance of a building permit for construction of a warehouse in the development project.

The Commission's data on this investigation was made available during 1972 to the Hudson County Prosecutor's Office. An indictment charging Timothy Grossi, who was a Jersey City Building Inspector at the time of the alleged payoff, with extortion and conspiracy was returned by a Hudson Grand Jury in 1973. Trial of this matter was still pending when this Annual Report went to press.

Additionally during 1973, Santo R. Santisi, the former President of the Middlesex County Bank, was, along with three other individuals, indicted by a Federal Grand Jury on charges involving

misapplication of hundreds of thousands of the bank's funds. Santisi during that same year pleaded guilty to the misapplication charge and is now serving a prison term in the Federal Penitentiary in Atlanta. His brother, John Santisi, also pleaded guilty and was given a suspended sentence, as was Arthur W. Brinkman, an attorney, after his plea of guilty. The other individual, Felix Cantore, who was a member of the bank's Board of Directors, has pleaded guilty and was sentenced to a year in prison.

The summary section of this report reviews briefly the Commission's initial discovery of the misapplications of the bank's funds in the S.C.I.'s 1971-72 investigation of Santo Santisi and his various schemes and how the Commission in 1972 referred data developed in this investigation to federal authorities.

During 1973, Joseph Seaman, the individual who was dismissed from his post as a state buyer due to the S.C.I.'s 1970 probe of certain State Purchase and Property Division practices, pleaded guilty to a State Grand Jury indictment for misconduct in office. He was fined and placed on probation for three years.

FORMER MADISON TOWNSHIP OFFICIALS ARE INDICTED

As part of its 1972 investigation of abuses in municipal planning and zoning practices in various parts of New Jersey, the Commission developed data as to alleged corrupt practices in connection with some development projects in Madison Township, Middlesex County.

The Commission had planned to present testimony relative to Madison Township at the public hearings which commenced in September, 1972. Those hearings, however, were suspended after a day and a half because of litigation which sought to bar the public appearance of three key witnesses who had testified in private before the S.C.I. as to irregularities in award of development permits in Hillsborough Township, as well as Madison Township.

The legal action by Angelo Cali, John Cali and Edward Leshowitz, all involved in business enterprises engaged in development operations in New Jersey, resulted in prolonged litigation which twice reached the New Jersey Supreme Court. The second occasion before that Court resulted in the Court's on July 5, 1973 reversing lower court findings and orders adverse to the Commission and ruling in favor of the Commission's stance that the three individuals, all of whom had been granted witness immunity by the

S.C.I., should be required to appear as witnesses at a public hearing in accord with obligations imposed on them by the Commission's statute.

During the prolonged litigation, however, the Commission was responsive to a request by the Middlesex County Prosecutor that his office be granted access to the Commission's records developed in this investigation relative to Madison Township. Immediately thereafter, the Prosecutor began a full Grand Jury investigation and requested that the S.C.I. take no further public action in this phase of its investigation of municipal planning and zoning abuses until the Prosecutor had completed his probe and the prosecution of any indictments which might result therefrom. The Commission has honored that request.

Just as this Annual Report was going to press, the Middlesex Grand Jury returned indictments involving charges of extortion, bribery, misconduct in office and perjury against three former Madison Township officials in connection with a series of alleged home development kickback schemes. The Middlesex County Prosecutor's Office in announcing the indictments stated that the Grand Jury began its investigation after receipt of information developed by the S.C.I. in its probe and that some more indictments were expected to be returned.

The three former township officials and a summary of the counts alleged against them in the indictments are: Donald Tierney, 45, now of Short Hills and a former Madison Township Councilman, charged with one count of giving a bribe, two counts of extortion, and one count of misconduct in office; Joseph Pandozzi, 43, of Madison Township, a former Chairman of the Township Planning Board, charged with one count of giving false information and taking of bribes and one count of offering a bribe; and Donald Borst, 57, of Madison Township, another former Chairman of the Township Planning Board, charged with three counts of false swearing to the Grand Jury that he had not distributed, paid or presented money to influence votes of public officials. All three individuals are free on \$5,000 bail each.

THREE JUDGES SUSPENDED

A portion of the Commission's public hearings in the Spring of 1973 on the investigation of the Workmen's Compensation system dealt with the conduct of several of the Judges of Compen-

sation who preside over Workmen's Compensation Courts. The testimony at the hearings prompted the State Commissioner of Labor and Industry to impose disciplinary suspensions on three Judges, one of whom was later dismissed from office.

Judge Alfred D'Auria was suspended for five weeks at the end of which he elected to retire. Testimony at the S.C.I. hearings showed that Judge D'Auria had consistently had his lunches paid for by attorneys and doctors who appeared before him regularly in Compensation Court, that he was the only Judge of Compensation being chauffeured by the shorthand reporter assigned to him by the reporting firm to which he regularly awarded the maximum fee permissible, that he had asked for and received a Christmas party paid for by a respondent insurance company whose attorneys appeared regularly before him, and that at his request, an attorney whose firm was regularly appearing before the Judge in compensation matters bought him a pair of shoes and once paid his Bar Association dues.

Judge Joseph Grzankowski was disciplined with a five-day suspension after testimony at the hearings showed he had sold a set of incomplete law books to the law firm of Rabb and Zeitler at a time when that firm had compensation matters before the Judge. The amount of the sale was \$2,339. The Commission received two professional appraisals one of which stated that the books at the time of the sale in 1971 were worth \$1,025 and another which stated that at the time of the sale, the highest conceivable value of the books would be \$1,750 but that that figure should be considered a high one at which negotiations might start. Judge Grzankowski in an appeal to the courts has questioned the power of the Commissioner of Labor and Industry to effect disciplinary suspensions of Judges. That appeal was still pending in the Appellate Division of State Superior Court when this Annual Report went to press.

Judge James J. Bonafield was under suspension ordered by the Commissioner for six months at the end of which time he was dismissed from office by order of the Governor. The Appellate Division of State Superior Court subsequently upheld the Governor's dismissal of Bonafield when he appealed that dismissal to that Court.

Through data developed principally by the S.C.I.'s reconstructing two bank accounts and finding papers in a number of legal actions and by the testimony of Bonafield's secretary and the

attorney whose name Bonafield used to mask a law practice, the public hearings demonstrated factually that after January 7, 1970, the day after which by law Judges of Compensation were prohibited from practicing law, a law practice was maintained at Bonafield's law office in Clifton, that he was directing and controlling that practice but using the name of the other attorney on stationery and legal papers, and that at least \$7,733 was paid to the Judge out of a bank account maintained in connection with the proceeds from that law practice.

In initiating dismissal proceedings against the Judge, then Governor William T. Cahill directed that Bonafield be given an administrative hearing at which he could cross examine witnesses and produce witnesses in his own behalf. After the conclusion of that public hearing, the hearing officer, John J. Francis Esq., a retired Justice of the New Jersey Supreme Court, found beyond a reasonable doubt that Bonafield had practiced law after the cut-off date and had continued to do so until July, 1972. Mr. Francis recommended that the Judge be dismissed from office in the interest of preserving the integrity of the courts.

After review and study of the matter, the Governor found that Bonafield had practiced law contrary to the statutory ban against so doing and ordered that Bonafield be dismissed from office.

A FEDERAL INQUIRY

The Commission's 1972 Annual Report reviewed in some detail how the United States Senate Committee on Commerce, headed by Senator Warren G. Magnuson of the State of Washington, held a significant round of public hearings in Washington, D.C., that year based largely on the S.C.I.'s investigation of the building maintenance industry in New Jersey. Four members of the S.C.I. staff testified at those hearings that the S.C.I. probe showed, among other things, the existence of the New Jersey Contractors Management Association as a competition-thwarting organization oriented toward insuring that member building maintenance companies held sway in their respective territories, with their customers guaranteed. A call was sounded at the hearings in Washington for a federal probe of possible anti-trust violations. During 1973 representatives of the United States Department of Justice's Anti-Trust Division came to the S.C.I. offices in Trenton where records of the S.C.I.'s investigation were made available, along with briefings by S.C.I. staff members.

CONTINUED CONFRONTATION

As previously noted in the summary section of this report, the Commission has since 1969 pursued a policy of continued confrontation of individuals identified by law enforcement authorities as ranking members of organized crime families by subpoenaing them to testify before the Commission. The policy is in keeping with the Commission's statutory mandate to investigate with particular reference to organized crime and is in furtherance of the goal shared by all agencies dedicated to the effective enforcement of the laws, namely that the intelligence available on organized crime activities in New Jersey be as comprehensive, authentic and timely as possible. None is in a better position to impart first-hand data about the underworld's operations than those who are identified as being involved in organized crime.

Since 1969, nine individuals said by law enforcement authorities to be either leaders and/or ranking members of organized crime have elected to go to jail rather than testify responsively before the Commission as the law requires of them. In each case, they have been judged by the State Superior Court to be in civil contempt of the Commission and have, by order of that Court, been confined to the State Correctional Center in Yardville until such time as they purge the contempt by becoming responsive witnesses before the Commission.

Civil contempt has been viewed by the courts as a coercive measure* designed to force an individual to do his duty under the law, as opposed to criminal contempt where a man is punished with a sentence to vindicate the court. During 1973 three of the individuals incarcerated at Yardville for civil contempt promised in State Superior Court to be responsive witnesses. The Court immediately in each case freed the individuals on their posting of \$25,000 bail each. One of the three, Ralph (Blackie) Napoli, changed his mind and refused to testify. He was recommitted by the Court to Yardville.

*Louis Anthony (Bobby) Manna, one of the nine individuals incarcerated in Yardville for civil contempt of the S.C.I., did during 1972 carry an appeal to the Appellate Division of State Superior Court, contending among other things that the indeterminate nature of civil contempt incarcerations constitutes cruel and unusual punishment as prohibited by the Eighth Amendment of the United States Constitution. (Continued on page 34)

The other two individuals, Nicholas (Nickie) Russo and Nicodemo (Little Nickie) Scarfo have appeared before the Commission in private sessions. They have been continued under subpoena while the Commission proceeds to develop this phase of this organized crime investigation.

Four of the nine who have been incarcerated at Yardville for civil contempt have been listed by law enforcement authorities as organized crime chieftans. They are Gerardo (Jerry) Catena, Joseph (Bayonne Joe) Zicarelli who continues to serve a state prison sentence for a bribery-conspiracy conviction, and Angelo Bruno and Anthony (Little Pussy) Russo, both of whom during 1973 were given temporary releases by the Superior Court for treatment of serious medical ailments but who are subject to return to Yardville when medical requirements so permit.

Besides Catena and Napoli, those individuals in Yardville for civil contempt at the time this Annual Report went to press were John (Johnny Coca Cola) Lardiere and Louis Anthony (Bobby) Manna.

A CHILLING EFFECT

A derivative result of the Commission's policy of continued confrontation of reputed organized crime figures has been to cause some individuals to remain outside New Jersey's borders to avoid being served a subpoena by the Commission.

The Commission argued otherwise, and the Court in 1973 found in the Commission's argument a totally adequate and concise response in denying Manna's appeal and affirming the lower court ruling. The Appellate Court wrote in pertinent part:

The indeterminate feature of the contempt procedure does not constitute cruel and unusual punishment. Civil contempt is employed as a coercive sanction to compel the witness to do what the law made it his duty to do. *Penfield Co. v. S.E.C.*, 330 U.S. 585, 590 (1947). Civil contempt is designed to provide a litigant with a remedy against an opponent's refusal to do what he ought to do. Criminal contempt has as its purpose the vindication of the authority of the court through punishment of the wrongdoer. *United States v. Consolidated Productions, Inc.*, 326 F. Supp. 603, 606 (C.D. Cal. 1971). This distinction according to purpose indicates that a party incarcerated under a civil contempt order is not enduring a sanction which the Eighth Amendment intended to limit. The principle has aptly been stated that such a man "carries the keys to his prison" in his own pocket. *Staley v. South Jersey Realty Co.*, 90 A. 1042, 83 N.J. Eq. 300 (1914). He need not be incarcerated at all.

In *Wyman v. Uphaus*, 100 N.H. 436, 130 A. 2d 278 (Sup. Ct. 1957), the New Hampshire Supreme Court considered a similar argument and rejected it. That result was affirmed by the United States Supreme Court *sub nom Uphaus v. Wyman*, 360 U.S. 72, 81 (1959).

The Commission's intelligence sources indicate that among those avoiding appearances in New Jersey are Anthony (Tumac) Acceturo of Livingston, now residing in Florida; Antonio (Tony Bananas) Caponigro of Short Hills, reported to spend most of his time in Florida; John (Johnny D) DiGilio of Paramus, now residing in Brooklyn; Carl (Pappy) Ippolito of Trenton, reported to have moved first to the Morrisville-Bristol area of Pennsylvania and subsequently to Florida because of actions by Pennsylvania authorities; Antonio (Zapep) Piscopo of the Seaside area, reported to be living in Florida, and John (Johnny Keyes) Simone of Lawrence Township, now living in Florida. Additional underworld figures now avoiding appearances in New Jersey due to S.C.I. activity are Joseph Paterno and Frank (The Bear) Basto, both of Newark, and Joseph (Demus) Covello of Belleville.

CITIZENRY COMPLAINTS

(The Commission's Role as Ombudsman)

Each year the Commission receives a hundred or more complaints from individuals throughout the State. The citizenry quite naturally views a bi-partisan agency with broad statutory powers as a sort of ombudsman. While citizenry complaints have been and continue to be a source of investigative leads, the Commission trusts the public will realize that mere allegation, suspicion and rumor, unsupported by any substantial and meaningful facts, cannot form the basis for an investigation. The Commission additionally would remind that by both statute and policy, the Commission cannot and will not referee the many political disputes attendant on elective politics.

The complaints received each year by the S.C.I. range from allegations of criminal offenses to requests for help in personal matters. Each complaint is evaluated by the Commission's staff, and, at a minimum, a letter of reply is sent to all but those who insist on anonymity. Often the Commission is helpful in directing a citizen's attention to other remedies when the complaint obviously does not fall within the Commission's powers or duties.

A citizen making a complaint alleging a serious conflict of interest or wrongdoing should first consider what factual basis he can present to the Commission, since a complaint of this nature, if seemingly sincere and reliable, usually requires the staff evaluate the complaint by preliminary inquiry.

One can readily perceive that with the volume of complaints received, many valuable man-hours of the time of Commission's staff can be consumed by such inquiries which often result only in the realization that the alleged abuses are insignificant or non-existent. Because of the size of the Commission's staff in relation to the requirements put on it by major investigations, qualitative decisions must be made on the basis of credible evidence, or its lack, whether inquiry will be made and whether an inquiry will be extended to a full investigative stage which requires interviews and examinations of documents, analysis of fiscal books and records and, if the facts justify, the taking of testimony at private hearings.

This section of this Annual Report presents examples of some of the citizen complaints received by the S.C.I. during the past year and the Commission's response to them.

As noted in the summary part of this Annual Report, it was a complaint by citizens, directed to the S.C.I. by a Federal law enforcement agency, which prompted the Commission to make inquiries about the state program for distribution of federal surplus properties to schools. The complainants were able to direct the Commission's attention to substantial facts relative to the mishandling of some of the surplus properties. The Commission's initial inquiries prompted further citizens complaints which, because of credible evidence uncovered, led to the S.C.I.'s full fledged investigation of the business affairs and purchasing practices of a large vocational high school in Northern New Jersey. The subsequent pages of this Annual Report review how that investigation led to five days of public hearings at which numerous irregularities and abuses were aired and a factual basis established for making recommendations for corrective actions.

In another citizen complaint matter, the complainant brought with him volumes of data which he had compiled and which he believed indicated illegalities in the zoning decisions by a Central New Jersey community's government. Examination of the volumes, however, showed the data was ambiguous and subject to several interpretations and could not be substantially corroborated. The complainant was informed of the insuperable corroboration and credibility-of-evidence problems, and the inquiry was brought to a close.

A third example of a citizen complaint received during 1973 dealt with complainant's belief that the State had grossly overpaid for the purchase of property for highway purposes in a Northern New Jersey shore area community. The Commission's evaluation inquiry found that the price paid was reasonable, since laws relative to condemnation made it necessary for that purchase to include the value of costly machinery on the desired property. The Commission explained the S.C.I. analysis of the transaction as being valid to the complainant, and the matter was marked as closed.

OTHER ACTIVITIES

LIAISON WITH LAW ENFORCEMENT AGENCIES

The Commission has since its inception emphasized the maintenance of close liaison and cooperation with law enforcement agencies at all levels of government. Indeed, it may be said that emphasis of this policy is one of the principal keys to the accomplishments of the Commission to date.

The web of criminal element activity is so complex and in such a constant state of flux that no investigative agency can afford to be an island unto itself. Through mutual interchanges of information between this Commission and the Federal Bureau of Investigation, the Federal Drug Enforcement Agency, the Federal Organized Crime Strike Force, the United States Attorney's Office, the State Attorney General's Office, the State Police, the County Prosecutors' offices, and local police departments, the full weight of data gathered and filed by all agencies can be brought to bear in the constant effort to keep pressure on and beat back criminal elements, organized and otherwise.

Hardly a week goes by without representatives of one or more law enforcement agencies visiting the Commission's offices to examine records and discuss matters with the Commission's staff and without members of the S.C.I. staff doing likewise at the offices of the various agencies.

During 1973, as reviewed in previous pages of this Annual Report, the policy of close liaison and cooperation resulted in the S.C.I.'s playing an important role in solving a gangland style homicide. Cooperative investigative actions by the Federal Drug Enforcement Agency (DEA), the Essex County Prosecutor and his Organized Crime Strike Force, the Pennsylvania State Police and the District Attorney for Lackawanna County, Pennsylvania, resulted ultimately in the arrests of three individuals now charged with murder in connection with that homicide. Prosecutor Joseph Lordi of Essex County commented at the time of the arrests of two of the three individuals in his county:

This is a graphic demonstration of what can be done by law enforcement through cooperation based

on mutual respect and confidence, and it certainly is another true validation of the merits of the State Commission of Investigation as an aid to law enforcement.

After the arrests in Essex of the two individuals, the Commission expressed in a letter its appreciation of the cooperation afforded by the Federal Drug Enforcement Agency and informed the DEA of the results of the cooperative investigatory effort. In response, the Administrator of that agency, John R. Bartels Jr., replied in a letter to the Commission:

It was gratifying to learn that the information developed by members of the Narcotics Task Force in Newark, New Jersey, and forwarded to your office brought about the arrests of Gerard Festa and Gerald Donnerstag in connection with the gangland homicide of one Jed Feldman.

I would like to thank you for the excellent cooperation that you and your staff have rendered the DEA Task Force Program.

The files compiled by this Commission in its three and a half years of full operation have become most comprehensive and extensive. The Commission's special agents have been assigned on a statewide, continuing basis to obtain and analyze large amounts of information that now are on file, as well as to determine current trends and directions of organized crime. The investigative staff carries out that mission through surveillance, cultivation of informants, and intelligence gathering. The data is compiled and returned to the Commission's offices where it is evaluated and placed in a current file. Investigations are initiated on the basis of the evaluated data.

Since organized crime is interstate as well as intrastate in nature, the Commission has continued to stress active membership in the nationwide Law Enforcement Intelligence Unit (L.E.I.U.). That network consists of 204 state and local police departments and other agencies throughout the United States. The organization's aim is to keep abreast of the whereabouts and activities of suspected criminal individuals through confidential investigation, surveillance and maintenance of liaison with official and other sources of information.

The Commission during 1973 responded to 47 requests for information from L.E.I.U. affiliated agencies in other states. The Commission during the year in 30 instances asked for and received information from agencies in other states on the background and whereabouts of suspected organized crime figures and operations with possible connections to underworld activities in New Jersey.

COOPERATION WITH THE LEGISLATURE

By consistent and definitive court interpretation of statute, the Commission has been found to be primarily a legislative agency and it is structured as a Commission of the Legislature. Quite naturally, therefore, the Commission has always considered cooperation with the Legislature to be a primary function of this agency.

The Commission takes pride in the fact that the Joint Legislative Committee on Ethical Standards has now come to view the S.C.I. as its continuing fact-finding arm in any substantial dispute that may arise from allegations of violations by legislators of the State Conflict of Interest Statute. The Committee, on the basis of the facts found by the Commission, would render judgment as to those allegations.

So far, the Committee has not had cause to refer any matters for fact-finding. The Commission's presence as the possible fact-finder, however, continues to make it unnecessary to expend state funds to support any retention by the Committee of expert legal and investigative personnel to cope with any fact-finding missions which might arise.

During 1973 the Commission was gratified to receive a letter of appreciation from the then Chairman of the Legislature's Local Government Ethics Study Commission for the S.C.I.'s presentation, made by Counsel B. Dennis O'Connor, of its proposals for an effective statewide code of ethics to apply to county and municipal governments. The Commission in the subsequent section of this Annual Report reasserts its recommendations in this area. Shortly after Mr. O'Connor's presentation before the Committee, the Passaic-Clifton Herald News commented as follows in pertinent part:

B. Dennis O'Connor, counsel for the crime commission and its spokesman at a legislative hearing on

conflicts of interest and ethics in public office, outlined the commission's suggestions. These suggestions are the result of investigations which the crime commission has made into charges of crime and corruption among public officials.

The commission says that John Doe, who is elected to the council in his community, has a right to know exactly what he cannot do because it would be unethical, even though not criminal. There is no guide for John Doe now except his conscience. And everyone knows the conscience lords it over some people but has no influence at all on others.

John Doe cannot get help from a lawyer unless his question is about the legality of what he has in mind to do. The lawyer can tell him that it is legal or illegal and that's it. On ethics the views of lawyers vary as widely as those of ordinary citizens.

Therefore, says the crime commission, the legislature should do two things. First, it should provide a code of ethics for the information of public officials, the veterans as well as newcomers. Second, there should be an official agency to keep an eye on public officials to catch lapses from ethical conduct. An official in doubt ought also be able to turn to this agency when he wants a definite answer to a question about the ethics of an act. The agency should be able to say it is ethical or unethical.

The suggestions are excellent. The fellow who uses his official position to line his pockets may not be committing a crime, but no amount of high-flown argument will convince the public that what he is doing is right and has to be tolerated.

PRIVATE HEARINGS

Private hearings held by the Commission play a vital role in the S.C.I.'s investigative process. They are used to follow-up and explore fully data uncovered by the inquiries and analyses made by the Commission's staff. Witnesses are examined under oath and pertinent documents are introduced and marked as exhibits.

The record established at private hearings, where the Commission is made totally aware of what witnesses will say under oath, forms the basis for determination by the Commission whether an investigation should proceed to a public action stage or whether the available factual picture justifies only private communications and referral of matters to other agencies.

Furthermore, after private testimony is initially taken, the Commission frequently expends considerable additional investigative effort in seeking corroborative and supportive data as part of the painstaking deliberative and evaluative approach followed by the Commission in reaching a decision on whether to take a public action. In this manner, the Commission may carefully avoid unnecessary use of names in public and the cluttering of the public record with testimony not meaningfully relevant to a public action.

During 1973 the Commission held 41 private hearing sessions at which 88 witnesses were examined. To further the progress of investigations during 1973, the Commission issued 154 subpoenas for the production of records and for appearances of witnesses before the Commission.

PUBLIC AWARENESS

A major responsibility of the Commission is to keep the public continually informed. Indeed, N.J.S.A. 52:9M-11 specifically directs that the Commission shall keep the public informed as to the problems of organized crime, problems of criminal law enforcement in the state and other activities of the Commission. It is quite obvious that the Legislature in creating this Commission desired that it help to maintain an informed and aroused public supportive of crime fighting efforts and to deter public apathy and lethargy which can lead to the ever-present dangers of organized crime being ignored.

The Commission's basic forms of communications with the public are its public reports and public hearings. Those reports and hearings receive extensive coverage in the news media. Copies of the Commission's reports also are sent to citizens requesting information about the Commission. As part of the Commission's continuing effort to keep the public informed, members of the Commission are available to speak before appropriate groups as the Commission's schedule permits.

LEGISLATIVE RECOMMENDATIONS

The Commission respectfully requests the Governor and the Legislature take under advisement the recommendations, advanced below, on proposals for new legislation.

NARCOTICS LAWS

The Commission's final recommendations based on its 1973 investigation and public hearings on illicit narcotics distribution and its relation to laws and law enforcement programs are presented in detail in the "Final Recommendations" Section of the complete review of that probe in subsequent pages of this Annual Report. The final proposals for legislative action are, therefore, presented only in brief summary form below. They recommend actions which would:

- Amend the State Controlled Dangerous Substances Act (N.J.S.A. 2:21 et seq.) to provide for imposition of a mandatory minimum prison term of 10 years, with no possibility of parole, and a maximum of life in prison for a non-addict seller of hard core drugs (enumerated in Schedules One and Two of the Controlled Dangerous Substances Act) who can be shown to be the head of a narcotics trafficking operation. This same amendment would increase the maximum fine for this type of offense to \$100,000. Existing penalties have no mandatory minimum sentence requirement and provide for maximum sentences of 12 years in prison and a \$25,000 fine. The Commission's proposal in this area is in accord with the S.C.I.'s belief that harsher sentences for non-addict sellers of narcotics are in order but that the goal of effective law enforcement would best be reached by continuing to give the courts some leeway in imposing sentence.
- Enactment of measures designed to increase, through monies seized in arrests, the amount of "buy money" and "flash rolls" for use by law enforcement agencies in further penetrating narcotics operations,

particularly the upper levels of illicit distribution operations. The measures would

- a) Deem moneys seized in narcotics arrests to be contraband and make it unlawful to return those monies to persons claiming to own same, except as provided for in cases ending in acquittals.
 - b) Mandate that County Treasurers in all counties where there is a County Narcotics Strike Force or Squad institute and maintain Special Narcotics Funds to consist of all money seized and lawfully retained in narcotics arrests.
 - c) Establish that there shall be no minimum amount required to be in the various Special Funds but that there shall be a maximum amount limit for those funds, ranging from \$50,000 for the most populous counties to \$5,000 for the least populous counties.
 - d) Provide procedures for the proper supervision and control of monies in the Special Funds and for due process in the securing orders for forfeiture of seized monies.
- Require physicians and others authorized to write prescriptions to apply in person, or through their authorized agents with identification credentials to be shown to printers, when ordering prescription pads.
 - Make it a disorderly persons offense to sell, offer for sale or dispense or distribute any substance which is portrayed by the seller or distributor to be a controlled dangerous substance.
 - Allow agents in the employ of a county's Narcotics Strike Force to follow investigations across county lines in the interest of furthering more successful enforcement of narcotics laws.
 - Provide for free, mutual interchanges of agents among various Narcotics Strike Forces so that agents with particular expertise and ethnic origin will be readily available for effective infiltration of various groups engaged in narcotics trafficking.

- Establishment of full time Prosecutors and staffs in all counties in the state in realization of the increasing importance of those offices as viable arms of modern law enforcement programs.

THE WORKMEN'S COMPENSATION SYSTEM

Just recently the Commission, in a 338-page public report to the Governor and the Legislature, made its final review and recommendations relative to the S.C.I.'s extensive 1972-73 investigation of the Workmen's Compensation System and certain abusive practices found common to both the compensation field and the negligence or liability field. The Final Recommendations section of that report proposed in detail, including suggested statutory and regulatory language, the enactment of 13 bills and two joint resolutions which, together with the taking of additional proposed administrative actions, would in the S.C.I.'s opinion provide a sound framework for elimination of abuses and progress toward an improved system.

Accordingly, this Annual Report will present in brief, summary form only those legislative enactment proposals for which the S.C.I. has requested priority action as "Immediate Corrective Measures" needed to halt further abuses and illegalities as uncovered in the investigation. Those proposals ask for enactment of bills which would:

- Provide for significant strengthening of the powers of the Director of the State Division of Workmen's Compensation with emphasis on specific powers, including initiation of removal proceedings against Judges of Compensation, to achieve the goal of an expeditious, well administered and excellence-oriented Workmen's Compensation system. The measure would provide further for a seven-year term for Director as a way of insulating the Workmen's Compensation Division from the impact of political changes and of encouraging development of the Directorship as a high level, career type post.
- Increase the salaries of the Judges of Compensation and the Division Director by tying the salary of a Compensation Judge to that of a County District Court Judge (\$34,000) and the salary of the Director

to that of a Superior Court Judge (\$37,000). Higher salaries are needed to improve the caliber of the Compensation Judiciary by attracting the best possibly qualified individuals to that Bench. The S.C.I. observes, however, that any raising of the Judges' salaries should be accompanied, as recommended by the S.C.I., by a Bar Association screening process of potential nominees to the Compensation Judiciary.

- Make it a misdemeanor for a doctor to knowingly submit a false medical report intended for use in any legal or administrative proceeding. This measure is needed as an additional tool to counter knowingly misleading or fraudulent bill padding practices as uncovered in the S.C.I.'s investigation.

- Require, under possible penalty of being a disorderly person, that doctors render true, accurate and itemized copies of bills to patients for treatment rendered in instances where the bills will form the basis of a legal claim. A further requirement of this bill is that the doctor by his signature attest to the actuality and accuracy of treatment rendered, a provision which would protect a patient in event of a criminal prosecution of a doctor who had treated that patient.

- Require petitioners to move to obtain a Workmen's Compensation Court order allowing medical treatments not authorized by the respondent employer or his insurance company. In a companion step, the S.C.I. has written the Director of the Workmen's Compensation Division, urging him to issue appropriate directives to insure that the motions are heard promptly.

- Ban outright the practice whereby some law firms pay doctors only a part of their fees if settlements in court were "low," thereby effecting a form of contingency fee system which tends to breed abuses of high fees, overtreatment and false reports of treatment.

- Impose a 25 per cent penalty payment on employers or their insurance companies who unreasonably or negligently delay in initiating payments of temporary

disability benefits to injured workers. The S.C.I. believes the 25 per cent level will be effective in spurring prompt payments of these benefits which are designed to partially replace wages lost due to job connected injuries.

- Require insurance carriers doing business in New Jersey to report all remittances of \$600 or more to physicians in a calendar year to the Secretary of State. This is the same type of information now required to be reported on the Federal Internal Revenue Service Form 1099. The S.C.I. found widespread non compliance with the issuance of Form 1099 by insurance companies, a failure which tends to encourage some physicians to divert income through creation of cash hoards which can be used covertly for improper purposes.
- Make it a duty for the Director of the Workmen's Compensation Division to approve appropriate booklets explaining to employees their opportunities and rights under the Workmen's Compensation statute and requiring employers to provide the booklets to all employees. The proposed bill is designed to encourage the approval and use of one standard booklet but leaves room for more than one such publication.
- Make it a misdemeanor for doctors to knowingly or negligently employ an x-ray technician who does not have a valid certificate to engage in the activities of that type of technician. Testimony at the public hearings found that instances of use of unlicensed personnel to administer x-rays in some doctors' offices posed a threat to personal health in the state.
- Outlaw the practice of two-tier billing by doctors whereby a differential of as much as 200 per cent higher is charged for treatments in Workmen's Compensation and negligence actions than the doctor's normal charges.
- Establish a five-member special Commission to study the number and types of doctors needed by the state to expand fully the effectiveness and scope of the informal process and the rates at which those doctors should be compensated. The testimony of

expert witnesses at the public hearings delineated the facts that the state-paid doctors who examine individuals and evaluate their injuries in the informal process are much too few in number and underpaid. The result has been a tendency to bypass the informal process, since hasty, unthorough examinations and evaluations have given that process the adverse reputation of not awarding the injured worker his due.

- Require C.P.A. audits of insurance companies in lieu of state examinations and rate-making examinations by C.P.A.'s of the Compensation Rating and Inspection Bureau, the insurance rate-setting body, at least once every two years.

- Permit the Governor to appoint to the Board of Governors of the Compensation Rating and Inspection Bureau three voting members who are not associated with the insurance business and who will represent the public interest on that board.

- Establish a nine-member study commission, specifically authorized to employ expert actuarial staff, to study in depth the following Workmen's Compensation, insurance rate-making areas brought into question at the S.C.I.'s public hearings—1) The possibility of an Open Rating system; 2) The inclusion of investment income in the rate-making structure, and 3) The possible use of actual paid losses and costs, properly adjusted for trends and/or legislative changes in the rate-making process.

LOCAL CONFLICTS OF INTEREST STATUTE

The question of what will constitute fair and effective action for establishing a code of ethics to govern the conduct of public officials at the county and municipal government levels has quite rightly been the subject of lengthy study in the Legislature. The Commission takes note of a number of recent calls to action in this area and expresses the hope that needed legislation of this type will soon be enacted in the near future. In that spirit and hope, the Commission restates its recommendations, made initially in its Annual Report for 1972, which were as follows:

• Enactment of a statute which would create a Uniform Code of Ethics for county and municipal officials, together with an agency for enforcing such a code. The Commission suggests further that any statute along those lines meet the following standards:

a. There be sufficient specificity in the Uniform Code of Ethics to clearly define to all who hold public office exactly what is expected of them.

b. That the Uniform Code of Ethics be applicable to all municipal and county employees throughout the state.

c. There be created a non-partisan agency to administer the code for the sake of uniformity.

d. The Agency be given sufficient power to initiate, hear, receive and review allegations that public officials are in violation of the Uniform Code.

e. The Agency be given sufficient power to recommend to the appointing authority suspension or removal of persons from public office and imposition of fines upon those found to be in violation of the Uniform Code of Ethics.

f. That the Agency be empowered to render advisory opinions to those public employees and officials throughout the state who are in doubt as to their status.

The Commission, from experiences with investigations at the county and local levels, finds a confusing vacuum of ethical guidelines for official conduct, a vacuum amounting to something much less than the public deserves and expects and which leaves the well intentioned public official without any firm guidelines for his conduct. Existing statute is woefully lacking as to specific guidelines.

VEHICLE FORFEITURE STATUTE

The Commission requests again enactment of a bill, which has been reintroduced in the 1974 Legislature, making subject to automatic forfeiture to the state of any automobile, boat or airplane

used or intended for use in the perpetration of any misdemeanor or high misdemeanor or to transport any person perpetrating such an offense. Forfeited vehicles would become property of the state and any agency of a county or a municipality could, on demonstrating appropriate need, apply for and obtain the use of those vehicles.

The Commission notes that expensive vehicles frequently are used by criminals as a cover for weapons, contraband and the fruits of the crime. They supply a capacity to strike without warning and leave without a trace. Enactment of a statute of the type recommended would make the criminal apprehensive as to the forfeiture of an expensive automobile and also would provide law enforcement officers with ideal undercover vehicles at no expense for use in apprehension of law violators.

LAND DEVELOPMENT

The Commission's investigation and public hearings on the development of the Point Breeze area of Hudson County into a modern containership port demonstrated the need for improvements in some statutes, with stress on greater coordination and planning in the development and redevelopment of valuable lands in New Jersey. Accordingly, the Commission made several recommendations for legislative action. Three of those recommendations have, in consultation with the Legislative Services Agency, been drafted into bill form. The bills would:

- Amend the Local Lands and Buildings Law (P.L. 1971, c. 199, C. 40A:12-1 et seq.) to effectively bar any payment of brokerage fees on sales of public lands to purchasers of such lands. The Commission notes once more that if purchasers receive even part of the brokerage fee paid by a municipality (as happened in the Point Breeze development), they are in effect getting a refund which lowers the amount they had to pay for the public lands.
- Amend the basic Blighted Area Statute (P.L. 1949, c. 187, C. 40:55-21.1 et seq.) to require a municipality to adopt a redevelopment plan before commencing any clearance, development of a blighted area. This measure would end the possibility of a municipality's declaring the existence of blight in an area, acquiring

and disposing of real property in that area, and proceeding with clearance and redevelopment thereof, all without having adopted a comprehensive plan for redevelopment of the area.

