

STATE OF NEW JERSEY  
COMMISSION OF INVESTIGATION

SEVENTH ANNUAL REPORT



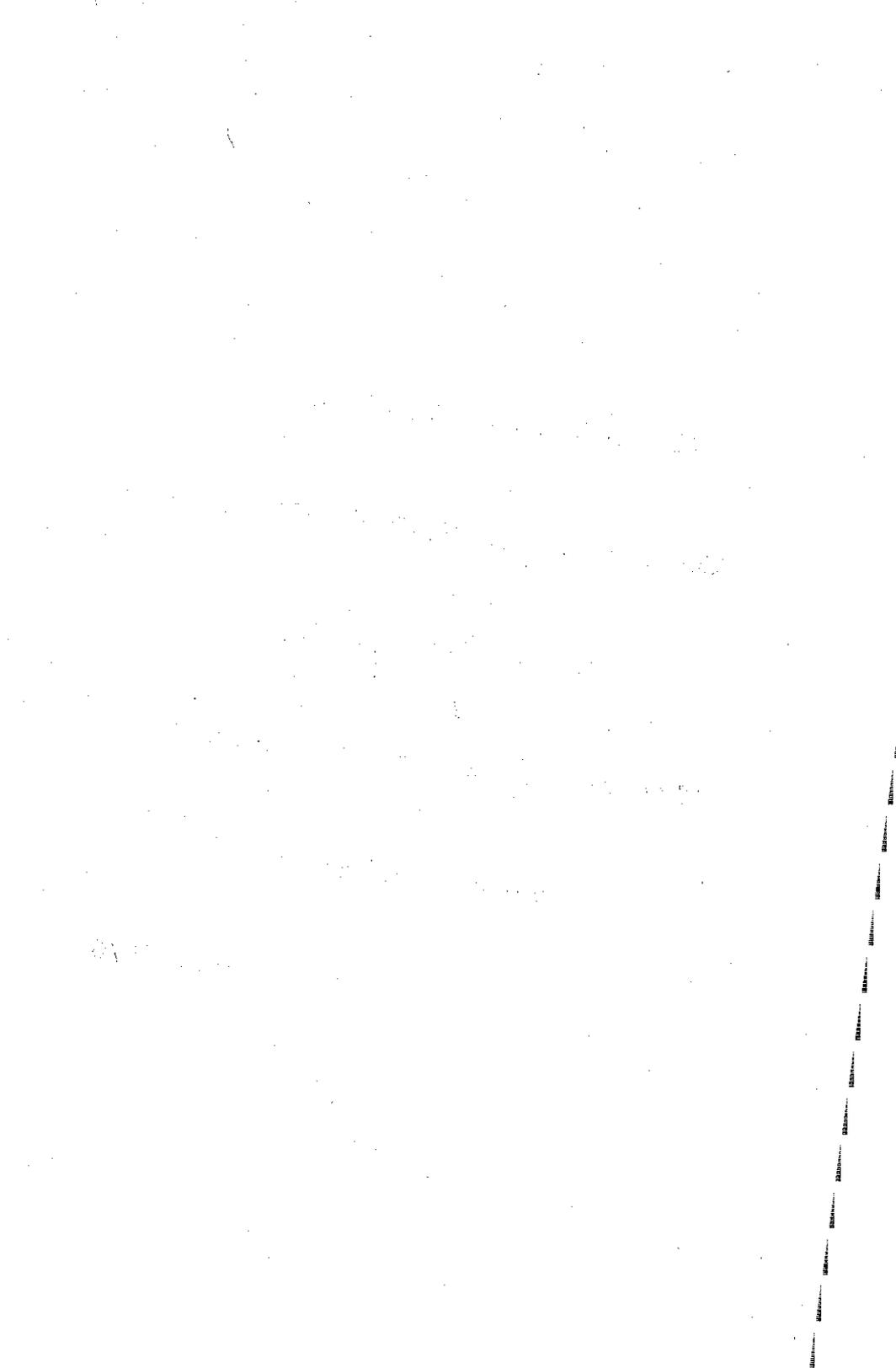
*Submitted to the  
Governor and Legislature*

June, 1976



SEVENTH 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

June, 1976



**THE COMMISSION OF INVESTIGATION  
OF THE STATE OF NEW JERSEY  
(S.C.I.)**

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COMMISSION OF INVESTIGATION

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June, 1976

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 its seventh annual report for the fiscal year 1975-1976 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*  
Charles L. Bertini  
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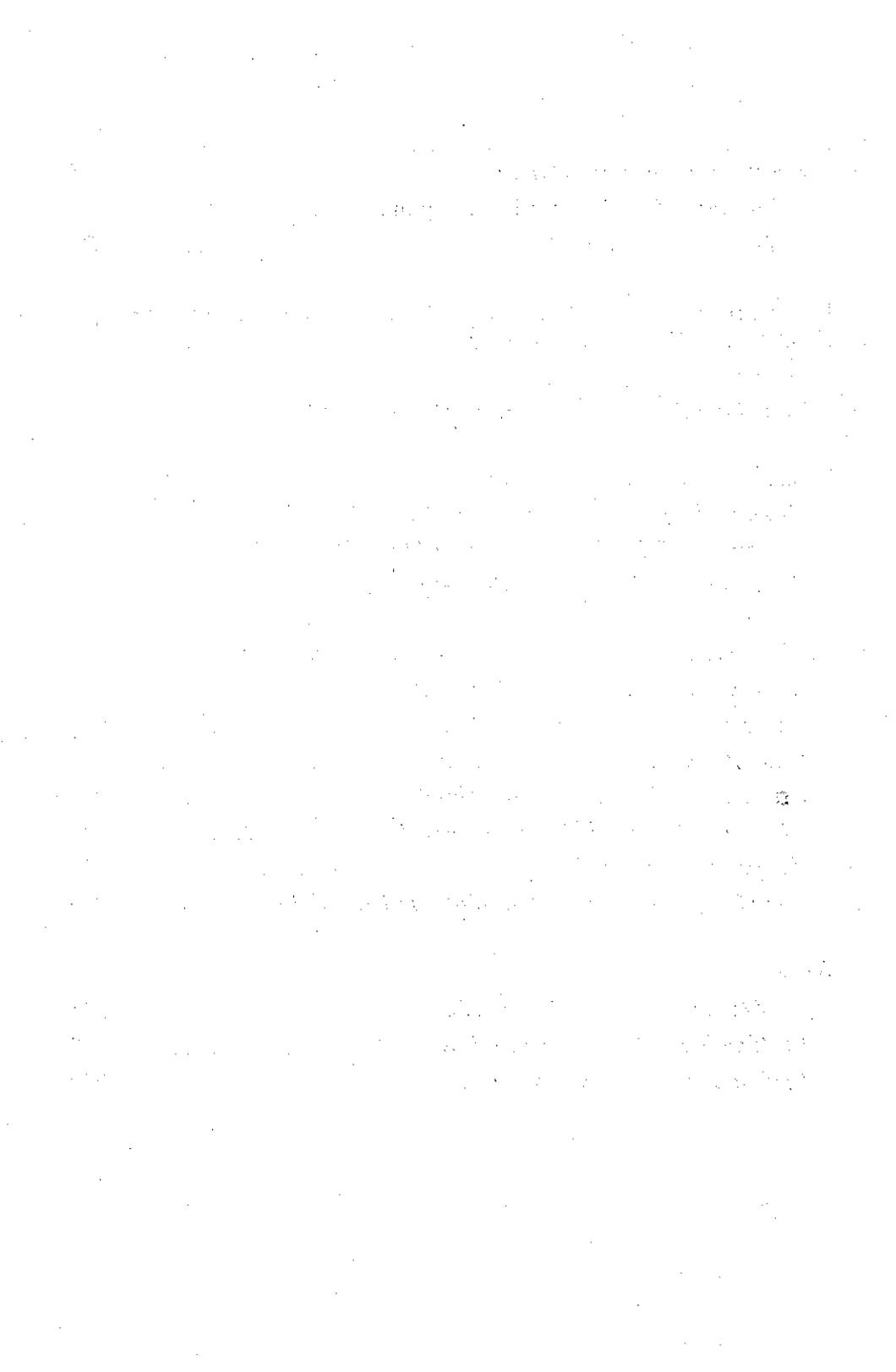
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## FOREWORD

“We need not list the extensive investigations undertaken by the S.C.I. and their results, since the annual and interim reports (of the S.C.I.) contain that information. We are satisfied that the S.C.I. has performed effectively and has significantly advanced the public interest.”

*Excerpt from the October 11, 1975 Report of the Governor's Committee to Evaluate the New Jersey State Commission of Investigation, former Chief Justice Joseph Weintraub of the New Jersey Supreme Court, Chairman.*

“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 problems that plague our institutions, an agency which can provide truthful information and sound recommendations.”

*Another excerpt from the Report of the Governor's Committee to Evaluate the New Jersey State Commission of Investigation.*

“Prosecutorial agencies . . . are limited in discussing at length or in detail specific criminal cases. In effect, then, there are no public education capabilities on the part of my office, or other prosecutorial agencies, comparable to those of the S.C.I.”

*Excerpt from the June 27, 1975 statement of William F. Hyland, Attorney General of the State of New Jersey, before the Governor's Committee to Evaluate the New Jersey State Commission of Investigation.*

“The deterrents from the S.C.I. would be that, if there is a public hearing, the problem would be aired and the public would be informed, whereas in a criminal investigation you either return an indictment or generally do nothing.”

*Excerpt from public remarks made in January, 1975 by Matthew P. Boylan, then the Director of the New Jersey State Division of Criminal Justice.*

## ORIGIN AND SCOPE OF THE COMMISSION

Despite the Commission's work being generally known throughout the state, inquiries continue to be made about its origin and its jurisdiction and the nature of its operations and their importance to a better New Jersey. The Commission believes this important information should be conveniently available, and, accordingly, the pertinent facts are again summarized below.

The New Jersey State Commission of Investigation (S.C.I.) 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 appeared to be 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 his June 27, 1975 statement 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 and recommendations issued in the Spring of 1968 found that a crisis in crime control existed in New Jersey and that the expanding activities of organized crime could be attributed to “failure to some considerable degree in the system itself, official corruption, or both.” Accordingly, the Committee offered a series of sweeping recommendations for improving various areas of the criminal justice system in the state.

The two major priority recommendations were for a new State Criminal Justice unit in the executive branch of government and

an independent State Commission of Investigation, patterned after the high-level New York State Commission of Investigation, now in its 18th 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 relatively large organization with extensive manpower and authority to coordinate and press forward criminal investigations and prosecutions throughout the state. The Commission of Investigation, like the New York Commission, was to be a relatively small but highly expert body which would conduct fact-finding investigations, bring the facts to the public's attention, and make recommendations to the Governor and the Legislature for improvements in laws and the operations of government.

The Joint Legislative Committee's recommendations prompted subsequent legislative and executive action. New Jersey now has a Criminal Justice Division in the State Department of Law and Public Safety and an independent State Commission of Investigation\* which is structured as a Commission of the Legislature. 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 discerning violations of law and bringing the wrongdoers to punishment. This Commission has the equally somber responsibilities of publicly confronting the truth and recommending new laws to protect the integrity of the political process.

The complementary role of the S.C.I. was underscored once more during 1975 by the Governor's Committee to Evaluate the

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\* 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. As noted in this section of this annual report, the Governor's Committee to Evaluate the S.C.I. in its October 6, 1975 public report has recommended that the Commission's statute be amended to make the S.C.I. a permanent agency.

S.C.I.\* which conducted a comprehensive, objective and impartial analysis of the S.C.I.'s record and function. The Committee's members consisted of former Chief Justice Joseph Weintraub of the New Jersey 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 has performed 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 the Committee, therefore, recommended amendment of the S.C.I.'s statute to make the Commission a permanent rather than a temporary agency.

The complementary role of the S.C.I. also was stressed in a statement made in June, 1975 by the then Director of the State Division of Criminal Justice, Matthew P. Boylan. 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

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\* 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 considerable public furor and criticism. The bill was subsequently withdrawn and has not been reintroduced. 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.

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 bi-partisan and by concern and action is non-partisan.

The primary and paramount statutory responsibilities vested in the Commission are set forth in Section 2 of its statute.\* It 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.

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\*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 subpoena, and has authority to grant immunity to witnesses. Although the Commission does not have nor may it exercise any prosecutorial functions, the statute does provide for the Commission to refer information to prosecutorial authorities.

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

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

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

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

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

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\* 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 Annals 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 such abuses. These, of course, are the same missions of the S.C.I.

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

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

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\* In the course of its conduct, the Commission by law adheres to and is guided by 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). The Code is printed in full in the Appendices section of this annual report. 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.

## RESUME OF THE COMMISSION'S MAJOR INVESTIGATIONS

This is a summary of the Commission's major investigations undertaken from June, 1969, when the S.C.I. became staffed and operational, and the principal direct and collateral results stemming therefrom. In describing them as major investigations, it is meant that they have required considerable time and effort and, where appropriate, have 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 subpoenas for the appearance and testimony of individuals identified by law enforcement authorities as leaders and/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 several 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 therefrom, a proper balance has been struck between protecting individual rights and the right of the state

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

to know as much as possible about the underworld. This philosophy and approach has met with the approval of the highest courts of state and nation.

At the time of publication of this report, five organized crime figures who had been served with S.C.I. subpoenas still elected to undergo extended periods of court-ordered incarcerations for civil contempt for refusal to answer the S.C.I.'s questions, with one of those five on temporary release under court order for treatment of a serious internal bleeding ailment and another presently serving a lengthy state prison sentence for a criminal conviction. Three additional organized crime figures during 1975 were subpoenaed by the Commission and remain under subpoena for further questioning. Ten other organized crime figures served with subpoenas have over the years testified before the Commission, with three of those so doing only after being coerced by prolonged, court-ordered incarceration for civil contempt. Nine other organized crime figures are known to have moved from New Jersey to avoid being served with S.C.I. subpoenas.

The present Attorney General of New Jersey, William F. Hyland, in his previously cited statement of June 27, 1975 stated in part, "... 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."

## 2. RECOMMENDATIONS ON THE GARBAGE INDUSTRY\*

The Legislature in 1969 passed a resolution requesting the Commission to look into the garbage industry and make recommendations for possible corrective action at the state level. An investigation was subsequently undertaken by the S.C.I. of certain practices and procedures in that industry. The investigation ended with two weeks of private hearings, concluding in September, 1969. A public report was issued in October of that year.

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\* See New Jersey Commission of Investigation: A Report Relating to the Garbage Industry, October 7, 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 will 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 control of the garbage industry. Specific recommendations were: Prohibit customer territorial allocation, price fixing and collusive bidding; provide for licensing by the state (to the exclusion of municipal licenses) of all waste collectors in New Jersey, and prohibit discrimination in the use of privately owned waste disposal areas.

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

### 3. ORGANIZED CRIME INFLUENCE IN LONG BRANCH\*

The New Jersey shore city of Long Branch had since 1967 been the focus of publicized charges and disclosures about the influence of organized crime. One charge was that an organized crime leader, Anthony "Little Pussy" Russo, controlled the mayor and the city council. Official reports indicated mob figures were operating in an atmosphere relatively secure from law enforcement. The Commission began an investigation of Long Branch in May, 1969. The exhaustive probe culminated with public hearings in the spring of 1970. Among the major disclosures of those hearings were:

That a Long Branch city manager was ousted from that job by the city council after he began taking counter-action against organized crime's influence; that Russo offered to get the city manager job back for that same person if he would close his eyes to underworld influences and act as a front for the mob; that impending police raids on gambling establishments were being leaked

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

in time to prevent arrests despite the anti-gambling efforts of a then 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 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 subpoenas in October, 1969, the chief committed suicide.

Public hearings were held in the winter of 1970. Testimony showed that a confidential expense account supposedly used for nine years by the chief of detectives to pay informants was not used for that purpose and could not be accounted for. The testimony also detailed how that fund was solely controlled by the chief with no county audit and no supervision by the county prosecutor. In fact, the then county prosecutor testified that he signed vouchers in blank, and without the knowledge they were to be used to pay informants.

The Commission, after the hearings, made a series of recommendations to reform the county prosecutor system. A principal

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

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.

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

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

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

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

This investigation met with immediate correctional steps by the State Division of Purchase and Property to change several procedures to prevent reoccurrence 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.

## **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-

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

up investigation was carried out with public hearings being held in June, 1970.

Testimony showed the existence of a trade organization designed to thwart competition by limiting free bidding and enterprise. The hearings also revealed that a union official with associations with organized crime figures was the real power in the trade organization and that coerced sales of certain detergent cleaning products and/or imposition of sweetheart contracts were sometimes the price of labor peace. Another disclosure was that a major organized crime figure in New Jersey could act as an arbiter of disputes between some cleaning companies.

The hearings served to alert legitimate 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." This investigation continued to have repercussions during 1974-75 when the U.S. Justice Department, after studying S.C.I. records, obtained anti-trust indictments against 12 building maintenance firms based in New Jersey and five officers of some of those firms. The firms and the officers pleaded no contest to the charges and have been fined a total of a quarter of a million dollars. Two of the officers pleaded respectively to making a false declaration before a grand jury and to obstruction of justice and were each given a six-month suspended sentence.

## 7. THE HUDSON COUNTY MOSQUITO EXTERMINATION COMMISSION\*

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

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

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

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

Additionally, records of the investigation were turned over to the Hudson County Prosecutor's Office which in 1971 obtained conspiracy and embezzlement indictments against the Mosquito Commission's executive director 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 THE GOVERNMENT OF ATLANTIC COUNTY\***

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

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

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.

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

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

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

The investigation showed that that particular development, undertaken by the Port Jersey Corporation, could offer a classic and informative example of how a proper and needed development project could be frustrated and impeded by improper procedures. Public hearings were held in October, 1971. Testimonial disclosures included a payoff to public officials, improper receipt of a real estate commission, and irregular approaches to the use of state laws for blighting urban areas and granting tax abatement.

Two bills which carry out S.C.I. recommendations stemming from this probe have been enacted into law. One improves the

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

blighting and urban renewal process and the other tightens the statutory ban against a purchaser of publicly owned lands receiving any part of the brokerage fee attendant on such a purchase. After reference of data from this investigation to prosecutorial authorities, a Hudson County Grand Jury indicted a former Jersey City building inspector on a charge of extorting \$1,200 from an official of the Port Jersey Corporation. The former inspector was found guilty of obtaining money under false pretenses and fined \$200 and given a six months suspended jail sentence.

## 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 Commission.

Gross' testimony during two days of public hearings by the S.C.I. 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 stimulating vigilance

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

against organized crime, with a particular alert going to areas subject to suburbanization, namely that organized crime follows population growth.

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

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

Substantially the same acreage had been sold only nine months earlier by two corporations headed by some Atlantic City businessmen to a New York City-based land purchasing group for \$476 per acre, which was about double the per acreage price of two comparable large-tract land sales in the Galloway area. The Commission in 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 safeguards 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, thereby assuring the taxpayers of properly protective procedures in the state's purchasing of many millions of dollars of properties—then, now and in the future.

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

## 12. SECURITIES AND BANK FUNDS MANIPULATIONS IN MIDDLESEX COUNTY\*

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

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

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. The Commission made a public report on this investigation in its annual report for 1972. The S.C.I. stated in that report that this investigation rendered a public service by protecting the investing public from further exploitation by Santisi and his cohorts.

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

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

In the summer of 1972 the 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, Esq., 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 campaign contributions from those aspiring to public works and the acceptance of those contributions by public officials or political parties is 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 State of New Jersey, Commission of Investigation, issued January, 1973.

## 14. THE WORKMEN'S COMPENSATION SYSTEM\*

The New Jersey system for compensating individuals for employment injuries became during the early 1970s the object of intense scrutiny and analysis. In addition to established arguments and statistics indicating ills in the system, there were new and persistent reports that the atmosphere of the system, including its courts, had gone astray to a point where irregularities, abuses and even illegalities were being ignored or tolerated. 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 1972-73 probe which resulted was one of the most comprehensive ever conducted by the S.C.I. It touched not only on all aspects of the Workmen's Compensation system but also certain related heat treatment abuses in the liability and negligence field. The facts, as presented by the S.C.I. 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 overtreatment of patients and in some instances to outright bill padding to falsely inflate claims.

As a result of the investigation, three Judges of Compensation were given disciplinary suspensions, with one of them eventually being dismissed from office by the Governor. Most importantly, the Commission's final report and recommendations on this investigation issued in 1974 were a major input in the sweeping administrative reforms of the Workmen's Compensation system, including the conduct of judges, promulgated recently by the State Commissioner of Labor and Industry. A bill, as recommended by the S.C.I., has been enacted into law to prevent more effectively bill padding by doctors in compensation and negligence cases. After referral of data in this probe to prosecutorial authorities, an Essex County Grand Jury during 1975 indicted two partners of a law firm and the firm's business manager on charges of conspiracy and obtaining

\* 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.

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. The Commissioners of the Waterfront Commission thanked the S.C.I. by letter for assistance and guidance rendered to the Waterfront Commission.

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

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

The 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 a well run, efficient

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

program of state distribution of the surplus property and for improved procedures for school boards in overseeing purchasing practices. The State Board of Education communicated the S.C.I. recommendations to all school boards in the state and instructed the Boards to be guided by them. Reference of data from this investigation was made to the State Criminal Justice Division which during 1974 obtained an indictment charging the Passaic County Technical and Vocational High School's purchasing agent-business manager with bribery in connection with the previously mentioned payoff testimony and with misuse of school personnel and property as outlined at the S.C.I.'s hearings. The purchasing agent-business manager was convicted of bribery and sentenced to three years in prison.

## 16. THE DISTRIBUTION OF NARCOTICS AND LAW ENFORCEMENT PROGRAMS\*

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

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

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 its role in aiding law enforcement agencies through its broad statutory purview and investigative expertise. 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 the Spring of 1976.

## 17. PSEUDO-CHARITABLE APPEALS\*

A growing number of companies in recent years have been 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

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\* 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.

employ only handicapped phone solicitors was open to serious question; 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. Four bills designed to carry out S.C.I. recommendations for barring deceitful sales appeals by these profit-making companies and to force financial disclosure by those companies have been enacted into law. Thus, this investigation resulted in needed, improved consumer protection against unscrupulous practices. Access to data from this investigation was afforded 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 have pleaded guilty, with the owner being fined and given a two-year suspended sentence and the sales manager have been given a three-year suspended sentence.

## **18. POSSIBLE CONFLICT OF INTERESTS OF THE CHAIRMAN OF 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 conflict of interest of Ralph Cornell, Chairman of the Delaware River Port Authority and 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

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\* 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.

of Investigation is better equipped in terms of personnel, resources and operating procedures to conduct this inquiry.”

The resultant investigation involved the subpoenaing and 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 sub-contracting 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 conclusionary 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 and 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 and 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 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 THE BOROUGH 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

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

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, money he came to feel to have been ill garnered in detriment to the public trust.

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" served to sound a warning and present 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. criteria in this area has been introduced in the Legislature, and the Commission, along with Attorney General for New Jersey, continues to urge enactment of the measure as sorely needed to improve government throughout the state. After the S.C.I. referred data from this investigation to the State Criminal Justice Division, a State Grand Jury indicted the then Mayor of Lindenwold and a former Mayor of that Borough on charges involving bribery, misconduct and perjury. The then Lindenwold Borough Treasurer was indicted by the same jury on a charge of soliciting a bribe. All charges related to land development activities as aired at the S.C.I.'s hearings. The indicted Mayor no longer holds that office, and the Lindenwold electorate has given control of the Borough to a new regime.

## 20. LAND ACQUISITION BY MIDDLESEX COUNTY\*

During the Spring of 1975 the Commission received a series of citizens complaints 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

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\* See pages 32 to 133 of this Annual Report.

land acquisition procedures. The Commission's final recommendations for improving land acquisition procedures at the county and local levels are presented on subsequent pages of this annual report. The data from this investigation has been referred to prosecutorial authorities.

## 21. THE NEW JERSEY MEDICAID PROGRAM\*

The New Jersey Medicaid program of health care for the indigent was nearing completion of its fifth year of operation in December, 1974 when Governor Brendan T. Byrne made a formal request that the S.C.I. evaluate the entire program. The Governor's letter of request expressed concern about the escalating, \$400-million-plus annual cost of the program and, in effect, asked for a thorough checkup of the program's efficacy and integrity.

A formal request from the Governor under the S.C.I.'s statute mandates that the Commission undertake the desired probe. Accordingly, full investigation of the New Jersey Medicaid program commenced during the first quarter of 1975 and continued until the spring of 1976. During the course of the investigation, the Commission reported on an interim basis from time to time to the Governor. Two of the interim actions were public documents issued in April and May of 1975. One of the documents was a report which detailed flaws in phases of Medicaid's reimbursement of nursing homes. The other document was a public statement which detailed dangerously poor conditions and operations in some clinical laboratories in New Jersey and recommended that the Legislature complete enactment of the Clinical Laboratories Control Act to provide more effective state control over the laboratories. The bill was subsequently enacted into law.

In June, 1975, the Commission held public hearings on the bilking of Medicaid by some independent clinical laboratories through false billing and kickback practices. A review of this hearing and the final recommendations stemming therefrom are presented on subsequent pages of this annual report. Since the public hearings, the Medicaid manual regulating independent clinical laboratories has been drastically revised to bar abusive practices, and the maximum fee schedule for reimbursing those laboratories has been reduced by 40 per cent. Estimated savings

\* See pages 134 to 221 of this Annual Report.

from these reforms alone have been put at \$1.4 million for the fiscal year ending June 30, 1976.

As this Annual Report went to press, the Commission's staff was completing preparation of several contemplated future public actions which will mark the termination of the S.C.I.'s Medicaid probe. The contemplated actions will cover the reaping of high profits by some individuals through sales, financing and lease-back techniques which have grossly inflated the values of some nursing homes; overbilling and overutilization patterns engaged in by some physicians and pharmacists, and an analysis of methods for controlling hospital costs which, through their effect on Blue Cross rates, affect Medicaid which uses those rates as a reimbursement standard.

