EIGHTH ANNUAL REPORT

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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April, 1977

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

The New Jersey State Commission of Investigation is pleased to submit for the year 1976 its eighth 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, *Chairman*
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FOREWORD

This Annual Report for 1976, covering a period of unusually diversified activity by the New Jersey State Commission of Investigation (S.C.I.), illustrates the Commission's statutory obligation to expose to public view improprieties and abuses of both a non-criminal and a criminal nature.

The year's work was marked by the culmination of one of the Commission's most intensive and complicated investigations, into almost every facet of New Jersey's $400 million-a-year Medicaid health care service for the poor. This monumental task gained national attention and, even before its conclusion, generated substantive lawmaking improvements in the original program. Meanwhile, the Commission completed probes and hearings on the shocking misconduct of the New Jersey prison system's pre-parole release programs and on the huge waste of taxpayer dollars in a county land acquisition scandal. The public airing of these revelations by the S.C.I. also spurred statutory and regulatory remedies as well as prosecutorial follow-ups by state and county law enforcement officials.

The report highlights almost simultaneous yet unrelated investigative burdens which at times severely tested the limited financial and physical resources of the S.C.I. The various complicated assignments required the Commission and its small staff to collect and collate tons of records, conduct hundreds of individual interrogations and field assignments and sponsor a succession of private and public hearings. All this, however, emphasized the S.C.I.'s intention to live up to the promise by the bipartisan legislative commission which recommended its formation—that "the State will benefit immensely from the continued presence of such a small but expert investigative body."

The S.C.I.'s 1976 record recalls a statement by State Attorney General William F. Hyland on the need for an agency such as this Commission, obligated by law to cooperate with law enforcement and civil agencies of the government in an effort "to see that the people are getting the kind of government and the kind of value they are expected to get." Mr. Hyland, who was the first chairman of the S.C.I., conceded the restraints on strictly prosecutorial bodies "in discussing at length or in detail specific criminal

cases. . . .There are no public education capabilities on the part of my office or other prosecutorial agencies comparable to those of the S.C.I."

The Commission believes this report appropriately reflects the findings of the Governor's Committee to Evaluate the New Jersey State Commission of Investigation, which climaxed a study of almost six months' duration in late 1975 by concluding: "We are satisfied that the S.C.I. has performed effectively and has significantly advanced the public interest."

Subsequently, the Pennsylvania Crime Commission, in a report on its inquiry into "syndicated gambling" in Bucks County, Pennsylvania, dated July, 1976, attributed a migration of crime figures from New Jersey into Pennsylvania in part to the anti-crime activities of New Jersey's S.C.I., emphasizing that one factor in this continuing influx is that "many persons considered members of organized crime operations in New Jersey are fearful of being subpœnaed by the New Jersey State Commission of Investigation."*

* From Pennsylvania Crime Commission Report, July, 1976: "Migration of Organized Crime Figures From New Jersey Into Pennsylvania: A Case Study of Syndicated Gambling in Bucks County." See also Pages 11 to 13 of this Annual Report.

ORIGIN AND SCOPE OF THE COMMISSION

(Despite the range and impact of the Commission's achievements, inquiries continue to be made about its jurisdiction, the way it functions and its importance to a better New Jersey. The Commission believes this important information should be conveniently available. Accordingly, the pertinent facts are again summarized below.)

The New Jersey State Commission of Investigation 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 was under direction from the Legislature to find ways to correct what was a serious and intensifying crime problem in New Jersey.

Indeed, by the late 1960s New Jersey had the embarrassing and unattractive image of being a corrupt haven for flourishing organized crime operations. William F. Hyland, Attorney General for the State of New Jersey, vividly recalled that unfortunate era in testimony before the Governor's Committee to Evaluate the S.C.I. He said in part:

> ". . . our state quickly developed a national reputation as governmental cesspool, a bedroom for hired killers and a dumping ground for their victims. Whether this was a deserved reputation was not necessarily material. The significant thing was that this became an accepted fact that seriously undermined confidence in state law enforcement."

The Joint Legislative Committee in its report issued in the Spring of 1968 found that a crisis in crime control did exist in New Jersey. The Committee attributed the expanding activities of organized crime to "failure to some considerable degree in the system itself, official corruption, or both" and offered a series of sweeping recommendations for improving various areas of the criminal justice system in the state.

The two highest priority recommendations were for a new State Criminal Justice unit in the executive branch of state government and an independent State Commission of Investigation, patterned

after the New York State Commission of Investigation, now in its 19th year of probing crime, official corruption and other governmental abuses.

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 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 laws and the operations of government.

The Joint Legislative Committee's recommendations prompted fully supportive 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. Nor is there any conflict between the functions of this purely investigative, fact-finding Commission and the prosecutorial authorities of the state. The latter have the responsibility of pressing indictments and other charges of violations of law and bringing the wrongdoers to punishment. This Commission has the equally somber responsibilities of publicly exposing evil by fact-finding investigations and recommending new laws and other remedies to protect the integrity of the political process.

The complementary role of the S.C.I. was emphasized anew by the Governor's Committee to Evaluate the S.C.I.**, which conducted in 1975 a comprehensive and impartial analysis of the Commission's record and function. The Committee's members consisted of the late Chief Justice Joseph Weintraub of the New Jersey

* The bill creating the New Jersey State 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. The Legislature on November 12, 1973 completed enactment of a bill, cited as Public Law, 1973, Chapter 238, which renewed the Commission for another term ending December 31, 1979.

** The Governor's Committee to Evaluate the S.C.I. was created in April, 1975 by executive order of the Governor after the introduction in the Senate of a bill to terminate the S.C.I. touched off a backlash of public furor and criticism against the bill. The measure was subsequently withdrawn. A bill to implement the recommendations of the Evaluative Committee to strengthen the S.C.I. was introduced in the Senate in June of 1976 under bi-partisan sponsorship.

Supreme Court, former Associate Justice Nathan L. Jacobs of that same Court, and former Judge Edward F. Broderick of the New Jersey Superior Court.

That Committee in its October 6, 1975 public report based on its analysis rejected summarily any suggestion that the S.C.I. duplicates work of other agencies. Indeed, the Committee found that the S.C.I.'s work demonstrated convincingly that the Commission performs a very valuable function and that there is continuing need for the S.C.I.'s contributions to both the legislative process and the executive branch.

The Committee went on to conclude that it saw no likelihood that the need for the S.C.I. will abate, and recommended amendment of the S.C.I.'s statute to make the Commission a permanent rather than a temporary agency. In support of this statement, the Committee declared:

> "Our evaluation of the work of the S.C.I. convinces us that the agency has performed a very valuable function . . . The current public skepticism of governmental performance emphasizes the continuing need for a credible agency to delve into the problems that plague our institutions, an agency which can provide truthful information and sound recommendations. There must be constant public awareness if we are to retain a healthy and vibrant system of government. Indeed we see no likelihood that the need for the S.C.I. will abate . . ."

The complementary role of the S.C.I. also was stressed in a statement made by Matthew P. Boylan when he was Director of the State Division of Criminal Justice. He stated in part:

> I have had the opportunity to work closely with the State Commission of Investigation and it is my opinion that this agency effectively plugs a gap in the law enforcement network in New Jersey. This gap which existed prior to the creation of the S.C.I. is due to the fact that traditional law enforcement investigative agencies either return an indictment based on the development of investigative leads or, in rare situations, request that a grand jury return a presentment exposing conditions in public institutions and agencies. There is no mechanism available to existing law enforcement agencies other than the

S.C.I. to alert the public to the existence of conditions which require remedial legislation unless the traditional press release or press conference is utilized. The drawback of that method of informing the public is obvious. Consequently, the S.C.I. is an independent agency which can reveal through a series of extended public hearings, conditions in the public domain which require remedial action either by the Legislature or through more diligent administration of existing laws by the state, county or municipal agencies entrusted with their administration.

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 paramount statutory responsibilities vested in the Commission are set forth in Section 2 of its statute.* This section provides:

2. 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.

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.

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

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 production of other evidence by subpœna, and has authority to grant immunity to witnesses. Although the Commission does not have and cannot 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?

---

*As a legislative, investigative agency, the S.C.I. is not unique, since investigative agencies of the legislative branch of government are as old as the Republic. The first full-fledged Congressional investigating committee was established in 1792 to "inquire into the causes of the failure of the last expedition of Major General St. Clair." (3 Annal of Congress 493 (1792). Most recently the U.S. Senate Committee on the Watergate matter brought forth at a public hearing the facts about gross abuses, including coverup activities, at the highest levels of national government. The testimony of some of the witnesses at that Committee's hearings touched in part on areas which dealt with a possible crime of obstruction of justice. But that was of no concern to the Committee which, like the S.C.I., had no power to seek a criminal indictment, pursue a trial and ultimately see punishment imposed by a court of law. The question of any criminality lay solely with the Special Prosecutor. The Senate Committee was out to expose the facts in order to inform the public, to deter further instances of such gross abuses and to provide recommendations for preventing further abuses. These, of course, are the same missions of the S.C.I.

The exact format for the public action by the S.C.I. is subject in each instance to a formal determination by the Commission which takes into consideration factors of complexity of subject matter and of consciseness, accuracy and thoroughness in presentation of the facts. The Commission may proceed by way of a public hearing or a public report, or both.

In the course of its conduct, the Commission adheres to and is guided by the New Jersey Code of Fair Procedure.*

The 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 the testimony or other evidence presented in a public action by the Commission shall be afforded an 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. Before resolving to proceed to a public action, the Commission carefully analyzes and evaluates investigative data in private in keeping with its solemn obligation to avoid unnecessary stigma and embarrassment to individuals but, at the same time, to fulfill its statutory obligation to keep the public informed with specifics necessary to give credibility to the S.C.I.'s findings and recommendations.

The Commission believes the true test of the efficacy of its public actions is not indictments which may result from referral of matters to other agencies but rather the corrective actions sparked by 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.

* The New Jersey Code of Fair Procedure (Chapter 376, Laws of New Jersey, 1968, N.J.S.A. 52:13E-1 to 52:13E-10) is printed in full in the Appendices section of this report.

RESUME OF THE COMMISSION'S MAJOR INVESTIGATIONS

This is a summary of the Commission's major investigations undertaken since June, 1969, when the S.C.I. became staffed and operational. 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 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*

Since the summer of 1969, the Commission on a continuing basis has from time to time issued subpœnas for the appearance and testimony of individuals identified by law enforcement authorities as leaders or members of organized crime families operating in New Jersey. This effort has been part of the Commission's on-going program designed to increase the storehouse of meaningful intelligence, mutually shared with law enforcement agencies, about the status and modes and patterns of operation of the underworld in this state. No individuals are in a more informed position to provide first-hand, detailed data about those operations than the persons responsible for directing them and carrying them out. This continuing investigation also has prompted a number of public hearings by the Commission.

The Commission firmly believes that, once individuals have been granted witness immunity against the use of their testimony or any leads derived from such testimony, a proper balance has been struck between protecting individual rights and the right of the state to know as much as possible about the underworld. This philosophy and approach has been approved by the highest courts of state and nation.

* See New Jersey State Commission of Investigation, Annual Reports for 1970, 1971, 1972, 1973, 1974 and 1975.

Six organized crime figures who had been served with subpœnas elected to undergo extended periods of court-ordered incarcerations for civil contempt for refusal to answer S.C.I. questions about underworld activities. One of these six, Gerardo (Jerry) Catena, 75, has been freed under a split decision of the State Supreme Court. This decision held that for reasons peculiar only to him further confinement would have no cœrcive impact on Catena. Another of the six, Angelo Bruno Annaloro, is appealing from a decision on January 7, 1977 by Superior Court Assignment Judge George Y. Schoch that vacated a previous court order releasing him for medical reasons and directed his reincarceration. Still another, Joseph (Bayonne Joe) Zicarelli, is serving a lengthy state prison sentence for a criminal conviction. Incarcerated at Clinton Reformatory are John (Johnny Coca Cola) Lardiere, Ralph (Blackie) Napoli and Louis Anthony (Bobby) Manna. Three other organized crime figures remain under S.C.I. subpœna for further testimony—Simone Rizzo (Sam the Plumber) DeCavalcante, Antonio (Tony Bananas) Caponigro, who is in Federal Prison, and Carl (Pappy) Ippolito. Ten other organized crime figures have over the years testified under S.C.I. subpœna, three of these only after having been cœrced by prolonged, court-ordered imprisonment for civil contempt. These three were Nicodemo (Little Nicky) Scarfo, Anthony (Little Pussy) Russo and Nicholas Russo.

Numerous organized crime figures are known to have fled New Jersey in an effort to avoid being served with S.C.I. subpœnas. These include Anthony (Tumac) Acceturo of Livingston, Frank (The Bear) Basto, Emilio (The Count) Delio and Joseph Paterno of Newark, Joseph (Demus) Covello of Belleville, John (Johnny D) DiGilio of Paramus, Tino Fiumara of Wyckoff, Carl Ippolito of Trenton and John (Johnny Keyes) Simone of Lawrence Township. The attempt by a number of these to "settle in" alternate places of residence, primarily in South Florida, has been interrupted from time to time by federal and state indictments charging them with criminal violations.

Of the Commission's ongoing anti-crime campaign, New Jersey's Attorney General William F. Hyland has observed: "... much has already been done to eliminate—or at least to weaken—organized crime. Much of the credit for that success belongs to the S.C.I. for its efforts in seeking testimony from alleged organized crime figures and for focusing the spotlight on, and thus alerting the public to, the problems associated with organized crime."

Illustrating the Attorney General's statements was a report issued in July, 1976 by the Pennsylvania Crime Commission which emphasized as a prime reason for the "continuing" influx of New Jersey mob figures into Pennsylvania a fear in the underworld of New Jersey's S.C.I.—to a large extent because of its success in jailing certain crime figures on contempt grounds for refusing to testify after being granted immunity. The Pennsylvania report also stressed other factors such as telephone wiretaps and electronic surveillances (activities not permitted to Pennsylvania law enforcement officials) which have been major tools in the New Jersey S.C.I.'s anti-crime battle, as well as active "stalking" of mob operations in New Jersey, which has been an important aspect of the S.C.I.'s surveillance efforts.

The Pennsylvania Crime Commission's report ("Migration of Organized Crime Figures Into Pennsylvania: A Case Study of Syndicated Gambling in Bucks County") summarized in its "Conclusions" section the difficulties that confront Pennsylvania authorities because of their inability to utilize important crime-fighting statutory weapons that have been available in New Jersey with the reiterated approval of the Judiciary at all levels up to the United States Supreme Court. Because of its relevance, an excerpt from the Pennsylvania Crime Commission report is reprinted, as follows:

> The Commission has been able to document that organized gambling operations in Bucks County have become infiltrated over the past several years by persons once prominent in similar activities in New Jersey. Many are believed to be directly or indirectly connected with organized crime "core-groups." This influx of organized crime figures from New Jersey is a continuing process. According to information received by the Commission, additional individuals are planning to move to Pennsylvania. It is not surprising, given such recent movement, that numerous numbers and sports-bet banks have relocated from Trenton to Bucks County. One such numbers bank operation, uncovered in 1973 in Falls Township, Bucks County, produced an estimated annual gross revenue in excess of $1 million. Both of the individuals apprehended for operating the bank were from Trenton; one has long been associated with Trenton figure Charles Costello.

The influx from New Jersey certainly cannot be attributed to weak anti-gambling laws in Pennsylvania. In fact, the maximum penalties for gambling violations were recently increased to a $10,000 fine and/or five years in prison. However, obtaining evidence of the existence of organized gambling syndicates is an extremely difficult task. For instance, despite the Crime Commission's exhaustive investigation in Bucks County, there has been only limited success in verifying the sources of the financial backing for the games. The Commission has been unable to document the recipients of the profits.

The migration of organized crime associates from New Jersey to Pennsylvania may be explained by the relative difficulty of obtaining this evidence in Pennsylvania compared with New Jersey. The following factors highlight this contract:

1. Pennsylvania law prohibits both telephone wiretaps and electronic surveillance ("bugging"), while New Jersey law permits wiretapping pursuant to a court order and discretionary use of "body bugs."

2. Law enforcement agencies in Trenton and its environs, as well as law enforcement units throughout New Jersey, have a reputation for actively stalking gambling operations (aided by court-approved wiretapping). Local Bucks County police are often hindered by inadequate manpower and Pennsylvania's legal prohibition against the use of wiretapping. They also do not have available for assistance any local unit similar to the Organized crime Squad of the Mercer County (Trenton), New Jersey Prosecutor's Office. Thus Bucks County police have generally been able to keep track of gambling operatives on only a fragmented and street-level basis.

3. Many persons considered members of organized crime operations in New Jersey are fearful of being subpœnaed by the New Jersey State Commission of Investigation. That agency has been successful recently in securing incarceration on contempt charges for witnesses refusing to testify after being granted immunity. The statutory procedures avail-

able to the Pennsylvania Crime Commission are time-consuming and unwieldly, as evidenced by the efforts to secure the testimony of Carl Ippolito.

> Given these tools and the greater quantity of solid evidence of the connection between large gambling operations and organized crime that they produce, it is not surprising that judges in Mercer County, as well as in the rest of New Jersey have acquired a reputation for imposing harsher sentences for gambling than their counterparts in Bucks County and other areas of Pennsylvania. . . .

And in the 288-page report on organized crime published in December, 1976, by the National Advisory Committee on Criminal Justice, Standards and Goals, the effectiveness of such independent state agencies as New Jersey's Commission of Investigation was emphasized anew. In his Foreword to that report, Governor Brendan T. Byrne, the chairman of the National Advisory Committee, noted that its Task Force on Organized Crime had recommended "many tools for dealing with organized crime" and added:

> "For example, provision is made for the creation in the States of independent investigating commissions with authority to conduct public hearings, to subpœna witnesses and documents, to extend immunity to witnesses and, ultimately, to make proposals to the executive and legislative branches of government. . . ."

In the body of the National Advisory Committee document is the Task Force's specific recommendations for creating state investigation commissions, with this reference to the work of such agencies in New Jersey, New York, Illinois, New Mexico and Pennsylvania:

> "The successful record of these five investigating commissions underscores the importance of establishing similar programs in other states."

Because of its background in monitoring organized crime, the Commission automatically zeroed in on the potential for organized crime penetration and governmental and business corruption threatened by the advent of Casino Gambling in Atlantic City—even before the Constitutional amendment proposition was approved by New Jersey voters at the November, 1976 General

Election. The Commission's inquiries and research into Casino Gambling problems, including the critical and formidable task of drafting a strict, loophole-free Casino Control Law that will effectively safeguard the integrity of the operation, are described in a subsequent section of this Annual Report.

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 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 would be faced with the situation of receiving only one bid for waste collection, the Commission concluded.

The Commission recommended legislative action leading to a statewide approach to regulating and policing 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.

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 operat-

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

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

ing 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 his job by the city council after he began taking counter-action against organized crime's influence; that Russo offered to get the city manager's 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 establishment were being leaked in time to prevent arrests despite the anti-gambling efforts of an honest police chief who died in 1968; and 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 irresponsible 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, information which was used by federal authorities in obtaining a 1971 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 subpœnas 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

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

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 county prosecutor testified that he signed vouchers in blank.

The Commission after the hearing made a series of recommendations to reform the county prosecutor system. A principal recommendation was for full-time prosecutors and assistants. 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. Prior to the Commission's probe in Monmouth, there were no full-time county prosecutors in the state. Today, only five of the 21 counties still have part-time prosecutors—Cumberland, Gloucester, Salem, Sussex and Warren.

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, which changed several procedures to prevent recurrence of similar incidents. The Commission commended officials of that Division for moving so rapidly to tighten procedures in order to better protect the public purse.

* See New Jersey State 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 alerted legitimate persons and business firms in the building services industry and users of the industry's services to the presence of unscrupulous and unsavory elements in that industry. Also, the information developed in this probe was forwarded, on request, to the United States Congress' Select Committee on Commerce which based extensive public hearings on the S.C.I. information in Washington in 1972. That Committee by letter thanked the S.C.I. for making a significant contribution to exposing "the cancer of organized crime in interstate and foreign commerce."

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. An 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-

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

down payments made by the New Jersey Turnpike and other organizations with projects or right-of-way in the Hudson meadowlands, the existence of a bank account kept secret by the executive director from outside auditors, and kickback payments by contractors and suppliers of up to 75 percent of the amounts received under a fraudulent voucher scheme.

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

Additionally, after S.C.I. records of the investigation were turned over to the Hudson County Prosecutor's Office, the prosecutor obtained conspiracy and embezzlement indictments against the Mosquito Commission's executive director and his two sons. 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.

8. Misappropriation of Funds in Atlantic County*

The Commission in 1970 was asked to make a thorough investigation of the misappropriation of at least $130,196 in public funds that came to light with the suicide death of a purchasing agent in Atlantic County government. The Commission in December 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.

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

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 misappropriation 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 recommended that 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 Point Breeze in Jersey City*

The lands that lie along the Jersey City waterfront are among 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 this project, undertaken by the Port Jersey Corporation, offered a classic and informative example of how a proper and needed development 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 real estate commissions, and irregular approaches to the use of state laws for blighted urban areas and granting tax abatement.

10. Tactics and Strategies of Organized Crime**

Although not a "sworn" member of organized crime, 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 shorten a State Prison term in 1971, Gross began in that year to cooperate with government agencies, including the S.C.I.

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

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

Gross' testimony during two days of public hearings by the Commission in February, 1972 pinpointed the relentless and ruthless modes of operation of organized crime figures in the Ocean County area and their ties back to underworld bosses in Northern New Jersey and New York City. His testimony and that of other witnesses also detailed how mobsters completely infiltrated a legitimate motel business in Lakewood. The former restaurant concessionaire at that motel testified that because of shylock loans arranged by an organized crime figure, the concessionaire lost assets of about $60,000 in six months and left town a broken and penniless man. Records of this investigation were made available to federal authorities who subsequently obtained an extortion-conspiracy indictment against nine organized crime figures relative to a shylock loan dispute which culminated with an underworld "sitdown" or trial. The individuals and incidents named in the indictment were first described by Gross in his S.C.I. testimony. New Jersey law enforcement officials testified at the S.C.I. hearings that the public exposure afforded by those sessions was a valuable contribution in meeting the need for continually active vigilance against organized crime—with a particular alert for developing areas that organized crime follows population growth.

11. Property Purchases in Atlantic County*

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 payment by the state of $924 an acre for a key 595-acre tract 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 sales in the Galloway area. The Commission in a 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; and lack of expertise and safe-

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

guards in State Division of Purchase and Property procedures to discover the faults in the appraisals and correct them.

The report stressed a number of recommendations to insure that the Division's processes would in the future detect and correct faults in appraisals. Key recommendations were post-appraisal reviews by qualified experts and strict pre-qualification of appraisers before being listed as eligible to do work for the state. The recommendations were promptly implemented by executive orders in the Division.

12. Bank Fraud 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 founded. A 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 corporations.

During the first quarter of 1972 the Commission completed private hearings in this investigation but deferred planned public hearings at the request of bank examiners who expressed fears about the impact of adverse publicity on the bank's financial health. Instead, the S.C.I. referred data from this investigation to federal authorities who later obtained indictments of Santisi and several of his cohorts on charges involving the misapplied bank funds. All pleaded guilty. Santisi was sentenced to three years in prison. One of his cohorts was sentenced to a year in prison and two others received suspended sentences.

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

13. The Office of the Attorney General*

In the summer of 1972 the Commission was requested by the then Attorney General of New Jersey, George F. Kugler, Jr., to investigate 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 contract.

The request, under the S.C.I.'s statute, triggered an investigation which extended into early 1973 and during which the Commission took from 22 witnesses sworn testimony consisting of more than 1,300 pages of transcripts and also introduced and marked exhibits consisting of more than 300 pages. The Commission, by unanimous resolution, issued in February, 1972 a 1,600-plus-page report on the investigation, a report which included in their entirety the transcripts of the testimony and the exhibits in order to effect complete and accurate public disclosure. The report was forwarded to the Governor and the Legislature and to all news media. Copies of the report were supplied to individual citizens on request until the supply was exhausted. File copies of the report remain available for public scrutiny at the Commission's offices and at the State Public Library.

In issuing the report, the Commission expressed publicly its gratitude to John J. Francis, the retired Justice of the New Jersey Supreme Court, who served without compensation as Special Counsel to the Commission in the investigation and the report preparation. A final conclusion of the report was that the political compaign contributions from those aspiring to public works and the acceptance of those contributions by public officials or political parties were a malignant cancer rapidly spreading through the bloodstream of political life and that "unless the giving and 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."

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

14. The Workmen's Compensation System*

New Jersey's system for compensating individuals for employment injuries became during the early 1970s the object of intense scrutiny and analysis. In addition to evidence and statistics indicating ills in the system, there were new and persistent reports that the atmophere of the system, including its courts, had darkened to a point where irregularities, abuses and even illegalities were being ignored or condoned. The mounting hue and cry about deficiencies in the system led the State Commissioner of Labor and Industry to request an investigation, a task which fell to the S.C.I. The probe was one of the most comprehensive ever conducted by the S.C.I. The facts, as presented at nine days of public hearings in Trenton in May-June, 1973, documented abuses which included the costly practice of making unwarranted allegations of impairments 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 heat treating doctors or "house doctors," an abuse which led to costly inflated claims through bill padding.

As a result of the Commission's investigation, three Judges of Compensation were given disciplinary suspensions, with one of them eventually being dismissed from office by the Governor. After referral of data in this probe to prosecutorial authorities, an Essex County Grand Jury during 1975 indicated two partners of a law firm and the firm's business manager on charges of conspiracy and obtaining money under false pretenses in connection with the alleged heat-treatment, bill-padding scheme exposed at the S.C.I.'s public hearings. Also the Waterfront Commission of New York Harbor used the investigative techniques and methodology established by the S.C.I. in this investigation to conduct an investigation of and hold public hearings on instances of widespread Workmen's Compensation frauds involving some workers on the docks.

* See Final Report and Recommendations on the Investigation of the Workmen's Compensation System, a Report by the New Jersey State Commission of Investigation, January, 1974.

15. Misuse of School Property in Passaic County*

A citizen's complaint was received by the S.C.I. in January, 1973 via reference from a Federal law enforcement agency and prompted the Commission to inquire 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 hearings presented facts concerning 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 through middlemen, one of whom marked up prices by more than 100 per cent, and regular payoffs to the school's purchasing agent by one of the middlemen. Additional facts were elicited about the purchasing agent's conversion of the services of some school employees and property to jobs at his home and how the school had become a virtual dumping ground for millions of dollars of federally donated surplus property under a chaotic and mismanaged state program for distribution of that property.

This investigation formed the basis for S.C.I. recommendations for administrative corrective steps to establish an efficient program of state distribution of the surplus property and for improved procedures for school boards in overseeing purchasing practices. The State Board of Education relayed the S.C.I. recommendations to all school boards in the state with instructions to be guided by them.

* See New Jersey State Commission of Investigation, Annual Report for 1973, issued in March, 1974.

16. The Drug Traffic and Law Enforcement*

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 drug trafficking, replete with high risks, high profits, violence and death.

At three days of public hearings in late 1973 in Trenton, witnesses told of their involvements in actual heroin and cocaine trafficking in Northern New Jersey, including accounts of one killing and an attempt by criminal-element figures to get one of the witnesses to kill another individual. Expert witnesses from federal, state and county agencies testified in considerable detail about the international, interstate and intrastate flow of heroin and cocaine and the programs and problems of law enforcement units responsible for the fight against illicit narcotics distribution.

Due to a combination of an extremely knowledgeable and accurate informant and an extensive follow-up investigation by S.C.I. Special Agents, this probe had significant collateral results which led to the S.C.I.'s playing a key role in solving cases involving a gangland style slaying, a stolen jewelry fencing ring and a crime federation burglary ring of more than 30 individuals. Both the Essex County, N.J., Prosecutor and the Lackawanna County, Pa., District Attorney complimented the S.C.I. for aiding law enforcement agencies. The hearings also established a factual basis for S.C.I. recommendations for improved law enforcement capabilities to combat narcotics distribution and for revisions of the narcotics law, including sterner penalties for non-addict pushers. A bill providing for life imprisonment for such pushers was introduced in the Legislature in 1976.

* See New Jersey State Commission of Investigation, Annual Report for 1973, issued in March, 1974.

17. Pseudo-Charitable Fund-Raising Appeals*

A growing number of companies were established in New Jersey as incorporated-for-profit entities to sell by telephone exorbitantly high priced household products, principally light bulbs, in the name of allegedly handicapped workers. Although different in age, size and some operating procedures, all indulge in degrees of deception by creating a false illusion of charitable works for the handicapped through telephonic sales presentations which stress references to "handicaps" or "the handicapped." Consumers by the hundreds in New Jersey became so outraged upon learning they had been duped into thinking these profit-oriented businesses were charities that they registered complaints with the State Division of Consumer Affairs. That Division sought a full S.C.I. investigation of these pseudo-charities because of the broader purview of the Commission's statute, the Commission's investigative expertise and its public exposure powers.

Facts put on the public record at hearings held by the S.C.I. in June 1974 in Trenton included: That people were willing to pay such high prices, marked as much as 1,100 per cent above cost, only because the phone solicitations of the various companies had given them the illusion they were aiding a charity; that some of the companies used healthy phone solicitors who stated falsely that they were handicapped to induce sales; that a large company's claim to employ only handicapped phone solicitors was open to serious questions; that phone solicitors, whether handicapped or not, were subject to prompt dismissal if they did not produce enough sales to make a profit for the owners; that an owner of one of the large companies received a total of more than $1 million in four years from the business; that any authentically handicapped phone solicitors could be harmed by having to constantly dwell on their ailments in order to induce sales, and that pseudo-charitable appeals drain off millions of dollars each year that otherwise could be tapped by bona fide charities.

The public airing of these facts accomplished a principal purpose of the S.C.I. and the Consumer Affairs Division, namely to make the consuming public more informed and, therefore, more discerning in the receipt of any telephonic sales pitches in the name of the allegedly handicapped. Access to data from this investigation

* See Final Report and Recommendations on the Investigation of Profit Oriented Companies Operating in a Pseudo-Charitable Manner, a Report by the New Jersey State Commission of Investigation, September, 1974.

was offered to federal officials both during the probe and immediately after the public hearings. Subsequently, the owner of one of the profit-making companies mentioned at the S.C.I.'s hearings and the sales manager of another such company were charged with fraud by federal authorities. Both pleaded guilty.

18. The Delaware River Port Authority*

The State Executive Commission on Ethical Standards during 1974 requested the S.C.I.'s assistance in investigating allegations of possible conflicts of interest of Ralph Cornell, then the Chairman of the Delaware River Port Authority who had been a Commissioner of that authority since its inception in 1951. The reason for the request, as stated by the Ethics Commission, was "that the State Commission of Investigation is better equipped in terms of personnel, resources and operating procedures to conduct this inquiry."

The investigation involved the analysis of a virtual mountain of books and records of the Authority, corporations and banks in order to lay bare certain business relationships relative to subcontracting work done on Authority projects. After holding private hearings on 14 occasions from March through August of 1974, the Commission issued a comprehensive public report on this inquiry and sent it to the Governor and the Ethical Standards Commission, appropriately leaving to that Commission the final judgments on the full factual picture presented by the report. The Attorney General's Office also was given copies of the report.

The principal facts brought forth by the S.C.I.'s investigation were that Mr. Cornell's Cornell & Company had received substantial income for work performed on Port Authority projects on a sub and sub-sub-contracting basis while other companies were listed in the Authority's records as the subcontractors with no listing of Cornell & Company in those documents; that he was the recipient of substantial dividend payments as a major stockholder in the insurance company which was the New Jersey broker for the insurance coverage needs of the Authority, and that as an investor in lands subject to value enhancement by proximity

* See Report on the Compatibility of the Interests of Mr. Ralph Cornell, Chairman of the Delaware River Port Authority, a Report by the New Jersey State Commission of Investigation, October, 1974.

to existing or proposed Authority projects, Mr. Cornell had received more than $1.9 million in unadjusted profits. The report stated, however, that the probe found no evidence of Mr. Cornell making land purchases on the basis of "insider information" and that the purchases could have been made by any well informed citizen with substantial monetary resources.

19. The Government of Lindenwold*

A citizen's complaint letter alleging abuses in the government of the Borough of Lindenwold, a rapidly developed suburban community in Camden County, was received by the Commission in the latter part of 1973. One of the letter's signatories, a former Borough Councilman in Lindenwold, in a subsequent interview with S.C.I. special agents, told not only of abuses concerning ethical standards but also of official corruption. He brought with him to the S.C.I.'s offices $5,000 he received, but never spent, as his share of payoffs made for votes favorable to land development projects.

During 1974 the Commission obtained substantial corroboration for this man's story of amorality in the Borough's government in a lengthy probe involving full use of the Commission subpoena and witness immunity powers and its investigative and accounting expertise. At three days of public hearings in Trenton in December, 1974, the Commission heard testimony supported by numerous exhibits that $198,500 had been paid by land developers to Lindenwold public officials in return for favorable treatment and cooperation of the Borough government, that a Borough official and a county official had accepted substantial amounts of cash from companies owning land subject to the officials' regulation, and that Lindenwold public officials used strawmen to mask their purchases of properties which were offered for sale by the Borough, the value of which could be enhanced by the officials' acts.

The public disclosure of what the Commission called "the democratic process of local government operating at its worst" sounded a warning and served as a deterrent factor to communities throughout New Jersey. The principal S.C.I. recommendation stemming from this hearing was for enactment of a tough conflict of interests law to apply uniformly on a statewide basis to all county and municipal officials. A bill meeting the S.C.I.'s standards is pending in the legislature.

* See New Jersey State Commission of Investigation, 1974 Annual Report, issued in March, 1975.

20. Land Acquisition by Middlesex County*

The Commission received a series of citizens complaints during the Spring of 1975 about actions by the Middlesex County government, with stress on alleged overpayment by that government for purchase of certain lands for park purposes under the State's Green Acres program. A preliminary, evaluative inquiry of the complaints by the Commission provided substantial indication that overpayments had occurred and that faulty real estate appraisals and insufficient review of those appraisals by the County's Land Acquisition Department and by the State's Green Acres unit might be at the root of the problem. Accordingly, the Commission authorized a full-scale investigation of the County's land acquisition procedures and related procedures of the Green Acres unit. Public hearings were held in Trenton in January, 1976.

This investigation, aided by the services of two of the most respected and expert post-appraisal reviewers in the State, determined that the County did indeed overpay by some 100 per cent above fair market value for certain parcels of land in the Ambrose and Doty's brooks area of Piscataway Township. Both experts found that the appraisals made for each of the parcels overstated the value of the lands, principally because of failure to take into sufficient account physical deficiencies in terrain. The investigation determined that the Administrator of the County's Land Acquisition Department had approved the land purchase prices with virtual rubber stamp consent from the Board of Freeholders. The Administrator not only constantly solicited a stream of political contributions from the appraisers doing business with the County but also, according to the sworn testimony of two of those appraisers, solicited cash payments from the two at a time when they were being awarded appraisal work for the County by the Administrator. Additional testimony at the hearings indicated serious deficiencies and confusion in aspects of the appraisal review function of the State Green Acres program, which supplies matching funds for county and local land purchases for park purposes.

As a result of the S.C.I.'s exposures in this investigation, the Administrator of the County's Land Acquisition Department was suspended from his post, and the County government moved to institute a more stringent process of checks and balances on land acquisition procedures. Even before the S.C.I. completed its 1976 hearings, arrangements were being formalized voluntarily by state

* See New Jersey State Commission of Investigation, Annual Report for 1975.

officials, alerted by the Commission's findings, for the transfer of the Green Acres appraisal and post appraisal review and control system from the Department of Environmental Protection to the Department of Transportation—one of many major general and technical recommendations by the commission that became implemented as a result of the inquiry. In addition, data from the S.C.I. investigation was referred to prosecutorial authorities.

21. Pre-Parole Release Rip-Offs in the Prisons*

The Commission during 1974 and continuing into 1975 received a number of complaints alleging abuses and ripoffs of the pre-parole release programs of New Jersey's correctional system. The programs, aimed at the worthy goal of success in re-introducing inmates to society, included furloughs, work releases, education releases and community releases. Lengthy preliminary inquiries to evaluate the complaints indicated clearly to the Commission that the effectiveness and goals of the programs were being subverted by exploitive abuses attributable to weaknesses in the operation and supervision of the programs.

Accordingly, the Commission by resolution in September, 1975 authorized a full investigation. The probe extended into 1976, with public hearings being held during May and June of 1976. Principal disclosures at the hearings included:

- Falsification of furlough and other types of applications to gain premature entry into the release programs.
- Establishment of favored status for some inmates and a resulting system of bartering for favors, including monetary exchanges among inmates.
- The ease with which work, educational and other releases could be ripped off because of insufficient supervision in the collusive hands of the inmates themselves.
- The intrusion of a barter-for-favors system in the procedures for the transfer of inmates from one to another of the various penal institutions.

* See pages 35 to 115 of this Annual Report.

The Commission in its public statements at the hearings credited what was then the State Institutions and Agencies Department, since restructured into a Department of Corrections and a Department of Human Services, with making creditable reform efforts to improve the programs while the S.C.I.'s investigation was in progress. However, the Commission concluded that the investigation and hearings had factually demonstrated the need for numerous further corrective steps to bring the programs to a point where system integrity is virtually foolproof and, therefore, deserving of proper and needed levels of public confidence and support. The Commission reviewed suggestions for introducing sufficient check and balance procedures to the programs and urged that there be sufficient funding to provide additional non-inmate personnel to conduct and supervise those improved procedures. But the Commission emphasized that even as a "fight for additional funds" was pressed to eliminate inmate subversion of the programs, more immediately important was the establishment of improved management and administrative policies, procedures and systems. Specific guidelines for such improvements are highlighted in the commission's recommendations, enumerated in detail at the conclusion of the presentation in this Annual Report of the testimonial evidence of the system's scandalous collapse.

22. The New Jersey Medicaid Program*

This Annual Report documents in detail additional public reports and public hearings on what was probably the Commission's most complicated and time-consuming assignment—its comprehensive inquiry into all major components of the New Jersey Medicaid system. This publicly funded program of health care for the poor was approaching its sixth year of operation in December, 1974 when Governor Brendan T. Byrne made a formal request that the S.C.I. evaluate it. The Governor expressed concern about the escalating $400 million-plus annual cost of the program and asked for an intensive probe of its efficacy and integrity. A formal request from the Governor under the S.C.I.'s statute mandates that the Commission undertake a desired inquiry. Accordingly, full investigation of the New Jersey Medicaid program commenced early in 1975 and continued well into 1976.

* See pages 116 to 224 of this Annual Report.

During the course of its probe, the Commission reported on an interim basis from time to time to the Governor—an operational pattern based on the premise, later substantiated, that the social and financial cost of apparent widespread exploitation of the huge health care delivery system would warrant urgent interim statutory and regulatory correction. The major public actions by the Commission that did not reach final report and recommendation stage in time to be covered in the last Annual Report are reviewed in detail on subsequent pages of this Annual Report. A full chronological summary of the entire investigation, however, shows the Commission took the following public steps:

• NURSING HOMES—An initial public report by the S.C.I. on April 3, 1975 exposed serious flaws in the rental and related phases of New Jersey's method of property cost reimbursements of Medicaid-participating nursing homes, one critical conclusion of which was that inflated reimbursement schedules allowed unconscionably inflated profits to greedy entrepreneurs at heavy cost to taxpayers.

• CLINICAL LABORATORIES—A formal public S.C.I. pronouncement on April 23, 1975 detailed dangerously poor conditions and procedures in certain independent clinical laboratories and recommended swift legislative enactment of a pending remedial measure. Subsequently the Legislature approved and the Governor signed the highly effective Clinical Laboratories Act.

• CLINICAL LABORATORIES*—The Commission conducted in June, 1975 a series of public hearings that effectively exposed how Medicaid was being bilked by some independent clinical laboratories through false billing and kickbacks practices, among other evils. The S.C.I.'s unprecedented probe and recommendations in this vital area also were followed by major reforms. The Medicaid manual regulating independent clinical laboratories was drastically revised to bar abusive activities and the maximum fee schedule for reimbursing laboratories was reduced by 40 percent. Taxpayer savings from these improvements alone were estimated at $1.4 million for the fiscal year ending June 30, 1976.

• NURSING HOMES**—The final S.C.I. dissection of nursing home property cost reimbursement under Medicaid provisions emphasized so-called "money tree" plucking by unscrupulous operators

* New Jersey State Commission of Investigation, Annual Report for 1975.
** See pages 116 to 189 of this Annual Report.

through facility selling-financing-leasing back schemes that excessively ballooned the value of the facilities. This Annual Report contains pertinent excerpts from a two-day public hearing held in October, 1976 which corroborated dramatically the gross abuses revealed in the S.C.I.'s final report on the nursing home property cost reimbursement system phase of its Medicaid inquiry, which was issued midway through the public hearing.

• "MEDICAID MILLS"*—How some doctors, dentists and pharmacists corrupted the system was dramatized by the Commission's expose of over-billing and over-utilization practices that bared a loophole potential for far wider abuse of the Medicaid system.

• MEDICAID HOSPITALS—Utilizing its small but expert staff of accountant-agents, an S.C.I. team made an in-depth assessment of the emerging rate-regulating and Medicaid reimbursement process affecting in-patient hospitals with substantial Medicaid patient care to determine the adequacy, if any, of fiscal controls by supervisory public agencies in insure the system's efficiency, economy and integrity. Such an unusually complex analysis of methods of controlling hospital costs was vital because of the huge impact of such costs on the Medicaid program.