- Create a bi-partisan commission containing both Legislative and Executive appointees to study and analyze the Urban Renewal Corporation and Association Law of 1961 (commonly known as the Fox-Lance tax abatement law) which is intended to attract private capital to urban redevelopment projects. The study's goal would be to attempt to find ways to make that statute an even more effective tool for stopping urban decline and stimulating redevelopment projects.

INVESTIGATION OF NARCOTICS DISTRIBUTION AND ITS RELATIONSHIP TO LAWS AND LAW ENFORCEMENT PROGRAMS

THE BACKGROUND OF THE INVESTIGATION

Despite major advances in the number, comprehensiveness and sophistication of law enforcement programs to combat narcotics distribution, illicit trafficking in narcotics remains the source and cause of a major menace to public health and public safety. The huge profits to be made from the illicit distribution of drugs are an obvious lure to criminal elements ranging from individuals associated with organized crime to street hoodlum types whose penchant for almost any form of law breaking for monetary gain makes them natural conduits for the flow of narcotics to the ultimate users of them.

The best interests of law-abiding society are, of course, seriously harmed whenever criminal elements find and nurture lucratively illicit ways of money making. That harm, however serious, pales in comparison to the horrendous human damage and ruination, especially tragic among young people, wrought by narcotics addictions and to the grave threat posed by the necessity to commit crimes, often of violence, to finance addictions.

Since illicit distribution of narcotics is the key to their widespread use, the Commission during 1973 decided that the distribution area should be the focus of increased intelligence gathering by the Commission's staff. This move by the Commission was an extension of its continuing interest in the narcotics problem, an interest quite naturally emanating from the mandate of the Commission's statute to investigate in connection with the full enforcement and faithful execution of the laws and with matters affecting the public peace, public safety and public justice.

As a result of the intelligence gathering move, the Commission obtained considerable data as to certain criminal element operations, including narcotics distribution, in the Northern New Jersey area. Accordingly, a full investigation was undertaken, with private testimony being taken in the latter part of 1973.

The investigation revealed in considerable detail the methods of illicit trafficking in the hard-core drugs of heroin and cocaine, replete with high risk, high profits, violence and even death. The detail also showed how illicit narcotics distribution operations can become intertwined with other criminal elements and activities.

The Commission determined on the basis of the detail uncovered that meaningful public hearings could be conducted to once more alert the public to the continuing presence of the narcotics menace and to present an overall picture of illicit narcotics distribution and the programs and problems of law enforcement agencies responsible for combating narcotics trafficking.

The public hearings were held December 18, 19 and 20 in the State Senate Chamber in Trenton. Among those testifying were a number of witnesses expert in the areas of narcotics entry and distribution and of narcotics law enforcement.

THE MIDEAST SOURCE VIA FRANCE

Robert W. Greene, an Editor of Newsday, a major daily newspaper published on Long Island, and Knut Royce, a reporter for that paper, devoted most of 1972 to an investigative reporting assignment relative to the production and movement of heroin to the United States. The investigative team they headed spent three months on preparatory research in the United States, three months in Turkey and three months in Southern France. Their expertise in the international flow of heroin into the United States earned them widespread acclaim. Called as the first witnesses at the public hearings, they initially outlined, as summarized below, the international nature of heroin's ultimate entry into the United States:

- The best grade of poppy, the basic source of heroin, is grown in an area which includes Turkey, Afghanistan, Iran and India. Until recently 80 per cent of all the heroin reaching the United States originated in this area. Because of the recent ban on poppy growing in Turkey, a ban which Mr. Greene predicted will be short lived because of a change in political administrations in that country, Turkey's percentage as the source of total heroin reaching the United States has fallen to 50 per cent. Other poppy growing areas are in Southeast Asia and Mexico.

- Sticky chunks of gum are extracted from the poppy, with the gum being known as raw opium. That gum follows two basic avenues of movement. One is into the legal world market as morphine. The governments allow poppies to be grown for this purpose and buy legal raw opium at a set price. The second basic avenue involves illegal sale into the heroin market. The underworld induces these sales by offering the poppy farmer a price higher than the government's set price. The farmer obliges by understating his actual poppy production to the government, hiding the remainder and then selling it into the illicit heroin market.

- Once into the flow of the illegal market, the raw opium is reduced to a powder morphine base and moved to Istanbul for shipment by a number of routes to France. A principal route is called the Northeast Passage where the morphine base is smuggled by trucks, cars, buses and other methods through Bulgaria and Austria to Germany where it is warehoused in Munich by Turkish laborers. Final shipment is made by way of a 24-hour delivery service to Southern France where laboratories are set up to refine the morphine base into heroin. Mr. Greene emphasized the key part France plays in the distribution of heroin by stating at one point:

I want to emphasize the fact that France is the nerve center of the world heroin trade, it is the Wall Street of heroin.

When there are customer demands from the United States, the biggest single customer, France will put out calls to Turkey to Munich, to other places for supply.

- After the refining process in France, the heroin is smuggled into the United States where there are an estimated 500,000 heroin addicts, with the greatest concentration of addicts, an estimated 300,000 being in the New York Metropolitan area which includes New Jersey. The amount of heroin coming into the United States annually is eight to twelve tons.

INEFFECTIVE CUSTOMS CHECKS

Messrs. Greene and Royce personally travelled the smuggling routes from Turkey to France. To test the effectiveness of European customs they placed two one kilo sized plastic bags filled with powdered sugar in their suitcases. The powder could only be differentiated from heroin by taste. They also placed the two bags of sugar on the dashboard of their car as they traveled through one of the smuggling routes. Messrs. Royce and Green told how they proceeded across national boundaries.

A. (By Mr. Royce.) Yes, we put them in the suitcase for the flight from Istanbul to Vienna. The suitcases weren't opened even though Vienna happens to be one of the points, one of the points where morphine base enters on its way to Munich.

We then put the two bags of sugar on the dashboard as we approached frontiers.

From there on out, we drove. We backtracked from Vienna, went down into Yugoslavia and crossed over the Yugoslavian-Austrian frontier. Nothing. There was no inspection to speak of. They did stop us at the frontier simply to check our passport and to stamp a temporary entry visa, but they made no inspection at all.

* * * * *

From there we drove through Austria into Germany at a frontier post on the autobahn, main autobahn crossing through Germany. The Austrian entry port, I think, was Salzburg. It's between Munich in Germany and Salzburg in Austria. We crossed through there. Absolutely nothing. They waved us on. There was such a mob of cars that they actually wave you on, don't even bother to look at passports.

A. (By Mr. Greene.) This is with this stuff in plain view. We were trying, literally trying, to be stopped and we couldn't slow down crossing the Austrian border, German border to less than forty miles an hour, they were waving us by so frantically.

A. (By Mr. Royce.) Then on through Germany into Strasbourg in France. Again at the frontier they waved us on. A very casual glance at our passport, as I recall there, but nothing beyond that. They were particularly concerned when I took pictures that there was—"Pictures verboten" they shouted. That was it.

Then we backtracked from Strasbourg. We went down back into Germany down into Switzerland in Basil, Basil. Across the frontier from Basil, Switzerland into St. Lo. Nothing. Again, absolutely nothing, with the two sugar packages on the dashboard.

Finally, we tested the southern routes from Turkey into Marseilles, the more direct route that bypasses Munich, the one that goes across Menton in France from Italy. They had arrested several months earlier a Turkish senator at that post based on information they had received earlier.

We went over there with the glassine—with the sugar again, and once again were waved through. Nothing.

Mr. Greene had heard continued declarations by the United States and France that the French government was now cracking down very hard on heroin manufacture in France. He and Mr. Royce decided to test the French border at three major crossings with the powdered sugar, again in plain view. They were waved by at all times even though they slowed down trying to have the customs officials see the exposed bags. However Mr. Greene noted that a different attitude was taken towards the young traveler:

A. Of course, we might point out at the same time we saw a number of French Customs guards gathered around a rather obvious Volkswagen painted with daisies and peace symbols, and there were six of them gathered around there looking for marijuana while the simulated heroin sailed right by sitting in the window of two people driving a Mercedes, therefore a more respectable car.

I think the point is, you can literally move heroin or morphine base right across Europe at will.

RELUCTANCE TO MOVE AGAINST THE HEROIN TRADE

There has been, according to Mr. Greene's testimony, a reluctance on the part of the French Government to move against those people engaged in the heroin trade. Two reasons have been given for this inaction. One is the fact that heroin is not a threat to France since there are only about 20,000 addicts in the country. The second reason is that many members of the French underworld aided the government by forming counter insurgency groups to fight terrorists during the Algerian crisis. There were thus favors owed to many who gravitated to the heroin market after the Algerian conflict, and the government more or less kept its hands off the operations. Messrs. Greene and Royce testified further:

A. But looking at the arrests and looking at the seizures, it's easy to see that what they have been focusing on has been the local problem itself. They're going after the street pusher, they're going after the addict himself. But the major international trafficker has been left virtually untouched.

* * * * *

We found, for instance, that in 1972, despite all the fanfare of the crackdown on heroin pushers, that they had actually seized less morphine base than they had in previous years, in the year 1972.

* * * * *

The arrests that they made were significant again in numbers only when you saw the application to the problem in Southern France itself. In other words, there were hundreds of arrests made, but of those hundreds only sixty had anything to do with the international flow, and most of these were small-time couriers.

Q. Mr. Royce, statistically, was there any decrease in the volume of heroin that was coming into the United States during that period of time?

A. None that we could detect.

Q. So, in effect, what you're saying, then, is the French enforcement program, at least as of mid-1972, is inadequate?

A. (By Mr. Royce) Yes.

THE NARCOTICS FLOW FROM MONTREAL AND SOUTH AMERICA

Once refined, heroin, according to Messrs. Greene and Royce, moves to the United States in a number of ways. The witnesses discussed two principal ways in particular. One is by way of Montreal where an organized crime family handles the shipments to the New York-New Jersey area. A second route is by shipment to South America and then to the United States, with the major point of entry being Miami from South America directly or South America to Miami via Mexico. Mr. Greene explained how heroin ultimately reaches the New York-New Jersey area from Southern Florida:

A. When it has moved in through South Florida, the major transit area is from South Florida again up to the New York-New Jersey area.

One of the principal shipping groups not connected with organized crime in this country has been the emergence of a very large Cuban syndicate, which has been moving the transportation of heroin from the Florida area to the New York-New Jersey area with particular emphasis on storage in places like West New York, Union City and other places with a growing Cuban population.

There is also the air entry where small amounts—one, two and three kilos—move in through airplanes into the United States into the New York-New Jersey area through airports such as Newark Airport, Kennedy Airport, others.

One of the more frequent ways of moving now is to move it on an airplane that lands in another place, not where you want to bring it, and then transfer to a domestic airline and then move it back into New York-New Jersey.

WHAT IS THE MATTER WITH YOUR CHILDREN?

Mr. Greene suggested that law enforcement alone could not completely halt the narcotics problem in the United States because of the extent of addiction, especially among young people, in this country. To emphasize the problem, he noted that, except for the

Orient where there is a long history of opium addiction, the United States has the most serious drug addiction problem in the world. He stressed that even though opium originates in Turkey that country has no opium problem. Mr. Greene added:

A. If we find the answer to this problem of why drugs are so attractive to our children, then perhaps we can proceed to cure our drug abuse crisis. But until then, as one of Turkey's leading exporters of heroin told us, "Heroin is the most profitable business in the world." Given this huge profit margin, no matter how vigorous our law enforcement agencies, there will always be people willing to supply the demand. We must find the reasons for the demand. As an aged opium farmer in the tiny Turkish village of Degermenderes asked us last summer, "We grow opium, but we do not use it. Our children do not use it. What is the matter with your children?"

ON WHO CONTROLS HEROIN AND COCAINE DISTRIBUTION IN FLORIDA

One of the expert witnesses who testified at the public hearings was Lieutenant Alan Richards, Supervisor of the Narcotics Investigation Section, Organized Crime Bureau, Dade County, Florida. Lieutenant Richards was able to shed considerable light on the exact nature of the groups controlling distribution of drugs in South Florida and how those drugs were shipped to some parts of New Jersey. The witnesses made the following observations at the start of his testimony:

- Close proximity and accessibility to Latin America, South America and the British territories has firmly established South Florida as the leading import center of drugs from those areas. They are then transshipped throughout the United States and more prevalently the Eastern Seaboard. Since the enactment of the new narcotics laws of New York State, some operations have been moving into surrounding areas of New Jersey and Pennsylvania.

- Due to the supply and demand made on South American laboratories, large seizures of cocaine and heroin are now rare. Smugglers as a rule make

several trips with small amounts of drugs rather than taking a chance of being caught with a large quantity that would be both costly and difficult to replace.

- The controlling interests in the Southern drug distribution network are the blacks and the Cubans, who import and distribute millions of dollars worth of heroin and cocaine annually. They are financed independently without the approval or backing of the Northern organized crime syndicates.
- Heroin has been steadily on the decline recently and control of heroin importation and distribution in South Florida has passed from the Cuban elements to highly organized black groups. Sales of large quantities of heroin are rare, and the product available on the streets of Miami is usually poor, averaging 3 per cent purity. Heroin is usually imported at 80 per cent purity at a price of \$24,000 a kilo. When this is finally broken down for street sale, the kilo will ultimately gross \$300,000.
- Cocaine is the most widely sought after and available drug in South Florida. A kilogram of 60 per cent purity will wholesale for about \$24,000 and ultimately will retail for as much as a kilo of heroin.

Lieutenant Richards explained in some detail the organization and operational methods of the typical black and Cuban drug distribution organizations in South Florida:

A. For too long we have belabored the theory of organized crime cartels as the controlling factor of all highly organized and specialized criminal activity in this nation. The Black and Cuban organizations of South Florida are as well organized, although admittedly on a smaller scale, than any so-called organized family. They operate through force and fear, engage in corruption of public officials, amass huge profits and also invest into legitimate businesses. Although Black and Cuban organizations have no direct organized crime sanctions or control, they are, nevertheless to be considered a viable and highly organized self-perpetuating and insidious threat to the health and welfare of this nation.

A typical Black organization closely resembles that of the stereotype organized crime family. Distributors are referred to as lieutenants, and a level exists between these lieutenants and the leader of the organization who act as a buffer and tend to isolate the leader from direct involvement with the working or the street level. These drug organizations have no drug importation capabilities, but rely on Cuban contacts for all of their cocaine and some of their heroin. The majority of their heroin is contracted from Northern sources directly involved with organized crime in New York and New Jersey areas.

Black organizations are characterized as tightly-knit groups whose membership is restricted to a select and hand-picked elite. Control remains stable and firm. Associates work for the privilege of appointment to higher responsibility. Transgressors are dealt with swiftly and usually violently.

Latin drug organizations are characteristically of Cuban decent and operate on a clannish basis, the hierarchy being composed of either relatives or friends of longtime proven relationships. Infiltration by either American operatives or unfamiliar Latins has been relatively unsuccessful.

Cubans have importation capabilities of cocaine, heroin and marijuana, but prefer cocaine which is more difficult to detect and in greater demand.

* * * * *

Cubans are inherently enterprising and continually strive to better themselves. For this reason the structure of the Cuban organizations is loosely interwoven. It is not uncommon for groups to exchange or loan personnel, provide drugs on consignment to a group that may have run out of available supplies, or even to pool their financial resources in order to purchase bigger lots of drugs at more reasonable prices.

Although a Cuban group or Latin group is characterized as headed by a certain person, in some instances it may only be a titular head of a group whose

power may now rest with an upcoming member of the group. Because of their enterprising nature, underlings are continually looking to start their own organizations or move up to prominence in their existing group. This is condoned as long as no effort is made to bring discredit or harm to the original organization.

The average Latin American citizen fears the drug organizations and generally lacks confidence in the American policing system. For this reason, assistance from the Latin population is rare.

INSTANCES OF THE DRUGS FLOWING NORTHWARD

Because of his knowledge of investigations which originated in Florida but proceeded across state lines, Lieutenant Richards was able to show a direct link between the illicit drug trafficking in the Miami area and the transport of drugs, cocaine in particular, to certain areas of New Jersey:

A. I have two instances where drugs were being moved from Miami to Union City. One was by the owner of a paint and body shop who secreted the cocaine in the door panels of vehicles at his paint and body shop, had them driven to New York and to Union City where they were off-loaded and distributed.

We had another case of a Miami widow. She was a widow of a prominent cocaine dealer who was killed while resisting arrest by agents of the Drug Enforcement Administration. She assumed control of his organization. Known as the Queen of Cocaine, she was personally involved in bringing large amounts of cocaine to Union City. She was also arrested.

I might point out at this time, too, is the transshipment of these drugs from Miami to this area for the most part is not being turned over to local drug distributors but is a continuation of the Miami organizations who have established themselves in this area so that they are responsible for importing the drugs to this country via Miami, transshipping it to this area where the same organization then distributes it to the local market.

Q. Are you saying, then, Lieutenant, that the Cuban operation that we have here in New Jersey is simply a subsidiary of the main operation which exists in the Miami area?

A. Yes, for the most part. We have established some eight different substantially large Cuban organizations in Miami that have capabilities and contacts or have extended themselves to this area.

Q. Lieutenant, if it will not jeopardize any pending investigation that you might have, could you identify this Queen of Cocaine for our Commission?

A. Her name is Maria Brezot and she is the widow of Juan Rostoy.

The first subject I mentioned with the car lot is Lionel Gonzales.

Q. Have you seen any other instances involving any other cities in the State of New Jersey?

A. We have one more that I've indicated here, which was an operation to Elizabeth, New Jersey, which I understand is in close proximity to Union City. In this case we had the subject who was transporting cocaine on a regular basis, also by automobile, and this subject is currently under active investigation. I couldn't reveal his name to you.

THE HUDSON COUNTY PROBLEM

John J. Hill, Jr., Assistant Prosecutor of Hudson County, testified that the Prosecutor's Office for that county had gathered considerable intelligence information relative to the existence and operation of Cuban-directed drug trafficking in the Union City-West New York area of the county. He said that due to the language barrier and the clannishness of the community, law enforcement officials are faced with almost insurmountable difficulties in trying to function effectively in that community. Mr. Hill explained further:

A. This becomes more complicated when the Cuban group will not even accept or cooperate with non-Cuban Latins. They exclude them from all of their operations and will not in any way participate

with someone that they do not know through family relationships or through long association.

Q. Are you addressing these remarks, now, to that group within the Cuban community that traffics in narcotics drugs?

A. That is correct; that is correct. By no means do I want to say that the entire one-half of Union City is involved. But I would point out that that complicates the problem. A law enforcement agent in a community of that size knows, rather the community knows and those lawbreakers know that he's there in a very short time. Surveillances under those circumstances are almost impossible.

One of the purposes of the Commission's public actions is to arouse citizen support for law enforcement efforts. The Commission was pleased to note, therefore, that after the testimony relative to Cuban drug operations, a group called the Ad Hoc Committee to Uphold Cuban Honor, with offices in Elizabeth, took a large display advertisement in the Elizabeth Daily Journal, said advertisement bearing the headline "Jail Cuban Drug Peddlers, An Open Letter to Federal State County and Local Officials and All Honorable Men and Women of Our Community."

In the advertisement it was stated that the 99 per cent Cubans of integrity, who are honest and decent citizens, once again were raising their voice to condemn any and all illicit drug traffic and "asking all our fellow Spanish-speaking citizens to provide the most complete and total cooperation to local officials to STOP, once and for all, the illicit traffic of drugs in our community."

The Commission in a communication with Carlos Ferrer of the Ad Hoc Committee stated that the group's advertisement was exactly the type of healthy citizen response intended to be stimulated by the public hearings.

AN INCREASE IN PILL USAGE

SPELLS A PRESCRIPTION PAD PROBLEM

Drug trafficking in Hudson County, Mr. Hill said, has been fairly constant over the past few years, although the habits and tastes of the drug users have been subject to some change. There has been a decrease in the use of heroin in most areas. Mr. Hill

said he felt that decrease was due to a combination of law enforcement efforts and increased public awareness of the health dangers attendant on injections of heroin. As heroin use has declined, there has been a corresponding increase in the use of cocaine and pill-form drugs, including prescription drugs. Mr. Hill, producing what appeared to be authentic prescription blanks bearing a doctor's name, and his phone number and a narcotics registration number, described a growing problem in the prescription pad area:

Q. Well, what is the significance of this otherwise seemingly quite lawful pad or piece of paper from a prescription pad of a doctor?

A. Well, the significance of this, Mr. Sapienza, is that when a local supplier of pills no longer has a stash to go to and cannot get his hands on something to sell on the street, he will attempt to obtain and sell blank or forged prescription pads. The prescription form is selling in our area at this time \$5 for a blank prescription form.

Q. One form?

A. One form. \$10 for a forged prescription form. The particular forms that you're looking at are forms that were ordered by a detective in Union City. He presented himself in attire equivalent to that of a doctor along with a little black bag at a printer's and identified himself as a doctor and for \$10 had a thousand of these blank prescription forms filled out. So, this is one area that we're looking into now.

We do foresee it as a problem as tastes in this area of controlled dangerous substances increase.

Apparently there is no requirement or regulations or restrictions on the printing of forms which can subsequently be used after being forged to obtain all types of controlled dangerous substances and prescription legend drugs.

Q. Well, throughout your area is it possible for an addict to buy one of these forms and inscribe thereupon a particular prescription, go to any pharmacist and get it filled?

A. Yes, he can, and what is usually done is, he will, through his intelligence community, determine someone who uses a particular type of prescription legend drug validly. He will, upon that person's next trip to the doctor's, view that prescription and attempt to duplicate it on his own blank form. Unless there would be careful scrutiny on the part of the person who fills the prescription, it can easily pass for the real thing.

Q. *Is this kind of scrutiny generally lacking at this point in time?*

A. In my opinion, it is very much so, yes.

Since New York presently has a much tougher drug law than New Jersey, Mr. Hill was asked to give his opinion of the impact of this law on the New Jersey narcotics situation:

A. From a law enforcement standpoint, I would have to say at this point that there has been no noticeable impact. Now, by that I mean, we do not see many more people on the streets or many more New York-based residents on the street distributing drugs within Hudson County.

But this, of course, is not the end-all and be-all with regard to whether or not drug traffic is moving from New York to New Jersey. I think we have to take into consideration a lot of things.

The reason that we don't see it is twofold. One, you must realize that the people who are conducting the drug operations at this point in New York, the entrepreneurs, so to speak, those who have control of the operation, are not the people on the streets of New York. The people on the streets of New York are the addict pushers who don't have a lot of control over where they operate and under what circumstances. Of course, New York, with their new drug law, has very severe penalties. But until those penalties are used consistently over a period of time and the heat comes to the man who is actually in charge of the business, he's not going to give up a multi-thousand-dollar-a-week business to come over to

New Jersey. And once he does come over to New Jersey, if the heat should be applied in New York, he won't come with fanfare. He'll come in quietly and he'll secrete himself in some community in New Jersey and he will get the lay of the land and feel out the law enforcement techniques before he starts to operate and before we can begin to enforce against him.

So, at this point in time we have had no appreciable movement as I see it in drug traffic within the Hudson County area as a result of the New York Drug Law.

Q. Do you think it's possible that if the New York Law, that tough law, is enforced consistently, that you might see more of the entrepreneurs or the bulk sellers of this narcotic drug coming into New Jersey to attempt to escape the harsher penalties in New York?

A. I think that you will. I think that if it is applied effectively at all levels. It will do no good simply to apply it very strictly at the lower levels, at the addict-pusher level, because he doesn't have much control over his existence. But when it is applied effectively at the entrepreneur level, yes, they have no choice. They're good businessmen. They're going to move.

A VIEW ON LESSER VIOLATIONS

Mr. Hill recommended the decriminalization of certain lesser narcotics violations combined with an increase in funds and manpower to combat the serious drug offenses. He explained:

A. What I meant was to decriminalize those which can effectively be handled at the disorderly persons level or at some other level while turning full force of the law against those areas in New Jersey which are the subject of the stricter drug laws now in New York. For example, the possession with intent to dispense and distribute and the actual distribution of various controlled dangerous substances. I am in no way asking for decriminalization in those areas, but a renewed effort in those areas beefed up by manpower and money to effectively handle those areas. With the

manpower we have now, we cannot effectively reach all those areas, so we've got to do one of two things: Decriminalize some of the non-dangerous, really non-criminal areas, and beef up those areas where we can effectively use the men and the money.

COCAINE TRAFFICKING IN NEWARK

The phase of the public hearings dealing with actual cocaine and heroin distribution operations in the Newark area featured two principal witnesses, one a woman and the other a man. For obvious reasons, the identity of these two witnesses who testified as to actual drug dealings and to violence and even death resulting therefrom, was protected by use of aliases and the veiling of their faces during their public appearances. The woman was identified only as Mary Smith and the man only as John D.

Miss Smith lived her entire life in Newark until 1971 when she moved elsewhere to start a new life. In 1968 she first met a man named Alvin Little who ran a tavern in Newark. She began to live with Little shortly after their first meeting and learned during 1970 that he had become involved in the distribution of narcotics, principally cocaine. The paragraphs below summarize Miss Smith's testimony as to her knowledge of how Little trafficked in drugs:

- From being present at a number of transactions and attendant conversations in the house in which she lived with Little, she saw and heard how Little obtained his supply of drugs from Raymond Freda and Austin Castiglione. Freda and Castiglione were present in the house when the purchases were made, engaged in conversation with Little relative to the sale and resale of drugs, and participated in the exchanges of bags of narcotics, with the largest single amount involved in the transactions being \$25,000.
- From being a witness to the conversations and transactions, she also learned that Freda and Castiglione went to the Bronx in New York City twice a week to purchase their drug supplies and that they also went to West Virginia to purchase additional drugs.

- She sometimes made the payments for purchase of the drugs from Freda and Castiglione on behalf of Little. She did so by taking money Little would give her, depositing it to her own account and then writing checks to the J.V. Construction Contracting Co., owned by Freda and Castiglione. She identified four checks, marked as exhibits, as being payments to Freda for drugs. The checks, signed by Miss Smith, were made payable to the aforementioned company and endorsed by Freda. The company had never done any contracting work for Little or Miss Smith.

- When Little received a supply of drugs from Freda and Castiglione, he would then sell it either directly to users on the street or sell it to other individuals for resale by them in the streets. These latter type sales took place at the New Main Street Luncheonette, East Orange, owned by Sylvester "Rogue" Maddox; the Akabis Talent Agency on Springfield Avenue, Newark, and a restaurant called the 55th Dimension in Newark, owned by Dave Sheffield.

SOME KIDNAPPINGS AND A BROKEN BACK

There came a time in 1971 when some of the individuals to whom Little sold drugs were kidnapped. Dave Sheffield was the first victim. A \$10,000 ransom was paid for his return. Rogue Maddox also was kidnapped, and a request was made for a \$45,000 ransom. Miss Smith testified the \$45,000 was to be in the form of cocaine stuffed in a receptacle that was shaped like an ice cream cone. Little, according to Miss Smith, borrowed that amount of money from Freda and Castiglione and, abiding by instructions, left it under a street light near the South Side High School in Newark. Rogue Maddox was not immediately freed. Miss Smith told how he was eventually found:

Q. Was Rogue ever released?

A. Yes.

Q. Where was he found?

A. In a gutter by Martland Medical Center.

Q. And what was his physical condition at that time?

A. He was beaten up. His back was broken.

* * * * *

Q. And is he, in fact, now a paraplegic as a result of that?

A. Yes.

A BAD LOAD AND A HOMICIDE

Miss Smith testified that in 1971 Little became involved in a large narcotics deal involving a \$87,000 transaction. She said that Little was to receive a large supply of cocaine from Freda and Castiglione for resale to an individual in Passaic. The deal, according to Miss Smith, never was consummated because the "load" of cocaine involved was "bad" or not of sufficient purity. Miss Smith testified as to what happened subsequently on the night of August 29, 1971 at Little's tavern:

A. Two men came into the bar and asked for Alvin and—well, one man came in the bar and asked the bartender for Alvin. Alvin went outside and they put a gun in his back and they took him off in a car.

Q. Alvin was taken from the bar and taken away in a car?

A. Right.

Q. And was this a short time after the eighty-seven-thousand-dollar deal was supposed to be transacted?

A. Yes.

Q. It was about two weeks afterwards, wasn't it?

A. Yes.

Q. And when was the next time that you heard of Alvin's whereabouts?

A. That Tuesday.

Q. And in what manner did you hear of his whereabouts?

A. The police told me that they found him dead in Passaic.

Q. He had been shot in Passaic; is that right?

A. Right.

After Little's death Miss Smith received threatening phone calls which asked her to come up with the \$87,000. She testified she became so apprehensive that one night she didn't go home but rather checked into a motel in Newark. Two men, she said, that night broke into her motel room, robbed her and threatened to throw acid in her face if she did not give the \$87,000 in two weeks. Miss Smith stated she never did learn of the whereabouts of the \$87,000.

Miss Smith's testimony about Little's drug-buying relationship with Freda and Castiglione was corroborated by that of the other veiled witnesses who, as previously noted, testified at the public hearings under the alias of John D. Testimony by Mr. D was that he was involved in an operation which sold heroin in bulk to Freda and Castiglione. He was asked for further knowledge he might have of those two individuals:

Q. Do you know whether there was any sort of a business relationship between Castiglione and Freda?

A. Oh, yes.

Q. What was that?

A. They were partners for many years. They were in the cocaine business before I came around; in the narcotics business for a good number of years. They controlled most of the cocaine operation at that time. They sold large quantities of cocaine in the Newark area.

Q. Do you know who their main customers were?

A. Well, I know of one of them. Are you talking about the heroin or the cocaine?

Q. Cocaine.

A. Well, there was an individual by the name of Alvin Little who bought quantities of cocaine from Raymond Freda and Austin Castiglione.

FREDA TESTIFIES

The Raymond C. Freda, now of Boonton but formerly of Newark, who was mentioned in the testimony of Mary Smith and John D appeared before the Commission in private session December 13, 1973 during the final stages of the investigation. The Commission questioned him at length, with particular reference to any associations or transactions he had with Alvin Little, Mary Smith, John D and some other individuals. Freda at the outset of his testimony conceded he had been arrested some 10 times since 1952 on criminal charges which included a plea of guilty by him and a federal prison sentence of five years in a bank robbery case.

The Commission believes the pertinent excerpts of Freda's testimony, presented below, illustrate the difficulties which can be encountered in attempting to elicit facts from individuals involved in the Commission's continuing investigation of organized crime operations. At the private hearing, the real names of Mary Smith and John D were used. Those real names have been deleted for the purposes of this public report and the aliases have been inserted as parenthetical matter. The excerpts of Freda's testimony follow:

Q. You never at any time supplied cocaine—

A. No, sir.

*Q. —to Alvin Little or
(Mary Smith)?*

A. No, sir.

*Q. Did you ever have any conversation with either
..... (Mary Smith) or Little with
regard to cocaine?*

A. Yes.

Q. Under what circumstances?

A. Alvin Little. I told him that I could have got him cocaine and I beat him for \$20,000.

Q. Well, didn't he, in fact, beat you for \$83,000?

A. No. I took \$20,000 of his money and I never gave it back to him.

COMMISSIONER FARLEY: Will you explain the specific details about that?

THE WITNESS: In other words, I told Alvin Little that I was going to get him cocaine. It was just a, you know, just a story I made, fabricated, to get \$20,000 from him. I took the \$20,000 from him. He gave me 10, and then another 10,000 and I never got him nothing. I kept the money.

Q. How long after that was he murdered?

A. Gee, I don't remember. It was during the—I think it was during the summer months when I took the money off him.

Q. And it was also during the summer months of 1971 that he was murdered. Isn't that your recollection, also?

A. No, I don't recall. I don't recall exactly when Monte got murdered. I don't.

COMMISSIONER FARLEY: Let's establish this for the record, if we could. This particular transaction with the \$20,000,—

THE WITNESS: Right.

COMMISSIONER FARLEY: —when did that occur?

THE WITNESS: I don't know. It was sometime during the summer months, because he gave me 10,000—

COMMISSIONER FARLEY: Of what year, sir?

THE WITNESS: It was the same year that he got killed. I don't recall exactly the year, sir.

COMMISSIONER BERTINI: So if he got killed in '71, it was in the summer of '71 that this—

THE WITNESS: Right, I did take 20,000 of his money. I took 10,000 the first, 10,000, and then a couple of days later he gave me another 10,000.

COMMISSIONER BERTINI: Were these cash payments?

THE WITNESS: Yeah, he gave me cash money.

COMMISSIONER BERTINI: Do you know what kind of denominations they were?

THE WITNESS: No, I don't remember the denominations. I know I took \$20,000 from him and I kept it.

* * * * *

Q. *Who initiated the conversation, you or Little, with regard to the cocaine?*

A. Alvin Little.

COMMISSIONER BERTINI: Can you tell us what he asked or how the conversation went?

THE WITNESS: I don't recall exactly, you know, but I did beat him for the money. I took the man's \$20,000, I know that, and I used his money.

Q. *What did you use it for?*

A. Spent it. Clothes, everything.

Q. *\$20,000 worth?*

A. No. Naturally I spent some money on clothes, cars. You know, 20,000 don't go far today.

Q. *Mr. Freda, weren't you, in fact, in 1971 dealing in narcotics?*

A. No, no, I did not deal in narcotics.

COMMISSIONER BERTINI: Did you ever deal in narcotics?

THE WITNESS: Ever deal, actually deal in narcotics? I refuse to answer that question.

COMMISSIONER FARLEY: One question, sir. Was Mr. Little, to your knowledge, dealing in narcotics?

THE WITNESS: I don't know.

COMMISSIONER FARLEY: Other than the fact that he asked you to get him \$20,000 worth of heroin?

THE WITNESS: Right, he asked me to get him heroin. I told him it would cost him \$20,000. I took the man's \$20,000 and I never gave him anything.

* * * * *

COMMISSIONER LUCAS: And you're telling this committee, out of the blue, for no reason Little says to you, "Get me cocaine"?

THE WITNESS: That's right. People do it every day.

COMMISSIONER LUCAS: And at that point he hands you \$10,000 as part of the 20,000 package?

THE WITNESS: No, no, he didn't hand me 10. I told him, "I'll shop around and see if I can find somebody for you."

In the meantime, I went back to him and told him, yes, I can get it for \$20,000. He gave me 10,000. He gave me another 10,000 and I kept his money.