## **22. PRE-PAROLE RELEASE PROGRAMS\***

The Commission during 1974 and continuing into 1975 received a number of complaints about possible abuses and ripoffs of the pre-parole release programs of the New Jersey State Correctional System. The programs, aimed at the worthy goal of success in re-introducing inmates to society, include 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 of the program. The probe extended into 1976, with public hearings being held on four days in May, 1976 in Trenton. Principal disclosures at the hearings included falsification of furlough and other types of applications to gain premature entry into the 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 releases and educational releases could be ripped off because of insufficient supervision, and the intrusion of a system of barter-for-favor in the procedures attendant on transfers of inmates among the various penal institutions.

The Commission in its public statements at the hearing credited the State Institution and Agencies Department with making credit-

\* See pages 222 to 235 of this report.

able reform efforts to improve the programs while the S.C.I.'s investigation was in progress. However, the Commission said the investigation and hearings had factually demonstrated the need for 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. In their adjournment statement, the Commissioners reviewed their 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.

# INVESTIGATION OF THE LAND ACQUISITION PRACTICES OF MIDDLESEX COUNTY UNDER THE STATE'S GREEN ACRES PROGRAM

## INTRODUCTION

The County of Middlesex began in the late 1960s to acquire lands in the Ambrose and Doty's brooks area of Piscataway Township principally for the creation of parklands. By the advent of 1975, the acquisition process had covered some 50 parcels in the area. This parkland project, like others of its type in recent years in New Jersey, has been eligible for fifty per cent funding under the State's Green Acres program, financed by taxpayer-paid-for state bond issues.

During February, 1975, the Commission received a series of citizen complaints relative to certain actions of the Middlesex County government, with emphasis on possible overpayment for some of the lands in the Ambrose and Doty's brooks parkland project. The complaints led the Commission to focus considerable attention on certain 1974 land purchases by Middlesex, among which were six parcels comprising 43.5 acres in the Ambrose and Doty's brooks area. The County in that year paid a total of some \$1.5 million to purchase those six parcels.

As it does in the case of any responsible complaint made by a genuinely concerned citizen who alleges in a rational manner a possible public harm, the Commission in the winter of 1975 commenced a preliminary inquiry to evaluate whether or not the citizen complaints relative to Middlesex County might be factually substantiated to a degree sufficient to warrant a full-scale investigation by the Commission. The inquiry involved interviews and document analysis by Special Agents and Special Agents/Accountants of the Commission. This evaluative phase also included reference of four of the total of 12 appraisals (two each for each parcel) used by the Middlesex County Land Acquisition Department to place a fair market value on the six Ambrose and Doty's brooks area parcels to Mr. James V. Hyde, M.A.I., Director of the Division of Right-of-Way in the New Jersey State Department of Transportation. Mr. Hyde, one of the most respected experts in post-appraisal review in the nation, graciously acceded

to the Commission's request that his staff, under his supervision and guidance, check the validity and accuracy of the four appraisal reports on a preliminary, accelerated basis and inform the Commission of the findings of that review process.

The initial data resulting from the evaluative inquiry indicated a distinct probability that the county had overpaid for the lands and that any overpayments might have their roots largely in insufficiencies in the appraisals rendered to the County and in shortcomings and improprieties in the processes of the Middlesex County Land Acquisition Department.

The Commission, therefore, subsequently authorized by resolutions a full investigation of the land acquisition procedures of the County and the related appraisal review function of the State Green Acres unit of the State Department of Environmental Protection. As part of the investigation, the Commission sent for full review and evaluation by Mr. Hyde and his staff all appraisal reports submitted by fee appraisers to the County and used in connection with purchases of the six previously mentioned land parcels. The Commission also retained for a similar, in-depth post-appraisal review of those same appraisals the services of Alton W. Van Horn, M.A.I., of the firm of Van Horn and Dolan, of Elizabeth, N. J. Mr. Van Horn, like Mr. Hyde, has widely recognized and respected expertise in the post-appraisal review field. Additionally, the Commission had in its 1971-72 probe of the State's purchase of land for the site of the then new Stockton State College in Atlantic County employed the expert post-appraisal review services of Messrs. Hyde and Van Horn, with the reports submitted by those two expert professionals being the key to exposing in a well documented manner gross overpayment by the State for the college campus site. That investigation, in a public report issued by the S.C.I. in June, 1972, showed that overpayment by some 300 per cent for the land was directly attributable to inadequate and misleading appraisals which assumed an outward appearance of validity because of a lack of expertise and safeguard procedures in the post-appraisal review capacity of the State Division of Purchase and Property.

The Commission's final recommendations contained in that report were subsequently instituted by executive orders and now provide effective safeguards against further misuse of taxpayer dollars in land purchases by that Division. The Commission, in initiating a full investigation of the Middlesex County matter, felt

that a similar, important public service could be provided by developing a somewhat parallel set of facts to those revealed in the Stockton College matter. The Commission would, thereby, provide the factual base for ultimately recommending improved standards and safeguard processes in the land acquisition procedures not only of Middlesex County but also of other counties and municipalities throughout the state. It is the Commission's firm opinion that expenditures of millions of dollars per year of taxpayer money for property purchases by governmental bodies at those levels of government certainly deserve as much safeguarding as similar expenditures at the state level.

At the same time that Messrs. Hyde and Van Horn were conducting their in-depth post-appraisal reviews of all the appraisals relating to the previously mentioned six parcels of land, the Commission's Special Agents and Special Agents/Accountants began intensive probing of the operations of the Middlesex County Land Acquisition Department and its Administrator, Nathan DuBester, and into contacts between Mr. DuBester and the fee appraisers who were, by virtue of being on the County's approved list of appraisers, eligible for award of appraisal work by Mr. DuBester. This phase of the investigation was further intensified when reports received by the Commission from Messrs. Hyde and Van Horn on their in-depth reviews indicated clearly that the appraisals on which Middlesex County had based its purchase of the six parcels were seriously deficient in a number of aspects and had, therefore, overstated the true fair market values of those lands.

By the summer of 1975, the Commission began taking private testimony in this investigation, with those executive sessions of the Commission being held on a score of occasions extending into early January, 1976. As authorized by resolution of the Commission, public hearings based on this investigation were held January 27, 28 and 29 in the State Senate Chamber in Trenton.

The salient facts, as presented at the public hearings, are reviewed in detail on subsequent pages of this report. A summary of the principal areas of public disclosure includes:

- Inadequacies and laxities in county procedures and practices which led to inordinate authority and autonomy being vested in the Administrator of the Middlesex County Land Acquisition Department for the purchasing of lands and the exercise of deplorably

poor and costly judgments in several land acquisition actions taken by the County.

- How the award of county work to some outside professional land appraisers and evaluation and review of that work by the Administrator of the Middlesex County Land Acquisition Department was mingled with payment of political contributions by appraisers and certain other monetary exchanges, all to the detriment of objective and uncompromised decision-making in the public interest.
- Shortcomings, oversights and judgmental errors which led to overstatement of fair market value in appraisal reports submitted to the County by fee appraisers for the six parcels of land which were subject to intense examination by the Commission.
- Serious deficiencies and confusion in the appraisal review function of the State Green Acres Program in the handling of the application by Middlesex County for matching Green Acres funds for the parkland purchases.

### *Final Recommendations Noted*

At the adjournment of the public hearings based on this investigation, S.C.I. Chairman Joseph H. Rodriguez read on behalf of the Commission a statement which outlined corrective-step areas which the S.C.I. would study further in fashioning its final recommendations. The statement emphasized that, while real estate appraising is not an exact science, it is subject to discernible disciplines and standards which must be adhered to in atmosphere which stresses professionalism and minimizes political influences and pressures.

The Commission subsequently in this report presents in full its final recommendations which appear logically on pages 99 to 133 after the review of the salient facts presented at the public hearings. Suffice it to say here that the final recommendations, in the Commission's opinion, provide check-and-balance mechanisms and other improved procedures and standards which will assure greater taxpayer protection in county and municipal property purchases and in the State's use of Green Acres money to preserve open spaces.

### *Other Delegation of Authority and Autonomy*

As the investigation of Middlesex County's land acquisition practices progressed, it became abundantly clear that at the root of some of the problems and abuses uncovered by the probe was an over delegation of authority and autonomy to the County Administrator of the Land Acquisition Department, Nathan DuBester. Mr. DuBester in actuality decided which fee appraisers would be placed on the approved appraiser list, which of those selected appraisers would be assigned appraisal work by the County, reviewed appraisal reports received, determined fair market values for the County to pay, asked for and received on a virtually rubber-stamp, sparsely documented basis freeholder approval for those values, and then negotiated the purchases of the lands, all without checks and balances so vital to assuring integrity and soundness in the democratic process of government. Additionally, Mr. DuBester worked as only a negotiator in the State Green Acres unit prior to becoming Land Acquisition Administrator for Middlesex, has never appraised properties, has had no specialized training in conducting reviews of appraisal reports, and could offer only 10 years of "on-the-job experience" as his sole job qualification.

The sparseness of the documentation afforded the Middlesex Board of Freeholders when considering a resolution to purchase lands, in this case lands in the Ambrose and Doty's brooks area, was illustrated in the following pertinent excerpts of the public hearing testimony of Freeholders Stephen J. Capestro, who is also Chairman of the County's Parks and Recreation Committee:

*Q. Who reviews those documents?*

*A. There's a whole, sir. The Board as a whole with the experts and we would review it at that time and any questions would be asked at that time.*

*Q. Your testimony is you received some documents from the county counsel's office that you would review?*

*A. A copy of the resolution that appears that day.*

*Q. How about the appraisal reports, sir?*

*A. No, sir.*

*Q. How about the title search?*

*A. No, sir.*

Q. *How about the contract?*

A. No, sir. Just the copy of a resolution.

Q. *Who gives you the information contained in those documents?*

A. That would be done at the conference, sir.

Q. *Who gives you that information?*

A. Whichever the department that came in, the engineer would be there or planning staff would be, county land acquisition.

Q. *In terms of fair market value for the property?*

A. The Land Acquisition Department.

Q. *Who is that?*

A. Mr. DuBester.

\* \* \* \*

Q. *Then actually, Freeholder Capestro, did you ever have in your possession the supporting documents to support this, the application for this project?*

A. Not in my possession, sir. To the best of my knowledge, never.

Q. *The best that you received was a verbal report at a meeting?*

A. Yes, sir. Documentation, sir, the normal thing I would do at a meeting if it was an acquisition on Ambrose-Doty, then I would ask the question do we have the documentation and are there any questions by any other freeholder. In the event there were any other questions, I would hold that resolution at that time. I would not vote on it at that meeting until the questions were satisfied in everyone's mind.

The public hearing testimony of Joseph H. Burns, First Assistant County Counsel, and Herman Hoffman, County Counsel, demonstrated that, prior to the S.C.I.'s investigation, there was an almost total lack of checking and evaluating of the fair market values arrived at and certified by Mr. DuBester after he had received appraisal reports from fee appraisers. Once Mr. DuBester referred his assessment of fair market value for a land acquisition to the Office of County Counsel, the practice was, except, of course, in cases involving condemnation, to draw promptly a contract for purchase, get the contract signed by the landowner and then draw

a resolution to be submitted to the Board of Freeholders for approval of the contract. Mr. Burns testified as to the lack of any substantial review procedures by Counsel's Office:

*Q. Do you have any input as to the fair market value placed on the property?*

A. No, I don't.

*Q. Is that solely in the hands of Mr. DuBester?*

A. Yes. It comes out of the Land Acquisition Department to Mr. Hoffman with a fair market value placed on it.

*Q. At this time, and we're talking about 1973-1974, was any review of appraisals done by the County Counsel's office for these particular lands?*

A. No. No review as such. If there were a condemnation proceeding, obviously the Assistant County Counsel handling that file would then secure copies of the appraisals because of course, in order to prepare for a condemnation hearing before the Condemnation Commissioners, he would have to study the appraisals and confer with the appraiser who would be testifying at the condemnation hearing with contracts. There was no review.

*Q. Well, then, was all supporting information as to the purchase price in the hands of Mr. DuBester at all times?*

A. Yes.

Mr. Hoffman's testimony at the public hearings in this area re-emphasized the lack of sufficient review and check and balance procedures relative to Mr. DuBester:

*Q. Mr. Hoffman, I'm just trying to learn more about this if I can. When Mr. DuBester would negotiate a price it would go to your office for normally a closing, correct?*

A. That is correct.

*Q. So the fixed price would come over to you?*

A. Where he had reached a fixed price, that's right, yes.

Q. Right. Now, would the appraisals also come over?

A. No, they would not.

Q. They would not?

A. No, they would not.

Q. So, really, there's no review at the County Counsel level or there had been no real review of the appraisals at the County Counsel level?

A. That's correct, sir.

### *Investigation Initiates Corrections*

Mr. Hoffman testified further that since the inception of the S.C.I. investigation in 1975, his office has instituted a policy of having the Assistant County Counsels obtain and examine supporting documents as to the fair market value determinations of the Land Acquisition Department. He also testified that a special Land Acquisition Committee was being formed with the intent of assisting in reviewing fair market value determinations and that the County was moving toward the hiring of an appraisal reviewer with accredited expertise in that area to analyze and evaluate thoroughly all appraisal reports received by the county.

Conceding at the public hearings that the County's review procedures in land acquisition had, prior to the S.C.I. probe, been minimal and inadequate, Mr. Hoffman testified that much more would have to be done to establish fully effective review and check-and-balance procedures to assure integrity and proper taxpayer protection in the purchases of lands. He stated that the county would continue to attempt to correct deficiencies on its own but also would be guided by the S.C.I.'s final recommendations in accomplishing full reform. He characterized the S.C.I. investigation as a "marvelous job" carried out by competent and dedicated people and stated that the S.C.I. public hearings had brought to the fore governmental problems which must be solved.

### *On Paying More for Less*

During the course of the investigation, the Commission came across instances of what it called indefensible decisions by the County in land purchasing conducted on a mostly unreviewed and unchecked basis by Mr. DuBester. In two of the instances, the

county ended up paying more dearly for partial or less-than-originally-planned takings than if they had purchased the full parcels. The instances included two lots in the six parcels of land acquired by the County during 1974 in the Ambrose and Doty's brooks area of Piscataway and analyzed in depth by the S.C.I. One of the parcels was officially designated as Block 457, Lot 8, owned by the M.W. Kellog Co. As in the case of each of the six parcels, this parcel was the subject of two appraisals, one done by F. Russell Holt, M.A.I., a fee appraiser with offices in Edison, and the other done by John J. Galaida, a fee appraiser then with offices in Perth Amboy.

It was Mr. DuBester's testimony that he relied more on Mr. Holt's appraisals than he did on those of Mr. Galaida. Mr. Holt in the case of the Kellog parcel came in with a appraisal of \$317,600 or \$35,000 per acre for the originally planned 9.073 full taking of this parcel. Subsequently, in a move supposedly initiated to save money, a revised partial taking of only 6.403 acres was directed. Mr. Holt accordingly revised his appraisal to take into account the partial taking. He still attached a \$35,000-per-acre value to the partial taking but found that remaining 2.673 acres left to Kellog were so severely damaged that \$110,000 in damages should be awarded to that remainder, bringing the total appraisal value for the partial taking of \$334,300. He placed a nominal value of \$500 on the damaged remainder. The County after negotiation ended up paying \$315,000 for the partial taking, thus paying thousands of more dollars due to a damaged remainder which was nominally valued at only \$500. Additionally the final sales price was only \$2,600 less than the value placed on the original full taking of 9,073 acres.

The second instance involved a parcel officially designated as Block 460 E, Lot 6B, with the owning parties being Di Leo and Nessler. Again as to this parcel, it was decided to go for a partial taking, this time on the grounds that some of the total parcel might be needed for future road widening. Mr. Holt in his appraisal of the 4.352 partial taking ascribed a \$35,000-per-acre value to the taking and found the .528 acre remainder left to Di Leo and Nessler had been damaged to the extent of \$18,350. That brought the total appraised value of the partial taking to \$170,600. In his appraisal, Mr. Holt placed a nominal value of \$200 for the damaged half-acre. Thus, the County again paid thousands of dollars in damages for a remainder with a nominal value of only \$200.

When Mr. DuBester was questioned about the instances of the county paying more dearly for land because of the damages awarded for partial takings and his not advising county officials of those facts prior to purchases of the lands, he testified it was possible that he might have "goofed" at one point, but he insisted he had made proper determinations of fair market value in all instances.

Mr. Holt was asked during his testimony at the public hearings why he had not in a separate communication warned the County that it could end up paying more money for less land. He stated repeatedly that all the pertinent figures were contained in his appraisal reports to the County and that those figures, speaking for themselves, constituted sufficient communication to the County. But at one point in the questioning he conceded he might have had an additional obligation:

COMMISSIONER FARLEY: But was not your appraisal, your second appraisal, really the predicate for the County to make a horrendously poor decision, buying less and paying more?

THE WITNESS: It seems to me, my appraisal should have waved a red flag and somebody should have said, well, might as well take the whole thing. The figures were obvious. If anybody had compared my original figure with my revised figure, as I said before, I think the figures spoke for themselves.

COMMISSIONER FARLEY: Would you concede that since Middlesex was paying you, that you had a duty of loyalty and trust to them, to it? To your employer?

THE WITNESS: I didn't—I can concede that maybe I had sort of a moral obligation to call on them.

COMMISSIONER FARLEY: And why didn't you speak up?

THE WITNESS: But I didn't, and I'm sorry I didn't. But I really felt the figures spoke for themselves.

## A TREMENDOUS DISPARITY

The public hearings dwelled in part with what the Commission found to be a "tremendous disparity" between the appraisals originally rendered by Messrs. Holt and Galaida for another

Ambrose and Doty's brooks area parcel officially designated as Block 460E, Lot 1 owned by Brown and Shea. Mr. Holt in July, 1973 submitted to Mr. DuBester an appraisal report placing a value of \$207,500 or \$25,000 per acre. In August, 1973, Mr. Galaida submitted an appraisal report for the same parcel, valuing it at \$58,000 or \$7,000 per acre. Mr. Galaida, after communications with Mr. DuBester, finally in March, 1974 changed his fair market value for the parcel to \$25,000 per acre, same as Mr. Holt's value. The Commission noted that Mr. Galaida made that sharp upward revision in his value for the parcel after Mr. DuBester had certified to County Counsel that \$25,000 per acre was the fair market value and a contract of sale had been signed for the \$207,000 figure.

It was Mr. DuBester's testimony that before recommending county approval of the \$25,000-per-acre figure, he had asked Mr. Holt to review his appraisal and that Mr. Holt after such review, reasserted that figure as his estimate of fair market value. Mr. DuBester testified that since \$35,000 per acre was the going price for industrial land in the area, he concluded that \$25,000 per acre was the proper value for the subject parcel which was slightly less valuable than some other parcels in the area. Mr. DuBester denied that he ever instructed Mr. Galaida to make his appraisal equal that of Mr. Holt, and he stated that he asked only that Galaida objectively reconsider his appraisal in light of its wide disparity with Holt's. Mr. DuBester also denied that he ever instructed Mr. Galaida to attach to his appraisal-revision letter to the County a sketch-map indicating how a rectangular shaped industrial building might be placed on the parcel's terrain.

Mr. Galaida's testimony on these points was in substantial variance to that of Mr. DuBester. Mr. Galaida testified that his original \$7,000-per-acre value was still in his opinion the correct value since the parcel was flawed with 20 to 40-foot easements or rights-of-way and because the vacant parcel had only a limited good frontage area which dropped down to swampy land and a streambed. He testified further about his appraisal and Mr. DuBester's alleged reaction to it:

*Q. And did there come a time when you had a conversation with Mr. DuBester on that appraisal report?*

*A. Yes.*

Q. *How did that come to you?*

A. Well, after I had submitted my report on it—

Q. *The report where you found it to be seven thousand per?*

A. Seven thousand an acre. He called me in and sort of read me the riot act because the other appraiser, Mr. Holt, was in at a much higher price per acre and I was quite low on this property.

\* \* \* \*

Q. *And Mr. DuBester, the county official for the people of Middlesex County, was mad at you?*

A. Yes.

Q. *How do you explain that?*

A. Well, he told me that I was causing a lot of waves by this appraisal and if I didn't come in line he would see that I wouldn't get any more work.

Q. *What did he suggest, if anything?*

A. Well, we sat down and I said I don't think a building could be built on this property.

\* \* \* \*

A. He said that he'd show me where a building could be built on this property and the other land where the easements cross it can be used for parking and it would meet the requirements for zoning and setback.

Q. *Did he draw a diagram?*

A. He sketched on a map that he had where a building, he thought a building could be built and I said, "Well, let me go back into the field. Let me see what I could come up with and let me see. If maybe I did make a mistake, then I'll see what happens."

\* \* \* \*

Q. *You first submitted your appraisal report in August, approximately, of '73?*

A. Yes, August 11th.

Q. *And then there came a time in March of 1974, some six months approximately later, that you finally revised your original appraisal; is that right?*

A. That's correct.

Q. Now, during that six-month period of time, were you studying modern technological engineering really for new buildings?

A. I said I didn't want—

Q. The answer to my question is?

A. No, I was sticking to my guns.

Q. Were you pouring over blueprints on the great new building that would be built on the Brown and Shea parcel?

A. No.

Q. And when you say you were sticking to your guns, I think you just said that?

A. Yes.

Q. What was happening during those six months on this parcel?

A. I was catching flack from Mr. DuBester.

Q. And that means—what was happening?

A. He kept telling me I better update that appraisal report and bring it in line with the other properties.

Q. And did you finally make a judgment to do so?

A. Finally I did, yes, sir.

Q. And will you read your letter to Mr. DuBester?

A. I—

Q. By the way, that has a date of what?

A. March 15th, 1974.

Q. What did you say?

A. I said, "In reviewing the above-captioned property I feel I have erred in not considering advanced engineering technology in constructing a building as outlined on the enclosed map. Taking into account this development, it is this appraiser's opinion that the new value should be as follows: 8.3 acres at \$25,000 per acre or \$207,500.

"This is my value as of this date, March 15th, 1974. If I can be of further assistance to you in regards to this matter, please call. Respectfully submitted."

*Q. Mr. Galaida, I realize it's a hard thing, but did that letter represent your true thinking and your true professional opinion?*

*A. No.*

### *The Red Flag Goes Up*

Mr. Hoffman, the Middlesex County Counsel, testified that if there had been sufficient checks and reviews of Mr. DuBester's certification of fair market values, the instances of the County's paying more dearly for less land and of a tremendous disparity of appraisals would have been red flags which would have led to questioning and re-analysis of Mr. DuBester's certifications. As previously noted, after the S.C.I. investigation began, Assistant County Counsels were under instructions not to accept Mr. DuBester's fair market values at their face value and to examine any supporting documentation. And as a result, the red flag did start to be raised as to his value certifications.

A case in point concerned another Ambrose and Doty's brooks area parcel officially designated as Block 496, Lot 7 and owned by Benro Inc. The County eventually opted to take partially 4.63 acres of this parcel, leaving a remainder to Benro of 3.35 acres. Mr. Holt's appraisal for this partial taking was \$212,200 and the contract was approved by freeholder resolution in June, 1975. Assistant County Counsel Burns testified because of some title clearance problems, closing of this approved, contracted-for-sale was delayed. In the interim, largely due to the S.C.I. probe, Mr. Burns decided to check on the documentation behind Mr. DuBester's certification of fair market value for this partial taking and a second appraisal, done by Charles Sullivan of the David B. Marshall Co., put a value of \$196,250 on that same partial taking.

Mr. DuBester had certified as the fair market value Mr. Holt's value of \$212,200 which included \$50,150 in alleged damages to the remainder left to Benro. Mr. Burns' review of the appraisals led him to visit the site of the parcel and to a determination that the Ambrose and Doty's brooks streambed and a drainage ditch were on the 4.63 partial taking by the County and that the remaining 3.35 acres to be retained by Benro were not so damaged. Mr. Burns also noted that neither appraisal made adjustments for the watercourse and the drainage ditch on the partial-taking acreage.

He then took Mr. DuBester and Mr. Masone of the Land Acquisition Department to the site and came to the belief during that visit that Messrs. DuBester and Masone agreed with Mr. Burns' opinion that the \$212,200 value for partial taking represented very possible over-pricing. Eventually, the County retained an outside review appraiser to re-appraise the partial taking, and the review appraiser set a fair market value of approximately \$110,000.

While the County was flagging the Benro matter, the S.C.I. asked, as part of its probe, Mr. Alton VanHorn, the expert post-appraisal reviewer retained by the Commission, to review Mr. Holt's and Mr. Sullivan's Benro appraisals. Mr. VanHorn, with assistance from John VanHorn of the same firm, carried out this reviewing task and rendered the Commission a report which indicated that the \$212,200 value or any figure close to that value was too high an estimate of value. The report indicated that both appraisals would have been substantially lower if proper downward adjustments had been used for factors of flooding, non-arms-length comparative sales, and a 1969 sales price of the parcel of only \$95,000. The VanHorns' report to the S.C.I. stated that the values in both the Holt and Sullivan appraisals "are unsupportable."

## SALES OF TICKETS FOR POLITICAL FUNCTIONS

Since mid-1973, the New Jersey State Election Law has required that political contributions, whether they be in the form of sales of tickets to political functions or just outright donations, be publicly recorded with the State Election Law Enforcement Commission. As part of its Middlesex County Land acquisition probe, the S.C.I. inspected the records of that Commission relative to any political contributions by appraisers who had been given appraisal work by the County. The names of all appraisers who had been awarded appraisal contracts by the County since 1967 through 1975 were supplied to the Commission by the Middlesex County Treasurer's Office.