23. CASINO GAMBLING

On November 2, 1976 the voters of New Jersey approved at a General Election referendum a proposition to amend the State Constitution to allow Casino Gambling in Atlantic City only. A similar proposal was rejected by the voters in 1974. The S.C.I.'s staff actually had begun intensive intelligence gathering on the impact of Casino Gambling even before the initial referendum on the issue in 1974. This low key activity, being conducted on a cooperative basis with the Attorney General's office and the State Police, has continued on an increasingly larger scale because of the magnitude of the inter-related problem of administration, regulation and control of this new industry.

The Commission has been acting at the behest of the Governor and under its statutory obligation to investigate relative to organized crime the movements, if any, of underworld elements in anticipation of profiteering from casino gaming, an area which has been notoriously vulnerable to underworld intrusion. The

* See pages 190 to 224 of this Annual Report.

Commission's staff has concentrated on collecting and collating clear, comprehensive, up-to-date information relative to organized crime infiltration, no matter how masked, so the citizens of the state and their elected public officials can be alerted to any problems posed by criminal penetration and can take appropriate corrective action.

In addition to investigative and research work on such direct and indirect issues raised by the advent of the new Casino industry as organized crime, street crime, operational integrity and law enforcement and investigative functioning of a Casino Control agency, the Commission also has undertaken the difficult overall burden of drafting positions and proposals for a crime-proof and corruption-proof casino gambling control law that will guarantee the kind of honest gambling action the public has been promised by promoters of the proposition.

Although this extensive inquiry, which has required field conferences with experts in distant jurisdictions where casino gambling is permitted as well as time-consuming surveillance in the Atlantic City area, has imposed additional pressures on the S.C.I.'s limited personnel and fiscal resources, the Commission nonetheless intends to fulfill its responsibility to help assure that Casino Gambling will be insulated to the greatest extent possible from criminal or corruptive influences.

INVESTIGATION OF THE PRE-PAROLE RELEASE PROGRAMS OF THE NEW JERSEY STATE CORRECTIONAL SYSTEM

INTRODUCTION

In late 1974 and continuing into 1975, the Commission received a number of complaints alleging abuses and rip-offs of the pre-parole release programs of the New Jersey State Correctional System. The complaints came from both public officials and private citizens. In order to evaluate fully the complaints, the Commission conducted preliminary inquiries into the standards and operations of the various programs—including furloughs, work releases, educational releases, community releases and transfers of inmates from prison to prison. By September, 1975, information gathered by the inquiries clearly indicated to the Commission that these basically worthy programs, which aimed at successful re-introduction of inmates to society, had become riddled with weaknesses which fostered exploitive abuses. Accordingly, the Commission by resolution authorized a full investigation of the programs at the various state prison units, an investigation which continued into 1976—the period during which the Commission's small staff climaxed simultaneous investigations into such areas as the practitioner, hospital and nursing home components of the Medicaid Program and the land acquisition practices and procedures of Middlesex County under New Jersey's Green Acres Program.

The prison investigation included the examination of tons of records both in Commission offices and in the field. These records and documents included applications for entry into release programs, classification committee papers used in recording decisions on entries into the programs, monthly reports detailing which inmates were let out on releases by the various institutions, inmate classification folders which contain inmates' prison histories, prison log books which purport to record the in-and-out status of inmates on a daily basis, records pertaining to inmate population movements among the various prisons, correspondence of various program coordinators and superintendents, business remittance records of inmates, personal bank account records of prison employees and families of inmates, and official trial and

sentencing records of courts of competent jurisdiction. This phase of the investigation was expedited by the special and complete cooperation afforded the S.C.I. by the Office of the Commissioner of what was then the Institutions and Agencies Department and particularly by the then Deputy Commissioner Robert E. Mulcahy, III.

This massive research and analysis of records followed up by hundreds of interviews by S.C.I. agents of individuals showed in full factual form specific patterns of improprieties and abuses. Armed with this data, the Commission was able to subpœna and question under oath inmates and other individuals in an intense and thorough manner which in numerous instances left witnesses with the option of either breaking the inmates' code of silence by testifying fully or facing coercive contempt proceedings in the Courts. As a result, the Commission at five days of public hearings in May and June 1976, was able to document exploitations of the pre-parole release programs in the following areas:

- Falsification of furlough and other types of release applications and documents to gain premature entry into the programs. A highlight of the hearings was the presentation of the facts relative to a bogus Superior Court Appellate Division decision which was inserted in the files of an inmate and was the basis for his total sentence being substantially shortened. The inmate was identified by State Police testimony as having associations with a leading New Jersey organized crime figure. Since the S.C.I. hearings, this inmate has been indicted for murder and on federal bank fraud charges. Also in connection with this particular inmate and the bogus document situation, a key witness before the S.C.I. has been indicted for perjury and false swearing. Five inmates were indicted for escape by fraud.

- The establishment of favored status for certain inmates who then become subject to pressures from other inmates wanting to make use of the favored status to gain premature and unqualified entry into the program. Under these conditions, a system of bartering for special favors, including monetary exchanges among inmates, flourished. That type of system created in the minds of the inmate populations

the impression that releases are not obtained on merit but rather on favors, money and pressure.

- The ease with which work and educational releases could be ripped off by inmates because of a free-form of supervision and check-up approach.

- The intrusion of a system of barter-for-favor in procedures attendant on transfers of inmates among the various penal institutions.

Prior to the hearings, and while the S.C.I.'s investigation was in progress, the State Department of Institutions and Agencies, since restructured into a Department of Corrections and a Department of Human Resources, made meaningful efforts to correct deficiencies in the programs. These efforts included restriction of the type of inmate eligible for releases, removal of inmate clerks from certain sensitive positions and adoption of a federal-type system of more proper furlough forms, verification of these forms, transmittal of the forms to area parole offices and some in-field verification of furloughs. The investigative record compiled by the Commission, however, demonstrates the need for further corrective steps to bring the programs to a point where system integrity is virtually foolproof and, therefore, deserving of the proper and needed levels of public confidence and support.

Background

In 1969 the Department's then Division of Correction and Parole instituted various pre-parole release programs under *N.J.S.A.* 30:4–91.3. The purpose of pre-parole release was in keeping with modern correctional goals and theories, ostensibly to provide for a smoother transition and reintroduction of inmates to the free community. The theory behind granting such releases is that the return of inmates to society without some pre-parole or pre-release opportunity for gradual reintegration is detrimental to both the inmates and the members of the law abiding community.

However, as so often occurs with the initial stages of progressive programs which strive for undeniably worthy goals, the pre-parole release system of New Jersey became riddled with weaknesses which led to exploitive abuses in contravention of the effectiveness of the programs. These transgressions included the falsifying of records and documents crucial to the programs'

proper functioning; the granting of release privileges to unqualified applicants; and the actual or apparent power of inmate clerks to subvert the system and receive remuneration from those expecting to benefit from the subversion. These are just some of the problems creating an atmosphere at the prisons in which inmates were left with the impression that releases were obtained not only on merit but also on favors, money, pressures, and deception. Furthermore, once out on release, opportunities for abuses by inmates were numerous due to the lack of pre-verification, meaningful spot-checks of inmates' actions while outside the prison walls, and the failure to restrict inmates to any identifiable area while in the free community.

Fortunately, much has been done to put the pre-parole programs on the right track during the past year, a time span which coincides with the Commission's initial inquiries and subsequent full investigation of the programs. Recent reforms in this area include a more sophisticated furlough application form and procedure, verification of the information indicated on the form, transmittal of the form to area parole officers, and some in-the-field verification of inmates' whereabouts. Additionally, there has been a significant reduction in the use of inmate clerks. Yet despite these laudable reforms, the following report will demonstrate the need for further corrective measures to bring the system to a point where the integrity of the programs is virtually fool-proof and therefore deserving of the proper and needed levels of public confidence and support. This report will point out the need for still more checks and balances in certain procedures and a critical urgency for sufficient funding to eliminate the necessity of inmate labor in the administration of the prison system.

This report follows an extensive investigation by the Commission's staff of virtually thousands of records and documents pertaining to these programs. This thorough research and analysis, followed by hundreds of interviews of individuals by S.C.I. agents, clearly demonstrated the aforementioned improprieties and abuses. This knowledge was followed by extensive private questioning of inmates and officials under oath with the threat of additional incarceration and culminated with five days of public hearings in May and June 1976. It should be noted that it took the threat of coercive incarceration vested by statute in the S.C.I. to break what has been referred to as the "prisoner's code" which includes among its maxims "never rat on a con" and "be loyal to your class—the cons". The Commission used its immunity power more

often than usual in this investigation because of inherent credibility problems of inmates.

While this report will demonstrate the weaknesses of the system, the Commission does recognize the validity and potential of pre-parole release programs and indeed encourages such programs provided the necessary safeguards are taken to protect their integrity and additional steps are taken to facilitate their reaching proper correctional goals.

The Testimony

Furlough Objectives Change

The furlough program allowed certain inmates to leave prison for up to days at a time. In the fall of 1975, after several sensational and much publicized crimes were committed by inmates while they were on furlough, Mr. Mulcahy, then Deputy Commissioner of the Department of Institutions and Agencies, was named by Commisisoner Ann Klein to head up a task force to review the furlough system and its operation. Mr. Mulcahy testified publicly that his investigation did not touch upon the work release, community release or educational release programs. Several of the furlough force's findings coincided with those of the S.C.I. In his public testimony before the Commission, Mr. Mulcahy pointed out that while the original objective of the furlough program was to offer selected inmates a vehicle for successful reintegration into the community in order to enhance the inmate's opportunity to succeed when he was no longer a prisoner, after the 1971 riots at Rahway State Prison greater emphasis was put on allowing inmates to have furloughs as a method of easing tensions in the prisons. This attitude was reflected by a lessening of the eligibility requirements for furloughs as well as in a more liberal interpretation of official objectives of the program. The fairly specific objectives stated in the 1970 standards were:

> To establish a program whereby selected inmates are allowed to return to the Community for specific periods of time to maintain and strengthen constructive ties with family and the community; to provide an additional opportunity for pre-release preparation by permitting inmates to secure employment; complete arrangements for education programs and secure housing; and to test readiness for release of parole.

This was replaced by the more liberal and vague standards which in 1975 stated:

> To establish and maintain a program whereby selected inmates are allowed to return to the community for specified periods of time to maintain and strengthen family and constructive relationships; to enable inmates to modify their life styles; and to engage in the kinds of activities which will enable them to cope with existing demands, changing conditions, and acceptable standards of living

Quite naturally, the result of this change in attitude was that more inmates became eligible for furloughs and, in fact, were released; and since the staff and personnel responsible for administering the furloughs was not increased proportionately, there was a rise in the abuses, inequities, and exploitation of the program. Mr. Mulcahy testified as to the new eligibility standards and the problems created by them:

> *Q. Now as a result of your work on the task force committee, Mr. Mulcahy, did you learn of new purposes to which the furlough program began to be put that went far beyond these original purposes?*
>
> A. Yes, sir, from the information and the interviews that we had it became apparent to us that, in addition to the original concept of reintegration, which necessarily was based upon some set date in which an inmate was going out, there were a number of changes that took place in the program following the riots.
>
> First of all, the concept of a set or final release date was changed to an anticipated date. This related to an anticipated date of a hearing before the Parole Board when in reality the experience was such that first appearances before the parole board usually did not result in release for, at least, the serious crimes.
>
> What that caused to occur was something that we called a recurring eligibility syndrome in the sense that you had someone who had a long sentence qualify for furloughs because he had an anticipated parole date, went before the parole board, was denied parole, was suspended from the privilege of furlough until

the next time that he had another hearing before the parole board.

* * * *

Q. Would you say that, as you learned from your study, that the management of the penal system began to use the furlough to reduce over-crowding pressures?

A. Yes, without question.

* * * *

Q. But in the past, from your evaluation, you found that if an inmate was awarded minimum security status, it was almost automatic that the inmate also received furlough privileges?

A. Yes, sir. . . .

* * * *

The testimony of Stanley J. Waltz, assistant superintendent at Leesburg State Prison at the time in question, reiterated the administrative problem caused by a burgeoning inmate population of eligibles:

Q. Now, when the furlough program was first instituted at Leesburg, do you have any recollection in terms of a ballpark figure of the amount of inmates on the farm that would be eligible to participate?

A. I would say probably a ballpark figure of forty or fifty inmates.

Q. Forty or fifty. And the ballpark—I'm sorry, and the population of the farm is pretty steady at 300?

A. Yes, it was steady at approximately 300.

Q. And in 1974, again when you left Leesburg, how many inmates were eligible to participate in the furlough program?

A. At the farm, I would give a ballhouse figure, again, of about 150.

Q. All right, so that the eligibility tripled, but yet the supervision only increased by some fraction; is that right?

A. That's right.

* * * *

William Fauver, director of what was then the Division of Correction and Parole, defended the sudden liberalization and expansion of pre-parole programs by pointing out that the changes were an important factor in bringing the New Jersey prison system through a critical period in the wake of the Rahway riots:

> There was very little, really, that the institutions themselves could do in the way of liberalization. Changing some criteria for work release and furloughs by lengthening the time that a man could be on it, for example, liberalizing the number of furloughs, those types of things were very real and very important things to the inmate population, and I think the expansion of the furlough programs and the work release programs were important to bringing the New Jersey prison system through a very critical time in the post-Rahway situation.
>
> *Q. They were helpful in keeping the lid on?*
> A. Yes, they were, very.

No Pre- or Post-Furlough Interviews

While some furlough objectives did exist, there was an apparent lack of concern on the part of the administration with whether those objectives were being reached by inmates going out on furloughs. Trenton State Prison Inmate Bernard Bellinger was questioned about furlough procedures in this regard:

> *Q. Does any body sit down with that inmate to try to make a determination as to whether or not, considering the purpose of the furlough, that that furlough is somehow going to benefit that inmate?*
> A. No one ever did. In fact, most of them even hated to go out to the farm or inside the prison or even talk with them about the furlough. Once it was approved, they're supposed to go to him and, you know, get a money transfer for him and go over the rules with him. Very rarely did anyone ever go over the rules with anyone. Nobody even talked to them.
>
> * * * *
>
> *Q. When the inmates would come back from the furlough would anyone sit down with the inmate to*

try and determine whether or not the purpose of the furlough had been accomplished and whether or not the inmate had somehow benefited?

A. Once you came back from the furlough, the only way you would hear anything again is if he got busted while he was on furlough or somebody called up and said he did something wrong on the furlough. Then instead of them talking to you, they would cut your furlough off and wouldn't even give you a reason most of the time.

* * * *

Under questioning, former Trenton State Prison Superintendent Alan Hoffman confirmed that there was no pre- or post-furlough interview to determine whether or not the inmate's furlough plans fit within the objectives of the program, or whether the inmate derived positive social benefit from the furlough. Mr. Hoffman testified further:

Q. You mentioned the term "succeeded on furlough"?

A. Right.

Q. What does that mean to you as a superintendent?

A. That means the individual came back on time and we had no reason to believe he did anything on furlough that he shouldn't have done.

Q. All right. And isn't that quite different than saying that an inmate succeeded on furlough because he accomplished the purpose of the furlough or attained the goals of whatever they might be in connection with the objectives?

A. Yes.

Q. All right. I'm viewing your definition of success as more of a body count than some sort of psychological qualitative measure.

A. Fair enough.

Q. All right.

COMMISSIONER BERTINI: Well, we would almost say there was a negative approach rather than a positive finding.

THE WITNESS: Yes.

Q. So that when the public sees success rates of 99.1 or higher for the Furlough Program, what that success rate is really portraying is a return of inmates from furlough, is that fair, rather than some qualitative goal attainment on the part of those inmates?

A. That's fair.

* * * *

The furlough coordinator at Leesburg agreed that the "success rate" was misleading:

Q. Well, in your mind now and dealing specifically during the time period that you served what, as the furlough coordinator at Leesburg, was the program at Leesburg ninety-nine point some percent successful?

A. The statistics would show that it was ninety-nine point some percent successful in that the only statistics that show up are the people that don't come back. The escape rate, I think, is what they were talking about that was not ninety-nine point some percent successful.

Q. So in your own mind they're equating the escape rate with the success rate?

A. Yeah, I would say that's what they're doing. Now, they are not talking about program abuse, what's actually happening when the inmates are on the street or the—is the program actually doing what it was designed to do. In the standards it says the program is designed to do this, this, this, strengthen community ties. Half the time no one ever knew where the inmates were. If you tried to get in touch with them, it couldn't be done.

CHAIRMAN RODRIGUEZ: Do I understand you correctly, then, if an inmate got out on the Furlough Program and let's say, for the sake of an example, committed a serious offense and was returned to the institution, that that incident would not be part of the statistic on the success rate so it wouldn't be an escape?

THE WITNESS: Yeah. The statistics on the escape rates or on the success rates are very vague, really. It wouldn't be an escape, really. It

would go down more as a type of thing on the reporting form as arrested on furlough or if he actually wasn't arrested it would just sometimes go down as a late.

MR. DICKSON: And of course a late, as I understand——

THE CHAIRMAN: The definition does not fit with the escape rate?

THE WITNESS: No.

THE CHAIRMAN: Or the success rate?

THE WITNESS: No, It's not counted against it.

Phony Court Opinion

The S.C.I. investigation revealed that laxities permeated the system and went even to procedures involving records of the most critical nature. The public hearings revealed testimony that the prison-time of one inmate, Patrick Pizuto, was substantially reduced by virtue of a document sent to Trenton State Prison which purported to be a decision handed down by the Appellate Division of the New Jersey Superior Court. Pizuto was identified by Carl Chiaventone, an intelligence expert on organized crime and assistant supervisor of the New Jersey State Police Intelligence Bureau, as being strongly connected with organized crime and particularly with Anthony "Little Pussy" Russo, known to be a high ranking member of the Vito Genovese organized crime family. Pizuto was originally sentenced in 1965 to serve from five to eight years for offenses including robbery, being armed in connection with that robbery and for obtaining money under false pretenses. He was paroled in 1967, but that parole was revoked in 1968 when he was charged in Bergen County with carrying a weapon without a permit, and with robbery in Passaic County. He was convicted and sentenced in connection with the Bergen County charge in November of 1968. In December of that same year he was convicted on the robbery charge and the judge ordered that his sentence was to run consecutive to the Bergen County sentence and his parole violation time. The alleged Appellate Division decision modified the December sentencing by ordering it to run concurrent with the parole violation and Bergen County conviction—with the end result being that Pizuto was

eligible for and did receive a parole 782 days earlier and gain admission to work release and furlough privileges sooner than he normally would have.

Lena Aversano, a Trenton State Prison employee who computed inmate time and handled inmate files, testified that she gave Pizuto and others sample copies of Appellate Division opinions relating to modification of sentences. She claimed that she knew Inmate Pizuto because he worked in the Trenton State Prison Classification Department. She gave Pizuto the sample opinions at an apartment after 10:30 p.m. rather than at the prison. She claimed he would leave the prison at 6:00 or 7:00 a.m. and not return until 11:00 or 12:00 p.m. to go on work release in Trenton.

Sometime later, Pizuto asked her if she had received an opinion on his case from the courts. Shortly thereafter, she did and modified his sentence downward according to its terms.

When shown the opinion and her time computations, she testified:

> *Q. Mrs. Aversano, can you tell from looking at the time computation, I know it's been a long time, can you tell from looking at the time computation whether that computation would have been made before or after the Appellate Division gave the opinion?*
> A. No, it would have been made when I got this.
>
> *Q. Made when you got it. Okay. So when you made that time computation you took the Appellate Division into account, right?*
> A. Yes.
>
> *Q. And can you just tell us approximately, and if you can pinpoint it from your figures, can you tell us the amount of time in terms of days or years that the Appellate Division actually would have modified Mr. Pizuto's sentence?*
> A. Would have modified?
>
> *Q. Yes.*
> A. It wouldn't have modified this. It would have modified the fact that his parole violation would have been adjusted to this.
>
> *Q. All right.*
> A. It didn't change his——

Q. Well, did the Appellate——

A. —his sentence from the Appellate Division itself. You know, his original sentence.

THE CHAIRMAN: What did he benefit from the opinion?

THE WITNESS: He didn't have to revert to a former number and do additional time on the violation.

THE CHAIRMAN: How much time would that have been? How much time did he save by that opinion?

THE WITNESS: Well, let's see. This one completed it—he completed the other one which would have been with it running concurrent, 1970. I have to have the other card to see what the other one was. I would say a couple of years.

Q. A couple of years?

A. Yes, that he wouldn't have to revert to his old number and then have to wait to be heard again by the Board.

While the opinion had great significance, apparently its validity was never determined by prison officials. Mr. Hoffman, the former superintendent of Trenton State Prison, admitted that indeed it was not the usual practice to verify writs from the courts. The testimony of Elizabeth McLaughlin, Clerk of the New Jersey Superior Court, Appellate Division, clearly indicated that the "opinion" was not authentic. In sum, her undisputed testimony was that there was no record of this opinion at all; there was no record of the three judges who allegedly signed the opinion ever sitting together and in fact there was no record of the existence of one of the judges who allegedly signed the opinion; the format of the opinion did not strictly conform with that of typical Appellate decisions nor was it written on the official stationery of the Appellate Division; there appeared on the document the signature of a clerk who would not normally sign such a document; a cover letter explaining the effect of the decision accompanied the opinion —again not a usual practice; there were spelling and typing errors of a nature not normally contained in a genuine Appellate Division opinion, and the docket number appearing on the Pizuto opinion

is officially recorded as the docket number for the wholly unrelated case of State v. Kelley. Finally, Mrs. McLaughlin testified:

> *Q. Mrs. McLaughlin, was the opinion State against Pizuto one which was rendered by the Appellate Division in your mind?*
>
> A. I would say not.
>
> *Q. In fact, it's as phony as a three dollar bill, isn't it?*
>
> A. I have no case—I can't find any case at all in my records of Mr. Pizuto.

* * * *

It should be noted that information relating to this aspect of the S.C.I.'s investigation was handed over to the State Attorney General's Office and in a recent court decision Pizuto has been ordered to return to prison, pending appeal. While incarcerated, he was indicted for murder and on federal bank fraud charges. In addition, Mrs. Aversano subsequently was indicted by the State Grand Jury on one count of perjury and three counts of false swearing in connection with testimony before the S.C.I. on details related to her admissions to the Commission.

Ineligibles Receive Furloughs—Release Date the Key

The public and private hearings revealed testimony of numerous instances where inmates at Leesburg State Prison did not meet the furlough criteria but nevertheless received furloughs. The inmates were able to do this by falsely filling out their furlough applications —particularly with respect to the questions on the application regarding release date and prior number of furloughs granted. To be eligible for furloughs the inmate had to be within a certain number of months from his parole or release date. Therefore, by filling in the application with a date within that period, he would make himself eligible. Furthermore, if the inmate put down that he had received previous furloughs, this apparently expedited the process with less likelihood that the veracity of the information on the application would be checked or even seen by the appropriate committee. The following is a sampling of inmate testimony regarding this scheme at a time when the required period was six months:

Q. Would you have put a date down on this application which would make you ineligible, that is, outside the six-month period?

A. I don't think I would have.

* * * *

Another inmate, Nick Mitarotonda, testified:

Q. I direct your attention to the second page of that packet there, sir, and ask you to look at Item 4, question 4, where it asks for a release date. What date is entered in that line?

A. December 17th.

Q. When were you released?

A. April 6th.

Q. Was the December 17th notation a correct release date for you?

A. No, it wasn't.

Q. I direct your attention to Item 8 on the same page. It asks for how many furloughs that you had been on previous to this one. What answer is on that form?

A. Two.

Q. Did you, in fact, have any previous furloughs prior to the one you were making application for?

A. No.

* * * *

Q. Well, then, what caused you to put down the wrong release date and the incorrect number of furloughs?

A. Well, I watched a couple of other inmates make furlough applications out and I just took a shot; you know, just took a chance that it would go through.

* * * *

Examination by the Chairman:

Q. Now, why did you pick December 17th rather than April the 6th?

A. Well, from the time that I was going out, at the time that was the criteria. It had to be within six months.

Q. So some rule said you had to be within six months of your release date?

A. Right.

Q. So you picked a date that you were six months in front of and simply put it down?

A. Yes.

Q. Even though it was false?

A. Right.

Q. Why did you say you had been out on other furloughs? Is that because it would indicate to somebody that you had qualified sometime before?

A. Maybe if I put down I was on furlough before they wouldn't check it.

Q. So when you said to us you took a shot, you took a shot by putting down two false answers assuming that it would get by the entire system and allow you to go out on furlough?

A. Not that I was assuming. I took a chance. I wanted to go home.

Q. But there was something in that grapevine that indicated to you that would work because the system was that weak?

A. It was just hearsay.

Q. And you took advantage of that hearsay and you got out?

A. Right.

* * * *

The paucity of checks and doublechecks became apparent in the questioning of another inmate, Austin "Big C" Johnson.

Q. Because I notice on C-27 in evidence here, that is your successful furlough application which is certainly questionable, was circulated to the superintendent, to Mr. Waltz, to Deputy Feenan, to classification, to the medium control center, to the minimum control center, to Captain McDonald and file and nobody picked this up?

A. I guess not.

Q. So it's a pretty porous system?

A. It's your system.

Testimony of Emeral Hayden, Captain at Leesburg Prison, was that initial eligibility of inmates was determined by the Classification Committee while subsequent applications for specific furlough dates were handled by a furlough subcommittee. According to Captain Hayden, one of these two bodies had the responsibility of verifying the information on the furlough application.

Unsystematic Dealings

George Risi testified that before the institution of the subcommittee, he had the responsibility as furlough coordinator of verifying the information on some 200 applications per month with no staff other than his inmate clerks.

Testimony brought out other unsystematic dealings with furlough applications. For one, the manner in which the applications were presented included dropping it into the captain's box or handing it to the captain or one of the inmate clerks personally. In addition, while furlough applications had to be in within 14 days of the desired release, there was no system to assure compliance with this other than Hayden's own system of initialing the applications; and on several occasions those initials as well as the signature of furlough coordinator Risi were forged.

Bellinger, an inmate who was a furlough clerk at Trenton State Prison, testified that he was often given the task of verifying whether or not an inmate applying for a furlough was eligible, i.e., to check if the inmate was on minimum custody, when his parole date came up (he checked this with an inmate clerk in the Classification Department), and if the inmate had been on previous furluoghs that month. Bellinger admitted that on occasion he would not disqualify an inmate he knew to be ineligible. He testified:

> A. I felt as though it really wasn't my responsibility to keep someone in prison. After all, I'm a prisoner, too, and it's not my responsibility to make sure a guy stays in. I did a fairly good job of screening the most—the majority of the applications to keep guys out, but when someone came up that I knew that I was sort of friends with, I would just tend to let that one go by.

* * * *

The prison superintendent at the time, Mr. Hoffman, testified that to his knowledge it was the furlough coordinator's responsibility to personally verify the information on the applications and not delegate that duty to his clerks. However, Bellinger testified that he did many tasks in the furlough office including answering phones and that on one occasion, when the civilian furlough officer was away at conferences, he literally ran the office for four days, processing many furloughs and providing information to police authorities before anyone realized that there was no civilian in charge.

Furloughs for Sale

A recurring problem, as brought out in the hearings, was the use of inmates as clerks in sensitive areas. In Leesburg State Prison, inmates were working in the furlough coordinator's office and by either forging signatures, slipping in fraudulent applications to be signed or other deceptive practices, the inmate clerks in that office had the actual or apparent control over who went out on furloughs and who didn't. Some of the clerks used this power to obtain remuneration from other inmates. Following is the testimony of Calvin Geathers relating to the sale of furloughs at Leesburg:

Q. There was general talk around the farm that if you paid moneys furloughs could be had?
A. Yes.

Q. What was the nature of the talk? Was there a price mentioned?
A. Yes, different prices.

Q. From what low price to what high price?
A. Well, a hundred dollars, fifty dollars, whatever they could get.

Q. From fifty to a hundred you heard. Did you ever approach someone about obtaining a furlough for a price?
A. Yes, I approached someone.

Q. Who did you approach?
A. A guy working in the furlough office, an inmate.

Q. Was he an inmate?
A. Yes.

Q. Was his name Russo?
A. Yes, it might be Russo.

Q. He was an inmate clerk, wasn't he?
A. Yes.

Q. All right. And what was the nature of your conversation with Russo? What did you say to him and what did he say to you?
A. Well, I asked him was it possible about a furlough.

Q. And what did he say?
A. He said, yes.

Q. And did he suggest a price?
A. Yes, he did.

Q. How much did he tell you it would cost for your furlough?
A. As I remember, not knowing, I think it was a hundred dollars at the time.

* * * *

Another inmate, Richard Hamilton, III, testified:

Q. With reference to this furlough of September 28th that you testified to, sir, did you make payments to anyone in order to obtain that furlough?
A. Yes, I did.

Q. And to whom did you make this payment and how much?
A. It was $50 and I made it to Russo and Chico.

Q. Russo and Chico. Are these prison officials?
A. No.

Q. Or are they inmates?
A. Inmates.

Q. Did you pay cash?
A. Yes, I did.

Q. As a result of your paying cash to a man named Russo and Chico, did you go out on furlough?
A. Yes, I did.

* * * *

Under a grant of use immunity pursuant to the S.C.I. powers under *N.J.S.A.* 52:9M–17, both Anthony Russo and Edwin "Chico" Williams reluctantly verified the fact that they were selling furloughs on a regular basis at Leesburg. The testimony of these two clerks indicate that they did in fact have a good deal of power with regard to inmates receiving furloughs. Russo testified:

> *Q. Well, the fact that you knew that and by filling in two blanks and by-pass the classification system, the judgment as to who goes out can very well be made by yourself?*
> A. Right.
>
> *Q. And it wouldn't matter who that person was, what he was in there for or how ineligible he was, but the system would be beaten and you could make the judgment to let him out?*
> A. Right.
>
> *Q. And he would go out and come in and no one would question you?*
> A. Exactly.

That administrative failures enabled the inmate clerks to have such power was clearly indicated by Russo's further comments:

> *Q. Mr. Russo, you didn't have to be any genius to invent this system, did you?*
> A. No, definitely not.
>
> * * * *
>
> *Q. I understand, but it would simply just go through and no one would ever check it out?*
> A. Evidently, right.
>
> * * * *

The testimony of Williams included a more detailed account of the different methods that were employed to allow an ineligible inmate to receive a furlough. One method previously discussed, was to advise the inmate how to fill out his application form. Williams also admitted to forging signatures but noted that this was often unnecessary since merely by handing his superior a large group of applications at one time and including fraudulent furloughs in the group, all of them would be routinely signed.

Williams also pointed out that sometimes inmates would be able to leave without any official signature at all appearing on the forms. Additionally, where changing of records in the prison control center was necessary, Williams and other inmates had easy access and records could be altered with little difficulty. Williams indicated he received payment for putting through approximately 30-40 illegal furloughs at an average cost of $76 within a 2½ month period. Those numbers justifiably created the impression that "Chico" and Russo decided who went out on furloughs. Williams testified:

> *Q. All right now there was a system to grant furloughs. As a very practical matter, I want you to tell me where the authority at Leesburg to grant furloughs was placed. Was it with the superintendent; was it with the Classification Committee; was it with the furlough coordinator, or was it with Chico Williams and Tony Russo?*
>
> A. As a matter of fact?
>
> *Q. As a matter of fact?*
>
> A. With Chico Williams and Tony Russo.
>
> * * * *

Russo and Williams also admitted that if an inmate wanted a furlough, but didn't have the money to pay for it, he could easily borrow the money from one of the loan sharks at the prison if he was willing to pay the exorbitant interest rate.

Did the Administration Know?

One of the questions raised by the previous testimony of inmates is that since it was common knowledge among the inmate population that furloughs could be bought, how could the administration not have some idea of what was going on? Testimony of Williams indicated that at least at the level of correction officer there was at least some suspicion of this practice:

> *Q. Did any corrections officers or civilian personnel at Leesburg ever approach you, prior to late October of '74, in connection with the possibility that you were dealing in illegal furloughs?*
>
> A. Yes, officers would approach me on occasion and make sport of the fact that furloughs were available for sale.

Q. Did anyone on the corrections staff or civilian staff ever ask you if they could buy a furlough from you?

A. Yes. One officer asked me could he get one for the weekend, and I told him I was booked up.

* * * *

The testimony of Captain Hayden also pointed out that from the outset there were serious doubts as to the propriety of employing inmates as clerks in such sensitive positions; Hayden testified:

Q. I understand. Now, during the time you were at the minimum security out on the farm, as it's sometimes called, were there inmate clerks who worked in the furlough office?

A. That's correct.

Q. And that was Mr. George Risi's office where these furlough clerks worked?

A. That is correct.

Q. I'd like to, with your permission, Captain, I'd like to read a statement to you and ask you whether you agree with it as an accurate statement or not. "We had always pushed to get inmates out of the furlough office altogether, John Barrick and I and other custody people, other uniformed people, because we realized that inmates are, most of the time they are trying to do you in, they're trying to be devious and get something for nothing. All rehabilitation notwithstanding, they are still inmates and they have a culture of their own." And my question is merely this: Did you have an objection and do you have an objection to the use of inmate clerks in the furlough coordinator's office, and if you do have such an objection to the use of inmate clerks in the furlough coordinator's office, and if you do have such an objection, is the statement I just read you an accurate description of why you have that objection?

A. It's part of it. I do have the objection and that does express my views to a certain extent.

Q. Is there anything inaccurate in that statement?

A. Not at all, from my point of view.

Q. Did you and other uniform corrections officers voice strong objections to the use of inmate clerks in the furlough offices and programs?

A. Well, I don't know how I could characterize anything as strong. We objected. We made our positions known.

* * * *

Q. And that one of the Achille's heels in the system was that it was so permeated with inmate control?

A. Well, inmate involvement I would say I would use that word.

Q. And that's a difficult brew to have, the inmate and the key to the jail, isn't it?

A. I think it's a difficult thing to have inmates involved in anything that's very sensitive.

* * * *

Furlough Cover Up

At one point, Captain Hayden was directly alerted to the practice of selling furloughs by the complaints of two inmates to him. The testimony is then conflicting as to whether Russo then threatened to expose the failures of the furlough program unless dealt with favorably, or whether Captain Hayden offered Russo a deal whereby Russo would agree not to publicize the weaknesses of the program in exchange for favorable treatment. In any case, the situation was reported to the highest levels of the administration at Leesburg where the response was not to conduct a thorough investigation into how Russo and Williams were beating the system but rather to rid the program of Russo and Williams by transferring them to Trenton State Prison for "disobeying orders." Since the incident was officially recorded as an administrative transfer for "disobedience of orders" it should be noted that the Parole Board would not be fully informed of the circumstances that these two inmates were illegally selling furloughs.

Risi, who had been the Leesburg furlough coordinator, testified as follows:

Q. Other than Mr. Loveland, did you have any indication at all that Mr. Russo had been selling furloughs to other inmates?

A. There was no—no official indication that he had at the time. It was—it seemed to be well known to

us that he had been doing this. Like I said, we never investigated it any further to see actually how many he had or hadn't sold. The main concern at that time seemed to be just to get rid of Russo and not to actually find out what he had done.

Q. All right. You knew about Mr. Russo and Loveland. Captain Hayden knew about Russo and Loveland. Mr. Waltz knew about Mr. Russo and Loveland. Who else?

A. I'm sure the superintendent knew about it.

Q. That would have been Mr. Groomes at the time?

A. Yeah. I don't see how an incident like that was going on without the superintendent knowing about it.

Q. Do you know whether anyone in the Institutions and Agencies central office knew of the Loveland-Russo incident?

A. I do not officially know whether anyone knew of that or not. There were several—the correction captain at the time in the back knew of it and in the medium unit, that is to say, knew of it. There were several correction officers that knew of it. Anyone that had anything to do with the courtline knew of it. The classification officer knew of it. It was—at the time around the incident, it was fairly common knowledge of what had happened.

Q. To the best of your knowledge, was there any attempt made to notify either a local prosecutor or the State Division of Criminal Justice or any other official agency concerning the Russo-Loveland incident?

A. To the best of my knowledge, I never heard of any. At the time I knew that Russo was about due to go to the Parole Board and I was very surprised to hear that he was released when I heard it.

Q. Do you know whether or not the Parole Board had knowledge of the Russo-Loveland incident?

A. I have no knowledge as to whether or not they knew about it. I was never informed that anybody was informed about it after they were gone.

Q. Mr. Risi, we often hear that the Furlough Program as operated by the Department of Institutions and Agencies in New Jersey is ninety-nine plus some percent successful. Do you have any feeling in your own mind, now, as to whether or not no investigation was ordered because there might have been some feeling elsewhere that the results of that investigation would somehow jeopardize the announced success rate of the program?

A. There was never any official written or verbal communication to me that we wanted to suppress or not publicize the failure rate in the Furlough Program. However, the only time—this is an informal observation on my part, the only time that anything was ever really—any action was ever really taken to straighten out anything that I might have considered to be wrong with the Furlough Program was when it was publicized and someone besides the institution knew of it. That is to say that a man actually went out on the street and had some type of failure in the Furlough Program. There were many, many foul-ups in the program that were never publicized, never investigated. There were many releases of people getting out of the institution on furloughs without signed papers, people that shouldn't have gotten out that nothing was ever done about.

Risi told of reporting furlough irregularities to his superiors, but that nothing was done. He continued:

Q. Somewhere along the line something must have broken down, someone must have said, "Forget about it, that's not our routine here," and you must have gotten the impression that just don't make waves?

A. Right.

Q. Could you put your finger on what it is that gave you the impression that your function was not to make waves?

A. Incidents. It would be incidents like the Hamilton furlough here. I reported—I brought it out. Nobody wanted to do anything about it. I said, "Okay, nobody wants to do anything about it? I'll

put the papers away and forget about it, give the man his furlough when he's eligible for them." There were other incidents over the course of time when I was there which I can't say, which I can't point out to you exactly what they were where I pointed out the fact that someone had gotten out on furlough that shouldn't have gotten out on a furlough and no particular big deal was made about it.

Q. So that you came away with the feeling that under our system the proper thing to do is mind your own business; don't make waves?

A. Depending on how much publicity it got, yeah.

Q. So that your feeling permeates our whole progressive system?

A. During most of the time that I was furlough coordinator I would say that that feeling was the feeling that I was given about the Furlough Program.

Inmates Go Unsupervised

While many ineligible inmates were receiving furloughs, perhaps a potentially more severe problem was what inmates were doing while in the free community pursuant to these preparole releases. Due to the lack of adequate spot-checking or supervision of prisoners on release, much of what they did is left to speculation. Lieutenant Wayne Muggelsworth, a correction officer at Leesburg, attested to the gross inadequacies regarding supervision of inmates out on release programs and pointed out that generally, unless an inmate on release was arrested or failed to return to the institution at the proper time, the institution had little knowledge of what the inmate actually did or where he was while outside the prison.

Muggelsworth continued:

Q. Falsification of address is a very good example. For instance, the only way that we would ascertain that a false address had been placed on the furlough application, which we have some reports to bear out, was if an inmate did not come back or if he came back late to the effect that we would put into process a telephone call to the residence and, at that time be

advised that they had no knowledge of the inmate or the residence didn't exist or the telephone number was fictitious.

Q. And this is all post-furlough?

A. This is all when an inmate did not return.

Q. Responding to a crisis of sorts?

A. Right, absolutely.

Muggelsworth went on to state:

> A. The inmates were completely aware of the fact that we had no control or no policing function of the program and, therefore, took advantage of it to the maximum extent.

* * * *

Little Supervision Means Big Problems

Lieutenant Muggelsworth pointed out, with documentation to support his observations, the problem of numerous escapes by those participating in release programs. In addition, Muggelsworth brought forth the seriousness of the situation regarding inmates returning to the prison with contraband. He noted that even with a limited staff permitting only minimal searching procedures, contraband ranging from narcotics, to money, to weapons was invariably discovered. Muggelsworth also testified that at one time inmates returning to the prison were subjected to a urine monitoring test but in many cases, despite positive test results indicating drug use by the inmate while out on release, the inmate would nevertheless be permitted to continue in the program. In response to a question regarding the criminal activities of inmates while on furlough, Muggelsworth responded:

> A. We have numerous reports of inmates committing various activities ranging from murder, armed robbery, rape, arson and the whole spectrum of the crimes—the whole crime spectrum. We had reports that inmates were incarcerated in county jail while they were on three-day furloughs, yes.

* * * *

Muggelsworth also noted that the same problem existed with respect to inmates on work and education release.

Double Standard for Crimes Committed by Inmates

Another problem brought out in the hearings was the occurrence of inmates committing crimes, i.e., violating criminal statutes, but being dealt with administratively rather than having the matter referred to the prosecutor's office. For example, when Chico Williams was found in possession of a small amount of marijuana, a violation of *N.J.S.A.* 24:21–20 with a potential penalty of six months in jail and $500 fine, he was dealt with strictly on an administrative level resulting in a brief isolation lock up at Leesburg and subsequent transfer to Trenton State Prison. In response to questioning about such double standards, superintendent of Leesburg, Ronald Groomes, testified that there were divisional (Division of Correction and Parole) standards which included sanctions for various actions by inmates and that those sanctions did provide the "option" of referring the incident to the prosecutor. It does appear, then, that there is a good deal of discretion vested in the particular institution with regard to referring a matter.

Since the S.C.I. hearings, a procedure has been established under which a representative of the State Police, the Division of Criminal Justice and the Department of Corrections and Parole review matters of possible criminal consequence and make appropriate referrals.

Statistics Do Lie

Superintendent Groomes also indicated that the success rate of the furlough program at Leesburg is officially listed at about 99%. However, under questioning Groomes admitted that in the general statement of the 1975 budget presentation for Leesburg it is stated that 8.85% of those furloughed violated some section of the institutional rules and 1.28% escaped. Add to this the fact that much of what the inmates do while on furlough is unknown, and it is clear to see that the approximate 99% success rate reflects only a body count and is far from a true assesment of the success of the program. Under further questioning, Groomes testified:

> *Q. So, then, when you compile these statistics, you're really using the tips of the iceberg in order to make generalizations; is that right?*
> A. Yes, sir.