* * * * *

EXAMINATION BY COMMISSIONER BERTINI:

Q. *The truth is, you took the money?*

A. I took it.

Q. *You didn't get taken over?*

A. No.

Q. *But the story you told Little was you were taken for the money?*

A. Right, and I kept the money.

Q. *Do you think he believed you?*

A. What?

Q. *Do you think he believed you?*

A. Right, he did believe me.

Q. *Did he ask you where the party was?*

A. No.

Q. *Did he ask you where the heroin was coming from; what the source would be?*

A. No.

Q. *Never asked you that?*

A. No.

EXAMINATION BY COMMISSIONER LUCAS:

Q. *Did he tell you where the \$20,000 was coming from?*

A. No. I didn't care. I just wanted it.

Q. *Did you ever buy any narcotics from a man by the name of (John D)?*

A. I take the Fifth Amendment.

Q. *Did you ever sell any narcotics to a man by the name of (John D)?*

A. Take the Fifth Amendment.

Q. *You're positive, though, that you never bought any narcotics from Jerry the Jew Donnerstag, though; is that correct?*

A. Yes.

Q. *And you could never have done it inadvertently; that's a fact, isn't it?*

A. What do you mean "inadvertently"?

Q. *I mean if you ever bought narcotics from him, you would know it.*

A. If I bought from him?

Q. Yes.

A. Sure, I would know.

Q. *Did he ever give you narcotics?*

A. I take the Fifth Amendment.

Q. *Didn't he have an arrangement where he would give you the narcotics on consignment and, as you sold the junk, you would pay him?*

A. Take the Fifth Amendment.

Q. *Other than Donnerstag, Mr. Freda, what was your source of narcotics in '72-'73?*

A. Take the Fifth Amendment.

SOME GUNS, A RIFLE AND SOME ARRESTS

In the wake of Little's death, Miss Smith thought she might try to step into Alvin's shoes and take over cocaine distribution because Little was a principal contact in the supplying and selling of the drug to the black population in Newark. As a result of a

conversation along those lines with Dave Sheffield, a meeting was arranged for her to meet with him and talk about the matter further. Miss Smith testified the arrangements for the meeting involved three of Sheffield's henchmen, armed with guns and a rifle, picking her up and taking her to a Howard Johnson's Motel. She explained further how the display of weaponry ended in the arrests which included herself and Sheffield:

Q. *And where were these men carrying their guns when they were in the Howard Johnson's Motel?*

A. In their pants.

Q. *How about the rifle?*

A. They had it down, stuck down in the pants.

Q. *Were they parading up and down the hall in the Howard Johnson's Motel?*

A. Yes.

Q. *And what was their purpose there? Were they guards?*

A. Yes.

Q. *And, in fact, did the police come as a result of the weapons which were there?*

A. Yes, they did.

Q. *And you were arrested, were you not?*

A. Yes.

Q. *Were you arrested with all the individuals who were there at the time?*

A. Just David Sheffield and myself.

Q. *And were you charged with possession of a weapon?*

A. Yes.

Q. *And at that time or a short time afterwards you spoke to representatives of the Essex County Prosecutor's Office, didn't you?*

A. Yes, I did.

Q. *And for the first time revealed the story which you're telling this Commission today; is that right?*

A. Yes.

Q. *And after you spoke to the prosecutor's office, that is when you left the state; is that right?*

A. Yes.

AN EARLY INVOLVEMENT IN DRUGS

As previously noted, the witness identified by the alias of John D, like Miss Smith,* appeared at the public hearings with his face veiled. Mr. D at the time of the hearings was 27 years old, six of which already had been spent in jails and prisons. He had had, by his own self description, since youth a penchant for a life of crime involving not only narcotics dealings but also burglaries and some stickups and bookmaking.

His associations with various criminal elements in the Northern New Jersey area made him a particularly informative witness as to narcotics distribution and how that operation can become intertwined with other criminal activities. Mr. D discussed how he became involved in narcotics at an early age in the testimony summarized in the paragraphs below:

- When he was 16 there were a lot of narcotics flowing through his neighborhood with a resultant high number of junkies or addicts. One day a couple of addicts who were without sufficient funds induced Mr. D to help purchase heroin from a local pusher. Following this purchase, Mr. D used heroin for a time before deciding the distribution of the drug was where the money was to be made.
- After that decision, he found a source of heroin supply in a small hotel in New York near 72nd Street and Broadway where he bought the drug from a man known to him only as Phil. Mr. D described his operation as relatively small-time in which he would buy for \$27-30 a half load of heroin consisting of 15 bags which he would sell on the streets in New Jersey for \$5 to \$6 a bag. That operation terminated after a year and a half when he was arrested for possession of narcotics and served two years in jail.
- Upon release from jail, he got involved in a cocaine distribution business in the Belleville-Nutley-Newark area with a man he identified as Phillip Russo. He said the operation was similar to his previous heroin operation, with the drug being purchased in Spanish Harlem in New York and then sold in New Jersey for

* Some photographs, including pictures of the veiled witnesses, taken during the public hearings appear on pages 86a to 86e of this report.

about double the price paid in New York. The operation netted him about \$500 per week. This operation lasted about eight months, it, too, being terminated by Mr. D's being arrested and sentenced to jail.

SOME ORGANIZED CRIME ASSOCIATIONS

Mr. D's second prison sentence was in the Caldwell Penitentiary. It was there that he became seriously ill and was transferred to the Martland Medical Center in Newark. The occupant of the bed next to him was a man named Victor Pisauero with whom Mr. D developed a close relationship. The witness explained further about Mr. Pisauero and where this association led Mr. D:

Q. Did there come a point in time when it came to your knowledge that he was a member of organized crime?

A. Correct.

Q. Do you know with whom he was associated in organized crime?

A. He was a member of the Boiardo family.

Q. The Boiardo family?

A. Correct.

Q. Did he tell you at any time during your stay in the hospital to look him up when you got out of prison for the particular sentence you were serving then?

A. Yes, he told me this.

Q. And didn't you, in fact, in 1968, when you were released, look him up?

A. My first day after my release I looked him up.

Q. And where did you locate him?

A. At the First Ward Democratic Club located in Newark, New Jersey.

Q. Do you recall what your first conversation with Mr. Pisauero was when you looked him up that day?

A. Well, he just told me to hang around the club, and I hanged around for about a month before I, I received any work.

Q. Well, as a result of this new relationship with PISAURO, did you find yourself involved in any new illegal activities?

A. Correct.

Q. Without going into any great detail, could you tell us generally what type of illegal activities you got involved in?

A. Burglaries, some stickups, bookmaking, shylocking. And I was also involved in transportation of illegal pharmaceutical products at that time.

Having made contacts in the Newark area, Mr. D soon met other individuals from the Hudson County area whom he learned were involved in organized crime type operations. Mr. D said one of his associations was with Louis Parisi of Butane Industries, Jersey City, which the witness said was a front for the distribution of "hot" or illegally obtained goods. Mr. D went into more detail about his involvement with Parisi:

Q. Well, what specifically was your involvement with Parisi and these illegal pharmaceuticals?

A. Parisi put me to work for him at \$100 a day to transport this product called Librax.

Q. Librax?

A. Yes.

Q. And what was Librax? Did you know at the time?

A. Librax, I believe, is a new form of Librium. It's a depressant or a nerve pill, some kind of a nerve pill.

I would deliver this stuff for him, and, also, I made other contacts on my own and made my own deliveries for a profit.

Q. To whom did you deliver this stolen Librax for Parisi?

A. There was a fellow up in Lake Hopatcong who owned a chain of drug stores. I don't know his name. I never heard his name. I met him once, and I used to deliver the Librax with Louie up to one of the warehouses for his drug stores.

Q. On any of these trips to Lake Hopatcong did you meet any other individuals whom you considered to be associated with organized crime?

A. Yes, I did.

Q. Who did you meet?

A. I met Frank Condi, also—well, that's Frank Cocchiaro, also known as Frank Condi.

Q. When you met him, was he introduced to you as Condi or Cocchiaro?

A. Condi.

Q. And did you have any type of illegal transactions with Mr. Condi?

A. Yes. I used to deliver, deliver Librax to his home, approximately, about once a week.

Q. Do you know where he was living at the time?

A. In Deal.

Q. And you delivered the stolen drugs to him in Deal?

A. Yes.

Q. And you have previously for our Commission identified photographs of Mr. Condi; is that correct?

A. That is correct.

Q. So there is no doubt in your mind that that was Frank Cocchiaro that you were delivering that Librax to?

A. That was Frank Cocchiaro.

ASSORTED CRIMINAL VENTURES

During 1970-72, Mr. D was involved in varying illicit ventures. His testimony as to those ventures is summarized in the paragraphs below:

- In 1970, Mr. D was moving guns from South Carolina to the New Jersey area and selling the weapons at a profit until he was arrested and charged with possession of eighty one pistols and two bur-

glaries. The guns were to be delivered to Teddy Riviello who is presently serving 10 years in federal prison. Mr. D was assisted by Bill Riga who also had organized crime ties.

- After release from prison, Mr. D went back into the narcotics business with a man named Thomas Goldrick of Belleville. Cocaine was once more purchased in Spanish Harlem for resale in New Jersey. He was paying between \$450 and \$600 an ounce depending on the quality of the cocaine. Also at this time he and Goldrick were robbing jewelry stores to supplement their income. In June 1971, Mr. D was arrested for a jewelry stickup and was sentenced to nine months in the Morris County Jail.

- Upon his release from jail, Mr. D organized a burglary ring in Morris County. The stolen merchandise was fenced in Newark through an individual named Jerry Festa, an operation which required Mr. D to visit Newark several times per week.

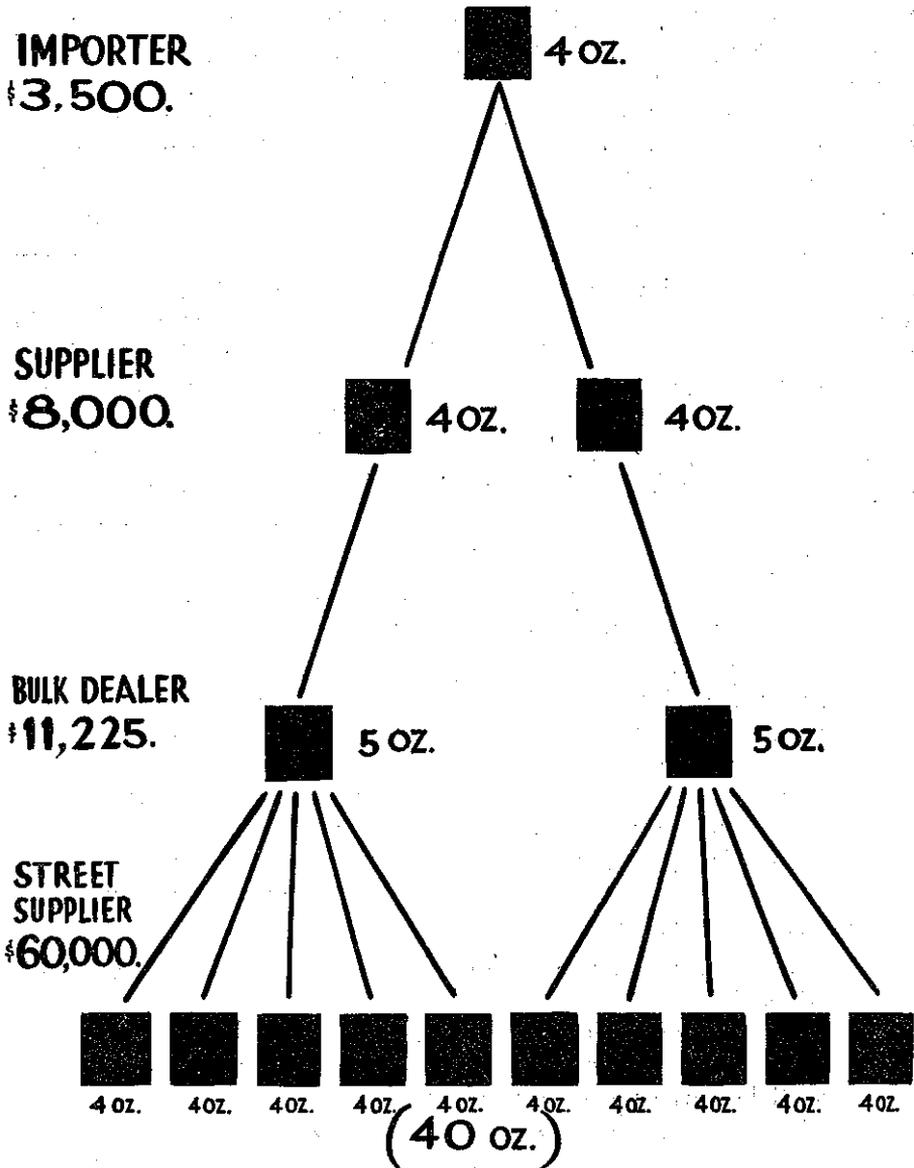
THE HUGE PROFITS IN HEROIN

Before continuing with more of Mr. D's testimony, it would be wise to digress here so that the reader has a basic understanding of the huge profits to be made from illicit heroin sales and how those profits are achieved through a multi-level process of distribution. As can be seen from Chart Number One on Page 83 entitled "Price-Volume Progression", there are four levels in the distribution process, commencing with importation and proceeding through Supplier, Bulk Dealer and Street Supplier.

Beginning with the supplier who obtains relatively pure heroin from the importer, the heroin is "cut" or reduced in purity at each level by adding inert ingredients. Thus, it can be seen that each four ounces of relatively pure heroin imported ends up as 40 ounces of quite low purity heroin. With handsome profits being taken at all levels of distribution, the \$3,500 price for the four ounces of imported heroin increases some twenty fold to \$60,000 at the street sale level.

CHART ONE

VOLUME & PRICE PROGRESSION



A SUBSTANTIAL HEROIN OPERATION

As previously noted, Mr. D testified that merchandise stolen by his burglary ring in the Morris County area was fenced in Newark through an individual named Jerry Festa. The frequent trips Mr. D made to Newark in connection with this operation resulted in his once more becoming involved in narcotics trafficking.

This time it was a substantial heroin distribution operation in Newark which, Mr. D testified, he set up in November, 1972 with one Jerry Donnerstag, also known as Jerry the Jew. Their operation was that of a bulk dealer, although Mr. D also acted a street supplier in some sales. Their principal supplier was a man known to Mr. D only as George from Fort Lee who had heroin importing contacts in New York.

Mr. D testified he and Donnerstag purchased up to a kilo of heroin per week from George, depending on their customer demand. They had a number of "weight customers" who as street suppliers would purchase from an eighth to a quarter of a kilo a week and cut it and put it on the streets. As previously noted, Mr. D testified Raymond Freda and Austin Castiglione, who dealt with Alvin Little, were among the weight buyers.

In addition to acting as a bulk dealer, Mr. D also acted as a street supplier for some heroin sales. Even though he had to split the proceeds with Donnerstag, he still made thousands of dollars per week. He testified further.

Q. Would you describe your street operation?

A. Well, I had anywhere between six and ten dealers in the Essex County and Morris County area and I would supply them with heroin already bagged up to put it in the street. I would give them fifteen ten-dollar bags. When they sell fifteen ten-dollar bags, they would have \$150. They would take \$50 and put it in their pocket and the other would be turned over to me, and, in turn, I would take \$50 and put it in my pocket and I would turn the remaining fifty over to Jerry the Jew.

Q. Your split with Donnerstag was fifty/fifty, then, at that point?

A. In the beginning I was only getting twenty-five per cent, but then after I learned the business fairly well he gave me fifty per cent.

* * * * *

Q. Approximately how much money were you making a week as a result of this operation?

A. This operation, I'd say, anywhere between 6 and 7,000 a week.

Q. What did you do with all that money?

A. Had a good time.

NARCOTICS FINANCES DETAILED

Mr. D was in an excellent position from his work experiences to provide in detail how the narcotics distributor reaps his huge profits. He told in brief how the supplier receives heroin of 80 to 90 per cent purity from the importer and adds an equal amount of inert ingredient, so that one kilo would be "cut" into two kilos of forty to forty-five percent pure Heroin. The bulk dealer after purchasing from the supplier adds one ounce more of an inert ingredient to each four ounces purchased from the supplier, with the resulting five ounces being thirty-two to thirty-six per cent pure heroin. Mr. D went on to explain how the heroin purity is further diminished as it is finally prepared for street sale. His testimony, making reference to Exhibit 18 which appears as Chart Two on Page 86 of this Annual Report, follows:

A. You take a quarter of an ounce of the thirty-two to thirty-six per cent and mix it with three-quarters of an ounce of mannite and quinine. This will give you an ounce out of a quarter of an ounce of the thirty-two to thirty-six per cent.

Q. So you were adding three times as much inert ingredients as pure heroin; is that right?

A. Right, so that with an ounce of the thirty-two to thirty-six per cent, after I finish cutting it I would have four ounces, or an eighth of a kilo of street heroin.

Q. That's right. And on a larger scale, if you took two ounces of the thirty-two per cent heroin, you would be adding six ounces of inert ingredients; is that right?

A. Correct.

CHART TWO

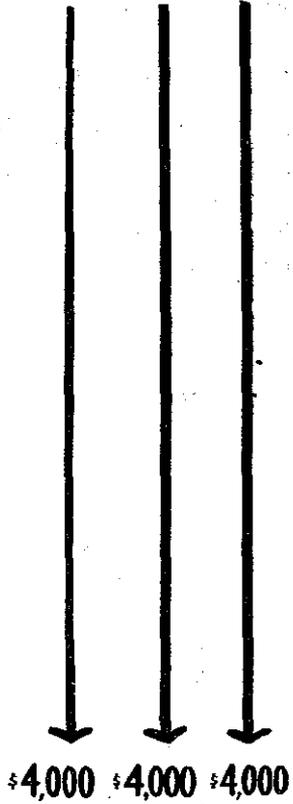
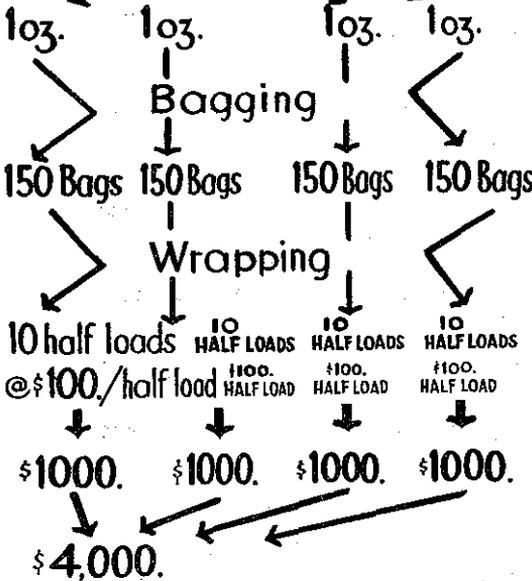
STREET SUPPLIER'S CUTTING OPERATION

1/8 Kilo (4oz) 32-36% pure heroin

1oz. heroin
 2 1/2 oz. manita (manite)
 1/2 oz. quinine

4oz. Street heroin (4-4 1/2% pure)

1oz. Heroin 1oz. Heroin 1oz. Heroin



Total Sale Price \$16,000.
 Cost Price - \$4,000.

Gross Profit 1/8 Kilo \$12,000



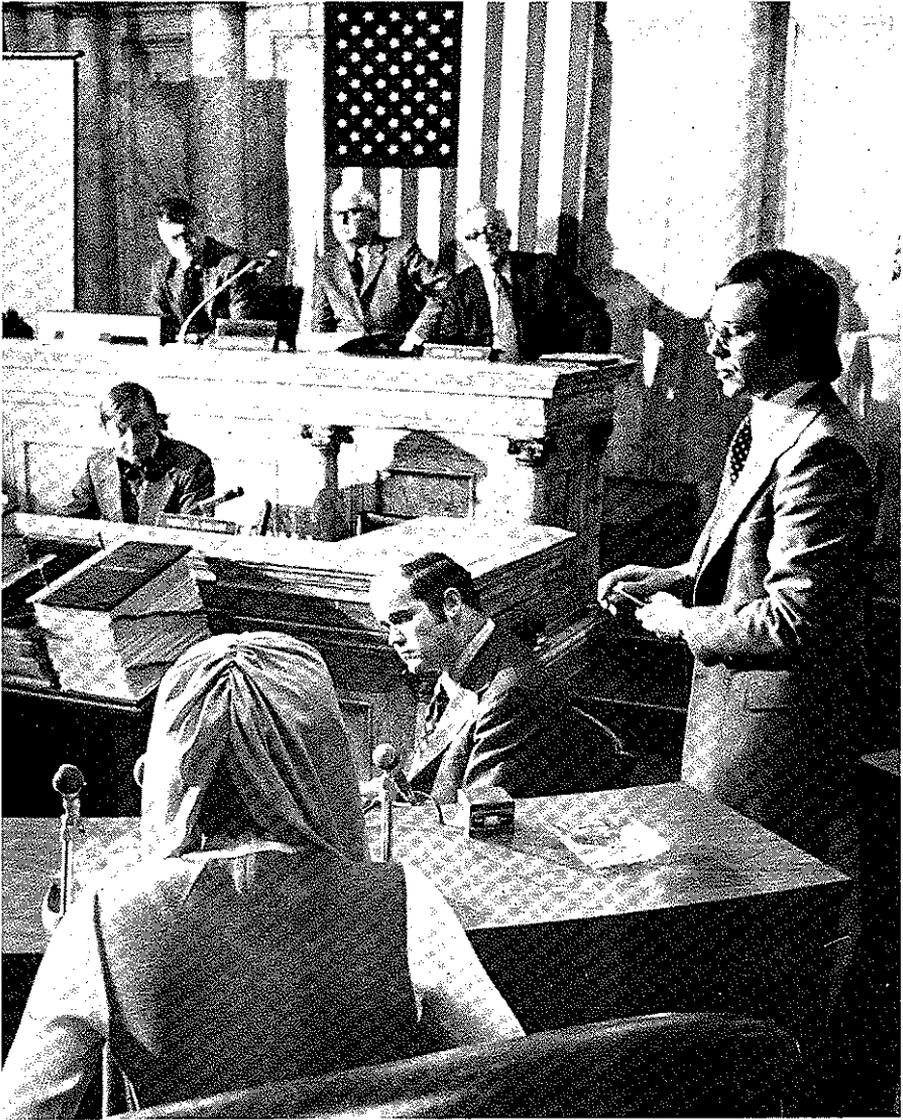
Photograph by New Jersey Newsphotos

The witness testifying under the alias of John D and wearing a veil to protect his identity grips a gun, shown to him by Commission Counsel B. Dennis O'Connor, at the point in the public hearings on narcotics when this witness testified that the weapon was given to him by a criminal element individual who wanted John D to execute a "contract" or kill a man. John D decided not to do so and, instead, began cooperating with law enforcement authorities.



Photograph by New Jersey Newsphotos

Commission Counsel Michael R. Siavage uses a chart in questioning the witness John D about the details of his illicit heroin distribution operation in Newark and the high profits reaped from operations of this type.



Photograph by Martin D'Arcy, Trenton Times

In this photograph taken during the Commission's public hearings on narcotics in the State Senate Chamber, Commission Counsel Michael R. Siavage (far right, foreground) questions the witness, alias Mary Smith whose head is veiled to protect her identity, about illicit cocaine distribution. Immediately to the left of Mr. Siavage is the Commission's certified shorthand reporter, John Prout. In the background are Commission Counsel B. Dennis O'Connor on the lower dais and, from left on the upper dais, Commissioners David G. Lucas, Thomas R. Farley (Acting Chairman for the hearings), and Charles L. Bertini.



Photograph by New Jersey Newspapers

Among the law enforcement officials who testified at the public hearings about narcotics strike forces were Richard L. Slavitt (right), Assistant Essex County Prosecutor and Director of that County's Bureau of Narcotics, and Detective Joseph M. Pariso, Chief of the Bureau's Investigative Staff.



Photograph by New Jersey Newsphotos

David S. Baine, Deputy State Attorney General and Chief of the Appellate Section of the State Division of Criminal Justice, testifies about suggested changes in New Jersey's narcotics laws.

Q. And ending up with eight ounces of four to four and a half per cent pure heroin, which is our normal street strength; is that right?

A. Correct.

* * * * *

Q. Now, Mr. D, this portrays, this exhibit which has been marked 18, portrays the prices that you would receive heroin for and the approximate profits, and the price which you would be able to sell it for and the profits; is that right?

A. Right.

Q. And you would buy an eighth of a kilo from George for \$4,000?

A. Correct.

Q. Is that right? Or sometimes \$4,500 to \$4,000?

A. Right.

Q. And he would normally make about a five-hundred-dollar profit on that, right?

A. Right.

Q. But this profit line here is higher than the mere \$500 because George is cutting it; isn't that right?

A. Correct.

Q. In other words, when George begins with a kilo of pure heroin and cuts it, he ends up with two kilos of heroin?

A. He has two kilos. That's double the amount—

Q. That's right.

A. —worth.

Q. Now, moving down to the street supplier, then, which you were in one occasion, you purchased that eighth of a kilo for \$4,500?

A. For 4,000, yes.

Q. \$4,000, that's right.

A. Yeah,

Q. And you would be able to sell it for a great deal more, wouldn't you?

A. Make about 16,000 on the purchase of an eighth.

* * * * *

Q. And your original eighth of a kilo has been split up into four ounces of heroin and you're making \$4,000 per ounce of this original kilo; is that right?

A. Correct.

Q. So that you end up with four times 4,000 or \$16,000?

A. Correct.

Q. For an original four-thousand-dollar investment?

A. Right.

Q. So that your final profit would be \$12,000?

A. \$12,000 is correct.

Q. How many times were you making that much money, Mr. D?

A. What do you mean by the question?

Q. When you were cutting heroin in this manner, you were making approximately \$6,000 a week; is that right?

A. Yes, around that area.

NO STOMACH FOR A CONTRACT

As a result of his deep involvement with narcotics, Mr. D was during 1973 given a contract to "hit" or kill an individual felt to be in the way of certain criminal elements. Mr. D was shown a sawed-off shotgun and, after identifying the weapon as his, was asked:

Q. Where did you get it?

A. I received it from an associate in the narcotics business. I was given a contract to perform and I reneged on the contract, I didn't want to do the contract, and this is the weapon I was supposed to hit the guy with.

Q. *You never carried out the contract?*

A. No, I never—

Q. *What did you do instead?*

A. I got word to the individual I was supposed to hit and told him; got word to him through, through friends to let him know his life was in danger.

Q. *And didn't you also go to special agents of the Drug Enforcement Administration in Newark?*

A. Correct.

Q. *And as a result of going to them you became a witness for the Commission; is that correct?*

A. That is correct.

FROM MIAMI TO NEWARK

Instances of transportation of drugs from Miami to Newark were established at the hearings through the testimony of John A. Matthews III, Project Director of the City-County Organized Crime Strike Force of Essex County. Mr. Matthews was able to review some of the results which evolved from the 1971 arrests at the Howard Johnson Motel, an action described previously in the testimony of the witness who appeared under the alias of Mary Smith. He explained that a second female, referred to at the public hearing only as Miss X, had been arrested in that action and had subsequently been interviewed by members of his staff. A tape recording was made of that interview, and Mr. Matthews testified relative to pertinent parts of the tape, which were played in the public hearing chamber. The facts which emerged from that tape-accompanied testimony are summarized below:

- Miss X was a narcotics courier who brought from Miami to Newark both cocaine and heroin. In fact, she had just delivered a supply of narcotics to Newark when she was arrested in September, 1971.
- Miss X was vague in her description of her supplier of drugs in Florida, identifying him only as Dan. Mr. Matthews said the vagueness could be attributable to her probably being, as disclosed by his investigation, a prostitute who was given supplies of narcotics by her pimp to take to Newark.

- When Miss X arrived in Newark, she made initial contact for delivering the narcotics by phoning the 55th Dimension Restaurant in that city, a business operated by Dave Sheffield, previously referred to in the testimony of Mary Smith.

- Under the final arrangements for her role as narcotics courier, Miss X received \$325 for bringing three ounces of narcotics (worth a total of \$6,000 in the illicit heroin market to Newark). Out of that \$325, she had to pay for her air fare and lodging. Mr. Matthews estimated she netted about \$100 on each trip. He attributed that relatively low payment to Miss X to her probable prostitute-pimp relationship with the supplier in Miami.

Mr. Matthews explained why heroin was carried in such small amounts from Miami to Newark in 1971:

A. At this time there was a crackdown on the large, or larger dealers in Essex County, which was bearing some fruits. Electronic surveillance had resulted in the identity and apprehension and conviction of several major dealers in the county. There was a less-available supply.

Also, there was the problem that time of Alvin Little and the fact that he had, just prior to this, been killed and no one had yet stepped in to fill his position, so that there was a tight market in the Newark area and it was necessary to reach outside the area and get it into New Jersey.

Q. And the tight market produced a little bit of desperation on the part of the dealers; is that right?

A. Yes, it produced desperation and a little higher prices than might otherwise have been paid.

In response to questions by the Commissioners, Mr. Matthews made the following observations about the impact of and trends in the narcotics problem:

Q. From your experience, is there any connection between organized crime and the traffic in narcotics?

A. Based on my experience, there is a definite connection between the two, yes, sir. I think the last

witness who testified here gives an indication of that. Actually, both witnesses who have testified here this morning. The names which he mentioned are the names of people connected with organized crime, also connected or dealing in the area of narcotics.

There is a tremendous profit, as the last witness has indicated, and organized crime is always quick to jump into an area when there's a profit to be made.

* * * * *

Q. One question, Mr. Matthews. From your experience, is violence a necessary associate of the traffic in narcotics?

A. It appears that it is, because there is a tremendous profit involved in it. As the last—the first witness this morning detailed, there were a series of kidnappings, which resulted in violence. There were many deaths in the area. There's a lot of double-crossing in the area and violence is a natural part of the narcotics traffic.

* * * * *

Q. Have you discerned any change in the type of drug that's being put on the street today?

A. Today, as opposed to two or three years ago, there is a much bigger market for cocaine than there used to be. There is a lessening of the use of heroin, or heroin on the street, and an increase in the use and presence of cocaine on the street.

Q. From your background and experience, does cocaine generally come up from the south to the north rather than from the European route?

A. Yes, it does. It's South America, or Miami, Florida, and up through that way. Much Cuban traffic in this area.

Q. And do you have any opinion as to why the heroin market seems to be diminishing?

A. The Federal Government has made inroads in the Far East areas with the growth and exportation of heroin from those areas. The Federal Government also has created the Regional Drug Abuse Offices

which have had an effect on larger dealers in heroin, and the general public became quite upset with heroin. I think those are all factors which led to the decline in use of heroin.

THE NEW YORK DRUG LAW

During 1973 New York State's new and severe drug law took effect. The Commission was interested in hearing what initial impact that law might have had or could have in the future, especially in relation to the possible need to adjust New Jersey's narcotics laws to deter a mass move of drug traffickers across the Hudson River to New Jersey. Frank J. Rogers, Special Assistant District Attorney for the City of New York, appeared as an expert witness to testify about the new New York law.

Mr. Rogers and his staff are responsible for the enforcement of that new law for the entire city. He explained that he has co-equal jurisdiction with the five District Attorneys for the various areas of the city and that in 1972 special Narcotics Courts were established in the city to concentrate solely on offenses involving the sale and possession of narcotics, which, as in New Jersey law, are referred to as controlled dangerous substances. Mr. Rogers outlined some of the principal provisions of the New York's new drug law, beginning with an instance of contrast to the old law:

A. Under the old law, if you possessed sixteen ounces, or a pound, of heroin, cocaine, or if you sold that amount, you were liable for the most severe punishment of fifteen years to life imprisonment. Today that has been reduced to the sale of one ounce or the possession of two ounces or more, so that it has been cut sixteen times.

* * * * *

A. What it means is this: That if you're convicted of the sale of one ounce of heroin, the judge has no alternative but to sentence you to a minimum term of fifteen years to life, which means that you must serve fifteen years plus one day before the parole board can consider you for parole. You may serve the rest of your natural life.

If the judge desires because of your background or whatever aggravating factors may exist, he can sentence you to sixteen, seventeen, up to twenty-five years to life.

Q. Suppose there are mitigating factors on the other side?

A. If you're convicted of what we now call an A-1 felony, he must sentence you to fifteen to life. He has no discretion at all. If after you serve the minimum amount of time set by the court, fifteen years or sixteen years, and the parole board desires to parole you, you're on life parole. You never get off parole, so that you can always be brought back for a violation of parole, whatever the conditions of parole are, and reincarcerated.

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If you sell or rather—yes, sell between one-eighth of an ounce and one ounce, it is what we call an A-2 felony. Of if you possess between one and two ounces, that's an A-2 felony, the minimum term for which is six years to life, the maximum eight and a third to life.

* * * * *

If you sell any amount of a narcotic drug, any amount at all, and that's the usual nickel bag, as we call it in the city, a five-dollar bag of heroin that contains somewhere close to a grain, purity 2%, that's an A-3 felony and again it's a life sentence, the minimum of which is one year, which means that you must do one year and a day before you're eligible for parole. The judge, however, could set the maximum minimum of eight and a third years for that violation.

Mr. Rogers said one immediate impact of the new drug law has been a decrease in the number of felony arrests for narcotics offenses, and he gave some reasons which he feels might have prompted that trend. He also was of the opinion that it still is too early to tell what the full impact of the law will be. Some pertinent excerpts of his testimony in these areas follows:

A. I can tell you at this juncture that in September of '73, the first month that the new bill was in effect, comparing it to September of '72, we had 50.8% less felony narcotic arrests in the city. We thought that might be a momentary thing. It was not. In October of '73, comparing it to October of '72, there was 31% less felony narcotic arrests. In November, '73, compared to '72, 38% fewer persons were arrested for felony narcotic violations.

* * * * *

A. Well, I think there are three reasons for the reduction in felony arrests in the City of New York.

Number one is the scarcity of heroin because of the Federal law enforcement effort drying up to a great degree, the European market. The Southeastern or Southeast Asian market has not become that sophisticated to make up for it yet. It's basically now alien-sailors-jumping-ship type of thing. It is not a real sophisticated distribution network.

The second reason is that there has been major steps made or accomplished in the City of New York with a joint Federal-state-municipal law enforcement and prosecutorial effort.

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In what is proposed in a narcotic enforcement system, no competing agencies; everybody who is in narcotic enforcement working under one umbrella outfit, and it really has been working out, so that the joint effort has also contributed to the reduction. But although it is a bit early with the law only in effect approximately a hundred days, it is a bit early to say, but I firmly believe that the new drug bill has caused some portion of the decrease even if it's only a wait-and-see attitude. Let's see what happens in the court. We have approximately in Manhattan 160 indictments under the new law and we have had approximately eleven or twelve dispositions under the new law. But it won't be until we're able to publish the figure of something like 200 people being sentenced to life imprisonment that you will really get the full impact of the law across to the people.

Mr. Rogers explained that despite its severe provisions, the new New York law does leave some room for prosecutorial discretion:

The key to the restriction of what a prosecutor can now offer a defendant as a lesser plea is indictment. Before indictment the prosecutor can offer anything. After indictment the prosecutor is restricted. In other words, I think the State Legislature left us with the ball in the lower court in the first few days of the handling of a criminal prosecution because they didn't want the upper court congested more than it is at the present time.

* * * * *

In the drug area, if you're indicted for any of the three A felonies, either an A-1, an A-2 or an A-3, you must plead to an A felony, which means simply this: if you sell ten tons of heroin, the most I can indict you for is an A-1. I can give you an A-3 plea. If you sell one bag of heroin, the most I can indict you for is A-3 and I can give you no plea, no lesser plea.

Q. So there is no plea bargaining for the lesser offenses, felony offenses?

A. No. If you're down into the B, C and D areas, you can. But B, C and D normally is—well, you can see it has nothing to do with the sale of any hard-core drug. It has to do with dangerous depressants, et cetera.