S.C.I. Special Agent Richard Evans then determined from the Election Law Commission records that 17 appraisers on the County's approved appraisers list had from mid-1973 through the year 1975 made political contributions totaling \$12,055. A further check by Agent Evans of Election Law Commission records showed that on at least eight occasions during that same time span, political contributions had been made by employees of the Middle-

sex County Land Acquisition Department on the same date as contributions by appraisers were made.

Agent Evans proceeded next to draw up a list indicating political contributions by appraisers by the date of each contribution. He then inspected the dates of appraisal agreements made by the County and the dates of the resolutions by the Middlesex County Freeholder Board approving awards of appraisal work and compared those dates with the dates of the making of the political contributions by the appraisers. As a result of these investigative and analytical steps, Agent Evans determined that on at least 14 occasions political contributions by appraisers on the approved list either immediately preceded or shortly followed the County's signing appraisal agreements with the appraisers or the approval of those agreements by the Freeholder Board.

The investigation of this area by Agent Evans also showed that on at least 13 occasions the political contributions by appraisers were preceded by County payments to the appraisers for services rendered and that on five occasions an appraiser made contributions ranging from \$50 to \$250 following the receipt of payments by Middlesex County for services rendered.

The above facts relative to political contributions by appraisers on the County's approved list were testified to by Agent Evans at the public hearings, and that testimony was accompanied by the marking as exhibits of four list-type documents which appear as Charts One through Four on pages 48 to 52 of this annual report.

The previously mentioned Nathan DuBester, Administrator of the Middlesex County Land Acquisition Department, conceded at the public hearings that, as a registered Democrat, he had sold tickets to political functions to appraisers doing business with the County and on "limited occasions" to employees in his department:

*Q. Do you perform or conduct any functions for the Democratic Party in Middlesex County?*

*A. Yes, I do.*

*Q. And what are those functions?*

*A. There are times when I sell tickets for political affairs.*

*Q. Where do you sell these tickets?*

*A. As I have stated before, wherever I can.*

**CHART ONE**  
**CONTRIBUTIONS BY APPRAISERS ON**  
**MIDDLESEX COUNTY APPROVED LIST**

<i>Appraiser</i>	<i>Date of Contribution</i>	<i>Amount</i>
Bolotin, Harry	April 19, 1974	\$ 25.
	August 12, 1974	250.
	August 15, 1974	50.
	August 19, 1974	50.
	January 24, 1975	30.
	June 10, 1975	100.
	August 14, 1975	100.
	August 14, 1975	50.
	August 22, 1975	200.
	October 20, 1975	25.
	October 20, 1975	50.
October 28, 1975	50.	
Christian, Gloria	August 1, 1973	200.
Fleming, Carl	October 31, 1974	500.
	January 28, 1975	100.
	August 28, 1975	75.
Galaida, John	August 1, 1973	500.
	October 29, 1973 <sup>1</sup>	250.
Gall, Jerome	August 1, 1973	300.
	April 19, 1974	50.
	July 10, 1974	100.
	August 12, 1974	250.
	November 20, 1974	50.
	January 16, 1975	75.
	January 17, 1975	60.
	August 14, 1975	200.
	October 20, 1975	100.
Harrigan, James	May 13, 1974	50.
	August 12, 1974	100.
	August 28, 1975	100.
Harrington, Donald	July 25, 1973	500.
	August 23, 1974	100.
	June 25, 1975	100.
	August 14, 1975	100.
Holt, F. Russell	July 23, 1973	500.
	August 12, 1974	300.
	January 16, 1975	60.
	August 14, 1975	100.

<sup>1</sup> Trans Jersey Realty.

<i>Appraiser</i>	<i>Date of Contribution</i>	<i>Amount</i>
London, Alfred	August 28, 1973	125.
	April 30, 1974	25.
	July 23, 1974	100.
	October 7, 1974	200.
	June, 1975	100.
	August 4, 1975	100.
	August 13, 1975	100.
Murray, James	August 15, 1974 <sup>2</sup>	500.
	October 31, 1974 <sup>3</sup>	25.
	January 24, 1975 <sup>3</sup>	30.
	August 19, 1975 <sup>3</sup>	100.
	October 28, 1975 <sup>3</sup>	25.
Paulus, Robert	August 21, 1974	50.
	June 12, 1975	100.
	August 14, 1975	100.
Patten, Thomas	January 24, 1975	30.
	January 31, 1975	45.
	August 21, 1975	100.
	October 20, 1975	50.
Salgado, Joseph	April 19, 1974	25.
	January 17, 1975	30.
	June, 1975	100.
	August 14, 1975	50.
Schurko, John	January 17, 1975	45.
	June 18, 1975 <sup>4</sup>	100.
	August 14, 1975	100.
	October 20, 1975	50.
Sullivan, Charles	June 21, 1973	300.
	October 13, 1973	370.
	October 30, 1973	225.
	April 15, 1974	50.
	August 13, 1974	100.
	September 10, 1974	50.
	October 16, 1974	200.
	January 23, 1975	150.
	June 6, 1975	100.
	August 8, 1975	100.
	September 3, 1975	50.
October 20, 1975	25.	

<sup>2</sup> South County Realty.

<sup>3</sup> Diversified Appraisals.

<sup>4</sup> Dial Agency.

<i>Appraiser</i>	<i>Date of Contribution</i>	<i>Amount</i>
Tanzman, Herbert	July 25, 1973	500.
	October 9, 1973	500.
	October 25, 1973	100.
	August 21, 1974	100.
Timpson, Walter	August 6, 1973	200.
	October 6, 1973	200.
	October 30, 1973	200.
	July 19, 1974	200.
	December 17, 1974	30.
	August 19, 1975	100.

### CHART TWO

#### CONTRIBUTIONS BY EMPLOYEES OF THE MIDDLESEX COUNTY LAND ACQUISITION DEPARTMENT

<i>Name</i>	<i>Date of Contribution</i>	<i>Amount</i>
Berkowitz, Jerrold	August 21, 1974	\$ 50.
Colonna, John	October 31, 1974 <sup>5 3</sup>	30.
		256.42
		256.42
DuBester, Nathan	None	
Fallon, T. Gilbert	January 24, 1975	45.
Gadek, Gerard	April 19, 1974	25.
	August 14, 1974	50.
	January 31, 1975	15.
Masone, Anthony	January 16, 1975	30.
	June 10, 1975	100.

### CHART THREE

#### APPRAISER CONTRIBUTIONS BY DATE

<i>Date of Contribution</i>	<i>Appraiser</i>	<i>Amount</i>
August 1, 1973	Gloria Christian	\$200.
	Jerome Gall	300.
	John Galaida	500.
April 19, 1974	Harry Bolotin	25.
	Jerome Gall	50.
	Joseph Salgado	25.
	Gerard Gadek*	25.

<sup>3</sup> Diversified Appraisals.

<sup>5</sup> Loan to South River Democratic Organization.

\* M.C.L.A.D. Employee.

<i>Date of Contribution</i>	<i>Appraiser</i>	<i>Amount</i>
August 12, 1974	Harry Bolotin	250.
	Jerome Gall	250.
	James Harrigan	100.
	F. Russell Holt	300.
August 15, 1974	Gerard Gadek*	50.
	Harry Bolotin	50.
	South County Realty	500.
August 21, 1974	Robert Paulus	50.
	Herbert Tanzman	100.
	Jerrold Berkowitz*	50.
October 31, 1974	Carl Fleming	500.
	Diversified Appraisals	25.
	John Colonna**	542.84
January 16, 1975	F. Russell Holt	60.
	Jerome Gall	75.
	Anthony Masone*	30.
January 17, 1975	Jerome Gall	60.
	John Schurko	45.
	Joseph Salgado	30.
January 24, 1975	Harry Bolotin	30.
	Diversified Appraisals	30.
	Thomas Patten	30.
	T. Gilbert Fallon*	45.
January 31, 1975	Thomas Patten	45.
	Gerard Gadek*	15.
June 10, 1975	Harry Bolotin	100.
	Anthony Masone*	100.
August 14, 1975	Harry Bolotin <sup>2</sup>	100, 50
	Jerome Gall	200.
	Donald Harrington	100.
	F. Russell Holt	100.
	Robert Paulus	100.
	Joseph Salgado	50.
	John Schurko	100.
October 20, 1975	Harry Bolotin <sup>2</sup>	50, 25
	Jerome Gall	100.
	Thomas Patten	50.
	John Schurko	100.
	Charles Sullivan	25.

<sup>2</sup> South County Realty.

\* M.C.L.A.D. Employee.

\*\* Loan by M.C.L.A.D. Employee.

## CHART FOUR

Name	Date of Appraisal Agreement	Date of Resolution	Contribution	Amount
Sullivan, Charles .....	8-7-74	8-15-74	8-13-74	\$100.
Bolotin, Harry .....	7-18-75	7-17-75	8-14-75	150.
			8-22-75	200.
Timpson, Walter .....	7-18-75	7-17-75	8-19-75	100.
London, Alfred .....	7-18-75	7-17-75	8-4-75	100.
			8-13-75	100.
Salgado, Joseph .....	6-17-75	8-7-75	8-14-75	50.
Paulus, Robert .....	7-18-75	7-17-75	8-21-75	100.
Murray, James .....	8-1-74	8-1-74	8-15-74	500.
	8-21-75	8-21-75	8-19-75	100.
	10-21-75	12-4-75	10-28-75	25.
Patten, Thomas .....	11-27-74	1-16-75	1-24-75	30.
			1-31-75	45.
	8-12-75	9-4-75	8-21-75	100.
Gall, Jerome .....	not available	8-15-74	8-12-74	250.
	7-5-73	7-5-73	8-1-73	300.
Holt, F. Russell .....	8-5-74	8-15-74	8-12-74	300.

Name	Date of Check	Amount	Date of Contribution	Amount
Bolotin, Harry .....	5-28-75 (2)	1,260	6-10-75	\$100.
		1,260		
Galaida, John .....	7-19-73	1,500	8-1-73	500.
	10-18-73	3,100	10-29-73	250.
Gall, Jerome .....	8-7-75	1,550	8-14-75	200.
	1-16-75	850	1-17-75	60.
			1-16-75	75.
	4-18-74	350	4-19-74	50.
	7-19-74	1,225	8-12-74	250.
	11-7-74	6,750	11-20-74	50.
Harrington, Donald....	7-19-73	7,100	7-25-73	500.
Holt, F. Russell .....	8-1-74	1,200	8-12-74	300.
	7-19-73	1,500	7-23-73	500.
Tanzman, Herbert .....	10-9-73	5,100	10-9-73	500.
Timpson, Walter .....	8-6-75	450	8-19-75	100.

*Q. In your office?*

*A. I have sold some in my office.*

*Q. Have you asked people to buy political tickets while in your office?*

*A. I have made people aware of the fact that there was a political affair.*

*Q. To whom did you sell these tickets?*

*A. I have sold them to appraisers in the past.*

Q. *Have you sold them to your own employees?*

A. Yes. My employees have never purchased more than one, but they have taken tickets on very limited occasions.

\* \* \* \*

Q. *Who supplies you with these tickets?*

A. They come out of the County Chairman's office.

Q. *Who specifically?*

A. They've been hand delivered to me by various people, Mr. Rhatican.

Q. *And have they been hand delivered to you while you were in your office in Middlesex County?*

A. At times.

Q. *What did you do with the money that's collected from the sale of these tickets?*

A. Turn them in to the County Chairman's office, Democratic County Chairman.

Q. *To whom specifically?*

A. It's Mr. Nicholas Venezia's office. In the past it was an office that the Democratic organization had on Elmwood Road when the late Mr. Mulligan was chairman.

Q. *Do you know a man by the name of Stephen Capestro?*

A. Yes, I do.

Q. *Who is he?*

A. He's a Freeholder.

Q. *Does he hold an office in the Democratic Party of Middlesex County?*

A. Yes, he does.

Q. *Has he supplied you tickets to sell?*

A. He may have. I don't recall.

Q. *Have you turned any of the moneys collected by you in the sale of these tickets to Mr. Capestro?*

A. I may have as a conduit to Mr. Venezia's office.

Q. *How long have you been selling tickets on behalf of the Democratic Party?*

A. I don't remember that.

*Q. Do you also collect contributions for the Democratic Party?*

*A. No, I don't.*

*Q. Have you contributed to the Democratic Party in 1975?*

*A. No, sir.*

*Q. '74?*

*A. No, sir.*

*Q. '73?*

*A. No, sir.*

*Q. '72?*

*A. I bought tickets, but I don't remember exactly when. It was back around '72 or '71.*

*Q. Mr. DuBester, do you assign appraisers on the basis of their donations and/or purchases of tickets for political affairs from you?*

*A. I do not.*

The Commission in its statement at the adjournment of the public hearings found that Mr. DuBester's serving as a virtual solicitation and collection agency for a constant stream of political contributions from appraisers through political function ticket sales created an atmosphere which set the stage for further types of alleged monetary exchanges between Mr. DuBester and two of the County's approved appraisers, Jerome J. Gall and the previously mentioned John J. Galaida. Messrs. Gall and Galaida were among the approved appraisers who purchased political function tickets from Mr. DuBester. Pertinent excerpts from Mr. Gall's public hearing testimony follow:

*Q. Now, Mr. Gall, during the time, and I'm concentrating now on 1972, during that year while you were doing work for Middlesex County on these projects, did you have occasion to buy tickets to political functions in Middlesex County?*

*A. I assume I did, yes, sure.*

*Q. Well, when you say you assume you did, I'd like you to be very careful and tell me whether you have actually done it or whether you are guessing.*

*A. I believe I did.*

Q. And did you ever have occasion to give the money for these tickets to Mr. Nathan DuBester?

A. Yes, I did.

Q. And did this ever occur in his office?

A. I would assume they did, yes.

Q. From time to time while you were conducting your appraisal work on these county projects you would have occasion to go into Mr. Dubester's office in the County building?

A. I did.

Q. And at that time on occasion you would give him money for political function tickets?

A. It would be cash—not cash, a check, rather than money.

Q. You would give him payment for a political ticket?

A. Correct.

\* \* \* \*

Q. Did it happen on more than one occasion from the period 1971 to the present?

A. Oh, yes.

Q. Would you say it was a fairly frequent occurrence for you to buy from Mr. DuBester political function or political activity tickets?

A. What do you mean by "frequent occurrence"?

Q. I think that's a fair question you just asked me. How often did it happen during a four-year period?

A. Whenever there was an affair, just about.

Q. Whenever there was a political party affair, a dance or some other function, you would be asked to buy tickets?

A. Yes.

Q. And Mr. DuBester was the one who asked you?

A. On most—not all occasions.

Q. But on most occasions?

A. I would say, yes.

Mr. Galaida in his public hearing testimony stated that when there was a political function, Mr. DuBester would solicit ticket purchases from him:

*Q. Is it important to get on that approved appraiser list?*

A. Well, if you want appraisal work from the County, yes, it is important.

*Q. And then who's the man who decides which appraisers on the list are going to get assignments of appraisal work?*

A. Mr. DuBester.

*Q. And over the years as you received various assignments of work, did you buy and purchase from Mr. DuBester tickets to political party functions?*

A. Yes, I did.

*Q. And describe that. Was it frequent, infrequent, just an occasional thing or—*

A. Whenever there was a function I bought tickets.

*Q. How would that work?*

A. Mr. DuBester would notify me, call me up or at a time when I'm by his office he'd say, "Listen, there's a dinner coming up. We have tickets. You should buy some tickets." At certain times.

*Q. And what was the price range per ticket?*

A. Some were ten or fifteen. Others were \$50, a ticket.

*Q. And you bought them over a course of about how many years?*

A. I'd say from '69 through '71 I bought, then '72—'71—end of—'71 I didn't buy; '72 then through '74.

\* \* \* \*

*Q. And in what amount—what number of tickets did you buy on any given occasion? For instance, did you sometimes buy just two?*

A. Sometimes it was four, a lot of times it was ten.

*Q. And do you recall what occurred on any instances when you bought ten tickets?*

A. Well, at one occasion, that was 1973, I believe for Governor's Day function, I bought ten tickets after I had gotten the Ambrose Brook Project.

*Q. Who did you buy them from?*

A. Mr. DuBester.

*Q. Who did you give the money to?*

A. Mr. DuBester.

*Q. And did you receive ten tickets from him?*

A. No, I gave him six back. He said he needed six for people that he had to give them out to.

*Q. So he gave you ten and you whipped six right back?*

A. Yes.

*Q. You ended up with how many?*

A. Four.

*Q. How much were those a head?*

A. \$50.

## PAYOFFS ARE ALLEGED

During the course of the probe of the Middlesex County matter, the Commission's investigative staff encountered speculative and unsupported information that Nathan DuBester as Administrator of the County's Land Acquisition Department might have requested and received cash payments from some of the appraisers who had received fees from the County for services rendered. Further investigation in this area led to the Commission's hearing private testimony which included a specific, sworn allegation that an appraiser had returned a percentage of his fees received from the County to Mr. DuBester. As a result, the Commission directed intensive additional probing in this area to determine whether or not any other instances of similar alleged payments to Mr. DuBester could be uncovered to add substantiation to the initial allegation.

The Commission after protracted investigation and a legal proceeding finally did receive in private session an additional, sworn allegation of cash payments to Mr. DuBester at a time an appraiser

was receiving fees from the County for services rendered. Given this substantiation, the Commission determined that it would be in order to present the sworn allegations at the public hearings as an integral part of the facts relative to the operation of the Middlesex County Land Acquisition Department. Mr. DuBester's sworn, categorical denials, first received in private session, of ever having asked for or received cash payments from any appraisers doing business with the County were, of course, also afforded a public forum at the public hearings.

### *A Most Reluctant Witness*

The witness who eventually supplied the substantiation testimony in this area of this investigation is the previously mentioned Jerome J. Gall, an appraiser with offices in Woodbridge. When Mr. Gall was first called on to give private testimony before the Commission, he appeared in accord with the subpoena served on him and accompanied by his Counsel, John J. Cassese, Esq. As Mr. Gall was to testify to later at the public hearings, he came to the Commission's offices with the firm desire and intention of not cooperating with the S.C.I. if at all possible on any inquiry dealing with his financial matters, including any relationships he might have had with Mr. DuBester. He so communicated that desire and intent to his attorney. Accordingly, at the private hearing, Mr. Gall invoked his constitutional privilege against possible self-incrimination when asked about any financial matters, including those that might have pertained to Mr. DuBester.

After the private hearing was concluded, Mr. Gall instructed his attorney to communicate to the Commission that Mr. Gall was still firm in his desire and intent not to cooperate with the S.C.I. in answering any questions regarding his financial matters. This total wall of non-cooperation left the Commission in the position of not knowing what degree of factual validity might lie behind Mr. Gall's Fifth Amendment invocation and, therefore, the nature of any testimony he might give, were the Commission to consider conferring on him a grant of witness immunity to compel his testimony over his Fifth Amendment plea.

### *Court Proceedings Force a Decision*

The Commission subsequently decided to go to court to attempt to ascertain the substance behind Mr. Gall's Fifth Amendment plea. It did so by filing with Judge George Y. Schoch of the Superior

Court an application to determine whether Mr. Gall's invocation of the privilege against possible self-incrimination was frivolous or meritorious. Accordingly, Judge Schoch heard arguments on this application *in camera* at the Mercer County Courthouse. Mr. Gall testified later at the public hearings how the progress of that court proceeding led him to an agonizing choice of either dropping his firm desire and intention not to answer any question about his financial relationships with Mr. DuBester and be incarcerated for contempt of court, or to answer truthfully under oath a question posed to him by Judge Schoch and return a free man to his home and family, with the latter choice finally being opted for by Mr. Gall:

*Q. And when you were going on your way to the Mercer County Courthouse, did you understand that the purpose of that proceeding would be for the S.C.I. to seek to compel you through the Court to answer the questions?*

A. That's correct.

*Q. And then do you recall appearing before Judge Schoch with your attorney in the Mercer County Courthouse?*

A. I do.

*Q. And there was various legal arguments; is that right?*

A. That's correct.

*Q. And you instructed your attorney to take the position that you would not cooperate; is that correct?*

A. That's correct.

*Q. And then do you recall there was an occasion when the Court took a recess and gave you an opportunity to talk to your lawyer and think over this very important decision? Do you recall that?*

A. That was after the judge told me, you know—

*Q. You recall the judge gave you an instruction as to what your options were?*

A. He did, yes.

*Q. Did the judge ask you questions about whether you had made payments to Mr. Nathan DuBester and*

*did he tell you that you had certain options as to those questions?*

A. He did ask the question and he told me I had options.

Q. *What did the judge tell you your options were?*

A. I can tell them—I can answer the question and don't answer the question and be put in the cage.

Q. *Or what?*

A. In the cage.

THE CHAIRMAN: In a cage?

THE WITNESS: In jail.

THE CHAIRMAN: In jail.

Q. *So you understood from what the judge communicated to you in that proceeding that you faced a very important decision; is that correct?*

A. I did.

Q. *And did you then consult privately with your attorney as to what course of action to take?*

A. I did.

Q. *And, in fact, you called your home, your wife, to discuss it, didn't you?*

A. I did.

Q. *And after that you came back before Judge Schoch and made your decision?*

A. I did.

Q. *And is your testimony here today the truth, the whole truth and nothing but the truth?*

A. It is.

Q. *And did you make the decision to testify and answer the questions after Judge Schoch gave you those options you just described?*

A. That's when I made my decision.

Q. *Pardon?*

A. That's when the decision was made.

The answers given by Mr. Gall to Judge Schoch's key question in the privacy of the *in camera* court session indicated that Mr. Gall had, indeed, made payments to Mr. DuBester, and the Judge

ruled that Mr. Gall's invocation of the Fifth Amendment to questions by the S.C.I. in that area was meritorious. However, the *in camera* proceeding enabled the Commission to obtain indicia as to the substance and import of Mr. Gall's testimony, were it to be compelled by a grant of witness immunity. The Commission did, after due deliberation, recall Mr. Gall to private session and compel his immunized testimony as to financial matters, especially those relating to Mr. DuBester. That testimony was subsequently repeated by Mr. Gall, again at the commands of an S.C.I. subpoena and a continuing grant of immunity, at the public hearings as reviewed below. The Commission attached particular credibility to Mr. Gall's testimony because of his determination to attempt, under his constitutional privileges, to avoid having to give truthful testimony which would be damaging to him and his subsequent full candor once that determination had been overcome first by the court proceeding and later by the Commission's compulsion of his immunized testimony.\*

### *Testimony of Jerome J. Gall*

Jerome J. Gall in 1969 began working in the real estate appraisal firm offices of his uncle, Albert Gall, in Woodbridge. The elder Gall's business included the rendering of appraisal services to both private companies and individuals and to public agencies, including the County of Middlesex. The elder Gall as proprietor of the firm carried on any necessary business dealings with Nathan DuBester as Administrator of the Middlesex County Land Acquisition Department, with Jerome Gall as an employee having no business negotiations with Mr. DuBester at that time but, through the work of the firm, meeting Mr. DuBester from time to time. During 1971, Albert Gall died, and, by 1972, Jerome Gall was operating the family business at the same Woodbridge location and beginning to receive on his own for the first time assignments to do real estate appraisal work for Middlesex County. He continued to receive such assignments from the County from time to time in ensuing years.

Mr. Gall testified at the public hearings that during 1972, at a time when he had begun to receive appraisal work from the County,

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\* Once it became clear that Mr. Gall would be called to testify fully in public, he and his attorney offered no objection to having the nature of the *in camera* court proceedings reviewed at the public hearings, since the proceedings were held in a closed courtroom only to protect Mr. Gall at that time.

he was contacted by Mr. DuBester who asked for a payment of money:

*Q. Do you have a recollection in your mind right now as to the first time you made such a payment?*

A. In 1972.

*Q. And do you remember the circumstances in general that led to your making the payment?*

A. He called me and asked me if I could help him out.

*Q. Who is he?*

A. Mr. DuBester.

*Q. Called you on the phone?*

A. Excuse me. I believe it was on the phone, yes.

*Q. And what did he say or what did he ask?*

A. Well, I would assume that he asked for—you know, maybe I don't know really what the actual question was of the conversation, but he might have asked for he needed some clothes or he needed a—he had a problem or if I could help him out.

*Q. At any rate you understood quite clearly what it was he wanted, did you not?*

A. I understood, yes.

*Q. And you understood he wanted from you what?*

A. Some money.

*Q. And did you pay him money?*

A. I did.

*Q. How much was it?*

MR. CASSESE: You're referring to 1972,

MR. HOLSTEIN: I'm referring to the first occasion he ever had occasion to make a payment.