Q. So they don't really reflect the tremendous problems that obviously exist; is that correct?

A. That's correct, sir.

Q. So, then, if we want to get a real feeling for how badly the programs are abused in a sense that false addresses, contraband, we have to go a little beyond your statistics; is that right?

A. That's right, sir.

* * * *

Escort Furloughs or Paid Taxi Service

Another of the pre-release programs the public hearings dealt with was the abuses in the escort furlough program. This program is one whereby an eligible inmate is permitted to leave the prison for a 12-hour period as long as he is accompanied by an approved escort. While the criteria for deciding who may be allowed to be an escort has varied, the problems have not. One common abuse, revealed by the public hearings as well as in private testimony, was that of escorts including institutional employees, acting, essentially, as a taxi service. In these instances the escort would pick the inmate up at the institution, drop him off at his desired destination—often times across state lines, then pick him up later and report back to the prison within the 12-hour period. So while the standards provided for the escort to accompany the inmate at all times during the 12-hour period, this regulation commonly was disregarded. A related abuse involved escorts charging inmates for their services. Again while the regulations bar an escort from accepting any remuneration whatsoever from the inmate, it was commonly done. Lloyd Carter, a civilian escort testified as to his procedure with Inmate Frank DeFelice:

Q. And did you discuss price with him after telling him that it would cost him?

A. Yes, I did.

Q. And what was the price agreed upon?

A. $150.

Q. And Mr. DeFelice, I assume, did agree to that price?

A. Yes.

* * * *

Q. And where did you take Mr. DeFelice on the first escorted furlough?

A. To his home in Netcong.

* * * *

Q. Did you stay with Mr. DeFelice on that occasion?

A. No, I did not.

Q. Did you pick him up later on in enough time to get back to the institution?

A. Yes, I did.

* * * *

And in at least one instance a girlfriend of an inmate regularly acted as that inmate's escort by representing that she was his daughter. This sham was made possible by the aforementioned practice of having inmates in sensitive positions with access to various records and failure to check on them.

Bellinger, the inmate clerk at Trenton State Prison, explained how this was done:

Q. Did you have any prior indication that Joan Sabarese would be coming down to the furlough office?

A. Yes, I did. Steve Cavano (another inmate) called me up before they arrived and told me that a beautiful young lady would be coming into the office with a gentleman and they are for Frank Martin. And he said to sign up—you know, make sure I take care of them. So I asked him, you know, what's wrong. I said, "Does she got identification and everything." He said, "Yes." He said, "Well, it's not Frank's daughter." He said it's his girlfriend, but he said sign her up as a daughter. So I said all right because I don't check the application. I just take them.

* * * *

Inmate Frank DeFelice completed the charade by listing Ms. Sabarese as Frank Martin's daughter on her visitation card.

Work Release—More Abuses and Exploitation

Testimony at the hearings also brought to light serious deficiencies in the Work Release Program at the various institutions.

Under this program, inmates were permitted to leave prison during the day to work at jobs in the community. The goals of the program were to provide inmates with the opportunity to earn money prior to release and secure employment after imprisonment. As with furloughs, much of the problem regarding work release stems from a lack of pre-verification and spot-checking. The Commission learned that it was not unusual for an inmate to be approved for work release hours of early morning to late in the evening seven days a week. One inmate, Robert "Indian Joe" Minter, testified to the freedom he enjoyed while out on work release and actually working on the job for only six hours a day:

Q. And while you were at the work release house in Trenton, would you go to the sanitation company each day?
A. Right.

Q. On work release and come back at night?
A. Yes.

Q. And would you leave the Work Release House in Trenton early in the morning?
A. Yes.

Q. And would you return late in the evening?
A. Yes.

Q. Did anyone ever check on you?
A. No.

* * * *

Q. Did you have total freedom while you were out during the day? I mean, could you go anyplace you wished?
A. Yeah, I would say so, you could.

* * * *

Q. I see. But there was no supervision of you while you were out for almost two-thirds of the day?
A. No.

Q. Let me ask you one other thing—When you were out on work release, how many days a week were you working?
A. Seven.

Q. Seven. And you would be out from seven a.m. to 10:30 p.m.?

A. Sometimes.

Q. Seven days a week?

A. Sometimes a little later.

Q. Sometimes a little later?

A. Right.

Q. But how long would you actually be functioning in your job; how many hours?

A. Approximately six, probably.

Q. Six.

A. At that time, six, right.

Q. And the rest of the time you were free enough to travel wherever you would want to go?

A. Right.

* * * *

As to how common it was for those on pre-parole release to abuse the privilege, Minter stated in private testimony and again in the public hearings:

> A. Well, I'm going to be very frank. You could put this on the record anyway. It ain't one person that's on work release, school release, program release that, you know, really would fill the position like it's supposed to be.
>
> Now, it's not a reason, really a reason for me. I'm not speaking for them. I cannot stand being cooped up with these guys, especially in the work release house. A lot of them shoot dope, smoke reefers and continually drink. Now, they got supervision there. That don't mean nothing. The only thing that I do once in awhile and most of the time ninety-five out of a hundred times I'm on furlough is take a couple of drinks of scotch, but the narcotics, the way they use it in the work release house, they even got the same problem in the Newark House, you go in early to lay down and rest and you got four or five guys, "Lend me a dollar." Give me this, give me that. Inside the jail was just as bad. Where can you really go unless you are free?

When asked whether he was fearful that program administrators might check on his whereabouts during his extended working hours, "Indian Joe" replied:

> A. You see, I'm going to show you a good point. It's a good point you brought up there. They are—the administrators, they are the bosses. I used to come in, not bragging, four, five o'clock in the morning, you know, sign the thing, but I was never questioned. So why should I volunteer and tell them, "Hey, are you going to do your job or what?" That's their job. They getting paid for it, right? So they the ones that should have fulfilled their job. Sometimes I leave five o'clock in the morning, come back five o'clock. They know nobody in the world goes to work that long, common sense would tell you that.
>
> MR. DICKSON: What more can I say.
>
> A. (Continuing.) This is the whole thing in a nutshell. What I was doing, it can't be hid because it's on the record. They got a big—they log it every day. It's on the records. They never did their job.

"No Show" Jobs

Investigations by the S.C.I. as well as public testimony revealed numerous instances of inmates having "no show" jobs, i.e., where the inmate is released by the institution to report to his place of employment but the inmate does not report or only works part of his scheduled hours. Often in these cases the inmate himself or his friends or relatives will actually be paying the salary which is deposited into the inmate's institutional account. Following is some of the testimony regarding this practice. Lieutenant Mugglesworth of Leesburg testified:

> *Q. Did any inmates suggest that they had a job at a given location when, in fact, they had not, but were leaving the institution on a daily basis?*
>
> A. Yes, sir, we had cases where one inmate in particular was working for a realty company, and instead of going to work he was going to Pennsylvania and maintained an apartment and young lady.

* * * *

The testimony of Lt. Thomas Julian, a corrections officer at Trenton State Prison who at one point was given the special assignment of conducting surveillance of inmates participating in work release, reflects the kinds of abuses common to the program.

In one case, Lt. Julian visited the supposed work site of Patrick Pizuto six times without ever seeing him there. Pizuto's work release job was at K's Stereo in Trenton. Pizuto testified that his work release hours were from early in the morning until midnight, seven days a week—including Sunday when the store was closed—at the salary of $117 net pay per week. As to what Mr. Pizuto actually did with his time while out on work release, much is left to speculation. It does appear, however, that he leased and frequented a nearby apartment. While the name of the lease was that of Pat Monti, Carl Chiaventone of the New Jersey State Police and an expert in organized crime testified that Pat Monti was a known alias of Pat Pizuto. Furthermore, Richard Tidy, a New Jersey State Police detective specializing in document examination including handwriting identification, testified as to a strong similarity between Pizuto's known signature and that of Pat Monti appearing on the lease form, though he could not say conclusively that both were by the same hand. Further buttressing the theory is the fact that on two occasions Lena Aversano, a Trenton State Prison employee, visited Pizuto's girlfriend (and later his wife) at that apartment and on both occasions saw Pizuto there as well.

On another assignment, Lt. Julian observed an inmate at his job site, a carpet warehouse, indiscriminately loading "every rug they had in the place" into a truck. That night the warehouse burned down—the work of arson. The S.C.I.'s own agents later investigated this incident and learned, as testified to by Special Agent Michael Paszynsky, that two other inmates were also employed at the warehouse and that one of the two was said to have a business interest in it. Additionally, it was learned that the general manager of the warehouse was instructed by the owner that if anyone ever called and asked for the inmates, he was to say that they were on the road.

On still another occasion, Special Agent Paszynsky was assigned surveillance of Trenton State Prison work release inmate Michael Miller. Paszynsky had this assignment on four separate occasions and on none of those four days did Miller report to his job site. On at least one of those four days he crossed state lines into New

York State and at all times was driving a leased vehicle with a forged license.

The testimony of Lawrence Borek, presently the supervisor of Community Release Programs at Leesburg, showed how the previously discussed exploitations could occur. Borek testified that there is no routine check done on an employer to determine if that employer has a criminal record or has been known to associate with criminals. Borek also revealed that the more distant from the institution the job site is, the more problems they have. This is not too surprising since he also testified that while the criteria states that a job site must be within one hour's traveling time from the prison, this regulation is routinely extended; that there is generally no original on site inspection of a job site outside the one hour range; that the jobs beyond the one hour range are those the inmates themselves have found; and that no one on the staff has the prime responsibility for making spot-checks and little surveillance is actually done—with proportionately less checking the further away from the institution the job is. Curiously, then, the least checking is done on those jobs the inmates themselves have found. Mr. Borek also admitted that, as with furloughs, the success rate of the work release program is measured simply in terms of reported arrests or escapes—again a somewhat misleading measure of the program's actual effectiveness.

Unemployment Benefits

The Commission also documented several instances where work release inmates initiated claims and received State Unemployment Funds at prison for work release positions held while incarcerated. State Unemployment Benefits officials were surprised to learn of these situations and we doubt that the legislature intended the unemployment benefits scheme be applied to inmates in work release programs.

Education Release

The S.C.I. also received testimony regarding the workings of the Education release program at the various state prisons. This program is designed to allow inmates to take college credit courses outside the prison walls. Unfortunately, this program as well has been fraught with abuses in its application. The testimony revealed that inmates were brought to participating college campuses early in the morning, picked up late in the evening, and given

virtually a free hand at the college. There was no requirement for professors to keep track of the attendance at classes of the inmates nor was any regular check of attendance made by the prison administration. The minimal spot-checking that was done regarding the whereabouts of inmate-students was regular and predictable—a fact substantially reducing the effectiveness of these checks. There was also very little coordination between the college administration and the prison administration. Testimony indicated that inmates participating in the program were not identified to the security officers at the college nor was security notified of the schedule of those participants. This lack of supervision and coordination resulted in abuses as testified to by Lieutenant Muggelsworth of Leesburg Prison:

Q. And have your subordinates directed reports of surveillance to you and through you concerning inmates enrolled in this program?

A. Yes, I do. As I said, in the past we have had very, very limited surveillances. Within the last four or five months, because of an increase in our force, we have been able to put on more surveillance, still nowhere near the number that is necessary to maintain a good policing of the program, and we have come across numerous violations at Glassboro.

Q. Such as?

A. We have at least one escape. We have crimes release students committed at Glassboro, the student program. Surveillance that we had on Glassboro, a student release, proved that some inmates were only attending one class during a period of twelve hours of release, so that there was at least ten hours of time for them to go pretty much wherever they felt, and this was after the Boland incident in which he left Glassboro College and did assault a woman, which was a major publicity.

Q. That was some time ago——

A. Yes.

Q. —was it not? And are the problems that you are indicating now as to the Educational Release Program recent problems or have they been secured?

A. These problems go right up to the current date.

* * * *

Community Release

The Community Release Program, while having relatively few participants, was a cause of considerable tension and frustration among inmates at Trenton State Prison. The only basic standard an inmate must meet to be eligible for community release is that he must be on minimum custody. Eligibility is not tied to any parole or release date as are participation in work release and furloughs. The purpose of community release, apparently, is to permit certain specially qualified inmates to engage in civic or developmental programs. The result is that there are inmates on community release housed in the work release house who have committed serious crimes and have rather lengthy sentences remaining. Bernard Bellinger, a former prisoner at Trenton, testified as to the inmate reaction to this and other discretionary privileges that exist:

> *Q. What effect did their (those in community release with long sentences) presence in the Work Release House have on inmates with shorter sentences, but yet who are kept behind the wall?*
>
> A. The men with shorter sentences used to get frustrated and disgusted because they didn't know what they had to do or how they had to go about, you know, along with the rules in order to get out, get work release or to get community release because after awhile it seemed it was just a favoritism thing or for stool pigeons, they were the only ones that were getting it.

* * * *

Also, with regard to the community release and the work study program, which is run through the prisons and funded by the Garden State School District, an investigation by S.C.I. accountants revealed that inmate Jerry Swan was paid for 199 days though he only left the institution for work on 135 days. The investigation showed that there is no system to doublecheck the accuracy of the records and that payment is measured according to the number of times the inmate left the institution—there being no verification that the inmate actually reported and worked a full day at his job assignment. There is also no requirement that the employer certify the actual number of days and hours the inmate worked and no one in the administration is responsible for monitoring and checking payments made through the program.

Such a system obviously lends itself to exploitation, errors, abuse, and frivolous spending of the taxpayers' money.

Schemes and Cons at Trenton State Prison

Testimony given at the public hearings demonstrated how certain inmates at Trenton either had the power or projected that they had the power to grant other inmates certain privileges for a price. The fact that some institutions were viewed as more lenient than others with regard to eligibility requirements for the pre-parole release programs helped create the opportunity for a system of bartering for transfers to flourish with prices ranging from $300 to $2,500. The testimony indicated that one of the inmates another inmate might seek out if he was desirous of a transfer was Robert "Indian Joe" Minter. Minter worked in then Superintendent Alan Hoffman's house, and therefore had access to Hoffman in a way other inmates did not. Apparently, Minter would offer Hoffman information regarding corrupt penal officers and dope smuggling inside the prison and in exchange Hoffman would consider granting the privileges Minter requested for other inmates. Minter testified as to this "arrangement" with Hoffman:

> *Q. You say that one hand washed the other insofar as the Warden (Superintendent Hoffman) is concerned and you said that you never did anything for him personally; is that right?*
> A. Yes, sir.
>
> *Q. What would you do in connection with the system that would wash the hand?*
> A. Try to help him, get out all the, how would you say it, crooked cops, I'd say.
>
> *Q. You would tell him who the crooked cops were?*
> A. Crooked personnel period.
>
> * * * *
>
> *Q. So when you testified that one hand washes the other, in effect you were saying that the warden would do you a favor, but in turn you were being somewhat of an informant as to people within the system that were violating certain regulations; is that correct?*
> A. Yes.

Minter detailed some of his earnings for "talking to the Warden":

Q. All right. Let's go over it generally. Do you remember an inmate by the name of Schneider?
A. Right.

Q. Did Schneider or anybody on Schneider's behalf give you money?
A. Right.

Q. Okay. Who did that?
A. His wife.

Q. And how was it managed? Where did you see Mrs. Schneider?
A. I met her on Market Street in Newark.

Q. In Newark?
A. Right.

Q. And how much did she give you?
A. Two fifty.

Q. $250?
A. Right.

Q. And do you know why she gave you $250?
A. She say her husband told her to do it for talking to the man to get him transferred to Rahway.

Q. Okay. And did you talk to somebody to try to get Mr. Schneider transferred to Rahway?
A. Yes.

Q. Who did you talk to?
A. The warden.

Q. Mr. Hoffman?
A. Hoffman, right.

Q. All right. Well, what did you say to Mr. Hoffman about Schneider, do you remember?
A. I think I told him that he was supposed to get me a job or something, something in that order. The actual—the whole thing I don't remember. I know a job was mentioned that he was supposed to get for me.

Q. You told the warden that?
A. Right. Then I gave him his name and number.

Q. And did the warden tell you anything about what he'd do after you gave him the information?
A. He said he would take care of it.

Q. Did he try to take care of it?
A. He took care of it.

Q. He took care of it?
A. Right.

Q. And do you think he took care of it because you talked to him about it?
A. Well, yes.

Q. All right. Did Mrs. Schneider ever give you any other money?
A. I think—I think she gave me another $150 at a later date.

Q. Okay. Do you remember what for?
A. The same thing.

Q. Getting her husband to Rahway.
A. After he got there I think she gave me that.

Q. After he got there. But you do remember her giving you money?
A. Right.

Q. On two different times?
A. Right.

Q. All right. And do you remember an inmate by the name of Serge Bychkowski?
A. Right.

Q. Serge?
A. Right.

Q. And his wife, Jannette, do you remember Jannette?
A. Right.

Q. All right. Didn't Serge have a problem with his furloughs or work release?
A. Yes.

Q. Didn't he get involved in a gas station problem?
A. Right.

Q. And the Board said no more furloughs or work release?

A. Right.

Q. Did you talk to anybody for Serge to try to help him out?

A. To the warden.

Q. Mr. Hoffman?

A. Right.

Q. And did Mr. Hoffman fix it so Serge could go back out?

A. Right.

Q. On both furlough and work release?

A. Well, he was never on work release. He fixed it so he can get furloughs back, then work release.

Q. I see. Do you remember what you said to the warden about Serge?

A. I think I told him I knew his wife a long time before he was married to her. I know that.

Q. Did you know Jannette Johnson?

A. Yeah, I know her when she worked for both the prosecutor's office in Essex County and I think out her way now, where she's at now.

Q. And she's a court reporter like Mr. Carone, isn't she?

A. Right, right.

Q. That's right. And did Jannette Bychkowski or Jannette Johnson Bychkowski ever give you money in connection with helping Serge?

A. Yes, she gave me $300.

Q. And where was that?

A. It was in Trenton.

Q. Where did you see her in Trenton?

A. Outside of the work release house, I think, in the parking lot.

Q. And did she give you cash?

A. Right.

Q. Do you remember approximately when that happened?

A. Let's see. '75. I guess it was April or May, I think, last year.

Q. April or May of 1975?

A. Or maybe June. Could have been.

Q. Maybe June. Okay. Well, in addition to Mrs. Schneider and Mrs. Bychkowski, did anybody else give you money in connection with talking to the warden?

A. A couple of people, but I don't remember their names.

Q. Well, what were the circumstances? What do you remember?

A. Well, I know this black fellow I was telling you about up in Newark, he wanted me to talk to the warden for him to go to Leesburg and he gave me $150 for it. Before he left he had it transferred to me. That's the one I think I had sent home, the $150.

Q. Did he give it to you through his inmate account?

A. Right, right.

Q. I see. Okay. Who else?

A. There's another fellow, but I don't remember his name. It's been a long time.

Q. Okay. How much did he give you?

A. I think he gave me $200.

Q. And do you remember why he gave you two hundred?

A. He went to Rahway, to the camp.

Q. To Rahway. And did you talk to the warden for him?

A. Right.

COMMISSIONER BERTINI: Was he a white person or a black person?

THE WITNESS: I think it was a white fellow.

COMMISSIONER BERTINI: Do you know what kind of sentence he was serving?

THE WITNESS: Eight to ten or somewhere around there.

* * * *

Another inmate known for his connections in this regard was Frank "Spanky" DeFelice, a cook at Jones Farm—the minimum security facility at Trenton State Prison. DeFelice testified about the ways the system could be beat and how he profited from the inefficiency of the administration there. After testifying as to the success of getting one three-day furlough for an inmate—at a cost to that inmate of $1,000—DeFelice gave a detailed description of the process whereby an unsuccessful attempt was made to get this same inmate another three-day furlough. This particular scheme was to be carried out with the assistance of one Raphael Huertas, an inmate clerk working in the furlough office who himself escaped while on a 1975 Christmas furlough. DeFelice testified:

A. . . . So I told him (Huertas) Christmas do exactly the same thing; on Christmas Eve type up the paperwork and just send it up with the classification. The guys in classification usually carried the paperwork up.

Q. In other words have typed up a furlough permit for three days?
A. Right.

Q. And ready to put in that file and slip it in and take out the twelve-hour escort?
A. They wouldn't even have to take out the twelve-hour, just slip in the three-day one.

Q. Into a file folder?
A. No, it would be put in a stack of papers that was coming up to Jones Farm; furlough papers.

Q. I see.
A. When they got to Jones Farm he would get a three-day furlough. Then the three-day furlough, he would go out on Christmas morning, come back two days later on a Saturday. No one would know the difference. They'd have to send one piece of paper-

work to Jones Farm which, when he went on furlough that paper was, to my knowledge, was just thrown away and the other piece of paper would have to go to the Center as far as the count was concerned and no one would ever know the difference. He would have a three-day furlough and everyone would just assume he had a one-day furlough. No one would ever question it.

Q. And did that three-day furlough actually work or did something happen to upset the plan that you had figured out?

A. Yes, it came to my knowledge later that they waited till the last minute, till the last day to type it up. They were a little shaky about it, and the furlough coordinator, Mr. Rivera at the time——

Q. Ben Rivera?

A. Yes. They would assume he would leave early on Christmas Eve and they would finish up the typed paperwork and send it to Jones Farm.

Q. Counting on the furlough coordinator, Ben Rivera, leaving early?

A. Yes, sir.

A. Right, but Ben didn't. Ben stuck around, making sure all the papers were done, send them up to Jones Farm. They never had a chance to put in the furlough.

Q. Ben Rivera did his job that day?

A. Yes, he did.

Q. And the scheme that you outlined on past successful occasions depended on employees not doing their job, didn't it?

* * * *

However, according to DeFelice, the administration was not always so conscientious:

Q. And my question merely is, can you enlighten us as to what it was that allowed inmates to have this kind of manipulation of the records? Why was that able to come to pass?

A. Well, like I said it came to my knowledge because being on the Farm for a long time, the appli-

cations were made, they were sent down to the Work Release House, and one way or another through the mail, through an officer carrying them, through a bus driver, anyway they ultimately got to the Work Release House and would be put on the agenda sheet at that time and go before the furlough Classification Committee, and they were just there and had to be typed up. Maybe they'd be written out and given to the clerk or maybe he would type them up. But, to my knowledge, most of the time the inmate did it. When he did that, sometimes he could take names off, put names on, because that's just the way it was done.

Q. But for him, for an inmate to be able to do this, what would the inmate depend on as far as the——

A. Depends on him doing it and not the guy that's supposed to be doing it.

* * * *

DeFelice also testified as to the ease with which the inmates working in the Classification Department could and did read, remove or alter information contained in an inmate's classified file. DeFelice pointed out two common ploys used to "aid" an inmate to become eligible for furloughs. One method was to simply change the record of a second or third offender to reflect that the inmate was a first offender and thereby make that inmate eligible for furloughs sooner than he normally would have been. Another rule at the prison was that if an inmate had detainers for certain offenses in his file he would automatically be ineligible for furloughs. In such a case the inmate clerk could simply remove the detainer from that inmate's file. This was accomplished in one of two ways. DeFelice described one method:

A. How he used to go about it, when you come out of the classification, go downstairs into the entrance of the prison, you get stripped first to make sure you have nothing on you, no copies no anything.

Q. You mean the corrections officers strip inmates coming out of the classification area?

A. Yes, sir.

Q. How do you sneak out a document without being found?

A. Well, in the prison there's big pink envelopes. They're called inner-institutional mail. So what he

did was put it in the pink envelope, seal it, type "To: Jerry Swan. From:", I guess he put Mr. Cashel's name, Chief Classification Officer.

So when you go in, get stripped, he says he's taking it down to the Farm. You put it down, the officers tell you to take your clothes off, strip you and that's it.

Q. The officers assume you were just being a delivery boy?

A. Yes.

* * * *

DeFelice also noted an even simpler method of merely removing the document from one file and burying it in another. The former superintendent at Trenton, Hoffman, testified that he was aware of this practice and pointed out how easily it could be done:

Q. In the area of inmate records, the investigation by the Commission and the investigation by Deputy Commissioner Mulcahy disclosed problems with inmates files, specifically files at Trenton State Prison. What type of problem would have come to your attention during your stay there?

A. Okay. Well, they would fall into the following areas: Files that were incomplete in the sense that after you have read through thousands of inmate files over the years you sort of get an intuitive feeling about what should be there and what shouldn't be there, and if you pick up a file of a guy who's been at the prison ten years and it's rather thin, that's unusual. So that I have no doubt that information was being periodically removed from certain files that were in the classification area, and there were a couple of ways that this could be done. I think the most common way, and the way that offered the best out for the inmate in the sense that you could never really prove that something was removed by a specific individual, or certainly the way I would do it if I was out there, if you picked up John Jones' folder and you wanted something removed, you would simply remove it and lose it in somebody else's file.

* * * *

Hoffman testified as to one specific incident involving the "loss" of an additional sentence:

Q. In connection with your past comments something came to mind. Do you recall an inmate by the name of Philip Ventigli?

A. Skipper Jake.

Q. Skipper Jake?

A. Yes, I know Skipper Jake. I wouldn't know him if I saw him, but I heard the name often.

Q. All right. Let me show you an inmate file on an inmate by the name of Philip Ventigli, V-e-n-t-i-g-l-i, No. 54178. Take a look at the file and tell me from the file whether or not you can tell if Mr. Ventigli would have been either at Trenton Prison or at Jones Farm.

A. Both.

Q. And looking at the file, can you tell whether you have the institutional inmate file?

A. It certainly—yes, it is. No question about it.

Q. All right. This would have been the type of file to which an inmate would have access?

A. Right.

Q. Now, after I received Mr. Ventigli's file through your auspices I had a chance to review it and I was somewhat dismayed to find in it what appears to be an additional sentence for an inmate by the name of Jerome DiGiovanni. Now, I don't know if there's anything of substance.

A. That's certainly what it is.

Q. In fact, if you look through that whole subfolder, which is marked "P.A. Ventigli", I think you will find all the information in there is concerning Mr. DiGiovanni.

A. This one?

Q. Yes.

A. Yes, it certainly is.

* * * *

Caught Napping

Bellinger also described a unique method prisoners in Trenton State Prison had of getting their hands on classified material. It seems they would schedule an appointment with a particular psychologist at the prison who was notorious for falling asleep while interviewing and writing his report on the inmates. In his office he would have the classified file of the inmate to refer to and when he fell asleep, the inmate would then have easy access to it.

Clerk Issues Standards

Another problem created by delegating responsibility to inmate clerks was attested to by Bellinger. Bellinger testified that when new furlough standards were put out by the Division, it was his job to re-type and distribute them. Bellinger admitted that he sometimes made changes in the standards as he saw fit:

Q. Do you recall any specific incidents concerning a particular policy or particular standard which had to do with inmates not being permitted to indulge in alcoholic beverages while on furlough?

A. Yes. There used to be a rule which states inmates may not return to the institution intoxicated.

Q. You changed the rule?

A. Yes, I did.

Q. And was that with the knowledge and consent of civilians in the office, the supervisors?

A. Nobody paid any attention to it. They just probably assumed it was already there before.

Q. And do you know whether or not your rule was then adopted by the institution as its rule?

A. Yes, it was.

Q. Did anyone bother to check your typing?

A. Most of the time no one did.

* * * *

Q. Mr. Bellinger, did you invent or modify any other rules other than the one concerning drinking?

A. Really, if I had them I could tell you. I don't have a copy with me here, but I could tell you because I had made changes in quite a few of them, more or less like the word changes where if a guy got an

infraction it would be more if he could beat the charge of it on a technicality rather than on the way it was written before, it was just a statement that was very hard to get around it. I made it more vague where there was at least a chance you could get around the charge.

Q. So in part you were author of the rules?
A. Yes.

Q. And did you liberalize the rules?
A. Oh, quite a bit.

Q. And no one ever picked it up?
A. No one ever paid any attention to it and I sent copies to every lieutenant, sergeant, department head and everything all over the prison.

* * * *

Superintendent Hoffman explained that while he and other administrators did not approve of having inmates as clerks in sensitive positions, the lack of manpower was such that they were necessary:

Q. Did you ever take any steps to attempt to remove the inmates from sensitive areas?
A. No, I think the problem of having inmates in classification was well known throughout the system. It was a problem that I'm sure every superintendent of Trenton State Prison was aware of and not satisfied with.

I discussed the situation on several occasions with Bill Cashel, who's the classification officer at Trenton, and I said, "Well, what happens if we jerk them all out tomorrow?" And he said that we simply couldn't function without the inmates up there to file the material, run folders back and forth. And that was also my observation from having gone up there.

The inmates—well, let me put it this way: They did enough work to justify their existence, and I didn't personally feel at that point we had sufficient number of staff to keep the records even quasi up to date without some assistance.

* * * *

William Fauver, Director of what was then the Division of Correction and Parole, testified that civilian clerks were continually requested in the Division's and Department's budget, but were just as consistently refused at the State Budget Bureau level. It was Fauver's belief that it was difficult to get civilian clerks approved because it was hard to document the need for those clerks. He pointed out how much easier it would be to get another armed guard if he needed one because he could simply say: "There have been 'x' amount of escapes from this location so we need another guard." Another problem Fauver alluded to was that perhaps the prison system suffers by being a part of the Department of Institutions and Agencies. He pointed out that the budget request for the prisons is included in the overall budget for I & A which also includes requests for mental health and mental retardation among others. It was Fauver's view, then, that when the Legislators start trimming the I & A budget, they start with the prisons rather than the other programs within the Department of Institutions and Agencies. (Since the S.C.I. hearings, the Department of Corrections has been established to administer the prisons and this department enjoys co-equal cabinet status with I & A, now known as the Department of Human Services.)

Superintendent Overrules Classification Committee

Inmate furlough clerk Bellinger also testified that frequently the Classification Committee at Trenton would deny a furlough only to have that decision overturned by then Superintendent Hoffman. He described one incident in which inmate Serge Bychkowski, while out on furlough, was arrested for attempting to steal something from a gas station. Subsequently, Bychkowski was denied furloughs by the Classification Committee on the grounds of previous furlough failure. However, Bellinger testified, Bychkowski did receive numerous administrative furloughs authorized by Superintendent Hoffman. Hoffman, upon questioning, admitted that this did occur and explained his action:

> *Q. What factors were brought before you for you to consider in connection with overruling the committee in terms of giving Bychkowski additional furloughs?*
>
> A. . . . Basically, the information that I had certainly didn't indicate that this was a particularly serious episode as things at Trenton go. I think it's a matter of perhaps keeping—looking at in context.

And the appeal was made to me, and I did review Bychkowski's folder and didn't see him as a particularly dangerous type of individual.

* * * *

Hoffman also admitted that the aforementioned "Indian Joe" Minter lobbied on Bychkowski's behalf and that in no way was Hoffman required to document or explain his decision with regard to overruling the Classification Committee.

Jacqueline Lucier, former furlough coordinator at Trenton State Prison, gave her understanding of Superintendent Hoffman's actions with respect to overruling the Committee and granting additional furloughs:

Q. Well, in connection with these extra furloughs or the times during which the superintendent might override the committee decision, do yau have any indications at all that he did it because of money changing hands?

A. No.

Q. All right. Was it a judgment call on his part or something more than a judgment call?

A. I don't—I'm not sure if I understand what you mean.

Q. Well, the committee may well consider a man's qualifications and decide that for some reason or other he should not go out. The superintendent after considering those same qualifications might come to a different decision.

A. In some cases I could agree with you on that. There were borderline cases that the committee was going back and forth with, but a lot of them were not. A lot of them were three and four furloughs a month.

Q. Did the superintendent ever give you or the committee any specific instructions as to run a tight ship as far as the furlough programs are concerned?

A. I think, the contrary.

Q. Did he ever indicate to you, for instance, review the applications; if there are any that are even questionable in your minds, refer them to me?

A. Definitely, yes.

COMMISSIONER FARLEY: Would you concede that he perhaps had a broader overview of the situation than your particular group could have had?

THE WITNESS: If you mean that—I always felt that he had a different objective than we did, for some reason.

COMMISSIONER FARLEY: What was your objective?

THE WITNESS: Our objective was to run the program according to the standards.

COMMISSIONER FARLEY: What was his objective?

THE WITNESS: His objective was to run the prison and to keep it quiet, as quiet as he could.

COMMISSIONER FARLEY: So what you're saying, that in order to diffuse tensions he may have been susceptible to being quite liberal in the use of the program?

THE WITNESS: Yes.

* * * *

Hoffman further testified that he gave extra furloughs (more than the one per month normally allowed) as rewards for information or in return for special cooperation. Mr. Hoffman related one incident whereby Inmate Paul Sherwin's life was threatened and Hoffman requested another inmate, Clay Thomas, to look out for Sherwin. As a result of this favor, Thomas was given extra furloughs.

Hoffman also testified that he was favorably disposed towards the leaders of the inmate population and that having their cooperation was a practical necessity. Hoffman was questioned in this regard with respect to inmate Muslim leader Lester 2X Gilbert:

Q. Well, is it fair or unfair to say that the Work Release House may have been used as a carrot or an incentive in order to obtain Mr. Gilbert's services in

keeping the prison cool or calm, using him as an ally to exert his influence on his fellow inmates?

A. Yeah, that's not an unfair characterization to say that. It's certainly one consideration.

* * * *

Certain Inmates Favored

Trenton State Prison inmate Frank DeFelice attested to the fact that certain programs such as the Inmate Legal Association, the Forum Project, and the National Alliance of Businessmen were favored by the administration because they relieved the administration of the burden of dealing with some of the problems of inmates. It was DeFelice's contention that the leaders of these programs could receive special privileges by virtue of their status. These privileged inmates could then use their influence to help other prisoners—for a price. DeFelice specifically testified as to his relationship with Jerry Swan, an inmate involved with the National Alliance of Businessmen:

Q. Would Jerry Swan from time to time make known to you his ability to intercede on behalf of inmates?

A. Yes.

Q. What was his purpose in telling you about how successful he could be on behalf of an inmate? Why do you think he wanted to involve you in that?

A. Because I was aware of a lot of people on the farm that had money that I would, so to speak, have a higher echelon than he was, that even that I can move a guy for money and through him, you know what I mean.

Q. He knew that you knew people, people who would pay for these services?

A. Right.

Q. And that you could steer people to him for a price?

A. Right.

Q. And you would share that money with Jerry Swan?

A. Yes.

* * * *

While Swan's role in the N.A.B. was to help ex-offenders get jobs, the records show that on several occasions Swan had written letters requesting transfers for various inmates. Mr. A. Merlin Smith, civilian director of the N.A.B. testified as to Swan's authorization to write these letters:

Q. Did Mr. Swan have any authorization from the N.A.B. to write letters on official stationery which might request some names as transfers from one institution to another?

A. Actually, sir, that was a function that he did that was not authorized and was not really a part of his duties on the job as the ex-offender director.

* * * *

Bettie Zaryckyj, N.A.B. secretary, told how Swan got his title, "Ex-offender Program Director":

Q. What title would Mr. Swan have?

A. He was the director of the Trenton metro ex-offender program.

Q. And how did he obtain that title?

A. I think he gave it to himself.

* * * *

Mr. Smith further testified that he was never contacted by any prison official with regard to supervising Mr. Swan and that Swan was virtually unescorted and unsupervised from September of 1975 to January of 1976. Mr. Smith also noted that Swan only spent approximately 30-35% of his work time in the office and that Swan had a key to the office which gave him access to it at all times.

While Swan denied ever receiving money from other inmates for his activities, Steve Cavano, an inmate working for the Inmate Legal Association, testified that Swan was a recipient of funds paid by Inmate Frank Martin who was trying to buy a transfer for $2500. Because Cavano had difficulty recalling previous testimony given to the Commission in private, at the public hearings Mr. Daniel Carone, the stenographer, read a series of questions and answers that were posed to Cavano the previous day at a session of the S.C.I.:

"Question. All right what did you do with the money?"

"Answer. I passed it on."

"Question. Who did you pass it on to?"
"Answer. To Swan and DeFelice."

"Question. All of the $2500 or a portion of it?"
"Answer. Most of it."

Examination by Mr. Dickson at the public hearing:

Q. Do you recall those questions and answers?
A. Yes.

Q. Do you recall now the fact that some of the money may have gone to a gentleman by the name of Swan?
A. Yes.

* * * *

The testimony of Bettie Zaryckyj was that Cavano came to see Swan at the N.A.B. offices two or three times a day. Her testimony also indicated that on occasion Swan possessed large sums of money:

Q. And when Mr. Swan gave you the $650, did he have other money in his possession?
A. Yes, he did.

Q. What type?
A. Hundred dollar bills.

Q. How many?
A. I don't know. There were a lot of them, though.

* * * *

Q. Again, during December of 1975, did Mr. Swan ever give you bills of large denomination and ask you to break them down into smaller bills?
A. Yes. He gave me about $300 in hundred dollar bills and asked me to break it down into twenties.

Q. Or fifties?
A. Or fifties, either one. And on another occasion, he gave me another $200 to break down into fifties or twenties, either one.

Q. And on the occasions when he would give you the hundred dollar bills, did he have other amounts of money in his possession?
A. Yes.

Q. What type denomination?
A. Hundred dollar bills.

Q. Do you know where he'd get the money?
A. No.

* * * *

Q. So you wouldn't say that during the time you were in association with him he was ever wanting for money?
A. He wasn't. He was in the very beginning.

Q. At the very beginning?
A. It was after Steve Cavano and he got together that he never had no problem again.

* * * *

Inmate Given Key to the State

The public hearings also brought to light a document signed by Alan Hoffman that apparently gave authorization for Robert "Indian Joe" Minter and possibly also Theodore Gibson to travel anywhere in the State of New Jersey as representatives of the Trenton State Prison newspaper. Inmate Bellinger testified that he typed the document at the request of Inmate Gibson. The letter indicates that carbons went to the mail room, front door, Center keeper and grill gate. Bellinger also testified that Gibson and Minter did use the document to travel about.

When questioned about this matter, Mr. Hoffman expressed the view that the document was merely intended to be used as a letter of introduction for these inmates when they went on authorized visits and that the letter would not enable them to get out of prison whenever they desired. Hoffman did admit, however, that in retrospect he would not sign an instrument worded the way this one was and that theoretically the document did authorize travel to anywhere within the State.

Free Phone at Morven

Another interesting situation brought out in the public hearings related to Morven, the Governor's Mansion. One of the prison work details was a clean up crew assigned to the mansion. This detail became a highly desired one as the word got around that it provided easy access to the phone there, and on at least one

occasion money was paid to an inmate to help arrange an assignment to the Morven crew. Inmate Richard Martin testified as to the ease with which the phone could be used—with the state apparently footing the bill:

Q. Did you use the phone at Morven?
A. Yes, I did.

Q. How was it that you were able to use the phone and where was that phone located?
A. The phone was located in what they call the slave quarters.

* * * *

Q. And did you have access to that area?
A. Yes.

Q. Was there a phone in there?
A. Yes.

Q. Did anyone come to check up on your activities in that particular——
A. No.

Q. —place? I mean the slave quarters place?
A. No.

Q. How would you describe your access and ability to use that phone, very occasional, as much as you wanted? How would you describe it?
A. I would use it once every other day.

Q. Was it a hassle? Was it difficult?
A. No.

Q. Was it guarded?
A. No.

Q. Were you fearful when you used it of being caught particularly?
A. No.

* * * *

Record Keeping Atrocious

With respect to the record keeping procedures in the various institutions, the Commission heard the testimony of Edward

O'Neill, Special Agent of the S.C.I., who investigated hundreds of these records. He testified that he frequently came upon misfiled information; there was no way of determining who made entries of materials into the files; there was no system of inventorying the information contained in the files; and generally there was no use of a check-out sheet to determine who had access to the files in the past.

Deputy Commissioner Mulcahy testified to similar difficulties encountered by his task force:

> *Q. When you were doing your study with the other members of the Committee, did you eventually form a judgment or a conclusion as to how adequate the record-keeping system was in our penal institution?*
> A. Yes, we formed a judgment that the records were—the files were poorly organized, sloppily kept. And, in fact, when we first came in we heard all the war stories about the condition of records, which literally were true; that they existed in cardboard boxes and this was——
>
> *Q. Laying about on the floor?*
> A. At Trenton Prison, which was the classification section at that time, yes. Not in all cases, but, at least, it did happen.

* * * *

Christopher Dietz, Chairman of the State Parole Board, testified to the problems caused by the inadequately kept records. Mr. Dietz pointed out that up to the public hearing date, the Parole Board was receiving incomplete information with regard to the criminal histories of the inmates, pre-sentence reports, and notice of new sentences. Additionally, he noted circumstances where serious disciplinary or administrative charges brought by the institution against the inmate were not faithfully reported, particularly where drug trafficking was involved, and instances of inaccurate computation of eligibility dates. Asked whether the situation was chronic, Dietz responded:

> A. . . . I would say in instances it's chronic because we can't trust the information sometimes and I don't mean that, you know, as an indictment against the criminal justice system in New Jersey. But where

there are contacts of inmate control over records, it's so easy to tear out pages and substitute them in pre-sentence reports and there's no way to know whether the pre-sentence report we're looking at was the same content-wise pre-sentence report that the judge had before him at the time.

* * * *

Chairman Dietz also noted that one of the problems with the present system is that the Parole Board did not receive the original information or documents in the inmates' file but rather a summary prepared by a clerk, with the result often being an incorrect or misleading report.

Mr. Dietz went on to make some suggestions as to how the system could be improved, pointing out that perhaps money is not the cure all but rather there is a more crucial need for cooperation among agencies and hard diligent work. He suggested a computer system whereby the complete background of the inmate is plugged in with new data continually being added each time an inmate is involved in a subsequent event. This new data would include changes in status and disciplinary procedures taken, with the information being verified by sending copies to the parties involved.