Up to date, Mr. Rogers said, there was no great exodus of pushers known to New York authorities going to neighboring states. However, Rogers stated:

A. There is no question in my mind that once the pusher fully appreciates the weight of the law. As I said before, the attorneys still do not appreciate that the bill affects not only the narcotic area but the non-narcotic area. Once the pusher appreciates the weight of the law, let's say, March, when they find 200-300 people being sentenced to prison for life, that they would move their operation. It seems to me quite logical that they will move it into the Weehawken-Fort Lee areas, et cetera, which practically, you know, border New York City, or up to Greenwich, Connecticut, or some place like that.

PROGRAMS OF THE CUSTOMS SERVICE

The task of attempting to keep drugs out of the United States has long been one of the responsibilities of the United States Customs Service. Fred R. Boyett, Regional Commissioner of that Service for southern New York and New Jersey, testified in an expert capacity and commenced his testimony as summarized below:

- The recent scarcities of available drugs on the street reflect improved enforcement at all levels and a reduction in the amounts of drugs entering our borders illegally. A balanced and integrated attack which maintains pressure against all facets of the drug problem has aided this success. However, this current lull cannot be expected to continue indefinitely. The payoff is too high for the worldwide smuggling combines to remain dormant for a long period of time. They will be back with increased attempts at smuggling hard narcotics. It is incumbent upon Customs to successfully accomplish its mission of prevention, detection and deterrent.

- The Customs Service must have an integrated enforcement program not only to apprehend and confront the smuggler but also to meet the increased demands placed upon the Service by the dynamic growth in the international trade level. There are now over 300 ports of entry in the U.S. Interdiction units are in place along with sophisticated communications equipment. Detector dogs provide a special interdiction capability and Custom boats and airplanes are constantly employed in the effort. Complementing these specific enforcement activities is the efforts of Customs special agents in uncovering instances of fraudulent importations, organized crime, cargo theft, major conspiracies, neutrality and other related categories. A small but significant phase of these investigations which can produce leads to large scale smugglers of heroin and other drugs is the detection of apparently legitimate firms whose true business is to act as a front for illegal activities involving organized crime.

Mr. Boyett discussed the feasibility of the use of detector dogs, trained to locate narcotics caches, by the State Police or local drug enforcement operations:

A. We have worked with the New York Police and the New Jersey State Police in specialized cases. The dogs do have a drawback in that they have very aggressive tendencies and it is not a practical thing to search people with dogs. We never have our dogs in proximity of passengers. The only things that we examine with the use of dogs are cars, trunks, cases, cargo, things that are not closeby to people, because when one of our dogs does alert on a narcotic, he is quite aggressive. He would literally tear it to bits, and if it were on a person, the person would not be in too good a shape.

Q. Well, is this something that comes about because of the training, or are these dogs naturally that way?

A. Well, the dogs are selected for aggressiveness, in the first place, and, as I said; a lot of them were attack dogs in the military, so they're big and they're strong and it does come about as part of their training.

The alert can't be just a sniff or a paw. It really is a considered attack on the thing and it is rewarded by the trainer giving him the reward that he seeks, and that's his affection and, literally, "nice dog."

The seizure statistics of the Customs Service reflect that the use of heroin is declining while use of cocaine is increasing. Mr. Boyett was asked:

Q. Do you have any opinion as to what is causing the decline of heroin?

A. Well, I have my own opinion and I think it's shared by some of the other so-called experts in the field.

I believe that we have attacked the demand side of the equation quite heavily, and I think that the state, local and Federal programs to alert children to the dangers, and the school programs, university pro-

grams; are now bearing fruit in that it's just not a thing to do any more. Kids are turning to other things, as they did in our days, I suppose; alcohol and other forms of release, or relief or whatever they're seeking.

Q. Mr. Boyett, one thing that our Commission is attempting to do is to frame areas wherein we can make recommendations to our Legislature for action to fight narcotics. Now, are you saying that an educational approach will be effective?

A. I think it's been very effective in decreasing the demand for heroin and in alerting first-time users that the guy who's really touting you to use heroin is not your friend, he's really the worst enemy you'll ever have, and I would suggest that we continue to work in that direction.

* * * * *

Q. Well, do you think that the educational aspect is equally as important as the law enforcement aspect?

A. Well, quality is a real hard thing to put your finger on. I think that our enforcement efforts are terribly important. I think that the deterrent effect that Customs and other interdiction units have is a major contributor to the decline of heroin on the street, and the lack of availability even further inclines someone who might have used it not to use it, so I don't know whether I can say 40%, 60% or what, you know, but I believe that we should go on in much the same direction. It's like the old thing that what you're doing is working, you keep doing it.

Q. Then as a United States Customs commissioner, would it be a fair statement to say that your advice to the State of New Jersey would be to give the two aspects equal priority?

A. I would say that they should give both priority. Mr. O'Connor, I really don't know, as I said, whether equality of resources in these directions, and that's literally what we're talking about, dedication of financial resources, which would have the largest payoff. I think that there's going to be a continuing decline in the use of heroin just through Federal efforts, but

I believe that the states can speed up by laying high priority and ask for utilization of drug interdiction and drug deterrent efforts.

A NEW FEDERAL PROGRAM

The United States Justice Department's newest agency in the narcotics area is the Drug Enforcement Agency (DEA). It is the major governmental arm for suppression of narcotics trafficking in illicitly produced drugs such as heroin and cocaine. A second major program of the agency is the elimination of unlawful diversion of legitimately produced drugs such as barbiturates and amphetamines. The agency has for these purposes some 2,000 criminal investigators stationed both in the United States and around the world where drug traffic originates or transits.

Mr. Arthur Lewis, Regional Director of the Drug Enforcement Administration, for an area including Philadelphia and parts of New Jersey, appeared as an expert witness to tell of that agency's findings and programs. He began by explaining the focus of his agency's work:

A. Working with such small numbers of personnel and attacking a problem of such vastness and complexity, it is obvious that the targets of our activity must be carefully selected and that the great burden of law enforcement in this area falls inevitably upon the state and municipal police. Our strategy is, therefore, a simple and direct consequence of this. It is first to attack the criminal elements who make the drug traffic possible at the international and interstate level and, secondly, to provide as much support, leadership, training and direct assistance to state and municipal police forces as possible.

THE NEW JERSEY DRUG SCENE AND THE BLACK MAFIA

Mr. Lewis's knowledge of the present status of drug trafficking in New Jersey enabled him to summarize situations and trends as of the end of 1973:

A. In the northern part of New Jersey we find heroin being supplied out of New York City. Most of this heroin is the European type. We are also

beginning to see the appearance of brown heroin, which is being smuggled in most instances into the United States from Mexico, with some coming in from Europe. We are finding large quantities of cocaine in the traffic. This is coming into the New Jersey area from Florida. This cocaine traffic is controlled by people of Cuban origin.

We are also seeing the appearance in the northern part of New Jersey of a hypnotic sedative, Methaqualone. This drug is much abused by youngsters in the United States and just recently came under Federal control.

In the southern part of New Jersey we find heroin being supplied by violators from Philadelphia who ship the heroin into Camden, New Jersey, and Atlantic City, New Jersey. We are also finding violators who ship heroin into Atlantic City and Detroit, who are calling themselves the "Black Mafia," the "Family," or the "Organization." These groups have money, power, and are rapidly gaining more influence. They are operating on an interstate and international level. They are engaged in a struggle with the old-line criminal groups for either all or a share of the heroin and cocaine traffic. They are ruthless and do not hesitate to kill either their competitors or their associates to establish control and authority.

In order to combat any efficient criminal organization there must be more efficient law enforcement organizations. There have been formed, and operational in New Jersey, task forces made up of experienced D.E.A. agents, New Jersey State Police, and municipal departments. To mention one, we have the Newark Task Force, which operates out of the Newark District Office of D.E.A. There has also been established a Cooperative Narcotic Intelligence Committee in New Jersey. The CONIC organization, on which sit ranking members of the Drug Enforcement Administration, the New Jersey State Police, Philadelphia Police Department and the Philadelphia District Attorney's Office, was formed for the rapid exchange

of information to avoid the duplication of enforcement effort and to exchange strategic and tactical intelligence. This has already been effective, but the area from Washington, D. C. to New York, of course, still remains a major source area.

One of the drugs which is increasingly coming to our attention and is rapidly becoming the drug of choice is methamphetamine, or speed. Our intelligence informs us that there are clandestine laboratories producing multi-pound lots of methamphetamine and that these illicit chemists are operating between Philadelphia and Southern New Jersey.

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As a result of the intensive enforcement activity of the last eighteen months, we are continuing to experience a shortage of illicit heroin throughout the East Coast. Heroin continues to be available in most localities, but the price at both retail and wholesale levels has markedly increased while the purity has declined.

There were several areas in the present system where Mr. Lewis encounters difficulty. There is a problem in setting bail for the narcotic peddler. He usually has a large cash flow and is a different type individual than a user. He has no roots and is in the business strictly for money. Whatever figure is set as bail, he has little problem making it and then he skips the area. Another problem is the sentencing procedures. It has been Mr. Lewis' experience that "you don't rehabilitate dope peddlers". They should be dealt with in the same way as other criminal offenders and a second time narcotics offender should be denied the opportunity for bail, Mr. Lewis said.

The pattern of drug traffic as it now exists in New Jersey, according to Mr. Lewis, is varied. The old-line organized crime types who have been engaged in this traffic for many years have been to jail and out again and have re-established contacts so they are even stronger than before. Over the last few years Mr. Lewis said, there has developed a well organized Cuban system and in urban areas the black groups are establishing a toehold—the Black Mafia. To deal with these organizations, they must be hit fiscally and jail sentences must be increased, Mr. Lewis added. A pertinent excerpt from his testimony follows:

Q. One of the things that came to our attention is that because they're organized, if you knock one particular member of that organization, there is someone available to take his place very quickly, keep it going until he returns or perhaps keep it going for himself. Do you think that mandatory sentences or stiffer sentencing policies would be more effective in dealing with that organization?

A. Well, very definitely I believe in two things. One of them is, I believe you must hit them fiscally; hit them in the pocketbook where it counts. Where a guy goes to jail, says, "All I'm doing is five," and he's taking a million-dollar risk, 200,000 a year, you can make me go to jail. Why not?

My thing is a non-bailable offense, heavy fine, and the other thing is mandatory penalties, and I mean mandatory penalties, life, twenty years, whatever it is. I'm talking about real sentences, not when you say life and the guy gets twenty years. I'm talking, when you nail a guy, he knows he's gone for good.

THE COUNTY STRIKE FORCE CONCEPT

A dozen New Jersey counties in which the majority of the state's populace resides have in recent years established narcotics strike forces (also called bureaus) as a way of mounting a more coordinated, sophisticated and intense fight against illicit trafficking in drugs. The Commission elicited testimony at the public hearings from representatives of agencies of this type in Union, Essex and Ocean counties. The purpose was to obtain facts about the various programs and their effectiveness and about any problem areas which might be appropriate areas for recommendations by the Commission.

THE UNION COUNTY NARCOTICS STRIKE FORCE

John R. Stamler, Assistant Prosecutor of Union County and Executive Officer of the County's Narcotics Strike Force, and Captain Daniel Hennessey, a member of the Plainfield Police Department and Vice Commander of the Strike Force, appeared as witnesses to describe that agency's operation. Mr. Stamler stated that the Union Strike Force emanated from a 1971 decision

to bring together representatives of the various municipal police departments and the Prosecutor's Office to work as a cohesive unit in recognition that drugs move across governmental lines with relative ease.

The force has grown to a present size of three full time attorneys, 13 county investigators, plus a laboratory staffed by two chemists. Municipal police officers are used in pending investigations only to monitor court-approved wiretaps, engage in surveillance, and participate in countywide narcotics raids. Mr. Stamler called the Union Strike Force a concentrated effort and commitment by the County Prosecutor and the Municipal Police Chiefs to combat the flow of drugs.

Mr. Stamler was asked to give his opinion on the effectiveness of the Union Strike Force's use of municipal policemen, a practice not followed by some other county narcotics strike forces. He answered:

A. Well, I think our unit has been exceptionally effective and productive, and I think the statistics will bear that out. Our method of operation is somewhat easier to run because the chain of command is within our own office. We do not have municipal police officers assigned there five days a week having to answer to a chief of police who has nothing to do with the operation.

When a municipal officer is assigned for a period of time, he works beneath Lt. Mason and Capt. Hennessey as the commander and vice-commander. We have found our experience satisfactory. We would rather have municipal police officers assigned to work within our unit for a given period of time, be it a month or three months, only because we think we could accomplish more. However, we recognize the problems that the police chiefs face in running a municipal department, and there are many departments within our county that have a detective bureau consisting of one man, who must do everything in police work, and it would be impractical for him to be assigned to the county strike force to work a month at a time and leave everything else go. It is a question of priorities.

We are able to complement the municipal police departments by giving them undercover men. When we need men to conduct surveillances, be they electronic or physical, or countywide raids, they provide us with the manpower we would not otherwise have.

A POSSIBLE BUT NOT PRESENT EXODUS

As previously noted, one of the Commission's interests at the public hearings was to garner facts about any possible impact of the new New York narcotics law. Mr. Stamler had an opinion similar to that expressed by prior witnesses:

A. We have not seen any hard, actual evidence. We have received intelligence information from informants, from undercover agents who have had contact with New York defendants, and it seems that they are taking the position they're going to wait and see just how sincere New York authorities are in enforcing their law. If in fact they are, do adopt the hard line in enforcing that law, then just practical economics will dictate they pay the one-dollar toll and move over to New Jersey where, for the same offense they will be exposed to no more than twelve years in prison as opposed to life in New York State. But we have seen no actual evidence of them coming over to deal in our county, no. Staten Island is only across the water from us.

Mr. Stamler was asked for his opinion on whether New Jersey's narcotics laws should be amended to place them on a par with the new New York law. He stressed in his reply his feelings that New Jersey narcotics laws were generally adequate but called for steps to effect firmer incarcerations of offenders:

A. In my opinion, this is a personal opinion, I am not speaking for the prosecutor of Union County, that our law is, or has, I think, adequate sanctions for dealing with criminals except for the area that I mentioned. I think there should be a mandatory minimum custodial sentence for sale of drugs. I think that if the judges in this state were made more aware of the enforcement problem, as well as the social problem of

drugs, I think they might adopt a more practical outlook in the sentencing of drug offenders.

We have nine judges in our county, all of whom will sentence a drug defendant on a Friday and the sentences will range from the suspended sentence to a state prison term for the exact same type of offense. I don't think that the disparity in and of itself is bad because that is human nature. I think that the judges, however, are not qualified enough in the area of drug enforcement and drug abuse to recognize the problems. Many of them think it is a social or a medical problem that is best helped by referring them to some rehabilitative agency or some type of program without considering that the first step to rehabilitation, as our former criminal assignment judge used to say, is a plea of guilty and when the doors of the jail clank shut.

Q. Well, with regard to the penalties, then, do you think that perhaps a more immediate solution might be to make this subject the topic of a judicial conference as opposed to legislation?

A. Well, it's a twofold process. Obviously, I think the judges should be trained as part of a judicial conference. However, we are emphatic about the need for mandatory minimum custodial sentences for the sale, and that would be strictly the Legislature's province.

Q. Well, do you know of any jurisdictions which presently have mandatory minimums and have had them for a period of time long enough to form an opinion as to whether they actually work?

A. Well, Capt. Hennessey pointed out to me last week that Japan has managed to eliminate their drug abuse problem by imposing for the smallest amount of marijuana five years in prison. I'm not saying that's the practical approach. Things are treated a little bit differently in this country, and I'm not suggesting anything of that sort.

However, incarceration, firm incarceration, I think, will reform an awful lot of drug dealers and users.

Both Mr. Stamler and Captain Hennessey found New Jersey's electronic surveillance law to be an effective law enforcement tool:

Q. Capt. Hennessey, perhaps you might be able to answer this question: In your experience, do you find that wire taps are effective in an enforcement program against narcotics?

A. It's my personal opinion that legalized wire taps are the most effective weapon to come along within the last twenty years in dealing with narcotic drugs and that type of hidden crime.

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Q. Mr. Stamler, if you would care to comment.

A. We have worked extensively under and within the existing electronic surveillance law. We find the law to be satisfactory. I think the constitutional safeguards are adequate to protect any criminal defendant's rights. They do represent a bit of a pain in the neck sometimes for law enforcement agencies, such as having to travel a great distance to find one of the six designated judges who can sign the order.

The suggestion that we have made several times, while it does not deal specifically with the narcotic problem but with the wire tapping statute, is that two areas within which organized crime find it profitable to work are prostitution and untaxed cigarettes, neither of which crime are one of those specified in the wire tap statute as being the subject of a court-authorized electronic surveillance.

THE ESSEX COUNTY NARCOTICS BUREAU

The Bureau of Narcotics of Essex County is now in its eleventh year of operation, Mr. Richard L. Slavitt, Assistant Prosecutor of Essex County and Director of the Narcotics Bureau, and Detective Joseph M. Pariso of that Bureau appeared as witnesses to discuss the Bureau's operations and current trends in the narcotics scene in their county.

The strike force, Mr. Slavitt said, is funded primarily by the State Law Enforcement Planning Agency (SLEPA) and receives

other monies from the state and county. As director, Mr. Slavitt is responsible directly to the prosecutor. There is also an advisory board made up of all the municipal chiefs of police. Detectives are assigned to field operations and some work exclusively in an undercover capacity. The personnel for the bureau are recruited from the Prosecutor's Office, Sheriff's Department and various municipalities of Essex County.

The bureau, Mr. Slavitt continued, has used court authorized electronic surveillance on numerous occasions to combat narcotics traffic. They are not authorized to conduct electronic surveillance outside of New Jersey so they must go to the authorities in the other state and request that they conduct the surveillance after presenting the basis for the request. This is necessary, Mr. Slavitt said, on many occasions due to the flow of narcotics from New York, Boston or Miami.

THE NEED FOR "BUY MONEY" AND "FLASH ROLLS"

A major law enforcement tool in the infiltration of narcotics trafficking is money used by undercover agents to purchase narcotics and to pay informants. These funds are referred as "Buy Money." The undercover agents additionally use these funds to display large amounts of money called "Flash Rolls" to drug traffickers to convince them of an undercover man's ability to buy sizable quantities of drugs.

Mr. Slavitt stressed that funds available for "Buy Money" and "Flash Rolls" are presently inadequate, especially for infiltration of the higher echelons of narcotics distribution. He suggested that action might be taken to empower law enforcement agencies to make use of money seized in narcotics raids for the purpose of increasing available funds in this area:

A. We have had occasion to seize great quantities of money in narcotics raids. We received — we confiscated at one time \$27,000 at an apartment house in Newark. Many other times we confiscated many thousands of dollars. We also had occasion to confiscate, although we have not been able to utilize vehicles which have been used to transport narcotics.

Q. *And what happens to this money and these vehicles presently?*

A. The money is handed over to the county treasurer. As I understand it, he puts it in a vault in an envelope with the name of the investigation on it and it remains there until, perhaps, the trial work or all appeals are exhausted, at which time it goes to the county treasurer.

Q. Could you see any alternative way of using either this money or these cars which would be more helpful to a bureau such as yours?

A. Well, I would think that the monies that we seize in narcotics raids could practically, at least in certain years, make us almost self-supporting. That might not always be the case, but certainly with the amount of arrests and confiscations that we make, we could utilize this money to purchase more sophisticated equipment; to purchase narcotics from other narcotic offenders. We could utilize this money in many different ways to more effectively combat the problems of narcotics.

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A. I would say that in our operation alone, which is only commenced since October, there have been numerous times when we have needed money of 15, 20, \$30,000, not to spend, perhaps, but to use as what we call flash rolls, and that is not available to us.

Now, a flash roll is money which we will expose to a dealer in narcotics, and prior to the deal being consummated or prior to him disposing of the money or whatever, we will arrest that person. This happens quite often and it's the only way that you're going to get to a narcotic dealer of any merit. We could arrest some now for another ten years, people on the streets who are addicts, and we're never going to make a substantial impact on the narcotic problem. If we cannot get to the source, we will never be effective, and if we can't spend money or show money to get to the source, we will never be able to be effective.

Q. So, what you do, then, if you don't have it, you've got to go some place to get it?

A. Yes, sir.

Q. And you go to the prosecutor?

A. I can go to the prosecutor for a reasonable amount of money. If I went to any prosecutor, I would think, and asked for \$30,000, I don't think I would meet with much success. I don't think any prosecutor just has that type of money.

Q. And who, in turn, to assist you, however, must then go back to the county treasurer or the board of freeholders to get some large sum of money or make it available for you; isn't that so?

A. What we do in that situation when we need a large sum of money like that is that we invariably have to turn to another authority. I don't think there is the provisions for the freeholders, though I'm not positive of this. I don't know of a provision that the freeholders have to give to the prosecutor a large sum of money, 20 or \$30,000, for use in this type of operation. The freeholders have approved, I assume, a budget and we're confined to use money within that budget.

Q. Then if you can't get it from that source and you must go somewhere else, then it strikes me there is a limitation on where you can go, isn't there?

A. Yes, sir.

Q. You're either going to get it from another county prosecutor who has the same limitation or you're going to get it from a Federal agency, who, I assume, is as tight with the money as a prosecutor is, or you're going to get it from the New Jersey State Police; isn't that so.

A. Yes, sir. In point of fact, we go to the Federal authorities. The Drug Enforcement Administration has worked very closely with us; Mr. Hambrick, who, I believe, is to testify tomorrow.

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Aside from purchases, aside from flash rolls, Mr. Lucas, there are also occasions when we—it would be most beneficial to a narcotic investigation to be able to purchase, let's say, 8 or \$10,000 worth of narcotics, and when you do something like that,

you're buying the narcotics and you might never see the money again. But that is the way to move up the ladder.

Q. I am in complete agreement with you, Mr. Slavitt, and I don't think there is anyone who has worked in the prosecutor's office who isn't aware of this particular problem both for purchase money and show money and the loss of time that's often involved in obtaining it; in some instances, the absolute failure to get it when necessary.

A. Yes, sir.

THE INTER-COUNTY FLOW AND INTELLIGENCE NEEDS

The inter-county nature of drug trafficking was discussed by Mr. Slavitt, who expressed hope that a statewide central intelligence system would be established:

Q. Now, you said before that your agency is bounded by Essex County, and that, I assume, is the extent of your jurisdiction?

A. Yes, sir.

Q. Have you perhaps already or do you anticipate running into any problems with the limited jurisdiction which your agents will encounter when investigation perhaps will take them across county lines?

A. Investigation into narcotic activity invariably takes us across county lines. We try and minimize it as much as possible, but we recognize, at least, I recognize that there are significant legal problems which could be attached to a police officer even under the prosecutor's auspices going into different counties.

Q. How does your intelligence system work at present in your office?

A. We are currently, since we have just been established as of October, setting an intelligence system up. We have a man who is working exclusively in the intelligence area. We're setting up files. We hope to have forms ready so that whenever

a narcotic arrest is made in Essex County, these forms will be sent to us. We, in turn, can send a notation to the home town of the narcotic offender so that we will have a record of the narcotic offense. The home town where the narcotic offender comes from, wherever it might be in the country, we will send this form to so that they can be aware that a narcotic violator resides within their boundaries. We hope to develop intelligence on key personnel throughout Essex County who we have reason to believe are narcotic offenders.

Q. Can you think or foresee of any other way a narcotics intelligence information might be centralized within the state, for instance?

A. Mr. Siavage, I would hope that with the advent of cooperation between different agencies we might be able to some day have a centralized intelligence system so that we could feed in something that would be analogous to what is here in Trenton with automobile license plates, or some kind of intelligence system of that nature so that all narcotic offenders throughout the state could be on one kind of centralized area and there we could all turn to receive information on narcotic offenders.

The county strike force concept has been a major step forward in a more effective fight against narcotics trafficking in Mr. Slavitt's opinion:

A. When you consider that before this strike force was in existence the majority of narcotic arrests were made by municipal agencies, you would have to consider that all of these agencies would not have the manpower or the monetary wherewithal to buy sophisticated electronic equipment or to provide undercover agents to go to different parts of their own municipality. For example, if the Nutley Police Department, and I just pick Nutley at random, decided to do an undercover operation, they might find it very difficult, number one, because the Nutley policeman might be known throughout the community. He might have grown up in Nutley. He might be well familiar with the area in which they

want him to do undercover work. So, to put him in a small town and ask him to act as if he is unknown is unrealistic.

In addition, additionally, the budget of a town like that might not have the monetary capability of purchasing sophisticated electronics equipment so that investigations could be conducted with telescopes, cameras, radio, tape recorders, microphones, things of that nature which can make a successful operation.

The availability of heroin and its percentage of purity, according to Mr. Slavitt, have been declining in recent years in Essex County, with a corresponding upsurge in cocaine distribution and use:

A. The availability of heroin has changed dramatically from when I first became an assistant prosecutor till today. Approximately four years ago on the streets of Newark where an addict was arrested we would find heroin in the quality of perhaps 15%. During the four years that I have been associated with the prosecutor's office up until today, our chemist informs us that the quality of heroin taken from an addict is anywhere between 1 and 4%, so the reduction in potency of the deck of heroin has been reduced dramatically.

Q. *In your opinion, is anything taking the place of heroin since it's become in somewhat short supply?*

A. The most likely drug to take the place, which has arisen in regards to amount of arrests and things of that nature, would be cocaine. Cocaine was taking the place of heroin, gives an exactly opposite effect on the human body. Heroin is a depressant, cocaine is more of a stimulant. Nevertheless, that is the one drug that has apparently taken the place of heroin.

* * * * *

Q. *Mr. Slavitt, or Det. Pariso, there's been a great deal of testimony with respect to the deterioration in the quality of heroin. What do you attribute this to?*

A. (By Mr. Slavitt) Well, I attribute it to the successful investigations that have been taken on by the

narcotic officers, both nationally and internationally; the cracking down, perhaps, of the factories in Marseilles; the stopping of the importation; the confiscation of large amounts of pure heroin would be the type of thing that would effectively curtail the continued high quality of heroin.

ORGANIZED CRIME INVOLVEMENT

Both Detective Pariso and Mr. Slavitt explained the need of narcotics traffickers to raise money, with Mr. Slavitt noting how that need is natural area for organized crime loan sharking activity:

A. (By Det. Pariso) In my experience, a lot of times I have heard of instances where we'll take a perfectly legitimate businessman who possibly has a connection with someone who has a connection with a large seller of narcotics, and he might go to this man and he might say to him, "I need \$25,000 and I'll give you 30 back next week." Now, this legitimate businessman doesn't want to know where his 25 is going. He trusts him in person. He gives him the \$25,000. A week later he makes 5,000 and doesn't want to know where it came from because probably the guy that came to him is not such a bad guy. Maybe he's a gambler. In other words, he shuts his eyes to it. This has happened.

There's a lot of times where people want to go into business and call up three or four people and get the money together. We've run into that a few times. Say they want to buy a couple of eighths. You need 7500. You get 25 from this one, 25 from that one and that one. Now you have 75. You whack it up and set yourself up in business like anyone else would.

* * * * *

A. (By Mr. Slavitt) I would like to add to that, aside from the gambling aspect which becomes related to organized crime, we also find large amounts of narcotic activity are funded by loan sharks. Their money is always being moved, and narcotics is one of the quickest ways to turn into a large profit.

For example, with the charts that have been shown here today, you can see that for a certain amount of money, I believe it was \$4,000 you had on the chart, you can make \$12,000 within a few days. This is the type of activity that loan sharks enjoy getting into. There is little risk. They will never touch the narcotics and all they have done is fronted the money and then they get back a substantial profit.

This is all related to organized crime, one of the main aspects where organized crime figures come into narcotics work.

DRUGS IN SCHOOLS

Mr. Slavitt noted continued drug use in the schools in the following testimony:

Q. What type of drugs do you find on the school level today? Is it heroin and cocaine or—

A. (By Mr. Slavitt) Depending on which schools you're referring to.

Q. Well, let's create a dichotomy between perhaps the urban schools and the hard-core city schools.

A. (By Mr. Slavitt) Fine.

Q. What do you find on that level?

A. (By Mr. Slavitt) In that level we have found heroin and cocaine. We find incidents of amphetamines, barbiturates, hallucinogens. LSD is quite prevalent there.

In the suburban schools, however, we find very little heroin. We do find evidence of cocaine. We find a large amount of amphetamines, barbiturates, enormous quantities of marijuana, and LSD.

THE OCEAN COUNTY NARCOTICS BUREAU

Ocean County established a Narcotics Bureau in 1972 after indictments for narcotics-related offenses had risen in that county from 24 in 1967 to 301 in 1971. The Board of Freeholders and the County Prosecutor both requested such a program be initiated with its principal aim being to combat illicit narcotics distribution

in the county. Establishment of the unit was endorsed by the County Chiefs of Police Association and the Mayors of the various municipalities. Palmer J. Herbert, Captain of Detectives for the Ocean County Prosecutor's Office and Director of the County Narcotics Bureau, appeared as a witness to describe the Bureau's operation and to offer his views on phases of the narcotics problem. His testimony began with a discussion, summarized below, of the nature of the Bureau:

- The bureau is unique in that it does not make any arrests except in extraordinary circumstances. It is primarily an intelligence gathering agency. Members of the staff will purchase narcotics, identify distributors of narcotics and forward investigative reports to the local police agency in which the distribution was made. The police agency is thus responsible for effecting the arrest of the perpetrator. The individuals of the bureau are then available at time of trial or grand jury hearings. This gives the municipal police departments a say in the operation of the bureau, and, in addition, they at times supply manpower and the municipality itself supplies funds for buy money, informant fees, and additional staff members.
- Basically, each municipality within the county signed a contract with the county and each put \$300 into the county general fund. When expenses are incurred in a particular municipality, that municipality is billed back for that amount of money. Bills are sent out on a quarterly basis with all pertinent information and itemization available.
- There are five or six police departments in Ocean County with more than 25 officers. Most of them detach an officer for a period of six months or longer to work for the bureau. Those communities with insufficient personnel to assign a police officer give a share of money.
- Of total operations for the first nine months of 1973, the complete costs were \$189,000. The bureau was running on a SLEPA grant from April 1973 to April 1974 of \$69,000. The bureau therefore is more

dependent on the municipalities for funding rather than the federal government.

- The bureau has an advisory board which establishes policy. It is made up of the prosecutor, sheriff, freeholder director of public safety and three members of the Chiefs of Police Association. There is a director of the bureau appointed by the advisory board as well as deputy director, undercover and surface investigators and a secretarial staff.

UNDERCOVER PEOPLE ARE INDISPENSABLE

Captain Herbert stressed the key role played in narcotics law enforcement by undercover agents. He sees a problem in always having on hand undercover agents of the proper ethnic origin and expertise for various probes. He stated that provision for interchange of agents among jurisdictions was a much needed step. His testimony in these areas follows:

Q. Undercover people, I assume from your testimony so far, are the backbone of an agency such as yours, aren't they?

A. I couldn't exist without them. They're a different type. They're people. They have a lot of moxie. It's a tough job. I have never worked undercover in this field, but I can admire and respect those people that do.

We have initiated the use of girls undercover in our bureau. They're one of the most fantastic things that we have done. It's just been extremely successful, and thanks to Lt. Grossi, who I see sitting in the back, we have been able to get them trained and they've just done a tremendous job for us.

Q. Do you have any opinion, Capt. Herbert, on the longevity of an undercover agent in that field?

A. We have a situation of roughly thirty-three communities and some 600 square miles, but I don't think an undercover agent can last in that area more than a year unless they came out on the surface, then went back under. But in addition to the possibility

of being burned, which sometimes will disrupt or shorten an undercover's undercover life, so to speak, there is a great deal of emotional stress. It's a tremendous tension-type job for undercover agents, and I think that after a period of time they need a break, a rotation or something. I don't know just what it is. You can see it sometimes. Some it never happens. Some it happens sooner than others.

* * * * *

Q. Have you been able to establish a cross section of a society as far as ethnic and racial groups go with your agents?

A. To a great extent, yes. We do have a problem in certain areas.

Q. Have you had occasion to either lend one of your agents to another agency or borrow an agent from another agency for a particular type of investigation which required a particular type of individual?

A. Yes. This is a problem. An interchange of agents, particularly amongst the counties within the state, is highly desirable and absolutely necessary. Even an interstate arrangement is desirable.

I had an incident within the last two months where a neighboring state wanted an undercover agent and we happened to have one that fit the particular qualifications. There was no way that I could send this agent up to work for this state. We ended up with—again in cooperation of my board of freeholders, and, I say, the prosecutor have been great for me. They gave the agent a leave of absence for a period of two months. The agent was hired by the foreign state for the two-month period of time, completed the assignment, and returned and ended the leave of absence.

But you can see it does a lot of things administratively. It interrupts earned vacation time for the agent. It interrupted sick time. It's very cumbersome in this way.

There was no doubt in Captain Herbert's mind that a high percentage of crimes against property in Ocean County are traceable to the narcotics problem. He testified further to that point and as to the flow of the main supply of drugs into the County:

Q. Do you see any connection in Ocean County, Capt. Herbert, between narcotics and other types of criminal offenses?

A. Absolutely.

Q. What percentage would you say of the crime in Ocean County is drug-related?

A. It's my opinion that some 70 to 75, perhaps even 80% of crimes against property—and by that I mean the muggings, the breaking and entries, the larcenies and the robberies—are directly or indirectly related to controlled dangerous substances.

* * * * *

A. As you know, Ocean County is a centralized area and you can almost in areas of criminal endeavor draw an imaginary line running down through Ocean County, through Toms River area, from east to west. Perhaps all that area north of Toms River, Brick Township, Lakewood, the Point Pleasants, would appear to be being supplied from the northern part of the state and New York City area. From the south of Toms River, and I refer to Long Beach Township, Stafford Township, the island down there, it appears to be coming from Atlantic City-Philadelphia area.

We have had occasion where our undercover agents on two occasions have been carried into New York City by Lakewood dealers who have carried them into New York and we have been able to buy in the New York City area from their suppliers and ultimately turn the D.E.A. people onto the New York City supplier.

THE IMPORTANCE OF FULL TIME PROSECUTORIAL STAFFS

The lack of a full time prosecutorial staff in Ocean is, in Captain Herbert's opinion, a major drawback to narcotics enforcement efforts:

Q. Capt. Herbert, does Ocean County have a full-time prosecutor's staff?

A. Unfortunately not.

Q. Has this had any effect upon the workings of your office? I think I heard you say before that some of your agents draw warrants.

A. This is something—we have a prosecutor and six assistants, all of whom are part time. We have two judges hearing criminal cases at all time. We have a grand jury that sits regularly. We have additional other work, reserve work that must be drawn by prosecutors or assistant prosecutors, and there is just not enough time for the assistants to do all of this work. Our investigators have to draw their own search warrants and go—wire tap warrant, those that we use, we draw. Investigators draw them. And it's just a question if they were full-time prosecutors, I think, a lot of these problems would be eliminated.

I personally believe that all prosecutors' offices should absolutely be a full-time position. I think it's come to—requires total devotion of the individual to that particular job.

THE ROLE OF THE NEW JERSEY STATE POLICE

The New Jersey State Police originally established its Narcotics Bureau to pursue drug law enforcement in 1951 with a staff of six men. The State Police effort has since been greatly expanded in terms of staff and programs and represents a particularly important phase of drug law enforcement throughout the state.