A. I believe it was around three hundred, \$350.

*Q. And do you recall the place where you made the payment?*

A. I believe it was in Perth Amboy.

*Q. Was it in a public place?*

A. A parking lot.

*Q. And was the payment made in cash or by check?*

A. Cash.

*Q. And you took the cash with you to this meeting?*

A. I did.

*Q. And afterwards did you and Mr. DuBester go your separate ways or did you spend some time together?*

A. I believe we went out for dinner.

Later during 1972, Mr. Gall received a check for \$35,275 from Middlesex County for appraisal work done on the Jamesburg Park project. That check was several times larger than any previous fee payment he had received from the County for services rendered and was, in fact, by far the largest single appraisal fee check he ever did receive from the County, according to his testimony. About the time the big check arrived, Mr. Gall testified, he was once more contacted by Mr. DuBester about a possible payment:

*Q. And what prompted you to make the payment to Mr. DuBester on this second occasion, and was there any relationship between the receipt by you of the thirty-four thousand-dollar check and the payment to Mr. DuBester?*

A. Well, I don't know if there's any relationship. It was after or during the time that the check was either in my hand or being processed that Mr. DuBester called me or spoke to me. I don't know. We had——

*Q. Mr. DuBester called you just about the time that check was hitting your office; is that right?*

A. I would say in that general time period, yes.

*Q. So his call came in right around the time that very big check was first coming into your possession?*

A. I would say, yes. I believe that was—I believe your statement is reasonably correct.

*Q. And Mr. DuBester called you?*

A. Either called me or I met him. I don't know the exact circumstances.

*Q. What did he want and what do you remember?*

A. He needed some help.

Q. Pardon?

A. He needed some help.

Q. *And did you understand from that that he needed help on his appraisal work or some other kind of help?*

A. I understood it was financial help.

Q. *There wasn't any doubt about that in your mind, was there?*

A. No, I don't think there was a doubt.

Q. *And did you give him financial help? Did you give him money?*

A. Yes, I did.

Q. *And what was the approximate amount of money that you gave him?*

A. About three thousand, \$3,500.

Q. *What was that?*

A. Three thousand to \$3,500, somewhere in there.

Q. *And was that amount roughly equivalent to 10 per cent of this Jamesburg Park fee that you had just received?*

A. It worked out to about 10 per cent, yes.

Q. Pardon?

A. It worked out to about 10 per cent, yes.

\* \* \* \*

Q. *Were you more generous, I guess my question is, the second time you made payment to Mr. DuBester than you were the first time?*

A. I believe so. Excuse me. I believe so.

Q. *And what caused you to be more generous?*

A. I had \$34,000 in my pocket.

Mr. Gall was obviously worried about the propriety of making a big cash payment to the man who had awarded him the Jamesburg Park appraisal project. He, by his own testimony, attempted to disguise his generation of \$3,500 in cash to make the payment by jockeying funds among his various bank accounts. He testified about that attempt at the public hearings:

Q. And when the S.C.I. served you with its subpoena for the books and records, did you make an attempt to look in your books to see if you could spot the exact transactions that were the kickback payments to Mr. DuBester?

A. I did.

Q. And were you able to find those, trace those payments to Mr. DuBester when you had those three days to look at your books?

A. Not really, no. I tried, but I really didn't come up with the method.

Q. Your system of disguising the flow of the cash had been pretty good?

A. I think it was.

Q. What kinds of systems did you use?

A. I would take money out, throw it into another account, take money back out, throw it into another account, take money out, keep part of it, you know.

Q. You used a system of jockeying between different accounts?

A. That would be the only—that would be only for the one large check in '72.

Q. It was mainly that thirty-four-thousand-dollar transaction?

A. Yeah, yeah.

Q. Right. Then the payment of \$34,000 that you worked very hard on disguising—

A. I don't know if I worked very hard, but—

Q. At any rate, you did attempt to disguise it?

A. Correct.

Mr. Gall testified further that on a third occasion, which he placed as occurring during 1974 around the time he completed appraisal work for the County on the Spotswood Drainage Improvement project, Mr. DuBester again requested a payment from Mr. Gall. Mr. Gall testified that he responded to this request by making a payment of approximately \$350 to \$450 to Mr. DuBester.

Mr. Gall stopped short of conceding the cash payments he made to Mr. DuBester were kickbacks, preferring to call them gifts for work received. But Mr. Gall was unequivocal in stating that he made the cash payment only on the request of Mr. DuBester and in concluding that the only factor motivating those payments was Mr. Gall's concern that he continue to receive appraisal work assignments from the County:

*Q. Is it fair to state that each of the three times you made payment it was prompted by a specific request from Mr. Nathan DuBester?*

A. It was by request of Mr. DuBester, correct.

*Q. Were there occasions when you got checks from Middlesex County for doing appraisal work during '72, '73 and '74 when Mr. DuBester would make no request?*

A. Oh, yes.

*Q. And when he didn't make a request, did you offer?*

A. No.

*Q. You waited for the request?*

A. Yes.

*Q. And when the request was made you complied with it?*

A. I did.

\* \* \* \*

*Q. Did you ever contemplate as you went about your business and did your work and received your money from Middlesex County, did you ever contemplate the possibility of saying to Mr. DuBester, "No, I'm not going to pay." Did that ever cross your mind?*

A. I thought about it, sure.

*Q. Quickly dismissed that idea?*

A. I don't know. You're asking me something I might have thought about years ago.

*Q. Did you ever say that to Mr. DuBester?*

A. No.

Q. You like to maximize your income, don't you? You do like to increase your income as much as you can?

A. Oh, yes.

Q. Then why was it that you never said to Mr. DuBester, "No, I will not pay"?

A. Because I was receiving work.

Q. And you were fearful of what might happen if you stopped paying after he requested?

A. I don't know if I was fearful, but I thought about if I didn't give him the money maybe I wouldn't get work.

Q. So you paid out of your concern that you would be able to still continue to receive work?

A. I would say that's the general feeling that I had.

Q. Was that the chief motivating factor in your giving the money?

A. That's the only reason.

### *Testimony of John J. Galaida*

The previously mentioned John J. Galaida was during 1968-69 employed in the real estate appraisal office of Albert Gall, the previously mentioned uncle of Jerome Gall. In fact, Mr. Galaida was displaced in that firm and eventually received County appraisal work on his own because of the decision to have Jerome Gall join his uncle's business during 1969.

Mr. Galaida testified that during this 1968-69 association with Albert Gall's firm, F. Russell Holt, the previously mentioned appraiser, had offices in the upstairs of the same building in which the Gall firm's offices were in the downstairs. Mr. Holt, it may be remembered, was eventually to appraise for Middlesex County, the same six Ambrose and Doty's brooks area parcels of land which also were appraised by the County by Mr. Galaida and which were intensely scrutinized by the S.C.I. in this investigation.

Mr. Galaida testified at the public hearings that while he was with Albert Gall's firm, Mr. Holt was assigned by the County as an appraiser on the Woodbridge Avenue road widening project, with the Gall firm also being assigned appraisal work on that

project by the County. It was Mr. Galaida's testimony that Albert Gall had a conversation with Mr. Holt in Mr. Galaida's presence shortly before the awarding of the appraisal contracts on the Woodbridge Avenue project:

A. Well, I was with Mr. Gall for about two or three months prior to the awarding of the contract on the Woodbridge Avenue project. And during this time there was a meeting at the office with Mr. Holt. I was in the next office. Then I came into the office whereby Mr. Gall said that he would see that Mr. Holt would get the job as the Woodbridge Avenue—do the Woodbridge Avenue job for the county.

*Q. Albert Gall indicated he might have some success in securing for Mr. Holt this appraisal work?*

A. Yes.

*Q. And did Mr. Albert Gall enlighten Mr. Holt any further on, shall we say, the facts of life?*

A. Yes. He told him that he would have to give a percentage of his contract as a kickoff—kickback or payback.

*Q. To whom?*

A. Mr. DuBester.

*Q. For what purpose or what reason?*

A. If he wants the contract, he had to do it.

*Q. And was Mr. Holt pleased by this or not?*

A. No. he wasn't.

*Q. And you don't have any knowledge, personal knowledge, do you, as to whether Mr. Holt ever followed through and made such payments or do you?*

A. No, I don't. No personal knowledge.

Mr. Holt during his testimony at the public hearings denied that Mr. DuBester ever indicated that Mr. Holt would have to make payments of a percentage of his County-awarded fees to Mr. DuBester as a provision for getting County appraisal work, and Mr. Holt also denied that he ever had had the meeting and discussion with Albert Gall as testified to by Mr. Galaida:

*Q. Were there any other discussions with Mr. DuBester on or about those times that he was giving*

*you the maps and the metes and bounds description for the property to be appraised?*

A. No, no particular discussion.

Q. *Did he indicate to you that, as a provision for you obtaining the contract with Middlesex County, that you would be required to pay a percentage of your fee to him?*

A. Never.

Q. *Did you suggest that you would offer him a percentage of your fee—*

A. I did not.

Q. *—in order to acquire work from Middlesex County?*

A. I did not.

Q. *Were you aware of any understanding that existed between the appraiser, yourself, and appraisers in general with the Middlesex County Land Acquisition Department that there was a price involved in getting Middlesex County land appraisal work?*

A. I never heard of that, no.

Q. *Do you know the name Albert Gall?*

A. Yes, I do.

Q. *And who is he?*

A. He's deceased.

Q. *Who was he?*

A. He was a broker and appraiser from Woodbridge.

Q. *Did you ever work for him or with him?*

A. I did not.

Q. *Did you ever have an office space rented in a building owned by Mr. Gall?*

A. I did.

Q. *And when was that?*

A. 1968-69, I would guess.

Q. *Do you know a man by the name of John Galaida?*

A. John Galaida, yes, I do.

*Q. And who is he?*

A. He used to work for Albert Gall; he used to work for the Highway Department; he sold me some stocks which I lost a lot of money on, and I know him as being a broker and/or appraiser from the area.

\* \* \* \*

*Q. Did you have occasion to have meetings with Mr. Albert Gall around 1968?*

A. Except for saying hello to him and good-bye to him when I went in and out of the office if I saw him, we had no meetings as such.

*Q. Well, did you have a meeting with Mr. Gall at which time Mr. Galaida was present—*

A. Not to—no.

*Q. —where the discussion involved an understanding of payment of a certain percentage of fee to Mr. DuBester in order to acquire work from Middlesex County?*

A. Positively not.

Mr. Galaida testified further that after he was displaced from the Gall firm by the arrival there of Jerome Gall, Albert Gall told Mr. Galaida that he could most likely obtain Middlesex County appraisal work on his own if he gave back to Mr. DuBester a percentage of County fees paid to Mr. Galaida and if he also contributed to various political functions. Mr. Galaida stated that Albert Gall arranged for Mr. Galaida to meet Mr. DuBester and that subsequently Mr. Galaida was awarded his first appraisal contract. It was Mr. Galaida's testimony that he kicked back a varying percentage of his fees totaling \$60,000 from that initial contract and from subsequent appraisal contracts awarded to him by the County:

*Q. And did you thereafter learn that you were given this contract?*

A. Yes.

*Q. And did you do the work?*

A. Yes, I did.

*Q. And did you get paid for the work from Middlesex County?*

A. Yes, I did.

*Q. And what did you do, if anything, with regard to these things we have been calling or you have been calling obligations?*

*A. Every time I would get paid I would give a percentage of my checks to Mr. DuBester in cash.*

*Q. And what was the range of that percentage, from what to what?*

*A. From 5 per cent to 10 per cent in the times I have had contracts with the County of Middlesex.*

*Q. 5 to 10 per cent of what?*

*A. Of the contract price.*

*Q. And after that first contract did you receive payments to do other work for Middlesex County as the years went on?*

*A. Yes, I did.*

Mr. DuBester during his public hearing testimony categorically denied ever requesting or receiving any payments from Mr. Gall and Mr. Galaida:

*Q. Are you aware of or have any reason to believe that a Mr. Jerome Gall dislikes you or would have reason to fabricate stories concerning your integrity or honesty?*

*A. No, I wouldn't.*

*Q. Are you aware or have you reason to believe that Mr. John Galaida dislikes you or would have reason to fabricate stories concerning your integrity and honesty?*

*A. No, I wouldn't.*

*Q. Have you met with either Mr. Gall and Mr. Galaida in places other than your office?*

*A. Yes.*

*Q. Can you explain those places and reasons?*

*A. Well, the last time I met Mr. Gall was at a political function in Perth Amboy last November.*

*Q. And Mr. Galaida?*

*A. I haven't seen Mr. Galaida for perhaps a year or better.*

*Q. Have you borrowed money from either Mr. Gall or Mr. Galaida in the last five years?*

*A. No, I haven't.*

*Q. Has Mr. Gall or Mr. Galaida given you a gift in money or any material thing of value over the past five years?*

*A. No, sir.*

*Q. Have you requested a payment of a specific percentage of a contract fee awarded to Mr. Gall or Mr. Galaida in order that they get the contract?*

*A. No, I haven't.*

*Q. Have you received payment from Mr. Gall or Mr. Galaida as a gift or as a result of a request on your part?*

*A. No, sir.*

## **APPRAISALS ARE FOUND INADEQUATE AND MISLEADING**

As previously noted, the Commission with the assistance of the two expert post-appraisal review sources analyzed in particular depth the processes leading to the purchase by Middlesex County in 1974 of six parcels of land, which lie in tandem in the Ambrose and Doty's brooks area of Piscataway Township, for a total of approximately \$1.5 million. The six parcels, comprising a total of 43.5 acres, all were flowed by a watercourse and all had floodplain characteristics and terrain deficiencies associated with the streambed. The subject parcels are all identified by their official designations in Chart Number Five which appears on page 73 of this report and which also contains the fair market value ascribed to each parcel by the two appraisers retained by Middlesex County, Messrs. Holt and Galaida, and summaries of the value analyses and comments of the S.C.I.'s post-appraisal review experts. The critiques of the appraisals by the expert reviewers will be subject to further review in subsequent subsections of this report.

The important fact to stress at this point is that Mr. DuBester testified that he relied heavily on the professional judgments of the appraisers and, in particular, on the judgments of Mr. Holt, in making determinations of the fair market value at which the County should purchase the parcels. A pertinent excerpt from Mr. DuBester's public hearing testimony under questioning by then S.C.I. Counsel Peter Rhatican follows:

**CHART FIVE**  
**SUMMARY OF VALUE ANALYSES AND COMMENTS**

Value Analysis and  
 Comments in Report of  
 Expert Review Appraiser  
 No. 1\*

Comments in Report of  
 Expert Review Appraiser No. 2\*\*

<u>Property Identification</u>	<u>Holt</u>	<u>Galaida</u>	<u>No. 1*</u>	<u>Comments in Report of Expert Review Appraiser No. 2**</u>
1. Block 460E, Lot 1 ..... Brown & Shea	\$207,500	\$207,500	\$108,000	In light of sales data cited and/or other data available for consideration, the values reported are unsupported. . . . Sales used by appraisers (Holt and Galaida) should not be considered as market value indicators.
2. Block 457, Lot 8A ..... M. W. Kellog Co. (Pullman Corp.)	443,900	419,000	190,000	Same comments as to item one above.
3. Block 457, Lot 8 ..... M. W. Kellog Co. (Pullman Corp.)	317,600	299,000	127,000	Same comments as to item one above.
4. Block 457A, Lot 7 ..... Kokenyessy	236,000	216,500	103,500	Same comments as to item one above.
5. Block 500A, Lot 1 ..... DiLeo/Nessler	182,000	166,000	The Holt and Galaida reports greatly overstate the value of the lands through use of unrealistic sales and lack of sales comparative adjustments.	Same comments as to item one above.
6. Block 460E, Lots 2 & 3.. DiLeo/Nessler	170,600	178,600	Same comments as to item five above.	Same comments as to item one above.

\* *Expert Review Appraiser No. 1 is the New Jersey State Transportation Department's Division of Right of Way, J. V. Hyde, Jr., Director, M. A. I.* This reviewer's report commented further: "The appropriate typical downward adjustments for poor terrain we estimate would be in the magnitude of 50%."

\*\* *Expert Review Appraiser No. 2 is the firm of Van Horn & Dolan, A. W. Van Horn, M. A. I., and J. Van Horn.* This reviewer's report commented further: "The flood-prone nature of at least portions of all the subject properties is the singlemost important fact, influencing their value. The appraisals make no mention whatsoever of flooding."

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*Q. Do you verify the consideration of the comparable sales?*

A. Yes, sir.

*Q. And how do you do that?*

A. I verify them according to the appraisal report where the verification is there in writing.

*Q. And that's how you verify the consideration, by seeing it there in the report; is that right?*

A. Yes, sir.

*Q. Do you call up either the grantor or the grantee?*

A. No, I don't.

*Q. So you're accepting the consideration at face value as presented in the appraisal report; is that correct?*

A. Yes, sir.

*Q. What other items or segments of an appraisal report do you accept at face value without going beyond the report in your review?*

A. Just about everything that's in the appraisal report, Mr. Rhatican. When we hire these people, they have been established as competent, efficient appraisers.

*Q. So part of your—part of the input in your review is, I believe this is your testimony, predisposed as to their competency?*

A. Yes, sir.

*Q. That's part of your review, knowing that?*

A. Yes, sir.

Thus, under Mr. DuBester's mode of operation, there was no in-depth review and analysis of the appraisals received in order to verify the fair market values set forth therein. If the appraisals overstated these values, then Mr. DuBester's final determination of those values would also be overstatements. And that is just what happened in the cases of the six Ambrose and Doty's brooks area parcels in question. One of the expert review appraisers for the S.C.I. placed the overstatement of fair market value in the appraisals at approximately 100 per cent. Both expert review appraiser sources found the appraisals to be particularly flawed in

two areas: 1) Insufficient consideration of the flood-prone terrain of the parcels and 2) The use of comparable sales which were unrealistic and which required comparative adjustments which were not made. As the Commission stated at the outset of the public hearings although real estate appraising may not be an exact science, it is subject to readily discernible disciplines and standards. The testimony of the expert review appraisers indicated to the Commission that those disciplines and standards were not sufficiently adhered to in the appraisals in question.

### *On Flooding and Flood Plains*

The testimony and accompanying exhibits at the public hearings left no doubt that the six subject parcels lay in a flood plain which was prone to flooding and that when the Holt and Galaida appraisals were made during 1973, considerable data as to that flooding was available. Douglas V. Opalski, Assistant Planning Director for the Middlesex County Planning Board and the first witness at the public hearings, testified that as far back as 1930, a park report prepared for Middlesex County made a mention of flooding in the Ambrose and Doty's brooks area in identifying that area as one for possible future parkland development. He testified further that he was involved in the writing of a report in November, 1965 for the Middlesex County Planning Board on a proposed park at Ambrose Brook and that the report and the study leading to it prompted a conclusion that there were flood conditions in that area. Indeed, Mr. Opalski testified one of the purposes considered for the parkland project was preservation of the flood plain. Additionally, Mr. Opalski noted that a major report known as the Killiam Report was issued in August, 1972 and dealt with a storm drainage plan and program for the area.

Also, during the course of the hearing, Peter Rhatican, the then S.C.I. Counsel in charge of this investigation, had marked as exhibits the following items:

An excerpt from the 1976 Annual Report of the Township of Piscataway Planning Board stating that soils in the township are generally well suited for development "with the exception of the low areas adjacent or in close proximity to the streambeds such as the Ambrose and Doty's brooks where drainage problems will hinder development."

A September 23, 1965 petition to then Governor Hughes which was signed by 600 persons from Piscataway and surrounding communities and which made a reference to the flooding history of the Ambrose and Doty's brooks area in pleading for restraint of development of that area.

Copies of newspaper articles in the Home-News of flooding occurrences in areas of Piscataway, especially the Ambrose and Doty's brooks area.

Several affidavits from residents in and around the brooks area (residents who had lived there for 13 to 36 years) in which those residents testify and swear to statements about flood occurrences. One such statement was, "The brook always overflows. After a heavy rain flooding is certain to occur lasting anywhere from one to two days."

Additionally, Mr. John Van Horn of the VanHorn and Dolan firm, one of the S.C.I.'s two expert post-appraisal review sources, testified that his inspection of the six subject parcels showed they had the characteristic flood plain configuration of properties generally susceptible to flooding. As a result of that finding, he did further review which led him to three pertinent documents which existed by mid-1973 and which indicated flood conditions in the area of the six parcels. Those documents were the 1972 Killiam Report, another report dated 1972 and entitled "Floods of August and September 1972 in New Jersey," and a map dated 1972 and entitled "Map of Flood Prone Areas, Plainfield Quadrangle."

Mr. John VanHorn concluded from his total research and review that the most significant physical condition of the six parcels is that all are subject to flooding, that they are low in relation to surrounding grades, and that they are probably of soil of poor bearing capacity as a result of proximity to streams. Mr. VanHorn testified further:

EXAMINATION BY MR. FARLEY:

*Q. Mr. VanHorn, would you say that the flooding condition, from your initial investigation of the property was patently manifest?*

*A. Yes, sir.*

*Q. And would you agree with me that fear of flooding as an abstract concept would be a deterrent to a potential purchaser?*

A. It's a—it's an absolute deterrent to some, and it's a value diminisher to the remaining potential buyers.

COMMISSIONER FARLEY: Thank you.

Also, Henry Zanetti, Piscataway Township Engineer, testified that he had personal knowledge that flooding conditions exist in the township because of Ambrose Brook and that parts of the flood plain in that area had to be filled in 1964 and 1966 for the construction of Centennial Avenue so that that artery would not be subject to flooding.

Additionally, William J. Van Nest, Principal Planner on the Staff of the Middlesex County Planning Board, testified that in 1972 he was involved in an extensive review and examination of the Ambrose and Doty's brooks park project and that in April, 1973, he sent a letter to Herman Hoffman, County Counsel, and Nathan DuBester, Administrator of the Middlesex County Land Acquisition Department, in which he attempted to make those two officials specifically aware that because of flooding potential existing in some parkland project areas, the county might purchase some of the lands at reduced cost.

Mr. VanNest's letter noted that the State, by statute as of 1973, was actively curtailing development in floodways and observed that the County was then about to acquire land along certain streamways, among them the Ambrose and Doty's brooks. The letter continued:

If in fact State statute now prohibits or greatly retards development of certain lands, would not this land be less valuable to the owner and therefore less costly for the County to purchase? If this is the case, are our appraisals now being developed considering and reflecting the situation?

Mr. VanNest suggested the County might save hundreds of thousands of dollars in land purchases under the new State statute, even if initially it had to spend a few thousand dollars in some litigated cases.

Ironically, Mr. Holt, one of the appraisers retained by the County to appraise the six parcels and the appraiser on whom Mr. DuBester placed particular reliance, introduced the VanNest letter at the public hearings in an attempt to bolster his contention that there were no hard and fast available facts as of 1973 on which to base a conclusion of serious flooding conditions in the area. Mr. Holt testified he received a copy of the letter on April 28, 1973. The Commission questioned him closely on the receipt of that letter:

*Q. My question to you is: Did you read the letter when you received it in 1973?*

THE WITNESS: I certainly did.

COMMISSIONER LUCAS: And you were aware of its contents?

THE WITNESS: I read it and I'm fully cognizant of what it says, yes.

COMMISSIONER LUCAS: So that it did put you on notice, did it not—

THE WITNESS: That's correct.

COMMISSIONER LUCAS: —that flooding and the flood plain were a matter of concern to the man who was the head of the Planning Board in Middlesex County?

THE WITNESS: That's right.

COMMISSIONER LUCAS: And he was bringing that concern, was he not, to the attention of the man who was running the Land Acquisition Department in Middlesex County?

THE WITNESS: Apparently so, yes.

COMMISSIONER LUCAS: And to whom else? The county engineer?

THE WITNESS: The county counsel.

COMMISSIONER LUCAS: County counsel. And that man, at least, the fellow who ran the Land Acquisition Department, in turn, was bringing it to your attention?

THE WITNESS: Yes.

COMMISSIONER FARLEY: And did any of that, the substance of that letter, get into your appraisal reports?

THE WITNESS: I didn't quote anything from it.

COMMISSIONER FARLEY: Did you allude to it?

THE WITNESS: I did not refer to it in my report, no. However, it did have the impact on me of making me very much cognizant of this situation and I did some rechecking on areas that I thought might be problem areas and I found nothing to substantiate his opinion as even he himself says it would be subject to long and protracted litigation if they ever did try to do that, and I found nothing to justify his conclusions.

\* \* \* \*

COMMISSIONER FARLEY: You don't think flooding is relevant?

THE WITNESS: I had no evidence of hard and fast fact to ascertain that any of these parcels were ever flooded.

COMMISSIONER FARLEY: Was not this a danger signal? Wouldn't this demand—

THE WITNESS: Yes, and I check, I rechecked.

COMMISSIONER FARLEY: And you found no—

THE WITNESS: I found no validity to his statement.

\* \* \* \*

COMMISSIONER BERTINI: This is the county asking this question, maybe not directly of you, but asking the question, and you don't consider it?

THE WITNESS: I considered it and found his argument invalid.

COMMISSIONER BERTINI: Now I ask you this question: What was the consideration that you gave to this factor?

THE WITNESS: Well, he's asking won't it be less valuable than other land and my answer is no.

COMMISSIONER BERTINI: Why not?

THE WITNESS: Because the market was buying this type of land regardless whether there was a brook on it or not. I don't create value. The appraiser does not create value. He can only—he can't be smarter than the market.

Mr. Holt insisted repeatedly in his testimony that he found no substantial evidence of flooding and that his analysis of the land market in the area indicated to him that that market was discounting any flood factor:

*Q. So I take it your testimony is then that you did not consider flooding as a serious factor in determining your valuation?*

A. That is a little bit misleading the way you state that. I considered flooding. I do consider flooding a serious factor. I found no evidence of serious flooding in this area and, therefore, I had no reason to especially discount value for this purpose.

*Q. I will concede the point that serious flooding is a factor. But now my question is, since you found no serious flooding in the Ambrose-Doty Brook Project, namely these six parcels, did you consider it in your evaluation?*

A. I considered it as I mentioned to you before as a potential in any instance where there is a waterway involved. The appraiser's job is to consider it in the light of how a typical purchaser would consider it, because this is what he would base his offer to buy the property on, and in this light I considered it.

THE CHAIRMAN: But as far as arriving at your values, you completely discounted it as being significant in this case of Ambrose-Doty's Brook?

THE WITNESS: I found that it did not affect value on these parcels.

THE CHAIRMAN: So as far as value, it was not significant even after you considered, as far as affecting value?

THE WITNESS: I beg your pardon?

THE CHAIRMAN: After you considered it, you thought about it, then you discarded it as not

being significant in this case of Ambrose-Doty's Brook?

THE WITNESS: That's correct.

THE CHAIRMAN: All right.

COMMISSIONER LUCAS: But a potential buyer would have had interest, would he not, or a prospective buyer, in the potential for flooding?

THE WITNESS: Certainly.

COMMISSIONER LUCAS: And inasmuch as you were viewing it from the viewpoint, at least, from a potential buyer, was not that a factor in the consideration you ultimately arrived at?

THE WITNESS: My findings indicated that the market was ignoring this factor.