As a further means of doublechecking, a Parole Counsellor would be present at each Classification Committee meeting since that is where most major transactions regarding an inmate are made. Mr. Dietz also noted that to his knowledge the facilities for the computer system are already available in the Department of Public Safety and could easily be converted to serve the needs of the prison system.

Expert Opinion

The Commission also received valuable insights from the testimony of Jameson Doig, a professor at the Woodrow Wilson School, Princeton University, specializing in the problems of bureaucracy and criminal justice and the director of the Research Program in Criminal Justice at the University, and also a member of the State Advisory Committee on Adult and Juvenile Justice by appointment of the Governor and a member of the Correctional Master Plan Policy Council in New Jersey.

Professor Doig strongly supported the rationale of pre-parole release and suggested that, regardless of the offense committed, if the inmate will eventually be released, whether through parole or after having served his maximum sentence, there must be some controlled re-entry into society as he nears that release.

Professor Doig further emphasized the three major areas of the New Jersey System that need improvement—integrity of the records used in deciding eligibility, clear objective rules and standards, and supervision of inmate behavior while on release—and commented upon each. To insure the integrity of the records, he suggested having a duplicate set of basic records stored in a central office or computer such as the method used in many school systems. This, of course, would decrease the vulnerability of a clerk, inmate or civilian, with access to the records kept within the prison walls. The setting of clear standards, Professor Doig pointed out, would reduce the amount of discretion involved which in turn would make the programs less vulnerable to corruption or misuse. As for supervising inmates in the community, he suggested the use of a diary system similar to that used in the U.S. Forest Service and in some large police departments. This method would require an inmate on release to enter his location and activities in half-hour increments in diary form, and there would be spot-checks by supervisors to turn up any discrepancies. It was also Professor Doig's opinion that adequate funding of the programs would allow greater supervision and that in the end the prison system would benefit financially due to a decrease in recidivism.

Professor Doig also commented upon the need for fairness and the appearance of fairness in the operation of the programs and on how the giving of undeserved privileges can undermine the entire system. He testified:

> A. In general, I think that one might say organizations operate more effectively when fairness and the appearance of fairness both exist. Prisons in this sense are not different from other organizations; that is from business firms or armies or schools. In any organization there is a widespread feeling among lower level people that special privileges are given to the undeserving and that people are not treated equitably, you sow the seeds of inefficiency and of disruption within the organization.

Perhaps the concern with fairness ought to be greater in prisons than elsewhere because——

> *Q. Why is that, Professor, in your opinion?*
> A. Well, if you give release privileges when they are widely perceived as being undeserved, you generate bitterness among the other inmates and this undermines the efforts we made toward rehabilitation and reintegration.

* * * *

Professor Doig did, however, go on to state that the goal of fairness may have to be balanced with administrative concerns such as the need for inmate informers, particularly with respect to drugs. He suggested that while it would be best if this information could be obtained without offering furloughs as a reward, if such rewards are given there must be a system whereby the information received and the reward given is documented. Then, at a later date, this decision could be reviewed by someone at a higher level in the administration and a determination made as to whether or not the information received was valuable enough to merit such a reward.

The Control Unit Concept

During the course of the Commission's investigation and prior to the May-June 1976 public hearings, Rahway State Prison introduced the Control Unit and Locator Board Concepts into the state penal system. At Rahway, the Control Unit is composed of a select few corrections officers who are specially trained and have responsibilities in intelligence gathering, inmate discipline, investigative technique and prison control technique. The unit maintains its own polygraph capability and regularly delves into areas including the importation of contraband into the prison and work release and furlough related checks. The unit monitors actions of prison employees as well as inmates. Through the efforts of this unit at Rahway, numerous narcotics and weapons-related arrests have been made and "no-show" work release positions discovered.

With the concurrence of Rahway superintendent Hatrak, the Control Unit has also devised and implemented a security system dealing with inmate records. The records are kept behind bolted doors and are accessible only to specified civilian prison employees. Persons having a legitimate need for material in an inmate's file

are required to utilize a sign-in and out procedure and are given only specific documents rather than the entire file.

Information duplicative of that in the inmate's file is kept updated in connection with the Rahway Locator System. This system consists of a wall-sized chart of the name and location of every inmate in the institution. Color codes and cards are used to indicate such things as furlough or work release status, escape or medical risk, narcotics history. The inmate's movement in the prison is also regularly posted on the chart. Under the Locator System, information from the inmate's file—which is used as the basis for work release, furlough and other decisions—is automatically cross-checked against the Locator material for discrepancies. Thus, at Rahway, two separate packets of material would have to be changed in order for an inmate to be able to take advantage of misinformation.

The Commission commends officials at Rahway for their initiative in devising these necessary and useful systems. We hope and trust that Rahway methodology will soon be extended to all State prisons.

The Commission's Final Recommendations

At this point, the Commission would again like to emphasize the essential value and critical importance of the pre-parole release programs. However, those programs must earn the respect their goals warrant by having a system which includes security, surveillance, and doublecheck mechanisms to thwart those individuals who would attempt to defy it. The system must not, as it has in the past, virtually invite abuse, deception, and exploitation.

A) Unescorted Furlough Program

1) *Clear Objectives:*

The Commission recommends that clear and legitimate goals of the furlough program be formulated and that releases not be granted unless there has been a thoroughly researched, evaluated and verified finding that participation in the program will contribute to the attainment of those goals.

a) Comment:

The purpose of pre-parole release is to aid an inmate in readjusting to the society he will soon be returning to on a full-time

basis. Releases must not be granted to relieve the problems of overcrowding or tension or as a reward to a "good" or influential prisoner. Furloughs should be awarded under a system of clearly set forth rules which are uniformly applied and administered so that an inmate will, on an objective basis, either qualify or not qualify under the rules. Such a practice would help immunize the system from the type of barter and influence peddling by specially favored inmates discussed on previous pages of this report.

2) *Parole Officers Involved in Decision:*

It is further recommended that institutional parole officers be included in these initial stages of the decision making process either as members of or advisors to the Classification Committee.

a) Comment:

These officers may possess valuable insights concerning inmates' readiness for pre-parole release and may add a slightly different point of view to the process.

3) *Pre-Authorized Purposes:*

Furloughs should be granted only for specifically pre-authorized purposes which could include: visits to a terminally ill relative, attendance at the funeral of a close relative, the obtaining of medical services not available in the prison system, establishment or re-establishment of *meaningful* community ties, the obtaining of valid school enrollment, the obtaining of housing, participation in family activities and in *bona fide* community, educational, civic and religious activities, and establishment or re-establishment of family ties, provided again, however, that it is determined that such release will facilitate the transition from penal institution to community life and have positive impact on the inmate.

a) Comment:

Such a statement of purposes would act to serve as a guideline for inmates and administrators alike and would preclude granting of furlough privileges for purposes other than those enumerated.

4) *Eligibility—Sixty Days Full Minimum:*

The Commission recommends that to be eligible for a furlough, an inmate must have had full minimum custody status for at least sixty days and be within six months of a firm parole or release date. In conjunction with this recommendation, the Commission also recommends that the definitions of minimum at the various

institutions be standardized and procedures for attaining that classification made uniform throughout the system.

a) Comment:

The Commission feels that the sixty-day requirement will enable prison officials to evaluate the inmate's adjustment to full minimum which in turn may indicate the likelihood of furlough success. The standardization of pre-requisites for minimum status would end the situation whereby an inmate could be ineligible for full minimum at one institution one day then by virtue of a transfer to another institution be eligible the next. The Commission notes that the above proposals either have been or are presently being instituted.

5) *Within Six Months of Parole or Release; Exception:*

The Commission also recommends that to be eligible for a furlough an inmate must be within six months of a firm parole or release date. An exception to this rule could be made upon the recommendation of the State Parole Board in instances of long term sentences with no available parole date, if, in the opinion of the Board, a release is necessary to test the release readiness of an inmate and thereby determine whether a future parole date would be appropriate. An inmate so released would be required on return to prison to confer with a prison psychiatrist or psychologist to determine his emotional reaction to the release, with a report of the conference being forwarded to the Parole Board.

a) Comment:

The general requirement would end the practice of allowing furloughs to inmates within six months of an anticipated parole date or parole hearing—a practice which caused much confusion and inconsistency in the past. An exception is necessary for those with uncertain sentences in order to allow the Parole Board to decide on a firm parole date. The present standards provide for the Classification Committee to arrive at an anticipated parole date for those with "from-to" sentences.

6) *General Exclusions from Program:* Special Procedures:

The Commission further recommends that, generally, furloughs not be granted to inmates identified with organized crime, inmates convicted of serious crimes against the person, or arson or to inmates whose presence in the community would attract undue attention or create unusual concern. Any approvals for inmates

in those categoreis must follow specific guidelines. For those identified with organized crime, approval must come from the Commissioner or Deputy Commissioner, who will base his decision on the degree of involvement in such crime. The Commissioner or his Deputy must also approve furloughs for those individuals whose presence in the community would attract undue public attention. For those persons convicted of serious crimes against the person or arson, who are otherwise qualified, approval may be made by the superintendent of the institution only after receiving positive reports from the inmate's work supervisor, the prison psychologist and the Classification Committee. Additionally, the superintendent would be required to write a special memorandum for the file giving the rationale for the approval of the furlough.

a) Comment:

As of the March, 1976 standards of the then Division of Correction and Parole, inmates convicted of certain offenses are completely barred from participation in the furlough program. It is the feeling of the Commission that while there are grounds for these exclusions, in light of the overall goals of the program, the restrictions are too severe. It must be recognized that in any case, those inmates incarcerated for the enumerated offenses would be paroled or released within six months. Therefore, these inmates and the community would benefit from a gradual reintroduction to society and the suggested guidelines would substantially reduce the inherent danger associated with those releases.

7) *Candidates Free of Disciplinary Infractions:*

It is also recommended that applicants for furloughs who are otherwise eligible be required to have institutional discipline records free of major infractions for six months prior to the first furlough grant and should be required to maintain such a record during the furlough eligibility period.

a) Comment:

This requirement insures that the inmate has given some indication that he will comply with furlough regulations and conditions. Additionally, it may serve as a needed incentive for inmates to abide by prison rules and regulations. The March 1976 Standards require an inmate to be free of such charges only in the thirty days immediately preceding the date of the furlough.

8) *Schedule of Furloughs:*

It is further recommended that the following schedule for furlough awards be followed during the six-month eligibility period and that the successes or failure* be documented in the inmate's file and forwarded to the Parole Board:

sixth month	one escorted furlough
fifth month	two escorted furloughs
fourth month	two escorted furloughs
third month	one escorted furlough
	one unescorted furlough
second month	two unescorted furloughs
first month	three unescorted furloughs

a) Comment:

It is felt that this schedule would best meet the objective of gradual reintegration into the community. Obviously, a failure at any juncture would be valid cause to remove the inmate from the program. Such a schedule would also aid the Parole Board in evaluating the adjustment capabilities of the inmate. The 1976 Divisional Standards do require the successful completion of at least one escorted furlough before an inmate can get approval for an unescorted furlough.

9) *Police and Prosecutor Contact before Granting Furlough:*

The Commission recommends that prior to a furlough grant, the police in the locality to be visited by the inmate and the local county prosecutor should be contacted.

a) Comment:

The purpose of this contact would be to give notice that the inmate may be coming into the jurisdiction and to give local authorities the opportunity to convey any new information the Classification Committee should have available to it when they consider whether to approve the furlough.

10) *Classification Committee May Still Approve:*

In the event that the police chief and/or prosecutor indicate a belief that the furlough is not appropriate, the Classification Committee may still approve the furlough, but the panel must then, in a memo to the inmate's file, document the rationale for so doing.

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* Again, we emphasize that success or failure is not to be measured simply by the return of an inmate to the institution on time.

a) Comment:

This would allow the Classification Committee some autonomy while at the same time forcing it to have a valid reason for granting the furlough despite the objections of local law enforcement agencies. The documentation would also permit a regular review of the process by higher levels of the administration.

11) *Pre-Furlough Verification:*

Prior to the granting of any furlough, the proposed furlough plan and purpose must be verified as to their suitability and legitimacy. The Commission recommends that the verification include direct personal on-site communication by Correction and Parole officials with the principal or person whom the furloughed inmate is to contact. This direct communication should be documented and made part of the inmate's file.

a) Comment:

This requirement substantially reduced the likelihood of inmates giving false or non-existent addresses as furlough destinations as has been done in the past. The March 1976 Division Standards do contain such a procedure.

12) *Furlough Applications Three Weeks in Advance:*

It is recommended that requests for furloughs be required to be submitted three weeks in advance of the proposed effective date of the furlough.

a) Comment:

This requirement would enable the various evaluations, verification and contacts previously recommended to be made.

13) *Authority to Approve Furloughs:*

The Commission recommends that ordinarily the full Classification Committee be the only body with the authority to approve furlough requests. However, it is also suggested that the superintendent of the institution be permitted to overrule the Committee in certain circumstances, but only upon writing a special memorandum explaining his action which is to be placed in the inmate's file and forwarded to the Commissioner for his concurrence. Only with this concurrence may the inmate leave on furlough.

a) Comment:

This procedure would strike a balance between the unfettered discretion the superintendent had in the past, and the March 1976

Standards which authorize only the Classification Committee to approve furloughs. It is felt that under the March 1976 Standards the Classification Committee, which consists of subordinates to the superintendent, could be subjected to undue influence by the superintendent. The S.C.I. proposal would place the responsibility directly upon the superintendent and the Commissioner should the Committee be overruled. The proposal would allow exceptions in special circumstances of which the Superintendent and Commissioner have special knowledge, while at the same time severely limiting that discretion to only legitimate purposes.

14) *Police Contact after Furlough Approved:*

The Commission recommends that after the Classification Committee had decided to approve a furlough request, the police chief in the locality visited should be notified of the crime for which the inmate was convicted, the time period of his furlough, and the locality he is restricted to.

a) Comment:

The Commission does not intend this requirement to serve as a form of harassment but rather as a safeguard to the community. This notification will help to strike a balance between the public safety and the value of reintegration to the inmate. While some notification requirement is included in the March 1976 Standards and was contained in past standards as well, a survey conducted by the S.C.I. indicated that in the past this procedure was not faithfully adhered to.

15) *Post-Furlough Evaluation:*

Additionally, the Commission recommends that, subsequent to each furlough and prior to the granting of any succeeding furlough, the success or lack thereof in accomplishing the purpose of the furlough should be evaluated and verified by direct communication by Correction and Parole Division Personnel with the principal or person with whom the furloughed inmate was in contact during the furlough, as well as with the inmate himself. Copies of such evaluation should be made part of the inmate's file and forwarded to the Parole Board.

a) Comment:

This post-furlough evaluation would prohibit the practice attested to at the hearings of rubber stamp approval of furloughs subsequent to the initial request, and also serve to remind the

inmate and the administration of the goals and objectives of the program. Additionally, the evaluation will aid the Parole Board in determining the release readiness of the inmate.

16) *Furlough Limited to Specific Location and Curfew:*

It is recommended that furloughs should limit the inmate geographically to a specific location and include a night hour curfew.

a) Comment:

N.J.S.A. 30:4–91.3 authorizes furlough grants to "a specifically designated place or places." The Commission suggests that this statutory mandate be more closely adhered to. The Commission points out that furloughs were never intended to be a license for an inmate to travel at will around the state or across state lines at all hours of the night and day, and such conduct is not necessary to meet legitimate furlough objectives.

17) *Spot-Checks:*

The Commission recommends that there be spot-checks by Correction and Parole personnel to see that geographical, curfew, and other furlough conditions are complied with. It is suggested that personnel be assigned this duty on a rotating basis.

a) Comment:

Testimony at the public hearings indicated the problems created by lack of some supervision in the community. Occasional off-duty checking was shown to be inadequate, suggesting that routine, but unpredictable, visits are necessary.

18) *Diary System:*

The Commission also agrees with the suggestion offered by Professor Doig of Princeton University that a diary system be inaugurated by Correction and Parole. This system would require inmates on unescorted furloughs to record their location and activities in one-half hour increments. This diary could be turned in upon return to the prison or on a daily basis for use in verification of the inmate's past whereabouts.

a) Comment:

The use of such a method, along with the periodic spot-checks, would help to curb the abuses by inmates attested to at the hearings. It is also believed that requiring the inmate to account for his time will encourage him to conduct himself in a manner in keeping with furlough objectives. Furthermore, the diary would be a

valuable aid in the post-furlough verification and evaluation procedure. Where serious discrepancies between diary entries and surveillance or verification reports are found, prohibition from further furlough participation and other appropriate sanctions would be in order.

19) *Disciplinary Action for Furlough Violations:*

The Commission further recommends that an inmate who fails to meet the conditions of his furlough be subjected to disciplinary action including loss of "good time" and loss of future furloughs. Additionally, it is recommended that serious abuses of the furlough privilege, such as crossing state lines, should be prosecuted under appropriate escape statutes.

a) Comment:

Testimony at the hearings indicated that in the past there were varying definitions among the institutions for terms such as lateness and escape with varying disciplinary measures as well. The Commission endorses the most recent standards which do attempt to standardize the definitions and penalties pursuant to those and other violations. The Commission also strongly supports the mandate contained in those standards that all offenses of a possibly indictable nature be referred to the prosecutor for review.

20) *Citizens Committee to Monitor This and Other States' Programs:*

Finally, the Commission recommends that a citizens committee be created for the purpose of studying the various practices, procedures, developments and results of the furlough programs in New Jersey and the other thirty some odd states and Federal Government which have such programs. The Committee would make an annual or semi-annual report, including possible recommendations for change in the New Jersey system.

a) Comment:

It is the view of the Commission that the New Jersey program should be allowed to benefit from the experience and mistakes made in other jurisdictions. Testimony at the hearings pointed out that many of the very same problems which created the need for the S.C.I. investigation had been experienced by other states. It is hoped that the proposed committee would permit preventive rather than corrective measures to be the rule in the future and also instill public confidence in the existing program.

B. Escorted Furlough Program

1) *Reimbursement for Escorts:*

In addition to the laudable reforms promulgated by the former Division of Correction and Parole which include a master list of all eligible escorts, an orientation procedure for escorts and inmates, and a State Bureau of Investigation criminal check on all escorts prior to their serving as escorts, the Commission recommends that escorts be allowed reimbursement by inmates for traveling expenses at the rate of 15 cents per mile. The escort would be required to submit a voucher verified by the inmate to the furlough coordinator. The money would then be taken from the inmate's institutional account through the appropriate business remit procedure.

a) Comment:

The Commission believes that the present system, wherein no reimbursement is provided for, is unduly burdensome on those who would act as legitimate escorts. Reimbursement for traveling expenses which is above board and out in the open, is an equitable and realistic method that would help reduce the occurrence of inmates paying fees for escorts, a practice attested to at the hearings.

2) *Criminal Sanctions:*

As a further deterrence to escorts charging fees, it is recommended that a statute be enacted which would impose criminal sanctions on an escort who requests or receives compensation other than that allotted for traveling expenses.

a) Comment:

Such a statute, of course, would give some teeth to the regulation prohibiting compensation for escorts.

C. Work Release Program

1) *Evaluation before Approval:*

Prior to approving a work release for an inmate, Correction and Parole personnel should check out, analyze and evaluate the validity, usefulness, and suitability of the employment situation and make a conscious determination that the particular work release opportunity will be of positive help to the inmate in reaching a legitimate correctional goal. An effort should be made to place the inmate in a work situation related to his prior experience or anticipated employment after his release from confinement.

The pre-release inquiry should determine exactly who will be the inmate's employer and the person to whom the inmate will report while at work.

a) Comment:

This requirement would help to insure that the work situation is genuine and one with the potential for fulfilling work release objectives. This pre-verification, along with the recommendations to follow, would also reduce the likelihood of "no show" jobs, a subject we heard much testimony upon at the public hearings.

2) *Police Check on Unknown Employer:*

If an employer's reputation is unknown or in any way in doubt, the State Police should be asked to check on that employer.

a) Comment:

This procedure would prevent the occurrence of an inmate being released to an employer with known criminal ties or one suspected of criminal dealings.

3) *Police and Prosecutor Contact Prior to Approval:*

The Commission recommends that prior to a work release grant, the local police and prosecutor be notified of the circumstances of the work release situation.

a) Comment:

The purpose of this contact is to get additional information on potential employers and their employees to aid in making decisions on the suitability of such employment.

4) *Eight-Hour Work Day:*

The Commission recommends that work releases be authorized only for a normal eight-hour working day, plus travel time, unless the employer certifies, on pain of criminal penalty for giving willfully false information, that longer work hours are necessary for the proper conduct of the business.

a) Comment:

This regulation would preclude the routine granting of work hours covering early morning to midnight, seven days a week, a situation which testimony at the hearings indicated existed in the past. The duration of work release must be strictly limited to job related hours.

5) *Weekly Certification by Employer:*

The Commission further recommends that an employer certify to Correction and Parole officials, on a weekly basis and again on pain of criminal sanctions for willfully false information, the number of hours worked by the inmate and that the employer was not reimbursed by the inmate or another individual on the inmate's behalf.

a) Comment:

This requirement again addresses itself to the past indulgence in "no show" jobs and the practice of employers not really paying the salaries to participating inmates. The threat of criminal sanctions is a necessary deterrent to such practices.

6) *Employer Contract:*

The Commission also recommends that a work release employer be required to sign a contract which would spell out the employer's supervisory obligations and which would stipulate that the contract could be cancelled if the employer did not make appropriate records and other information available to Correction and Parole officials.

a) Comment:

This procedure would help officials to determine who has the responsibility of supervising the inmate while on the job site and also require the employer to have accurate accessable records needed for verification. This contractual obligation is appropriate and not an overburdening demand since employers can and do benefit from the use of work release labor.

7) *Police Notification after Approval:*

After an inmate has been approved for work release in a community, the local police should be notified of the date the inmate will begin work, his hours and conditions of employment, how the inmate will be transported to and from work, and the crime for which the inmate was incarcerated. Additionally, police should be given a follow-up notice as to the date of termination of the employment.

a) Comment:

Again, this is not meant to be an invitation to police to harass participating prisoners, but rather as a courtesy and precaution to local police. Due to staff limitations, any supervisory aid or information the police can provide to prison officials should not be discouraged.

8) *Inmates Apprised of Rules:*

It is also recommended that when an inmate is approved for participation in the program, he should be furnished with a list of standards of conduct and work performance with which he is expected to comply and advised that non-compliance with those standards may be the basis for termination of his participation in the program, criminal prosecution, or other disciplinary action. The inmate should be required to sign an agreement to abide by those conditions and to keep a copy of the agreement on his person. A copy of the agreement should be given to the work release employer as well.

a) Comment:

This procedure would insure that all parties are fully aware of the terms and conditions of the work release arrangement.

9) *Spot-Checks at Job Site:*

The Commission further recommends that Correction and Parole personnel make unscheduled visits at least twice a month to the work sites of the participating inmates. Additionally, it is recommended that where an inmate has found his own employment or where an inmate is released to work for a relative or to conduct his own business, special evaluation and scrutiny be given.

a) Comment:

Testimony at the public hearings indicated that the recommended spot-checking, particularly for the three latter mentioned categories, is essential in order to preserve the integrity of the program. These visits, along with the other recommendations contained in this report will help defeat the schemers who would attempt to defy the system.

10) *Separate Quarters:*

The Commission also urges that a continuing effort be made to place participating prisoners in quarters apart from the general inmate population. Additionally, procedures must be established by the Department to prevent and control the introduction of contraband into those quarters.

a) Comment:

The use of separate quarters would help to lessen the pressures and demands other prisoners subject the work release inmates to with regard to bringing contraband in from the outside. Searching procedures would also help to reduce the contraband problem attested to at the hearings.

11) *Prisoner Employment Service*:

The Commission recommends that a Department level prisoner employment service be created to operate in conjunction with the New Jersey State Employment Service in an effort to locate jobs for work release candidates.

a) Comment:

The Commission feels that the value of the work release program to society and the inmate is such that greater efforts should be made to find jobs for qualified prisoners. Among the benefits of work release are that inmates learn and develop skills, pay their way at the prison, allow them to accumulate some savings and adjust to civilian life—hopefully reducing the instances of recidivism.

12) *Inform the Public*:

Finally, the Commission recommends that special channels of communication be developed with state and local officials, citizens groups, social and business organizations, private enterprises and other agencies in order to inform and educate the public to the useful goals and special problems and needs of the program.

a) Comment:

Communication of this nature will apprise the public of actions the institutions are undertaking and it is hoped that by pointing out the legitimacy of the program, a positive atmosphere will be generated and with it bring public understanding and support.

D. Community Release Program:

1) *Objectives Defined and Verified:*

The Commission recommends that clear and legitimate goals of the community release program be formulated and that such releases not be granted unless there is a thoroughly researched, evaluated and verified finding that participation in the program will contribute to the attainment of those goals. This finding should then be documented and entered into the inmate's file.

a) Comment:

The community release program has in the past been run in a highly discretionary manner with few guidelines. This program should only be utilized in exceptional cases and not, as in the past, to grant pre-parole release privileges to favored inmates who are unqualified for either work release or furlough. The above recom-

mendation would require a legitimate documented purpose before such a release could be granted.

2) *More Supervision:*

The Commission further recommends that the Correction and Parole officials assume greater responsibility for supervision of the released inmates including more on-premises spot-checking.

a) Comment:

Testimony at the public hearings showed that the community release program was another source of abuse of the system. The recommended procedures would help to assure that participating inmates are adhering to the conditions of their releases.

3) *Civilian Supervisor:*

It is also recommended that where a civilian is in charge of the community release project to which an inmate is assigned, that civilian have the responsibility of verifying, under oath and threat of criminal sanctions for giving willfully false information on the work hours and attendance performance of the inmate. The civilian supervisor should also supply the agents of the Department of Corrections with the work schedule and anticipated duties the inmate is slated to perform.

a) Comment:

Testimony of the public hearings, particularly with respect to Jerry Swan, showed that the civilian supervisors may be kept unaware of the comings and goings of an inmate and may never have any contact or communication with prison officials. The above recommendation will reduce the likelihood of similar occurrences with a minimum of effort.

E. Education Release Program:

1) *Pre-Release Verification:*

As with community release, the Commission recommends that the Correction and Parole authorities initiate policies and procedures which emphasize greater pre-release verification of the legitimacy and usefulness of the release plan. In this regard, it is suggested that a potential education release inmate be required to discuss his educational goals and background with a college counsellor and administrator before being permitted to enter the program.

a) Comment:

Testimony at the public hearings indicated that with respect to the course of study an inmate might undertake, there was little, if any, coordination between the inmate, the college, and the prison. The suggested requirement would allow for the college to have some input with regard to advising the inmate of those courses of study for which he is unqualified or of those areas of study that would be most suitable to his goals.

2) *More Supervision:*

As it has in other programs, the Commission recommends that the Department of Corrections increase its supervision and spot-checks of participating inmates.

a) Comment:

Testimony at the public hearings indicated that the freedom given the inmates and the lack of supervision by prison officials resulted in various transgressions by inmates involved in the program. The Commission concludes that additional surveillance procedures are necessary to curb such activities.

3) *Counsellor of Campus:*

It is further recommended that the Corrections Department assign a counsellor to the campus at least once a week for the purpose of meeting with participating inmates to discuss the special problems they may be encountering. This should be required where there are five or more inmates attending a particular college.

a) Comment:

It is felt that such couselling is necessary to increase the chances for a successful program by helping the inmate to adjust to the new demands he will face at the college.

4) *Security Alerted:*

The Commission further recommends that the Department of Corrections alert the security personnel of the educational institution to the presence of inmate students at the institution and to the inmates' schedules of hours and designated courses of study.

a) Comment:

This requirement would allow the college security force to take any added precautions they deem appropriate and could help the limited prison staff by providing some additional supervision of participating prisoners.

5) *Attendance Taken:*

It is also recommended that the faculty members of a participating institution be required to record the attendance of inmates at their designated classrooms and courses. It is further suggested that an inmate student with two or more authorized absences be suspended from the program.

a) Comment:

This requirement would help to assure that either inmates are going where they are supposed to be going or they are no longer in the program. The inmate must be made to recognize that he is being given a special privilege and does not have all the rights that other students on the campus might have.

F) Record Keeping:

1) *Centralized File System:*

The Commission recommends that all records and other papers —or verified copies of those records and papers—relating to all inmates in the prison system should be placed in a centralized file, with the aid of appropriate computer technology, subject to maximum security precautions.

a) Comment:

The testimony at the public hearings, as summarized in this report, regarding incomplete, misfiled or missing information in connection with inmate files clearly indicated the need for a centralized record keeping system subject to the most sophisticated and thorough checking, verification and security procedures devised by experts and which is effectively executed by employees of assured integrity assisted by applicable computer technology.

2) *Inventory of File:*

The Commission recommends additionally that the central file contain chronological inventory sheets detailing documents placed in an inmate's file, the date when so placed, and by whom so placed.

a) Comment:

This practice would enable prison officials to get a quick overview of what is contained in an inmate's file without having to go through every document in the file. With the aid of this system, it could easily be determined that an inmate is not eligible for furloughs or other privileges.

3) *Entries in File Signed:*

It is also recommended that any one who authors an entry in any inmate's file be required to document that entry by his or her signature.

a) Comment:

This requirement is in response to testimony that in the past entries concerning such crucial matters as time computations for parole consideration could be made anonymously. The signing procedure creates responsibility and accountability of those who make entries in the central file.

4) *Inmate Access:*

It is further recommended that the Department of Corrections adhere to a practice whereby no inmate will work in any area in which access may be had to classified information, mail, funds, prisoners' personnel records, prisoners' personal property and prisoners' classification reports and summaries thereof.

a) Comment:

The testimony at the public hearings clearly indicated the critical importance of instituting this policy. The Commission also notes that this recommendation is not limited to removal of inmate clerks from the classification and furlough offices. Inmate runners and porters must likewise be denied access to sensitive areas, as well as other inmates who work in areas where the enumerated materials might pass. The Commission endorses and encourages further the efforts already made by the Department to implement such a policy.

5) *Verify Documents:*

Finally, the Commission recommends that no court or other agency opinion or ruling affecting an inmate's status be entered into an inmate's file until the integrity of that ruling or opinion has been thoroughly checked with the issuing court or agency.

a) Comment:

The verification of all documents before entrance in the inmate's file would preclude the phony document Pizuto-type situation that was attested to at the public hearings.

G) Miscellaneous Recommendations:

1) *Effort to End Contraband:*

The Commission recommends that policies and procedures be instituted sufficient to insure that the importation of contraband

into the prisons is deterred by effective measures including regular systematic and mandatory searches of returning inmates and aggressive efforts to expose corrections personnel possibly involved in such importations.

a) Comment:

Testimony at the public hearings indicated that trafficking in narcotics and other contraband was commonplace at the prisons. The Commission strongly urges that serious efforts be made to put an end to this practice.

2) *Communication with Attorney General:*

The Commission also recommends that there be regular and sustained communication between Corrections Department officials and the Attorney General's Office on the question of whether or not to prosecute for offenses committed by inmates while on release or elsewhere.

a) Comment:

Testimony at the public hearings brought out the fact that prison officials are left to make decisions as to whether pre-parole violations or other possible offenses committed by inmates should be handled internally on an administrative basis or brought to the attention of prosecutorial authorities. It is the Commission's belief that the prison system should be serviced with continuing legal input and should not wait for a crime-of-the-century situation to seek or receive advice from the Attorney-General's Office.

H. Closing Statement:

This report will now be concluded with an excerpt from the closing statement as read by Chairman Joseph H. Rodriguez at the adjournment of the public hearings June 3, 1976:

> As we stated at the opening of these hearings, the Commission believes pre-parole release programs are a vital part of any modern correctional system striving to succeed in successfully returning inmates to society. We support the programs and state again that the principal purpose of these public hearings has been to fuel the fires of reform of the programs to a point where they will receive the full level of support they deserve.

The S.C.I. is available to appear before any legislative or executive panel to urge that funds be provided for the hiring of additional non-inmate personnel to fully carry out and maintain reform of the programs. Furthermore, the Commission realizes that overcrowing is a serious problem in the state corection system and is a constant presure for releasing inmates. The public should understand that, unless public funds are forthcoming to expand prison facilities and adequately staff them, there can be no total cure for the ills of the system. The public must not labor under a false sense of security that those dangerous to society are firmly incarcerated, because the reality is that corrections institutional space in New Jersey now remains static while the number of those being incarcerated is increasing sharply.

NURSING HOMES PARTICIPATING IN NEW JERSEY'S MEDICAID PROGRAM

INTRODUCTION

Since December of 1974, when Medicaid and Medicare payments to nursing homes began to undergo public scrutiny, several agencies and committees of New Jersey government became involved with one more aspect of the inquiry. In December of 1974 the Governor requested the State Commission of Investigation to conduct an evaluation of New Jersey's system of Medicaid reimbursement. Also, in December of 1974, the New Jersey Attorney General's office announced that it was probing the alleged interests of Dr. Bernard Bergman in New Jersey nursing homes. Later, that office set up a special portion of its Enforcement Bureau to deal specifically with possible criminal activities and fraud in the area of reimbursement to nursing homes and other providers. This unit has already produced a number of indictments. In January of 1975, Governor Byrne announced the formation of a cabinet-level committee to study the problems of Medicaid reimbursement for nursing home care. That committee issued its report on November 13, 1975, and the recommendations relating to property costs reimbursement reiterated several of the suggestions initially made by the S.C.I. on April 3, 1975, in its first interim report on nursing home reimbursement. The New Jersey Legislature also created its own committee to examine nursing homes in January of 1975. That committee, chaired by Senator John Fay of Middlesex County, examined the quality of care in New Jersey nursing homes receiving Medicaid reimbursement and other aspects of the program.

Because of the attention being given to other facets of the Medicaid system as it relates to nursing homes, because reimbursement of land and building costs presents one of the largest cost factors in Medicaid reimbursement and because investigators involved in the area have realized that it is this component of reimbursement which is most often abused and most in need of reform,* the S.C.I. continued to direct its attention to this area.

* *See, e.g., Reimbursement of Nursing Home Property Costs, Pruning the Money Tree, Report of the New York State Moreland Act Commission on Nursing Homes and Related Facilities,* January, 1976; *Report on Nursing and Related Facilities,* Temporary State Commission on Living *Costs and the Economy,* April, 1975; *Report of the Ad Hoc Committee on* Capital Cost Reimbursement Rates, New York Public Health Council, October 25, 1975.

In the first report issued by the Commission in April of 1975, the genesis of a certain schedule of ceilings for rentals and imputed rentals was examined along with other components of the property cost reimbursement system created by the Division of Medical Assistance and Health Services (DMAHS) of the Department of Institutions and Agencies. One of the primary conclusions of that report was that the schedule of maximum rentals and imputed rentals was inflated so as to permit unnecessary profits.

Specifically each nursing home operator operating his institution under a lease was allowed to "cost" for Medicaid purposes the amount of the lease up to certain maximums supplied by the rental schedule of DMAHS. That rental schedule purported to identify per-bed rental ceilings which corresponded to construction costs during the year of initial building. For instance, if the schedule alloyed a maximum of $1,000 per bed for a home built in 1970 and the home contained 100 beds, the maximum rental allowance would be $100,000.* Obviously, if the rental schedule was inflated, the programs would overpay leasees.

After concluding that the schedule was inflated, the Commission undertook to scrutinize a number of New Jersey nursing homes to determine the extent of the problems. In this inquiry attention was focused not only upon leasees but also upon owner-operators who are compensated for their property expenses (debt service, taxes, insurance and a return on equity) on a dollar-for-dollar basis with no ceiling whatsoever.

Having completed its investigation work on the second phase of the inquiry by the Spring of 1976, the Commission thereafter prepared a report of its findings. Because those findings, which will be discussed in more detail hereinafter, illustrated that the system was being bilked to so substantial a degree, however, the Commission also resolved to hold public hearings preceding the release of the report. Some highlights of those hearings follow.

A Key Witness

One of the first witnesses at the opening of the Commission's public hearing on October 13, 1976 was also one of the most revealing in testimony that corroborated S.C.I. Chairman Joseph

* There were also several ancillary provisions which effect the amount of reimbursement. For instance, leases executed prior to December 31, 1970 resulted in the lease receiving 125% of the schedule amounts, presumable on the assumption that they could not have been negotiated with knowledge of the rental schedule maximums.

Rodriguez's contention that "smart-money manipulators use lease and sublease pyramiding to realize excessive profits, to the detriment of the Medicaid program and the taxpayers of New Jersey." He was Joseph D. Cohen of New York City, who once lived briefly in Lakewood, N. J., the administrator of East Orange Nursing Home run by Garden State Nursing Home, Inc., of which he was president and owned 80 per cent. His almost accidental entry into the nursing home business was also revealing, as to the ease with which he qualified not only for operating in New York but also by automatic licensing reciprocity in New Jersey. He was called as a subpœnaed witness by Michael R. Siavage, counsel to the Commission:

Q. When you first became interested in the nursing-home business, what did you do as your first activity to get involved in the nursing-home business?

A. My first activity was to go take the necessary schooling, both to gain the knowledge plus to get the license to be permitted to operate a nursing home.

Q. And about when did that happen?

A. In 1970, I believe.

Q. Okay.

A. Or 1969. 1969, 1970, around there.

Q. How long did you go to school, if you can recall?

A. It was a hundred-hour session, what they call. I think it was over a period of three weeks daily, full days.

Q. Did you become employed in a nursing home in New York to gain experience?

A. Yes.

Q. Did you act as administrator there?

A. Yes, I did.

Q. What's the name of that nursing home?

A. Parkway Manor Nursing Home.

* * * *

Q. Were you looking around at that time, also, for a nursing home of your own to become involved in?

A. That was my intention from the beginning.

Q. Did it matter to you whether that nursing home was in New Jersey or New York?

A. Well, I weighed all factors and I decided I would rather go to New Jersey.

* * * *

EXAMINATION BY COMMISSIONER KADEN:

Q. Mr. Cohen, what was your occupation before you went into the nursing-home business?

A. Real estate.

Q. What nature of real estate business?

A. Primarily buying and selling.

Q. In the state of New York?

A. No, most of my real estate was in Illinois and Michigan and only a short while in New York. In New York my real estate was limited to managing.

Q. Buying and selling what?

A. Residential properties.

Q. What first caused your interest in the nursing-home business?

A. I had a divorce, and I was forced abruptly to give up my business. In fact, much of my funds was tied up in litigation. And I came to New York to get change of scenery and, fortunately, I got married and I was looking for some new form of making a living, decided upon the nursing-home business.

Q. Is there any person in particular who suggested to you the possibility of the nursing-home business?

A. My wife.

Q. Did she have any background in it?

A. No. Her feeling, she kept pushing. She said my nature was such, I liked to help people and it seems to be a pretty good business, and with my feeling for people and so on I should be good in it.

Q. You said you took a course to qualify yourself as a nursing-home administrator. Where was that course?

A. That was in—given in the Jewish Home and Hospital for the Aged in Manhattan.

[Whereupon, the witness confers with counsel.]

Q. As a result of that course, did you obtain a license as an administrator under the regulations of the State of New York?

A. Well, I spent—yes. But during the time I was taking that course and prior to taking that course I made it my business to visit many nursing homes, especially people that I knew from before and were friendly to me, and learn all about it to gain the necessary background to be able to properly run a home.

Q. What do you mean people that you knew from before and people that were friendly to you? People in the nursing-home business in New York?

A. People who I knew from school days primarily, who went into the nursing-home field and they were willing to teach me.

Q. What was the nature of the course that you took?

A. It's a prescribed course by the state for people who want to be licensed. They must take this course and then take a test.

Q. Any person who takes this course for a hundred hours and takes an examination can become licensed to operate a nursing home in New York?

A. At that time, yes. Today there are requirements for in service and so on.

Q. What did you have to do to obtain equivalent license in New Jersey?

A. The New York standards were, I think, even higher than New Jersey standards and I was able to —reciprocal agreement.

Q. In other words, having taken a hundred-hour course and obtained a license in New York, you were then able, without any further evidence of your background, to obtain a license to be a nursing-home administrator in the state of New Jersey?

A. Yes.

Selling Beds

It was Mr. Cohen who first disclosed to the Commission that setting up a nursing home corporation did not necessarily follow a traditional pattern for launching corporations. He described a practice in the industry known as "selling beds." The Commission decried this practice for more reasons than merely the lack of contact between the bed owner and the actual operation of the nursing home, but also more importantly because the scheme had the obvious potential of being a device to withhold from administrative agencies which oversee the Medicaid program the actual identity of the people involved in the ownership of nursing homes.

Mr. Cohen, a part owner of Perth Amboy Nursing Home as well as the operator of the East Orange facility, reinforced publicly his testimony at the Commission's private hearings at which he told of garnering the $525,000 necessary to launch the Perth Amboy home by selling beds for $3,000 each through what he described as "social contacts." Simply put, as the Commission learned from Mr. Cohen and others, for a cash investment of $3,000 per bed a person was guaranteed an interest in the Perth Amboy Nursing Home that assured him a profit of $400 per bed annually, over and above the profit of the entrepreneurs. Such an investor could purchase as many beds as desired.

A. Yes. I own an interest in Perth Amboy Nursing Home.

Q. And what interest do you own in Perth Amboy?

A. It's approximately 22 plus some fraction of a per cent.

Q. Approximately 22 per cent?

A. Yes.

Q. You initially characterized your percentage before the Commission as 57 265ths; is that correct?

A. That would be—well, I can give it to you exactly that way. It's 57/250ths.

Q. 250ths. Now, what does the 250 refer to in that fraction?

A. The total number of beds in the nursing home.

Q. So might we say that you own 57 beds out of the 250?

A. Yes, correct.

Q. Is that a common mode of nursing-home-ownership in New Jersey; that is, the ownership of a portion of the beds, based on your experience?