Accordingly, the Commission heard as witnesses in this area two State Police Officers, Lieutenant William J. Kennedy of the Narcotics Bureau and Detective Sergeant Louis F. Grossi of the Drug Enforcement Training Bureau. In their initial testimony, the witnesses set forth the following facts:

- In 1969 the New Jersey State Police, when confronted with the ever growing narcotics problem, especially in suburban areas, initiated what is considered to be the first drug enforcement training agency created by a state police organization in the country. In 1970 an additional 50 men were assigned to drug enforcement areas to bring the total complement to seventy-six personnel. By 1971 the stepped up program was fully operational.

- The drug enforcement school in Sea Girt is available to municipal-county drug enforcement officers as well as out-of-state police officers. Also instituted was an advance drug enforcement class for those who have graduated from the basic course and have gone out to the field and become more deeply involved in drug enforcement. The basic course contains not only legalistics but social and medical problems as well. Drug identification, drug user identification and the use of informers are also covered.

- In 1969 there were 13,364 drug arrests in New Jersey. By 1972 it had increased to 28,313. According to Sergeant Grossi, this increase probably reflects both an increased awareness of the police officer as well as an increase in drug abuse.

Both Lieutenant Kennedy and Sergeant Grossi emphasized that a major service performed by the State Police to aid county and municipal level drug law enforcement is provided by the previously mentioned training school where comprehensive and up-to-date instruction on modern enforcement techniques is given by men fully trained and experienced in all phases of drug enforcement work, including the use of undercover personnel and informers. Lieutenant Kennedy commented on services provided by the State Police:

A. We do, as a State Police bureau, oftentimes comment for the Attorney General's Office on all proposed drug legislation entered into the State of New Jersey. We continue to train local and county police as to the awareness of the drug problem in attaining proficiency in drug investigations.

However, getting specifically to your point as to what we do for the municipal and county police de-

partments, we offer our assistance in the way of resources, manpower. Their particular need of us oftentimes is the need for an undercover man to infiltrate the drug trafficking situation in the municipality or their immediate area or county, and this demand for these services are constant upon our personnel.

Like previous witnesses, Lieutenant Kennedy stressed the importance of law enforcement penetrating the higher levels of narcotics distribution to achieve more substantial results. He explained how the Narcotics Bureau is embarked on a priority program with high echelon distribution as the target:

A. We deployed more manpower in the detection, identification of individuals we considered to be the intermediate or even higher level drug traffickers in the State of New Jersey, and we have been, what I think, successful in this area because we have achieved and effected several arrests of individuals who we identified as intermediary-level drug traffickers, and besides getting involved in these types of investigations, which demand more time, which demand more resources, which demand the assignment of more personnel, we continue to maintain our cooperate effort with municipal and county agencies in offering them undercover personnel, and our ability to effectively operate on these two levels is seriously hampered by your assignment of personnel.

The State Police, according to Lieutenant Kennedy, have long been aware that a Cuban ring has been particularly active in cocaine distribution in New Jersey. He told of State Police action and views in this area:

Q. — *referring to specific individuals within the Cuban community located in North Jersey and Hudson County, that is monopolizing the cocaine trade and perhaps pushing cocaine so that it's now becoming a drug of choice. Is the State Police aware of this problem?*

A. (By Lt. Kennedy) I attended all of the sessions here of this and I find them very beneficial. I've learned a lot.

In 1967 we were aware of the Cuban infiltration into the State of New Jersey. In fact, I have here compiled for my information information on the Cuban infiltration.

* * * * *

A. When you say Cuban infiltration into New Jersey, as in direct traffic route with Miami, I don't think that it stops in New Jersey. I think that there is also Cuban drug traffickers in New York. But there are some of them in New Jersey because we have a concentration of Hispanic-speaking people in the metropolitan area of the state. And as far as our awareness, we know. Since 1967, I think, we have been conducting ongoing, continuous investigations into it. Part of our investigative actions were concerned with the Cuban infiltration particularly into the cocaine traffic.

In 1969 your New Jersey State Police Narcotic Bureau, which at that time consisted of seventeen men, arrested, effectively arrested, an individual, not the individual but two of his lieutenants in the Camden area, and this man at that time was regarded by us and by the international and national, Federal authorities as being the number two smuggler of cocaine into the country.

Q. What is that man?

A. (By Lt. Kennedy) That was a man by the name of Cardona. This man was not arrested in New Jersey, he was arrested in New York for other violations. However, we effectively arrested who we considered to be two of his lieutenants in the State of New Jersey at his home, which he purchased in Voorhees Township in Camden County, New Jersey, and we seized eleven pounds of pure cocaine.

ON THE DANGERS OF UNDERCOVER WORK

Both State Police officers observed that undercover work in narcotics enforcement has become increasingly dangerous because of a number of factors, including attempts to penetrate the higher echelons through large drug purchases:

A. We now must carry much more money with us, and it has so happened that in the past year we have had six occasions where our undercover personnel have been threatened, placed in very serious danger. We call it a ripoff. In other words, those attempting to sell us drugs, thinking we have the money to purchase, have attempted to hold us up. And there have been occasions when we have purchased drugs, substantial amounts of drugs. There was an attempt to again hold us up, not only get our money but get the drugs that we have purchased. So, this is a dangerous situation that exists, I think, not only in the State of New Jersey. It's happening throughout the country where people involved in drug traffic are actually ripping each other off and it's dangerous.

What it means for me, what I would hope to do is to be able to send at least two undercover men out on the street at all times and have him covered constantly by at least six or seven men.

Q. I get the impression that undercover intelligence gathering and undercover work by police officers in the field of narcotics is probably more dangerous than any other undercover work with regards to specific crimes. Is that a fact?

A. (By Lt. Kennedy) Yes, yes, I would agree.

A. (By Sgt. Grossi) I agree, from my own experience, but I can tell you from walking the streets from 1962 to '66, walking the streets in '73 is definitely more dangerous with the type of people we have out there from organized crime, young Turks, to quote their type of people, to the type of person on the street selling and using drugs today and that exposure is also from out-of-state police officers who have come to Sea Girt and have reflected their danger in walking

the streets as undercover men outside of New Jersey. Violence is not indigenous to New Jersey.

The present New Jersey narcotics law are generally adequate in the opinion of Lieutenant Kennedy and Sergeant Grossi, but both witnesses felt there were inadequacies and disparities at the judicial level in sentences imposed. Lieutenant Kennedy gave a drug investigator's view on the importance of stern and consistent sentencing of offenders:

A. A drug investigator is a different type individual. He's a detective who must seek the crime; the crime doesn't come to him. It's not in the form of a complaint that comes into the police station and he goes and responds and he arrests an individual. He must seek the crime, seek the individuals, identify them, spend many hours in surveillance, spend many hours talking to informers to justify probable cause and the issuance of warrants. And when he does this, after spending two or three months on one drug investigation and he effects what he considers to be a good pinch, a good arrest, and when he sees this man, this drug trafficker, come back out onto the street within two or three months, and this has happened either because of light sentencing, either because he wasn't convicted of the sale of drugs or perhaps was a downgrading of the offense into a possession, this man becomes frustrated. He spent so much time. He's dedicated. He wants this man taken off the streets. And I think there is no more—nothing that will destroy the initiative of a good detective as much as poor judicial action.

Sergeant Grossi presented recommendations he had prepared for the improvement of New Jersey's drug laws. They included provisions to expedite the seizure of vehicles used in drug trafficking, minimum mandatory sentencing for sale of controlled dangerous substances, and the re-enactment of the Registration Act pertaining to distributors and possessors with intent to distribute and those with physiological and psychological addictions.

PROPOSED REVISIONS OF NEW JERSEY'S DRUG LAW

During 1973 a comprehensive review of the State Controlled Dangerous Substance Act of 1970 was completed under the direction of David S. Baime, Deputy State Attorney General and Chief of the Appellate Section of the State Division of Criminal Justice. The report and recommendations emanating from that review were the subject of testimony by Mr. Baime at the public hearings.

Mr. Baime outlined six basic categories of drug offenders: 1) Those who use or are found under the influence of narcotic drugs; 2) Those who are found in possession for one's own use or with intent to sell or distribute; 3) Those who sell or distribute based on their own drug dependency; 4) Those who distribute as an accommodation to friends; 5) Those who sell for profit but who are not drug dependent, and 6) Those motivated solely by pecuniary considerations who engage in large-scale drug trafficking.

TOUGHER SENTENCES

For those in Category Six, the report and recommendations stemming from the law review directed by Mr. Baime propose a mandatory minimum sentence of ten years and a maximum sentence of life. Mr. Baime explained the need for stiffer sentences in this area:

A. Now, we have recommended that the present Controlled Dangerous Substances Act be amended to require a mandatory minimum sentence of ten years' imprisonment and a maximum penalty of life imprisonment with respect to the last category; that is, the high echelon drug trafficker.

On balance, we generally disfavor mandatory minimum sentences, the reason being that they have simply not worked in the past.

I'm sure you are all aware that prior to the Controlled Dangerous Substances Act we had the Uniform Drug Law, which had a minimum and maximum sentence, two to fifteen, with respect to most offenses. Very frankly, it was found that statute did not have a deterrent effect on drug offenders.

The basic question, of course, is how to define the high echelon drug distributor, and we cite as a model

the definition of a larger-scale drug trafficker which exists in *21 U. S. Code* at Section 848. Basically, that definition calls for a finding that the individual who has been convicted must be involved in some continued criminal conduct undertaken in concert with others, in other words, some sort of conspiratorial arrangement where the defendant occupies a supervisory or managerial role with respect to the drug distribution chain and where he derives a substantial pecuniary benefit by virtue of the conspiracy.

We believe that stiff penalties with respect to this type of an individual are warranted both by the moral culpability of that offender and also by the harm and the havoc that he wreaks upon the public.

As far as the other categories of drug offenders, the report recommends that the motivation of the convicted offender should be the predominant factor in determining the sentence to be assessed. The distinction would be continued between a possessor who takes drugs for his own use and those who possess with the intent to manufacture or distribute.

With respect to a drug dependent individual the report finds that rehabilitation might be the best means of deterring future misconduct. Accordingly, it was recommended that diversionary programs be expanded in the state. Mr. Baime explained the diversionary terminology.

A. Now, diversion under the present statutory scheme has two objectives: Number one, the program screens out those capable of rehabilitation and permits, at least, an attempt to rehabilitate those types of offenders; and, secondly, and importantly with respect to the testimony that has been given here this week, the diversionary programs permit law enforcement agencies, including prosecutors' offices, to investigate and prosecute major offenses.

* * * * *

We feel that diversion is a meaningful alternative so as to rehabilitate the individual where possible and, therefore, deter future acts of misconduct.

* * * * *

With respect to those who are capable of rehabilitation and who do not pose a danger to the community, the role of the criminal justice system must be to detect and arrest these individuals and to introduce them to programs where they can obtain treatment. The earliest possible time that these individuals can be diverted from the criminal justice system the better, both for the purposes of prosecutors and for the individuals involved.

* * * * *

We advocate a rather simple amendment to our present statutory scheme which would, in effect, create a separate offense for the violation of a condition of a supervisory treatment with a sentence that would be relatively stiff so as to prevent any kind of violation of that program. In such a way there would be no fear that the prosecution would go stale and there would be less impetus to require a plea of guilty before diverting the offender to a supervisory program.

We also advocate that the diversionary program which we presently have should be expanded to offenders who are drug dependent and who have committed drug-related offenses, specifically, non-violent drug-related offenses such as fraud cases, larceny, all cases without violence or where there is no assaultive nature to the crime. However, we do advocate that, with respect to drug-related offenses, the offender should be limited to a first-time offender. We should require a finding of guilt or a guilty plea, and, again, that we would exclude violent offenders.

Mr. Baime stressed that the present statute makes relatively little provision for sufficient medical input for cases involving drug dependencies:

A. What is needed is a reshaping of our statutory scheme to introduce a medical judgment into the process at the earliest possible time. We have advocated an amendment to the Controlled Dangerous Substances Act which would provide that those offenders who exhibit symptoms of drug dependency

would be referred to a medical authority similar to the Menlo Park Center with respect to sex offenders under the sex offenders statute that we have now. Following physical and psychological examination, the authority would determine whether the offender is drug dependent, the degree of his drug dependence, what programs are available, whether he can be treated, and, if so, the likelihood, if there is a strong likelihood of success. If the defendant does not pose a danger to the community, the authority would certify to the sentencing judge that this individual should be discharged based upon a scheduled and definitive supervisory program. The court under our statutory scheme proposed would retain the discretion to refuse to comply with the medical authority's recommendations. However, we envision that the recommendations of the medical authority would generally be followed.

A final recommendation was the decriminalization of certain marijuana offenses. Mr. Baime said the 25-gram limitation is unrealistic and the penalty of up to six months incarceration should be abolished and a fine imposed in these cases:

A. We feel that by decriminalization of marijuana offenses the prosecutorial authorities would be given freer hand and would be permitted to investigate and prosecute cases really warranting great attention, such as the high-echelon drug traffickers and the sale, the sellers and distributors of other dangerous, controlled dangerous substances.

FINAL RECOMMENDATIONS

Introduction

At the conclusion of the public hearings, the Commission, in a statement read by Acting Chairman Thomas R. Farley, made a number of observations and findings based on the facts presented at the sessions. Some major observations of the Commission were:

- It is clear that while heroin is in shorter supply and of poorer quality due to law enforcement efforts here and abroad, it can still be readily purchased in the streets to maintain the disastrous addictions which it spawns.
- With heroin in short supply and diminishing quality, there has been a sharp growth in the distribution and use of cocaine, another hard-core drug. Testimony established a major flow of this drug from Miami, Florida, to New Jersey.
- The experimentation with and/or the habitual use of pills—uppers, downers and hallucinogens—is on the increase, with many of the experimenters or users being of school age.
- Although law enforcement authorities and programs at the Federal, state and county levels have become more innovative and vigorous, there appears to be an urgent need for more and improved law enforcement tools and programs, if the distribution of narcotics in New Jersey is to be significantly stemmed.

The testimony of the witnesses who were involved in distribution of heroin and cocaine in Northern New Jersey dramatically emphasized the violence and complete disregard for human health and even human life by those who profit from narcotics trafficking. As the charts which accompanied the testimony of one of those witnesses graphically portrayed, a heroin cutting and distributing operation in just several days can generate a \$12,000 profit on a \$4,000 investment.

The lure of those profits to organized crime operations, particularly loan sharks, is obvious and was attested to by the testimony of a number of witnesses at these hearings.

The Commission found that all the facts cited above, plus others documented at these hearings, create a sense of abhorrence and alarm which cries out for a more effective fight against the narcotics menace. To that end, the Commission addressed itself to the research and deliberation needed to produce meaningful recommendations to help achieve that type of fight.

The final recommendations subsequently presented in this annual report, in the Commission's opinion, offer possible major steps which will improve law enforcement tools, and add deterrents to those who would profit greatly from illicit drug trafficking.

New Jersey's Controlled Substances Act.—Penalties

The Testimony and Background

One of the primary interests of the Commission at the outset of the narcotics hearings was the question of whether the sentences for narcotics law violations were sufficient. This issue was fostered, at least in part, by the recent sweeping changes in the New York narcotics law.

The Commission found, of course, that it was difficult to approach an issue such as this without some degree of personal prejudice. The witnesses before the Commission testified directly, or at least by inference, that the question of harsher sentences for narcotics law violations depends upon one's view as to whether jail sentences deter further drug related criminality. After listening to the testimony and considering the matter at length, it is the Commission's view that, except for sale cases, stiffer sentences do not deter further criminal conduct in the narcotics area. This position is based on the fact that most narcotics violators are themselves addicted. A mandatory minimum sentence in these cases, then, seems inappropriate if not counterproductive. What seems more appropriate to the Commission is the greater utilization of diversionary programs and the institution of new ones.

On the other hand, the degree of culpability of non-addicted individuals selling narcotics is considerably higher than the aforementioned group. The Commission is of the opinion that more traditional means of dealing with criminal conduct are warranted in this context.

It is also the Commission's view that, although the present penalty provisions (with the exception of sales cases) are adequate,

greater care should be taken by the sentencing court to determine the degree of culpability prior to sentencing with an eye towards diversionary programs if the individual's addiction is verified.

It should be noted that the Commission is in substantial agreement with the spirit of several of the specific recommendations contained in the Division of Criminal Justice's Report on the Controlled Dangerous Substance Act which was introduced as an exhibit in these hearings through Mr. David S. Baime, Chief, Appellate Section, who was responsible for its preparation. The report provided the Commission with a salient and comprehensive foundation for many of the recommendations which follow.

The S.C.I. Recommendations

I. In view of the foregoing, it is the recommendation of the Commission that a seller of controlled dangerous substances listed in Schedule I (*N.J. Stat. Ann.* 24:21-5) and Schedule II (*N.J. Stat. Ann.* 24:21-6) who is not addicted himself and who is shown to be at the head of a narcotics trafficking operation should be liable for a mandatory minimum term of ten years imprisonment, with no possibility of parole during the minimum period, and a maximum of life. It is also the recommendation of the Commission that the maximum fine be increased to \$100,000.00.

Comment

The aforementioned recommendation could be implemented through amendment to *N.J. Stat. Ann.* 24:21-19. The one obvious difficulty with drafting such a statute would be a sufficient definition of a drug seller who is at the head of a drug trafficking operation. Federal law already provides such a definition, 21 U.S.C. § 848 (b) (2):

such violation is a part of a continuing series of violations of this subchapter or subchapter II of this chapter—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

The Commission recommends addition of a similar definition to the New Jersey statute with the possible requirement that the trafficker be non-addicted.

The suggestion of raising the maximum fine to \$100,000 is more in line with the huge profits reaped by hard drug traffickers.

Finally, it should be noted, that the recommendation refers only to Schedules I and II drugs. Legislative consideration should also be given to providing mandatory minimums in the case of Schedule III drugs.

II. Although the Commission suggests mandatory minimum sentences only in the case of high echelon drug dealers, there was also substantial testimony on the disparity of sentences in the several counties of the state. It is the recommendation of the Commission that a greater parity be sought. Greater parity can be accomplished through several methods. First, the Commission believes that judicial discretion should not be shackled, so that present penalties, in all but the circumstances previously mentioned, are deemed sufficient. It is the opinion of the Commission, however, that this discretion should be tempered by sound direction either from the Legislature or the Supreme Court. *See State v. Ivan*, 33 N.J. 197 (1960). Consideration might also be given to the policy of having one judge in each county do all of the sentencing with regard to narcotics offenses. These judges could be brought together at regular intervals to discuss guidelines and difficulties.

Seized Money as Contraband; Use in Other Investigations

The Testimony

Law enforcement witnesses before the S.C.I. testified that it is often difficult to obtain sufficient funds with which to purchase narcotics and that it is often almost impossible to obtain large sums, even though these monies are almost always recovered. The suggestion was made that seized monies might be employed for this purpose in future.

The S.C.I. Recommendation

It is recommended that money seized in connection with narcotics arrests be placed in the same category as obscene material,

N.J. Stat. Ann. 2A:152-5, gambling paraphernalia, *N.J. Stat. Ann. 2A:152-6*, and money seized in connection with gambling raids, *N.J. Stat. Ann. 2A:152-7, et seq.*, in that it be considered contraband and, therefore, not returnable.

Furthermore, since there is a critical need for monies for the purchase of narcotics by undercover agents, it is recommended that counties having narcotics strike forces or narcotics squads establish limited county funds for the deposit and authorized release of seized monies for the specific purpose of narcotics investigation.

Background

N.J. Stat. Ann. 2A:152-5, -6, -7, et seq. treat obscene materials, gambling paraphernalia and money seized in connection with gambling arrests or arrests in connection with obscenity as contraband and, therefore, non-returnable property. These statutes, however, treat the disposition of these materials, i.e., destruction, *N.J. Stat. Ann. 2A:152-5*, use for county purposes, *N.J. Stat. Ann. 2A:152-6*, and depositing in the county treasury, *N.J. Stat. Ann. 2A:152-8* and *-9*, in manners which are considered inappropriate in the narcotics context. It is therefore suggested that new legislation be enacted dealing specifically with the seizure of monies in connection with narcotics arrests and the disposition of same to the benefit of the seizing agency. More specific suggestions will be discussed under the "Comments" sections following each portion of the proposed legislation.

Specific Legislation

A) Money Seized on Arrest for Violation of Narcotics Laws; Return Prohibited; Exceptions

Whenever any money, currency, or cash shall be seized or captured by the police, constabulary or other officer in connection with any arrest for violation of or conspiracy to violate any narcotics law of this state, the said money, currency or cash shall be deemed prima facie to be contraband of law as a narcotics device, or as a part of a narcotics operation, and it shall be unlawful to return the said money, currency or cash to the person or persons claiming to own same, or to any other person, except in the circumstances and manner hereinafter provided.

Comment

It should be initially noted that no "Definitions" section has been herein proposed. It is suggested that such a section be added, of course, at the discretion of the framer. The above section is patterned after *N.J. Stat. Ann.* 2A:152-7 which deals with confiscation of monies in connection with gambling arrests. For interpretive cases dealing with that statute see *Stapleton v. Two Million Four Hundred Thirty-Eight Thousand, One Hundred and Ten Dollars*, 454 F. 2d 1210 (CA 3, 1972); *State of New Jersey v. Kaiser*, 338 F. Supp. 42 (D.N.J. 1972); *State v. Moriarity*, 97 N.J. Super. 458, 235 A. 2d 247 (L. Div.), *aff'd*, 102 N.J. Super. 579, 246 A. 2d 476 (App. Div.), *aff'd*, 55 N.J. 31, 259 A. 2d 201 (1967).

- B) Special Narcotics Fund; Institution and Maintenance; Supervision; Monies to be Used in Creation.

The County Treasurer of each county in the State of New Jersey in which a County Narcotics Strike Force or County Narcotics Squad is operating shall, by and under the supervision of the prosecutor of the county, institute and maintain a Special Narcotics Purchase Money Fund. Said fund shall consist of, but not be limited to, all monies seized and lawfully retained in connection with the other sections of this chapter.

Comment

In addition to setting up the fund this section contains several provisions which are deemed advisable by the Commission. First, supervision of the fund is granted to the County prosecutor who will be most familiar with proceeds and disbursements (which will be treated later). Second, the second sentence allows the fund to be constituted solely of seized monies (so that county finances will not be effected) while allowing the county the discretion to add to the fund if it deems it advisable. Finally, the "lawfully retained" section would prohibit addition of any monies to the fund until a decision is reached on whether those monies are in fact the property of the county.

- C) Amount of the Fund; No Minimum; Maximum Amount According to County Size; Surplusage

1. There shall be no minimum amount required to be on deposit in the Special Narcotics Fund, unless the county

treasurer with the consent of the county prosecutor deem it advisable to establish a minimum, but the maximum amount of monies on deposit in any fund shall be as follows :

a) In counties having a population of more than 600,000, the maximum sum shall be \$50,000.

b) In counties having a population of more than 265,000 and less than 600,000, except counties bordering on the Atlantic Ocean, the maximum sum shall be \$40,000.

c) In counties bordering on the Atlantic Ocean having a population of more than 265,000, the maximum sum shall be \$35,000.

d) In counties having a population of more than 130,000 and less than 265,000, except counties bordering on the Atlantic Ocean, the maximum sum shall be \$30,000.

e) In counties bordering on the Atlantic Ocean having a population of more than 100,000 and less than 265,000 the maximum sum shall be \$25,000.

f) In counties having a population of more than 100,000 and less than 130,000 the maximum sum shall be \$20,000.

g) In counties having a population of more than 75,000 and less than 100,000, the maximum sum shall be \$15,000.

h) In counties having a population of less than 75,000 except counties bordering on the Atlantic Ocean, the maximum sum shall be \$10,000.

i) In counties bordering on the Atlantic Ocean having a population of less than 100,000, the maximum sum shall be \$5,000.

2. If the Special Narcotics Fund in any county is at its maximum and any monies become the property of the county under this section, those monies shall become part of the general county treasury.

3. With respect to subparts a) through g) of part 1. hereof, \$5,000, and with respect to subparts h) and i) of part 1. hereof, \$2,500, shall be retained by and be in the exclusive control of the county prosecutor for immediate use in his sole

discretion for the purchase of narcotics by narcotics agents. Said county prosecutor shall, however, account to the county treasurer for expenditures from this fund and shall be responsible for its replenishment from the Special Narcotics Fund by application to the County treasurer.

4. The Special Narcotics Fund shall be debited immediately upon receipt of monies by the county prosecutor and any debit shall remain even though the monies remain in the possession of the county prosecutor, except that where, in the discretion of the prosecutor, said monies are no longer necessary for the original purpose of debit or as evidence in a case evolving from the original purpose.

Comment

Part 1. of Section C) sets limits on the size of the Special Narcotics Fund with relation to the probable need of the counties on the basis of their classification. The classification of counties is modeled after the classification with respect to the salaries of prosecutors appearing in *N. J. Stat. Ann.* 2A:158-10.

Part 2. provides that when the Special Narcotics Fund is at its maximum, any monies seized and retained in accordance with this chapter shall become part of the county treasury as they would have in the normal course of events prior to this legislation.

Part 3. provides that a smaller portion of the fund should be retained in the exclusive control of the county prosecutor who would be responsible for its maintenance. The intent of this subpart is the establishment of an easily accessible reservoir for the everyday street purchasers which are a vital part of narcotics investigations. It is intended that such a fund would be maintained in the office of the prosecutor or some convenient place so that an emergent need could be accommodated and investigations not frustrated for a lack of funds. Correlatively, the access to the Special Fund itself, since the need for large sums will usually not be an emergent basis, should probably be more formalized.

Subpart d. addresses itself to the problem of money which, although being in the possession of the prosecutor, is nevertheless unavailable for the purchase of narcotics. One such situation would be where these monies are being used as evidence in pending criminal trials. The proposed solution is to immediately debit the Special Fund or "working fund" upon withdrawal by the County

prosecutor and not credit it until the monies are again available for their intended use.

D) Disposition Pending Trials of Money Seized

Pending trial or ultimate disposition of the charge or charges, indictment or indictments, growing out of any arrest in connection with which any such money, currency or cash was seized or captured, the same shall be accounted for and deposited with the county treasurer of the county in which said arrest occurred, by and under the supervision of the county.

Comment

This section is patterned exactly after *N.J. Stat. Ann.* 2A:152-8. For cases interpreting that section see *State of New Jersey v. Moriarity*, 268 F. Supp. 546 (D.N.J. 1967); *State v. LaBella*, 88 N.J.Super. 330, 212 A.2d 192 (L. Div. 1965).

The intent of the present statute and the intent of the proposed section is a facility for escrowing monies in question until it is determined that they are in fact the property of the county. The county treasurer would probably establish a system to earmark the monies for deposit into the Special Narcotics Fund once such a determination is made.

E) Disposition, On Conviction of Money Seized; Order of Forfeiture

If the trial or other ultimate disposition of such charge or charges, indictment or indictments result in a record of conviction being entered against the person or persons so arrested as aforesaid, in connection with which arrest the said money, currency or cash was seized or captured, as aforesaid, then the county treasurer may, after 6 months from the date of the record of the entry of such conviction, make application, without prior notice, to the county court for an order to show cause why such money, currency or cash so seized or captured, shall not be forfeited to the sole use and gain of the county; such order to show cause shall then be served upon the person from whom said money, currency or cash was so seized or captured, in accordance with the rules of practice and procedure. Upon the return of the said order, a hearing shall be conducted in summary manner, at such hearing proof of the

conviction shall be prima facie evidence that the money, currency or cash so seized or captured was used in connection with the violation or conspiracy to violate the narcotics laws of this state; provided, however, that proof, to the satisfaction of the court, shall first be established that no action or proceeding, then pending and undetermined, has been filed in any court of competent jurisdiction against said county treasurer seeking a recovery or return of the money, currency or cash so held in custody.

Comment

The proposed section is the same as *N.J. Stat. Ann.* 2A:159-9 and the intent would be the same, that is, to provide a procedure which will result in a decision on ownership of the monies while comporting with due process standards.

F) Application for Order of Forfeiture; Notice by Treasurer; Hearing; Filing Certified Copy of Order, Additional Remedy.

a) Whenever any money, currency or cash seized or captured from a person in connection with any arrest for violation of or conspiracy to violate any narcotics law of this State shall have been on deposit with the county treasurer, pursuant to *N.J.S.A.* 2A:152-8 for a period of more than 2 years from the date of ultimate disposition of the charges against, or indictments of, the person from whom such funds were seized or captured, the county treasurer may make application to the County Court for an order forfeiting said money, currency or cash to the sole use and gain of the county.

Amounts seized or captured from any number of persons may be consolidated in a single application.

b) The county treasurer shall cause a notice signed by him to be posted in a public place in the county court house and published once in a newspaper circulating in the county stating that on a date specified therein, which shall be at least 10 days after the date of posting and publication of the notice, application will be made to the County Court for an order for the forfeiture to the county of funds deposited with

him pursuant to N.J.S.A. The notice shall contain a list of the names of the persons from whom the amounts set forth in the application were seized or captured, or if the names of such persons are unknown, the dates, places and amounts seized or captured.

c) Upon the date set forth in the notice, the county treasurer may apply to the County Court for an order for forfeiture and a hearing shall be held in a summary manner, proof being made to the satisfaction of the court that no action or proceeding, then pending and undetermined has been filed in any court of competent jurisdiction seeking recovery of any of the amounts contained in the application.

d) A certified copy of the order of the court made in compliance with this act shall be kept on file by the county treasurer.

e) The remedy provided by this act shall be in addition to all other remedies authorized by law.

Comment

Subparts a) through e) are the same as *N.J. Stat. Ann.* 2A:152-9.1 through 9.5 and provide an additional remedy for the county treasurer with respect to the funds in question.

G) Acquittal; Disposition of Moneys Seized; Claimants Application for Return; Application for Forfeiture.

If the trial or other ultimate disposition of such charge or charges, indictment or indictments, result in an acquittal or other final termination of such proceedings in favor of the person or persons so arrested, as aforesaid, in connection with which arrest the said money, currency or cash was seized or captured, then the person or persons claiming to own the said money, currency or cash may within 2 years from the date of such acquittal or other final termination, in addition to any other remedy now provided by law, make application, on giving 10 days' prior notice thereof to the said county treasurer, to the county court of said county, for an order declaring such money, currency or cash to be the property of such person or persons, and ordering the same to be returned by the said county treasurer. At any time after the

expiration of said period of 2 years from the date of acquittal or other final determination, the county treasurer may make application to the county court for an order to show cause why such money, currency or cash so seized or captured shall not be forfeited to the sole use and gain of the county; such order to show cause shall then be served upon the person or persons from whom said money, currency or cash was so seized or captured, in accordance with the rules of practice and procedure. Upon the return of said order, hearing shall be held in a summary manner, proof being made to the satisfaction of the court that no action or proceeding, then pending and undetermined has been filed in any court of competent jurisdiction seeking recovery of any of the amounts contained in the application.

Comment

Part G) is the same as *N.J. Stat. Ann.* 2A:152-10 which provides a procedure for disposition of the monies in the possession of the treasurer in the event that there is an acquittal on the charge related to the funds.

Narcotics Strike Force Agents—Jurisdiction

The Testimony

Witnesses before the Commission who are involved in the everyday activities of various narcotics strike forces in New Jersey pinpointed what is a substantial and continuing obstacle in the path of their attempt to successfully enforce the narcotics laws: the inability of agents to follow investigations across county lines. Directors have told of instances where agents were invited to make purchases in neighboring counties and could not and where complex surveillance had to be discontinued. These same witnesses expressed apprehension concerning arrests in neighboring counties and at the possibility of injury to agents.

The S.C.I. Recommendation

Specific legislation should be enacted which would allow agents in the employ of narcotics strike forces to follow investigations over county lines. The obvious *caveat* with such an enactment, of

course, would be that such investigatory extension should not be undertaken without notice to the county prosecutor in the "target" county. The balance to be struck on this specific point should be a result of a weighing of two valid countervailing interests. On the one hand, effective law enforcement could be hampered if the target county does not have notice, but, on the other hand, immediate notice, due to the exigencies of narcotics investigations, is often impractical or even impossible. The S.C.I. suggestion is that the legislation provide an intelligent notice procedure with these considerations in mind. Perhaps the best statutory provision would be one that sets a maximum time that investigations could proceed in the absence of notice while leaving the specific mechanics of the notice procedures to the counties involved.

The specific suggestions advanced in this portion of the recommendations could be implemented through amendment to *N.J. Stat. Ann.* 2A:156-1 (Intrastate Fresh Pursuit), *N.J. Stat. Ann.* 24:21-1 *et seq.* or by the enactment of completely new legislation. It behooves the drafters, however, since agents should be covered by the relevant portions of the Civil Service law and any insurance provisions, to provide for a lack of conflict with other laws.

While the Commission believes legislation is in order for this area, the Commission is of the opinion that the desired end might be reached by administrative direction. The Attorney General of the State could empower the Director of the Division of Criminal Justice to formulate specific administrative guidelines which could be transmitted to the county prosecutors who have responsibility for supervising the narcotics squads in question. This manner of promulgation, in fact, might be particularly effective, since the Department of Criminal Justice is the state agency most familiar with workings of the prosecutor's offices and could therefore apply its expertise to a workable solution of the problem. Furthermore, the issue would be simplified from a legislative standpoint since the only requirement, if any, would be specific enabling legislation.

Narcotics Strike Forces— Free Interchange of Agents

The Testimony

Witnesses before the Commission who are familiar with the everyday workings of narcotics strike forces detailed the problem

of availability of agents with particular types of backgrounds. Such agents are often necessary when investigations, for instance, necessitate infiltration of a particular racial or ethnic group within a given community. If such an individual is not in the employ of the interested agency, the only feasible method of obtaining him or her is to borrow from other agencies. The strictures of time do not permit the avenue of recruitment and training of a new agent.

Severe problems occur, however, when one agency attempts to borrow from another. One witness stated that the administrative difficulties encountered were of such a staggering proportion that he has found it simpler to have the sending agency terminate the agent and the receiving agency hire him or her.

The S.C.I. Recommendation

The problem outlined in the aforesaid testimony before the Commission could be remedied by simple legislation. It is suggested that the agency providing the individual in question receive one in return from the seeking agency. The new law should contain provision for continuation of compensation (or perhaps an increase in compensation as an incentive to agents). The drafters might also consider a provision which would require consent of the agency employing the requested individual.

The statute should also require the consent of the agency employing the requested individual since he may, at the time requested, be involved in an investigation in his home jurisdiction which would be stymied in his absence.

As with the prior recommendation, the Commission believes legislation is in order in this area but also is of the opinion that administrative directive might accomplish the desired end. The administrative recommendations suggested herein would require as a prerequisite to success a confidential listing and short resume of all narcotics undercover agents in the state so that the seeking agency could locate the desired individual. Such a procedure, implemented by administrative directive, would appear to have little, if any, effect on other laws.

OTHER RECOMMENDATIONS

The Commission also heard testimony on other areas in which legislation is mandated. These include the following:

1. Prescription Pads

The Testimony and Background

A witness from one of the testifying agencies exhibited a prescription pad which he had printed on the basis of a phone call when he merely identified himself as a doctor. Such a pad could, of course, be employed to fraudulently receive controlled dangerous substances from pharmacists. New Jersey's Controlled Dangerous Substances Act provides a penalty for such a fraudulent act, *N.J. Stat. Ann.* 24:21-22(a)(3), but it would seem that it should be a fairly simple matter to enact legislation which would make such an act far more difficult.