The testimony of John VanHorn of the VanHorn and Dolan firm as to the well documented flooding problem associated with the area of the six subject parcels and the adverse effect of that problem on the value of the land has already been reviewed in this report. Alton VanHorn of the same firm also testified that proper appraisal reports on the subject parcels would have addressed the flooding-terrain problem and made adjustments in accord with that problem:

*Q. Again in your opinion, Mr. VanHorn, would the fact that the brook and the setting of the land being low and the general irregular shape of these parcels have an adverse effect on the valuation?*

A. Yes, sir.

\* \* \* \*

*Q. Did either Mr. Holt or Mr. Galaida discuss the problem of flooding or refer to documents which would indicate a condition such as flooding—*

A. No.

*Q. —effecting the use of the subject parcels?*

A. No.

*Q. Did either Mr. Holt or Mr. Galaida discuss the potential threat of severe wetness or flooding affecting their valuations of the subject parcel?*

A. No.

*Q. Is it your judgment, Mr. VanHorn, that good review procedures would have identified the problem you have pointed out here today in terms of not making adjustments or allowances for physical characteristics and specifically a potential flood hazard?*

A. That very definitely is my professional judgment, yes.

The Commission's other expert post-appraisal review source, the State Right-of-Way Division under Director James V. Hyde, Jr., also found flooding to be a major problem for the six parcels. Mr. Hyde testified that his staff's appraisal review process found the parcels to have extensive areas which were below road level and which showed many signs of flooding. He testified that, like John VanHorn, his staff reviewers could testify to official records relative to the flood-prone nature of the parcels. Therefore, Mr. Hyde concluded, Mr. Holt erred in comparing these flood-prone lands to much better properties, with the result being fair market values considerably higher than they should have been.

### *On Comparing Uncomparable Comparables*

A key to arriving at a fair market value in an appraisal of land by the market data approach is to seek and find completed sales of other parcels which can be considered comparable to the parcel under appraisal. As will be seen from the testimony of the S.C.I.'s expert reviewers as presented below, selection of lands not largely comparable to a parcel under appraisal can lead to errant conclusions as to fair market value, unless proper adjustments are made between the comparable sales and the subject parcel. Both expert review appraisal sources found that the Holt and Galaida appraisals had gone off the track and reached higher-than-justified fair market values for the six parcels because the comparables used were superior land and no downward adjustments were made for terrain differences, especially the flood-plain and flood-prone nature of the parcels.

Mr. Holt used in his appraisals the same four comparable sales\* for each of the six Ambrose and Doty's brooks parcels. Of the four, only one was traversed by a watercourse. And that water-

\* Mr. Holt at the public hearings testified that the four comparable sales used in his appraisal reports were only representative of some twenty sales he determined to be comparable. Under the State Code of Fair Procedure, he was permitted at the conclusion of his testimony to read into the public record the other sales he considered comparable.

course, as demonstrated by photographs taken for the S.C.I. by a State Transportation Department photographer and which were projected on a screen during the public hearings, averaged thirty-six to forty inches wide and had been easily contained in a thirty-six inch culverted pipe. The pictures of the Ambrose and Doty's brooks on parts of the six parcels purchased by Middlesex County showed that watercourse to be 12 to 16 feet wide at one point and substantially wider at all points than the culverted rivulet on the so-called comparable property.

Mr. John VanHorn in his testimony said his inspection of the six parcels showed the Ambrose and Doty's brooks watercourse to be ten to twenty feet wide which he did not consider to be comparable to the few-foot-wide, culverted watercourse on Mr. Holt's one watercoursed comparable. Mr. VanHorn said of the Ambrose and Doty's watercourse, "It absolutely could not be culverted and covered over and is a major bridging problem."

Mr. VanHorn also dismissed this comparable sale of Mr. Holt's as being a truly comparable sale on the grounds that it was not an arm's length sale, meaning an open market sale of free-standing property between a willing buyer and a willing seller. This so-called comparable sale, Mr. VanHorn testified, was actually the sale of 2.33 acres to an adjoining owner who already owned nearly seventy acres. The buyer, Mr. VanHorn testified, had a lot more to gain in this purchase than he would by buying some free-standing land elsewhere, namely significantly increased frontage, significantly increased exposure to Route 287, and elimination of an irregular jut into the principal holding of the buyer. "On that count alone I would have dismissed it as a comparable sale," Mr. VanHorn said.

Mr. Holt contended in his testimony that he had thoroughly checked on that sale and determined it was an arms-length transaction. He also referred to the culverted, few-foot-wide watercourse on that property as a brook running right down the middle of the property and noted that \$36,600 per acre had been paid for the property, a figure \$1,500 per acre above the price he generally ascribed to industrial land in the area. Mr. Holt, however, could not recall the width of that watercourse and also had a recollection difficulty on the varying width of the Ambrose and Doty's brooks watercourse:

Q. With reference to the comparable sale that you used that, in fact, had a stream on the parcel, approximately how wide was that stream?

A. I don't know.

Q. Did you make an on-site inspection of the premises?

A. I did.

Q. Do you recall how wide it is from that on-site inspection?

A. At the time I made my inspection, 1973, they had already detoured it underground. The purchase took place in 1971.

\* \* \* \*

Q. Approximately how wide is the Ambrose Brook in these subject parcels that we are reviewing today?

A. It's different in every place.

Q. Are there sections of the brook that you would agree that the width is somewhere in the area of 15 to 20 feet wide?

A. Yes, I'd say that's a fair statement in some areas.

Q. Are there any others that go below 10 feet wide, to your recollection?

A. I don't recall.

Mr. Holt, through his testimony, defended his comparable sales as being valid and being representative of the industrial land values in the area. Some pertinent excerpts of his testimony follow:

Q. Mr. Holt, with reference now to the subject parcels of your appraisal reports, are the subject parcels comparable in size, shape, setting and overall topography with each other?

A. No, there is all kinds of varieties. They're not all the same, no, by no means.

Q. So your testimony is that they are different?

A. There is always differences, sure.

Q. With reference to the comparable sales employed by you in your market data analysis or approach, did you attempt in assembling your com-

*parable sales to match the size, shape, setting and overall topography with the subject parcels?*

A. Yes.

*Q. And are the comparable sales in your appraisal reports for the subject parcels consistently the same?*

A. They're different, just as the subject parcels are different.

\* \* \* \*

*Q. Let me ask the question and you can answer with an explanation. Are the comparable sales set forth in the appraisal reports the same?*

A. They are base—I believe they are the same four. However, I did not base my valuation on those four sales alone. I had approximately 20 sales. These are only the ones that went into the report to keep the report within reasonable limits.

\* \* \* \*

*Q. My question now, then, Mr. Holt, is, if the other 15 or so, 20 comparable sales used by you in evaluating this property were not in the report, how was the reviewer given the opportunity to examine valuation in light of what you did?*

A. He's given an opportunity to examine the ones that I submitted, which I feel are more or less representative of the entire spectrum of the 20 that I actually examined and considered. It would be entirely improper and cumbersome to include 20 sales in an appraisal report. It's rarely, if ever, done.

*Q. It was your judgment, then, that these four best reflected comparability?*

A. I considered them to be more or less typical and that's the reason I used these as in preference to any of the other 15 or 16 that I have, yes.

*Q. All right. So your preference is based on that they were more typically representative of the subject parcels?*

A. Yes.

*Q. Does each—I think we have established that, from your previous testimony, that only one of these*

*comparable sales did, in fact, have a watercourse traversing it or bounding it?*

A. Yes, the one that had the highest per acre value had the watercourse.

*Q. Did your appraisal reports include a market sales analysis section?*

A. No, but I did analyze the sales to arrive at my value.

*Q. And is it your testimony that you verified the consideration and the transaction of your comparable sales?*

A. It is.

*Q. And with whom did you verify these sales?*

A. Well, it would be different on each property. I'll go through them, if you wish. Sometimes the buyer, sometimes the seller, sometimes the attorney. In addition to that, every deed was individually examined by me where there is a sworn affidavit as to the purchase price.

The S.C.I.'s expert reviewers were critical of both the Holt and Galaida appraisals' selection of comparables and/or their failure to make an extensive market analysis of the comparables as they related to the six subject parcels. Mr. Alton VanHorn testified that a valid market data approach to an appraisal involves comparing the parcel under appraisal with other parcels which have been sold and "making adjustments for time of occurrence, motivations, differences in size and shape and physical condition, and the differences in other value influencing factors."

He testified that the appraisal reports of Messrs. Holt and Galaida, with only one exception, did not make allowances or adjust valuations in accordance with the physical differences of the subject parcels, particularly the lowness of the parcels and their irregular shapes, to the comparable sales employed in the reports. Mr. VanHorn concluded that the fair market values in those reports were unsupportable:

*Q. What was the overall conclusion as to the worth of the valuations as established by Holt and Galaida for the subject parcels?*

A. In the light of the total content of the reports and the facts developed in the data, independent data

investigation, and an off-premise but at-site inspection of the properties, it is my opinion that they simply did not support their conclusions and that the values found were, in fact, not supportable.

Mr. John VanHorn's dismissal of Mr. Holt's key watercoursed comparable sale as a valid comparable has been previously reviewed in this report. Mr. John VanHorn also found serious fault with other comparables used by Mr. Holt. According to Mr. VanHorn, Mr. Holt's comparable sale number one was not an open market, arm's-length transaction but rather an insider deal involving partners in a joint venture. Mr. Holt's comparable sale number two, Mr. VanHorn testified, was another expansion sale where the buyer was an adjoining industrial owner who through this purchase and another one improved the shape of his land ownership, increased its frontage, and generally made the whole property more desirable. That was a situation where the adjoiner would clearly overpay and, on that basis, the sale should not be taken on its face value for a direct comparable, Mr. VanHorn testified. Mr. Holt's comparable sale number three, according to Mr. VanHorn, was the primest kind of industrial land, being well shaped, flood-free, and having desirable road frontage. Mr. VanHorn testified further:

*Q. What about the other physical characteristics of the comparable sales as they relate, if they do, to the subject parcels?*

A. The comparable sales, whether they were arm's length or not or whether they were open market or not, are level, firm land, far removed from any stream, not subject to flooding, not in an area suspect of poor soil bearing. They're just physically good industrial land, physically good for development.

*Q. In other words, they don't meet the physical description as you have stated already today that would indicate a flood plain configuration?*

A. That's correct, they absolutely do not. They're not in a flood plain or near a flood plain.

\* \* \* \*

*Q. Mr. VanHorn, in your opinion, were the comparable sales used by Holt and Galaida a reflection of*

*the market, true market values for the subject parcels?*

A. They're not in the term that you could take the prices paid and transpose them directly to the subject properties.

*Q. Well, what would have to be done if you can't transpose them to the subject properties? What would you have to do if you assumed that there were no other additional sales available?*

A. They would require an adjustment for differences between the properties sold and the subject properties, and other than some minor upward adjustment for time, all the adjustments would be downward, downward for the fact that the subject properties flood, that the sales don't; for the fact that there are low, possibly soft, wet areas on the subject properties, not present on the other properties; downward for the varying shape of the subject properties; varying from something that could be accommodated to with a minor reduction in value to vary severe shape problems resulting from acute shallowness.

Substantially downward adjustment for those factors are the principal things that would have to be done to make the sale properties applicable to the properties appraised.

*Q. Would that reduction procedure be contained normally in an appraisal report?*

A. It would at least be outlined in the factor—in the manner that I have outlined it. If not point by point or dollar by dollar, per cent by per cent, there would be at least, I feel, I should say, in a properly done appraisal I think there would be at least a statement of the factors or facts for which adjustments or one overall adjustment had been made.

Mr. John VanHorn, from having made an on-site inspection of the six subject parcels, took direct issue with the descriptions of those properties in Mr. Holt's appraisal reports and concluded that the quality of those reports is deficient and their results shocking in terms of cost to the taxpayers:

A. All right. I have the properties identified by parcel numbers. Is that sufficient? I don't have the block and lot right in front of me. I can get it.

Q. *It's quite all right.*

A. Parcel No. 1, which is one of the M.W. Kellogg parcels, the bulk of the taking area is low. The (Holt) report glosses over the topography and characterizes it as mainly level to gently rolling, which I don't think is a correct statement of something that's low and subject to flooding. As I have indicated, there is the probability of soft soil, especially close to the brook. The report is silent on this point.

Nearly all, if not all, of the property appears to be flood prone and the report is silent on this point.

With respect to parcel No. 2, also M. W. Kellogg, possibly, again there is the possibility if not the probability of soft soil, especially near the brook. Again, the report is silent on this, and the same thing with respect to flooding; nearly all, if not all the property is flood prone and the report is silent on this point.

With respect to parcel No. 3, the Kokenyessy parcel, the bulk of this property, not all of it, but at least two-thirds of it is low or in the slope up from the flood plain. The report description is—I would say it's vague but incorrect in the impression it gives. It's characterized as mainly level to gently rolling in contour. I don't think that's really to the point.

Again, possibility of soft soil is a fact. Again, the report is silent on it. Same thing with respect to flooding. The obvious probability of flooding, silence in the report on this subject.

Parcel No. 5, one of the DiLeo and Nessler parcels, property is low adjacent to the brook, yet it's described in the report as mainly level and clear throughout. It's misleading, I would say.

Again, the possibility of soft soil. Again, the report is silent on this point. There are portions of this site that are low and that clearly appear to be flood prone and there are some indications that the entire

property may be flood prone under more extreme conditions. The report is silent on this point.

Parcel 42, the property slopes downward from the road to the brook and it's low except for two relatively small bulges in the front portion of the property. The report incorrectly characterizes the property as mainly level to gently rolling and somewhat low in some areas. I think the emphasis is clearly in the wrong place.

With respect again, there is a possibility of soft soil near the brook. Again, the report is silent. Nearly all of the property, I feel, is clearly flood prone. The report is silent on that point.

And with respect to property No. 45, the other DiLeo and Nessler property, all or nearly all of this property is low and—but it's described in the report as level to gently rolling. I suppose that characteristic would be applied to any flood plain, but I think it's clearly misleading to characterize something that's a flood plain as gently rolling. It's not at all to the point.

Again, there is the probability of soft soil near the brook and again the report is silent on it. And again, the property is clearly flood prone and silence in the report on that point.

*Q. Mr. VanHorn, did you form an opinion as to the quality of these reports? Or better stated, would your opinion be that the quality of these reports is deficient?*

A. I would say the quality is deficient. I think anyone who were to look at the reports, look at the properties and look at the data and think about it, I think the results of the reports are shocking.

Mr. James V. Hyde, Jr., testified that he had top members of his staff make an initial review of the Holt and Galaida appraisals and that those staffers reported back to him that there was not enough content, especially in the area of market data analysis, in the reports to actually conduct a meaningful review of them. In fact, Mr. Hyde testified that, had the reports been submitted to his Division relative to land purchases, they would not have been

accepted for failure to meet proper standards and would not have been paid for by the Division. Mr. Hyde testified:

*Q. I take it, then, your testimony is that the deficiency can be identified as a lack of market data analysis in the reports?*

A. Well, that was the critical, most critical deficiency. There were sales listed in the reports, sir, but you can list a hundred or two hundred or five hundred sales in an appraisal report, but unless there is a relationship, at least narrative, but preferably narrative and summarized in grid form, you cannot tell what the sales reflect. And that was the critical weakness.

Accordingly, Mr. Hyde had his staff make its own investigation of sales in the area of the subject parcels, perform a new and complete market analysis, and prepare a full appraisal report on each of the parcels. Mr. Hyde then reviewed his staff's findings and, after personally viewing the new comparables used by his staff and the subject parcels, certified his agreement with those findings. Mr. Hyde testified how his Division's post-appraisal review found that the true fair market value of the parcels should have been much lower than the values in the Holt and Galaida appraisals:

*Q. Director Hyde, you testified before that you agreed with the conclusions based upon your experience with their report and their briefings. What were their conclusions? Or if we can break it down to make one specific area as to the valuation of these properties.*

A. Conclusions philosophically or dollarwise item by item by item?

Philosophically, the conclusions were that there was an extreme key weakness in the reports in that, in effect, they had no comparability analysis. Without a good comparability analysis, a narrative, and in my opinion, we teach this in the appraisal review courses of the Appraisal Institute, as well as a grid in chart summary form, there is no way for the reader, meaning the user, the person that's paying for the appraisal, to follow the appraiser's line of reasoning or to check on the validity of the report.

We in our agency would not accept such reports, as I said before, as usable and would not pay for the work until they were either supplemented with comparable analysis data to assure such criteria. We carefully spell this out in our appraisal contracts and say to the appraiser, if he sends an appraisal in without it, "You have not completed your contract. Please supplement."

*Q. Was it your—*

A. Now, what—not to interrupt you, what has resulted and what our reviewers found is that appraisers had essentially utilized sales of much better properties and had, it was the opinion of our reviewers, not included in their reports properties that were well below road level; that had a stream which had many signs of flooding regularly. In fact, our reviewers, as I am sure if you bring them before the Commission, will be able to sustain and testify that there are official records that this area had flooded periodically.

Now, if you take sales that's not comparable, if you take sales of \$200,000 mansions that sell for \$200,000 and say that these represent a nice home such as you and I would buy hopefully in the \$45,000 bracket today, it sure does not make our homes worth \$200,000. In fact, you can't even use those sales because they are so far from comparability that no matter what adjustment gymnastics you place there, they're not competitive in the market and you can't utilize them, except as a rare exception when there is nothing comparable.

*Q. Did your staff, in fact, find other sales?*

A. Yes, sir, they did. They found the sales. They checked the terms and conditions similar to that which the VanHorn consultants have reported to you. They checked carefully the terrain conditions and they did find a number of sales, including one directly adjoining in this assemblage, a fairly large sale, which they utilized as their comparables.

They have in their report both narrative and adjustments, all for terrain, for terms and conditions,

for topography, for time, which is a very important comparability adjustment in today's climate and market, and then transposed those narrative adjustments into a grid summary so they could be seen to arrive at their conclusions and then told why they gave various weights to the various sales that they actually used in a summary form to arrive at a particular conclusion.

*Q. Director Hyde, were the valuations of your staff reasonably close to the valuations established by Mr. Holt and Galaida?*

A. The valuations of the staff are much, much, much lower. They did not believe the Holt-Galaida reports were representative of the fair market value of the subject tracts of land, which are well below road level and have a major stream traversing them, which, according to the information they secured, including from the State Water Policy Commission and even newspaper photographs showing them to be totally flooded.

*Q. Director, would the percentage of 50 per cent be adequate figure in terms of where your staff valued the property less than Mr. Holt and Mr. Galaida's valuation? Is it a fair percentage?*

A. Plus or minus.

## **CONFUSION AND CONTRADICTION AT THE GREEN ACRES LEVEL**

As noted in the introductory section of this report on the investigation of Middlesex County's land acquisition practices, the purchase of parklands by that County was eligible for a fifty per cent matching grant from state bond issue funds under the Green Acres acquisition program for preserving open spaces. Accordingly, Middlesex County, after purchasing not only the six subject parcels closely scrutinized by the S.C.I. but also other parcels along the Ambrose and Doty's brooks, forwarded an application to the Green Acres unit in the New Jersey State Department of Environmental Protection in Trenton for matching funds. The application included numerous appraisals done for the County by Messrs. Galaida and Holt.

The Commission learned during its investigation that, although the Environmental Protection Department had not yet awarded the matching funds to Middlesex, the County's application had received a degree of approval within the Green Acres unit before a decision was made to hold that application in abeyance. Accordingly, the S.C.I. looked into the Green Acres unit's handling of the Ambrose and Doty's brooks parkland application, with emphasis on what kind of review process was brought to bear on the appraisals contained in that application. After hearing the testimony in this area of the investigation, the Commission stated that the review function of the State Green Acres Program was afflicted with deficiencies and confusion which needed correction so that expert and thorough post-appraisal review could be brought to bear on all appraisals received by Green Acres. The Commission's recommendations for making such a correction are included in the "Final Recommendations" section of this report on this investigation.

### *A Memo Approves the Appraisals*

Howard J. Wolf, as Administrator of the Local Matching Grant Program of Green Acres, was the official in the State Department of Environmental Protection who received Middlesex County's application for matching funds for the Ambrose and Doty's brooks parkland project. He testified at the S.C.I.'s public hearings that, as with similar applications, he passed along for review the appraisals relative to the Middlesex application to Vincent T. Bogdan, an Appraiser-Supervisor in the Green Acres unit. Mr. Wolf testified that the purpose of appraisal review by Mr. Bogdan was to insure against overexpenditures of Green Acres funds and that Mr. Bogdan's advice in writing as to his conclusions about appraisals in matching fund applications was the key to whether or not Mr. Wolf would recommend approval of the applications and payment of the matching funds.

On September 27, 1974, Mr. Wolf received a memorandum from Mr. Bogdan relative to the Ambrose and Doty's brooks appraisals. That memorandum read:

In accordance with your request, the above application was reviewed by the staff and Nicholas Friday, M.A.I., of the Appraisal Review Board.

After inspection and review of all information pertinent to the subject area, it has been determined that the value stated by the County-assigned appraisers indicates a fair representation of market value.

### *Recommended for Approval*

Mr. Wolf testified that given such a recommendation by Mr. Bogdan, he ordinarily would recommend promptly to the Commissioner of Environmental Protection that the matching funds be dispensed. However, because Green Acres funds were in short supply at the time and because the S.C.I.'s investigation had become known, Mr. Wolf did not make such a recommendation to the Commissioner but rather caused a memorandum to be sent to the Commissioner advising him that the Middlesex application was being held "in limbo."

Mr. Friday operated his own real estate agency in North Brunswick until retiring about 1971 and becoming a real estate consultant. He did serve with two other appraisers bearing the M.A.I. designation on the Green Acres Appraisal Review Board from the mid-1960s until that Board expired in October, 1973. Mr. Friday conceded in his testimony at the S.C.I.'s public hearings that even his holdover status as member of that Board had expired by March, 1974, a time when, according to Mr. Friday, either Mr. Bogdan or Mr. Wolf asked Mr. Friday to take a look at the Ambrose and Doty's brooks area appraisals of Messrs. Holt and Galaida.

Mr. Friday said he could not recall with any surety the details of the request he received to look at the appraisals on behalf of the Green Acres unit but that he was quite sure he had made it perfectly clear to either Mr. Bogdan or Mr. Wolf that he would review the appraisals for their substance and quality but would not render any judgment on the reasonableness of the fair market values arrived at in the appraisals. Mr. Friday testified:

*Q. So you weren't assigned the exercise of determining whether the comparables were, in fact, legitimate?*

*A. No.*

*Q. And from the end of your exercise it wasn't your function to determine whether true market value was accurate?*

*A. No.*

*Q. Then what would you say is the key to your exercise, the key objective?*

A. The key objective, in my recollection, as I mentioned, it's repetitious, but I was asked if I would look at these reports and I said, yes. All right. But only for substance purposes and because up to that point a couple of times that we had been to Trenton we had been told that soon our services were going to be terminated.

*Q. I appreciate that, Mr. Friday. But would determining the legitimacy of comparables be a substantive factor, in your mind, in your review?*

A. In your doing the valuation part, yes.

*Q. Would the reflection of fair market value be substance in a substantial factor in your review?*

A. Overall review, yes. If we did the whole thing, yes.

*Q. But, in fact, you didn't pass judgment in these cases on either of those two factors, the legitimacy of the comparables or the fair market value?*

A. No. No, I didn't.

Mr. Friday testified that he took a stack of appraisals given to him in Trenton to his home office in Middlesex County. There, according to his testimony, he looked through some of the appraisals and was particularly appalled by the disarray of some of Mr. Galaida's appraisals. He said he subsequently telephoned the Green Acres people in Trenton and said, "Look, these have to go back and I don't want any more to do with them because my time is up, but I have done this much for you." He said the Green Acres people asked him, since he was in Middlesex County, to take the appraisals back to the County's offices in New Brunswick. He stated that he did just that only to find them returned to his desk a couple of months later. Mr. Friday testified that he then delivered the appraisals back to Mr. Wolf's office in Trenton and left them there for the State and the County to resolve the matter.

Mr. Friday acknowledged at the hearings that he had received per diem compensation of \$200 from the State for time spent looking at the appraisals. He also testified that he held public office in Middlesex County as President of the Board of Education for the County Vocational and Technical High School.

### *Mr. Bogdan's Testimony*

Mr. Bogdan testified that after he received the Ambrose and Doty's brooks area appraisals from Mr. Wolf, he randomly checked and reviewed about five or six of the appraisals out of the total of more than forty. He subsequently requested Mr. Friday to review the appraisals. It was Mr. Bogdan's testimony that Mr. Friday was specifically asked to review for both substance and the reasonableness of fair market values and that Mr. Friday verbally informed Mr. Bogdan that the values were reasonable.

*Q. Mr. Bogdan, did you instruct Mr. Friday as to the procedure he should follow?*

A. I requested from Mr. Friday to inspect and review the appraisal reports in support of the Ambrose-Doty Project.

*Q. Did you instruct Mr. Friday to review the appraisal reports for verification of substance?*

A. Not only substance, but as to value also.

*Q. To your knowledge, did Mr. Nicholas Friday review the appraisal reports that you assigned to him?*

A. He had indicated that he did.

*Q. Did he submit any written report to you upon the conclusion of his review procedures?*

A. No, he did not.

*Q. Did he verbally brief you as to his conclusions?*

A. He verbally indicated that in general the values for the general—for the general project, the overall project, was an indication of fair market value.

*Q. Did he specifically say to you, Mr. Bogdan, "I have reviewed the appraisal reports and I find that the value is reasonable"?*

A. Yes, he did, verbally.

*Q. And did he indicate to you at any time during this conversation or any other conversation that he found deficiencies in the substance of these reports?*

A. I think he did, but as far as the general overall project was concerned, that the value nevertheless was a fair indication of fair market value.