A. Yes, on my experience, rather than work with percentages, you work with beds. It means the same thing.

Q. There is a practice in the industry known as selling beds; is that correct?

A. Correct.

Q. How is that done? Do you know?

A. Well, it's someone wants to go into a nursing-home operation and he's looking for partners to go in with him, it's a matter of trying to figure a method how to divide it so that each one knows exactly what he has and to make it easier for reimbursement, later for dividing profits if there are any, hopefully, to have a definite system to know what percentage is yours, being everything in nursing-home bed business is done on a per-bed basis; all your auditing, bookkeeping is kept on a per-bed basis; automatic statistics coming through would come through on a per-bed basis. It's easier if a man knows he has so many beds and each bed produces so much, that's his share.

Q. Did you get a group of investors together to invest in Perth Amboy Nursing Home?

A. Yes, I did.

Q. Did you receive any beds in return for that function?

A. Yes, I did.

Q. How many out of your 57 beds did you receive in return for that function?

A. 50.

Q. And I would imagine that the other seven beds you invested in with cash; is that correct?

A. Correct.

Q. How much was your investment in those other seven beds?

A. $21,000.

Q. Approximately $3,000 per bed?

A. Correct.

Q. Would it be fair to say that your 50 beds which came for your expertise in the field were worth about $150,000?

A. Well, it's more than just expertise. There was a lot of work and so on, but it was for services rendered.

Q. All right. Now, I would like to pose a hypothetical for you, and consider myself to be one of your social contacts to whom you would sell a bed. What would you say to me to attempt to influence me in the deal with regard to Perth Amboy, for instance?

A. I would try to convince you that you would be able to get a reasonable return on your money and with reasonable security. I mean, perhaps, a little better security than in other industries.

Private Patients Favored

Mr. Cohen spoke with more candor at the private hearing than in public on what Mr. Siavage characterized as "talk" of Medicaid patients being put on waiting lists to get into many nursing homes. Finally his private testimony had to be made public by the S.C.I. counsel:

Q. Let me read you two questions and answers in your testimony in executive session and ask if you still agree with it.

"Question: Do you have any opinion on why there is a waiting list other than the fact that there is simply——

"Answer: Sure, I have an opinion. I know the reason.

"Question: What is the reason?

"Answer: Because If I were in a neighborhood where I could get private patients, I would keep beds vacant for a long time and wait for the private patients rather than take the Medicaid patient.

"Question: Is that done in areas where private patients are available to nursing-home operators?

"Answer: Definitely."

Q. Would that be a correct statement?

A. That would have to be modified.

Q. You would modify it today?
A. Yes.

Q. All right.
A. I would have to modify. It isn't an incorrect statement, but it has to be modified.

An Investment Profit of $1.2 Million Paid by Taxpayers

As shocking as it was complicated was Mr. Cohen's revelation about the pyramiding transactions for launching the East Orange nursing home facility through a lease, a lease assignment and a leaseback arrangement that involved two foreign speculators—Yehuda Gertner of Venezuela and Menachem Kurnick of Belgium—and which guaranteed a 50 per cent investment gain of $1.2 million on a facility that was built for $2.1 million. Mr. Cohen testified that on January 12, 1971 he signed a contract under which Philip Kruvant of South Orange built the nursing home and leased it to Garden State Nursing Home, Inc., for $272,000 a year. In return Garden State was to give Mr. Kruvant a series of notes for $75,000 to be paid back over 10 years and a letter of credit for $75,000. But Mr. Cohen, apparently in need of funds to carry out the contract with Mr. Kruvant, found a saviour in the form of Mr. Gertner, a so-called wealthy toy manufacturer from Caracas, who was on the search for investment opportunities in the United States:

Q. All right. Now, who introduced you to Mr. Gertner?
A. My brother-in-law, Mr. Besser.

Q. And did you have negotiations with Mr. Gertner?
A. Yes, I did.

Q. Why did you? What was your purpose in negotiating with Mr. Gertner?
A. I needed money in order to be able to run my business.

Q. Okay. How much capital were you in need of?
A. I was in need of a lot more than I got from him, but I took whatever I could get.

Q. What was whatever you could get?
A. The $75,000 for the letter of credit that I needed.

Q. That was, essentially, the one thing that you needed now in that agreement, is that correct, the $75,000?

A. Plus I wanted security, because according to the agreement I was personally liable for the first six months' rent, which added up to $136,000. Anything went wrong, I couldn't afford that kind of a loss. Mr. Gertner could better afford it than I could.

* * * *

COMMISSIONER POLLOCK: What did you know about him, about his background at the time you met him?

THE WITNESS: Just what I heard from my brother-in-law.

COMMISSIONER POLLOCK: And what was that?

THE WITNESS: That he's a very successful businessman and that he has a, primarily, a toy factory in Caracas and that he looks for investments in the United States, or was looking for some investments in the United States.

COMMISSIONER POLLOCK: All right. But you had had no prior connection or relationship with Mr. Gertner?

THE WITNESS: None whatsoever.

COMMISSIONER POLLOCK: This was the first time you met him?

THE WITNESS: Yes.

COMMISSIONER POLLOCK: And if I understand your earlier statements correctly, the reason you needed Mr. Gertner was in order to obtain the initial cash to go forward with this project?

THE WITNESS: Yes.

BY MR. SIAVAGE:

Q. By the way, Mr. Cohen, when is the last time you spoke to Mr. Gertner?

A. When is the last time I spoke to him? Probably six or eight months ago. He was here and I met him in synagogue.

Q. I show you what's been marked for the purposes of identification Exhibit C-10, which purports to be a copy of an assignment and amendment of lease made effective the 15th day of January, 1971, between Garden State Nursing Home, Inc., as the assignor, and Yehuda Gertner residing at Avenida Marques del Toro, Number 3, Caracas, Venezuela, and before I ask you if you recognize that, on the 12th of January you did also agree to lease the nursing home from Mr. Kruvant. Is that correct, if you recall?

A. Yes. Well, based on your document, yes.

Q. Now I ask you if you recognize Exhibit C-10.

A. Yes.

Q. All right. This memorialized your agreement with Mr. Gertner to put up some money, some consideration, other valuable consideration, and he then became the assignee on a lease?

A. Right.

Q. All right. Now, let me summarize it, if I can, at this point with respect to just these two documents, and bear with me for a moment.

Mr. Kruvant agrees with you to build a nursing home and lease it to you for $272,000; is that correct?

A. Correct.

Q. And Mr. Gertner gives you $75,000 of cash that you need and you agree to assign your lease with Kruvant to him?

A. Correct.

Q. Now, one more thing happens in this chain; is that correct?

A. I—well, you better say what. I'm not sure what you're driving at.

Q. After becoming your assignee on the lease from Mr. Kruvant, Mr. Gertner leases back to you; is that correct?

A. Correct, correct.

Q. All right. What is the amount of the lease from Mr. Gertner—I'm sorry—yes, Mr. Gertner back to you?

A. I know it better on a per-bed basis rather than total figure.

Q. All right.

A. $1,700 a bed plus $100 a bed for furniture, which is $1,800 a bed.

Q. How many beds are in East Orange Nursing Home?

A. 195.

Q. Does that come to $351,000?

A. I think that's correct.

Q. Mr. Kruvant has a lease to you for $272,000; is that correct?

A. Correct.

Q. Okay. Now, after the home opens, to whom do you pay your rent?

* * * *

A. Actually, I pay that portion of the rent that's due to Mr. Kruvant directly to him, and the balance I pay to—at present it's the assignee of Mr. Gertner.

Q. All right. According to the documents, you would be paying Mr. Gertner $351,000; is that correct?

A. Right.

Q. But to shortcut things and make them easier, you simply paid Mr. Kruvant directly $272,000 and the balance to Mr. Gertner?

A. Yes. Well, not just to make it easier. It was Kruvant's desire that it be done that way.

Q. How much is Mr. Gertner getting? What is the difference between the 272 and the 351? According to those amounts, is it basically 79,000?

A. I thought it was 78, but close enough.

Q. All right. So that, to summarize it, and referring to this chart which is Exhibit C-3 for the purposes of identification, assuming that the state reimburses the full $351,000, $272,000 is going to Mr. Kruvant and $79,000 is going to Mr. Gertner; is that correct?

A. Correct.

Q. Now, one more individual enters the chain in approximately June of 1974; is that correct?

A. I think it was May 15th, '74.

Q. All right. What is his name?

A. Menachem Kurnik.

* * * *

Q. Where does he live?

A. Belgium.

Q. Antwerp, Belgium?

A. Antwerp, Belgium.

Q. How does he enter the picture, if you know? Where does he come from?

A. Well, Yehuda Gertner was very unhappy with the deal in spite of the fact it looks like he's doing so well on the chart. He wasn't doing very well and he had fears he would lose his money and wouldn't get his money out, and I at the same time had fears I may have to go bankrupt. So he decided to go out and he got this Menachem Kurnik to—you know, he took a reasonable calculated risk, so to speak. If it goes well, he'll get a nice return. If it goes sour, he'll lose everything.

Q. He assigned his position to Mr. Kurnik; is that correct?

A. Correct.

Q. Do you know what the terms of the agreement between Mr. Kurnik and Mr. Gertner were?

A. No, I do not.

Q. All right. Mr. Gertner gave you the $75,000 for your agreement with Mr. Kruvant, is that correct, or he gave you a letter of credit?

A. A letter of credit.

Q. All right. He also became the obligee on a series of notes; is that correct?

A. Correct.

Q. And that series of notes will be paid back by Mr. Kruvant over ten years; is that correct?

A. Yes.

Q. What is the term of the lease between Mr. Gertner and yourself in years, number of years, if you recall?

A. Twenty years with a twenty-year renewal.

Q. All right. It's a twenty-year lease. Would it be fair to say that for Mr. Gertner's investment of $75,000, then, he's receiving $79,000, according to the documents, for a period of twenty years?

A. Well, I believe I once pointed out that it would take close to five years for him to get back his first 75. Thereafter you'd be right.

Q. All right. Let's not analyze the investment. Let's just—the question is——

A. No, it wouldn't be twenty years. I'm answering you specific. It couldn't be twenty years because—wait a minute. From the time—see, he put up the money in 1970, beginning of '71, and it took two years to build. So, I mean, so you had money tied up, and then it was furniture, so you wouldn't get a return right away. But then once it started, he would get what you said.

Q. For how long?

A. For twenty years.

Q. Okay. Have you ever multiplied $79,000 times 19.5 years or twenty years?

A. No, but I'll rely on your figures.

Q. All right. My figures are in the area of $1,580,000 which he is receiving for an investment of $75,000.

COMMISSIONER POLLOCK: *What was that figure again?*

MR. SIAVAGE: It's approximately—well, 19.5 years would be exactly $1,540,500.

BY MR. SIAVAGE:

Q. Could you have found another lender to give you the $75,000 at perhaps better terms, Mr. Cohen?

A. If the rules and regulations of New Jersey would have been otherwise, I probably could have.

Q. All right.

A. But under the rules that they had, it was very difficult.

Q. Do you think you could have found a bank that would have given you a severty-five-thousand-dollar loan for 104 per cent annual interest?

A. No.

Q. Okay

A. I can only explain it, if you wish, but, no.

Q. No. that's all right.

How the deal mysteriously gravitated from the Venezuelan toymaker to Mr. Kurnik, the man from Antwerp, was related by Mr. Cohen, at least to the extent of what he knew or purported to know of the details of the switch:

Q. Now, has Garden State Nursing Home ever actually made out a check to Mr. Gertner in the amount of $79,000? Have you ever paid Mr. Gertner a seventy-nine-thousand-dollar check? Have you ever given him any currency?

A. I haven't given him anything.

Q. Never paid him any money?

A. No.

Q. Now you can explain to us why you have never given him the $79,000 a year.

A. Because his obligation was, as you mentioned earlier, to pay for the series of notes or furniture, which added up to a little over $75,000, in addition to which he had to pay for any furniture that was a necessity for the proper operation of the nursing home, and before I would start paying him anything, the first money, the money that was due him for rent would be applied directly towards these furniture payments.

Q. All right. So, instead of paying Gertner his $79,000 a year, he had certain obligations under the lease is your testimony?

A. Correct.

Q. Which you paid for and used as a setoff against that seventy-nine-thousand-dollar-a-year obligation to him?

A. Correct.

* * * *

Q. All right. Is that the furniture that you purchased for Mr. Gertner in satisfaction of his obligations?

A. That's the furniture that I paid for, yes.

Q. All right. Was it in satisfaction of the obligation of Gertner under the leases?

A. Part of the satisfaction, right.

Q. All right. Was the balance of those moneys paid to Mr. Gertner? This total amount, by the way, is $150,000. Would you like to examine the document?

A. Of which Mr. Kruvant paid $75,000.

Q. All right. So this represents $75,000 of Gertner's obligation?

A. Right.

Q. How long was Gertner obligated to—I'm sorry. Strike that. How long were you obligated to pay the $79,000 to Gertner; what period of time?

A. For the life of the lease.

Q. All right. In actuality, how long did that exist before Mr. Kurnik came in the situation?

A. Till 1974; May of '74.

Q. All right. Was it in existence in 1972?

A. Yes.

Q. W as it in existence in 1973?

A. Yes.

Q. And it ceased in May of 1974?

A. Yes.

Q. So it lasted about two and a half years?

A. Correct.

Q. And you paid an obligation worth $75,000 for Mr. Gertner. Did you end up at the end of this owing Gertner money?

A. Yes.

Q. How much was it, do you recall?
A. I believe it was $30,000 or so.

Q. Did you ever pay him that money owed to him?
A. No.

Q. Did you have discussion with him concerning that amount?
A. Certainly did.

Q. Was he upset at the fact that he was not receiving it?
A. Yes.

Q. Did he decide then to get out of the deal, so to speak?
A. Yes.

Q. And he assigned to Mr. Kurnik?
A. Yes.

Q. Do you know anything of the negotiations between Gertner and Kurnik?
A. I do not.

Q. Do you know where they took place?
A. I do not.

Q. Did they take place on foreign soil, to your knowledge?
A. I presume so, but I have no real knowledge.

* * * *

By Commissioner Farley:

Q. Let me just understand this, Mr. Cohen. As I understand it, the State of New Jersey, based upon the Gertner East Orange lease, that would be this lease, pays you $351,000 a year?
A. Yes.

Q. That's correct?
A. Correct.

Q. And then you, theoretically or literally, have two landlords. You pay $272,000 of that to Kruvant; is that correct?
A. Correct.

Q. If you added the 79 onto the 272, we come back to the 351?

A. Correct.

Q. But you have not been paying this money to Kruvant because you have some kind of an amorphous arrangement about buying furniture?

A. That was in the past. I have been paying it lately.

Q. I see. How many years——

A. Gertner never got any money, but Kurnik has gotten money from me.

Q. How much money has Kurnik received?

A. I could do a little computation.

[Whereupon, the witness confers with counsel.]

A. About $120,000.

Q. And that will be continued to be paid?

A. Yes.

Q. And it will be paid out of this sum; is that correct?

A. Right.

Q. What is the total amount that ever came to East Orange Nursing Home from this red line, whether it be the Kurnik or the Gertner lease?

A. You're talking total amount of dollars was $75,000.

Q. All right. So you've got $75,000 and you've bought some furniture out of the 351 that you got directly, correct?

A. Right.

Q. If you multiply the 79 by the 20 years, we come out with approximately 1,580,000, more or less, correct?

A. Correct.

Q. So for 75,000 coming in in cash and you buying some furniture, which you were already paid for by the State of New Jersey, theoretically, the balance of that will be paid out along this red line?

A. Well, that, that is correct from the dollars. But there was another major consideration that Mr.

Gertner had to, had to—gave to East Orange Nursing Home beyond the 75,000 in cash.

Q. But according to the documents, and let's just stick with the documents for the time being.

A. Well, according to——

Q. You would agree that all East Orange ever got was 75,000, but, theoretically, pursuant to the terms of the lease, if it ultimately is run out to the end, this red line will pick up about $1,500,000?

A. The dollar figure, the dollar figures that you're restating are correct.

Q. And the source of that million-five on the red line is from the State of New Jersey, which is paying you this 351 a year?

A. Correct.

* * * *

Q. On the bottom line, as I see it, at least from the documents, is that for a seventy-five-thousand-dollar cash investment, either through Gertner or Kurnik, ultimately New Jersey will be paying close to a million and a half dollars?

A. Correct.

Q. How can you defend that as far as the taxpayers of this state are concerned?

A. I only can explain what my motives were and what my thoughts were at the time I entered into the deal and negotiated the deal.

I went into the nursing home and I want—would have preferred to operate it myself without having to come onto outside people to help me. I began to—as I got deeper into it, I realized that the operating capital, startup costs may run much higher than I had originally anticipated, and I had to find some means to finance myself.

The most obvious thing to me was to try to get a partner to go into this deal with me. But the rules and regulations of the state have no room for a partner in the nursing-home field, because the only money you can make is your salary and beyond that you have to expect to lose a little bit because they

don't reimburse you all your costs, most of your costs, and no profit factor. So I couldn't possibly interest an honest person to become a partner of mine.

Q. So what did that leave you?

A. That left me one other choice; try to go out and make a loan. I couldn't do that, either, because again there would be no way in the world for me to be able to tell the man where I'm going to get the money to pay back the loan because never will I make a profit. I can't get back the money I lost originally.

Q. What was your last option?

A. My last option was so-called what you call a loophole, whatever you want to call it. The only place would be in the real estate area would be to have a man do what I did; is to sign it and sign it back.

Q. So let me rephrase it from legitimate transaction, no can do; bank, no can do. So, you go into the outer extremities of legitimacy and there is where you find the loophole?

A. Now, only one thing, though, I do want to point out; that at the time when I entered it, I say again I had in mind very much this chart and I knew more or less what the state considers a fair amount to pay for a home. When I negotiated with Mr. Kruvant, and it was heavy negotiations, went on for a long time, I was very well aware that I was negotiating what you would call a very good lease, well below what most people were negotiating in the nursing-home field, and mainly because Mr. Kruvant was putting up a building on my—on the strength of my lease. In other words, he didn't want to invest until he knew he had a customer, and it was because—and it was very particular who he chose for a customer, and because of that I was in a position to drive a hard bargain with him to leave me a little room so I could turn around and get someone else to enter the deal and still come into the reasonable amount so that the total amount of money that the state is spending is not more than it would spend on any average nursing home.

* * * *

In a further explanation of the pyramiding paperwork involving his entry into the nursing home business in New Jersey, Mr. Cohen told how he had lacked "start-up" cash and how the lease he signed with Mr. Gertner of Venezuela provided, among other benefits, a vehicle for purchasing furniture for the nursing home—through public funds.

EXAMINATION BY COMMISSIONER POLLOCK:

Q. I recognize from your testimony which I have heard here today that, prior to entering the nursing-home business, you, indeed, had been in the real estate business in New York.

A. Right.

Q. And that, notwithstanding that, you did not have sufficient initial cash for your start-up cost, right?

A. Correct.

Q. And so you had to get the 75,000 from Mr. Gertner, okay?

A. Correct.

Q. And beyond that, you didn't have sufficient funds to go out and purchase the furniture?

A. Correct.

Q. So that the lease that you signed with Mr. Gertner, which I think is marked C-11, provided for a vehicle for you to purchase the furniture for the nursing home?

A. Correct.

Q. And that lease contained the rental payment, which I guess the figure is $351,000 a year?

A. Correct.

Q. So out of that rental payment is coming the money to buy the furniture to make the nursing home suitable for occupancy by your tenants?

A. Correct. If I may just inject, I don't know if it makes any difference, I mean there's a certain amount of money that I knew I needed altogether in the nursing home. Whether the 75 was for the furniture, I knew I didn't have enough money to cover all aspects of what I needed. So, I mean, it happened it

was earmarked this way for furniture. I could have just as well taken my money for the furniture and used his money for something else. I worked out this way. I had to put up a lot of money of my own in addition to the $75,000.

Q. But another nursing-home operator who had sufficient capital for this venture would not have had to include in his rental arrangement a sum sufficient to purchase the furniture?

A. Correct.

Q. And, indeed, it's the rental set forth in C-11, the $351,000, which is one of the figures on which you qualify for reimbursement for public funds, right?

A. Right.

Q. So, in effect, from public funds, based on the rental set forth in C-11, you are obtaining the money to buy the furniture to make the nursing home suitable for occupancy by your tenants?

A. I don't fully understand the question. I mean, if I can rephrase it, if you permit me to rephrase it, what I did perhaps then would answer. I needed a large amount of money to open up the home because until you fill up a home you have tremendous expenses and you don't get reimbursed on those expenses, and you have to be in a position to lose that money. Now, I had, I think at the high point, I had about $200,000 of my money in the home and I saw there is a limit how much. That was about all I could possibly go and expect—I thought it would be less, wound up I was short. I needed additional money. It wasn't furniture or this or that. Just to be able to operate a nursing home in the state of New Jersey I needed additional money, and I turned to Mr. Gertner and I used this vehicle, this method of getting $75,000 additional in order to operate the home.

Q. Yes. But it was because you didn't have enough money of your own?

A. Yes. If I didn't have to buy furniture, I wouldn't. That's very true. By the same token, if I didn't have operating expenses, I would have money for furniture.

Q. It was your own lack of personal finances in going into the real estate venture that resulted in the sublease C-11 being signed in which the rental was bumped up to the sum of $351,000 so you could make a go of it on your real estate investment?

A. Well, I mean I had—I don't know what you're driving at, but what I'm trying to point out, I mean, if this would have been a gravy train that would be I couldn't possibly lose and only could make and everything would be fine, I probably could have raised the $75,000 by selling some of my land holdings. I have other assets, but I didn't have the liquid money and I didn't want to, you know, just simply tie myself up hand and foot in a risky adventure, and I went as much as I could my own and the rest I raised this method.

$1.580 Million for $75,000

Mr. Cohen conceded that the New Jersey Medicaid program was not designed to enrich nursing home speculators, such as the East Orange deal had done through foreign wheeler-dealers. And he also conceded that loopholes in the Medicaid law and regulations should be closed to keep people from "getting rich unnecessarily and unfairly"—but that the reforms should not proscribe private investment in and operations of facilities. He expounded at some length on his philosophy on how the nursing home business should operate.

EXAMINATION BY COMMISSIONER POLLACK:

Q. Okay. And under the documents as drawn based on Mr. Kurnik's —strike that—Mr. Gertner's initial investment of $75,000 cash, Mr. Gertner and now Mr. Kurnik, indeed, stand to receive, or stood to receive, $1,580,000; is that right?

A. Yes.

Q. And that's American taxpayers' money going to two foreign investors on the basis of a seventy-five-thousand-dollar cash investment, right?

A. Right.

* * * *

Q. Do you believe that the Medicaid program for reimbursement for nursing homes was intended to provide a one-million-five-hundred-eighty-thousand-dollar return to a foreign investor on a cash investment of $75,000?

A. That was not the purpose of the Medicaid program, by no means.

Q. You know, the one other thing that troubles me in addition to some of the other statements, including the most recent one, is that you have been testifying here for about two hours and, if my recollection serves me correctly, the whole thrust of the testimony and your involvement and that of Mr. Kurnik, that of Mr. Gertner is that this became, in effect, an attractive real estate investment because of the introduction of Medicaid in 1971 and nowhere in the statements made thus far have I heard any concern expressed about the quality of care provided the patients. It's all a bed is worth so much and the bed is the mode of computing the real estate investment.

A. Yes. I am in full agreement with you that the main purpose of the Medicaid program is, and should be, patient care, maximum patient care in the most efficient manner, and by "efficient," I mean the most economical, too; most economical to give the best results.

I'm in full agreement that this is the correct goal and purpose and should be the purpose, and I feel that, although what you're trying to do at this particular hearing, which I understand what you're driving at, is basically a correct thing, but I'm afraid that it's going to backfire and you're going to destroy the underlying purpose that I just stated what you agree with me is the purpose, because it is true that there probably are some so-called loopholes, like perhaps this, what happened here may be a form of a loophole.

However, the basic concept has to be that, if you want to attract reasonable people to operate nursing homes in a reasonable manner at an efficient way, you have to allow them some incentive. You have to know

that we believe in the capitalistic system of government; that people work better when they have some incentive, not just for pure idealism. I mean, I may feel that I chose the nursing-home deal because I happen to like people, and I think I'm very proud of the fact I take good care of them, but I won't deny that my underlying purpose of going into the field was to make a living, make a comfortable living. And if you take that away from the nursing-home field, you're going to wind up with defeating the very thing what you're trying to drive at. In other words, you're trying to save dollars for the government and you're trying to bring about a tremendous expenditure, because you're going to encourage a system of waste and inefficient operations of nursing homes. I don't mean you as such. I'm talking if you block out all forms of a person being able to get a return on his investment and if a man operates a home efficiently and saves money and he can't make anything on it, it's going to wind up with government-run homes and voluntary-run homes, which have proven, and it's known, will cost at least two to three times as much to operate. Now, so, what I believe is the correct theme is to block up loopholes. There is no reason for, you know, having people getting rich unnecessarily and unfairly and so on and so forth. However, what is very important to work hand in hand at the same time is to make sure that the reasonable person who's not trying to get enriched, who honestly wants to enter the nursing-home field because he thinks his personality is such that he could render a service and render good service, that he should be able to operate in a way that he wouldn't have to come on to such type of arrangements. He should be able to go to the bank and say, "Look, in the nursing-home field, if I operate correctly, I'm going to be able to pay you back because the state will reimburse me for whatever I put in, whatever you loan me."

"More Than They Deserve . . ."

Mr. Cohen said he and his wife were drawing more than $38,000 a year in salaries out of the East Orange nursing home business

even while he was on the verge of bankruptcy. As for the foreigners with whom new leasing arrangements were negotiated on top of the original lease, Mr. Cohen admitted they got more than they deserved but that they regarded it as essential for the gamble they were taking rather than a gouging of taxpayers.

Q. What was the salary you drew out of the nursing home for last year?

A. 27,500.

Q. And no dividend?

A. No.

Q. How many other members of your family do draw any salary out?

A. My wife.

Q. What did she draw?

A. Approximately, I think, 11,000.

Q. And yet based on this statement that you have just made, because of your own personal circumstances at the time you entered this venture, you now find, indeed, just stated very graphically, that two other investors have been, in effect, if I may use the word, gouging and have their hands deep into the taxpayers' pockets of this state. Is that a true statement?

A. Well, as I said before, they did—I don't know what happened between Gertner and Kurnik, but Mr. Gertner definitely took a risk and the proof of it was a risk because I know I was on the verge of bankruptcy at the beginning. I knew I almost couldn't make it because with the feeling, I was running above the ceiling, and I kept losing money. I just didn't know what to do and I couldn't meet my payments to him. And when Kurnik took over, he knew I wouldn't be able to pay him at first. We were counting on as I said before, the stroke of the pen that would change some of these rules or give a higher ceiling, so on, so forth.

So there was a definite risk. I mean even though they are getting tremendous—and I feel, like you say, that they're getting more than they deserve—I have to say that, in their defense, it isn't—you know, when you say gouging, they look upon it as business people taking a gamble.

Q. They have no interest in the service to the patients, do they?

A. No, not at all.

COMMISSIONER POLLOCK: Thank you.

Mr. Cohen explained how he had long needed a storage room in East Orange that would cost $30,000 but that he lacked the incentive to undertake the project because, were he to borrow from a bank, if he could, he'd get state medicaid reimbursement for only the interest and not the principal. He said he probably could make another "deal" such as the Gertner-Kurnik scheme but "I don't want to go into another arrangement like this."

Questioned by Commission Chairman Rodriquez, Mr. Cohen said S.C.I. probers were the first to confront him with the multi-lease deal, since no one ever came around to check the books.

Q. All right. Let me ask you this, if I may.

A. Yeah.

Q. There is an excessive amount of money goes to the Gertners and Kurniks out of this country; is that right?

A. That is right.

Q. If we drove them out, would that drive out the Cohens? Yes or no.

A. If you do not change your laws, yes.

Q. All right. So we have to be paying out $79,000 a year and you can't put up a thirty-thousand-dollar facility and yet the State of New Jersey is putting out $351,000 a year, someone's getting 79,000 and you've got to struggle to put up a thirty-thousand-dollar facility?

A. One second. I don't think I was understood correctly there. I could raise the $30,000 to put it up. I'm saying, I have no way of being reimbursed. I have no incentive to do it, what I said.

Q. You don't have the incentive because you have entered into a deal that you're paying out $79,000?

A. No. That's the part that apparently didn't come across. I agree that what that part should be blocked. The people shouldn't be able to make that kind of money.

Q. So far as that part's concerned, we are just throwing money away——

A. Right.

Q. ——as far as the nursing homes are concerned?

A. I agree with that. I don't think that will backfire in your face. That's good.

Q. Did anybody come around to check the home to find this fact out, to confront you with this lease, to say, "Listen, there's a lot of this money leaving and is it a smart thing to do as far as you're concerned?"

A. No.

Q. So we are the first ones who uncovered this transaction?

A. Well, I don't know if you're the first ones to uncover it.

Q. First ones to confront you with it?

A. First ones.

Q. Even though leases have been filed in the past?

A. Right.

Exit Mr. Cohen

In his concluding remarks, Mr. Cohen recapitulated portions of his previous testimony in response to final questions from the Commission.

Yes, he had negotiated a deal with Mr. Gertner, he said, on Dec. 18, 1970, a year before he signed the lease with Mr. Kruvant for the East Orange nursing home property. He was not aware, he continued to contend, that the arrangement with Gertner came only 13 days before a state regulation would expire that would allow him a 125 per cent medicaid state reimbursement rather than 100 per cent. He said Mr. Kruvant was not aware of his deal with Mr. Gertner "till well afterwards." Therefore, Mr. Kruvant was never given an opportunity to negotiate a better deal, such as the $351,000-a-year instead of the $272,000-a-year lease that was negotiated by him with Cohen. Mr. Cohen said he feared that any suggestion of that opportunity might have caused Mr. Kruvant to fear Mr. Cohen lacked the wherewithal to carry out the project and he might have "packed out altogether."

That $75,000 arrangement under which Mr. Kruvant purchased the furniture for Mr. Cohen's nursing home had been crucial but the reassignment or leaseback-ahead-of-time arrangement with Mr. Gertner that produced the $75,000, subject to complete reimbursement by the state, was not known to Mr. Kruvant.

EXAMINATION BY CHAIRMAN RODRIGUEZ:

Q. All right. Now, is it possible to get the reimbursement before you actually had patients in the nursing home?

A. No, I don't believe so.

Q. All right. So let's go back again to the other question you answered about the furniture. Then the furniture had to be purchased before you were opened?

A. Oh, yes.

Q. And you had to have patients in the beds?

A. Yes.

Q. All right. Then you start receiving reimbursement?

A. Correct.

Q. All right. Here's my last question. When was the first time that you disclosed to Kruvant the identity of Gertner or Kurnik?

A. I can't give you an exact time, but I can give you an approximate time. One of the things that worried me was that, according to the terms of the lease, he had a right to refuse, to turn me down because I couldn't assign without his permission for six months after I entered into the deal with him, and so I wanted to wait, you know, as long as I could. But more than anything I wanted to make sure that he starts—see, he wasn't sure he wanted to go into this nursing-home deal altogether. He had this building——

Q. Pardon me. Let's see if I understand that. You had an agreement with him not to divest yourself of the lease for six months?

A. I had agreement with him that I would, should, needed his permission to, approval if I decide, if I wanted to divest myself.

Q. And you committed yourself to him on that provision of the lease on December the 12th, 1971?

A. Pardon?

Q. And you committed yourself to Kruvant when you executed the lease with him, that you would not convey your interest?

A. I didn't commit myself. It's a statement in—I mean that he doesn't have to recognize an assignment within six months without his permission.

Q. But that agreement was in the document——

A. Right.

Q. —which you signed in 1971?

A. Right.

Q. But you, in fact, already—

A. Right.

Q. —had some many days before that already done it?

A. Right.

Q. And you didn't tell him at the time you entered into the agreement with him?

A. No, I did not.

Q. Plus you didn't give him the opportunity to increase the rent if he would put up more money?

A. Right.

* * * *

EXAMINATION BY COMMISSIONER FARLEY:

Q. Mr. Cohen, may I ask you just one question, hypothetical. If you had $75,000 in cash extra on or about January 1, 1971, you wouldn't have needed Gertner, would you?

A. No, I mean I would never get reimbursed the $75,000, but I wouldn't have bothered with Gertner.

Q. If you had the additional $75,000, you wouldn't have the Gertner deal?

A. Correct.

Q. So, for the lack of Mr. Cohen having that $75,000, New Jersey's going to pay 1.5 million dollars to Gertner and Kurnik, residents of Venezuela and Belgium, correct?

A. Correct.

What Mr. Kruvant Didn't Know . . .

Mr. Philip Kruvant, the owner of the property that Mr. Cohen, et al., subjected to a swirl of contractual restructuring, didn't know until the S.C.I. inquiry that his $272,000 lease had been rearranged into a $351,000 lease and that the State of New Jersey was paying all the extra freight. Mr. Kruvant was the final witness on the first day of the Commission's hearing into the matter:

EXAMINATION BY THE CHAIRMAN:

Q. Mr. Kruvant, I have just one. To clarify in my mind, when you entered into your lease with Mr. Cohen, which was back in January 12th, 1971,—is that correct?

A. That's correct, sir.

Q. Were you aware in or about that time in 1971, January, of the presence of Mr. Gertner?

A. No, I was not.

Q. Were you told or was it suggested to you that, if you were to pay for the furniture yourself, that perhaps the lease might be increased to $351,000 a year?

A. I did pay for the furniture.

Q. Pardon me?

A. I did pay for the furniture.

Q. You did pay for the furniture?

A. Yes. I made that statement. It was my money that went for the furniture. If he lent me money, he lent me $75,000. I took that money and I agreed to pay it back over a period of years, and that was for advancing money, from my point of view, for the total investment; to assist in the total investment I was making.

Q. Then were you aware then, Mr. Kruvant, that, when you executed your lease with Mr. Cohen for a two-hundred-seventy-two-thousand-dollar-a-year return, that he already had entered into another document whereby he was going to pay $351,000 a year?

A. I knew nothing of that agreement.

Q. Based on his testimony to us, simply because that investor was buying the furniture, that would not be a true statement?

A. No, I have no knowledge of that. I say, at the time I knew nothing about the transactions between Mr. Cohen and Mr. Gertner. All I knew, he was assigning his lease, to which he had no objection, and he was going to operate it and pay the rent, and one day I met him, as I stated before, casually. Mr. Gertner I mean. That's as far as I knew of that whole transaction.

MR. CHAIRMAN: Mr. Farley.

EXAMINATION BY COMMISSIONER FARLEY:

Q. Mr. Kruvant, something comes to mind. I gratuitously put this on the record: that I think you are a sophisticated investor and you negotiated for about eight or nine months with Mr. Cohen with respect to determining a rental on this property. Is that correct?

A. No, not only rental. The rental was probably agreed much sooner. This lease is a very complex lease and this lease tied in with F. H. A. commitments and approvals by F. H. A. and final approvals by the nursing authorities of the state, and producing this, it was really quite complex. It's—I don't know —maybe fifty, sixty pages long.

Q. If I may distill it, though. After this long negotiation——

A. Yes.

Q. —wherein you gave him a completed unit, to wit, real estate plus furniture and all the facilities, correct?

A. Yes.

Q. You were going to get 272,000 a year?

A. Correct.

Q. And out of that 272,000 a year that you now get, you admit this is about a 16 per cent return on your money?

A. Yes.

* * * *

Q. All right. So, as far as you were concerned, the $272,000 was an adequate sum for you to lease this property for twenty years?

A. Yes, yes.

Q. And are you aware that the State of New Jersey is paying $351,000 a year for the lease of this property?

A. I learned that very recently before this closed meeting where I was called maybe a month ago. First time I knew anything about that.

THE CHAIRMAN: You first heard it from us?

THE WITNESS: Yes, from you.

Q. So, notwithstanding the fact that you are doing quite well, I would think with the 272,000 a year that you get, New Jersey is paying about $80,000 a year more than that.

A. I don't follow. I don't follow that.

Q. Well, I think you would have to concede to me that after this deal was finally put in a finalized form and you began getting your 272,000 a year——

A. Yes.

Q. You have made a reasonably good investment.

A. Yes.

Q. Now, the only thing that bothers me is if the 272,000 a year seems to reflect a decent rental value, why should the State of New Jersey be paying 351,000 toward subsidizing this rent? You don't know?

A. I can't answer a question like that. If you ask me something about myself—I can't answer a question like that.

Q. I know you can't. The point that I'm making, sir, is that——

A. I understand your point, but I can't answer that kind of a question.

Q. But you are getting a fair rate of return on the 272,000?

A. Yes. I have a legal agreement that I'm accepting that and I was satisfied to make that agreement on that basis and I did.

Exit Mr. Kruvant

As he concluded his testimony, Mr. Kruvant finally had to concede that Mr. Cohen et al. had gotten the better of the deal—or redeal. Counsel Siavage reopened this area of discussion:

Q. Did you feel, as a businessman, that you had negotiated a beneficial transaction to yourself on the 272,000?

A. No, no. I felt that under the circumstances, that considering, considering the risk involved with this property, which, as I said, was a single-purpose property, the success of which was not the building but basically the success of the operator, that 15 per cent return was on the low side for that kind of risk property, actually.

Q. Did you feel—and this may be an unfair question, you may not be able to answer it, but did you feel, or did Mr. Cohen give you any indication that he felt, the deal was a beneficial one to him?

A. He entered into the negotiation and consummated a deal. I assume he thought it was a good deal, otherwise he wouldn't have gone into it. I can't answer.

Q. He was poker-faced?

A. I can't answer for him.

* * * *

EXAMINATION BY COMMISSIONR FARLEY:

Q. I would just like to ask another couple of questions, Mr. Kruvant. You will have to take them in a hypothetical form. Assuming you were getting the rents that New Jersey is paying, to wit $351,000, will you accept my mathematics that this would hypothetically increase your input by $17,000?

A. Yes.

Q. And that would show about close to a 50 per cent return on your investment?

A. I assume, if your calculations are right.

Q. And that's a pretty good deal?

A. I wish I had it.

EXAMINATION BY THE CHAIRMAN:

Q. Were you aware that it was capable of being reached back in 1971?

A. I can't answer a question like that. I can only tell you what I did. What somebody else did I have no way of knowing.

Experts Confirm Gross Excess Payments

Two highly expert, professionally esteemed appraisal authorities, Robert Aubrey Stewart Miller and James C. Kafes, were the lead off witnesses at the second and final S.C.I. hearing day. They are principals in a partnership specializing in real estate analysis and evaluation in Fort Lee, N.J. They are, naturally, accredited members of the American Institute of Real Estate Appraisers and of American Society of Real Estate Counselors. They provided expert—and illuminating—testimony on three nursing home cases on which the S.C.I. subjected the spotlight of a public hearing, the Edison Nursing Home, the Lincoln Park Nursing Home and the East Orange Nursing Home. S.C.I. Counsel Michael Siavage began with Mr. Kafes:

Q. With respect to the East Orange Nursing Home, Mr. Kafes, yesterday the Commission took testimony concerning that home and you have been apprised of the essential facts surrounding those transactions, have you not?

A. Yes, I have.

Q. All right. Firstly, are you aware of the construction costs of that facility?

A. Well, according to the figures supplied to me, I believe the total project costs were about $2.2 million.

Q. All right. Now, yesterday in Commission testimony it was illustrated that there was an individual who was making an exorbitant, I think by

anyone's characterization, rate of return involved in a lease transaction, in an assignment and a leaseback.

A. I'm aware of that.

Q. Okay. I want you to disregard for the moment the fact that there are three individuals involved in the lease on that home and assume only that the State of New Jersey is paying $351,000 to that home in rental, which is the correct figure, I believe. Is that correct?

A. Yes, it is.

* * * *

Q. Okay. Suppose for a moment that I am one of your clients and I seek your advice on real estate consulting and I come in to you with a signed lease for $351,000 per year for a term of twenty-two years. Okay?

A. Yes.

Q. And further suppose that I plan to build that nursing home for $2.1 million and finance it with a 1.9 million-dollar mortgage at 9 per cent for twenty-two years, interest only in the first two years, and I would ask you what your advice would be to me with respect to that deal on the basis of the fact that my income is $351,000 a year as opposed to the expenses on that mortgage.

A. And the only expense is the mortgage expense?

Q. That's right.

A. Well, I would say that the deal looks like a real winner. If you can get a net rental from a fairly guaranteed source for 351,000 per annum and you could erect a property for 2.2 million, I would say in using traditional methods of capitalizing that income into an expression of value, you could create a value here of around 3.4 million.

The fact that you have constructed for 2.2 million means that immediately you have created an unrealized gain of 1.2 million. So I would say it's a very attractive investment.

Q. All right. Let's suppose that you were a New Jersey resident and a New Jersey taxpayer.

A. Certainly.

Q. Okay. Suppose it was your tax dollars that were supporting the $351,000 a year on a value of 2.2 million. Would you want that to continue?

A. No, I don't think I would. If the system purportedly is designed to reimburse reasonable costs, I certainly wouldn't want to pay this figure.

EXAMINATION OF MR. KAFES BY COMMISSIONER POLLOCK:

Q. Assuming, as the facts seem to be, that the cost here is 2.2 and the income is 351,000, this is a lot more than a real winner or an attractive investment, which is the term that you used, recognizing that the income is being generated by public funds. I don't want to put words in your mouth. I can put some words in my mouth. But does this not sound to you like a grossly excessive return?

A. Well, sir, that's a moral question.

Q. No, there's a matter of economics. Recognizing your expertise in appraising property, your familiarity with nursing homes, does it not sound to you, as an expert in this area, that a return of $351,000 a year, given the conditions that exist in New Jersey, on a 2.2 million-dollar investment is excessive, just as a matter of economics?

A. Well, this is true, yes. You know, 2.2 million, given the fact that the source of this 351,000 is a secure one and it goes on for a long time, I would have to agree with you.