It should be further noted that there are provisions which attempt to control distribution by specifying that prescriptions for controlled dangerous substances and certain other drugs may not be refilled, *N.J. Stat. Ann.* 45:14-26.1, and that an order for a drug listed in Schedule II may only be filled on the basis of a written prescription, *N.J. Stat. Ann.* 24:21-15(a). Both these statutes, however, are predicated upon the sometimes erroneous assumption that the written prescription in question is a valid one.

The Commission is of the view that controls should be placed upon the printing of prescription pads.

Recommendation

The Commission recommends a statute which would require physicians, veterinarians, and others authorized to write prescriptions to apply in person or through their duly authorized representative with identification to printers when ordering prescription pads. When such a statute is passed, the legislature should, of course, provide a notice procedure to create an awareness on the part of physicians and printers of the new law. The legislation might also contain a provision requiring a formal report of stolen or missing pads.

2. The "Beat Bag" Sale

The Testimony and Background

Law enforcement witnesses defined the "beat bag" sale as the sale of a purported narcotic by an individual to another or to a narcotics agent. In fact, the substance usually turns out to be milk sugar, quinine or some other substance which closely resembles the narcotic involved. Although an individual who commits such an act could be charged with various acts of criminal fraud, there is, at present, no specific statute making such an act a crime or disorderly person's offense.

Recommendation

The Commission recommends the following addition to *N.J. Stat. Ann.* 2A:170-1, *et seq.*:

Any person who sells, offers for sale, dispenses or distributes any substance portraying it to be any controlled dangerous substance listed in N.J. Stat. Ann. 24:21-5 through -8.1 is a disorderly person.

3. Full-Time Prosecutors

The Testimony and Background

In 1970, the Commission recommended full-time prosecutors for the counties of New Jersey, a recommendation which was an impetus to the establishment of full-time prosecutors in the more populous counties. Testimony adduced at the narcotics hearings illustrates that full-time prosecutors are a necessity in any county regardless of size and even where a part-time staff is able to try a sufficient number of cases to avert backlogs. Full-time prosecutors are necessary because of the increasing importance of prosecutors' offices as viable arms of law enforcement.

Witnesses told of instances where counsel was needed on an emergency basis and was not available. One witness stated that he and the undercover agents in his employ often drafted search warrants. It seems that the only answer to such situations is the availability of "in house" counsel at all times.

Recommendation

The Commission recommends the employment of full-time assistant prosecutors and staffs for all counties in the state. The Commission notes that the county prosecutor under the present criminal justice framework is the chief law enforcement officer of his county and, as such, not only must seek indictments but also is responsible for investigation of complex matters. The Commission urges that the establishment of full time prosecutors in all counties be accompanied by adequate staffing and funding of all prosecutors offices to meet the complexities and challenges of modern law enforcement. The Commission further recommends that county prosecutors offices, which have not yet done so, organize specialty units in the areas of fraud, homicide, organized crime, narcotics, pre-grand jury probes, and a complaint bureau.

INVESTIGATION OF DONATED FEDERAL SURPLUS PROPERTY DISTRIBUTION BY THE STATE AND THE PURCHASING AND ADMINISTRATIVE PRACTICES OF THE PASSAIC COUNTY VOCATIONAL AND TECHNICAL HIGH SCHOOL

BACKGROUND OF THE INVESTIGATION

In a prior section of this Annual Report, note was taken that a key to the Commission's accomplishments has been the policy of maintaining communication and liaison with law enforcement agencies at all levels of government. That policy once more bore fruit in January, 1973 when citizen complaints connected with the Passaic County Vocational and Technical High School in Wayne were directed to this Commission by a federal law enforcement agency which had originally been approached.

The complainants were concerned about excessively large amounts of federally donated surplus property on the grounds of the school. The Commission's initial inquiries, prompted by the complaints, in Passaic County resulted in the S.C.I.'s receiving additional citizens' complaints relative to alleged abuses in the administration and purchasing practices of the school. After further inquiry, the Commission decided to make a full investigation of both sets of complaints.

The investigation developed facts indicating that the school had become a virtual dumping ground for valuable surplus properties and that the state's program for distribution of those properties to schools and other institutions had been sorely lacking. As to the school's administration and purchasing practices, then Chairman John F. McCarthy Jr. in his opening statement at the commencement of public hearings on this investigation September 12, 1973 in the Passaic County Court House, summarized the facts as follows:

The investigation, of necessity, had to be prolonged and detailed in order to examine a web of questionable procedures relative to the school which were benefiting private individuals at the expense of the public pocketbook. The picture that will emerge at these

hearings is of purchasing operations proceeding with virtually no effective controls and no realistic accountability to anyone, and of a system providing for only perfunctory approval of decisions and actions and evidencing insufficient checks and balances.

The result of this situation was an absence of any real attempt to get competitive prices for many goods and services and indiscriminate reliance on purchasing through middlemen. If these practices had been detected and stopped by adequate controls, it is apparent that the unnecessary expenditure of many thousands of dollars in tax monies could have been avoided.

The principal areas to be covered by these hearings relative to the school are: Bidding procedures, the use of middlemen, questionable financial transactions in the purchasing process, and conversion to personal use of some of the school's materials and employee services.

The public hearings are reviewed in detail on the subsequent pages of this Annual Report, followed by the Commission's final recommendations for improving surplus property distribution and tightening school purchasing practices.

THE STATE AGENCY FOR SURPLUS PROPERTY (S.A.S.P.)

The above named agency, existing within the Division of Purchase and Property, which in turn is under the Treasury Department, had sole responsibility for obtaining and distributing donated federal surplus property in New Jersey.

Emil C. Friedlander, the regional representative of the Federal Office of Surplus Property, defined at the public hearings these materials as property which has been screened by federal agencies for their possible use and then donated to the states on an "as is, where is basis" for distribution to eligible institutions. Such donees include most tax supported or non-profit institutions such as schools, hospitals, educational radio and television stations and civil defense organizations. Mr. Friedlander outlined the normal procedure for such distribution:

Federal surplus personal property is allocated on an equitable basis to state agencies for surplus prop-

erty by regional representatives of the Department of Health, Education and Welfare located in regional offices of the Department.

Donable personal property is usually picked up by, or shipped to, the state agency for surplus property and taken into their warehouses. There it is inventoried and becomes available for inspection and distribution to eligible applicants within the state. Occasionally, state agencies may arrange to have the property picked up at the federal agency's installation by the donee, or may arrange to have the property shipped direct to the donees.

These agencies, created by state law or executive order of the governor, then distribute the donable personal property to eligible institutions and organizations within the states.

The then Director of this state agency, Walter Macak, had sole responsibility for its operation. An audit conducted by this Commission's accountants discovered that under Mr. Macak's direction the distribution of the surplus property, at least on the level of schools as eligible recipients, was arbitrarily and chaotically administered in favor of one institution, Passaic County Vocational and Technical High School. It is equally clear that that school could not and did not utilize even a small portion of what it actually received.

POOR MANAGEMENT LEADS TO INEQUITABLE DISTRIBUTION AND QUESTIONABLE STOCKPILING

Immediately upon receipt in January of 1973 of the complaint, the Commission's accountants conducted a search of the state agency's files to determine what property had been allotted to the Passaic County Technical and Vocational High School. A totally inadequate filing system together with missing files prevented an accurate appraisal. However, it may be said at a minimum, that in fiscal year 1972 this school received over three million dollars worth of donated federal property out of twelve million actually received by the agency. In addition, this school's share was more than one half of all such property distributed to educational institutions throughout the state. Agents of the Commission

presented themselves to the school administrator and requested permission to inspect this property as it was then being used.

The agents found that very little of the property then in possession of the school was being used. Most was observed lying on open ground in a large field area known as the "Nike base." A large portion of that property which state records indicated had been picked up by school custodians at various federal depots could not be accounted for. In an effort to trace the missing articles, a series of interviews with school custodians was arranged. Their comments to Commission agents prompted the taking of their testimony, at executive session, in March of 1973.

These men testified that in 1970 and 1971 they transported large amounts of surplus property, originally receipted for at that school, to the personal residence and barn of Walter Macak, Director of the Surplus Property Agency of the State, in Stockton. They did this on the orders of Alex Smollok, County School Board Secretary and Business Manager of the school. After this investigation was commenced in January of 1973, and during its pendency, Mr. Macak, with the assistance of Mr. Smollok and these same custodians, returned most, if not all of this merchandise to the State depot at Raritan, New Jersey.

At public hearings the custodians reiterated their testimony. One custodian, Mr. Michael Mausley, kept a calendar of these trips and testified that this was a cause for great concern on the part of Mr. Smollok.

Q. Did you make a record of all of the times that you were requested by Mr. Smollok to pick up Federal surplus property?

A. Most of it I did, yeah.

Q. I'm going to show you, Mr. Mausley, a calendar that we will mark as Public Hearing Exhibit No. 1. Can you identify that calendar for us?

A. Yes, I can.

Q. Whose calendar is that?

A. That's my calendar.

Q. Is it your method to keep a calendar of your daily events in your daily—

A. Yes, I always kept one. I still do. I still keep it on what work I do right at the present time.

Q. Did you previously supply me with that calendar?

A. I did.

Q. There is a story behind that calendar, isn't there?

A. There is.

Q. Would you relate that to the commissioners, please?

A. Are you referring to the one that I brought into the school?

Q. Yes.

A. Yeah. Mr. Smollok wanted to know if I had a diary or something, a calendar or something, that I kept all my stuff down and he was very much concerned about it. He was very worried about—if I wouldn't have got that, I wouldn't have got my job at the Passaic County School. I did not get a contract. Andy Weisz got me aside and said, "Geez, take that calendar into Smollok or you're out of a job."

Q. Stop there.

Mr. Smollok learned you were keeping a calendar of the different jobs that you did?

A. Yes.

Q. When did he learn of this?

A. I don't know. He learned that right before the new contracts are given out to the school.

Q. What year was this?

A. Well, this was the last year before—before the—

COMMISSIONER BERTINI: Are you talking about 1973?

THE WITNESS: Before July.

COMMISSIONER BERTINI: Or '72?

THE WITNESS: '72.

Q. And when Mr. Smollok learned of it, were you contacted by Mr. Weisz and told to bring your calendar to him?

A. I was.

Q. Did Mr. Weisz indicate to you that if you didn't do as you were asked, that you would lose your job?

A. That's right.

Q. And did you do as you were asked?

A. I brought the one calendar in which I had some stuff on and he said he didn't want to see it. So he had wanted me to tear it up and put it right there in the wastepaper basket, and that's what I did, and that's how I held my job or else I would be out of a job.

Q. But I take it you didn't show him that calendar?

A. He didn't see this one.

THE CHAIRMAN: Are you indicating there is a second record or calendar you kept and you didn't destroy that?

THE WITNESS: Yeah.

COMMISSIONER BERTINI: Was that second one for the year 1972?

THE WITNESS: '72.

COMMISSIONER BERTINI: This is 1971, right?

THE WITNESS: Yeah.

COMMISSIONER BERTINI: So that he wasn't aware of a 1971 calendar.

THE WITNESS: No.

COMMISSIONER BERTINI: But he was aware of the 1972 and he made you destroy it?

THE WITNESS: That's right.

COMMISSIONER BERTINI: Then you received your contract right after you destroyed it?

THE WITNESS: I never got the contract yet. In fact, he's holding the contract back for this

year. I didn't get it yet, which I was supposed to get July 1st. I didn't get it. I don't know what the reason is, but I didn't get no contract last year or this year.

Mr. Mausley detailed in his testimony six transactions within a 10-month period (Sept. of 1970 to June 1971) wherein he was ordered to transport federal surplus property to either the home or barn of Walter J. Macak, by the School Board Secretary and Business Manager, Alex Smollok:

1) In September-October of 1970 he was ordered to deliver a tractor trailer load of aluminum stanchions from the Nike base to the home of Walter Macak. On this first occasion he followed an auto driven by Alex Smollok, Ansell Payne, Assistant Business Administrator, and Joseph Hausemen, School Administrator.

2) On April 17, 1971 he was ordered to deliver a tractor trailer load of styrofoam, acquired the day before from the Picatinny Arsenal, to a barn on a farm owned by Mr. Macak in Stockton. When he arrived Mr. Macak instructed him to place the property inside the barn and then purchase hay for the school from a nearby farm. Mr. Smollok had previously explained that Mr. Macak would direct him on this purchase of hay.

3) On April 23, 1971 he was ordered to deliver another tractor trailer load of styrofoam, acquired the day before from the Picatinny Arsenal to Mr. Macak's barn.

4) On June 5, 1971 he was ordered to deliver a Jeep from the school grounds to Mr. Macak's barn.

5) On June 11, 1971 he was ordered to drive Mr. Macak to a federal depot at Guy Mills, Pa. and pick up a tractor which was then to be delivered to Mr. Macak's barn. The length of the drive required that both men stay in a motel overnight at the school's expense. When their tow vehicle broke down on the way back they abandoned the tractor and hitchhiked back to the school. Sometime later Mr. Mausley

delivered it to Mr. Macak's barn. Several of the teachers learned of this and caused such a clamor that on November 6, 1971 Mr. Smollok ordered him to retrieve the tractor which he did. This incident formed the basis of an anonymous letter directed to the Attorney General, the Governor and the Commissioner of Education which was passed along to Mr. Macak himself to investigate. The results of his investigation appear in another section of this report.

6) On June 26, 1971 Mr. Mausley was ordered to deliver an inflatable building, acquired the day before from Lakehurst Naval Depot, to Mr. Macak's home.

According to Mr. Mausley all of these deliveries which entailed at least 180 miles round trip, were made on a Saturday, at time and one half salary, by himself and another custodian. On each occasion hay was purchased at the Fischer Farm. According to Mr. Macak, Mr. Fischer was related to him by marriage.

The testimony of three other custodians was taken at the public hearings. Each corroborated Mr. Mausley's account and, in some instances, added to it.

FAILURE OF THE STATE TO AUDIT THIS AGENCY

The State Agency for Surplus Property was part of the State Education Department until 1972 when it was transferred to the State Division of Purchase and Property. At the public hearing, the Commission inquired of Herman Crystal, Deputy Director of that Division, as to the extent of any controls the Division might have exercised over this agency to determine whether it was functioning properly:

EXAMINATION BY COMMISSIONER BERTINI:

Q. Has any review been made of the method used for handling surplus property in this state?

A. I don't understand your question.

Q. By any auditing agencies.

A. Did we audit?

Q. Did any agency for the State of New Jersey review the manner in which surplus property was handled?

A. I'm trying to figure out just what you're driving at. We looked at the picture and we did ask the Federal Government to make an audit, a utilization audit, which they never did.

Q. So that nobody—

A. No, sir.

Q. —from an agency has, to your knowledge?

A. No, sir.

Q. And I presume, then, you're not really familiar with what was going on in the surplus department?

A. Well, I knew. I knew what was happening, yes, sir.

Q. Well, who would be responsible for keeping an inventory of all the surplus property that was assigned to the State of New Jersey?

A. Mr. Macak would have been responsible, yes, sir.

Q. Now, did anyone check to see whether an adequate inventory or control was being kept?

A. I did, and there was none and I ordered—as soon as I found out that there was no adequate inventory and we had the property in the Raritan Arsenal, I ordered that all work be stopped on screening and that all hands be turned over to making the inventory, yes, sir.

This lack of an efficient system of checks and balances led to an abuse of administrative power resulting in the stockpiling of surplus material at an abandoned Nike base owned by the vocational high school. Mr. Crystal testified further:

Q. Mr. Crystal, there's been testimony before you that literally thousands and thousands of dollars of equipment, miscellaneous lots, was stored up at the Nike Base and you said that you became aware of this when the investigation started?

A. I first became aware of it when I was shown clipping in the newspapers, yes.

Q. And I think I just took a quote from what you said. You then learned how it was being done, unquote. How was it being done? How was all of this equipment being sent from the central depot up to the Nike Base or to the Passaic County Vocational School?

A. Mr. Macak arranged with the secretary-director, I guess his title is, of the Passaic County Vocational School to pick up the items and have them brought to the school or the Nike Base directly from where they were available.

Q. Well, what kind of checks or balances were placed upon these persons so that there would be, you know, an equitable distribution of surplus property?

A. There were none. We left it up to Mr. Macak.

Q. So, as far as your departmental level was concerned, there were no guidelines?

A. No, sir.

Q. And you were solely relying upon the ability and knowledge of the person that had the specific function?

A. Yes, sir.

Q. And that would be Mr. Macak?

A. Yes, sir.

Q. Now, had it come to your knowledge that there was this disproportionate amount of equipment going up to the Passaic County Vocational School, what would you have done?

A. What? I would have put a stop to it.

Q. So, in your judgment as the head of the department, what was happening was not correct?

A. It was not correct, yes, sir. In other words, there was no reason to take the items from one warehouse and put it into another warehouse just to make it available to somebody else.

* * * * *

Q. And you are now aware that utilization was not the primary concept in transferring surplus property?

A. We suspect it, that's right, yes, sir.

Q. When did you first suspect that?

A. When we became aware of what was happening, the disproportionate amount that was going to the Nike Base. This was around February or March when we learned of investigation.

Q. Would you call this stockpiling?

A. Yes, sir.

Q. And that's contrary to your rules and regulations?

A. It's contrary to our rules and to the federal rules and regulations, yes, sir.

Q. So, in essence, I think, the only thing we can deduce is that there was an operation being run that did not have the proper controls upon it. Would you agree?

A. I agree, and when we learned what was going on, we began to place those controls on it, yes, sir.

WALTER MACAK TESTIFIES

Walter Macak, former director of the State Agency for Surplus Property, testified that he personally used only a small portion of damaged styrofoam padding which was part of the Surplus Property "stored" by him at his home. He testified that because the State lacked a warehousing and distribution facility he was forced to ask the Passaic County Vocational School to pick up items and then store them on his own premises, a procedure which Mr. Friedlander and Mr. Cataldo of the Federal H.E.W. said was in violation of federal regulations concerning stockpiling.

Mr. Macak was questioned regarding his investigation of an anonymous complaint mailed to Attorney General Kugler, Governor Cahill, and then Commissioner Carl Marburger. This complaint alleged that various pieces of Federal Surplus Property including a tractor were delivered to the vocational school and then to Walter J. Macak, personally. Mr. Macak was assigned to investigate this and submitted a report in November of 1971 to his superior, a Mr. Rosser, which explained that he was storing a tractor at the request of the school to assist them in a proposed haybaling operation.

This report already has noted from the testimony of the school custodians that in early 1971 the school ceased its practice of pur-

chasing hay from a local dealer and began traveling approximately 90 miles to the Fischer Farm which abuts Mr. Macak's property in Stockton. Mr. Macak was questioned about his relationship to Mr. Fischer, and he answered:

Q. *Are you related to Mr. Fischer?*

A. I am.

Q. *Do you know how Mr. Fischer came to sell hay to a school ninety miles away?*

A. That's right.

Q. *How?*

A. I suggested it.

Q. *You suggested it?*

A. Right.

Q. *Whom did you suggest it to?*

A. I suggested it to my brother-in-law, Henry Fischer.

Q. *Well, I'm asking you if you know how he came to sell the hay to the Passaic County Vocational and Technical High School.*

A. That's right.

Q. *Through your suggestion?*

A. And there was no hanky-panky with this, sir.

Q. *Did you—*

A. I am not even involved with this. If you can get hay for a school in Passaic County at sixty or fifty cents a bale, and you yourself heard the testimony of Mike Mausley here who said he got twelve to fifteen bales of hay for \$45, that is \$3 a bale.

Q. *Well, that's one—*

A. That is testimony given right here. You heard it.

Q. *I want to know why Passaic County Vocational-Technical High School goes ninety miles down to your brother-in-law's, whoever he is, and buys their hay.*

A. I don't know, sir. It might be because they get it that cheaply.

Q. *It's cheaper?*

A. Have you ever thought of that?

Q. *Is that your answer?*

THE CHAIRMAN: All right.

A. Inexpensive. I shouldn't say, "cheap."

Mr. Macak was also asked whether he reported his storing of other materials to Mr. Rosser. He answered that he did not recollect storing other items at the time he made his report (November, 1971) although the school custodians testified that they delivered trailer truck loads of aluminum stanchions and styrofoam to his barn in April of 1971.

Mr. Macak was questioned concerning the delivery of a Jeep to his home by school custodian Michael Mausley on June 5, 1971. He admitted registering the Jeep in his own name by submitting an affidavit to the State Motor Vehicle Department saying that the original registration was lost. In fact, the Jeep was federal surplus property that had been assigned to the Woodbridge public school, then transferred to the Passaic County public school and finally transported to Mr. Macak. He also admitted spending \$50 of his own to repair the Jeep although he denied any intention to convert the vehicle to his own use. After being questioned by Commission agents, during the course of their investigation, Mr. Macak transferred the Jeep to the Essex County Vocational and Technical program.

UNCONSCIONABLE PROFITS PAID TO MIDDLEMEN

With the phase of the investigation dealing with abuses in distribution of surplus property covered, the public hearings turned to the even more extensive phase relating to the administration and purchasing practices of the Passaic County Vocational and Technical High School, whose Business Manager and Purchasing Agent was the previously mentioned Alex Smollok.

As the subsequent presentation of facts will show in the review of this phase of the probe, Mr. Smollok's abusive purchasing practices had the unfortunate and cruelly logical result of the school suffering severe financial penalty in the form of grossly inflated prices which were paid for materials received and work performed by outside contractors.

Most of the contractors who supplied the school on its non-bid purchases were apparently chosen for their willingness to pay a "commission" rather than the competitiveness of their prices and

the quality of their workmanship. Characteristic of many of these purchases was that they were made through a "middleman" who did little more than lift the telephone to make his substantial profit which was, in effect, a generous helping of the taxpayers' pie. A major such middleman was Joseph Carrara of the Caljo Contracting Co., and there were others.

Records of the school and the testimony of various witnesses established the following examples of non-bid, middleman transactions in 1969 and 1970, as summarized below:

1) On June 23, 1969 the school contracted to purchase a snowplow for attachment to a Jeep with the Caljo Contracting Co. at a cost of \$852. Mr. Carrara in turn ordered this item from the Dianem Co. located in nearby Lodi, New Jersey, who delivered directly to the school and charged Caljo \$539.

2) Again, on August 3, 1970 the school contracted to purchase a truck tail gate with the Caljo Contracting Co. at a cost of \$1,425. Mr. Carrara merely communicated this order to Dianem Co., who delivered the tail gate to the school and charged Caljo \$909.

3) Mr. Marchese, the sales representative of the Dianem Co., testified that his firm does business with many municipalities throughout the state and would have been happy to offer these items to the school at roughly the same price that was charged Caljo. Unfortunately, the school never solicited their business.

4) On August 5, 1970 the school contracted with Caljo Contracting Co. to rebuild a Dodge truck motor for a cost of \$910. The vehicle was taken directly to the K. & K. Automotive Shop in Clifton, New Jersey, by school personnel and picked up by them when completed. K. & K. charged Caljo \$609. In a completely similar transaction on September 1, 1970 the school paid Caljo Contracting Co. \$1,682 to rebuild another truck engine and K. & K. charged Caljo \$1,123.

5) Again, on September 18, 1970 the school contracted to rebuild a Hercules truck engine at a cost to the school of \$1,395. K. & K. charged Caljo \$979.

6) On Oct. 22, 1970 the school contracted with Caljo Contracting Co. to replace a transmission at a cost of \$760. K. & K. charged Caljo \$524.

7) During this period of time the school through its business manager was also dealing directly with K. & K. Automotive Co. In one such transaction, on July 6, 1970, K. & K. was the sole bidder on Contract #38-E-A-70B which called for the supplying of 10 automobile engines at a cost of \$11,500. K. & K. in turn purchased them directly from Warner Ford located in nearby Garfield, New Jersey, at a cost of \$6,510. Mr. Sistaro, the Secretary-Treasurer of Warner Ford, Inc., testified that his company would have sold these same engines to the school for the same price it charged K. & K.

8) On June 22, 1971 the school contracted with Caljo for the purchase of paint and a paint sprayer at a cost of \$1,625. Caljo in turn purchased these items from Frank Rhodes Assoc., Roselle Park, New Jersey, for \$1,002.

9) On September 27, 1971 the school contracted with Caljo for the purchase of cassettes at a cost of \$800. Caljo purchased them for \$500 from Magnetic Communications, Inc., located in nearby Denville, New Jersey.

This pattern of purchases without bid through middlemen at inflated prices continued into 1972 at an untold cost to the school. It would seem to be incumbent upon any ordinary, prudent man acting in the capacity of purchasing agent for a public school to seek out the best possible price and, where possible, directly solicit the manufacturer of the product to make an offer. Mr. Alex Smollok consistently failed to do this and actually ignored known suppliers in preference for a middleman who added nothing of value. This course of conduct was not restricted to non-bid purchases alone. In many instances, where purchases were made pursuant to bidding, the same individuals and only those submitted bids and were successful. Records of the school and testimony of various witnesses established, for example:

1) On June 23, 1969 Caljo was the only bidder on a specified Scott Air Conditioner at a cost to the school

of \$3,470. Caljo ordered the item directly from Scott Air Conditioning Co. at a cost of \$2,575.

2) On June 8, 1970 Caljo was the only bidder on specified Kentmore Engine stands at a cost to the school of \$7,923.30. Caljo purchased them from K. & K. Automotive for \$6,150. K. & K. Automotive simply ordered them from the Kent-More Corp. at a cost of \$1,715. This represents a profit of approximately 400% to middlemen who did little more than fill out a bid form.

"COMMISSIONS" ARE THE KEY TO THE BUSINESS

The investigation of the Passaic County Vocational and Technical High School purchasing practices covered in detail several instances of "commissions" being paid to middlemen, said "commissions" obviously being the key to Mr. Smollok's awarding of school business to the commission-paying firms.

The Jersey Janitor Supply Co. was one example of how "commissions" led to immediate business with the school and how that business abruptly terminated when that firm ceased paying "commissions". Three individuals who were connected with that firm testified at the public hearings—Rodman Follender, Salesman; Isaac Weinstein, President, and Abraham Weinstein, Vice President and Treasurer.

Mr. Follender testified that he was employed by Jersey Janitor as a salesman during 1970 and 1971. In 1970 a business service supplied him with a lead to Caljo Contractors Supply Co. as a possible purchaser of certain machinery sold by Jersey Janitor. Mr. Follender went to the business office of Caljo and spoke with Joseph Carrara who explained that a vocational school in his area needed a particular scrubbing machine for which Jersey Janitor was the authorized distributor. Mr. Carrara explained that he had a "contact" within the school, but that he (Carrara) wanted "a commission" on the sale. Mr. Carrara demanded 20% in cash but when Mr. Follender refused this he settled for 5% by check. After this agreement was made Mr. Carrara arranged for Mr. Follender to demonstrate this machine and other products at the school. This initial sale was consummated and others followed.

Mr. Follender was questioned regarding why he entered into this commission agreement with Mr. Carrara:

Q. When you originally came to the agreement with Carrara about the commission, it was because he had an in at the school, right?

A. Definitely.

Q. And who do you think the in was at the school?

A. Mr. Smollok, I presume. He was the boss.

Mr. Follender identified seven checks, marked as exhibits, totaling \$4,479.49 which represented "commissions" paid by Jersey Janitor to Mr. Carrara as a result of Jersey Janitor's selling products directly to the vocational school. Most of the checks were made payable to third parties, particularly Clifton Auto Parts and Cardell Body Shop. Mr. Follender testified further as to the "commissions" and the third-party arrangement:

COMMISSIONER FARLEY: Did you ever tell the Weinstein brothers, or either one of them, to make checks out to persons other than Carrara but knowing that the check would be delivered to Carrara?

THE WITNESS: I might have, yes. I mean—you mean to Clifton Auto Parts and so forth?

COMMISSIONER FARLEY: Yes.

THE WITNESS: I might have, yes.

THE CHAIRMAN: Why do you say "might"?

THE WITNESS: Because I don't recall exactly.

THE CHAIRMAN: We know that. We don't expect that witnesses stand and know exactly the date of the check and the exact amount. Now, we want a clear and an honest answer.

THE WITNESS: The checks—

THE CHAIRMAN: Don't interrupt. Commissioner Bertini asked you to tell, the best you can, what the arrangement was, what Mr. Carrara wanted you to do. Now, let's generalize as to how these checks would be made out. Mr. Carrara must have given you some direction.

THE WITNESS: Well, Mr. Carrara and I, when it came to the commission base, would argue

constantly and Mr. Carrara would always want it in cash. If you want direction, sure, but in cash that we would never pay. Now, we cared not how we paid it other than that. We'd pay it to anybody he wanted us to.

THE CHAIRMAN: Was his direction, "If I can't get cash, then I want the check made out to someone other than myself"?

THE WITNESS: After quite a long time, yes, it might have been, yes.

COMMISSIONER FARLEY: Well, did you ever discuss it with the Weinstein brothers?

THE WITNESS: I might have, yes. I keep answering the same way.

COMMISSIONER FARLEY: What did you discuss? What's your recollection of the discussion?

THE WITNESS: That the commission due Mr. Carrara was to be paid. There was no question in our mind how much we owed Mr. Carrara. We paid it.

COMMISSIONER FARLEY: All right.

THE WITNESS: If we paid it to him or to someone that he designated, the commission was paid.

COMMISSIONER FARLEY: All right. And who was designated?

THE WITNESS: Who was designated? You have to—

COMMISSIONER FARLEY: Who was designated other than he to be paid the commission that was agreed upon?

THE WITNESS: There are other names. I don't recall the names; I don't recall the names.

COMMISSIONER FARLEY: There were other names?

THE WITNESS: Yes.

COMMISSIONER FARLEY: So you're saying, now, under oath that you were directed to have checks drawn that belonged to Carrara but to be placed in other names; is that correct?

THE WITNESS: That's correct, yes.

* * * * *

COMMISSIONER BERTINI: Then have we established that check marked PH-14, payable to Clifton Auto Parts, really was not a check to Clifton Auto Parts for commissions but was a check to Carrara for commissions made payable to Clifton Auto Parts?

THE WITNESS: Yes, sir.

COMMISSIONER BERTINI: And that goes for all the others; is that right?

THE WITNESS: I presume so.

Mr. Follender testified that in May of 1971 Jersey Janitor stopped paying Mr. Carrara a commission and simultaneously the school stopped ordering their products:

Q. All right. At sometime Jersey Janitor stopped doing business with Caljo Contractors,—

A. Yes, sir.

Q. —didn't they?

It was around May, 1971. Does that square with your recollection?

A. Yeah.

* * * * *

Q. Did you have any discussion with Carrara about the cessation of business?

A. Not really, no.

Q. The orders just stopped from Passaic County?

A. Yes.

Q. And Carrara's commissions obviously stopped at the same time, then; is that right?

A. Definitely.

* * * * *

Q. *Why did that stop the business?*

A. I can't answer that.

Q. *Did Mr. Weinstein get nervous about that situation, so to speak?*

A. I can't answer his feelings, either. All I know is he told me unless it's paid to Joe Carrara we do no more business, and that's the way it was.

Q. *Who told you that? Mr. Carrara told you unless the checks were made out to Mr. Carrara there would be no more business?*

A. No, Mr. Weinstein told me that.

Q. *Mr. Weinstein said unless the checks were made out to Mr. Carrara there would be no more business?*

A. That's correct. No, we will not give any more commission.

Q. *Unless the checks were paid directly to Mr. Carrara?*

A. Right.

* * * * *

Q. *Mr. Follender, I would just like to summarize briefly. You agree that you did business with Caljo, and as a result of that business, which related to the Passaic Valley School, that he was entitled to certain commissions; is that correct?*

A. Yes, sir.

Q. *And that under normal circumstances the check for the commissions would always be payable to the person that was entitled to them?*

A. Yes, sir.

Q. *And that you believe that certain commission checks may not have been directed to Mr. Carrara but to other entities?*

A. Yes, sir.

Q. *And that these other entities were Clifton Auto Parts and Cardell; is that correct?*

A. Yes, sir.

Q. *And, in effect, that these checks that went to Clifton Auto, Cardell, you believe, may very well have*

represented commissions that were due to Carrara for the work and purchases made by Passaic Valley?

A. Yes, sir.

Q. So, in effect, what we're saying here is that commissions that would normally go to Carrara were diverted to other entities?

A. Yes, sir.

Q. And that was the reason that Jersey Janitor Supply ended its dealings with the Passaic Valley School, because checks were going out to other than the person named as the salesman?

A. Yes, sir.

Q. And that Mr. Weinstein would not continue to make out checks except to Joseph Carrara?

A. Correct.

Q. And that when he would not do this, you stopped doing business with the Passaic Valley School?

A. Correct.

Isaac Weinstein, President of Jersey Janitor, corroborated Mr. Follender's testimony that "commissions" to Mr. Carrara were the key to getting the vocational school's business:

Q. Now, when Follender explained to you his financial agreement with Carrara after returning from the first meeting, I think it was, with Carrara, is that right?

A. Yes.

Q. He knew what the financial arrangement was to be with Carrara after he met with him the first time?

A. Yes.

Q. How did he explain it to you? Give it to me, in your own words. Well, give it to me in his words as he explained it to you.

A. As I said, Follender told me that Carrara could get us all the business for the vocational school plus all of the business in Passaic County, but he wanted to be paid a commission.

Mr. Weinstein testified about a conversation he had with Mr. Joseph Carrara in September of 1971, after they had ceased doing business with each other:

Q. Now, after Mr. Follender left your employ, did you ever meet with Mr. Carrara?

A. Yes, I did.

Q. Did you have a conversation with him when you met with him?

A. Yes. It was Caljo Contracting Company owed us for merchandise that we sold them, and it was about four months in arrears.

* * * * *

Q. And did you have a conversation with him?

A. Yes.

Q. And what was the substance of that conversation?

A. Well, I asked him about a check and he said that he would mail in a check in a few days, which we did receive later.

Q. And did you talk about your dealings with him and with Passaic County Technical and Vocational School?

A. Yes. He wanted to know why we stopped doing business.

Q. And what did you say?

A. I said we didn't want to do any more business under those conditions.

Q. Now, "under those conditions." I assume that you refer to the indirect payment to Joseph Carrara evidenced by Exhibits PH-18 through 20. Is that what you mean?

A. That's for the other names?

Q. That's right.

A. That's right.

Q. In other words, you did not want to pay monies to individuals other than Mr. Carrara for Mr. Carrara's commission?

A. Right, right.

Q. *And what did Mr. Carrara say to you when you said that to him?*

A. He said I was a fool or something to that effect.

Q. *You were a fool for not wanting to deal with him?*

A. Yeah.

Q. *And the reason that you were a fool was because that you were not going to get any more business?*

A. Right.

* * * * *

Q. *When you ceased doing business with Mr. Carrara, in other words, paying monies to different individuals and towards the latter part of the relationship directly to Mr. Carrara, did business stop coming from Passaic County Technical and Vocational School?*

A. Yes, sir.

In closing, Commissioner Thomas R. Farley asked Isaac Weinstein whether he felt that Jersey Janitor could have done business in a legitimate manner with the school:

EXAMINATION BY COMMISSIONER FARLEY:

Q. *Mr. Weinstein, I have one question. Do you believe that your company could have done work for the Passaic County Vocational and Technical School without Carrara?*

A. No, impossible.

Q. *Impossible?*

A. Impossible.

Q. *Why?*

A. Well, I could see it when we never got a request for price; we never got a letter; we never got a request for a bid; we never got a purchase order. It was haphazard, the whole thing. It was like doing business with the local candy store, the corner candy store or corner grocery store.