*Q. So notwithstanding the deficiencies he found, he assured you in his evaluation of the values contained therein the values were reasonable and adequate for the subject parcels being appraised?*

*A. For the whole project.*

*Q. Which would include the subject parcels of the Ambrose-Doty Brook Project that the State Commission of Investigation looked into; is that correct?*

*A. Conceivably so, yes.*

The Commission then had Mr. Bogdan read out loud his September 27, 1974 memorandum to Mr. Wolf recommending approval of the Middlesex application. Mr. Bogdan testified:

*Q. Were you here earlier today? Did you hear Mr. Friday testify?*

*A. Yes, I was.*

*Q. And did you hear Mr. Friday testify that he did not review the appraisal reports submitted to him by either you or Mr. Wolf as to value?*

*A. It was my understanding when Mr.—*

*Q. Did you hear him state that, sir?*

*A. Yes.*

## FINAL RECOMMENDATIONS

### SUMMARY

In January, 1976 the State Commission of Investigation held public hearings on certain serious weaknesses and abuses in the administration of the land acquisition program of the County of Middlesex, and in the local assistance-Green Acres Program of the N. J. Department of Environmental Protection. These public hearings exposed shocking shortcomings in the methods used to select appraisers to do appraisals of lands to be acquired for Green Acres purposes. The hearings also demonstrated gross deficiencies in the content and quality of such appraisals, and revealed that the post-appraisal reviews and evaluations conducted by the administrators of the county land acquisition program and the State local assistance-Green Acres program were completely inadequate and unprofessional.

The result of the gross administrative failure and neglect consistently described in the course of the hearings was that certain appraisals utilized to fix purchase prices for land acquisitions were inaccurate, misleading and unreliable, and appraisal reviews and evaluations thereof were in fact merely "rubber stamp" and automatic endorsements of poor appraisal work. These systematic surrenders to mediocrity led to regular and large overpayments of tax dollars for land acquired at inflated and excessive purchase prices.

The public interest demands that public officials make sure that such waste and inefficiency is not allowed to occur in any county, local or state land acquisition program. The S.C.I. recommendations herein set forth are designed to help concerned public officials reach this goal.

To prevent waste of the public's tax dollars, the administration of all county and local land acquisition programs must be consistent with the best and highest standards for selection of superior appraisers and for the professional review and thorough, critical evaluation of all appraisals used to fix land purchase prices. In addition, there must be substantial reform of the administration of the Green Acres Program of the State of New Jersey in order to insure that Green Acres funds granted to counties and localities

are not misspent by awards of inflated purchase prices for Green Acres land acquisitions.

To this end, the State Commission of Investigation makes the following general recommendations for reform, the details of which are set forth at length in this report:

1. all appraisers to be selected solely on the basis of their professional qualifications, and without regard to their willingness to make political contributions and donations, and without regard to their political affiliations;

2. appraisers to be approved to do only those designated, specific kinds of appraisal work for which their training, experience, education and skills actually qualify them;

3. appraisers to be selected to possess superior, and not average, qualifications to perform the designated appraisal work to be undertaken;

4. appraisers selected to be acknowledged experts, and not novices, in the respective kinds of appraisal work;

5. the work of approved appraisers to be periodically, consistently and thoroughly reviewed in order to promptly remove from approved appraiser lists those appraisers whose work disserves the public interest;

6. approved appraisers to be strictly required, *by contract*, to render appraisals in accordance with certain recognized and established standards and requirements of the land appraisal profession, including, but not limited to, the requirement that appraisers personally and thoroughly inspect the land appraised and the requirement that *all* information relevant to land value be set forth in detail in appraisal reports;

7. county, local and state acquisition programs to promulgate vigorous, mandatory specifications for the proper conduct of land appraisal work and for the achievement of excellence in the contents, format, and quality of land appraisals;

8. post-appraisal reviewers to be selected pursuant to standards even more demanding than those necessary for the proper selection of appraisers;

9. the local assistance-Green Acres Program to pre-qualify appraisers to be used for county and local Green Acres projects, in accordance with and pursuant to standards designed to insure selection of highly competent appraisers for such appraisal work;

10. the local assistance-Green Acres Program to adopt mandatory specifications requiring the best possible performance of appraisal work for county and local Green Acres projects, and strict adherence by county and local land acquisition programs to such specifications to be made an express, material condition of the grant of Green Acres funds;

11. all post-appraisal reviews and evaluations to be conducted in a manner designed to guarantee that appraisals strictly comply with such standards and specifications, and nonconforming appraisals to be disregarded in the final determination as to land value;

12. the land acquisition, appraisal and post-appraisal review operations of the Green Acres Program to be transferred from the Department of Environmental Protection to the Department of Transportation.

The details of the above recommendations for reform are hereafter set forth.

## APPRAISER SELECTION AND APPRAISAL ASSIGNMENTS

### *Site Inspection*

Prior to processing the appraisal request, a qualified officer of the land acquisition office or the land acquisition committee, whichever is appropriate, shall visit the land site and familiarize himself with the local land conditions. The primary objectives of this recommended practice are to identify the specific appraisal problem, to determine the number and types of appraisals needed, the priority time schedules, and to obtain any other relevant data.

## *Preliminary Report*

Upon completion of the field inspections, the inspecting officer shall file a written preliminary report summarizing the observations made during such field inspection. The preliminary report shall include a meaningful summary of all relevant data and insights in the possession of other governmental entities, including, but not limited to, county and municipal planning boards, and county and municipal engineers' offices. The preliminary report shall be furnished to the appraisers selected to do the appraisal work, prior to commencement of the appraisal work.

## *Appraisal Fees, Contracts, Appraiser Lists*

The land acquisition office or land acquisition committee shall maintain a list of qualified realty appraisers. This list shall be reviewed and updated annually. Copies of the list shall be furnished to the appropriate governing body. There shall be set forth on such list a detailed description of the skills, training and experience possessed by each appraiser on the list and a statement as to the specific reasons each such appraiser is deemed qualified to be placed on such list. While it is not possible to define an inflexible set of standards covering the minimum qualifications for all appraisers and for all kinds of appraisal work, the following represents a guideline for the selection of most appraisers and for most kinds of appraisal work.

### *Qualifications Guideline*

1. Graduation from high school or equivalent education.
2. Possession of a certificate of completion of a business or professional course devoted to instruction in real estate, real estate appraisals, real estate and commercial law, conveyancing, laws of eminent domain and related subjects, or proof of training, education, and experience equivalent thereto.

Such formal courses shall specifically include at least two (2) semester-length courses in real estate appraisal. Alternatively, the appraiser shall have completed the equivalent thereof in formal, recognized appraisal courses such as MAI courses I and II given by the American Institute of Real Estate Appraisers, or other courses similar thereto.

3. At least five (5) years successful work experience in the real estate industry, including experience in appraisal of real estate

and with land development projects. A minimum of 100 appraisals shall have been completed.

4. Membership in the American Institute of Real Estate Appraisers (MAI), in the Society of Real Estate Appraisers, or in some comparable, recognized professional organization devoted to the professional activities of members specializing in real estate operations, real estate appraisals and valuations. If the appraisal applicant is not a member of any such organization, the appraisal applicant shall present proof of comparable attainment in the realty appraisal and realty valuation field by other means, such as completion of advanced courses in recognized educational institutions specializing in instruction in the valuation and appraisal field, or by demonstrated ability to pass an appropriate, comprehensive test prepared by an appropriate testing service.

5. All appraisers should have experience and ability in interpreting property and site plans, and land surveys and drawings, and sketch plots and should be familiar with basic legal principles and court decisions affecting realty appraisals and valuations of property taken by the State for public purposes.

6. Appraisers whose appraisal work may necessitate their appearance in court to defend their conclusions should also demonstrate special ability and superior knowledge and expertise in those specialized fields that relate to the subject-matter of the appraisal work contemplated, and should possess experience and ability in giving expert testimony.

It is recognized that some appraisers who may be lacking in one or more of the above-described qualifications could otherwise be qualified to undertake some special assignments suited to their more limited skills and experience, or could qualify to undertake less complicated and sophisticated appraisal assignments. Each applicant should be evaluated in accordance with these variable factors.

### *Prequalification Procedure*

Fee appraisers must be prequalified before being considered eligible for retention to render appraisals for governmental purposes. A standard application form shall be developed by local land acquisition offices or committees, which form shall require the above-mentioned career and educational information.

Applicants shall be required to complete this form and to submit sample copies of prior appraisal work to the governmental entity or official responsible for selection of appraisers. Application forms and sample appraisals shall be analyzed, and personal interviews conducted of applicant appraisers to determine their skills and abilities to undertake the appraisal work contemplated.

Upon receipt of a completed application and required sample appraisals, the land acquisition officer, or the acquisition committee, and the legal advisor who represents the governing body in condemnation and other such proceedings shall interview the applicant. The interview shall include a detailed discussion as to the applicant's qualifications to do the subject appraisal work. Thereafter, the applicant's appraisal skills, training, experience and other appraisal qualifications shall be verified by a thorough, follow-up investigation. Such investigation shall include a visit with the applicant at his place of business.

Following said interview and follow-up investigation, the land acquisition officer or acquisition committee shall prepare a comprehensive report and recommendation relevant to the applicant's eligibility to do the contemplated work; the same shall then be presented to the governing body, which shall review the report, the application and such written recommendation. The report shall contain a certification as to the specific educational, professional and career attainments of the applicant as well as the specific skills, training and experience possessed by the applicant. Said recommendation shall set forth specifically and in detail the particular kind of appraisal work the applicant is deemed competent to undertake, and the particular reasons the applicant is deemed competent to perform such work in a manner consistent with the public interest. Thereafter, the governing body shall vote to approve or disapprove the applicant appraiser. Applicants who do not possess the aforementioned qualifications shall not be approved.

As a supplement to the required procedure mentioned above, and in order to insure maximum objectivity in selection of appraisers, there shall be established an Appraiser Selection Committee consisting of the engineering advisor, chief planning executive, and the chief legal advisor for the governmental entity. Prior to final selection or rejection of an appraiser applicant, the Selection Committee shall review each application and shall make an appropriate written recommendation to the governing body.

The Appraiser Selection Committee shall:

A. Review the determination that the engagement of an appraiser is necessary or desirable.

B. Reject or approve appraiser applicants for specific appraisal projects on the basis of their respective qualifications to complete the particular appraisal work required for the specific appraisal projects to be assigned to the respective applicants.

In making this determination, the Appraiser Selection Committee shall, in addition to the aforementioned criteria, consider the following:

1. The financial status and reliability of the applicant;
2. The reputation for skill and integrity of the applicant as described by former clients;
3. Applicant compliance with all applicable existing Federal and State regulations and laws pertaining to the requisite qualifications of appraisers and to the conduct of their business.

### *Final Approval of Appraisers*

The governing body shall make the final determination to approve or disapprove the qualifications of applicant-appraisers. This determination shall include a specific decision by the governing body as to the particular kind or kinds of appraisal work or projects the applicant-appraiser is qualified to undertake. The land acquisition officer, or committee, shall maintain a current list of appraisers approved by the governing body for appraisal work.

Said list shall contain a specific description of the particular kind or kinds of appraisal work or projects for which each appraiser has been approved. With the assistance, advice and recommendation of the land acquisition officer, or land acquisition committee, and of the Appraiser Selection Committee, the governing body shall periodically review the qualifications of the appraisers on such list and shall determine whether or not to re-approve such appraisers. Such review shall occur at least once a year and shall be conducted in the same manner and pursuant to the same guidelines and standards as for initial determinations on the qualifications of appraisers applying for approval to do public appraisal work.

The land acquisition officer, or committee, and the Appraisal Selection Committee shall meet periodically to review and analyze

the quality and merits of the work of approved appraisers. The results of such review and analysis shall be periodically furnished to the governing body to aid it in periodic re-evaluations of the qualifications of appraisers on the aforesaid approved appraiser list.

Appraisers approved to do public appraisal work shall possess skills, training, experience and general qualifications commensurate with the critical importance to the public interest of public appraisal work. Appraisers approved to do work for government should not be novices relying on government work to furnish them with needed skill and experience. Only appraisers who have already secured good reputations for the quality of their work should be selected as approved appraisers.

### *Political Contributions and Affiliations*

Government land acquisition officers and employees shall not solicit political contributions from applicant appraisers or approved appraisers. The making of political contributions by appraisers shall not be a condition of the receipt of government appraisal work and a determination to approve an appraiser for public appraisal work shall not be contingent on the making of political contributions by the appraiser, or on the political affiliation of the appraiser.

Determinations to approve or disapprove appraisers for such work should be independent of considerations based on the needs of political fund-raising. Such determinations should be based solely on the professional qualifications of appraisers.

### *Newly Approved Appraisers*

The initial appraisals prepared by a newly-approved appraiser shall be critically and thoroughly analyzed and reviewed by the land acquisition officer or committee, and the Appraiser Selection Committee. If, as a result thereof, it is found that such initial appraisals are satisfactory, no further special action need be taken. If such analysis results in a conclusion that the initial appraisals are deficient, the officials making such analysis shall forthwith present a written recommendation to the governing body for the removal of the subject appraiser from the approved list. The governing body shall immediately make a final determination on such recommendation.

## *Work Distribution*

It is desirable but not always practicable to distribute appraisal assignments on a statistically equal basis among all approved appraisers. Work distribution is dependent on the location of the real estate to be appraised, the special qualifications and background of each approved appraiser, the time a particular approved appraiser is able to devote to government assignments, the requirements of the assigning agency concerning work completion dates, the nature of the assignments and many other variable factors.

Appraisal assignments shall be divided as equitably as possible consistent with the needs and requirements of the assigning agency and consistent with the skills and abilities of the respective approved appraisers.

To insure the award of appraisal assignments in the most equitable manner possible, consistent with the needs and requirements of the assigning agency and consistent with the public interest, the land acquisition officer of the land acquisition office or acquisition committee shall prepare a cumulative, monthly report of all appraisal assignments made for the preceding twelve-month period. A report of the number of assignments made to each appraiser shall be made by the aforementioned officer to the governing body once each month. Whenever an appraiser is awarded a disproportionate number of appraisal assignments such report shall contain a detailed statement explaining and justifying the award of such assignments. The paramount consideration in the distribution of appraisal assignments shall be the need of the assigning agency to secure the best appraisers available for the assignment in question and the need to secure appraisers who can promptly meet the agency's prescribed work completion dates, thereby insuring advancement of the public interest.

In allocating appraisal assignments, officials shall not consider the record of the approved appraisers for political contributions.

## *Order Approval*

All appraisal assignments and contracts *must* be approved and expressly authorized by the appropriate governing body prior to the issuance of appraisal assignments.

The award of an appraisal assignment to a qualified, approved appraiser shall not be assignable. The specific appraiser named to undertake the subject appraisal work shall actually do such work, and it shall not be assigned or delegated to, or divided with, any appraiser not specifically designated to do the particular appraisal work in question. It shall be recognized that a contract for the performance of appraisal work is a personal service contract, not assignable without the express consent of the subject government entity.

## APPRAISAL FEES

It shall be the policy of the assigning governmental agency that the amount of the fee for an appraisal shall represent just and fair compensation for services rendered, including expert testimony.

Whenever an estimated appraisal fee shall be in excess of \$250, a qualified individual representing the land acquisition office shall visit the premises to be appraised and determine the number and type of appraisals needed and estimate the fee therefor or, alternatively, the applicable fee schedule category or categories relevant to the subject properties.

The official files of the land acquisition office shall be fully documented in writing as to the amount and basis of the estimated fee.

Provision shall be made for a per diem rate to be paid the appraiser for appearing as an expert witness in condemnation proceedings. This fee shall be in addition to the fee for the appraisal work, and shall be paid only when expert testimony has been given, or when the appraiser has expended time devoted to preparations for such appearances.

Factors to be considered in estimating and fixing fees are set forth below. Fee schedules should be promulgated and adopted wherever possible. It should be noted that the suggested fee schedules hereinafter set forth are among those utilized by the U.S. Department of Transportation and the New Jersey Department of Transportation.

In general, some of the factors to be considered in estimating and fixing fees are as follows:

1. The complexity of the appraisal or other work to be undertaken and the skills necessary to provide such services.

2. The number of parcels included in the assignment.

3. The amount of information and data provided the appraiser by the assigning government agency as contrasted with the amount of information that must be developed independently by the appraiser.

4. The location and conditions pertinent to the project concerning which the appraisal services are to be furnished.

5. The complexity, format and detail required for the final appraisal report.

### *Fixed Fee Schedules*

Notwithstanding the diverse factors involved in completing various appraisal assignments, compensation for many appraisal services can be fixed in accordance with certain uniform fee schedules instead of by individual fee negotiation. The use of certain fee schedules by governmental entities often protects the public from the payment of excess fees for such services.

The N.J. Department of Transportation has adopted the fee schedule hereinafter described; its use is highly recommended. It should be used as a basis for establishing appraisal fees, absent special factors dictating an individually negotiated fee.

### **SCHEDULE OF APPRAISAL FEES**

<i>Class No. 1 Residential</i>	<i>Total Take</i>	<i>Partial Take</i>
Vacant Land* .....	\$250	\$350
1-Family Dwelling** .....	300	400
Alternate*** .....	275	...
2-3 Family Dwelling (income if applicable) .....	400	500
Multi-family income dwelling up to 8 units .....	500	600
Apartment property 8-16 units	600	800
Apartment property over 16 units .....	Fees to be negotiated	
Categories not listed .....	Fees to be negotiated	

\*Note—Vacant land shall include unimproved residential (non-income producing) lots. Abutting lots

under the same ownership and not exceeding ten (10) in number on unsubdivided lands in one tract not exceeding five (5) acres shall fall into this category.

\*\*Residential dwellings (1- and 2- and 3-family units) shall include vacant lots abutting the residential units whether used in conjunction therewith or not. So long as the same are under common ownership, they shall be treated as one appraisal, and such appraisal shall include all additional out-buildings such as garages, etc.

\*\*\*Residential Alternate—On uncomplicated entire takings of residential single family properties where adequate market data is available, the lower fee alternate shall be clearly noted.

<i>Class No. 2</i>	<i>Total</i>	<i>Partial</i>
<i>Farm Lands</i>	<i>Take</i>	<i>Take</i>
Unimproved Farm Land, 10-50 Acres .....	\$400	\$500
Unimproved Farm Land, 50-100 Acres .....	500	700
Unimproved Farm Land over 100 Acres .....	Fees to be negotiated	
Farm Land and Buildings up to 100 Acres .....	600	800
Farm Land and Buildings over 100 Acres .....	Fees to be negotiated	
Categories not Listed .....	Fees to be negotiated	

Note—Properties in this category are considered to include farm and related properties. For definitional purposes, farm lands shall include any property of ten (10) acres or more used primarily for farming or related purposes and not used primarily for industrial or other commercial purposes, and may include lands available for non-income type residential subdivision.

<i>Class No. 3</i>	<i>Total</i>	<i>Partial</i>
<i>Commercial Properties</i>	<i>Take</i>	<i>Take</i>
Vacant Commercial Land .....	\$400	\$500
Service Station .....	800	1,000

Commercial Structures—combination store, business or other, up to 4 units .....	600	700
Diners .....	Fees to be negotiated	
Commercial Structures—combination store, business or other, 5 to 8 units .....	1,000	1,500
Special purpose properties...	Fees to be negotiated	
Motels .....	Fees to be negotiated	
Categories not listed .....	Fees to be negotiated	

Class No. 3 is to include vacant lots abutting subject improved units, whether used in conjunction with the improvement or not. So long as the lots are under the same ownership, the appraisal shall treat the entire property evaluated as one entity pursuant to the highest and best use formula.

Vacant land shall include abutting plots under the same ownership and up to five (5) acres in size, regardless of the manner in which they are subdivided.

*Class No. 4  
Special Purpose  
Properties  
and Parcels*

	<i>Total Take</i>	<i>Partial Take</i>
Industrial and special purpose properties	Fees to be negotiated	
Special engineering or architectural reports (non-real estate)	Fees to be negotiated	
Revision of submitted appraisal due to parcel revision	Fees to be negotiated	
Categories not listed	Fees to be negotiated	

Whenever the compensation fixed by the fee schedule reasonably appears disproportionate to the estimated value of the real estate to be appraised (for instance, in cases wherein the value of the subject real estate is quite low due to the age or poor condition of improvements), then, and in that event, the fee may be fixed and negotiated without reference to the fee schedule. If the contemplated appraisal assignment reasonably will require resolution of extraordinarily sophisticated and complicated opinion, fact and value issues, necessitating the expenditure of unusual amounts of

time, the fee may be determined without resort to the fee schedule. In cases involving highly sophisticated, complex and time-consuming appraisal services, the assigning agency may agree to compile for the appraiser special data and materials of the kind not ordinarily available in order to aid the appraiser in his work.

In support of any decision not to use the fee schedule, the land acquisition officer shall file a written report with the governing body, which report shall incorporate the reasons for such decision. Such report shall specifically recite and detail the criteria and factors by which the subject appraisal fee was derived.

The work performed by fee appraisers is considered a professional service and formal solicitation of bids therefrom may be waived. However, the land acquisition officer and/or the acquisition committee shall request and obtain detailed appraisal proposals and specific fee estimates from qualified appraisers in instances where major appraisal projects involving substantial or expensive land holdings are involved.

## **APPRAISAL STANDARDS**

All appraisals shall clearly substantiate and support the opinion of value set forth by the appraiser. It is imperative that all appraisals contain the specific factual information that any informed, prospective purchaser needs to know in order to make an intelligent judgment as to the value of the subject land. In order that all appraisals contain such information, it is recommended that appraisers shall be required to prepare appraisals in accordance with the following instructions.

Each appraisal shall be the product of the uncompromised, and independent judgment of the appraiser preparing same. Therefore, the appraiser shall not allow other appraisers working on the same or related projects to review his work, and he shall not alter his value conclusions in order to equalize his value conclusions with those of such other appraisers.

The appraiser shall contact any and all government agencies which might reasonably be expected to possess information, data, records, or expertise relevant to the property appraised and to the value thereof. The appraiser shall include in the appraisal any and all relevant information and documents possessed by various government agencies including but not limited to planning boards, engineers' offices, boards of adjustment, tax assessors' offices, and the Department of Environmental Protection.

## ADDITIONAL APPRAISAL REQUIREMENTS

### I. A. Parcel Identification

1. Names of apparent owner of each real estate interest to be evaluated.
2. Location of property.
3. Total area of property (in acres or square feet).
4. Area of each individual interest in property to be acquired (in acres or square feet).

### B. 5-Year Delineation of Title

As a minimum, the following county land records information shall be shown for all transfers of the appraisal property for the past five years. The consideration should be verified. If there have been no transfers within the past five years, such fact shall be indicated:

<i>“From To Date Book Page</i>	<i>Consideration Verified-Indicated”</i>
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### C. Purpose of Appraisal

1. Statement of value to be estimated.
2. Rights or interests to be appraised.

### D. Description of Property

General location, present use, total area, zoning, type and condition of improvements and special features that may add to or detract from the value of the property. In case of a partial acquisition, there shall be a similar description of the remainder parcel.

### E. Highest and Best Use

State the highest and best use of the property on which the appraisal is based before the acquisition of certain rights and interests and the highest and best use of the remainder to be left after the take when a partial take is involved. In either instance, if the actual existing use is not the basis of the valuation determined, the appraisal shall contain a specific and detailed statement explaining and justifying the determination that the property is available and actually adaptable for a different highest and best use and demonstrating that there is actual demand for that use in the market.

## F. Documentation

1. The "before and after" method of valuation, as construed by state law, shall be used in partial acquisitions except where it is obvious there is no damage or benefits to the residue land or improvement as a result of the partial taking.

2. The appraisal shall include all possible formulas by which to determine fair property values. If a particular formula is not considered relevant to the subject appraisal, the appraiser shall specifically explain and justify such conclusion. All pertinent calculations used in applying the formulas shall be set forth.

a. Where the cost approach is utilized, the appraisal report shall contain the specific source of cost data and an explanation of each type of accrued depreciation data utilized.

b. Where the market approach is utilized, the appraisal report shall contain a direct comparison of pertinent comparable sales to the property appraised. The appraiser shall include a statement setting forth his analysis and reasoning for each item of adjustment to comparable sales.

c. Where the income (capitalization) approach is used, there shall be set forth data sufficient to support the conclusions as to the income, expenses, interest rate, remaining economic life and capitalization rate. Where it is determined that the economic rental income is different from the existing or contract income, the increase or decrease shall be explained and supported by appropriate market information.

3. Where authorized by State law, benefits shall be offset against the value of the part taken and/or damages to the remainder in accordance with such law. The after value appraisal shall eliminate any consideration of damages that are not compensable or benefits not allowable under State law, even though they may in fact be part of the ultimate determination of the value of the remaining property in the market. In case of doubt, a legal ruling should be secured.

4. The appraisal of the after value shall be supported to the same extent as the appraisal of the before value. This

support shall be based on one or more of the following kinds of data:

a. Sales comparable to the remainder properties.

b. Sales of comparable properties from which there have been similar acquisitions or takings for like usages.

c. Development of the income approach on properties which show economic loss or gain as a result of similar acquisitions or takings for like usages.

d. Conclusions from severance damage studies as related to similar takings.

e. Public sales of comparable lands by the State or other public agencies.

f. In the event the data described in *a* through *e* above are not available, the appraisal shall so state and give the appraiser's reasoning for his value estimate.

5. The difference between the before and after appraisal should represent the value of the property to be acquired, including the damages and benefits to the remainder property. To assist the review appraiser, the appraiser shall in the appraisal analyze and tabulate the difference, setting forth a reasonable allocation to land, improvements, damages and benefits.

6. Where two or more of the approaches to value are used, the appraisal shall contain a description of the correlation of the separate indicia of value derived by each formula along with a reasonable explanation and justification for the final conclusion of value. This correlation shall be included for both before and after appraisals.

7. All appraisals shall include photographs of the subject property including all principal above-ground improvements, or unusual features affecting the value of the property to be taken or damaged.

8. Appraisal reports for whole takings shall contain a sketch or plat of the property, showing boundary dimensions, location of improvements and other features of the property. For partial takings, the sketch or plat shall also show the area

to be acquired, relation of improvements to the taking area, and size and boundaries of each remainder.