Q. Because there is a shortage on beds, right?

A. Surely, surely.

Q. So the risk here is low?

A. Very low.

Q. And the rate of return—and I want to use words with which you agree and I want to——

A. Sure.

Q. —use words which are fair and accurate. Is not the return grossly excessive, given the market?

A. Yes, it is; yes, it is.

EXAMINATION OF MR. KAFES BY COMMISSIONER FARLEY:

Q. Mr. Kafes, I would like to look at that same problem in another way.

You are a purported expert in the field. Now, taking that figure of 2.2 million, what would you think vis-a-vis the taxpayers would be a fair rental value?

A. Well, if we take into account the mortgage portion of the figure, now that first mortgage is $1,914,000.

Q. Correct.

A. We understand the debt service is 185,000, so there is a remaining imputed equity investment here of $300,000.

Q. 293,000?

A. Right.

Q. Okay.

A. We would apply a reasonable capitalization rate to that investment of approximately 11 per cent. That would give us an income there of $33,000, which, added to the 185,000 for debt service, should provide a reasonable rate of return.

Q. All right. So that would come out to 208,000. Now, sir, let me just follow that through. The excessive rent being paid, in my judgment, then, is the difference between 351,000 and 208,000. Would you agree?

A. That would be a fair statement.

Q. Just so that the report would be complete, that would be $143,000 excess rent?

A. Correct.

COMMISSIONER FARLEY: Which would certainly comport with Commissioner Pollock's comment that it was excessive. Thank you.

COMMISSIONER POLLOCK: By over 50 per cent. Excuse me.

EXAMINATION OF MR. KAFES BY COMMISSIONER POLLOCK:

Q. By over 50 per cent it's excessive, right?

A. Yes, it is.

EXAMINATION OF MR. KAFES BY THE CHAIRMAN:

Q. So, then, basically, Mr. Kafes, if I understand your testimony, accepting their figures or the project cost figures and breaking it down this way, 143,000 is what is jumping out quite obviously as the excessive rent?

A. Correct.

Edison Nursing Home

The Commission at its public hearing questioned expert witnesses on "pyramiding" financial transactions connected with two other facilities, the Edison Nursing Home in Middlesex County and the Lincoln Park Intermediate Care Center in Morris County.

So far as the Edison Nursing Home was concerned, the testimony underscored the complaint emphasized in the Commission's written report issued in conjunction with the public hearings that:

> Since there is no limitation upon the amount of debt financing which the Medicaid program will allow, informed entrepreneurs will sell nursing homes at highly inflated values as long as the state continues to underwrite unlimited debt.

As an explanatory preface to the public hearing action on the Edison facility, here is what the Commission said in part under "comments and observations" in its written report on the situation:

> On October 13, 1970, the amount of financing on the nursing home was the amount of the outstanding mortgage ($1,943,665) plus the amount of the aforementioned note from 465 Plainfield Corp. of W.B.W. Associates ($916,720) for a total of $2,860,385. After the first year, the nursing home became a more than 90% Medicaid facility and remains so to this date. The result, of course, is that the State of New Jersey has paid the overwhelming majority of the interest on this indebtedness since it was incurred.
>
> The aforementioned figure, $2,860,385 is more than $360,000 in excess of any appraisal that has ever been done on the nursing home, including appraisals that were done some two years before this transaction.

The figure is also over $1,000,000 in excess of the total construction cost listed on the initial F.H.A. application when the home was being built. Finally, the figure is also more than $360,000 in excess of the value placed on the home by the owners themselves in their various tax appeals. It is true that the sale included an amount of $300,000 for good will, but the cost reports filed by the institution indicate nowhere that the financing on the institution pertains to anything but the building.

James C. Kafes, the appraisal authority who had previously dissected the East Orange Nursing Home transaction was questioned by S.C.I. Counsel Siavage on the financing of the Edison Nursing Home:

Q. Now, Mr. Kafes, have you also been provided with materials on another nursing home, known as Edison?

A. Yes, I have.

Q. I would like to refer you for a moment to Exhibit C-17, which purports to be a chart illustrating certain construction prices in an eventual transaction with regard to that home. The approximate construction price of Edison Nursing Home was how much?

A. One million point nine.

Q. All right. And this is according to the F.H.A. application for this particular project; is that correct?

A. Yes, it is.

Q. And includes not only construction costs, but also——

A. Indirect charges.

Q. Indirect charges. All right. And when was Edison Nursing Home built?

A. In 1965.

Q. Now, subsequently to the home being built, was permanent financing obtained upon it?

A. Yes, it was.

Q. What was the amount of the mortgage on that home?

A. The amount of the mortgage was for $2,225,300, and it was granted by the Garden State National Bank July 1st, 1965.

Q. All right. Now, is that approximately $230,000 in excess of what the project costs were, or about $300,000, I would say, in excess?

A. Well, according to the figures supplied, it appears that he obtained the proceeds of a mortgage $300,000 in excess of his actual cost.

Q. All right. So that he was more than 100 per cent financed in 1965?

A. That's true.

Q. Now, between 1965 and October of 1970 did anything happen?

A. Well, nothing affecting the ownership interest until October 13th, 1970, when the nursing home was sold.

Q. All right. Now, on that date—have you been supplied with the terms of that sale?

A. Yes, we have. The overall price was approximately $3 million comprised of the following: The buyer received $150,000 in cash. He assumed the outstanding mortgage of about a million-nine, and he took back a note for 916,000.

Q. So at this point on that sale in October of 1970 what was the total financing on the home?

A. 2.86 million.

Q. And that is a combination of the assumption of the *1.9 mortgage plus the note for 916,000; is that correct?*

A. True. Yes, it is.

Q. Now, referring you again to Exhibit C-17, what is the apparent vehicle to raise the financing from 1.9 million to 2.8 million in 1970?

A. Well, it would have to be that second mortgage note for 916,000.

Q. All right. Now, I show you, Mr. Kafes, what has been marked Exhibit C-25 for the purposes of identification, which purports to be a note in the amount of $916,720 between 465 Plainfield Avenue Corporation and W. B. W. Associates as a co-partnership of men involved in owning the nursing home since 1965. I ask you to examine that note for a second.

A. Yes, sir.

Q. Does it appear to be a secured instrument?

A. No, it doesn't. It just appears to be a note payable.

Q. All right. So might we say, then, that that note is basically an unsecured obligation?

A. I think we could.

Q. In the amount of 916,000 at an interest rate of 7-1/2 per cent for a term of ten years?

A. Correct.

Q. And as we said before, that's the vehicle that gets this value up to 2.8 million; is that correct?

A. Yes, it is.

Q. Now, Mr. Kafes, I'm showing you what purports to be a copy of the 1972 cost report for this facility, that is Edison Nursing Home, which has been extracted from Exhibit C-16, which is the cost report filed from the Division of Medical Assistance and Health Services, and I'm referring you to Exhibit 5 of that particular cost report to a particular line, that is, the mortgage payable line, and I ask you what that figure is?

A. $2,867,709.

Q. Can you draw the conclusion from that particular line that it appears that the nine-hundred-sixteen-thousand-dollar note is included in the financing?

A. Yes, the numbers seem to add up to that.

Q. All right. What is the interest rate that that home is claiming on that mortgage expense?

A. 5.25 per cent.

Q. And it's not the same as the 7½, is it?
A. No, it isn't.

Q. It's the mortgage interest on the initial mortgage of 1.9; is that correct?
A. It would appear to be.

Q. Could you tell by looking at that cost report that $900,000 worth of financing is an unsecured obligation?
A. No, you couldn't.

Q. All right. Now, based on your understanding of New Jersey's system of Medicaid reimbursement, will the state pay the debt service on this obligation?
A. They'll pay the interest portion of the debt service, yes.

Q. All right. That's a cost reimbursable item; is that correct?
A. Yes, it is.

Q. And the problem, is it not—strike that. Based on your understanding of the system, could this note be in the amount of $1,000,000?
A. I don't see why not.

Q. And it would have been reimbursable; is that correct?
A. That's true.

Q. Could it have been in the amount of $2,000,000?
A. I believe it could have.

Q. Or $5,000,000?
A. I would say, yes, according to your rules.

Q. Now, the beneficiary on that note is a co-partnership by the name of W. B. W. Associates, who are the same individuals who built that nursing home; is that correct?
A. That's correct.

Q. I show you what's been marked Exhibit C-26 for the purposes of identification, which appears to be the Federal Housing Administration building loan agreement, or a copy thereof, and ask you if you recognize that.
A. Yes, I do.

Q. All right. Now, from that document and from the financing that we have already reviewed, are we able to compute what the initial investment of W. B. W. Associates, under the name of another entity, was in this nursing home?

A. The original investment. Well, they have a total here of a million point seven forty-four, but I think we concluded a million-nine if we count the indirect charges in. I don't know where they're listed on this form.

Q. All right. But, as we said before, they got financing in the amount of 2.2, so that already they had made essentially $300,000?

A. That's true.

Q. So from those documents, it appears that not only didn't they invest anything in the construction, but they made approximately $300,000 as the proceeds of the financing?

A. Correct.

Q. All right. Now, between 1965 and 1970 were you able to compute what their investment in that nursing home was?

A. Well, disregarding the negative three-hundred-thousand-dollar investment, it appears the only charge he may have had is the breakdown, is his debt service payments over the period.

Q. Okay. Do you have a figure for that debt service?

A. Yes. That came out to about $280,000.

Q. All right. So his investment over five years, their investment, excuse me, over five years is approximately $280,000?

A. Correct.

Q. In 1970 what did they receive in return for that investment of $280,000?

A. They received a cash down payment of $150,000 and a note for $916,000, which totals about a million-o-sixty-six.

Q. All right.

A. Now, if we ignore for the moment the time value of money, that is to say, if we don't discount the note, that indicates a differential between what he's receiving and what he's paid out of approximately $746,000.

Q. Seven-hundred-forty-six-thousand-dollar profit. Now, let's stay with that for a minute. The cash of $150,000, which is in that seven-hundred-forty-six-thousand-dollar figure,——

A. Correct.

Q. —was supplied at the time of the sale, correct?

A. Yes, it was.

Q. All right. What's the rest of his income that makes up the 746?

A. Well, that comes from the mortgage note.

Q. All right. It comes from the mortgage note of 916,000?

A. Correct.

Q. Which is a reimbursable expense through Medicaid?

A. Yes, it is.

Q. And which then is therefore being paid by the State of New Jersey?

A. Correct.

Lincoln Park Care Center

The Lincoln Park Intermediate Care Center contained 526 beds, of which 294 were certified for Medicaid purposes at the time of the Commission's October, 1976 hearing. The facility is a joint venture of two corporations. The operating corporation is Lincoln Park Nursing and Convalescent Home, Inc., owned by Jerry Turco, and the land on which the nursing home is situated is owned by Mimi Holding Co., Inc., which in turn is owned 60 per cent by Mr. Turco and 40 per cent by his wife, Delores. A proposed sale and lease of the facility by the Turco holding corporation to David Schwartz of Brooklyn, following applications for a certificate of need for a change of operator from the State Health Department

and certification of an additional 226 beds for Medicaid, came under particularly close scrutiny by the Commission, which said it was "illustrative of the many and varied problems of the present system of property cost reimbursement as it exists in the Medicaid system in New Jersey today."

Under "Comments and Observations" in its written report on this phase of its investigation—reprinted here as an explanatory prelude to public hearing testimony on this nursing home's transaction—the Commisison stated:

> The schedule of maximum rental allowable is allegedly reflective of construction costs. The Lincoln Park facility was constructed for approximately $3.75 million and the "imputed rent" figure which would be employed on Lincoln Park's cost report, assuming 100% Medicaid certification, is $811,618, yet the actual carrying charges for the facility (mortgage interest, insurance, depreciation and a return on equity) amount to only $504,637. This is true, even though there is no equity on the part of the owner in the present facility as listed on the cost report. According to Mr. Schwartz's testimony, the beds which are not presently certified for Medicaid purposes are lying vacant. If the certification is approved, however, the owner, due to the deficiency of the present system, will be allowed to report a figure over $300,000 higher than his actual carrying charges. Moreover, the possibility of certifying the additional beds has surfaced an opportunity which is presently being taken advantage of by the proposed purchasers and lessee.
>
> The final result is that a home that was built and finished in November of 1974 for $4 million, is sold one year later for $8 million. It is the belief of the Commission, as supported by the conditional nature of the documents involved, that such a transaction could not and would not take place if it were not for the existence of the property cost reimbursement system of Medicaid.
>
> The most disconcerting factor, however, is that no portion of this increased cost is being applied to patient care. Mimi Holding Co., Inc., in the person of Mr. Turco and his wife, will have nothing to do with

the operation of the nursing home, but will be collecting $250,000 per year after having received $1.2 million in cash on an initial investment which was 100% financed. Mr. Schwartz, likewise, will also have nothing to do with the operation of the nursing home and will be collecting a net return of $210,261 per year for three years and $385,056 per year for 18 additional years. Moreover, there is no present administrative regulations or statute existing either in the laws of New Jersey or the regulations of DMAHS or the Department of Health which would prevent this situation from occurring. The Department of Health, as has been stated, has already granted one of the certificates of need necessary to consummate the transaction. It is because of this fact that the Commission decided to examine in detail the present procedures existing in both of the aforementioned administrative agencies for dealing with such transactions.

Mr. Kafes' equally respected partner in real estate appraisals and counseling, Robert Aubrey Stewart Miller, gave expert testimony on the Lincoln Park deals, as introduced by Counsel Siavage:

Q. Now, for the next few moments I'm going to refer you, Mr. Miller, to Exhibit C-18, which purports to be a chart concerning some of the transactions with respect to Lincoln Park Intermediate Care Center.

Have you been supplied with information that tells you when construction was completed on that home?

A. Yes, we have.

Q. And when was it completed?

A. In 1974.

Q. All right. What was the project cost for the institution?

A. Approximately $4 million.

Q. Now, I'm showing you what's been marked Exhibit C-28 for the purposes of identification, which purports to be a copy of an agreement, dated 21 November, 1974, between Mimi Holding Company, the owner of Lincoln Park, and David Schwartz, individually, of 1262 45th Street, Brooklyn, New York,

and I refer you specifically to Page 2 of that exhibit and to the chart which has been marked Exhibit C-18, and ask you to review for me the terms of a particular sale for $8 million on November of 1974. Particularly, is the first provision of that agreement that the buyer will assume a mortgage of $4 million?

A. Yes.

Q. Is another provision that he will provide $1.2 million in cash?

A. Yes.

Q. And will he also assume a three-hundred-thousand-dollar mortgage?

A. Yes.

Q. Finally, will he supply to make up the total $8 million a purchase money mortgage in the amount of $2.5 million?

A. That is correct.

Q. Now, perhaps you should explain what a purchase money mortgage is, Mr. Miller, at this point.

A. It's simply the form the mortgage takes when the seller agrees with the buyer that he will provide some financing. Normally, it's normally subordinated to the first or any prior mortgage that's already existing on the property.

Q. All right. Is there any institutional financing in that 2.5 million-dollar mortgage?

A. Not in this case.

Q. It's the buyer to the seller, correct?

A. Yes.

Q. And the total, therefore, is $8 million, agreement of sale dated approximately nine months after the completion, correct?

A. That's correct.

Q. Now let's take it one step further and I will show you what's been marked for the purposes of identification C-27, which purports to be a copy of a lease, dated May of 1975, between Lincoln Park Associates and Lincoln Park Intermediate Care Center, and I ask you again to refer to the chart. At this point

Lincoln Park Associates on this additional deal which has not yet come to fruition will buy for $8 million, and what you have in front of you is a lease between that entity, Lincoln Park Associates, and Lincoln Park Intermediate Care Center?

A. That is correct.

Q. What is the total amount on the lease?

A. The lease calls for annual payments of a million dollars and, as the term is for twenty-one years, the total lease payments would amount to $21 during the life of the lease.

Q. $21 million?

A. $21 million, correct.

Q. Now, let's stay with that for a minute and again ask you another hypothetical with respect to advising a client, and I would just like you to compare the million-dollar per-year rental with the four-million-dollar construction costs and ask you if recouping 25 per cent of construction costs in the first year of a lease is a nice investment.

A. I believe so.

COMMISSIONER POLLOCK: Well, again, I don't want to intrude, but it's a lot more than a nice investment, isn't it?

MR. MILLER: I would state it plainly and say it's an excessive return.

Q. Now, with respect to the mortgages on the home, would it be usual or unusual for an institutional financer to place himself in the third position on a 2.5 million-dollar mortgage on a building that was built for 4 million, which had a mortgage of 4 million on it already?

A. An institutional purchaser I don't believe would make such a loan. It would be highly improbable.

Q. Yet in this particular situation the seller of this home is reasonably assured of his mortgage payments, isn't he?

A. Oh, he is, I would say, absolutely assured.

Q. Why is that?

A. Because of the reimbursement schedule, which provides for him to be paid from the state.

Q. And that would be through this lease of a million dollars; is that correct?

A. Yes.

* * * *

Q. Are you familiar, essentially, with what the annual payouts on these three instruments here are?

A. Yes, I believe so.

Q. Would the total be approximately $794,000 a yeor?

A. Yes.

Q. All right. So that the individual who buys for 8 million in this net-net lease has expenses of about 794,000 a year; is that correct?

A. Those are his debt obligations.

Q. Right. If it's a net-net lease, he has no other obligations, correct?

A. None.

Q. And he's receiving $1 million a year; is that correct?

A. Yes.

Q. So that even with the obligation on the 2.5 purchase money mortgage, he still has an excess income over expenses of over $200,000 a year; is that correct?

A. Yes.

Q. Now, I show you again what's been marked for the purposes of identification C-27, which purports to be the lease upon this facility, and I'm referring you to the first page of a rider annexed to that lease, and I would like you to read to the Commissioners a paragraph entitled "Rent Overage."

* * * *

Q. Does that paragraph mean to you that, at least with respect to the rent overage, that the lessor and

lessee are keying themselves into the amount that will be reimbursed by Medicaid?

A. Undoubtedly.

Q. Now, with respect to Exhibit C-28, which I again show you, which purports to be the agreement of sale for Lincoln Park Nursing Home, I'm referring you to Page 21 and I would ask you again to do some reading for us of Paragraph 23 of that agreement.

* * * *

Q. All right. Now, does that paragraph mean to you that there is going to be an application for a certificate of need to certify an additional number of beds in excess of 294 which are already certified?

A. Yes.

Q. Does it also mean to you that this transaction is apparently dependent upon an application for that certificate of need?

A. Yes.

Q. All right. In summing up, then, between the agreement of sale and the lease it appears that the lease will not take place unless the certificate of need is granted for the additional certification and that, if the lease does go into effect, there will be a dependent clause on exactly the amount of rent that will be reimbursed by Medicaid?

A. Yes.

EXAMINATION OF MR. MILLER BY COMMISSIONER FARLEY:

Q. Mr. Miller, with respect to this property, it was completed in 1974 and it had a four-million-dollar mortgage on it, so I assume the state would have been paying maybe a 9 to 10 per cent mortgage carrying fee, which would be 360,000 or 400,000, correct?

A. I believe so, possibly a little more than $400,000.

Q. Yet in the event they're successful in having these additional beds put into the Medicaid system, that four-hundred-thousand-dollar carrying charge paid by the state would escalate to $1 million a year?

A. Exactly, yes.

Q. And that's in a period of one year?
A. Yes.

Q. So that the state's carrying cost, if they're successful in this project, from 1974 to now would jump up from approximately 400,000 to a million, or a difference of 600,000?
A. Yes.

Q. Taxpayer dollars?
A. Yes.

EXAMINATION OF MR. MILLER BY COMMISSIONER KADEN:

Q. I make the same point with respect to the Lincoln Park Home. This pyramid which produces what is clearly an excessive and exorbitant return to these entrepreneurs begins with the construction of a nursing home for $4 million. The construction contract in this particular case, is it not, is between related parties? Owners of the land contract, essentially, with themselves for construction of a home for 3.75 million; is that right?
A. We always have—yes, that is right.

Q. Okay. From what we know, is there any way of testing at this moment the reasonableness of that construction figure, in other words, the first figure in this pyramid rather than the last?
A. Only by physical inspection and some independent survey that might disclose, of course, that it didn't cost that at all; that it might have only cost three and a half million dollars. On the other hand, subsequent additions, which have not been charted, may show that it cost higher. The only background we have for the figure adopted in here is supplied from the contractors.

Q. From the contractors themselves, who, in turn, were the same parties that own the land?
A. Related parties, yes.

EXAMINATION OF MR. MILLER BY COMMISSIONER FARLEY:

Q. With respect to the point that Commissioner Kaden brings up, which is certainly valid, however, the fact that an institutional bank, the Rochester

Savings Bank, came in and put in a 4-million-dollar mortgage on there would seem to give some credence to the value of the property, would you not agree?

A. Well, if you don't mind me entering into something else that probably hasn't been mentioned, the placement of a mortgage in that amount depends to a large extent on the income that the facility can generate.

Q. So if you can generate an excess rent, then you can get a greater mortgage?

A. And any lender will place more credence on the income obtainable than he will on the construction costs. If he can satisfy himself there is a suitable margin over the construction costs, he feels that everything is fairly secure. The only reason he's going to accept this income is that he can himself look at a reimbursement schedule supplied by the state and find that there is a maximum amount shown, a maximum level shown on that reimbursement schedule, and it's not difficult for him to do the mathematical calculations.

It was shown as a maximum and, theoretically, of course, you can be granted rates or allowed rates below that level.

Q. I would like to nail that point down, and I absolutely agree with you. So, what in effect you are saying, it isn't the value of the property as much as the potential rental from a guaranteed source, to wit, the State of New Jersey, which is the inducement for mortgaging?

A. That's all that creates the value, and the more secure that income source is, the better the value that you can create from it.

Each time you can reduce your risk, you can add a little more to the value.

EXAMINATION OF MR. MILLER BY COMMISSIONER POLLOCK:

Q. Mr. Miller, since Mr. Siavage completed his questions of you he's brought to my attention another document, which is captioned "Memorandum of Understanding entered into this 29th day of January, 1975, between Lincoln Park Associates as landlord

and Lincoln Park Intermediate Care Center, Inc., as tenant," the same parties as are identified in the lease, which has been marked C-27 and to which your attention was previously drawn. I would ask you, if you would, to read Paragraphs 8 and 9 from this memorandum of understanding. Read it out loud, if you will.

A. "In the event that during the term hereof the amount of rent reimbursable to tenant under Medicaid regulations which may be applicable from time to time is less than the net annual rent payable hereunder, then for any period of partial disallowance of rent reimbursement, such net annual rent shall be reduced to the amount for which tenant shall be entitled to full reimbursement. But in no event shall the reduction be such that the net rental is reduced below $860,000."

Q. If you be so kind as to read the next paragraph.

A. "Notwithstanding that the parties shall hereafter initial a copy of the lease for the demised premises in the event any conflict or inconsistency between the provisions contained herein and those contained in the lease, the provisions hereof shall be controlling."

Q. So the way we bottom out with this is, here are two parties, the lessor Lincoln Park Associates and the lessee Lincoln Park Intermediate Care Center, entering into an agreement, the rental for which is keyed to the reimbursement provided by the state, right?

A. Yes.

Q. And yet the state was not represented in this leasing process, was it?

A. Not as far as I know.

Q. And presumably the interests of the public, the state, the taxpayer, was dependent, therefore, upon some other process, presumably, to protect the interest of the taxpayers?

A. Yes.

EXAMINATION OF MR. MILLER BY COMMISSIONER KADEN:

Q. I don't want to lose sight of the first step in this transaction because I think it's extremely important to understand. Is it not accurate to say that, as a result of the Medicaid system and the guaranteed reimbursement that is part of that system, the Turcos, the initial owners and builders of this property, were able, at the end of the year when they had sold the property to Mr. Schwartz, they were left in a position of zero investment, land that they had paid some $26,000 for and a purchase money mortgage that gave them $250,000 a year? Is that an accurate summary——

A. And more.

Q. —of those positions?

A. And more.

COMMISSIONER KADEN: Plus, if I might add——

Q. Plus $1.2 million in cash. So, to summarize the position of the Turcos as a result of this system, they bought a piece of property in 1966 for $26,000; they wound up in 1974 getting 100 per cent financing or more to construct a nursing home; selling it to Mr. Schwartz a year later and winding up with $1.2 million in their pocket, $250,000 coming in every year, all of which was paid by the taxpayers of the state of New Jersey?

A. Exactly. If I might just carry that a little further, the three—there are three elements, really, in the proceeds from this transaction; that first one being a million-two; the second one being $250,000 a year for the fifteen years, at the end of which is one single payment, also, of $550,000 which they receive. If one was to consider at this moment buying those rights, in other words, if somebody offered those to me at this moment, the right for that money now and some money a little later and eventually $550,000, and I was to conclude that a 10 per cent return on my investment was adequate because I'm fairly secure in all of these amounts, I would be willing to pay on a ten per cent rate about $3,200,000 right at this moment.

Q. Okay. So that for a zero investment, essentially, the Turcos have received a net value of $3.2 million, and they have done that—let me complete this circle—as far as we know on the facts before us, entirely within the law and the regulations established by the state?

A. Certainly as far as I can tell.

EXAMINATION OF MR. MILLER BY THE CHAIRMAN:

Q. Mr. Miller, when we are talking about these amounts and the reimbursement schedule and an increase or acceleration of money from zero investment to 3.2 million, one thing I want to make clear is that the intention of this money that we are talking about and the mortgage money and the cost of construction, project cost, are dollars that the state is paying out without any purpose of it reaching the better quality care service; is that right? We're simply talking about the land cost?

A. Exactly. It reaches as far as the entity that owns it, but then it's diverted out to other participants in this whole thing. It never reaches the people for whom I think it should be intended, the people for whom the services are being provided.

Q. Then there is also another ingredient they're receiving that goes into the operational costs of the home?

A. Oh, quite a different area altogether.

Q. So we are not talking about the dollars reaching the beds, we are simply talking about the dollars going into construction of the building and debt service?

A. That's true.

The Audit Function

Until recently, the audit section of the Division of Medical Assistance and Health Services had the responsibility of setting the individual rates for each nursing home and validating that the payments to each specific nursing home were correct through its auditing procedures. The audit section employed 25 people, including its chief, of which 20 are classified as field auditors. The bulk of the work of this section is processed by these 20 field

auditors. In order to better understand the functioning of the audit section, the Commission, on two occasions, took the testimony of Mr. Nicholas J. Perroni, Chief Auditor, and Administrative Head of the Audit Section. An auditor has three basic functions. During the course of a particular year, the nursing home files a "cost report" for its last year of operation. In that cost report is included all of the operating expenses of the facility for the past year. A check of that cost report is made by an auditor at a "desk review" for the accuracy of the mathematical computations and the proper reporting of the amounts involved. Subsequent to the computing of the total overall operating expenses of the home, that amount is divided by the total number of patient days (number of beds occupied in the facility for the past year) and the rate for the coming year is computed. It is important to note that other than the checks for proper reporting and proper mathematical computations, the desk review is in no way a functional audit.

The remaining two functions are, in fact, actual audit procedures. One is a per diem field audit. This validation is a complete check of the books and records of a nursing home and results in the verification of the figures supplied to the Division via the cost rpeort. Where deficiencies are established by the per diem audit, resulting in an overpayment to the facility for a particular year involved, a monetary recovery is recommended as a result of the per diem audit.

Another function of the auditor is called an income audit. As opposed to the per diem audit, the income audit validates only other sources of income which the nursing home receives from patients housed in the facility. Example of such other income would include S.S.I. benefits and the like. These amounts, of course, should be deducted from the overall operating expenses so that there is a direct effect upon the Medicaid reimbursement received by the home for the year involved. Again, where deficiencies are evidenced, a monetary recovery is recommended by the auditor for the particular year involved.

Because of the importance of the S.C.I.—recommended reforms in the auditing procedures, Counsel Saviage explored the process in detail with Chief Auditor Perroni:

> *Q. All right. Now, a desk review, you would not characterize it as an audit, would you?*
>
> A. No, not necessarily, no.

Q. In other words, if somebody spent $100 on lamb chops——

A. We wouldn't know that on desk review.

Q. By the same token, if someone told you they spent $351,000 on rent, you wouldn't know on desk review how much they spent?

A. That's correct. We're taking their word what they write on the report.

* * * *

Q. Now, the first type of audit is something called a per-diem audit. Would I be wrong in saying that that's the only true full-blown audit out of the three that we have mentioned?

A. That's correct. This is done at the facility.

Q. Okay. You audit all the transactions concerned with the facility for the year with which you are concerned; is that correct?

A. That's correct, their operating expenses.

Q. And this is the one where you would look behind the $100 for lambchops; is that corect?

A. That's correct.

Q. And you would look behind leases, et cetera?

A. We would. Whatever is available to us.

* * * *

Q. All right. Let's stick with the end of 1975, then. Approximately 110 audits were completed out of the 221 nursing homes that exist, which means, does it not, that almost half of the homes had not been audited by 12/31/75 on a per-diem basis?

A. Half the homes had not had approved audits, yes.

* * * *

Q. Okay. Now, I would like to turn to this particular column concerning suggested recovery on both audits. What does the word "suggested" mean?

A. This is what the auditor has recommended to be recovered.

Q. What's the longest term that you have seen on recovery?

A. We have not gone beyond six months.

Q. All right. Do you charge them interest for that period?

A. No, we did not.

Q. Okay. Is any penalty charged to the homes that are overpaid?

A. There was not.

Q. There isn't one now?

A. I believe there is one now, sir.

Q. Is that a recent enactment?

A. Yes.

Q. Have you ever computed what the ratio is for the dollars spent upon your section versus the dollars recovered by your section on any informal basis?

A. Yes. It was $7 recovered for fiscal year '75, and it's been, it's been dropping a little bit because of the more activity and the nursing homes know we're out there.

Q. What is it down to now, do you know?

A. It may be down to about four and a half dollars for each dollar spent.

Q. So for every dollar the State of New Jersey invests in your section, they get approximately $4.50 back right now?

A. Currently.

On Some Homes, No Audits

The Chief Auditor said no audits were made on some of the facilities cited by the S.C.I. as prime examples of Medicaid payout excesses to nursing homes. And, Mr. Perroni noted in response to a hypothetical question, because of certain regulatory loopholes, excessive payments would have been made anyway:

Q. Let's assume for a moment that, with regard to East Orange Nursing Home, that Mr. Gertner was not involved in that transaction at all and that he had not assigned or leased back and Mr. Kurnik was not in the transaction. Let's assume there was just a lease between Kruvant and Cohen. Do you follow me?

A. Yes.

Q. You are familiar with the facts of that case; is that correct?

A. Yes.

* * * *

Q. I want you to assume that the lease between Kruvant and Cohen was 351,000.

A. All right.

Q. Let's assume that three-fifty was under the maximum, okay? Are you with me?

A. Yes.

Q. Did you hear Mr. Kruvant testify in the afternoon?

A. Yes, I did.

Q. Did you hear him say that he'd love to have Mr. Gertner's deal?

A. Yes.

Q. Well, in my hypothetical he has Mr. Gertner's deal, and I think he testified that it has increased his cash flow to something like fifty per cent return a year, correct?

A. Uh-huh.

Q. Is there any way that you can knock out my hypothetical under the present regulations?

A. Under the hypothetical, no.

More Auditors, More Auditing

The Commissioners in questioning the chief auditor expressed concern about the limited auditing personnel and salary ranges:

EXAMINATION BY COMMISSIONER POLLOCK:

Q. It also seems to me, based on what I have learned over the last couple of days, that the protection of the public interest depends upon you and your auditing procedure.

A. Right.

Q. Would you agree with that?

A. Yes.

Q. And I recognize, I've heard everything you said, and I understand the problems you have with inadequate staff in terms of numbers and the need to attract persons with better qualifications, and my question is, and I pose it most earnestly, what suggestions can you make with respect to the auditing of nursing homes that we can avoid and prevent the excessive payment of Medicaid moneys based on property costs?

A. Well, one is, adequate staff would be one and a better salary schedule to become—to do more audits, and the other is maybe on the property cost of getting back—getting first historical costs, or give them a fair return from those first historical costs rather than accepting inflated deals later on.

Q. You know, I just offer this comment gratuitously, and that is that this is precisely what's done with respect to utility regulation. In New Jersey we use original cost, historical cost, as the basis for the rates, and, ironically, the same kind of pyramiding of costs on which rates are predicated which we have observed over the last couple of days occurred seventy-five years ago in the utility industry, so that all I can say at this comment, this point, is I endorse—it seems to me that there is much to be said for your suggestion. Can you get more specific, though, with your staff? If you could have the staff you wanted to do the job, have you given this matter sufficient thought to say what it is you would like to have? And if you haven't given it a thought, just say so. But if you have, again, I would like to get as specific as possible with you as to what you think you need to do the job better.

A. I think we need a professional staff of approximately seventy-five personnel and additional ancillary staff. I'm talking about clerical personnel.

Q. You have to go from twenty-two to seventy-five?

A. Yes. I think we could do audits every year with a staff of that type, and that's what we would like; an annual basis. If we cannot go for the annual

basis, I would not like to go below a semi-annual basis. I would like to go——

* * * *

Q. One more question, if I may. Assuming you could have the audits with the degree of frequency that you would like to have, are you satisfied in your own mind that the persons on your staff, assuming you had fifty-three more of them, would have the sufficient expertise to find the situations where the parties have engaged in transactions that would appear to suggest that inflated property costs are being used as a mode of recovering excessive Medicaid money?

A. I think we could, sir.

The Commission in its written report made public during the public hearing, urged among many other recommendations, that the auditors be empowered to subpœna records and compel testimony under oath. Mr. Perroni said such additional powers would have been helpful in connection with the abuses revealed by the inquiry.

EXAMINATION BY COMMISSIONER FARLEY:

Q. All right. Now, hypothetically, going to this East Orange situation which we discussed yesterday, if you had suspicions that there were other documentation that was not being shown to you, does your department have any subpœna power to force a person to produce all documents relating to the rental of a given facility?

A. Our division has not, sir.

Q. Do you have any power to put someone under oath and compel them to answer questions with respect to rental?

A. No, I do not, sir.

Q. Do you feel that if your division on your department had the power to subpœna and the power to put people under oath, that it would significantly assist you in doing an auditing job?

A. It would significantly assist us, sir, and I understand we're doing a revision in our division to try and secure subpœna powers.

Q. And by the use of the subpoena and putting people under oath, that the——

A. We could uncover some of these other leases that were not uncovered through normal channels.

Swift Corrective Action

The swiftness with which certain responsible state officials and agencies took corrective action on some Medicaid problems, even as they were being revealed by the Commission's investigation, was suggested by Mr. Gerald J. Reilly, the director since January 5, 1975 of the Division of Medical Assistance and Health Services. Called by Counsel Siavage, Mr. Reilly reviewed many facets of the overall Medicaid problem with the Commission:

Q. Mr. Reilly, I believe you have been present for every moment of the last two days of hearings. Is that correct?

A. Almost every moment.

Q. All right. Did you have a preconceived notion concerning the property cost reimbursement system under Medicaid before coming to these hearings which began yesterday?

A. Yes.

Q. What was that notion?

A. It was that the property reimbursement system was outmoded and no longer appropriate and requiring modification.

Q. Have these last two days of hearings corroborated that to you in your mind?

A. They have more than corroborated it, they have greatly strengthened it. I believed that the system was flawed, but I did not conceive of the kinds of manipulations that have been exposed these last two days.

Q. In regard to that, perhaps it's appropriate to ask you here and now, Mr. Reilly, whether with respect to the transactions that were described yesterday, referring to East Orange Nursing Home in particular, whether your division has taken any action in that regard.

A. I believe the transactions described with regard to East Orange Nursing Home warrant our taking action to cease paying the $79,000 a year that had first gone to Mr. Gertner and then Mr. Kurnik on the basis that that was not a true lease; that was a disguised loan, and that the true lease was the two-hundred-seventy-two-thousand-dollar lease with Mr. Kruvant; and, further, that we will begin an immediate audit at East Orange Nursing Home with a view to recovering any funds that may have been inappropriately expended pursuant to that false lease.

Q. Now, with regard to your notion that the reimbursement-of-property-cost system in the program is outmoded as you had it before these hearings and as it's been, as I said, corroborated in the hearings, is the Division of Medical Assistance and Health Services taking any action in conjunction with the Department of Health?

A. Yes. In conjunction with the Department of Health, we are attempting to design a property reimbursement system that eliminates the kinds of abuses we have seen demonstrated here for implementation in the next fiscal year.

Q. Now, if I could lay a foundation for it. The Department of Health will enter into a contract, as I understand it, to develop and compute rates for nursing homes beginning in 1977, as I said, in contract with you, the Division of Medical Assistance and Health Services; is that correct?

A. That is correct.

Q. And in conjunction with that task, are they presently working on what is called cost models for other areas of reimbursement to nursing homes?

A. Are you talking about the operating cost of nursing homes?

Q. Yes, sir.

A. I think it's fair to say they're presently working on it. I think it's their intention to largely adopt with some modifications the revised approach that we have taken this year to the operating cost.

Q. Are you, vis-a-vis what you have heard this morning with respect to our recommendation, satisfied with that progress or, to put it very plainly, are you more impressed with the suggestions which you heard this morning?

A. Well, I'm extremely impressed with the suggestions I heard this morning. I don't know whether it's fair to make a value comparison between that and what their consultants may propose. I haven't seen fully what their consultants may propose.

I do know that the basic principle or concept that their consultants are discussing is very similar to your proposed approach, and that is that we develop some mechanism to look past and through all of the various financial arrangements to come up with some unit cost, real estate value per bed.

I think that the technique that you have proposed, building upon what the Moreland Commission suggested, is perhaps at a more advanced stage of development than what I have heard from the consultants currently working with the Department of Health.

Another Call for Audit Reform

Mr. Reilly backed up what his chief auditor had testified to earlier, as to the inadequacy of the auditing staff and process:

Q. Do you consider the present number of audits being completed by that section to be sufficient, first of all?

A. Totally insufficient.

Q. All right. Now, what do you ascribe as the reason for that insufficiency?

A. Lack of adequate staff.

Q. And did you receive that additional number of auditors?

A. No, we did not.

Special Probe Unit

The possibility that the auditing process might benefit from an additional state appropriation of $400,000, which would be matched

by the federal government, under then-pending legislation was discussed. Mr. Reilly indicated that the S.C.I.'s own activity could influence the kind of beefing-up that might occur.

EXAMINATION BY COMMISSIONER POLLOCK:

Q. What does that translate out to in terms of auditors, for instance?

A. Well, that would translate out into about forty-five auditors.

Q. And you may not have had the opportunity to sufficiently reflect on whether or not that's how you want to spend the 400,000, but if you have, is that, indeed, what you intend to do?

A. Well, I think under the general rubric of program integrity and program control, but there may be more cost effective ways of using that money. It may not be wise to spend it all on auditors in the traditional sense.

For example, it may be wise to take some of that money and build into the division a special investigative unit capacity to put together a team of lawyers, accountants, C. P. A. accountants and so forth, to do some of the kinds of intensive follow-on investigation that I know must have happened within the S. C. I. to untangle these kinds of arrangements, and use another portion of the money for the normal auditors to conduct the routine audits, and perhaps that may be a more effective way of using the resources.

Millions of Dollars Could be Saved

The Commission in its discussions with Mr. Reilly was not only anxious to obtain a projection of the potential savings that might result from implementing S.C.I.'s and other Medicaid reforms but also how such savings would benefit the Medicaid clients and the taxpayers.

EXAMINATION BY COMMISSIONER KADEN:

Q. Have you made any attempt to estimate what the potential savings might be by the implementation of the kind of reforms the Department of Health

is working on or the Commission has proposed as you heard this morning?

A. Well, I could extrapolate very rapidly from what has been discussed here. If $22 million is the whole property cost, and if perhaps the basic system allows an over-compensation of between 30 and 50 per cent on those costs, take 30 or 50 per cent of 22 million, you may be talking about $6 or $7 million on a real property side.

And I think I would like to make a point made earlier; that every dollar inappropriately spent on the real property side is a dollar we don't have to spend on the patient-care side. We have to go after it.

Q. The Commission's inquiry, of course, is focused on this one major cost element. In your experience, is the same, at least if not in degree, some potential savings consistent with the institution of similar reforms and procedures for reimbursement affecting other costs than nursing-home care?

A. No, I think traditionally the operating costs have been the sector that has been squeezed. I think I would argue that we have under-funded operating costs of the course of the year because of the existence of the administrative ceilings. It was misguided public policy that let the leaseholders make the profit and took the money out of the operating side.

I think our new operating cost system, which I'd be happy to describe for you, if you would like, is an extreme improvement over what we have done in the past and, in fact, encourages provides incentives for patient care, provides incentives for administrative efficiency and so forth.

I don't think the operator side, I don't think there is that much order in the operating side as there is in this side.

* * * *

Q. Is there any lesson that you draw from that that might guide public policy makers in the future in the development of programs that involve payments for health services or other services?

A. I think we have to be willing to invest sufficient resources to buy the talent and creative intellect

necessary on the front end of very, very large programs to be able to cope with the kinds of individuals we are going to have to deal with, particularly if we're going to attempt to mix the public sector and the private sector in the provision of services. I'm sure the Turcos had the best lawyers and the best accountants and the sharpest cost-cutting architect they could find when they designed their building, and I'm not sure that the state provided itself with an armament to deal with that.

EXAMINATION BY THE CHAIRMAN:

Q. Mr. Reilly, the question that concerns me, and I would want this point, at least, for my mind to be as certain as possible, I understand you to say that every dollar that goes out for the reimbursement of property costs is a less dollar or dollar less per patient care?

A. I'm saying, every inappropriate dollar. There are appropriate dollars that we have to spend for property. It's a real cost of operating a nursing home.