Abraham Weinstein, Vice President and Treasurer of Jersey Janitor, shed further light on how "commissions" to Mr. Carrara, frequently through third-party payees, worked wonders with the award of business from the vocational school:

Q. *But, in other words, since you were the custodian of the books and records, if any payments were made, checks went out or invoices received, you would know about that?*

A. Yes, sir.

Q. *I show you what's been marked Exhibit PH-22 for identification and Exhibit PH-23 for identification, and I think they are copies of your ledgers. Is that right?*

A. Right.

Q. *And I refer you, also, to what has been marked Exhibits 14 through 17 for the purposes of identification, which purport to be copies of checks made out by Jersey Janitor Supply to particular entities or persons.*

A. Yes, sir.

Q. *The checks include checks to Clifton Auto Body and, also, one check to Cardell Body Shop; is that right?*

A. Yes, sir.

Q. *Did you ever have any business with either Cardell or Clifton?*

A. No, sir.

Q. *Do you know why the checks were made out by your company to Clifton and Cardell?*

A. Yes. They were under advisement of the salesman.

Q. *Salesman being Mr. Follender?*

A. Follender.

Q. *When you say "under advisement," did he suggest that you make out these checks to these individuals?*

A. Yes, sir.

* * * * *

Q. You made out the checks to Clifton Auto Body and Cardell Body Shop because of the arrangements with Carrara, between Carrara and Follender?

A. Correct.

Q. In other words, these checks represent commissions paid by Jersey Janitor Supply to Mr. Carrara?

A. Or to Caljo.

Q. "Or to Caljo." And you were aware that the money that they represent eventually ended up in Carrara's hands?

A. Yes, sir.

* * * * *

Q. Now, you did about \$17,000 worth of business with Passaic County Vocational School?

A. Right.

Q. You say that approximate profit margin is thirty-seven per cent, which would run around \$6,700, so we would be in agreement that your paying to Caljo or Carrara \$3,600 is a substantial portion of your profit, right?

A. Right.

Q. And you were paying him a substantial portion of your profit because he was the key man, the lead man into the school, correct?

A. He was the—he was a key man in getting us business.

Q. That's what I mean.

A. Yes, sir.

* * * * *

Q. Wasn't it your understanding that his function was that he was the lead into the school as far as obtaining the business?

A. Well, from what I understand, he could have gotten us a lot of other business from a lot of other schools, also. This is what Follender told me.

Q. Did he give you any other business?

A. No, sir.

Q. Just Passaic?

A. Right.

DISINCLINATIONS TO TESTIFY

Mr. Raymond Kutcher, President of K. & K. Automotive Inc., located at 979 Main St., Passaic, New Jersey, was sworn at the public hearings but refused to answer any questions based upon his Fifth Amendment privilege. Certain records of the corporation, previously subpoenaed by the Commission were marked as public hearing exhibits. One such exhibit was a series of four checks totaling \$3,900. Three of these checks were made payable to "cash" while the check stub contained the legend "commission for Caljo." The fourth check in the amount of \$3,000 was made payable to "Joseph Carrara."

Mr. Robert Burke, formerly Vice President of K. & K. Automotive Inc., was sworn but also refused to answer any questions based upon his Fifth Amendment privilege.

MORE ABOUT "COMMISSIONS"

Mr. Edward Portley, President of Clifton Auto Parts, Inc. of Clifton, New Jersey, was called as a witness but refused to answer based upon his Fifth Amendment privilege. At that point the Commission voted to compel his testimony by granting him witness immunity. Mr. Portley testified that his company first began to do business with the Passaic County Technical and Vocational High School in November of 1970 as a result of a meeting with Mr. Joseph Carrara:

Q. How did you first come to do business with the Passaic County Vocational and Technical High School?

A. We have a mutual friend of ours who is in business in Hackensack, Mr. James—Joseph Gioffre, who had done some business with the Passaic Technical School and suggested that I stop and see if I could get some business, and he recommended that I call on a Mr. Carrara who might be able to help me obtain business from the school.

Q. Would you spell Gioffre for us, please?

A. It's G-e-o-f-r-e-y, I believe, Joseph.

Q. Did you know who Mr. Carrara was when Mr. Gioffre mentioned him to you, or is that the first time you heard of him?

A. No, I didn't know who he was at all except that Mr. Gioffre intimated that Mr. Carrara was very

friendly with the people in the school and he could help me to obtain some business from them.

Q. By the way, did Gioffre indicate to you that Carrara had so helped him?

A. Really, I couldn't say, sir, because Mr. Gioffre originally spoke to Mr. Marino.

Q. All right, fine. I take it, then, that you did call Mr. Carrara and make an appointment to see him?

A. Yes, I did. I called Mr. Carrara and made an appointment, and I met him in a diner in Little Falls, New Jersey, and he told me that—

Q. Well, when was that, sir?

A. That was in—I would say it was approximately—oh, wait a minute. Approximately in the spring of 1970.

Q. When you met with him in the diner; where did you say that diner was, if you did?

A. In Little Falls, New Jersey.

Q. Do you recall the name of the diner?

A. No, I do not, sir.

Q. Was anyone else present when you met with him?

A. No, sir.

Q. I'm curious. How did you recognize him?

A. I made an appointment with him and I met him in his office and then we went from his office to the diner and had coffee.

Q. I see. Did you have any discussion with him in his office concerning the Passaic County Technical and Vocational High School?

A. Well, I had had a preliminary discussion with him on the telephone in which I told him I understood he could help me get business from the school. Then I made an appointment to meet him in his office and then from his office we went to the diner.

Q. Going back to that conversation you had with Mr. Carrara in the diner, did he indicate to you how he wished to be paid his commission?

A. Yes, sir. He wanted to be paid in cash.

Q. *And did you agree to that?*

A. Yes, I did, sir.

Q. *Did that raise any questions in your mind at that time?*

A. It did, sir, yes.

Q. *How did you generate the cash to pay Mr. Carrara?*

A. I have, sir, in my salary which I receive, I have \$50 a week which I can use for my own discretion, which is for petty cash and entertainment, so forth. I also have American Express credit cards and so forth if I go out and spend any large sums of money. But for incidental sums of money I had this additional \$50 a week, which is paid to me above my salary but included in my salary, which I can defray any way I wish.

* * * * *

Q. *During the period from approximately November of 1970 to December of 1972 did Mr. Carrara ever try and up the ante?*

A. Yes, there are occasions that I'd have conversations with Mr. Carrara and he said, "Look, Ed. You're doing very well with the school and I think that you could probably afford to pay a little higher commission than we started." And I was reluctant to, but I paid him. So, this is why the overall figure reached the point of approximately ten per cent on the entire.

COMMISSIONER BERTINI: How high did he want to go?

THE WITNESS: On some items, sir, he wanted me to go as high as twenty per cent.

Q. *I assume that you agreed to increase your payments because you felt that, if you did not, you would lose the business of the school; is that fair?*

A. That's right, sir.

Mr. Portley testified that Mr. Carrara required that he cash checks made payable to Clifton Auto Parts and drawn upon other business entities and give the cash to Mr. Carrara. As part of

this testimony Mr. Portley identified checks drawn upon the following businesses: Caljo Contractors Supply, Jersey Janitor Supply Co., V. J. Curcio Co.

In addition, Mr. Portley was required to give fictitious bills to the above-mentioned payers so that the true purpose of the payment would be hidden. In this regard Mr. Portley testified:

Q. Did you question Mr. Carrara why he was asking you to cash checks drawn upon a third party whom you did not know?

A. I probably did ask him, sir, but I cashed them anyway.

Q. You don't recall his reply to you?

A. It was put in the form of do him a favor, or a request.

Q. Once again, did you feel that these favors were something that you had to do, otherwise you jeopardized your business with the technical and vocational high school?

A. I felt the whole thing was in the same package.

Mr. Portley recalled a conversation he had with Mr. Carrara immediately after Commission agents interviewed him in which Mr. Carrara told him to keep quiet:

Q. Now, Commissioner Bertini also asked you about this conversation on Page 43 at the bottom, and his question to you asked you to be more specific if you could. He asked you, "Can you tell us a specific discussion that he made to you as to how you should work it out?" Do you recall your answer?

A. Yes, I do, sir.

Q. And what was the suggestion that Carrara made to you as to how you should work out your relationship with this Commission?

A. Well, if we all keep—stand fast and keep quiet and say nothing, really, nothing can come of this whole thing.

MR. SAPIENZA: Okay.

THE CHAIRMAN: Who do you believe he meant by "all"?

THE WITNESS: Mr. Carrara and myself.

THE CHAIRMAN: Nobody else?

THE WITNESS: No, sir. Well, generally speaking, that we—from all the newspaper and conversations, there were other people involved besides myself. So, if all of us that were involved in doing business with the school, if we all kept quiet, nothing much could happen, sir.

A BETTER PRICE COULD HAVE BEEN OBTAINED

Mr. Portley testified that the approximate total amount of money paid to Mr. Carrara for the privilege of doing business with the school was \$4,200. He also indicated that the school could have obtained a better price if these “commissions” were not required:

Q. At any rate, though, you could have, and probably would have, charged the school less if Mr. Carrara had not been in the picture?

A. I think if someone—if there had been sharper bargaining, that the prices could have been cheaper, yes, sir.

Q. All right. I'd like to hear from you a little more on that idea of sharper bargaining. Are you telling us that if Mr. Carrara hadn't been in the picture, and if the school purchasing agent had been a little sharper in his bargaining, the school would have gotten a better price? Is that your answer?

A. Perhaps I can paint a better picture for you. If my partner was buying the supplies for the school, the school could save a whole lot of money.

* * * * *

Q. In effect, you're saying they were buying retail whereas they might have been able to, if they had put it all together, buy wholesale?

A. Yes, sir, something along that line.

Q. And if they buy on a wholesale level, they get a better price?

A. Yes.

ON LEARNING FROM AN UNFORTUNATE SITUATION

At the conclusion of his testimony, Mr. Portley was afforded an opportunity to read into the public record a short statement in which he expressed the hope that businessmen no longer will be forced into improper situations to secure business:

THE WITNESS: Thank you, sir.

Now that you have concluded your questioning of me, I would appreciate the opportunity to read a statement into the record.

This has been an extremely trying experience for me, as I am sure you are aware. In retrospect, with 20/20 vision that is never available at the time you need it, I would have never gotten involved with Joe Carrara at all. The business was not that important to me. Furthermore, I now realize the seriousness of what I was involved with, which I did not at the time.

It is ironic that I did not seek out a contact to do business with the school. It was only because someone asked me if I would like to do business with the school that I even became interested.

After speaking with Carrara I realized that I would never do any business with the school unless I agreed to his terms. Frankly, at the time I was aware that such payments were a regular course of business in many areas and I truthfully felt that they were so widespread as to be almost an accepted way of business life. Of course, I was wrong and recognize that now. Times have changed for the better and I would hope that businessmen will no longer be forced to involve themselves in such situations in order to obtain business that rightfully should be theirs in any event.

Looking to the future, this unfortunate experience has put my life in a different perspective. I'm a better man for it and I know that I will never again allow the profit motive to override

doubts I might have had about the procurement of business.

Thank you for allowing me to make this, to have this opportunity to speak.

Mr. Robert Glazer, Secretary of the Fox Fence Co. located in Clifton, New Jersey, was sworn and testified that he too was required to pay "commissions" to Mr. Joseph Carrara for the privilege of doing business with the Passaic County Technical and Vocational High School:

Q. Were you the person that was primarily engaged in bringing in Passaic County Technical and Vocational High School as a client for Fox Fence?

A. When you say bringing in as a client, I was engaged in doing most of the work that was done at the school. I was most familiar with it. I saw the jobs, I took the men to the jobs.

Q. How were you led to that particular customer?

A. From a Mr. Carrara.

* * * * *

Q. Did Mr. Carrara make contact with you in Fox Fence?

A. Yes, he called us by phone and asked me to go to see a Mr. Smollok at the vocational school; that some work was to be done in regards to fencing.

At first he said to go to his office. He had some information as far as what had to be done at the school, what jobs Mr. Smollok was asking for.

I went to his office, I believe. There were no real papers there. He told me what had to be done.

Q. Whose office did you go to?

A. I went to Mr. Carrara's office.

Q. So in the first instance—

A. That's the first time, I believe, I ever saw him.

Q. Now, that time that you went to the office, did Mr. Carrara discuss with you what he wanted for his services in arranging this?

A. Yes, yes. At that time before I went to the school he asked to figure a twenty-five per cent com-

mission to him for anything that was sold or billed for the school.

Q. Did he indicate to you that he could see to it that Fox Fence Company received business from the school?

A. No, he never did. He just said that he knew of work that had to be done at the school and I should go see it and price it.

Q. And for this he wanted a twenty-five per cent commission?

A. Yes.

Q. Was that twenty-five per cent of the gross business done or was it twenty-five per cent of the profit?

A. No, it was twenty-five per cent of the cost of the job.

Q. The cost of the job?

A. Right.

Mr. Glazer submitted a summary sheet of all work done for the school and all commissions paid to Mr. Carrara on account of this work. This document indicated the following:

1) In 1970 Fox Fence performed two jobs for the school, receiving a total of \$6,831. From this Mr. Glazer paid Mr. Carrara \$1,591.

2) In 1971 Fox Fence performed five jobs for the school, receiving a total of \$10,745.25. From this Mr. Carrara was paid \$1,847.75.

3) Fox Fence continued to do work for the school in 1972 and 1973 without paying Mr. Carrara any money. However, the document also lists work done by Fox Fence at Mr. Smollok's personal residence during that time.

Mr. Glazer testified that on one school job he arrived at a fair price that he would charge (\$2,625), communicated this figure to Mr. Carrara who in turn told him to add on \$825 for his commission bringing the total cost to the school of \$3,450. On each occasion that they paid Mr. Carrara a commission, Mr. Glazer testified that he added that figure on to the amount charged the school:

Q. How much would you have billed the school if they were dealing directly with you?

A. It's difficult to say. All the jobs that we priced were priced with the fact in our mind that we knew twenty-five per cent was being added to the job, and I think that they were priced fairly plus, again, twenty-five per cent.

Using one example, Mr. Glazer testified that on one occasion he charged the school \$6,100. If Mr. Carrara had not been in the picture he could have charged \$4,800. If he had charged \$4,800 he would have had a profit of \$1,600.

Mr. Glazer testified that around October 29, 1971 he stopped paying a commission to Mr. Carrara although they continued thereafter to do business with the school:

Q. Now, what happened in October of '71 that you no longer paid Joseph Carrara a commission?

A. Well, we felt it was an unusual situation. In the beginning we were happy to give him his twenty-five per cent for a customer who we had no contact with before and might never have been in contact with, and we were satisfied to give him his twenty-five per cent. But as the jobs went on, the situation got unusual in the fact that Mr. Smollok was calling for jobs and Mr. Carrara, I'm sure, probably didn't even know most of the jobs that we did at the school. Yet, our word is our word and we sent him his twenty-five per cent.

We also felt that prices were increasing at the time. We knew we were going to have to increase our prices, and we also felt, why should we have a partner? As tough as the jobs were there, and many of them were tough, it took us two and three times the time longer to do them than anticipated, felt that why shouldn't we charge the price that we felt was fair to us without worrying about twenty-five per cent for Carrara. We weren't getting any other leads aside from those that were the school's, although promises were of others, you know, but nothing ever happened to them, and we decided that it was time to sever and we told him.

ALL MIDDLEMEN INFLATE THE PRICE

Mr. Glazer, in response to questioning by Commissioner Farley, commented on what Mr. Carrara's presence meant to the school and ultimately the taxpayer.

Q. I have one more question, Mr. Glazer. No matter how you look at this picture, that middleman was inflating the ultimate cost to the school; is that not a fact?

A. Yes.

Q. And it's just a question of what the percentage would have been?

A. All middlemen inflate the price of a job.

Q. And there was no reason that the school couldn't have come to you directly?

A. In this case they could have.

TWO MORE DECLINE TO ANSWER QUESTIONS

Mr. Joseph Gioffre, President of the Industrial Petroleum Supply Co., located in Hackensack, New Jersey, was sworn but refused to answer any questions based on his Fifth Amendment privilege. Among other questions, Mr. Gioffre was asked the following:

Q. Mr. Gioffre, have you ever paid any money to anyone for the privilege of doing business with the Passaic County Vocational and Technical High School?

A. Same answer.

MR. SAPIENZA: No further questions.

Mr. John B. Gerow of Dorrow Inc. located in Clifton, New Jersey, was sworn but refused to answer any questions based upon his Fifth Amendment privilege.

Q. Mr. Gerow, can you tell me what business you're in?

A. On the advice of my counsel, I refuse to answer on the grounds that my answer might tend to incriminate me.

COMMISSIONER BERTINI: All right. In the future you can say, "Same answer," to shorten it.

THE WITNESS: Same answer. Thank you.

MR. SAPIENZA: John, will you mark these exhibits.

(Documents received and marked Exhibits PH-78 through and including PH-97.)

Q. Mr. Gerow, have you done business with the Passaic County Vocational and Technical High School?

A. Same answer, sir.

Q. Have you had to pay any person a sum of money for the privilege of doing business with that entity?

A. Same answer, sir.

Q. Have you ever deliberately overbid a project in order that Caljo Contracting Supply Company would be the successful bidder?

A. Same answer, sir.

Q. Is it your intention to take your Fifth Amendment privilege as to all of these, all the questions I may ask in this area?

A. Yes, sir.

Another businessman who was induced to go the middleman route by Joseph Carrara in transactions with the school was Mr. Anthony Galiardo, Sales Manager for V. J. Curcio Co., a supplier of beautician equipment. Mr. Galiardo testified about his initial contact with Mr. Carrara:

Q. Did there come a time when V. J. Curcio Company commenced business with the Passaic County Vocational and Technical High School?

A. Yes.

Q. Do you recall when, or approximately when this was?

A. They commenced doing business after it was successful with a bid, and I believe it was 1970.

Q. How did you come to do business with the Passaic County Technical and Vocational High School?

A. It began one time, I believe it was, I believe it was 1969, a man by the name of Joseph Carrara owned a shop in Bloomfield by the name of Aquarius Beauty Salon. He came to my office and asked me if we wanted to work on a project that he had a good lead for us and I said I certainly do.

So, he gave me the name and address of the Passaic County Technical and Vocational office at that time on Route 23 in Wayne and he gave me a name of Mr. Smollok. "Call Mr. Smollok, make an appointment. They need your assistance and you can go ahead and start working with them."

Mr. Gagliardo testified that Mr. Carrara requested and received approximately 10% of the gross business which V. J. Curcio Co. transacted with the school. He identified five checks drawn on the company to the order of several fictitious payees or "straw men" which were actually given to Mr. Joseph Carrara in payment for his "commission:"

The first check dated June 10, 1970 was in the amount of \$2,500 and made payable to Mr. Richard Carrara.

The second check, dated October, 1970, was in the amount of \$1,336.00 and made payable to Gilbert Carrara.

The third check, dated October 30, 1970 was in the amount of \$395.00 and made payable to Mr. Robert Burke.

The fourth check, dated October 30, 1970, in the amount of \$202.65 was made payable to Mr. Robert Burke.

The fifth check, dated October 5, 1970, in the amount of \$3,012 was made payable to Richard Carrara.

In addition to these checks Mr. Gagliardo also identified five others made payable to Clifton Auto Parts that had previously been acknowledged by Mr. Portley of that company as part of those which he cashed for Mr. Joseph Carrara and issued phony invoices to cover. These checks amounted to \$957.88. The total amount actually paid to Joseph Carrara by V. J. Curcio Company was \$8,419.01.

Mr. Gagliardo explained why he drew these checks in this manner:

Q. Are they the checks to your outside salesman?

A. Yes, these were made to Joseph—these were not made to Joseph Carrara, but they were given to Joseph Carrara.

Q. Is that the way you pay an outside salesman?

A. No. We asked him—we made out—I believe you have the check we made out to him. He said he was having trouble with his family and he didn't want his wife—this is what his words were—to know what was going on, and to make the checks out accordingly.

Mr. Gagliardo testified that his company does business with many other boards of education and municipal and state governmental units and never, in any of these, did he deal through a "middleman."

Much of the business transacted with the school by this company was done pursuant to bidding. Mr. Gagliardo explained how he became the successful bidder on all items which he chose to submit a bid for:

Q. Did you assist Mr. Smollok in the drawing of the specifications for the outfitting of Beauty Culture Classrooms A and B?

A. I entered the full specifications.

Q. You—pardon?

A. I suggested the whole specifications.

Q. And—

A. I mailed it to him.

Q. Mailed it to him. And you are familiar with the specifications that became part of the bid proposal?

A. I believe they're actually what I wrote down, I believe.

Q. As a practical matter you, in fact, drew the specification?

A. Yes.

COMMISSIONER BERTINI: And then you were a bidder?

THE WITNESS: Yes.

COMMISSIONER BERTINI: In competition with other bidders?

THE WITNESS: Yes.

COMMISSIONER BERTINI: Who hadn't assisted in preparing the specifications?

THE WITNESS: Well, not everybody will run in to do this service for them, for people, and I believe in it and we do it for all the schools. And then when we enter our specifications, because the average layman doesn't know what a particular dryer is better than another or a particular apparatus or hydraulic chair is better than another, we enter into this and we specify the qualities such as what type of upholsteries and whatnot.

COMMISSIONER BERTINI: Doesn't that sort of give you the inside track?

THE WITNESS: Oh, sure.

Richard Carrara, brother of Joseph Carrara, formed in June 1971 the C.S.M. Corporation with the intention of selling janitorial and paper supplies. In this venture he was counseled and assisted by his brother, Joseph. Richard Carrara testified how C.S.M.'s first and best customer throughout the company's life was the Passaic County Vocational and Technical High School:

Q. Did there come a time when the C.S.M. Corporation did business with the Passaic County Vocational and Technical School?

A. Yes, sir.

Q. When was that?

A. About a month after the company was formed, approximately.

Q. Was this corporation formed to do business with the Passaic County—

A. No, sir.

Q. —Technical and Vocational School?

A. No, sir.

Q. Who did it do business with in that month previous to the doing business with the school?

A. It was just being formed. I got other—

Q. Was the school its first customer?

A. I believe, quite possibly, yes.

Q. And would it be fair to say that in the entire history of that particular corporation the school was its best customer?

A. Yes, sir.

Q. My examination of your business records indicates in the period from July 1st, 1972 to December, the end of December of 1972, you did approximately \$38,000 worth of business with the school. Does that comport with your recollection?

A. I would say that's it, yes.

Q. During that time I see that you did \$613 worth of business with one other customer, Raymond Concrete Pile Company. Is that accurate?

A. Is that for a year, sir?

Q. This is for the period July 1st, '72 to December 22nd, '72.

A. I guess so, then.

* * * * *

Q. I notice in that same period of time you had one other client, Mrs. Maryjo Scola, and she purchased \$362 worth of business?

A. Yes.

Q. So you had three clients; the school, \$38,000, Raymond Concrete, \$600, and an individual for \$362?

A. I had Howard Bank, also.

Q. During this time your records don't show you did any business with Howard Bank.

A. I'm sorry. That's different.

Q. Could C. S. M. have survived if they did not have the Passaic County Technical and Vocational School account.

A. I guess not. I was still building it up. It was a new business.

C.S.M. was highly successful in those bids which it submitted to the school. Mr. Richard Carrara attributed much of this success to Joseph Carrara's help:

Q. *At any rate, Mr. Carrara, shortly after you stopped being a teacher you started being a successful bidder; is that correct?*

A. Yes, sir.

Q. *Our analysis of your records indicates that in the period from July 28, 1971 to July 1st, 1972 C. S. M. was successful in part on every time it bid. Does that comport with your recollection?*

A. Yes, sir.

Q. *You never recollect submitting a bid that you weren't successful on, do you, in some part?*

A. I don't recall.

* * * * *

Q. *Who assisted you in drawing your bids that you submitted to the school?*

A. My brother Joe.

Q. *Did anyone else assist you?*

A. No.

Q. *Did you have any knowledge of how to bid on a project?*

A. No. He was showing me how to bid. He was teaching me that.

Q. *Did he help you figure out how much profit you should put in?*

A. He was telling me how, yes, how to do that.

Q. *And as I understand it, at this point in time you were unemployed and starting this business was a new business venture for you?*

A. Yes, sir.

Q. *Mr. Carrara, do you feel that you would have been as successful as you were in this business in which you had very little experience if it were not for the intervention of your brother, Joseph Carrara, with school authorities?*

A. Not as quickly, I guess.

Mr. Richard Carrara described the operation of the C.S.M. Corporation:

Q. What do you do for your money?

A. I pick out bids; I go out and price them, see what I can get for the best price; and then I bid it; and then when I keep records, I check it when it comes in.

Q. You don't make a product, do you?

A. No, sir.

Q. Do you stockpile or store products?

A. No, sir.

Q. Do you own a warehouse?

A. No, sir.

Q. Where was this business operated from when it was in operation?

A. It was—the business address itself is my house.

Q. It was out of your home; is that right?

A. Yeah.

Mr. Richard Carrara testified that his own brother demanded and received in cash 10% of all the business which C.S.M. did with the school:

Q. Did you have to pay anyone any sum of money for the business done with Passaic County Vocational and Technical School?

A. I paid Joe.

COMMISSIONER BERTINI: How much did you pay Joe?

THE WITNESS: Ten per cent of all my business, not—with the school, now.

COMMISSIONER BERTINI: Well, what did you pay Joe for?

THE WITNESS: Because he helped me. He was helping me to get into this business.

COMMISSIONER BERTINI: He helped you?

THE WITNESS: Right. He was showing me how to keep the books; he was showing me how to bid;

he was telling me—he got me customers. He just was teaching me the business.

COMMISSIONER BERTINI: So, then, the vocational school, that customer was secured by Joe, not you?

THE WITNESS: Yes, sir; yes, sir.

* * * * *

COMMISSIONER FARLEY: How did you pay him?

THE WITNESS: Cash.

COMMISSIONER FARLEY: So, based upon your overall volume, including the school and a couple of other customers, you would pay him ten per cent of that in cash?

THE WITNESS: Right, sir.

COMMISSIONER BERTINI: How did you show the cash that was paid to Joe?

THE WITNESS: I paid income tax as——when I paid my wife services rendered for typing and everything she did, and the bookkeeping and the billing and all this here, I would take that money and I would give that to Joe as his ten per cent.

COMMISSIONER BERTINI: So that your income tax return doesn't truthfully show that you paid Joe ten per cent?

THE WITNESS: No. The money was paid on the money, but not that it went to Joe.

COMMISSIONER FARLEY: Let me reconstruct this so I understand it.

You were paying your wife and this money was then being cashed and given to Joe?

THE WITNESS: Right, sir.

Q. Do you know what Joseph did with the cash that he received from you?

A. No, sir, I don't.

JOSEPH CARRARA'S TESTIMONY IS COMPELLED

Mr. Joseph Carrara, principal in Caljo Contractors Supply Co., located in Fairfield, New Jersey, was sworn in at the public hearing but refused to answer any questions based upon his Fifth Amendment privilege. The Commission then ordered him to testify pursuant to a proper grant of testimonial immunity.

Mr. Carrara testified that he began a contractors' supply business in 1966 and approximately two years later was introduced to Mr. Alex Smollok by a Mr. Carmen Ottilio:

Q. Did there come a time when Caljo Contracting Supply Company did business with the Passaic County Vocational and Technical High School?

A. Yes, sir.

Q. How did it come to do that business?

A. At the time I had offices at Main Street in Little Falls and I was an employee of another company while I was running this same business, also. A Mr. Carmen Ottilio at that time had come into my office. I had been friendly with him and he knew that I was in the contractor's supply business and he recommended that maybe I should call on Mr. Smollok to see if I could sell him anything and that maybe I could gain another account.

Q. Could you fix a period of time when this occurred?

A. I really have no idea. I believe it's somewhere around 1968.

* * * * *

Q. When you saw Mr. Smollok, did you tell him that Mr. Ottilio had suggested you come down to see him?

A. Yes, I did.

Q. And do you recall what Mr. Smollok's reaction was to you?

A. I don't recall his reaction. He was cordial to me.

Q. What was the next thing that you can recall happened with regard to your doing business with the school?

A. The best I can recall was that I received a call. It was either that we were asked to quote on an item

or if there was a request that came up about did I know of anyone—did I know of anyone that was a good engineer.

Mr. Carrara testified that he suggested O'Dell Associates to Mr. Smollok and then requested a commission from O'Dell on any work they received from the school:

Q. Did he ask you to suggest an engineer?

A. Yes, he asked me if I knew of an engineer, a reputable.

Q. Who did you suggest to him?

A. O'Dell Associates.

* * * * *

Q. Did you have an acquaintance with the principals in O'Dell Associates?

A. Yes, I did.

Q. How so?

A. I met with them and told them that I knew of an account that they could probably try to get, and that was just about the gist of the conversation at that time.

* * * * *

Q. Was it after you suggested O'Dell Associates that you went to see that firm and told them that you could see to it that they did business with the school? And if "see to it" is a poor choice of words, correct me.

(Whereupon, the witness confers with counsel.)

A. I don't recall if it was after or before, but I do recall having a conversation with Mr. O'Dell that I can recommend him to an account, and if he were to get the job, if he would agree to paying a commission to me.

Q. And, as a matter of fact, did Mr. O'Dell pay such a commission to you?

A. Yes, he did.

A MIDDLEMAN TELLS OF PAYOFFS

The O'Dell business led to Joseph Carrara entering into an agreement whereby he would give to Alex Smollok a portion of the "commission" he received in acting as a middleman on school purchases:

Q. Well, after receiving this money did you enter into an agreement with any other person regarding its distribution?

A. Yes, sir.

Q. What person or persons did you have such an agreement with?

A. Mr. Smollok.

Q. Exactly what was your agreement?

A. I told him at the time that I should receive a commission for X amount of dollars.

* * * * *

A. (Continuing) I had a conversation with Mr. Smollok that if Mr. O'Dell did, in turn, receive the business, that I would receive a commission for that said business and that I was willing to give part of it to him.

Q. Well, I take it, then, that this agreement with Mr. Smollok, who was then——was he then the secretary to the board of education?

A. I believe so.

Q. Was he also the business manager of that entity?

A. I don't know.

Q. But you did know him to be responsible for the letting of such contracts on behalf of the school; is that correct?

A. I guess so, yes.

Q. I take it, then, that this agreement that you had with Mr. Smollok was prior to the school entering into any contractual relations with O'Dell; is that correct?

A. The best that I could remember, yes.

Q. *What was the final agreement that you reached with Mr. Smollok in this situation as to the distribution of any monies you would receive from O'Dell?*

A. I just remember telling him that I would give him a portion of it, of what I received.

Q. *You do not recall, then, how much or what portion of the percentage you would give to Mr. Smollok on this occasion?*

A. I believe it was half or more.

Q. *Was this what Mr. Smollok demanded or did he want more?*

A. Yes.

Q. *Yes what?*

A. Yes, he asked for it.

Q. *Well, did he want more than half, if you recall?*

A. Well, he didn't know exactly what the commission was to start with, so he didn't know what was half.

Q. *But what did he want? Did he want half of whatever it was or did he want more than half of whatever it was?*

A. He wanted all.

Q. *He wanted all of it?*

A. Yes.

Q. *Did you agree to give him all of it?*

A. Yes. Of course, he didn't know what all of it was.

Q. *And I take it he did not receive all of it; is that correct?*

A. No, he did not.

* * * * *

Q. *Mr. Carrara, what did Mr. Smollok offer you in return for this arrangement that he would receive all of the money that you received from O'Dell?*

A. Nothing. I don't believe anything at the time.

Q. *Well, he drives a hard bargain. It seems unusual to me, and I would ask you to think back, that Mr. Smollok would demand all the money you received*

from O'Dell in return for giving you nothing, either a part of that money or a chance for business or whatever.

A. Well, of course, Caljo was doing business with the school.

Mr. Carrara explained that Mr. Smollok received these payments in cash on a monthly basis at his school office in Wayne, New Jersey.

THE CHAIRMAN: How did you transfer the money to Mr. Smollok?

THE WITNESS: In cash.

THE CHAIRMAN: And where was the transfer made?

THE WITNESS: At his office.

THE CHAIRMAN: And where was his office?

THE WITNESS: I believe at the time his office was in Wayne, New Jersey.

Mr. Carrara was asked to identify all of the vendors who paid him a "commission" for the privilege of doing business:

Q. *All right. Will you identify for us all of the vendors that had to pay you money for the privilege of doing business with the Passaic County Technical and Vocational High School?*

A. The best that I can remember, it's Clifton Auto Parts, K & K Automotive, Dorow, Curcio, Jersey Janitor, Fox Fence, Industrial Petroleum, Rutherford Sporting Goods, Royal Stationery, Atlantic Sheet Metal and C. I. S.

In addition to these vendors, Mr. Carrara testified that Mr. Smollok also demanded payoffs on the business which Caljo Contractors Supply Co. did with the school.

Q. *Did you have to pay Smollok any monies for the business Caljo did with the school?*

A. Yes, sir.

Q. *How was that computed?*

A. Five per cent of the gross.

Q. And when did you reach this agreement with Mr. Smollok?

A. I don't recall the exact time, sir.

Mr. Carrara proceeded to testify as to the amount of business Caljo did with the school and what this meant to Mr. Smollok in terms of dollars received:

Q. And have you totaled these individual amounts up so that you may now give us a grand total of the gross amount of business Caljo Contractors Supply Company did with the school?

A. Yes, sir. Approximately \$278,434.

Q. And is it true that you paid Mr. Alex Smollok a five per cent commission on this business done?

A. Yes, with the exception of a few that the profit just wasn't in it.

At all times the money was paid in cash at Mr. Smollok's office without anyone else present. In summary Mr. Carrara testified:

Q. First, you had the O'Dell relationship. This was your providing the school with an engineer, correct?

A. Yes, sir.

Q. And the O'Dell people paid you a certain percentage, because you brought them that business, by check?

A. Yes, sir.

Q. And that these checks were then cashed?

A. Yes, sir.

Q. And it was the understanding that Smollok would get all of this money?

A. Yes, sir.

Q. And in point of fact, you gave him a half or more of that money in cash?

A. Yes, sir.

Q. Now, Point 2. You had a fiscal relationship between Caljo and the school and over a period of years this generated about \$278,000 worth of business?