9. Each appraisal report shall describe or make reference to the comparable sales which were used in arriving at the fair market value estimate. The appraisal shall set forth the date of sale, names of parties to the transaction, relationship of parties to the transaction, consideration paid, financing, conditions of sale, and with whom these were verified, the location, the total size, type of improvements, estimate of highest and best use at the date of sale, zoning and any other data pertinent to the value analysis and value evaluation. If the appraiser is unable to verify the purchase, financing date and terms and conditions of sale from the usual sources (such as buyer, seller, broker, title or escrow company, etc.), he shall so state. Pertinent comparable sales data shall include photographs of all principal, above-ground improvements and unusual features affecting the relevance and significance of the comparable sales data.

10. All property appraised, and the properties for which is compiled the comparable sales data relied upon, shall be personally and thoroughly inspected in the field by the appraiser, and the results of same shall be set forth.

11. Each appraisal report shall contain the appraiser's signature and the date same is affixed.

12. Each appraisal report shall contain the customary affidavit of appraisal.

## II. Partial takings (Before and After Evaluation Formula)

Where the taking is partial, a before and after evaluation shall be made in all instances except for minor takings where it is obvious that there are no damages to the remainder beyond nominal amounts which can be measured on a cost-to-cure basis.

The before and after appraisal method does not contemplate the appraiser's estimation of severance damages in advance of his estimation of the after value of the remainder property. Before and after appraisals should consist basically of both an appraisal of the entire property as it exists before the taking and a second separate appraisal of that portion of the property remaining after the taking.

### III. A. Value Formulas

In the application of the before and after approaches to value it is contemplated that the before value will be developed through use of all applicable value approaches, as follows:

1. Cost
2. Market
3. Income

The applicable before value approaches are to be integrated by correlation and analysis into a single before value estimate. A separate valuation of the remainder by all three approaches is then to be made, as follows:

1. Cost
2. Market
3. Income.

The after value approaches are to be integrated by correlation and analysis into a single after value estimate. The difference between the values before and after is the value of the part taken and is the damages to the remainder.

In the application of the before and after formula it is recognized that all the criteria used in the before value estimate may not always be applicable in the after value estimate. When a before value criteria is not applicable in the after value estimate, the appraiser may omit it, but the appraisal shall contain a statement justifying and explaining in detail the reasons for the asserted non-applicability.

#### B. Cost Approach—Land

When the cost approach formula is applied, it is required that the appraiser list and compare with the subject property all the various comparable sales data he is utilizing to derive the vacant land value. In his comparable sales data listings, the appraiser is to also discuss and furnish in narrative form the various asserted reasons for his conclusions as to the sales data, the relative degree of comparability of each sale listed.

Following this narrative sales listing and the narrative sales data comparisons, a sales data summary is to be made in chart form. This summary is to indicate the sales price, the comparable unit value reflected, the applicable compara-

tive adjustments made by the appraiser, and the comparative unit rate indicated for the subject property by each sale.

This sales summary is to be reduced by correlation into a single comparative unit value determination, such as per front foot, per acre, per square foot, as the case may be. These unit rates multiplied by the property size or frontage of the subject property will indicate the comparative value of the vacant land.

### C. Buildings

In estimating building values by the cost approach, the appraiser shall be sure that the appraisal contains the calculations used in making the estimate of the reproduction cost new for each structure less the particular kinds of depreciation data deducted to develop a present-day value for the building.

When the cost approach is the sole applicable valuation method utilized, the cost figures selected are to be corroborated by an expert specialist familiar with construction costs (such as an architect, building contractor, etc.). When the building value exceeds \$25,000, supplemental reports from two such specialists are to be secured.

Depreciation estimates for building values determined pursuant to the cost approach are to be explained, justified and broken down into each particular kind used (physical, functional and economic). An exception to this requirement may occur when the "abbreviated" depreciation estimate is used, in which event the depreciation may be deducted in a lump sum amount.

In the application of the cost approach, all on-site improvements are to be listed and valued on the basis of the amount of their contributory enhancement of the value of the subject building premises.

The value of drives and walks is usually to be derived from rates based on square feet or yards, fences and curbing on lineal feet, and wells on depth. A lump sum value shall be used for septic systems, based on the appraiser's expertise or a contractor's or other specialist's cost estimate.

Generally, landscaping value may be rendered on a lump sum basis, depending on its overall contributory enhancement of the value of the premises. However, in cases of significant

over-improvement of certain partial takings, it may be necessary to estimate and list its cost in place and then adjust this figure by depreciation to arrive at its contributory value.

#### D. Market Comparative Approach

When the market or comparative approach to determining the value of an improved property is applied, the land and buildings as a single entity are to be compared with other similar properties. This approach contemplates that the appraiser shall specifically list and detail and compare the sales he asserts to be comparable to the subject property and the appraisal shall discuss and explain in narrative form the reasons for the alleged degree of comparability, including each appropriate adjustment.

Supplementing the narrative sales data description and sales data comparison, a sales summary is to be made in chart form. This summary is to include the sales price, the applicable comparative adjustments and the value determined for the subject property, as contrasted with each comparable sales price.

When completed, this market sales summary is to be utilized to reach a conclusion as to the actual value for the property.

#### E. Income Approach

The income approach formula generally necessitates the fixing of an economic rental value for the subject property so as to arrive at a gross income estimate. Wherever possible, an actual analysis of comparable rental properties is the best method of making an economic rental estimate. When the estimate of economic rent value varies from contract rent value, adequate explanation must be set forth in the appraisal so as to justify the decision to apply economic rent value as against the contract rent value.

Expense estimate statements in the appraisal should indicate whether the expense data was obtained solely from the owner of the property, or whether they were also corroborated entirely or partially by the appraiser.

The appraiser should explain the capitalization rate that he selects and the basis therefor, as well as the method of capitalization that he applies (such as building residual, property residual, land residual, etc.).

All computations and formulas used in developing an income estimate of value for the subject premises shall be set forth in detail and explained in the appraisal report.

#### F. Highest and Best Use

Each valuation is to be made on the basis of the highest and best use for the subject property.

The appraiser is expected to describe intelligently his reasoning in applying this formula and to state in the report his conclusions as to the highest and best use of the property and the highest and best use of the remainder or remainders where partial takings are involved.

In either instance, if the actual, present use of the property is not the same as that on which the appraiser's stated valuation is based, the appraiser shall also furnish a detailed and thorough explanation justifying his conclusion as to the highest and best use for the subject property. Furthermore, the appraisal must contain data and analysis sufficient to demonstrate that the property is actually subject to and adaptable for the highest and best use claimed by the appraiser and that there is actual demand for that use in the relevant market.

#### IV. Maps, Exhibits and Photographs

Each appraisal shall contain the following supporting maps, exhibits and photographs:

1. Photographs of subject property.
2. Photographs of each comparable sale property referred to in the report.
3. A comparable sales location map.
4. Map or sketch of subject property.
5. Sketch of improvement dimensions.

The original and all copies of each appraisal shall include a sufficient number of regular, glossy-print photographs, properly identified to show all improvements and any significant terrain and topographical features of the property.

Each photograph shall contain an unalterable, written identification setting forth the date on which the photo was taken, the photographer's name, exact position and place from which the picture was taken, and the section, the parcel, and the tract and the owner's name.

All appraisals are also to contain regular, glossy-print photographs of the comparable sales properties described, listed and referred to in the appraisal report.

These photographs of comparable sales properties are to be mounted on the respective appraisal report pages containing the respective comparable sales data. Each comparable sales photograph shall contain identification as to the property it represents, date and time photo taken, and name of person taking the photo. Additionally, it is to be specifically cross-indexed to the comparable sales data to which it relates in the appraisal report. The purpose of this requirement is to enable the relevant comparable sales property location to be plotted and identified on a comparable sales property location map.

Each appraiser shall submit, as an appendix to his appraisal report, a sales location map sufficient to identify both the location of the comparable sales properties used in each appraisal report, and in specific geographic relation to the subject property.

The sales location map requirement applies also to bulk appraisal assignments. In addition, a sales map and economic area study shall be required for all bulk appraisal assignments of fifty (50) or more appraisals.

Each appraisal shall include a map or sketch of the entire property appraised showing boundary dimensions, location of any improvements, property area to be acquired, relation of improvements to the property area to be taken and the property area of each remainder.

Appraisals involving improved properties shall contain a sketch showing building dimensions, including average heights and the calculations as to the area sizes used in the cost approach to value.

These sketches shall include site improvements (such as drives, walks, etc.), and the measurements thereof are to be those made by the appraiser from actual on-site measurements.

### *Cost and Market Approach Grids*

Comparative land sales shall be set forth in the following kinds of grids after appropriate analysis and comparative adjustments have been made:

**COST APPROACH:**

**LAND SALES COMPARATIVE RATING GRID**

<i>Sale No.</i>	<i>1.</i>	<i>2.</i>	<i>3.</i>	<i>4.</i>
Sale Price	.....	.....	.....	.....
Unit Price Rate	.....	.....	.....	.....
± Adjustments (% or \$ Amounts)	.....	.....	.....	.....
Time	.....	.....	.....	.....
Location	.....	.....	.....	.....
Physical	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Subject Property Value by Comparison: Value Indicated:	=====	=====	=====	=====
To Subject Property by Unit Rate:	_____	_____	_____	_____

**MARKET APPROACH:**

**COMPARATIVE SALES RATING GRID**

<i>Sale No.</i>	<i>1.</i>	<i>2.</i>	<i>3.</i>	<i>4.</i>
Sale Price	.....	.....	.....	.....
± Adjustments (% or \$ Amounts)	.....	.....	.....	.....
Time	.....	.....	.....	.....
Location	.....	.....	.....	.....
Land, Size, Shape & Topography	.....	.....	.....	.....
Improvement Size	.....	.....	.....	.....
Improvement Quality	.....	.....	.....	.....
Physical Condition	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Subject Property Value by over-all Comparison: Value Indicated:	=====	=====	=====	=====
To Subject Property Value:	_____	_____	_____	_____

## V. Specialists (Non-Real Estate Reports)

Whenever the property value determination of the appraiser is dependent, in whole or in part, on expertise and specialized knowledge not possessed by the appraiser, the appraiser shall obtain a special supplemental report from an appropriate expert or specialist. Such supplemental report shall be attached to the appraisal report. Such supplemental reports are to be obtained and used to describe and analyze various special appraisal and value issues whose proper resolution depends on architectural and engineering studies, landscaping estimates, machinery cost estimates, cost-to-cure estimates and studies, studies of wells and septic systems, costs, etc.

A. In order to provide for uniform guidelines for such supplemental reports, the following formal elements, and contents and format shall be required for all such reports:

1. Letter of transmittal from non-real estate specialist making report to the appraiser.
2. Statement as to purpose.
3. Description of existing facilities.
4. Definition of valuation problem and explanation of valuation process.
5. Value estimate.
6. Supplemental exhibits, sketches and photographs.
7. Affidavit of specialist.

B. Such supplemental reports shall contain the following information and materials:

1. Letter of transmittal

Indicate the basis for the report, appraisal order number, the parcel designation, parcel number, owner's name, project number (if applicable) and summary as to valuation opinion and related analysis, date of valuation, and number of pages of the full report; notation on each and every page of the report as to the page number, section, parcel number, owner's name, project number (if applicable) and name of specialist making the report.

2. Purpose

A statement as to the purpose of the report and nature of the valuation issue to be resolved.

### 3. Description of Existing Facilities

A narrative description of the buildings, plant, and/or facilities covered in the report, and appropriate sketches (with dimensions) and adequate, clear photographs. Photographs shall be labeled on reverse side if hinge mounted, and, if not, in the picture margin, with the parcel number, owner's name, date picture was taken, photographer's name, and identity of photo.

### 4. Definition of Valuation Problem and Explanation of Valuation Process

A narrative description of the valuation and issues problem, the recommended solution and an explanation of the analysis and reasoning utilized. Also, a narrative description of the nature and type of any depreciation calculations applied to the building or facility appraised.

### 5. Value Estimate

The relevant value estimate for the property items to be taken or damaged, or, alternatively, cost-to-cure estimates, as the case may be, shall be specifically set forth for each item evaluated, including the quantity, the unit price and the total asserted value for each item. All cost estimates must be supported by sales prices, published sales and costs lists and indices, comparable buildings actually constructed, current market prices, etc., or, where applicable, by a description of the specific applicable knowledge and experience of the specialist, or by some other commonly acceptable reasoning and justification, as the case may be.

### 6. Exhibits

Exhibits, maps, plans, and diagrams shall be attached as appendices to the report and shall be properly identified.

### 7. Certification and Affidavit

All reports shall contain a sworn statement as to inspection dates, lack of personal interest by the specialist in the subject property transaction and non-disclosure of the contents of the report. Affidavits and certifications shall be strictly in accordance with those required of real estate appraisers.

VI. It is highly recommended that the above described requirements as to the content, subject matter and format of appraisals be made contractual obligations for any appraiser undertaking appraisal work for governmental agencies. To this end, all of the above-described appraisal-report and performance requirements and specifications should be adopted as uniform standards and conditions for the performance of public appraisal work.

Whenever government and an appraiser enter into an agreement for the furnishings of appraisal services, the specific terms, conditions, and stipulations of such agreement should be incorporated in a written contract. All of the above-described specifications and requirements should be attached to and made a part of any such agreement, and each and every contract should expressly provide that compliance by the appraiser with such specifications and performance requirements shall be a mandatory and material obligation of the appraiser.

## POST APPRAISAL REVIEW

### *Introduction*

The completed appraisal, when filed with the government agency requesting same, shall be critically and thoroughly reviewed, evaluated and analyzed to determine the merits and quality of the opinions and conclusions therein contained. This review process is commonly known as a post-appraisal review, and the person conducting same is commonly referred to as a review appraiser.

The essential goal of post-appraisal review is to insure that the appraiser's conclusion as to land value is fully supported and justified by the contents of the appraisal report, by recognized appraisal standards, requirements, and guidelines, and by other relevant and material information and knowledge possessed by the review appraiser. The essential purpose of post-appraisal review is to insure that the consideration to be paid by public agencies to land-owners for publicly needed lands is reasonable and fair, and not excessive.

The review appraiser should be appointed or employed by the government agency which will take the subject land, or by the government agency which will finance such taking. All appraisals must be reviewed by a competent, qualified review appraiser if the aforesaid goal is to be reached and aforesaid purpose realized.

For this reason, review appraisers should possess skills, training, education and experience at least equal to, and preferably in excess of, those required for appraisers undertaking public appraisal work assignments. Such minimum appraiser qualifications are hereinabove set forth in detail, and the procedures and standards herein set forth for the selection of appraisers should be adopted by government as minimum requirements for the selection of review appraisers.

### *Review Requirements*

Appraisal reports shall be reviewed and accepted and the fair market value fixed and approved by an authorized and qualified review appraiser before the commencement of negotiations for the purchase of the subject lands.

### *Review Appraiser's Delegated Authority*

Review appraisers should be delegated authority to estimate the fair market value of properties to be acquired, in accordance with and pursuant to acceptable appraisal reports. The fair market value so estimated shall govern purchase negotiations. The review appraiser should consider, in making a determination as to the value of the subject lands, *all* pertinent value information that is available, including, but not limited to, appraisals obtained by the agency and the property owner, as well as comparable sales data not included in the appraisals but concerning which he has knowledge. *The fair market value determined by the review appraiser shall be substantiated in a writing setting forth the reasoning followed in arriving at his determination of value, including the methodology used to calculate the fair market value.*

The review appraiser, on the basis of additional value information obtained by him, may at any time prior to settlement revise his determination as to fair market value. The review appraiser shall describe in writing the reasons for any changes so made, and all value estimates made by the review appraiser shall be "registered" in the acquisition office prior to use in negotiations and shall be retained as a part of the official files.

### *General Review Processes and Functions*

The review appraiser personally shall inspect the property appraised and personally inspect the properties to which the comparable sales data compiled by the appraiser relates.

The review appraiser shall examine the appraisal reports to determine that they:

1. Are complete and in strict compliance with the appraisal contract and specifications.

2. Follow accepted and recognized professional principles and techniques utilized in the evaluation of real estate, in accordance with existing State law.

3. Contain the information, documentation, analysis and data necessary to substantiate the conclusions and estimates of value contained therein.

4. Include a consideration of all compensable items and benefits and do not include allowance for items not compensable under State law.

5. Contain a special statement demonstrating a reasonable allocation as to land, improvements and damages.

### *Summary of Review Appraisal Processes and Functions*

The review appraiser is the person responsible for ultimate quality control of the appraisal product on which government bases determinations as to just and reasonable compensation to be paid land owners out of public monies.

The processes followed by the review appraiser shall include an examination and office review of all appraisals secured by the assigning governmental agency for each specific land parcel to be acquired.

When all appraisals on a particular parcel have been reviewed and accepted by the reviewer in accordance with proper and required appraisal techniques as aforesaid, the reviewer shall then compare and contrast the conclusions in the respective appraisals so as to establish a single value figure, within the range of the appraisals which, he concludes, best represents fair market value of the property to be taken.

### *Reviewer's Estimate of Fair Market Value*

Following completion of the office and field reviews, the reviewing appraiser shall make a determination as to fair market value. This determination shall be written and recorded.

As a part of each value statement, the reviewing appraiser shall present such information as he deems appropriate regarding his decision-making and the steps he took in the review process and the important information rejected or accepted by him in arriving at a final conclusion.

If the reviewing appraiser's value estimate is substantially at variance with the values submitted by the appraisers, the reviewer in effect becomes the appraiser, and his report and statement shall adequately document and support the conclusions reached in such cases.

Prior to institution of negotiations on any particular parcel, the reviewing appraiser's signed value estimate report shall be registered with the appropriate custodian of the assigning agency's records. Additionally, copies of said report, together with one copy of all appraisals secured, shall be forwarded to the land acquisition officer or committee prior to the commencement of negotiations.

The land acquisition officer or committee shall make the appropriate entry in the individual parcel status book upon receipt of the reviewing appraiser's signed value estimate report.

Upon notice of the recordation of the value estimate report with the custodian of records, the land acquisition officer or committee may commence negotiations with the owner of the subject parcel.

All communications and correspondence relative to the negotiated transaction shall be preserved and made part of the negotiator's ultimate report. Complete and thorough documentation shall be required in order that the individual case files may be intelligently evaluated by the governing body prior to a grant of authorization to purchase.

The processing of case files to the governing body for disposition shall include a "matching audit" of the original copy of the reviewing appraiser's recorded statement of fair market value filed with the custodian of records as against the final value statement, and the duplicate forwarded to the land acquisition office or committee with the case file.

As a protective measure, no case is to be presented to the governing body for formal action and commitment unless the matching audit confirms that both the original and duplicate copies of the registered statements are identical. Following the audit,

both the original and duplicate statements of value are to remain as a permanent part of the case file.

Any appraisal revisions or addendum supplements which are necessary are to be delivered, reviewed and processed by the same procedures required for the delivery and review of initial appraisal reports. They are then to be permanently attached to the original report which the reviewing appraiser will initial and note as superseded or revised.

When an appraisal is supplemented or revised, the reviewing appraiser will prepare a supplemental estimate statement based on the appraisal revision or addendum supplement.

### *Divergency Procedure*

It is recognized that, occasionally, appraisals which are independently produced will result in wide divergencies in value particularly on partial taking, which divergency the review process must resolve. Thus, the reviewers will be confronted with the task of determining what value amount determination to make in cases wherein two or more adequately substantiated appraisals for the same land parcel widely differ in their final value conclusions.

If appraisals for a particular property widely differ in the value estimates submitted, and the review process does not reveal mathematical error or omission which would clearly reduce the divergency by correction, the issue is to be resolved in part by way of in-depth discussion between the reviewer and each appraiser and in part by a determination by the reviewer as to which appraisal report is superior in quality. The substance of any such discussions and his analysis of same shall be incorporated in an appropriate file memorandum. Any appraisal report determined by the reviewer to be deficient or inconsistent with accepted appraisal techniques and standards shall not be considered by the reviewer in reaching a final decision as to the value of the subject land.

## **LAND ACQUISITION, POST-APPRAISAL REVIEW, AND COMPLIANCE REVIEW OPERATIONS OF THE GREEN ACRES PROGRAM**

I. The New Jersey State Commission of Investigation recommends that all post-appraisal review work, acquisitional appraisal

work and all land acquisition work presently performed by the Department of Environmental Protection (DEP) be transferred to the Department of Transportation (DOT). An agreement should be forged between the departments in order to secure an orderly transfer of specific duties and functions.

The informality of procedure too often found in post-appraisal review in the DEP for certain Green Acres projects has led to inadequate appraisal review which has been haphazardly performed. Considering the millions of dollars appropriated for Green Acres projects, the State must tighten its appraisal review procedures for such projects to the extent that generally recognized and accepted expertise and methods shall be utilized for that work.

The State Commission of Investigation finds that the Department of Transportation's personnel possess the requisite skills necessary to properly perform such work in a manner designed to protect the public interest. Additionally, the DOT employs skilled personnel capable of properly discharging certain responsibilities critical to the effective administration of the land acquisition programs of such projects, including the conduct of compliance reviews and appraisal approvals relative to State Aid grants to local government. The department with the best expertise in land acquisition systems and procedures should perform Green Acres land acquisitions.

The Commission's recommendation to transfer the entire land acquisition operations and post appraisal review operations of the Green Acres Program from DEP to DOT is supported by a major efficiency recommendation of the Statewide Industrial Management Review and Report of 1970, presented to Governor William T. Cahill by the Governor's Management Commission. In this report, the Management Commission recommended that the "Functions of the Bureau of Recreation and Conservation Land Acquisition" (in the Department of Environmental Protection) "would be performed by the Division of Right of Way in the Department of Transportation." The report states that, "this bureau . . . essentially performs the same functions" (namely, land acquisition for State purposes) "as the Division of Right of Way." Additionally, the report concludes that the "Division of Right of Way has the manpower and expertise to assume the present responsibilities of the Bureau of Recreation and Conservation Land Acquisition without an increase in its personnel complement."

Certain standards for land acquisition and appraisal review and related procedures including compliance review procedures followed in the DOT are far superior to those used in the DEP. This Commission found that, for instance, appraisals submitted to DEP in support of local applications for Green Acres grants were not subject to expert and thorough post-appraisal review.

On April 15, 1976, Dr. Horace J. DePodwin, Dean of the Graduate School of Business Administration, Rutgers University, submitted an evaluative memorandum to David J. Bardin, Commissioner, DEP, concerning the "Green Acres Land Acquisition Review Procedure". This evaluation focused on the local assistance portion of the Green Acres Program.

Dean DePodwin and a team of faculty members from the Graduate School of Business Administration at Rutgers assisted Commissioner Bardin in an "in-house" review of certain procedures following the S.C.I.'s public hearings in January, 1976.

The DePodwin Report made the following observations as to the work of the Green Acres staff:

- a. "Personnel assigned to the Green Acres Program appear to lack the minimum skills for the technical aspects of land acquisition."
- b. "DEP's appraisal review work seems weak. The function appears to lack sufficient independent professional appraisal so that appraisals performed for municipalities and counties seem to stand unchallenged for the most part."

Additionally, the "DePodwin Report" made the following general conclusions:

1. "Present procedures appear cumbersome with few managerial check-points for efficiency of operation and validation of expenditures for acquisitions."
2. "We found no continuing objective reconciliation of actual price paid for land acquired under the Green Acres Program with open market transaction prices."

Although the DePodwin memorandum did not specifically recommend the transfer of the land acquisition and appraisal review functions to DOT, the finding of deficiency in certain DEP procedures and expertise by Dr. DePodwin supports the need for such transfer as recommended by this Commission.

An unpublished fiscal study on ways and means to effect savings of tax dollars by transfer of Green Acres acquisition procedures to the DOT was made by the Bureau of Budget in the Department of the Treasury in August 1975. The recommendation in that report is as follows:

“Immediate concern shall be afforded to those steps necessary in order to effectuate the transfer of Green Acres acquisition to DOT.”

In this report, the Budget Bureau concludes that,

“It would appear that the present method of acquisition tends to increase the cost of public acquisition.”

II. The local assistance projects of the Green Acres Program must henceforth be administered in a manner designed to insure that the price paid for land is fair and reasonable, and not excessive.

To this end, the following requirements and standards must be imposed on local and county governments applying for Green Acres funds:

A. Appraisers should be selected strictly in accordance with and pursuant to guidelines and criteria herein set forth, and appraisals submitted by appraisers not possessing the necessary qualifications should not be accepted for use in the Green Acres Program;

B. Appraisal fees should be determined in accordance with the schedules and rules herein set forth;

C. Appraisals and post-appraisal reviews should be rendered in a manner strictly in conformity to the principles herein stated. Such requirements and standards should be an express condition of the receipt of Green Acres Program funds. The present practice of allowing county and local government to decide whether or not to adhere to such standards and requirements should be discontinued forthwith. In addition, the form contractual provisions and terms presently used by the Department of Transportation to specify the performance obligations of appraisers furnishing appraisals for the DOT, should be adopted for county and local land acquisition.

sition appraisal work and for all Green Acres projects appraisal work.

III. Furthermore, the administrators of the State Green Acres Program should determine which appraisers shall be approved to work on projects financed by Green Acres funds.

Finally, the Green Acres Program must critically, thoroughly and independently evaluate and analyze all appraisals and appraisal reviews submitted by state, or local, or county government, prior to release of Green Acres funds and prior to the grant of authorization to make the requested purchase. This final evaluation and analysis must be performed in a manner consistent with the highest and best standards and principles of the land valuation profession. Appraisal and appraisal reviews not consistent with such standards and principles should be rejected, and Green Acres funds should not be released until the Program administrators actually receive appraisals and appraisal reviews consistent with such standards and principles. The practice found in the Green Acres Program of permitting local and county government to make commitments for land purchases prior to the conduct of a thorough and meaningful appraisal compliance review must be discontinued forthwith.