Q. Yes. The excessive dollars that we have been hearing about?

A. Yes, it's a dollar that we do not have to spend for patient care.

Q. All right. So, then, if we come up with, or there finally is aroused at, a realistic way of compensating or reimbursing for property costs, a reasonable way of doing that, and at a savings to the state, would that, therefore, then indicate that there might be more money for the quality-of-care dollar to the patient?

A. It would free up resources. Then we'd have to make the decision to use them there or some other way, but it would make the resource available.

Q. Well, what concerns me is comments that if we start to reduce the payment on the reimbursement for property cost, the emotional argument that you are now affecting the total dollars going into the nursing home and attempting to relate that cut to quality care isn't really accurate in light of the facts that we have been hearing?

A. I think if we could do it rationally and carefully it would to enhance patient care and not to harm patient care, if that's the question. If the question is will this harm patient care, it could if we did it in a fashion that was chaotic and thoughtless. But if we do it in a rational, reasonable way and attempt to avoid payoff in the industry, I think it will enhance patient care.

Q. Perhaps my question wasn't understandable, but that's the answer I was hoping we would hear.

A. Then I must have understood it.

Q. If we do this rationally, we will be freeing up more dollars,——

A. Yes.

Q. —apparently, for the quality-of-care dollar that goes to the nursing beds?

A. Yes. We're going to get back the $79,000 from Mr. Kurnik and perhaps be able to hire some more nurses or have better—have scrambled eggs instead of cereal for breakfast.

"Character and Fitness"

John Reiss, Assistant Commissioner of Health for Health Planning and Resources Development, the last witness at the Commission's public hearing, discussed among many topics the adequacy of what little "character and fitness review" was required in the New Jersey's Medicaid nursing home regulatory process:

EXAMINATION BY COMMISSIONER KADEN:

Q. Can I ask one more question? In the regulatory process, including the certificate of need, including the rate-setting procedure, where in that process is there an evaluation of the character and background of an applicant or an operator?

A. At this point there is none in that process. The question has been raised whether or not it should be part of the licensing process, because that's where it is, and so that character and fitness is taken into account at that point.

My own feeling, at this point I haven't won this argument, is that the licensing comes last. It comes after all of those other processes have been undertaken, and it would make sense to me to include that kind of provision in the certificate of need application at the very beginning. At this point it isn't.

Q. In other words, if the principal entrepreneur in the nursing-home venture today were someone who had been convicted of Medicaid fraud, either in New Jersey or another jurisdiction, that fact would not influence the decision early in the process of regulation?

A. Obviously we would notify such an individual, if we identified the fact that, if he got a certificate of need approval, et cetera, that he still wouldn't get licensed to operate the home. But it would not at this point, and we are told we cannot use it to influence the issuance of the certificate.

EXAMINATION BY COMMISSIONER POLLOCK:

Q. But it is necessary on the licensing aspect?

A. It is necessary on licensing.

Q. A character clearance?

A. Yes.

EXAMINATION BY COMMISSIONER KADEN:

Q. Does licensing apply only to the administrator or to the institution itself, including its owners?

A. The institution itself, I'm not—I presume that that includes owners. No, it doesn't. It includes the operator. So the owner could be a convicted criminal, but if it was rented to somebody else who operated it, that would not be taken into consideration in the licensing arrangement.

Q. Is there any discussion going on about the character and fitness problem among reg——

A. There has been. There isn't currently.

EXAMINATION BY COMMISSIONER POLLOCK:

Q. You know it's astonishing, because you have, in order to get a license to operate a solid-waste landfill or to pick up garbage, you have to pass a

character test. It would seem to me, if character is relevant on those two issues, it certainly is relevant on the ownership and the operation of a nursing home.

A. It is considered for operation, but not for ownership.

EXAMINATION BY COMMISSIONER KADEN:

Q. I would say, at least for my own part, that I would consider instituting some kind of character and fitness review at the earliest possible stage of the regulatory procedure to be essential. We have learned, both in New Jersey and elsewhere, about the potential abuse of public funds nad public trust that takes place in the Medicaid system, and I would think it's the least we can do to assure that people who have violated those statutes, have been found guilty of that violation, not come to New Jersey to do business in the future.

A. I agree. The position that I have just described is that which has been given to us by the office of the attorney general, and I think that unless that position is changed, it might require change in the statutes.

COMMISSIONER KADEN: Well, that may be something that this Commission looks into as well.

IN CONCLUSION . . .

S.C.I. Chairman Joseph H. Rodriguez wound up the two-day hearing with a summary statement on the Commission's findings, conclusions and recommendations. In his summary, he emphasized that the Commission's purpose was constructive and that the agency hoped its recommendations, once implemented, would have a balancing impact that would "provide an efficient and cost-conscious system of Medicaid reimbursement while making the industry attractive enough to hold most legitimate present investors and attract new ones." Mr. Rodriguez concluded:

> We, in New Jersey, like to consider ourselves leaders in the field of surveillance of our Medicaid payments, but with respect to this particular aspect of our endeavors, we are lagging far behind our sister states. The intent of the S.C.I. is not to be punitive. The recommendations which we offer today are in-

tended to provide an efficient and cost-conscious system of Medicaid reimbursement, while making the industry attractive enough to hold most legitimate present investors and attract new ones. The Commission believes that the best solution to the problems portrayed over the last two days is the enactment of the aforesaid recommendations and that the worst solution would be to do nothing at all.

The Final Report

Augmenting the public hearing, as has been stated earlier, was the issuance, on the final day of that hearing, of the Commission's "Final Report On the Property Cost Reimbursement System For Nursing Homes Participating in the New Jersey Medicaid Program." That report specifically examined a number of additional nursing homes and the administrative agencies with regulatory responsibility.

Some of the most noteworthy findings of the report were:

1. That there are profiteers and opportunists with investments in substantially Medicaid funded nursing homes in the state who recoup returns as high as 105% annually and have no connection with the operation of the facility.
2. That there has been a large number of nursing homes participating in the Medicaid program which have never been audited.
3. That due to the lack of auditing, substantial overpayments have occurred to a number of homes examined by the Commission.
4. That there is no effective control by either the Department of Health or DMAHS on escalating property cost expenses.
5. That communication between the two agencies with the responsibility for administering the program is extremely poor.
6. That there exists a combine of loosely connected groups of New York-based entrepreneurs who control a substantial percentage of the Medicaid beds in New Jersey.

A summary of the recommendations of that report is as follows:

1. That while a completely new system of property cost reimbursement is being implemented, certain controls on escalat-

ing property cost reimbursement should be adopted by the Department of Health.

2. That construction costs on new facilities and additions be strictly controlled since they will directly affect reimbursement.
3. That additional auditors be hired by DMAHS and that an educational program be provided for them to further increase their efficiency.
4. That Senate Bill 594, presently pending before the New Jersey Legislature, be substantially strengthened as to reporting requirements by individuals with interests in nursing homes and that that knowledge be utilized by the administering agencies.
5. That communication between DMAHS and the Department of Health be created by the institution of a standing committee on property cost reimbursement and ownership.
6. That the entire present system of property cost reimbursement be completely overhauled along a pattern suggested initially by New York's Moreland Commission with modifications suggested by the S.C.I.

The Commission, aided by its expert consultants, examined several possible new systems and discarded all but the Moreland Commission recommendation. Even that approach was substantially modified in a number of important respects to arrive at the S.C.I.'s final recommendation. The new system was first disclosed in the public hearing and is discussed in detail in the final report. Essentially, that system proposes 1) a bulk appraisal of all nursing homes participating in the Medicaid program in the state to arrive at a true value (neither a market value nor a replacement cost) 2) the application of a percentage figure to that value to arrive at a yearly "fair rental" reimbursement and 3) the reimbursement of the fair rental amount over the "useful life" of the facility. The system avoids the inflation of the rental schedule and the inducement to fraud of unlimited debt service reimbursement while providing a reasonable return to the prudent and honest investor. As the Commission stated in its final report:

> The Commission is also aware, however, that it must be mindful of the realities of the industry involved in making its legislative recommendations. Any legislative recommendations, therefore, must

avoid the temptation to be punitive in character and must necessarily strike the proper balance between providing an efficient and cost-conscious property cost reimbursement to nursing home operators, while at the same time presenting the attractiveness of a return on investment so that an adequate number of investors are attracted into the program.

Continuing Efforts

Subsequent to the public hearing and the issuance of the final report, the Commission persisted in its effort to revamp the property cost reimbursement system via its recommended approach. DMAHS and the Department of Health had already been engaged in restructuring of other cost centers of the reimbursement system and Commission representatives have met on several occasions with those agencies to explain the Commission's recommendation and urge its adoption. As this Annual Report went to print Director Reilly of DMAHS and the Department of Health were exploring ways and means to effectuate the initial stages of the Commission recommendation.

Additionally, Senate Bill 594, which the Commission recommended be strengthened, was amended on the floor of the Assembly to comport with the suggestions.

PRACTICES AND PROCEDURES OF PRACTITIONER GROUPS PARTICIPATING IN THE NEW JERSEY MEDICAID PROGRAM

Introduction and Summary

As part of its evaluative probe of the entire Medicaid program in New Jersey made at the request of Governor Brendan T. Byrne, the New Jersey State Commission of Investigation assigned one of three investigative teams to look into the area of health services encompassing providers of other than nursing home and hospital care. Among the major components of this section of the program are dentists and physicians practicing in groups or otherwise associated by virtue of sharing space at a common facility. The practitioner phase of the investigation focused upon the workings of individual medical facilities devoting at least 75% of their practice to Medicaid and bringing in substantial amounts of Medicaid money and the manner in which these facilities are administered by the New Jersey Division of Medical Assistance and Health Services.

During the course of this investigation, staff of the Division's small Bureau of Medical Care Surveillance provided valuable assistance to the Commission. We wish to publicly express gratitude to Division Director Gerald Reilly and Surveillance Bureau Chief Boniface Damiano for extending many courtesies and total cooperation. The S.C.I. also established a working liaison with the United States Senate Select Committee on Aging which reviewed the Medicaid Program on the National Level.

Evidence obtained by the Commission on some twelve sample facilities suggests that only a small minority of practitioner groups receiving substantial Medicaid moneys engage in improper or questionable conduct. However, the Commission recognized that the potential for the abuses outlined in this report was great and accordingly, the Commission recommended the following steps to promote program integrity, guard against unnecessary utilization and ultimately, conserve State and Federal tax dollars.

The principel thrusts of these recommendations, which are reviewed in some detail subsequently in this report, are:

• Promulgation of a scheme to identify and register on an annual basis, medical facilities receiving substantial amounts of Medicaid moneys.

• Periodic inspection of such facilities for proper procedures and cleanliness.

• Outlawing percentage arrangements between facility owner-operators and practitioners.

• Establishment of a liaison between the Division of Medical Assistance and Health Services and an insurance clearing house to obtain accurate information on payments made by insurance companies to physicians on behalf of Medicaid recipients.

• Addition to the staff of the Bureau of Medical Care Surveillance of undercover agents who would pose as recipients seeking medical cases to ferret out:

"ping-ponging"—practice of requiring a patient to see several specialists in the same facility without medical need

"family-ganging"—practice under which covered family members are seen by facility personnel without initially requesting care.

"churning"—practice of unnecessarily requiring patients to come to a facility for billable visits.

"steering"—practice of directing patients to specific specialists or pharmacies.
use of para-professionals; requirements to sign claim forms in blank.

• Notification to recipients of services billed by physicians.

• Require that physicians and radiologists justify the need for radiology procedures and holding both the requesting physician and radiologist separately and equally responsible for assuring that all requested procedures are consistent with the patient's diagnosis.

• Outlaw direct telephonic links and common entranceways between medical facilities and pharmacies.

- Reduction in Medicaid reimbursement rates to pharmacies sharing space in medical facilities.

- Enforcement of State statutes prohibiting lay personnel from participating in the practice of medicine.

Medicaid Group Practice—Aspects of New Jersey Mills

In connection with its evaluation of New Jersey's Medicaid Program, the Commission determined to examine the professional group-pharmacy aspect component for possible abuse. Scrutiny was centered upon the practices and procedures of relatively large dental and physician groups, their relationship with other providers of medical care and services—especially pharmacies—and the adequacy of existing regulations and integrity monitoring methods utilized by the Division of Medical Assistance and Health Services (D.M.A.H.S.).

The Commission focused upon recognized professional groups, "professional centers" housing various unassociated tenant practitioners and offices of single practitioners in which other physicians would regularly share space in either an employee or independent contractor capacity. At least twelve facilities across the State—each having at least a 75% volume of welfare patients and bringing in substantial Medicaid monies yearly—were examined. Books and records were reviewed, offices were visited by investigators posing as patients, and sworn testimany was taken from practitioners, facility employees, Medicaid recipients and program administrators.

The facilities reviewed were located in poverty areas in Camden, Hoboken, Irvington, Jersey City, Newark, Passaic and Paterson and housed in places such as welfare project high-rise buildings, converted stores, warehouses and tenements. Typically, the facilities were divided into a reception area for patients—some of which were equipped with rows of theater-type seats consistent with mass production technique—and several smaller compartments used for patient examination, X-ray services and laboratory services. Several locations also contained in-house pharmacies.

Each facility had an owner or the equivalent of a business manager to supervise the day-to-day running of the operation, hire and fire physician, nursing and clerical staff, and arrange liaison with out-of-house specialists and suppliers of goods and

services. In many cases, the owner of business manager was a layman.

Arrangements were made between owner or administrator and physicians who desire to practice at the facility. In the main, staff practitioners were comprised of foreign physicians and recent graduates anxious to put together enough capital to open their own practice elsewhere. In earlier years (1971-1973) many facilities paid staff physicians a straight salary averaging only $15.00 per hour regardless of the number of patients seen or amount of services billed to Medicaid. Salary arrangements between facility operators and staff practitioners declined because of a fear that such arrangements might subject facilities to the licensing and cost review requirements of the Health Care Facilities Planning Act.

Arrangements shifted to "rental" or "partnership" agreements based upon a percentage of the fees earned by the practitioner. The Commission identified specific relationships under which the amount kept by the practitioner varied from as little as 30% to as much as 70%. On the average, practitioners involved in such arrangements turned over 40 to 50% of their earnings to facility operators or landlords. Typical negotiations with a lay landlord owner were described by a physician:

> *Q. Can you give us the terms of the financial arrangements?*
>
> A. Yes. We discussed, and in his terms, I was to bring my knowledge and my stethoscope and he would provide me with space and telephone service and, you know, all medication, nurses, secretarial work, everything, and so for that he would charge me a definite amount of fee.
>
> *Q. What was the definite amount of fee? Was it a percentage?*
>
> A. Well, the fee was—yes, it was 50 percent.
>
> *Q. How would the 50 percent reach Mr. ***? Would you have to write a check or would he write a check to you after certain deductions would have been made?*
>
> A. I was to write him a check.
>
> *Q. Would you bill Medicaid under your own name?*
>
> A. Yes, sir, I billed Medicaid in my own name.

Q. Then after you received a check from Medicaid.
A. Yes.

Q. —would you then just take half that?
A. Yes. I would write him a check for half of the amount that was paid to me.

*Q. Did Mr. *** require any type of proof from you as to the amount of money that Medicaid had paid you?*
A. All the billing that came to—through *** and there was a secretary——

Q. I see.
A. —who kept track of it.
The presence of the operator-owner's secretary to keep a watchful eye on billings was not at all uncommon.

Facility administrators contend that the high percentage return to the center was justified by the space utilized by staff practitioners—including all common areas—and expenses including salary of nursing and secretarial personnel as well as other operating costs. The Commission recognizes that certain expenses are indeed borne by the facility, but suggests that economies of scale accruing to large facilities should lessen the necessity of high percentage arrangements. We believe that these percentage arrangements lead to unreasonable profit for facility owner/operators and foster abuses which will be detailed later in this report.

More recently, arrangements between facilities and staff involved fixed payments which increase with growth of practice.

The Commission questioned the owner-operator about his costs and other arrangements at the center. It came to light that he leased the entire building for only $225 per month and had "arrangements" returning much more:

*Q. You're paying $225 a month for the floor to *** ?*
A. Right, sir.

Q. How much rental do you get? Or any company that you are a principal in, what do they get in rent a month?
A. Several thousand dollars. I can't give you an exact number.

Q. So you're taking in several thousand dollars a month as a landlord, correct?

A. Right, sir.

At another facility, a building was leased for $500 per month by a physician. He himself practiced there, and sublet space to dentists for $200 per month and to a physician specialist for $550 per *week.*

At yet another center, physicians paid the lay-owner operator a weekly fee.

Q. How do you determine how much rent a particular doctor in one of your offices should pay?

A. Well, they are—the full time doctors, they paid $300, you know.

Q. Is that a month or a week?

A. This is a week. It depends upon also the medicines and supplies that they use.

Q. So it would be like a flat fee plus the cost of whatever materials they use; is that right?

A. Yes.

Pharmacies also have arrangements with medical facilities. At one medical group, a pharmacy paid in excess of $1050 per month rent for some 225 square feet of space. It is significant to note that the rental increased from $550 to $850 to its present amount within two years and without any concomitant increase in space.

Several of these facilities were visited by investigators from the State Commission of Investigation and the United States Senate Special Committee on Aging. In many cases, investigators reported filthy conditions and questionable and fraudulent practices by employees which will be detailed throughout this report. Our experience with these facilities, as partly set out in this document, demonstrates the need for a new approach by the Division of Medical Assistance and Health Services.

Initially, we recommend that facilities receiving substantial Medicaid monies and having several staff practitioners be identified, registered and periodically inspected for proper procedures and cleanliness. We believe that the Division of Medical Assistance and Health Services presently has power to promulgate an administrative scheme to accomplish this purpose. During the course

of the Commission's investigation the Division drafted such a scheme and we add our support to it. We suggest, however, that a more effective solution might be to amend existing State health facility licensing law (*N.J.S.A.* 26:2H–1 *et seq.*)—the very law which facility operators now seek to evade—to provide for Health Department jurisdiction irrespective of the nature of the financial arrangements between owner-operators and staff over these facilities which receive substantial amounts of taxpayer dollars. We note that such a statutory amendment would also place in the Health Department power to review and set reasonable rates of reimbursement for these facilities which, hopefully, would be more in keeping with the goals of a public welfare program rather than private profit motive.

Affiliated Radiology Services

Once the treating physician determines radiologic services are necessary, a requisition specifying the X-ray procedure desired is drawn. The service may be rendered in one of several ways: The patient can be referred to a specific radiologist or hospital facility; the X-rays can be taken, developed and "read" by a radiologist member of the group using his own equipment and personnel; films can be taken on the group's equipment by a technician paid by the group and interpreted by the radiologist whose office may be located off the group's premises.

Ideally, in this latter situation, the radiologist will closely supervise the work of the X-ray technician and will himself perform (or be present for) more esoteric procedures. During the course of the investigation, however, the Commission discovered one instance where a radiologist receiving in excess of $118,000 of Medicaid funds between 1972 and 1975 was employed full time at a New York hospital. Despite the fact that Medicaid claim forms signed in his name represented that the radiologic services, including intravenous pyleography, mammography and tomography, "were personally rendered" by him or by a qualified individual in his actual presence, office employees—including the X-ray technician—saw him only once or twice over the years. In the absence of the radiologist, numerous X-rays of questionable medical value were ordered by office physicians and taken by the technician.

Percentage arrangements in a Medicaid setting should be outlawed. As this report will indicate, they are incompatible with the goal of providing quality care to recipients at reasonable cost

to taxpayers. Such arrangements foster and incite over-utilization of services, ping-ponging, family ganging and churning. It is unrealistic to expect practitioners to practice fiscal restraint when salary is dependent upon the amount billed.

We further urge that an identification system be developed to indicate on the claim form which specific practitioner rendered service to the recipient and the precise location where the service was rendered. Such information—which is not now readily available—will provide program surveillance personnel with easy access to accurate information on moneys flowing through particular locations and facilitate detection of ping ponging, and family ganging. It will also track Medicaid Doctors who wander from facility to facility. The Commission discovered one physician who visited three facilities in different cities a week. Such a practice raises serious questions about continuity of care and treating physician availability to patients.

The testimony also raises serious questions about possible violations of the Professional Practices Act (*N.J.S.A.* 45:9–1 *et seq.*) by facility lay owner-operators who share in the profits of facility associated physicians. The Commission will forward a copy of its investigative record to the State Board of Medical Examiners for consideration of this and other issues. The radiologist could only review medical necessity on an after the fact basis and, according to the X-ray technician, would question the number of films taken on individual patients.

The testimony raises serious questions about the quality of care received by office Medicaid patients in this highly sensitive and potentially dangerous area of health care delivery. The record also raises questions about the conduct of certain physicians which appears to transgress basic standards of medical ethics in practice, issues which are beyond the scope of this report.

At another facility, with the radiologist located in a nearby city, evidence exists that unqualified persons were permitted to take X-rays. Rather than hire a licensed X-ray technician, the lay group administrator allegedly instructed a licensed practical nurse (LPN) to take films. If questioned by authorities concerning X-ray procedures, group personnel were supposedly rehearsed to claim that the LPN only positioned the patient and that a physician actually "pushed the button". Questions concerning these allegations to a physician-partner of the group drew the following responses:

*Q. During your stay at * * * Health Group was there an employee of the health group by the name of Sonia?*

A. Yes.

Q. And do you know how long Sonia was with the group?

A. I'd say about a year.

Q. All right. Do you know what her duties were; that is, were they administrative as opposed to medical?

A. I plead the Fifth and Fourteenth Amendments.

Q. Did Sonia dress in the garb of a nurse?

A. I plead the Fifth and Fourteenth Amendments.

Q. Do you recall if Sonia dressed in the garb of a lay person in the office of a doctor?

A. I plead the Fifth and Fourteenth.

Q. All right. Now, in the spring of 1974 was there an X-ray technician—strike that.

*In the spring of 1974 was there a young lady at the * * * Health Group by the name of Sonia, who would take X-rays?*

[Whereupon, the witness confers with counsel.]

A. I plead the Fifth and Fourteenth Amendments.

Q. Do you know if—strike that.

Do you know whether or not Sonia was a certified X-ray technician?

A. I plead the Fifth and Fourteenth.

*Q. Did you ever hear * * * instruct physicians to say that they, the physicians, rather then Sonia took X-rays if anyone should ask?*

A. I plead the Fifth and Fourteenth Amendments.

After the group obtained the services of a licensed technician, problems again developed when the facility's lay administrator himself allegedly took X-rays. The physician-partner again raised constitutional privileges when asked if it was ever brought to her attention that the administrator may have taken X-rays. The administrator denied taking X-rays but acknowledged that he

could position patients and develop X-rays for a physician who would "push the button".

Radiologists associated with Medicaid Mills, like other practitioners, often work on a percentage fee arrangement. The Commission commonly found group associated radiologists keeping only between 35-40% of Medicaid dollars paid for radiology services with the balance flowing to the facility. Other situations were encountered in which the radiologist would pay the group a lower fixed percentage of his fees plus a monthly rental. (30% of fees plus $100/month is one example of this type arrangement.)

In any percentage relationship, incentive exists to increase dollars received by increasing volume of work performed. The radiologist can maximize his income by billing for as many procedures as possible on each patient. The group can maximize its earnings by supplying as many patients as possible to the radiologist through the practice of "ping-ponging". These temptations often materialize in pressure exerted upon group physicians to order unnecessary X-rays for their patients and radiologists engaging in "creative billing"—billing based upon the number of readings rather than the number of anatomic areas filmed—and false billing for services not performed.

When questioned about pressures exerted by the lay group administrator on physicians to take numerous X-rays, a physician partner responded:

* * * *

*Did Mr. * * * ever suggest to you that you yourself should order a certain number of X-rays on your patients?*

[Whereupon, the witness confers with counsel.]

A. I respectfully plead the Fifth and Fourteenth Amendments and decline to answer the question on the ground that the answer may tend to incriminate me.

THE CHAIRMAN: Doctor, in the event we have occasion to rely on those privileges again, the record will indicate the complete context of your statement, but you would simply have to say you plead the Fifth and Fourteenth Amendments. All

right? Instead of going through the entire process.

THE WITNESS: Fine.

*Q. Doctor, are you aware of any advice or suggestions that Mr. * * * may have given to other physicians at the * * * Health Group concerning the number of X-rays they should order for their patients?*

A. I plead the Fifth and Fourteenth Amendments.

* * * *

The radiologist associated with the group maximized his percentage earnings by billing Medicaid for an additional esophogram whenever the group X-ray technician would perform an upper G.I. series and even though the treating physician would not request such a procedure. The X-ray technician testified that he only took films for an upper G.I. series and forwarded a Medicaid claim form to the radiologist which billed only for the procedures he actually performed:

A. I would do a G.I. series and that would be all. And then one morning I noticed the forms were on the counter and then underneath it, the G.I. series, and in another person's handwriting "and esophagus," and it had a certain amount of money written on the side.

Q. So "esophagus" was added in?
A. Right.

Q. You didn't do anything to the esophagus?
A. No.

Q. Right?
A. No.

Q. Who signed the form, do you know?
A. Dr. * * * [the radiologist]

Q. Are you sure?
A. Yes.

*Q. Were the words "and esophagus" written in the same color pen as Doctor * * * [radiologist] signature? Did you notice that?*
A. Right, yes.

Q. It was. All right. How many times did this happen, often?

A. On practically every G.I. series.

This technician was also instructed by the radiologist to take films other than those requested by the treating physician:

Q. Okay. Did anyone ever tell you or suggest to you that, as the X-ray technician, you should do more X-rays than the X-rays requested by the physician?

A. Right, Doctor * * * [radiologist].

*Q. Doctor * * * [radiologist]. What did Dr. * * * say?*

A. Doctor * * * requested that if it was a finger, that I would do a full hand on the frame.

Q. Did he tell you why you should do a full hand?

A. No.

Q. He just said do it?

A. Right.

Q. And this is even though the prescription or the written request that you would get from the doctor requesting the X-ray would say the finger?

A. Right.

Q. What would you do, the finger or the full hand?

A. I would do the full hand.

Q. Any other particulars, such as a foot, ankle?

THE WITNESS: Yeah. He said if it was an ankle I was to do a foot and ankle.

Q. What about a request for an X-ray of one of the hips?

A. I was to do both hips.

Q. In other words, if the request said please X-ray right hip——

A. Right.

Q. ——you would do both hips?

A. Both hips.

*Q. Do you know why doctor would make that request—Doctor * * * [radiologist]?*

A. Just for a comparison. But most comparison studies are done between children under sixteen.

Q. And you say children under sixteen. Were most of these hip X-rays taken of children?

A. Not really.

When questioned concerning the practice of the affiliated radiologist to engage in "creative billing," the physician partner invoked the Fifth Amendment.

Steps can be taken to safeguard the program from over-utilization of X-ray services and "creative billing." Primary physicians requesting radiologic procedures should be required to document *clearly* the medical necessity of such procedures in the patient's chart. The requesting physician should then specify the *precise* X-ray procedure desired on a multi-copy combination Medicaid X-ray requisition claim form. A line should be drawn under the last test required and immediately thereunder the requesting physician should list the diagnosis and "rule-outs" for the benefit of the consulting radiologist and Medicaid surveillance personnel. The requesting physician should then *personally* sign the form and forward it to the radiology consultant for use as a description of services to be rendered and as his own program billing invoice. Both the requesting physician and the radiologist should be separately and equally responsible for assuring that all requested procedures are consistent with the patient's diagnosis. If a radiologist believes that services requested should be modified, extended, or rejected, he should be required to consult with the requesting physician. Claims not submitted in complete accord with the above procedure should be rejected by the processing agent.

Steps should be taken to make it clear to providers that radiology billing should be based on the number of anatomic areas filmed rather than on the number of readings. While, for example, a pelvic film allows interpretation of multiple anatomic segments, a radiologist should not bill for readings of "right hip," "left hip," "pelvic," "lumbosacral spine," etc. Only the minimum number of views necessary to delineate anatomic pathology should be taken.

The Commission also suggests that the Division of Medical Assistance and Health Services give serious consideration to the amount and method of reimbursement to program radiological providers. The fact that many providers are willing to accept 35-40% of the present Medicaid fee itself suggests that the fee may be high. 60-65% of that fee, or the portion taken by the group, may contain excess profit in addition to moneys sufficient to cover costs related to radiological procedures.

Not Getting Our Money's Worth

The Commission's investigation disclosed a number of practices used by physicians to maximize unfairly the amount of Medicaid reimbursement they receive. Many of these practices contravene the requirement (*N.J.A.C.* 10:54–1.1) that reimbursable services be rendered by the physician or in his actual presence:

> "Physician's services" means those services provided within the scope of practice of the profession as defined by the Laws of New Jersey, or if in practice in another state by the laws of that state, by or under the direct personal supervision of an individual licensed by the State of New Jersey to practice medicine or osteopathy. It includes services furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. Direct personal supervision means that the services must be rendered in the physician's presence.

One method of maximizing Medicaid income is to disguise non-reimbursable treatment through the use of codes applicable to reimbursable procedures. Medicaid pays for physical therapy under certain conditions. Payments are not made for "physical medicine procedures administered by a physician, or physical therapy which is purely palliative such as the application of heat *per se* in any form, massage, routine calisthenics or group exercises, assistance in any activity or use of a simple mechanical device not requiring the special skill of a qualified physical therapist." *N.J.A.C.* 10:54–1.7.

At one facility, patients were scheduled to come in for diathermy, hydroculator and electric muscle stimulator (E.M.S.) treatments at a time when the physician was not in the office. A facility clerical employee who operated the equipment testified as follows:

*Q. I see. Now, would you run this EMS and hot pack machine when Dr. *** was not in the office?*

A. Sure. That's when we used it. We used it mostly in the morning because when he came in he had patients to see, and, you know, if we had a patient in there taking treatment, it would tie the room up and we needed the room. So we advised most of the patients to come in in the morning for their treatment.

*Q. I see. What about the EKG. Now, was this another situation where an EKG would be taken in the morning when Dr. *** would be absent?*

A. Yes.

Q. Was that standard procedure?

A. Yes, because it took time and it was also done in the same room and that took time to do also.

The clerical employee often "treated" as many as 30 patients per day out of the physician's presence.

Medicaid claim forms were submitted for these services in the name of the physician. The services rendered were described as "prolonged office visit" and processed for payment by the fiscal intermediary. The facility's registered nurse, who handled much of the Medicaid billing, testified as follows:

Q. When would you write prolonged office visit?

A. Whenever we give a physical therapy treatment.

Q. But, again, the physical therapy treatment might be diathermy?

A. Diathermy, EMS, EMS and hot packs, hot packs.

The woman who operated the physical therapy equipment and also gave injections, had no medical training. One of them testified concerning her background as follows:

Q. Are you a registered nurse?

A. No.

Q. Are you an L.P.N. or practical nurse?

A. No.

Q. Do you have any kind of training in the medical field?

A. I'm a medical secretary by training.

Q. And where were you trained?

A. Lyon's Educational Center, 900 Broad Street, Newark, New Jersey.

Q. And how long did you attend Lyon's? How long did you study there?

A. It was a year.

Q. Did you receive some sort of certificate——

A. Yes.

Q. —or diploma?

A. Yes, a thousand hours.

Q. And generally what kind of training did you receive there? What did they teach you?

A. Well, medical terminology. I had shorthand already in school, so I had shorthand, medical office procedures. I had typing. I imagine that's about it. English.

Q. Did you learn to operate any type of office equipment at Lyon's, any medical equipment?

A. No.

Q. Like a diathermy machine?

A. No.

Q. Did you learn how to give injections at Lyon's?

A. No.

Q. Did you learn how to take blood from a patient at Lyon's?

A. No.

She went on to detail the methods she used to give electric muscle stimulation treatments:

Q. What's a EMS and hot packs?

A. Electrical muscle stimulation. That was part of that machine. It was just like—I never knew heads or tails what it did. I was just told that's the way I had to do it. You just put the lotion on and you just iron; give him certain amount of watts. You ask him if he

feels it. If he feels it, then you just leave him there and iron him for ten minutes. Just rub him back and forth.

*Q. And did Dr. * * * leave you instructions as to what degree of voltage you should use with each patient?*

A. Well, he showed me a couple of times and he said you would normally leave it on—like it was just a knob and it has numbers from one through eight, and like I used to put it midway, somewhere between four, five and six, you know, unless the patient said it was too much. Then I would turn it down. That's all.

One must seriously question the quality and value of these services.

Another abuse involved billing Medicaid for injections administered by a nurse or clerical assistant rather than the physician under the guise of an office visit. A registered nurse testified as follows:

Q. You mentioned earlier you gave injections, right?

A. Yes.

Q. Suppose the patient came in for an injection and you actually gave the injection. Would you fill out a Medicaid form——

A. Yes.

*Q. —if the patient were a Medicaid patient? All right. And would you sign it in Doctor * * * name?*

A. Yes. When a patient comes in for an injection and walks in the door, it's an injection that Doctor * * * has said, "Mrs. Jones, you come here each week for an Imferon injection each week and she comes for an injection.

The nurse claimed that in addition to giving the injection, she would check the patient's weight and blood pressure and ask questions about general well-being. Again, the services billed were not rendered by the physician although claims were submitted in his name.

Medicaid was also billed for office visits when patients telephoned the facility for prescription renewals. Often the decision to renew

the medication would not even be made by a physician but by a nurse or clerical assistant. The nurse explained her procedure when a call from a patient was referred to her by the receptionist:

Q. Suppose she gave it to you, what would you do?
A. I check the patient's chart.

Q. Then what would you do?
A. See when her last visit was. If it was somebody who I was familiar with and her medications were normally renewed, they would be renewed. If it was somebody I was not familiar with or if she hadn't been there for a long time, I'd have her come in or I would hand it over to Dr. * * *.

In addition to the nurse, clerical personnel in the office renewed prescriptions. Instructions from the physician called for a Medicaid claim to be submitted in these situations. The medical secretary testified as follows:

A. Yeah. A lot of times I would go ahead and refill it and I would tell the patient, you know, you would have to come in and see Doctor some time this week.

Q. Okay.
A. Nine out of ten they would never show.

Q. What would happen as far as someone filling out a Medicaid form based upon my telephone call?
A. You see, I never did it. But it has——

Q. Would (the nurse)?
A. Yes.

Q. Well, what were her procedures? Would you make a list?
A. Doctor would tell—if Doctor was there and I told him a patient called and wanted meds renewed and I renewed it already, he had said get a form and fill it out. Any one of us could do that. Just fill out the top part, the name and Medicaid number. We would hand it over to him or (the nurse) and they would take it from there.

* * * *

Q. But the Medicaid form that's filled out is based upon the telephone call?
A. Right.

Q. Right. Not the patient coming in to see the Doctor?

A. Right.

Q. Right, Okay. Do you know what procedure code—you know what a procedure code is——

A. Yeah.

Q. ——in Medicaid?

A. Um-hum.

Q. Do you know what procedure code is placed in or on that Medicaid form?

A. Triple o-one.

Q. Triple o-one means what to you?

A. Just a regular office visit.

A related problem involved instructions given by facility employees to patients who would call in for prescription renewals. The receptionist described her procedures which were geared to getting the patient into the office for a billable visit:

Q. Have you ever answered the phone and gotten people on the other end who want to renew their prescriptions?

A. Yes.

Q. Well, what did you do? What is your procedure when that happens?

A. Well, I usually tell them to come down and talk to Dr. * * * about it.

Q. You ask them to come in in person?

A. Yeah.

Q. What would yau say to them? Suppose I were the patient. What would you say to me?

A. Well, say, you know, you better come down to the office and bring your bottles, you know, the empty bottles and talk to him. If he can renew it, then he'll give it to you. If not, you know, whatever he says.

This is one example of techniques which we label as "churning" or unnecessarily requiring patients to come into a facility for a billable visit. A medical secretary at one facility described another technique:

Q. Was there any practice or procedure that you were aware of on the part of the doctor or anyone else in the office acting under his instructions to get patients to come back on any type of a regular basis?

A. I don't understand what you mean.

*Q. Well, for instance, did Dr. * * * ever instruct you or the receptionist or any other persons working in the office to instruct the patients to return next week or the week after——*

A. Yes, me.

Q. ——to—all right. How would that work? What would his instructions be like?

A. Well, he would see a patient and say the patient had a cold. So he would say tell her I would want to see her Wednesday or Thursday. If they came in on Monday, tell her to come back Wednesday or Thursday to see me.

Q. And would the doctor actually examine these patients when they came back the second time?

A. He would come in and say, you know, "How do you feel?" you know, "How's the medicine working?" And they would say, "Okay." He would say, "Finish up your medicine and come back and see me again." That's what he would say.

Q. So he would want them to come back a third time?

A. Yeah. A lot of them came back three times a week.

Q. Three times a week?

A. (The witness nods her head.)

Q. What would happen the third time?

A. The same thing. He would come in and say, "How do you feel?" You know, "Cold all gone?" and they would say "Yeah." "Okay. Take it easy." And that was it.

Q. Okay. But there wouldn't be any further physical examination?

A. No.

Q. On his part?

A. No.

Another abuse involved billing Medicaid *and* an insurance company for services rendered to recipients in connection with auto accidents or workmen's compensation claims.

A medical assistant/ secretary testified as follows:

> *Q. Do you know of any instances where patients who were involved in accidents received payments from the insurance company or an insurance company and some of these payments from the insurance company went to Dr. * * * ?*
>
> A. Yes.
>
> *Q. But Medicaid was also billed for services that Dr. * * * rendered to these patients?*
>
> A. Yes.
>
> *Q. What can you tell us about that type of a situation? How would that work?*
>
> A. Well, that patient—we had an invoice card on the patients. So whenever they came in, we would put down the date and at the end of the twenty-five or thirty treatments, you know, the secretary would type the bill up and send it into the lawyer. Meanwhile, if they were on Medicaid, we still had to fill out a form and submit the form to Medicaid. That's all.

Because of this ruse, Medicaid monies could not only be paid to the physician, but also to pharmacies, laboratories and other providers of care.

The Division should take a hard stand with respect to this double billing. Any physician submitting claims to Medicaid who also claims reimbursement for identical services from another third party payer should be immediately and permanently suspended from the program.

We further suggest that appropriate State and Federal agencies consider such conduct in connection with possible actions against professional licenses and criminal sanctions.

Rather than relying upon the accuracy of information provided on the claim sheets or the good faith of hospitals or physicians in notifying Medicaid of any inquiries indicating the existence of an insurance claim, we suggest that the Division consider establishing a liaison with a local insurance clearing house. During the course of the investigation the Commission subpœnaed one such

clearing house for information relevant to Medicaid recipients treated by suspect physicians for "trauma." The clearing house was quickly able to provide details of treatment and insurance company payments for which Medicaid was also billed.

Other common abuses include ping-ponging—the practice whereby a Medicaid recipient will be seen by many or all practitioners in a clinic, and family ganging—the practice under which covered family members of the patient are seen by facility personnel without initially requesting medical care. "Family ganging" often occurs when small children accompany a "Medicaid mom" to a facility.

A medical secretary described the procedure at one office:

*Q. All right. Did Dr. * * * himself or did Dr. * * * instruct personnel in his office to try to get patients to bring their children in to him?*

A. Well, no. He would ask the patient when they were there—you know, if the mother had the child with her, he would, you know, ask her if, you know, the child had all his baby shots. That's what he hit them with most, the baby shot bit. And she would say no or something and he would say get a form, fill out a chart and then we would start with the baby.

Q. And the mother would return with the baby to get the shots?

A. Um-hum.

Q. And who would give the shots?

A. Me.

Q. You would. Would the Doctor see the baby?

A. No, not unless the baby was sick.

At one facility, ping-ponging to the Dentist-tenant was common.

Q. And do you know who would, if anyone, make suggestions to the patients that the dentist be seen?

A. Usually Dr. * * *.

Q. Did he ever make that suggestion in front of you?

A. Yes.

Q. What would he say?

A. Your teeth look bad. I want you to see the dentist.

Q. And would he then escort them to the dentist's office?

A. Yes, most of the times he would.

Another employee corroborated ping-ponging to the dentists:

*Q. Were there any other medical personnel associated with Dr. * * *? How about dentists?*

A. Dr. * * * and Dr. * * *.

*Q. All right. And would they come to Dr. * * * office?*

A. The office was right behind us. All we had to do is walk through a hall.

Q. And were these two dentists in every day?

A. Yes. Well, they would take turns.

Q. I see. One of them would be present every day?

A. Yeah.

*Q. And how did Dr. * * * refer people to the dentist? Strike that question.*

*Did Dr. * * * refer his patients to the dentists?*

A. Yes.

Q. How would that happen?

A. He would look in their mouths, you know, and like he would just ask them, "When was the last time you saw a dentist?" And he would send them right over to them.

*Q. Would this be the same day that Dr. * * * saw the patient?*

A. Yeah.

At another facility a physician was pressured by the lay owner to refer patients to other in-house specialists, even for procedures which did not require services of a specialist:

Q. All right. Can you give us an idea of the nature of his advice; what did he suggest or advise you to do?

A. To have, for example, breast screening done on more female patients over age thirty.

Q. This would have entailed the services of the radiologist?

A. Yes.

Q. On the premises?

A. Yes.

This facility was visited by investigators from the State Commission of Investigation and the United States Senate Select Committee on Aging who posed as Medicaid recipients. Each of the three "patients" was greeted by a receptionist who extolled the merits of the facility and the various specialists who practiced there. *Before* each of the investigators was examined or even seen by a physician, the receptionist made appointments for return visits with the dermatologist, radiologist, podiatrist, gynecologist, optometrist and dentist.

At another medical group a physician described pressures to ping-pong exerted by the lay administrator.