A. Over a period of three and a half years.

Q. Yes.

A. Yes.

Q. *And your fiscal relationship with Smollok was that he would get five per cent of the gross?*

A. Yes, sir.

Q. *And this, in fact, he was paid in cash?*

A. Yes, sir.

Q. *And all payments were made at the school?*

A. Yes, sir.

Q. *And no payments were made in the presence of a third party?*

A. No, sir.

Q. *Thirdly, you had an arrangement, a fiscal arrangement with Smollok with respect to the outside vendors, and here you generally had an average payment that you would receive from the outside vendors of ten per cent, correct?*

A. Yes, sir.

Q. *And that Smollok's agreement with you was that he would get all of this ten per cent?*

A. Yes, sir.

Q. *And that, in point of fact, you gave him fifty per cent or more of that in cash?*

A. Yes, sir.

Q. *Fifty per cent of the ten per cent that is.*

A. Yes, sir.

Q. *And finally, you had a corporation formed in the name of C. I. S., which was, in point of fact, owned by you and that you did business with the school?*

A. Yes, sir.

Q. *And you made certain sums of money on that?*

A. Yes, sir.

Q. *And certain sums of money were given back to Smollok in the form of cash?*

A. Yes, sir.

ALEX SMOLLOK DECLINES AN OPPORTUNITY TO TESTIFY

The Commission wishes to note that Mr. Alex Smollok, a public employee within the meaning of the presently existing Public Employees Immunity Statute, was notified by certified letter and through his attorney that the Commission would be happy to receive his testimony in reply, as provided for under the State Code of Fair Procedure which grants all those who feel adversely affected by the Commission's public proceedings to make relevant statements under oath on their own behalf. Mr. Smollok, through his attorney, notified this Commission that he would not voluntarily appear and give testimony nor reply to any of the testimony given by other witnesses at these public hearings.

SCHOOL PROPERTY AND EMPLOYEE WORK IS CONVERTED TO PERSONAL USE

One evidence of administrative abuses at the Passaic County Vocational and Technical High School, as uncovered by the S.C.I. investigation, was instances of school-connected officials, principally Alex Smollok, converting to personal use the work of some school employees and some of the school's property. The conversions were carried out generally during school working hours and, therefore, at the expense of the taxpaying public. A number of employees of the school's custodial staff testified at the public hearings to a variety of such conversions. The first was Michael Mausley who told of top soil transportation to Mr. Smollok's home, delivering a school rug to that home, and cementing the pool at that home:

Q. Having had the benefit of your prior testimony, I would now like to elicit from you the circumstances which occurred on March 1st, on or about March 1st, 1973, with regards to some topsoil.

During that period of time was there a contractor working on the school site?

A. Yes, sir.

Q. And who was that contractor, do you know?

A. Otilio.

Q. And did you receive any instruction from Mr. Smollok relative to that contractor?

A. Yeah. I was told to get a dump truck and haul topsoil down to his house down in Clifton.

Q. *And whose house are you referring to?*

A. Smollok's house.

Q. *Where is that located?*

A. I think it's Brower Road or something like that in Clifton. I don't know that.

Q. *Brower Street?*

A. Yeah, something like that.

Q. *And did you, in fact, get a dump truck?*

A. I did.

Q. *Where did you get the truck from?*

A. Right from the school property.

Q. *Whose truck was it?*

A. Well, the Passaic County Vocational School.

Q. *And did you load that truck up with topsoil?*

A. Yeah. Ottilio loaded it up. One of his workers loaded it up with topsoil.

Q. *Where did he get the topsoil from?*

A. Right above the school, school grounds there.

Q. *Well, was this topsoil being spread upon school property?*

A. It was at the time, yes.

Q. *What were they doing there?*

A. They were supposed to be spreading it around in fields.

Q. *Football field?*

A. Football field, yeah.

Q. *How many dump truckloads of it did you deliver to Mr. Smollok's home?*

A. I delivered three of them.

* * * * *

Q. *All right. Was Mr. Smollok present when you delivered the topsoil?*

A. Yes, he was. At the first load, he was present.

Q. *Where did he have you dump it?*

A. Right around—right around his pool he has built at his house.

Q. *Was the pool built at this time?*

A. The pool was built.

Q. *Do you know who had to spread the topsoil?*

A. Well, we spread it with shovels.

Q. *Oh, you spread it?*

A. Yeah.

Q. *Three dump trucks full of it?*

A. Yeah.

Q. *That's a pretty hard job, isn't it?*

A. Well, it wasn't easy.

Q. *What day of the week was this, can you tell?*

A. I don't know for sure, but it could have been on a Monday.

COMMISSIONER FARLEY: Was it a school day?

THE WITNESS: School day, school day.

Q. *Were you compensated by Mr. Smollok for this?*

A. No, I wasn't.

Q. *To your knowledge, did he compensate Mr. Ottilio?*

A. No.

Q. *Who helped you?*

A. Well, Ronnie Kopack helped me.

Q. *All right. Leaving that instant, I'm referring, now, to an instance that took place on Christmas Eve of 1971. Do you recall going to Mr. Smollok's home on that evening?*

A. I do.

Q. *What were the circumstances of that?*

A. We were delivering a rug, which we got at the new school, 45 Reinhardt Road, which came out of the library. We took it to Smollok's house and we put it down the basement through the window.

Q. *Did Mr. Smollok order you to take a rug from the school?*

A. Yes, he told me.

Q. *He did. Was this during the day that he gave you these orders?*

A. Well, this is sort of in the afternoon.

Q. *What did he tell you to do, as much as you can recollect?*

A. Take it down to his house.

Q. *He told you to take a rug from where?*

A. From the school.

Q. *And did he tell you to wait until after school hours?*

A. No, he didn't tell us what time.

Q. *Did he tell you where to get the rug?*

A. Well, he helped to load it on the truck.

Q. *On the school truck?*

A. Yes.

* * * * *

Q. *Did you take it to Mr. Smollok's home?*

A. I did.

Q. *Was it in the evening?*

A. No, it was in the afternoon.

Q. *Who helped you?*

A. Ronnie Kopack and Mr. Smollok himself.

Q. *And where did you place the rug?*

A. Down in his basement.

Q. *Did he compensate you for this?*

A. He gave me \$10 and a bottle of Ambassador Scotch, which I have the Scotch yet.

Q. *Were you on school time when you did this?*

A. I did. I was.

Q. *Now, you mentioned Mr. Smollok's pool. Did you ever have occasion to do any work on his pool or around the pool?*

A. Yes. I helped cement around the pool. When the cement was delivered, we had to be there.

Q. *When you say "we," who is that?*

A. Me and Frank Puzio.

Q. And what did Mr. Smollok tell you to do?

A. Well, we had to—I was holding the wheelbarrow, the cement, while Frank was leveling it off.

Q. Were you compensated for this by Mr. Smollok?

A. No, I wasn't.

Q. To your knowledge, was Mr. Puzio compensated for this?

A. No, he wasn't.

Q. Were you on school time?

A. On school time.

Q. Was it on a Saturday?

A. No, it was during the week.

Q. During the week. And you got a check from the school for the hours that you worked on Mr. Smollok's walk; is that right?

A. Right.

Q. Was this a regular check or drawn on any particular firm?

A. No, right in my regular paycheck.

Ronald Kopeck, another employee of the school's custodial force, gave testimony corroborating that of Mr. Mausley about deliveries of top soil and the rug to Mr. Smollok's home. Mr. Kopeck additionally told of instances where he worked at Mr. Smollok's home breaking up concrete in the driveway, installing a concrete walk around the swimming pool there and installing tile in the cellar of that home:

Q. Were you ordered by Mr. Smollok to do any work in and about his private premises?

A. Yes, sir.

Q. Would you tell us about that?

A. Well, we broke concrete up in his driveway and we laid concrete around the pool. I did work down the cellar, laid tile down the cellar.

Q. When you say "we," do you recall—

A. Frank Puzio and I.

Q. Now, you were required to assist in building a concrete walk around his pool; is that what you're telling me?

A. Yes.

Q. Do you recall when that was?

A. No, sir, not offhand right now.

Q. Was it during regular school working hours?

A. Yes, yes.

Q. Were you compensated in any extra way by Mr. Smollok?

A. No.

Q. Did Mr. Smollok ever indicate that he'd make it up to you?

A. No.

Q. Now, you say that you were required to lay tile in Mr. Smollok's basement?

A. Yes, sir.

Q. Was this during regular school working hours?

A. This was on a Saturday, as I recall.

Q. A Saturday?

A. Yes, sir.

Q. Were you compensated by Mr. Smollok for this?

A. No.

Q. Did you receive a check from the school to cover this time?

A. Yes, yes.

Q. What is your rate of payment on a Saturday?

A. Well, time and a half.

Mr. Kopek testified further that he knew of deliveries of school property consisting of chairs and ceiling tile to Herman Steinberg, then Attorney for the County Board of Education, and consisting of an executive desk and chairs to Eugene Dockery, President of the Board:

Q. Were you required by Mr. Smollok to deliver school property to any other locations?

A. Yes, sir.

Q. *Where were they?*

A. One was in Pompton Lakes. I was ordered to deliver a table, desk, table, two chairs, three chairs, as a matter of fact, to Mr. Dockery's place in Pompton Lakes at the municipal building there.

Q. *And when did this occur?*

A. Oh, I don't know offhand the date, but it was during school hours.

Q. *You have previously testified it occurred in the winter of 1971. Does that refresh your recollection?*

A. Yes, something around—somewhere around there.

Q. *Who assisted you, if you know?*

A. Mr. Smollok.

Q. *Mr. Smollok helped you take the desk?*

A. No, excuse me, no. One of the fellow—when I got there, I backed the truck up and Mr. Dockery told one of the fellows in the building to give me a hand to take it off.

Q. *Did everything go smoothly?*

A. No. It was the wrong—I brought up the wrong desk. Mr. Dockery called Mr. Smollok. Mr. Smollok told me to bring it back and bring another one up. I brought another one.

Q. *Was this the only time that you brought school property to Mr. Dockery?*

A. Yes.

Q. *And it was a working desk and a couple of chairs?*

A. Yeah, it was a regular desk, like office desk.

Q. *Besides that, were you required by Mr. Smollok to bring school property to any other location other than the school?*

A. Yes.

Q. *Where?*

A. Mr. Steinberg's office.

Q. *When was this?*

A. This was—I'm not really sure. During the winter I was told. I brought two chairs and ceiling blocks.

Q. *We're not familiar with the term "ceiling blocks." What are they?*

A. For the ceiling, the square blocks, tile. If you want to, call them ceiling tile.

Q. *In other words, if you're putting in a new ceiling this would be what you would use?*

A. Yeah, like a dropped ceiling.

Q. *How many boxes of ceiling tile?*

A. Ten boxes.

Q. *How big is a box of ceiling tiles?*

A. Oh, I guess four-foot by—four-foot, four by three, something like that, somewhere around there.

Q. *Did anyone assist you—*

A. No.

Q. *—in this delivery?*

A. No. Well, I delivered. Mr. Steinberg was there. I took—he told—I took the boxes off the truck and he told me where to put them. I laid them down and came back.

Q. *Besides the boxes, you say you delivered chairs?*

A. Yes, sir.

Q. *Was this done in the day or night?*

A. This was done in the morning at eight o'clock.

Q. *Do you know where these ceiling tiles and chairs came from?*

A. Yes, they came from the school.

Q. *Do you know where the school got them from?*

A. Excuse me?

Q. *Do you know where the school got the ceiling tiles from?*

A. Yes. I went down to—I was told by Mr. Smollok to go down pick up tile, and Mr. Barker knew where the place is. He gave me directions. I went down to Burlington and picked the tile up.

Another school custodial employee, Frank Puzio, described how he started out at Mr. Smollok's direction fixing a few windows at Mr. Smollok's home and ended up doing major carpentry jobs on school time, with the school additionally paying for the lumber:

Q. Who told you to do that?

A. Mr. Smollok.

So he said I'll change a few windows and all that stuff there and help him out because he's too busy at the school, so I started to work in his house. First it was one window, then it was two windows, then three windows, then four. Before you know, I did all the job, all the windows. I figured that was it. As a favor, I did the job. Then, before you know it, fix the roof, fix the gutter, and here I am in the middle.

* * * * *

Q. By doing the basement, what do you mean?

A. I remodeled the basement for him; I remodeled the basement for him.

After I was finished there and he says, "Remodel my porch." I got stuck there again. I finished his porch for him again. I figured I was finished. I did a favor, I did the job. I figured that was it. Before you know it, he wants a dormer on his porch; before you know it, the concrete around his pool, his driveway. And he gave me a couple of helpers, Andy Weisz, Jim Trenicos.

* * * * *

Q. Now, where did the material come from that you as a carpenter used to fix or build in Mr. Smollok's house?

A. Material came from Sills Lumber Yard in Paterson.

Q. Now, was this, to your knowledge, delivered?

A. And I picked it up.

Q. You picked it up at Sills?

A. Yes.

Q. Did you pay the man at Sills?

A. I signed vouchers for.

COMMISSIONER BERTINI: In what vehicle did you pick it up?

THE WITNESS: What?

COMMISSIONER BERTINI: What vehicle did you use?

THE WITNESS: County school, county vehicle, the Jeep.

COMMISSIONER BERTINI: County?

THE WITNESS: Yeah.

BY MR. SAPIENZA:

Q. You mentioned you signed vouchers. What type of vouchers were they?

A. They were school. In other words, they have the lumber, then you tell them Passaic County Vocational School, they have a number and they write the order down, the certain number there, whatever it is. I think each place has a number.

Q. On each occasion that you picked up lumber at Sills that you took to Mr. Smollok's personal residence, did you sign a school voucher?

A. Yes.

Q. So that this lumber was billed to the Passaic County Vocational and Technical High School?

A. Yes.

Walter Puzio, nephew of Frank Puzio and another school custodial employee, testified that he was required by Mr. Smollok to do jobs at Mr. Smollok's home as varied as adjusting cabinets and feeding Mr. Smollok's dogs:

Q. I'm now interested in whether you were ever required to do any work or deliver any school property at the direction of any school official?

A. Yes.

Q. I have had the benefit of your testimony previously—

A. Yes.

Q. —in executive session.

Were you required to do any work at the home of Alex Smollok at 15 Brower Street?

A. Yes, sir.

Q. When were you so required?

A. Well, I think it was about in the summer of, I think, '71 or '72, around there, or '70.

Q. Well,—

A. I think, '71.

Q. '71?

A. Yeah.

Q. What sort of work were you required to do?

A. We supposed to—it was me, me, Bob Flick, and Walter Puzio, my uncle, Frank Puzio, supposed to go to his house and take all this, the cabinets down in the kitchen, you know, you put the dishes in, supposed to fix it up like that.

Q. You were required to do work on kitchen cabinets in Mr. Smollok's home?

A. Yeah, just take them down.

* * * * *

Q. Besides working on the kitchen cabinets, were you required to do any other work around the Smollok residence?

A. I don't even—I used to mind his dog, and that's all, when he went away on vacation. That's it.

Q. Well, certainly—you say you minded his dog?

A. Yes.

Q. You didn't do that at Mr. Smollok's house, did you?

A. Yeah. When he went on vacation, I used to go over there and check on his dogs.

COMMISSIONER BERTINI: What?

THE WITNESS: Check on his dogs. He had two dogs. They go on vacation, they don't believe in feeding animals. They just go.

COMMISSIONER BERTINI: You went and fed the animals?

THE WITNESS: Yeah, I went and check around, need water.

THE CHAIRMAN: Did he ask you to do that?

THE WITNESS: Yeah, he told me.

* * * * *

Q. *All right. During the time you worked on the kitchen cabinets, were you compensated by Mr. Smollok?*

A. No. It was during school hours.

Q. *You were compensated by the school?*

A. Yeah, it was my regular eight hours.

Q. *You're quite certain the hours you put in working on Smollok's were hours you, in a sense, billed the school for and were paid by the school?*

A. That I can't tell. We take the cabinets down and throw them on the truck and go back to the Nike Base.

Q. *This was during the day?*

A. During the day.

Q. *Regular working hours?*

A. Regular working hours, and that was it from then on.

In addition Walter Puzio testified to the delivery of a school blackboard to Mr. Steinberg's office and to the use of a school dump truck to deliver crushed rock to be used on the driveway of Ansell Payne, Assistant County School Board Secretary.

Q. *All right. Let's slow down. You were required to deliver a blackboard to Mr. Steinberg's office?*

A. Yes.

Q. *When?*

A. Last summer it was, I think. Last summer.

Q. *Where did the blackboard come from?*

A. From the school.

Q. *What kind of a blackboard was it?*

A. One of these, like this.

Q. *All right. A blackboard approximately five feet by three feet?*

A. Yeah, that's all.

Q. *On a stand?*

A. No, I don't think it was on a stand. Only had the blackboard.

Q. *Where did you get the blackboard from?*

A. From the school.

Q. *Where in the school did it come from?*

A. Downstairs in the basement.

Q. *Was it in an inventory shed or inventory room?*

A. They had the blackboard there and I put it on the truck and take it.

Q. *Who told you to do this?*

A. Mr. Weisz was there and told me to do that.

Q. *Did he say who told him to do it?*

A. No, he didn't, just take it down.

Q. *Did somebody help you?*

A. Curt Brooks, I think, or Ben Brooks went with me.

Q. *He was an employee of the school at the time?*

A. Yeah, part time in the summer.

* * * * *

Q. *Was Mr. Steinberg there when he received it?*

A. Yes.

Q. *Did he say anything to you?*

A. No, just told me, "Put it in that room over there." Gave us a three-dollar tip or four-dollar tip and we left.

Q. *Besides that, were you required to deliver any property to any other school official?*

A. No, that's it.

Q. *All right. Now, you mentioned something about use of the school truck previously?*

A. Yeah. I think it was in October or November.

Q. *Of what year?*

A. I think it was last year.

Q. *1972?*

A. '72.

Q. *What were you required to do with the school truck?*

A. Mr. Ansell Payne told me to get a dump truck, and Mr. Panasoka worked for Ottilio, was a foreman, said, "He'll go with you, take a ride in the truck." I said, "All right." Wait for the foreman to come, took a ride back of Sam Braen's. You know, they make rock, crushed rock. So, we had to pick up a truckload of rock. A guy throw a load of rock and I had to go to his summer home.

Q. *Whose summer home?*

A. Mr. Payne's summer home.

Q. *Where is that located?*

A. West Milford.

Q. *New Jersey?*

A. Yes.

* * * * *

Q. *You picked up a dumpload of crushed rock?*

A. Yes.

Q. *You brought it to Mr. Payne's summer residence in—*

A. Yes, West Milford.

Q. *In West Milford?*

A. Yes.

Q. *What did you do when you got there?*

A. His uncle was there and his son was in the house. His uncle came out and said, "Dump it in the driveway." So I backed the truck up and dumped it, the whole load, and left.

Q. *When you picked up the rock, did you have to sign any voucher?*

A. No. I had to go on the side, and the foreman went inside and talked to the man.

Q. You weren't present?

A. No, I was outside waiting for him.

Q. Then you brought the truck back to school?

A. That's right.

REPLY TESTIMONY

The Commission notes that Mr. Payne testified at the public hearings that he did receive delivery of the crushed rock at his summer home but that he paid for it in full.

Eugene W. Dockery, the previously identified President of the Passaic County Board of Education, testified at an executive session of the Commission and additionally submitted a notarized statement relative to the delivery of a desk and some chairs from the vocational high school to Mr. Dockery's municipal office in the Borough of Pompton Lakes where he is Borough Clerk-Administrator. Mr. Dockery testified and stated that he received those school properties believing them to be surplus and only to effect a savings for the Borough. Mr. Dockery stated further that after meeting with the Commission in executive session in August, 1973, "I had Mr. Alex Smollok come to Pompton Lakes, inspect the furniture and tell me if it was surplus or non-surplus. On inspection, he said a mistake had been made at the school. The next day I returned the furniture to the school, replacing it with municipally purchased furniture."

FINAL RECOMMENDATIONS

Introduction

The Commission found at the close of the public hearings that the total factual record of those proceedings clearly delineated how costly inefficiencies, laxities and abuses can develop in a public school's purchasing of supplies and services, all at the expense of the taxpaying public. The Commission concluded that development of corrective recommendations was obviously needed.

The importance of the best possible practices and controls being employed by public schools is emphasized by the following data from a recent report of the New Jersey State Chamber of Commerce: New Jersey residents are paying approximately \$2.6 billion a year in property taxes. On a statewide average basis, more than half, or \$1.5 billion of that total onerous property taxation goes for the support of public schools, with that percentage reaching the 60 to 80% level in some communities.

In the probe of the Passaic County Vocational and Technical High School, the Commission found most disturbing and regrettable the widespread lack of concern by the school's administration to obtain purely competitive prices for goods and services purchased, with one witness characterizing the school's purchasing approach as akin to that of a corner "candy store."

The Commission took particular note of the testimony of one witness who stated it should not be necessary for well intentioned businessmen to do anything other than deal directly, openly and honestly with a tax-supported institution.

In the atmosphere of laxity and abuse in the school's administration, the Commission found it small wonder that the school became a dumping ground for millions of dollars in federal surplus properties and that school employees on school time carted many of those properties in school trucks to the private property of the then Director of the State Surplus Property Agency.

After the Commission had completed development of its final recommendations in a prior investigation of the Workmen's Compensation system, immediate analysis and study of the facts presented at the public hearings in Passaic County was undertaken

to formulate the final recommendations presented in this Annual Report. The Commission believes these final recommendations provide avenues of action for improving fiscal procedures and controls for schools throughout the state and to provide New Jersey with a model surplus property agency which would be adequately structured, financed and equipped to bring this vital educational resource to all schools in need of it on an efficient and equitable basis.

A Proper Surplus Property Program

The Testimony

Testimony from Mr. Herman Crystal, Deputy Director of the Division of Purchase and Property, Walter J. Macak, Former Director of the State Agency for Surplus Property and, Frederick Leary, a former employee of the Agency outlined a state agency ill-structured and ill-equipped to perform a potentially valuable service to educational institutions and other approved facilities throughout the State. To remedy this situation the Commission makes the following recommendations.

The Commission's Recommendations

1. A State plan for the acquisition and distribution of this surplus property

The U.S. Department of Health, Education and Welfare has advised the Treasurer's Office of this State must draw a plan for the acquisition, screening, inventory, distribution and accountability of this property. This has not been done. We recommend the following outline:

- a) The overall plan must encompass and be designed to effect compliance with the "Surplus Property Utilization Manual" which is the compilation of federal regulations concerning the flow of this property. These regulations are the "ground floor" which govern acquisition by the State of such property. They do not reach the State's duty to see that such property is efficiently used in a manner which most benefits the broad spectrum of eligible donees.

- b) Optimum use of such property depends in the first instance on proper "screening"—the procedure by

which property is identified, examined and evaluated as to its potential use by eligible donees. The agency screener must be informed, in a general way, by the eligible donees as to what type of property they are looking for. This communication has been lacking in the agency to this day and is a prime reason why so much of the property acquired has never been used.

c) A procedure should be adopted whereby all eligible donees forward, on a regular basis, requests for surplus property to the agency.

d) The agency must publish a list of available property to all eligible donees. These lists are now received by the agency from the federal government, but have not been regularly circulated to all eligible donees thereby allowing some "favored donees" to receive most of the property available.

e) The agency must maintain adequate files on all property received from the federal government and returned items from donees, in order to comply with accountability regulations and allow the director to evaluate the agency's efficiency.

f) To insure effective management, provision must be made for periodic internal audits of inventory and distribution. These audits will encourage a wide distribution of surplus property throughout the State.

g) The plan must include the requirement for periodic field inspection by the director of the use of such property by receiving donees. Such inspection should include a check of all correspondence pertaining to surplus property items.

h) The ultimate disposition of obsolete and "scrap" materials must be effected with the prior knowledge and consent of the agency.

2. A Proper Staff to Carry Out the Agency's Responsibilities

A staff consisting at a minimum of the following personnel is a necessity:

- 1) Director
- 2) Property Scanner

- 3) Warehouse Manager
- 4) Truck Driver—Heavy Equipment Operator
- 5) Two Warehousemen
- 6) File Clerk
- 7) Stenographer

3. Sufficient Warehouse Facilities

A central warehouse for the storing of donated federal property which is not directly picked up by an eligible donee is required. The Commission has heard testimony that valuable property which could have been acquired by this State was lost because it could not be acquired within the 15-day time period set by the federal regulations. In addition, such a facility could be used for "supermarket" shopping by eligible donees—an idea conceived long ago but never put into effect. Currently, the agency is renting warehouse facilities in the Raritan federal depot at a yearly cost of \$87,000. This amount is likely to increase in succeeding fiscal years. The Commission believes that this present arrangement is economically unsuited to the long-range operation of the agency. Adequate space can and should be made available in State warehouse facilities.

4. A Realistic Budget

A realistic budget for the operation and management should be drawn so that the agency is not forced to rely upon service charges which, under federal regulations, may be made against receiving, eligible donees. Such service charges are likely to fluctuate from year to year depending upon how much property is received and distributed, while a reasonable budget will insure constant operation and management of the agency.

5. Transfer of the Agency

The primary intent of the federal program is to assist educational institutions, although other entities do qualify as eligible donees. The federal officials who administer this program for New Jersey and who testified at the public hearings indicated their preference for a totally independent unit within the executive branch of government. Under this State's Constitution such independence without cabinet status is impossible. However, the Commission feels that the intent of the federal program and the desires of the U.S. Department of Health, Education and Welfare could be achieved by placing the agency "in" the Department of Education but not "of" it.

Execution of Recommendations

The recommendations for an effective plan of operation, staff, physical facilities and realistic budget may be implemented by the State agency itself in conjunction with the governmental department that it exists within.

The recommendation for transfer of the agency and change of its status to a governmental unit "in" but not "of" a department would require new legislation.

Improved Controls of School Purchasing Practices

The Testimony

This Commission has heard testimony from vendors doing business with the Passaic County Technical and Vocational High School that the board secretary and business manager, through a third party, consistently demanded and received "commissions" on orders placed and bids awarded for supplies throughout a three-year period from 1969 to 1972. This price of doing business was uniformly added to the cost of the product or service supplied so that it eventually became a charge against the school's financial resources.

In addition, the testimony revealed a pattern of dealing through middlemen by the school's purchasing agent which substantially inflated the price of every article and service supplied beyond any reasonable expectation of fair profit. This practice continued for the same three-year period apparently without the knowledge but under the nose of the duly appointed Passaic County Technical and Vocational Board of Education. Again, this resulted in a substantial charge against the school's financial resources.

The Commission's Recommendations

1. Responsibilities Must Be Fully Shouldered

Laws presently existing under Title 18A of New Jersey Statutes annotated comprehend a balance of duties and responsibilities between the paid administrative staff of a school and the non-paid board members that will allow for efficient day to day management. Put another way, the statute contemplates that the board manager and/or business secre-

tary will execute his responsibilities with integrity and ability and, if he does not, the supervising board will soon become aware of it. The total failure of the lawmakers expectations in this particular case was *not* a result of a flaw or loophole in the statute; rather, it was the failure of the individuals associated with this school, intentionally or otherwise, to shoulder their fair responsibilities as public officers.

In executive session the Commission received the testimony of the President of the School Board, another board member and the school administrator. The first two testified that the pressures of time and indifference to details resulted in a virtual rubber-stamping of the purchases and other activities of the business agent and board secretary. When it is realized that school districts in general and particularly in suburban areas, spend more than half of the average residential tax dollar, the propensity for waste that any breakdown in the system of checks and balances encourages is alarming. The state cannot prevent planned criminal activity from opening a wound in the important part of our social fabric, but the state simply cannot afford to allow such a wound to bleed a tax-supported operation through indifference.

The Commission notes that its public hearings were concluded on September 19, 1973 and that a transcript of these public hearings is available to anyone who wishes to purchase the same. The Commission also notes that Mr. Alex Smollok, Board Secretary and Business Manager of the Passaic County Technical and Vocational High School still occupies these official positions. The Commission is aware that there is ample procedure under the law for the removal of board secretaries and/or business managers who are guilty of neglect, misbehavior or other offenses during the performance of their official duties. The Commission feels that its findings of fact and official testimony taken should be considered by the Board of Education in determining whether or not to institute removal proceedings against Alex Smollok.

The Commission hopes that the example abuses of this school's purchasing practices as exhibited in the public hearings will encourage all officials throughout the state, who fill the thousands of non-paid supervisory positions, to apply their good judgment and those sound business principles which made them the choice of their appointing authority.

2. Confusion Between Statutes Governing Purchase by Bid

During the course of this investigation the Commission became aware of some confusion among many school administrators and Board members regarding the applicability of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), which became effective on July 1, 1971, and the older bidding laws contained under Title 18A of New Jersey Statutes Annotated.

Under N.J.S.A. 18A:18-5 contracts executed by a Board of Education for supplies costing less than \$1,000 may be entered into without bidding. However, under the Local Public Contracts Law (N.J.S.A. 40A:11-4), contracts for the furnishing of supplies exceeding \$2,500 must be made by public bidding "except as provided otherwise in this act or specifically by any other law."

The Local Public Contracts Law contains an explicit repealer clause (N.J.S.A. 40A:11-38) which does *not* repeal anything in Title 18A. Apparently, this latter statute was not intended to affect the requirements contained under Title 18A. In a sense this is unfortunate since the Local Public Contracts Law is superior to the older law in all respects.

Inflation has made the \$1,000 limitation more burdensome than originally intended in 1949 and counterproductive to genuine efforts to secure the lowest price possible in rapidly fluctuating markets. The Local Public Contracts Law spells out what the advertising requirements are and provides for the governing body to fix the qualification of bidders—a provision which would go far towards reducing any reliance upon "middlemen." Further, it specifically forbids the governing body to adopt specifications which knowingly exclude prospective bidders by reason of impossibility of performance, bidding or qualifications by any but one bidder.

On the whole, this newer statute is designed to secure competition while guarding against favoritism, extravagance and corruption to the immense benefit of the taxpayer.

The Commission strongly recommends that the Legislature review the bidding provisions contained under Title 18A with an eye towards replacing them with the more realistic scheme contained in the Local Public Contracts Law.

3. Proper Purchasing Procedures

In order to bolster the present statutory scheme of checks and balances, the Commission submits the following specific recommendations:

The Commission recommends that all school boards who have not already done so, prescribe the following regulations concerning the purchase of materials, supplies and services by its business agent without bids

1) Prior to the purchase of any material, supply or service in excess of \$250.00 a reasonable effort be made to determine a competitive price for such material, supply or service;

2) That such a reasonable effort shall be presumed to have been made if three quotes are solicited and received from independent sources for such material, supply or service;

3) That such quotes or other evidence of reasonable effort be recorded in writing and annexed to the contract which by existing law (N.J.S.A. 18A:54-26) must be presented and passed on at a regularly called meeting of the board;

4) That reasonable effort shall be presumed to have been made if the purchase of such material, supply or service is made from the list of supplies and suppliers maintained by the State Bureau of Purchase and Property or the Surplus and Vending Distribution Service within that department;

5) That the board or a committee of its members review on a quarterly basis with its purchasing agent its purchasing practices.

4. Prompt Payment of Bills

The Commission has received testimony that indicates some potential suppliers of goods and services are reluctant to deal directly with school boards due to the "inordinate volume of paper work involved" and "excessive period of time" between submission of their bill and actual receipt of payment. In order to insure that such difficulties, whether real or imagined on the part of the supplier, will not exist, we recommend:

1) All payment invoices should be reviewed by the school board within 20 days of receipt of such invoice at a public meeting and approval of such payments should involve thorough review and not become a "rubber stamp" procedure which was found in the investigation.

2) All payments due suppliers or materials or services, except those whose invoices for incremental payments (such as on capital construction or major reconstruction contracts), should be made within 10 days of voucher approval. This, then, would indicate payment within 30 days of receipt of demand for payment (invoice). This is normal business procedure which suppliers have a right to effect.

Execution of Recommendations

The proposed regulations which are intended to insure the obtaining of a competitive price for those articles purchased without bid should be promulgated by the State Board of Education pursuant to its authority under N.J.S.A. 18A:54-21.

The proposed review of those statutory sections under title 18A which govern purchases by a school board should be considered by legislature at its earliest convenience.

Theft of Goods and Services by Public Officials

The Commission has received testimony indicating that the school's Board Secretary and Business Manager required employees of the Passaic County Vocational and Technical High School to perform labor and professional services at his private residence during school hours without compensation by him. Instead, these employees were compensated by the school in the form of regular salaries and overtime payments. In addition, the testimony indicated that the Board Secretary and Business Manager received articles of school property and converted them to his own personal use. The Commission believes that this problem is certainly more widespread than the particular instances examined during these public hearings. Therefore, it wishes to take this opportunity to recommend that legislation be enacted that will specifically define such conduct as a criminal violation.

APPENDIX I

STATE COMMISSION OF INVESTIGATION

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

L. 1968, C. 266, as amended by L. 1969, C. 67, L. 1970, C. 263, and L. 1973, C. 238.

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

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

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

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

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

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

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

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

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

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

a. The removal of public officers by the governor;

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

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

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

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

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

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

52:9M-8. Reference of evidence to other officials. Whenever it shall appear to the commission that there is cause for the prosecution for a crime, or for the removal of a public officer for misconduct, the commission shall refer the evidence of such crime or misconduct to the officials authorized to conduct the prosecution or to remove the public officer.

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

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

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

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

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

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

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

d. Unless otherwise instructed by a resolution adopted by a majority of the members of the commission, every witness attending before the commission shall be examined privately and the commission shall not make public the particulars of such examination. The commission shall not have the power to take testimony

at a private hearing or at a public hearing unless at least 2 of its members are present at such hearing.

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

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

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

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

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

Any statement made by a member of the commission or an employee thereof relevant to any proceedings before or investigative activities of the commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander.

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

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

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

52:9M-18. Severability; effect of partial invalidity. If any section, clause or portion of this act [chapter] shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and

no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

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

52:9M-20. This act shall take effect immediately and remain in effect until December 31, 1979.

APPENDIX II

MEMBERS OF THE COMMISSION

The Commission's activities are now under the direction of Joseph H. Rodriguez who in December, 1973 was appointed to be a Commissioner and Chairman by then Governor William T. Cahill. He succeeded John F. McCarthy Jr. who had been Chairman since February, 1971 and a Commissioner since July, 1970. The other Commissioners are Charles L. Bertini, Thomas R. Farley and David G. Lucas.

Mr. Rodriguez, of Cherry Hill, took his oath of office as Commissioner and Chairman in January, 1974. A graduate of LaSalle College and Rutgers University Law School, he was awarded an Honorary Doctor of Laws Degree by St. Peter's College in 1972. Mr. Rodriguez was a member of the Board of Directors of the Camden Housing Improvement Project during 1967-71. He was appointed to the State Board of Higher Education in 1971 and the next year was elected Chairman of that agency which oversees the operation and growth of the state colleges and university. Mr. Rodriguez resigned that Chairmanship to accept his appointment to the Commission. He is a partner in the law firm of Brown, Connery, Kulp, Wille, Purnell and Greene, in Camden.

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

Mr. Farley, of West Orange, took his original oath of office as a Commissioner in March, 1973 following his appointment to the Commission by then Speaker of the State Assembly Thomas H. Kean. A graduate of the University of Notre Dame and Rutgers University Law School, Mr. Farley served as an Essex County Freeholder during 1968-70 and as Essex County Surrogate in 1971. He has been an instructor in insurance finance courses at Rutgers

University and St. Peter's College. His law firm, Farley and Rush, has offices in East Orange.

Mr. Lucas, of Somerville, took his oath of office as a Commissioner in November, 1973 following his appointment to the Commission by then State Senate President Alfred N. Beadleston. A graduate of Seton Hall University and Columbia University Law school, he was Deputy Director of the State Criminal Justice Division in 1970-73, during which time he also held successively the posts of Deputy State Attorney General and Assistant State Attorney General. As Deputy Director, he was assigned at various times to serve as Acting Prosecutor of Ocean, Bergen and Hunterdon Counties. Mr. Lucas is a partner in the law firm of Imbriani, Westling and Lucas, Bound Brook.

APPENDIX III

CODE OF FAIR PROCEDURE

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

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

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

1. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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