> *Q. It started——*
>
> A. When the Group got downstairs which was approximately May of '74 and the new office suites were ready and the dentist had then come in the area and there was an optometrist there part time and then the optometry office was on the other side of the clinic. When we got downstairs. I was told to make referrals to the dentist, to the optometrist, to the obstetrician, to the gynecologist and also with the orthopedic doctor who was coming in eventually. And my answer at that time, I recall, to Mr. * * * was that if I think it's medically necessary for this patient to be seen by the dentist, I will tell him to go to a dentist, but I will not tell him to go to your dentist. I will not tell him to go to this eye doctor or that eye doctor. I will ask him when was the last time your vision was checked and examine eyes, which is a normal part of my routine exam.
>
> * * * *
>
> *Q. Okay. Now, you have indicated to us that Mr. * * * approached you with suggestions that you make referrals to certain of the other physicians in the group?*
>
> A. That's right.
>
> *Q. Are you aware of Mr. * * * or any one else approaching other physicians and making a similar request for referrals?*
>
> A. Yes. I know that he was quite frequently harassing, I'll use the word harassing, Dr. * * * to

make referrals to the gynecologist and eye, ear, nose and throat specialist or an orthopedic doctor.

* * * *

Q. Do you have any idea why he requested the referrals to be made?

A. I assume that he was looking to ping pong his patients. That's an assumption—a presumption on my part, and that he was going to get a percent of the billing from the particular consultant, which would increase his income, certainly not mine.

The physician claimed that these pressures were one reason which caused him to disassociate himself from the group. The administrator involved allegedly referred to group patients as "warm bodies" and urged physician staffers to "keep the warm bodies flowing." A physician partner was questioned about the activity of the lay administrator:

*Q. Doctor, have you ever heard Mr. *** use the term "warm bodies" in connection with the patients at *** Health Group?*

A. I plead the Fifth and Fourteenth Amendments.

*Q. Doctor, have you ever heard Mr. *** suggest to physicians at the *** Health Group that they should circulate the warm bodies amongst themselves?*

A. I plead the Fifth and Fourteenth Amendments.

The lay administrator's actions apparently did not end at advising physicians how to practice medicine. One female Medicaid recipient told of being examined at the facility by a "physician who did not wear a white coat."

The individual—who also prescribed medication for the recipient —was positively identified by the recipient as the group's lay administrator.

The Commission also discovered it a prevalent practice for Medicaid recipients to be required to sign claim forms in blank and prior to having any service rendered. This practice allows physicians to bill the program for other than services actually rendered. United States Senate Select Committee on Aging personnel who assisted the State Commission of Investigation were required to sign forms in blank virtually at every facility visited.

A comparison of claims submitted by the facilities for services *allegedly* rendered with detailed investigative notes itemizing services actually rendered showed gross discrepancies in many cases. Physicians billed for injections that were not given, for blood which was not drawn and for urinalysis and tine tests which were not performed.

The Commission is also concerned with the amount of time spent with Medicaid patients by physicians. In several facilities visited, undercover investigators from the United States Senate Special Committee on Aging reported that physicians would spend only minutes with them and give the most cursory examination for which Medicaid was billed $30.00. Such minimal procedures again do not appear consistent with quality medical care.

Many of the abuses outlined above—extensive use of para-medical and even lay personnel for duties which are reimbursable only to physicians, double billing, ping-ponging and family ganging —can be and are being detected by the Division of Medical Assistance and Health Services through the use of sophisticated computer screens and time studies. We commend the Division and specifically the Bureau of Medical Care Surveillance for the effectiveness of current methodology. Existing computer program comparsion procedures, however, do not uncover abusive practices in each and every case, but only when certain factors are present. To further protect the integrity of the program, we recommend that the Division obtain and regularly employ the services of undercover agents who would pose as recipients seeking medical care. The Commission found that the use of such agents provided a quick, reliable and efficient method of uncovering practices inconsistent with the aims of the Medicaid program. Evidence gathered by such investigators, who we envision would be assigned to the Bureau of Medical Care Surveillance, could and should be aggressively used by the Division in suspension hearings or passed along for the review of appropriate law enforcement agencies.

We additionally recommend that facilities performing substantial amounts of Medicaid work be required to disclose to the Division the names and positions of employees. This information which, of course, should be updated periodically, will prove helpful in detecting use of para-professionals in place of physicians. We would also suggest that the Division consider legitimatizing the use of *qualified* medical para-professionals in certain instances.

Services rendered by such individuals, however, should be paid at a rate lower than that now designated for physicians.

Lastly, we urge that steps be taken to insure that recipients be made aware of services billed to Medicaid on their behalf and be given an opportunity to challenge the accuracy of physician requests for reimbursement. At the very least, a procedure should be instituted and strictly followed requiring recipients to sign only completed, itemized claim forms. We further recommend that recipients be advised of services billed on their behalf, either by a Division listing of billings periodically through the year, or simply by adding a copy claim form to be given to the recipient by the physician at the time of service as a "receipt". We anticipate that costs incurred as a result of the adoption of either of these proposals would be offset by savings realized from more truthful billings. Either procedure would build a sorely needed "check and balance" into the existing system.

Alliances Between Mills and Pharmacies

During the course of the investigation, the Commission discovered a number of questionable relationships between pharmacies and mills. At one location an owner of the pharmacy and a lay "entrepreneur" also "owned" a substantial interest in a medical center located less than a block away. The pharmacist paid the salaries of physicians at the Center and subsequently played a role in determining the "rent" physicians would pay for use of the facility. According to the pharmacist, Center patients initially numbered more than 50 a day and rose to the point where they comprised about a third of his business. We believe this estimate to be conservative.

According to the pharmacist, Center patients patronized his store because of convenience. He claimed that the next closest pharmacy was four blocks away. In order to determine whether factors other than convenience were involved, personnel from the State Commission of Investigation and the United States Senate Select Committee on Aging visited the subject medical center. Following an examination, a physician at the Center contacted the pharmacy by an automatic-dial phone and ordered several prescriptions for a Committee undercover investigator. The Center receptionist then directed the investigator to the pharmacy to pick up her medication.

In another area, a pharmacy and a medical center located directly across the street were sold as a "package" to a pharmacist and a lay person. Initially, physicians at this Center were paid a salary and subsequently, arrangements changed to a percentage "rental." The County Medical Society recently objected to the pharmacist and his lay partner acting as owners of the Center. Accordingly, arrangements were made to the end that the Center was "sold" to a physician. The physician now pays rent to a realty company whose principals are the former owners, a fee for the former owners to open and close the facility daily, and a fee to the "former" owner's brother who acts as facility bookkeeper. Investigators from the State Commission of Investigation and the United States Senate Select Committee on Aging who visited this facility were directed to the "former" owner's nearby pharmacy for prescriptions.

A comparison of the location of the medical center and that of the pharmacy rendering service to significant numbers of the center's patients may itself suggest impropriety. Surveillance personnel should closely scrutinize situations where pharmacies distant from centers provide service to large numbers of center patients. The Commission was surprised to find one situation where the majority of one medical facility's patients were having their prescriptions filled by a pharmacy located some five to eight miles away, notwithstanding the fact that at least two drugstores were located within blocks of the office. Prescriptions from the one facility alone accounted for 55% of the drugstore's total business and 80% of its Medicaid volume.

Investigation disclosed that the pharmacy was once a tenant of the physician. When the physician relocated in another town, direct telephone lines were established to the subject pharmacy. The physician, as well as his registered nurse and lay office help, would phone in prescriptions to the pharmacy and the pharmacist would then type a script with the relevant information for his files. Evidence indicates that the pharmacist would be supplied with blank prescriptions pre-signed in the physician's name by his registered nurse. These blanks were apparently used in violation of Federal Law to record transactions involving controlled substances.

The medical facility involved maintained a cardboard box into which it placed drug samples left by pharmaceutical salesmen and medications returned to the physician by patients. According to

several present and past employees, the pharmacy's deliveryman would regularly pick these up. The pharmacy's deliveryman recalled picking up only outdated vaccine and specifically denied ever taking pills and syrups. He recalled picking up samples only between one and three times a year. While the drug store's employee maintained that he personally placed the medication in a trash receptacle, a real possibility exists that these items were redispensed. In addition to this possibility, the Commission has received material from the State Division of Consumer Affairs indicating that the pharmacy had been billing the Medicaid program for expensive brand name drugs while actually dispensing cheaper "look-alike" generic drugs.

Another abuse involved the short-circuiting of normal checks and balances between the pharmacy and recipients. The pharmacy's deliveryman would take the prescriptions to the facility's patients. The Medicaid claim forms acknowledging receipt of and requesting payment for the medication were not signed by the recipients. They were pre-signed in the patient's name by another pharmacy employee. With such a procedure, there is no need for the recipient to ever see the claim form and no way for the recipient to compare drugs billed on his behalf with drugs actually received.

All of the facilities and pharmacies mentioned above were involved with others in an ingenious scheme designed to maximize personal profits. A lay entrepreneur who owned substantial interests in several medical centers banded together with a relatively small group of physicians, pharmacists and clinical laboratory operators to form a company which would arrange for laboratory tests to be performed and repackage and resell relatively inexpensive generic drugs under its own brand name. Stockholders included the physicians who would write prescriptions for their corporation's products and lay medical facility owners. With each prescription and sale, stockholder equity in the corporation increased. Questions of product quality aside, such a situation raises grave questions of conflict of interest and temptation to overutilize scant Medicaid program funds.

Problems of steering are exacerbated in physician groups having an on-premises pharmacy. At one facility the in-house pharmacy "rented" some 225 sq. ft. of space for in excess of $1,050 per month. Entrance to the pharmacy was via the facility's door and waiting room. A plexiglass partition separated the two areas and

prevented the patient from physically entering the pharmacy. Employees of the facility testified that it was the practice of the lay administrator to approach patients following an examination and say in English or in Spanish, "You can obtain the prescription at the pharmacy and you can wait in the waiting room," or "Honey, could you please take your prescription to the pharmacy and then have a seat outside." Another facility employee told of instructions to direct patients to the pharmacy which were given by the lay administrator.

*Q. Would Mr. * * * instruct any of the girls or any of the doctors to send the patients in to the pharmacy?*

A. Especially he told me himself.

*Q. Mr. * * * told you to send patients to the pharmacy?*

A. Right.

Q. What did he tell you?

A. When the pharmacy was open, he go straight to the lab and he told me that they should tell the patient to go to the pharmacy to pick up the prescription.

Q. And along with his instructions, did you tell the patients to go to the pharmacy?

A. It was in front of the patient and most of the patients understands a little bit in English.

Q. So you didn't have to tell them, they heard?

A. Right.

The facility also maintained a double standard as to whether a charge would be made for injectable drugs. Private patients would not be charged for injectables while the taxpayers picked up the bill for injectables given to Medicaid recipients. An employee described the practice as follows:

*Q. Now, Mrs. * * *, suppose a Medicaid patient comes in and he needs an injection of pencillin. What would happen?*

A. Then the doctor give the prescription and the patient go to the pharmacy. We tell the patient, "Get in the pharmacy, get the needle," you know, because for the patient it's very easy to tell that way, and

come back to the lab and I give it, the needle, to the patient.

Q. And at the pharmacy would the patient sign a Medicaid form for the penicillin?
A. Yes, they have to sign.

Q. So Medicaid would be billed for the penicillin injection, right?
A. Right.

Q. Now, suppose a private patient came, somebody who didn't have Medicaid or Medicare but was going to pay cash, and suppose the private patient needed an injection of penicillin. What would happen?
A. Well, we have a salesman supply some samples, right, and we got some sample, you know, for like we have 600 dozen units of penicillin and we keep it for special patient you know, private patient, and we supply, you know. Like a doctor do a little favor, save a little money.

Q. *No charge?*
A. No charge.

Q. So the Medicaid patients would have to pay for the penicillin and the other injectables, right?
A. If the doctor order, yes, yes.

The Commission received material from the State Division of Consumer Affairs indicating that the subject pharmacy short-weighted or short-counted medications going to Medicaid recipients. Information from the Division of Medical Assistance and Health Services suggests over-prescribing of vitamins, preparations and vaporizers.

In another pharmacy, which had a direct telephone link to a doctor's office, evidence of the following additional abusive practices came to light: Medicaid recipients were required to sign forms in blank and prior to receiving medication; billing Medicaid for drugs not dispensed; billing Medicaid for drugs covered by the program and dispensing a drug not so covered; tracing recipients' signatures from old claim forms onto blank forms and billing for drugs allegedly supplied to recipients who were deceased.

A major step in reducing program costs was taken during the Commission's probe by the Division of Medical Assistance and Health Services. Under present regulations, generic rather than brand drugs should be prescribed and dispensed whenever possible. Additional steps can be taken to further reduce abuse and unnecessary expenditure of limited program monies. The Division currently has the computer capability to develop a prescriber profile on Medicaid program physicians. This program would analyze prescribing patterns of physicians and display questionable or abusive practices. Unfortunately, the profile is not effectively used because program providers choose not to supply necessary information on claim forms. We recommend that the Division assume a tough stance on this issue and reject for payment any claims not containing relevant information.

To facilitate the gathering of information relevant to program integrity, we suggest that a standard Medicaid multi-copy prescription/claim form be developed. The name of the prescribing physician could be pre-stamped on the form. The physician should list the medication desired and draw a line immediately under the last item prescribed and personally sign the form. Space can also be provided for the physician to list a substantiating diagnosis. A copy can be kept for the physician's record and the balance forwarded to the pharmacy via the patient for use as a description of drugs to be dispensed and the pharmacist's billing invoice.

Existing program regulations prohibiting the referral of patients to a particular pharmacy by physicians should be broadened to encompass all facility employees and stringently enforced. It should be made clear to all that the physician may not require nor may he recommend that a prescription be filled by a particular pharmacy; nor may his receptionist or any employee do so. Patients who ask must be reminded of their free choice of pharmacy. Any liaison—including direct telephonic connection and common entranceway—between physician and pharmacist should create a presumption of impropriety. Landlord-tenant and other relationships between physicians and pharamcists should be subjected to special scrutiny as to pharmaceutical utilization.

Landlord-tenant relationships present perhaps the greatest temptation to overutilize pharmacy services. Even without direct steering by facility staff, patients are usually required to pass the pharmacy entrance to pick up coats or children before arriving at the public street. The in-house pharmacy truly has a "captive" audience. For this reason, the common entranceway should be

prohibited. Moreover, when a physician or landlord owns a pharmacy or has a pharmacy for a tenant, he is induced to take whatever steps are necessary to see that the pharmacy succeeds. In-house pharmacies also present opportunity for profit based upon the precise nature of inventory kept and the ability to obtain volume discounts on drugs. We recommend that the Division take these savings into consideration along with the fact that in-house pharmacies primarily—if not exclusively—service patients of the facility and reimburse these pharmacies at a lower institutional pharmacy Medicaid rate. We further suggest that the professional boards in their licensing schemes take into account the great potential for overreaching present when pharmacies enter into financial relationships with physicians located on the same premises.

Recommendations

The Commission has already recommended substantial changes in program legislation and administrative practices and procedures in previous reports on nursing homes, independent clinical laboratories and hospitals participating in the New Jersey Medicaid Program. Many of these previous recommendations—such as those calling for criminal sanctions against kick backs, establishment of a scheme of financial penalties for incidents of fraudulent conduct, subpœna power and accountants for the Division of Medical Assistance and Health Services, and increased monitoring of fiscal agent actions—have effect in several program component areas. We take this opportunity to supplement the record with recommendations pertinent to the administration of the physician groups aspect of the program.

1. Shared Health Care Facilities receiving substantial amounts of Medicaid funds should be identified and annually approved for program participation by the Division of Medical Assistance and Health Services. Practitioners rendering service and the facility at which service is rendered should clearly be identified. We have reviewed proposals drafted by the Division of Medical Assistance and Health Services to achieve these goals and concur with their substance. We pause, however, to add our own suggestions (in italics):

D. Prohibited Practices,—Administrative Requirements

1. Percentage letting prohibited—The rental fee for letting of space to providers in a shared health care facility *or the*

remuneration of providers for services in such facility shall not be calculated wholly or partially, directly or indirectly, as a percentage of earnings or billings of the provider for services rendered on the premises in which the shared health care facility is located. A copy of each lease *or details of any agreement between the facility and any provider* and any renewal thereof shall be filed with the Division.

5. The Commission understands that the separate entrance requirement imposed by this section is applicable to in-house pharmacies.

6. Claims—All provider claims submitted for services rendered at a shared health care facility shall (a) contain the registration code of the facility at which the service was performed and (b) be *personally* signed by the practitioner who rendered service (c) *contain the code number of the physician who rendered the service,* (d) *be personally signed by the patient who received the goods or service.*

8. Orders for ancillary clinical services—*All* orders issued by providers for ancillary clinical services, including, but not limited to, X-rays, electrocardiograms, clinical laboratory services, electroencephalograms, as well as orders for medical supplies and equipment, shall contain the registration code of the facility at which the order was written *and the code number of the provider requesting the service or gods. A line shall be drawn under the last good or service requested and the diagnosis justifying the request and requesting providers personal signature shall be placed below that line.*

10. Direct telephonic links between providers is prohibited,

11. Providers shall not order ancillary clinical services from providers in which they hold a financial interest.

12. Providers shall not submit claims to Medicaid who also claim reimbursement for identical services from another third party payor. All information requested concerning possible third party liability shall be listed on claim forms.

2. We strongly recommend that the Division obtain and regularly employ the services of undercover agents who would pose as recipients seeking medical care. Evidence of improprieties gathered by these agents could and should be aggressively used in suspension hearings or passed along for the review of appropriate law enforcement agencies.

3. Medicaid recipients should be made aware of services billed to the program on their behalf and be given an opportunity to challenge the accuracy of physicians requests for reimbursement.

Lastly, and perhaps most importantly, we recommend that there be constant and close coordination between Division Surveillance personnel and those responsible for the review and promulgation of administrative regulations applicable to program providers. Many of the abuses identified by the S.C.I. were previously found by surveillance personnel, and passed along for further action. Unfortunately, in many instances warnings of potential widespread abuse noticed by the Bureau of Surveillance and passed along to others seem to have fallen through the cracks of bureaucracy. The Commission notes that conditions have improved and many aggressive, explicit regulations have been promulgated during the course of our own investigation by new Division leadership. We fully expect that such efforts will continue.

Copies of the investigative record compiled by the Commission in this probe were forwarded to the State Attorney General, the United States Attorney for the State of New Jersey, the State Board of Medical Examiners, the State Board of Pharmacy, the Division of Medical Assistance and Health Services and the State Legislature for further review and consideration.

RECOMMENDATIONS, CORRECTIVE STEPS AND PUBLIC REACTIONS AS A RESULT OF S.C.I. INVESTIGATIONS

The law creating the Commission requires it to submit to the Governor and the Legislature an Annual Report "which shall include its recommendations." By this and other appropriate means, the statute says, "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." This section of the Annual Report, therefore, summarizes S.C.I. recommendations and the legislative and regulatory actions that resulted from the Commission's activities and public reactions to the year's work. This report summarizes in another section the "collateral results" of the S.C.I.'s investigations in the form of indictments, trials and convictions stemming from follow-up actions by state, county and local prosecutorial authorities.

MEDICAID

As noted elsewhere in this report, statutory and regulatory steps were taken in response to the revelations of abuses and exploitation of the vast Medicaid system of health care for the indigent following—and even during—the Commission's investigations, interim reports and public hearings. These actions included the Legislature's enactment of a New Jersey Clinical Laboratory Improvement Act, which was reviewed in the last report, while the Commission's inquiries into the Medicaid maze was still in progress. More recently, the Legislature approved and Governor Brendan T. Byrne signed into law on September 15, 1976 Assembly Bill No. 1455, which increases maximum penalties for bilking the Medicaid program through overbilling and false billing. The S.C.I. in its last Annual Report emphasized that it "strongly supports the concept and substance of this measure and recommends its immediate adoption." The new law effectively provides for the recovery of severe penalties, including interest on moneys improperly received, assessments of up to three times the amount of moneys wrongfully paid, and payments of $2,000 for each excessive claim submitted.

After hearing and evaluating the testimony of the witnesses who appeared during clinical laboratory hearings, the Commission noted that many of its recommendations were promptly and expeditiously adopted by the Division of Medical Assistance and Health Services.

The highly inflated fee schedule—which facilitated the making of financial inducement type payments from some laboratories to their physician customers—was reduced 40 per cent. Language in the program laboratory manual was tightened to clearly proscribe the practice by which small laboratories subcontracted particular tests to large reference facilities and then, in many instances, marked-up the cost by more than 300 per cent and reaped windfall profits at the taxpayer's expense. The manual now explicitly prohibits the breakdown of automated component-part tests into separate procedures and the submission of bills to Medicaid for each to the end that a lab might receive between $60 and $80 for a profile which costs less than $3.50 to perform. A computer system for analyzing and screening group tests was developed.

The Division took steps to insure that laboratories fully identify the procedures performed and for which payment is requested. In this regard, a requirement was imposed upon Prudential (the fiscal intermediary) that all claims be itemized in detail. Aggregate billing—which was effectively used by some labs to mask improper requests for reimbursement—is no longer tolerated.

The Division adopted a hard line with respect to the flow of inducement type payments in any form whatever between laboratories and physician customers. The relevant and expanded Medicaid program rule reads as follows:

> 205.1 Rebates by reference laboratories, service laboratories, physicians or other ultilizers or providers of laboratory service are prohibited under the Medicaid program. This refers to rebates in the form of refunds, discounts of kickbacks, whether in the form of money, supplies, equipment, or other things of value. This provision prohibits laboratories from renting space or providing personnel or other considerations to a physician, or other practitioner whether or not a rebate is involved.

The Division cured a glaring weakness by obtaining for its surveillance staff a person with expertise in clinical laboratory processes and procedure. During its investigation, the Commission had available to it the expertise of personnel assigned to the State Department of Health's Division of Laboratories and Epidemiology. Because of their technological backgrounds, these State employees were able to readily identify many program abuses and make valid judgments as to the quality of care being provided to Medicaid patients by various laboratory facilities. The Division of Medical Assistance and Health Services now has similar capabilities.

One problem area which surfaced during the hearings involved the lack of direct and constant supervision over the fiscal intermediary by the Division. While the Commission is aware that liaison between the fiscal intermediary and the Division is maintained primarily through periodic contractor meetings, we believe it desirable to have a Division representative stationed at the contractor's office to constantly monitor its State Medicaid procedures.

The Commission recommended that a panel be formed to draft an equitable competitive bid system for laboratory work based upon awards of a regional nature. In furtherance of this recommendation, the Commission testified against impractical restrictions of federal law before several Congressional bodies.

The New Jersey Legislature must provide additional new statutory tools to deal with problems decumented in the Commission's laboratory hearings. To deter the flow of financial inducement type payments from laboratories to physicians—whether in private or government-funded program situations—appropriate criminal sanctions should be enacted. Such a statute might be modeled upon sections 650 and 652 of the California Business and Professional Code, which makes the offering, delivering, receiving, accepting or participating in financial inducement type payments a misdemeanor punishable by six months imprisonment and/or a fine not exceeding $500.

At the conclusion of the second phase of the Commission's probe of gross profiteering in medicaid nursing home facilities in October, 1976 the Commission urged that Senate Bill 594, requiring full public disclosure of those who have financial or other business interest in nursing homes, be substantially strengthened to eliminate practices that siphoned health care dollars from patients to

speculators. This bill, which had passed in the Senate on April 12, 1976, subsequently was amended on the Assembly floor in accordance with the S.C.I.'s recommendations, according to a spokesman for the Legislature's Joint Nursing Home Study Commission which drafted the original legislation. The revised measure has been on second reading in the Assembly, awaiting a floor vote.

Additionally, subsequent to the issuance of its Final Report on Nursing Homes, the Commission persisted in its efforts to have New Jersey's system of property cost reimbursement to Medicaid nursing homes restructured along the lines suggested by the Commission in that report. Commission representatives met on several occasions with high-ranking officials of the appropriate administrative agencies. Those agencies have accepted the Commission recommendation, which will show a savings of as much as $6 million per year, according to the Director of the Division of Medical Resistence and Health Services, and are presently implementing its initial stages.

Certain unusually alarming aspects of the Commisison's complicated Medicaid inquiry, such as the so-called clinical laboratory "chambers of horror" and the evils of the "medicaid mills," helped to spur corrective efforts. In fact, the clinical laboratory phase was a pioneering probe that revealed for the first time the hard facts about unscrupulous ripoffs of the system. These disclosures resulted in the appearance before the U.S. Senate Committee on Aging and the U.S. House of Representatives Subcommittee on Oversight and Investigation of Frank L. Holstein, the Commission's Executive Director, and former Commission Counsel Anthony G. Dickson. They testified about the S.C.I. probe and the scandals it unearthed. U.S. Senator Harrison A. Williams of New Jersey, reporting his "dismay" over the "widespread fraud and abuse among clinical laboratories," told the Senate in remarks entered into the Congressional Record:

"With respect to the latter, I am pleased to note that the Aging Committee gives great credit to the New Jersey Commission of Investigation and to our New Jersey Department of Institutions and Agencies (now Department of Human Services). The Legislature and the Department responded with prompt implementation of corrective measures. At an Aging Committee hearing in February, Frank Holstein of the S.C.I. explained how the Commission had conducted a sweeping investigation last year and documented the practice of offering kickbacks to acquire accounts,

documented gross overutilization of some laboratory services by physicians receiving kickbacks and indicated a practice defined as unconscionable profiteering by small laboratories, brokering services and other billing for services not performed."

The Prison System

At the conclusion of public hearings in May and June, 1976 on the dangerous misuse of the pre-parole furlough system in the prisons, the Commission issued a statement of conclusions and recommendations in which it declared:

"The public should understand that, unless public funds are forthcoming to expand prison facilities and adequately staff them, there can be no total cure for the ills of the system. The public must not labor under a false sense of security that those dangerous to society are firmly incarcerated because the reality is that corrections institutional space in New Jersey remains static while the number of those being incarcerated is increasing sharply."

Since that observation, the Legislature and the Governor joined to authorize a public referendum in November, 1976 on a $225 million bond issue program for capital construction. Part of this program provided $80 million for institutions, including new correctional facilities. This bond issue received overwhelming public approval and, with legislative authorization, is now being implemented.

At the close of the hearings on the prison furlough scandal, the Commission also noted that New Jersey's corrections system "is operated on a day-to-day basis adjusting from one crisis to another," that there has been a "severe breakdown of effective communications, including guidelines, among the many agencies that in some manner relate to the correctional system," and that planning should be initiated "so that the existing correctional system can be brought into the realities of 1976 and not merely continue as a historical hand-me-down system that simply is not performing to the standards required."

Since those S.C.I. comments, the Legislature enacted a proposal by the Governor that restructured the sprawling Institutions and Agencies Department into a Department of Human Services and a Department of Corrections, effective in October, 1976 when the Governor signed the legislation into law. The Commission is gratified that this important remedial move toward an

improved corrections system at least in part reflects its own investigations into abuses of the former system. As the Commission has emphasized publicly, its probe and hearings were aided substantially by the contributions of Ann Klein, the former Commissioner of Institutions and Agencies who is now Commisisoner of Human Services, and Robert J. Mulcahy 3d, the former Deputy Commissioner of Institutions who is now the Commissioner of Corrections.

In addition to these legislative reforms and regulatory restraints by the administrators that followed the Commission's inquiry into furlough abuses in the prisons, a series of indictments and arrests resulted after the Commission referred its facts and public hearing transcripts to the Attorney General and other appropriate prosecuting authorities, which are reviewed in the "collateral results" section of this report.

In an editorial on New Jersey's changing correction system, the Trenton Times stated on November 7, 1976:

> "New Jersey's much-troubled prison system is off on a new, and we hope better, course. There's a new, separate Department of Corrections, whose top administrators no longer have their attention diverted by welfare and mental health problems and whose offices are being centralized at the Old State Home for Girls. There's a new commissioner Robert Mulcahy. And there's some $20 million in newly-voted bonding authority with which to provide facilities for about 400 inmates.
>
> "Those developments are all to the good. They aren't going to solve all the prison problems, whose immensity was suggested in five days of public hearings held last spring by the State Commission of Investigation (SCI). But they're a start."

Green Acres Appraisals

Since the completion of the S.C.I.'s investigation and public hearings into inflated appraisals of land acquired in Middlesex County under the Green Acres program, the Commission has been advised by Commissioner David J. Bardin of the Department of Environmental Protection (DEP) on the progress of the land appraisal review agreement it voluntarily negotiated with the New

Jersey Department of Transportation (DOT). The New Jersey DOT thus is now controlling all local and county Green Acre appraisal work as strongly recommended by the Commission. On December 18, 1976 Commisisoner Bardin informed Joseph H. Rodriguez, chairman of the Commission, that more than 120 county and municipal applicants for Green Acres funds, once supervised by DEP, "have initiated DOT appraisal review procedures."

With respect to this S.C.I. inquiry, the Star Ledger of Newark commented editorially on July 15, 1976 that the Commission had "wisely" recommended that the State DOT assume the appraisal task, stating:

> "The Administrative change tacitly acknowledges the bull's-eye accuracy of the S.C.I. condemnation of the deplorable practices that flourished under DEP supervision."

Conflicts of Interest

The S.C.I. has for a number of years strongly urged the Governor and the Legislature to enact a tough conflicts of interest law to apply to all county and municipal officials and to be administered on a uniform statewide basis. This concern has been heightened by the Commission's various investigations since 1969 of official corruption and unethical conduct at the county and municipal level, including the 1974 public hearings on the government of the Borough of Lindenwold.

A bill is pending in the Legislature which meets the criteria set forth in S.C.I. recommendations and the Commission trusts, as in the case of the state conflicts of interest law, that the legitimate public-interest demands of the people of the state will be met by enactment of this measure.

Other Prior Actions Included — —

Pseudo-Charitable Appeals (1974): Legislation designed to carry out S.C.I. recommendations for barring deceitful sales appeals in the name of the allegedly handicapped by profit-making companies was introduced in an effort to provide needed consumer protection against unscrupulous practices harmful to individuals and the fund-raising efforts of legitimate charities. The Governor on February 3, 1977 signed into law a major bill requiring the

approval of the attorney general for the use of such terms as "handicapped" or "blind" by any corporation or solicitation firm.

Workmen's Compensation System (1973-74): Major reforms, many specifically recommended by the S.C.I. and/or obviously aimed at stopping abuses exposed by the S.C.I., were accomplished by rules changes promulgated by the Labor and Industry department. Additionally, a bill recommended by the S.C.I. was enacted into law to prevent more effectively false medical billing practices which, investigation showed, were used by some to inflate compensation and negligence claims. Further proposed legislation to reform the workmen's compensation is pending.

Point Breeze (Jersey City) development fraud (1970): Two bills which carry out S.C.I. recommendations from this probe were enacted into law. One improved the urban renewal process and the other tightened statutory provisions to prevent a purchaser of publicly owned lands from receiving any part of the brokerage fee attendant on such a purchase.

The Garbage Industry (1969): Due to growing monopolistic trends in the industry, the S.C.I. recommended a statewide approach to control of the industry. The substance of the S.C.I.'s recommendations was encompassed in subsequently enacted state laws for regulation of the solid waste industry.

* * * *

Finally, the Commission recomends enactment of certain proposed laws that will greatly increase its ability to serve the public as mandated by the law that established the agency in 1969.

Approval is urged of Senate Bill 1526, which would make the S.C.I. a permanent agency as recommended by the Governor's Committee to Evaluate the S.C.I. This measure, cosponsored by Senators John A. Lynch, Middlesex Democrat, and Raymond H. Bateman, Somerset Republican, also carries out other recommendations of the S.C.I. study committee headed by the late Chief Justice Joseph Weintraub. It would require prior public hearing notice to the Attorney General and appropriate county prosecutors, strengthen the criminal contempt penalties for refusal to testify under the Commission's witness immunity process and provide for staggered terms of the commissioners.

The Commission renews its endorsement of Assembly Bill 1407. This measure, which has been in a position for a roll call since

May, 1976, would restore to the Chairman of the Commission the power to authorize consensual electronic surveillance that he had before the act was amended in 1975, when that authority was inadvertently eliminated. Attorney General William F. Hyland's office has urged enactment of this legislation to protect the S.C.I.'s independence and the integrity of its investigations.

COLLATERAL RESULTS FROM S.C.I. INVESTIGATIONS

Under judicial interpretations of its statute, the Commission is an independent public exposure, fact-finding agency. As such it has no accusatory, prosecutorial or penalty-imposing powers. However, the drafters and enactors of the S.C.I. statute recognized that in directing the Commission to investigate and expose wrongdoing in such areas as organized crime, full and effective enforcement of laws, conduct of public officials and the state of public justice, the Commission would frequently come upon evidence of criminal violations. Accordingly, the S.C.I. statute directs the Commission to refer any possible criminal law violations to prosecutorial authorities. From time to time the Commission has made such referrals, which are reviewed below. The Commission defines any indictments and convictions resulting from such referrals as "collateral results" of the Commission's efforts which are in addition to the Commission's primary thrust—making recommendations for and urging implementation of statutory and regulatory corrections to improve public laws and governmental operations.

Alleged Medicaid Crimes

A flow of criminal indictments is mounting to a large extent as a result of S.C.I. referrals to Attorney General William F. Hyland's office of evidence and public hearing transcripts stemming from the Commission's Medicaid investigations.

According to the Division of Criminal Justice, a number of indictments await trial in a joint state-federal action against a clinical laboratory, three corporations, a laboratory owner and a laboratory business manager. The state indictments charge medicaid fraud and related tax frauds. In January, 1977 a doctor, his son, the administrator of three nursing homes in Passaic County, and an accountant were convicted of cheating the state Medicaid program out of $132,000. Their testimony led to an investigation of alleged payment of bribes to labor union officials. Four other doctors have been convicted in other Medicaid fraud cases. Still pending are criminal complaints against 14 doctors and dentists

and two professional partnerships that resulted from questions referred to the State Tax Division by the Commission's Special Agents/Accountants as to whether or not substantial business income from Medicaid was being reported under the unincorporated business tax laws. The complaints by Attorney General Hyland's office allege that the defendants failed to file reports on $2.7 million in business income over a three-year period.

Prison "Furloughs"

The Attorney General announced in January, 1977 the indictment by the State Grand Jury of five former inmates of Leesburg State Prison on charges of escape in connection with alleged fraudulent obtaining of furloughs from the prison. Criminal Justice Division Director Robert J. Del Tufo said the indictments stemmed from the S.C.I.'s probe into the operation of the work release, furlough and parole programs in the prisons. Del Tufo charged the five defendants "brought" furloughs from fellow inmates who had been utilized as clerks by the prison system to process forms, records and other paper work that enabled inmates to qualify for furloughs.

In December, 1976 the State Grand Jury indicted a since-dismissed clerk at Trenton State Prison on one count of false swearing and three counts of perjury as a result of testimony elicited from her on circumstances related to prison furlough abuses during the Commission's private and public hearings.

The Criminal Justice Division's investigation of irregularities in the parole and furlough systems in the prisons is continuing.

Land "Appraisals"

The Middlesex Grand Jury in July, 1976 conducted an investigation into the conduct of the Middlesex County Land Acquisition Department and its former Administrator, Nathan DuBester, as a result of allegations raised during public hearings by the S.C.I. in January, 1976. On September 27, 1976 the County Grand Jury returned a presentment in which it said that while it found "no provable affirmative criminal act" by DuBester as the department's Administrator, "it does feel that his actions in that capacity indicated an insufficient expertise and lack of concern to perform his office in the best interests of the citizens of Middlesex County." The Grand Jury also noted that DuBester solicited and collected

political contributions from the same people with whom he dealt as departmental administrator. The inquest declared:

> "This mixing of his public function with individual politics created an unhealthy atmosphere which in turn led to actions which if not improper within the law, certainly gave the appearance of impropriety. Since the individual who effectively awarded the contracts which formed the livelihood of the land appraisers requested contributions, there was created an implicit coercion, even if only in the minds of the contributors. Such a condition in no way serves the public interest."

The Grand Jury's presentment said that, although "since the public hearings of the State Commission of Investigation in January, 1976 the Freeholders of Middlesex County have already taken substantial corrective actions," it urged in addition that the office of Land Acquisition Department Administrator by "completely disassociated" from solicitation and collection of political contributions and also that "all of the county officials who control the award of contracts be forbidden from soliciting contributions from individuals over whom they have the power to award contracts." The presentment also recommended that the post of departmental Administrator be filled on a nonpartisan basis.

Lindenwold Officials Indicted

After holding public hearings in December, 1974 on corrupt and unethical practices related to land developments in Lindenwold (which resulted in the overthrow of the controlling regime in the borough) the Commission referred the records of that investigation to the State Criminal Justice Division. Subsequently, during 1975, a State Grand Jury indicted two former Lindenwold Mayors, William J. McDade and George LaPorte, on charges which included soliciting a bribe from a land developer, misconduct in office and perjury. Former Lindenwold Borough Treasurer Arthur W. Scheid was also indicted by the same jury on a charge of soliciting a bribe from a land developer. In announcing the indictments, the State Attorney General's Office stated that the S.C.I.'s referral was the springboard for its investigation. The indictments are approaching trial.

Attorneys Charged in Fraud Indictment

The Commission's 1973 public hearings on abuses of Workmen's Compensation included extensive testimony and supporting exhibits relative to the practice of the then Woodbridge law firm of Rabb and Zeitler of allegedly obtaining phony medical treatment statements to inflate both compensation and negligence claims and, thereby, increase either compensation awards or negligence suit settlements. The data from this investigation was referred to prosecutorial authorities, and in October, 1975 an Essex County Grand Jury returned indictments charging attorneys Richard J. Zeitler and William E. Rabb and their law firm's business manager, Charles Haus, with conspiring with two doctors and others to submit false and fraudulent medical reports to insurance companies. Subsequently, the main indictment against the trio was dismissed but a second indictment against Zeitler charging conspiracy to obtain money under false pretenses was allowed to stand. However, an appeal was filed from the dismissal of a petition to throw out the second indictment. Essex authorities later, after being deputized in Middlesex County, obtained a seven-count indictment from a Middlesex Grand Jury.

The same public hearings on Workmen's Compensation dwelled in part on how a then Judge of Compensation, Alfred P. D'Auria, had constantly had his lunches paid for by attorneys practicing before him and also had a Christmas party given him and his Bar Association dues paid for him by attorneys practicing before him. He was given a disciplinary suspension after the hearing and later retired. In March, 1975, the New Jersey State Supreme Court suspended D'Auria from law practice for six months.

Passaic School Official Convicted

The Commission's 1973 public hearings on the purchasing practices of the Passaic County Vocational and Technical High School in Wayne centered in large part on certain activities by that school's Business Manager and Purchasing Agent, Alex Smollock. After referral of data from this probe to the State Criminal Justice Division, a State Grand Jury indicted Mr. Smollock on charges of taking nearly $40,000 in kickbacks between 1968 and 1972. After trial in Superior Court, Essex County, in January, 1976, Mr. Smollock was convicted of nine counts of accepting bribes in connection with the $40,000 in kickback payments. He was sentenced to one to three years in state prison and fined $9,000.

Former Building Inspector Fined

After its 1971 public hearings on the development of the Point Breeze area of Jersey City, the Commission referred the records of that probe to prosecutorial authorities. A Hudson County Grand Jury returned an indictment charging Timothy Grossi, a former Jersey City building inspector, with extorting $1,200 from an official of the Port Jersey Corp. and obtaining money under false pretenses. During 1975 he was convicted of obtaining money under false pretenses and fined $200 and given a six-month suspended sentence.

Fines Paid in Anti-Trust Action

The Commission's 1970 investigation and public hearings on restraint-of-trade and other abusive practices in the building service maintenance industry in New Jersey aroused the interest of the United States Senate Commerce Committee which invited S.C.I. staffers to testify at its 1972 public hearings on organized crime in interstate commerce. As a result of that testimony, the Anti-Trust Division of the United States Justice Department, with assistance from the S.C.I. launched an investigation into an association which allocated territories and customers to various member building service maintenance companies in New Jersey. In May, 1974, a Federal Grand Jury in Trenton indicted 12 companies and five company officials for conspiring to shut out competition in the industry. The companies were the same as those mentioned in the S.C.I.'s public hearings. The companies and officials pleaded no contest to the charges during 1975 and were fined a total of $225,000 and given suspended prison sentences.

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 of 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, subpœna 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 subpœnaed pursuant to this section shall neglect or refuse to obey the command of the subpœna, any judge of the superior court or of a county court or any municipal magistrate may, on proof by affidavit of service of the subpœna, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpœna, 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 have been 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. The other Commissioners are Thomas R. Farley, Stewart G. Pollock and Lewis B. Kaden.

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 Seton Hall University in the Spring of 1976, by Rutgers University in 1974 and 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, Willie, Purnell and Greene, in Camden. He is First Vice President for 1976-77 of the New Jersey State Bar Association.

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. Pollock, of Mendham, took his oath of office as Commissioner in May, 1976 after his appointment to the Commission by Senate President Matthew Feldman. A graduate of Hamilton College and the New York University School of Law, Mr. Pollock served as Assistant United States Attorney for New Jersey during 1958-60.

A former Trustee of the College of Medicine and Dentistry of New Jersey, Mr. Pollock served as a Commissioner of the New Jersey Department of Public Utilities during 1974-76. He is a partner in the law firm of Schenck, Price, Smith and King, Morristown, having been associated with that firm since 1960 except for the period he served as a Public Utilities Commissioner.

Mr. Kaden, of Perth Amboy, was sworn in as a Commissioner in July, 1976 following his appointment by Governor Brendan T. Byrne. A graduate of Harvard College and Harvard Law School, he was the John Howard Scholar at Cambridge University, England. Until January, 1974 he was a partner in the law firm of Battle, Fowler, Stokes and Kheel in New York City. From 1974 to July, 1976, he was Counsel to Governor Byrne. Mr. Kaden is now Professor of law at Columbia University, and active as a labor arbitrator and mediator.

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 subpœna 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.