# INVESTIGATION OF THE NEW JERSEY MEDICAID PROGRAM OF HEALTH CARE FOR THE INDIGENT

## PREFACE

As noted in the investigations resume section of this Annual Report, the S.C.I. during 1975 undertook a comprehensive investigation of the State's Medicaid program on being mandated to do so by request of Governor Brendan T. Byrne. The New Jersey Medicaid program is one of considerable complexity and magnitude, involving hundreds of institutions, thousands of individuals and the total expenditure of more than \$400 million annually in Federal and State funds. To best investigate such a massive system, the Commission established three teams of investigative personnel. The teams were assigned to investigate the flow of Medicaid dollars to, respectively, nursing homes, hospitals and other health care institutions exclusive of nursing homes, and purveyors of services (doctors, pharmacists, clinical laboratories etc.) compensable through Medicaid.

Because of the magnitude and complexity of the subject matter and the natural sense of urgency to detect, halt and correct any costly abuses of a system involving such large outlays of taxpayer dollars, the Commission notified the Governor by letter on March 4, 1975 that it would, when meaningful and well documented sets of facts were developed, report to him on an interim basis by taking interim public actions. The first such interim public action was the issuance on April 3, 1975 of a report on phases of the New Jersey system of reimbursement of rent and carrying costs to Medicaid-participating nursing homes. The report documented how New Jersey, in its haste to originally implement Medicaid adopted, without critical evaluation, an upper New York State reimbursement schedule which was unnecessarily inflated to begin with and was further inflated by New Jersey in the area of carrying charge subsidies. The report made a number of recommendations to correct this costly distortion and for a longer-term shift to a more realistic reimbursement system of better equity and effectiveness.

The Commission's second interim public action was a public statement, issued on April 23, 1975, in support of the then pro-

posed New Jersey Clinical Laboratory Improvement Act. The statement detailed a virtual chamber of unsanitary and unsafe horrors which had occurred in the operations of some of the laboratories, pointed out the weaknesses in present State regulation and control, and pin-pointed how the provisions of the proposed new act would be effective in enabling the State to maintain high standards in the laboratories. The Senate subsequently approved the proposed act, and the Assembly, which had originated the measure, concurred with the Senate's amendments. Governor Byrne then signed the legislation.

A third interim public action was completed in June, 1975 when the Commission held three days of public hearings which exposed costly abuses of overbilling, false billing, and kickback payments by some independent clinical laboratories doing inordinately large amounts of Medicaid-funded test business. This phase of the Medicaid investigation is reviewed in detail on subsequent pages of this Annual Report, along with the Commission's final recommendations for improving State supervision and control of the flow of Medicaid dollars to independent clinical laboratories. As noted in the investigations resume section of this Annual Report, changes and improvements already prompted by these public hearings have effected annual savings estimated at \$1.4 million in Medicaid expenditures.

By June, 1976, when this Annual Report was completed, the Commission's staff was in the final stages of preparing several contemplated future public actions which will mark the termination of the S.C.I.'s Medicaid probe. The contemplated public actions will cover the reaping of high profits by some individuals through sales, financing and lease-back techniques which have grossly inflated the values of some nursing homes, overbilling and overutilization patterns engaged in by some physicians and pharmacists, and an analysis of methods for controlling hospital costs which, through their effect on Blue Cross rates, affect Medicaid which uses those rates as a reimbursement standard.

### *National Recognition*

The S.C.I.'s independent clinical laboratory phase of the Medicaid investigation was a pioneering probe which brought to the fore for the first time well documented and substantiated facts about unscrupulous methods which were ripping off the system. As such, it received considerable national attention. Frank L.

Holstein, the Commission's Executive Director, and Anthony G. Dickson, the Commission Counsel who directed this phase of the Medicaid probe, appeared before both the United States Senate Committee on Aging and the United States House of Representatives Subcommittee on Oversight and Investigation to testify about the S.C.I. probe and its findings in public hearings held by those Congressional panels during February, 1976. United States Senator Harrison Williams of New Jersey publicly complimented the S.C.I. for its investigation and exposures in remarks placed on the Congressional Record. Additionally, the S.C.I.'s probe of independent clinical laboratories was featured as a major segment of an hour-long ABC-TV documentary on Medicaid abuses, a show which was televised nationally in April, 1976.

## INDEPENDENT CLINICAL LABORATORIES RECEIVING MEDICAID MONIES

### INTRODUCTION

The S.C.I.'s Medicaid investigative team assigned to purveyors of health services other than nursing homes and hospitals initiated its inquiry with a series of meetings with personnel of the State Division of Medical Assistance and Health Services, the State Institutions and Agencies Department's unit which administers Medicaid and which hereafter is referred to as the State Medicaid Division. Although the intent of the original discussions and associated document review was to provide S.C.I. personnel with a broad overview of the Division's functions and operations, it quickly became apparent to S.C.I. staffers, principally through data provided by the Division's Bureau of Medical Care Surveillance, that patterns of possible irregularities in the operations of some of the independent clinical laboratories under the Medicaid program made those laboratories particularly appropriate subjects for in-depth investigation. Accordingly, an immediate inquiry into this area of Medicaid was undertaken by the S.C.I.

New Jersey has some 184 independent clinical laboratories which perform a variety of tests on human body materials, with the results being used in the diagnosis, treatment, and prevention of disease. The S.C.I., with the assistance of the State Medicaid Division, determined that 12 of these 184 laboratories were receiving more than half of the \$2.2 million in Medicaid funds flowing annually to all independent laboratories.\* This investigation, therefore, concentrated on those laboratories which seemed to be doing an inordinate amount of Medicaid-funded business in comparison to the average for the industry.

The Commission was fortunate to enlist the expert cooperation of the State Health Department's Division of Laboratories and Epidemiology, hereafter referred to as the State Laboratories Division, to make an initial analysis of the operation and billing procedures of some of the clinical laboratories ranking highest in Medicaid receipts. The Division personnel made field inspections

\* See Chart Number 6 on Page 221a of this report for a listing of the 12 independent clinical laboratories receiving the most Medicaid dollars during 1972-1975 period.

of these laboratories, analyzed hundreds of pertinent documents, and then provided the S.C.I. with comprehensive written and oral reports. Those reports, combined with continuing inputs from the State Medicaid Division, provided a sound starting point for the S.C.I. to probe in depth into the independent clinical laboratories field, an investigation which eventually exposed and documented fully at public hearings June 24, 25 and 26, 1975 the existence of abuses of the Medicaid program in the following areas:

1. Virtual windfall profits to some relatively small and largely unautomated laboratories which marked up the cost of tests performed on a subcontracting or referral basis by as much as 300 per cent and collected the markups from Medicaid. The facts gleaned in this area as well as other areas discussed below were instrumental in documenting that the New Jersey Medicaid fee schedule for reimbursing independent clinical laboratories was much too high and in need of revision downward.

2. Instances where some independent clinical laboratories were able to overbill Medicaid for certain tests and even render false test claims without these practices being detected at either the pre-payment or post-payment processing levels.

3. Rebate or kickback type practices whereby some laboratories either returned a set percentage of Medicaid test fees to some of the doctors referring business to those laboratories or indulged in some other financial-inducement type payments to the doctors under the guise of paying for "rented space" or "office salaries" in the doctors' offices.

All the above areas will be reviewed in more detail on subsequent pages of this report, along with Commission's findings thereon, corrective steps already taken since the S.C.I. began its investigation, and further Commission recommendations for additional corrective actions.

## **APPALLING CONDITIONS PROMPT A NEW CONTROL ACT**

In developing the investigation of the independent clinical laboratories, the Commission during the first quarter of 1975 began to hear testimony and mark pertinent documents at private hear-

ings relative to the previously mentioned field inspections of some of the laboratories by the personnel of the State Laboratories Division and the reports based on those inspections. The Commission quickly became appalled and alarmed by the considerable evidence that dangerous inefficiencies and laxities and inept, erroneous and sanitarily unsafe and unsound procedures could flourish in some of the clinical laboratories in New Jersey at any given time, notwithstanding present state and federal enforcement efforts under existing statute.

### *A Chamber of Horrors*

A few examples of a virtual "chamber of horrors" story which was presented to the Commission relative to practices and conditions at some of the laboratories were:

At one Medicaid laboratory, the supervisor performed glucose analysis in such a manner as to result in wholly invalid test results. After lining approximately 30 different patient specimens in a rack, he proceeded to use the *same* measuring device (Pipette) in taking samples from each. Rather than replacing the disposable tip in which a small residue of the sample remained, the supervisor used the same tip for each subsequent specimen, contaminating each and resulting in invalid samples.

Negative results for tests for a specific disease causing bacterium were routinely reported to physicians by a laboratory and the cultures were discarded by the laboratory long before it was possible to establish that the organism was not present in the specimen.

Laboratory reporting forms from a laboratory contained incorrect "normal ranges." Physicians accepting the written normal range as accurate would be misled in interpreting results of tests on specific patients.

There was virtually no quality control of tests being performed at one laboratory. Cheap disposable measuring devices were being washed and possibly reused, although they were only guaranteed by the manufacturer to be accurate for a single measurement.

At one laboratory which received in excess of \$250,000 in Medicaid moneys in 1974, the State Laboratories Division personnel found the basement to be small and possessed of only one small hand basin. As testing progressed, liquids from a large automated machine were emptied directly into the sink, thereby precluding the employees from using it to wash hands or equipment.

This same laboratory performed a large volume of bacteriology tests on the premises. As many as one hundred contaminated culture plates required sterilization and safe disposal. When confronted with the inadequacy of sterilization equipment in the laboratory to handle such a volume, the laboratory supervisor said the laboratory director daily picked up plastic garbage bags full of contaminated material and carried them to the incinerator of a local hospital. The Assistant State Health Commissioner in charge of the Laboratories Division testified before the Commission that this procedure was "exceedingly poor and dangerous."

The Commission viewed evidence of this nature with a sense of particular alarm, since unreliable and inaccurate laboratory test results can lead to erroneous diagnosis, cause the selection and pursuit of an inappropriate course of treatment, induce needless suffering of both a physical and emotional nature, create unnecessary financial burdens and, in extreme cases, may even proximately contribute to death.

### *A Public Statement Is Issued*

During this phase of the Medicaid investigation, the Commission was briefed in detail on the then proposed New Jersey Clinical Laboratory Improvement Act. The Commission concluded on the basis of the evidence received and the facts set forth in the briefing that enactment into law of this measure would be a much needed step in providing New Jersey with tough, effective licensing and enforcement powers to require and maintain proper conditions and standards at clinical laboratories. Indeed, the Commission found that such enactment would make New Jersey only equal to its neighboring states of New York and Pennsylvania in the type of state control exercised over clinical laboratories.

Accordingly, the Commission directed the staff to prepare a public statement\* which urged enactment of the proposed control, and the Commission caused that statement to be delivered to members of the State Legislature and to the Governor. The statement, which was issued on April 23, 1975, analyzed provisions of the proposed act, with particular attention to how specific provisions would fill major gaps and vacuums in the existing web of state and federal statutes and regulations. The Commission's public statement summarized the principal thrusts of the proposed act as follows:

- Require all independent clinical laboratories to be licensed by the state, with the licenses permitting a laboratory to perform only those tests for which the laboratory has demonstrated the ability to perform with adequate quality. Licensees would be monitored through required participation in a State program of proficiency testing and unannounced inspections. This scheme would go far in eliminating the danger of inadequate and erroneous testing procedures and induce laboratories to have proper equipment and properly trained personnel.
- Empower the State Health Commissioner to suspend the license of a laboratory when the Commissioner has reason to believe that conditions posing an imminent threat to the public health, safety and welfare exist. Any licensees summarily suspended could seek a hearing before the Commissioner which must be held and a decision rendered within 48 hours of the receipt of the request for the hearing.
- Attempt to bring New Jersey laboratories either equal to or in excess of the federal standards for such laboratories, standards considered comprehensive and stringent. One requirement of the proposed act is that laboratory personnel be certified as meeting the federal standards.

The Commission in its statement noted that perhaps only a relatively small minority of clinical laboratories in New Jersey had failed to adhere to high standards. The statement added,

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\* See statement by the New Jersey Commission of Investigation on the proposed New Jersey Clinical Laboratory Improvement Act (Assembly Bill No. 2320). Report dated April 23, 1975.

however, that even if that was the fact, the potential for widespread danger absent sufficient controls was still present when it was realized that one large laboratory alone could conduct many thousands of tests in any given year. The statement concluded that enactment of the proposed control act would, if properly and vigorously administered, be of immense benefit to the health and safety of the citizenry of New Jersey.

The proposed control act bill, at the time of issuance of the S.C.I.'s public statement, had been approved by the Assembly in February, 1975 but had not been acted on by the Senate where it had been amended. Subsequent to the public statement's issuance, the amended bill was promptly approved by the Senate by a vote of 22-1 and the Assembly soon concurred with the amendments by a 61-0 vote. The measure was signed by the Governor July 23, 1975 as Chapter 166 of 1975.

## **BILKING MEDICAID BY MARKUPS AND BILLING IRREGULARITIES**

Besides aiding the Commission in determining the existence of deplorable conditions and operations at some of the independent clinical laboratories, personnel of the State Laboratories Division also honored an S.C.I. request that they assist in the examination of many hundreds of documents relative to bills rendered to the state by a sampling of those laboratories, bills which had been paid with Medicaid funds for tests allegedly performed. The results from this exhaustive, cooperative inquiry uncovered facts which demonstrated clearly and conclusively that the New Jersey system could be taken costly advantage of through practices involving the marking up of subcontracted or referred test costs as much as 300 per cent, overbilling for certain tests, and even false or fictitious billing for tests not performed. The fact that these practices could exist under the Medicaid program also showed conclusively that the Medicaid fee schedule\* for reimbursing the independent clinical laboratories for test work was antiquated and too high and that the Medicaid Manual of rules and regulations covering those laboratories was in need of revision. Both of those matters will be reviewed in some detail subsequently in this report.

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\* The maximum Medicaid reimbursement fee schedule for certain tests as of May, 1975 is presented as Chart Number 7 on Page 221b of this report.

## *Mammoth Markups*

Recent years have seen major technological advances in the clinical laboratory testing field. Many of the tests have become highly automated, producing a quantity and quality of test results with a degree of accuracy and speed not attainable by the older manual or "bench test" methods.

During this phase of its Medicaid investigation, the Commission came across indices that those independent clinical laboratories whose businesses were most heavily oriented toward Medicaid were predominantly of the smaller, largely unautomated nature and that those laboratories were subcontracting or referring test work to some of the larger, highly automated laboratories. The bill claims submitted by the smaller but heavily Medicaid-oriented laboratories to the State Medicaid program were readily available for inspection. By use of its subpoena power, the Commission was able to obtain the corresponding billing invoices submitted to the smaller laboratories by the larger, automated laboratories which had actually performed the test on a subcontract or referral basis.

By comparing the subcontractor laboratory billing invoices with corresponding bill claims eventually submitted to Medicaid by the smaller laboratories, it was determined that the subcontract cost of any given test could be grossly marked up by the smaller laboratory which could then proceed to collect that inflated charge under then existing Medicaid maximum reimbursement fee schedule.

In order to thoroughly document this costly abuse, the Commission asked a team of State Laboratories Division personnel with expertise in the procedures of clinical laboratory testing to examine, in cooperation with the S.C.I. staff, stacks of laboratory bill claims to Medicaid from some of the laboratories and other related documents. In all, this exhaustive search and analysis covered more than 20 independent clinical laboratories. The facts established by this effort showed conclusively that the practice of gross markups above actual subcontract costs was widespread and that provisions of the State Medicaid Manual did not effectively restrict and estop this practice.

Mrs. Gerda Duffy, Principal Medical Technologist for the Clinical Laboratory Improvement Program of the State Laboratories Division, played a key role in the search and analysis of

documents. She testified about the results of that effort at the public hearings in June, 1975. Part of her testimony dealt with the specifics of a sample of one of the numerous instances uncovered in the area of huge markups over subcontracting costs. In the testimonial excerpts which follow, the test referred to is essentially a blood chemistry analysis done on an automated device known as an SMA-12. The device reports almost instantly on the status of as many as 12 blood chemistries in any given test sample. The full name and location of the smaller laboratory referred to in the testimony is Physicians Laboratory Service, Inc. of Passaic. Mrs. Duffy testified:

*Q. Mrs. Duffy, let me show you a claim submitted by Physician's Lab Service, Inc., for services allegedly rendered on or about 12/18/74 to Medicaid recipient J. V. C. I would ask you to look at this claim and tell us whether or not you see a request for payment for an SMA-12?*

*A. Yes, I do.*

*Q. How much has Physician's Lab Service, Inc., requested for payment for the SMA-12?*

*A. \$15.*

*Q. Now, Mrs. Duffy, does Medicaid pay \$15 for an SMA-12?*

*A. No.*

*Q. Do you know what the maximum amount of money Medicaid will pay for an SMA-12 would be?*

*A. Yes, it's \$12.50.*

*Q. All right. Now, Mrs. Duffy, let me call your attention to a second part of Exhibit C-12, that being a billing invoice which was received by the Commission of Investigation, pursuant to a subpoena, from the Center for Laboratory Medicine, Inc., in Metuchen. I would ask you by looking at this billing invoice whether or not you can determine if the SMA-12 listed on the lab claim sheet submitted by Physician's Lab Service was performed at a location other than Physician's Lab Service?*

*A. Yes, it was.*

Q. Well, what is that indication, Mrs. Duffy?

A. The patient's name is given; the date the test was performed; the type of test, the test code and a charge made by the reference lab for that test.

Q. All right. And does this data correspond with the data submitted on the claim form by the Physician's Lab Service?

A. Yes, it does.

Q. Mrs. Duffy, I ask you to examine the billing invoice submitted by Center for Laboratory Medicine to Physician's Lab Service and with particular reference to the SMA-12 test performed for Medicaid recipient J. V. C. I would ask you to identify the test price listed on that document or the test price charged by Center for Laboratory Medicine to Physician's Lab Service.

A. \$3.50.

Q. All right. Now, Mrs. Duffy, are you telling us that, while Medicaid will allow \$12.50 for an SMA-12 test, it's possible to have that very same test performed at—by the way, is Center for Laboratory Medicine an automated facility?

A. Yes, it is.

Q. All right. It's possible, to continue, to have that test performed at an automated facility at a cost that you testified, \$3.50?

A. That's correct.

Q. And is it your testimony that Medicaid will then pay approximately three times that amount?

A. That's correct.

\* \* \* \*

Q. Mrs. Duffy, are you familiar with the present Medicaid Manual as it pertains to laboratory services?

A. Yes.

Q. To the best of your understanding, is there anything in that Medicaid Manual which would in any way restrict the amount of monies that might be paid to a small laboratory for work that is actually performed in a large laboratory?

A. No.

Q. I'm talking about subcontracting.

A. There are——

Q. No.

A. —no such regulations.

\* \* \* \*

Q. All right. Now, Mrs. Duffy, from your experience in the industry as well, more importantly, from your experience in reviewing different claims as well as supporting materials is this an isolated instance that we have here where, for instance, first of all, that an SMA test would be performed at a large reference laboratory for a relatively small amount of money and then billed to Medicaid by a small laboratory for a much higher amount of money?

A. No, this is not an isolated case.

### *Overbilling and False Billing*

The previously mentioned cooperative effort by personnel of the State Laboratories Division and the S.C.I. Staff in searching and analyzing stacks of bill claims from independent clinical laboratories and associated documents also indicated clearly that some of the laboratories were not content with just profiting from mammoth markups over subcontracting costs but were further inflating their profits by certain overbilling and even false or fictitious billing practices. The specific types of overbilling and false billing practices were illustrated at the public hearing through the testimony of Mrs. Duffy, accompanied by the marking of and reference to appropriate documents. In each instance, one example was examined as being representative of a frequent and widespread abuse discerned in the voluminous search and analysis of documents.

A principal overbilling practice discerned in the investigation was that of taking a single test which produces multiple, component-part results and billing for each component part as if it were a separate test. As previously noted, the blood chemistry test performed on the SMA-12 device can produce as many as 12 component part results. Mrs. Duffy was questioned about an instance where the Fair Lawn Clinical and Cytology Laboratory, a relatively small and largely unautomated independent clinical laboratory located in the basement of a home in Fair Lawn in violation of

that community's zoning ordinances, billed Medicaid for \$26 for an SMA-12 test by listing six of the blood chemistry, component-part results as separate tests. The SMA-12 test was performed for Fair Lawn by the automated Center for Laboratory Medicine at a cost of \$3.25. The maximum Medicaid reimbursement fee for an SMA-12 was \$12.50. Mrs. Duffy testified about this instance and the deficiencies in the Medicaid Manual relating to this abuse:

*Q. But, again, you see here by the billing invoice that it was a full SMA that was ordered?*

A. That's correct.

*Q. And the cost of that SMA was what?*

A. \$3.25.

*Q. Do you have any idea of the amount of money that this provider, the Fair Lawn Clinical and Cytology Laboratory, could have received from the Medicaid program by breaking the SMA into these component parts?*

A. Yes. In this particular case there are only six components, so in this case he would have received \$26 from Medicaid.

*Q. All right. So you're telling us, then, that the Fair Lawn Clinical and Cytology Laboratory would have received \$26 from Medicaid for an SMA test, an SMA-12, which it was billed \$3.25 by Center for Laboratory Medicine?*

A. That's correct.

*Q. Mrs. Duffy, again, you are familiar with the Medicaid Manual?*

A. Yes.

*Q. All right. Is there any present regulation in that manual which would prevent breaking a test down into its components?*

A. No. There is one regulation that says the sum of the components, the charge for the sum of the components cannot exceed the charge for the cluster of tests itself.

*Q. All right. Mrs. Duffy, let me show you what that regulation is. It can be found not only in the Medicaid manual for laboratories but also in New*

*Jersey's Administrative Code, Section 10:61-1.5, which reads, in relevant part, sub-section (b), "The sum of the components of a cluster of tests, for example, SMA-12, may not exceed the total customarily charged for the group offering." And it's your opinion that this particular regulation is not adequate; is that fair?*

A. That's fair.

Q. *All right. Under the regulation as it now stands, Mrs. Duffy, is there anything to prevent, to the best of your knowledge, any laboratory from doing exactly what the Fair Lawn Clinical Laboratory had apparently done here, break an SMA into component parts and bill for it?*

A. There is nothing to prevent it.

Mrs. Duffy, again with appropriate documents being marked and referred to, testified about two instances where Park Medical Laboratory of Montclair overbilled Medicaid by billing for component parts of multiple-result tests as if they were separate tests. Park Medical, another relatively small and largely un-automated laboratory, is located in the converted sun porch of a home, a fact Mrs. Duffy learned when she inspected the laboratory's premises.

One instance of overbilling by Park involved a urinalysis test which provides several component-part results through a chemically coated, color sensitive stick which is dipped into the test sample and then examined by a laboratory technician. Mrs. Duffy testified that the appropriate documents clearly showed that Park had billed Medicaid for the maximum allowable \$2 for a urinalysis and for an additional \$2 for a urine occult blood which is part of the test results from a urinalysis by the dip-stick method.

The other instance relative to Park involved a complete blood count (c.b.c.) test. Mrs. Duffy testified that the documents in this instance revealed that Park had billed Medicaid for the \$5 maximum fee for this type of test and billed additionally for a red blood cell morphology which is a component-part result of a c.b.c. test.

Another overbilling technique examined in the investigation was to bill for the more costly of two types of tests designed to de-

termine the same type of condition. The sample instance in this area presented at the public hearing involved two types of tests to determine pregnancy. One is an outmoded test known as the A-Z pregnancy test where a rabbit or rat must be used in the test process. Medicaid allows \$10 for this test. The other type of test is the more modern rapid-slide pregnancy test which is more expeditious and does not require the use of animals. For this test, Medicaid pays \$7.50. Mrs. Duffy testified that in this instance the documents showed clearly that the physician requesting the Fairlawn Clinical and Cytology Laboratory to make a pregnancy test had specifically asked for the less expensive slide test. Yet, Fair Lawn on its billing form claimed payment for the A-Z test. Mrs. Duffy testified further on how her visit to the Fair Lawn laboratory revealed that no A-Z test was performed:

*Q. Now, Mrs. Duffy, you mentioned that you did visit the Fair Lawn Laboratory; is that true?*

*A. Yes.*

*Q. While you were at the Fair Lawn Laboratory, did you see any animals?*

*A. No.*

*Q. Did you see any facilities for animals?*

*A. No.*

*Q. Well, Mrs. Duffy, since you saw no animals on the premises, is it your opinion that Fair Lawn could not have performed an A-Z test?*

*A. Yes.*

The problem of controlling a billing abuse of this type was in Mrs. Duffy's opinion a matter which would require an improvement in the Medicaid system and more expertise in the Medicaid surveillance staff, corrective steps which are reviewed in more detail subsequently in this report under the title of "System Controls and Surveillance." Referring to Fairlawn's bill claim for the A-Z pregnancy test, Mrs. Duffy testified:

*Q. All right. So, Mrs. Duffy, is it fair to say that what we have in Exhibit C-16 is a claim submitted to Medicaid which does not accurately reflect the work that was actually performed?*

*A. That's right.*

*Q. In fact, it was a claim described as an A-Z test and one which, to an untrained person, a person who had no knowledge of, perhaps, Fair Lawn's request report sheet or its procedures, would be one involving animals?*

A. Correct.

*Q. Mrs. Duffy, is this the problem that the Medicaid manual has to speak to or is this something that perhaps surveillance has to cope with?*

A. I think that the problem would have to be attacked by eliminating test descriptions and using only code numbers and initials and ensuring that reimbursement is made only for tests that are specifically coded so there can be no ambiguity about what test was performed.

*Q. All right. I take it, then, that you're saying that more definition is required in the Medicaid fee schedule and the Manual as to exactly what procedures are entailed in a particular test?*

A. Yes.

*Q. But isn't it also necessary to have trained people familiar with laboratory work on the Medicaid surveillance staff in order to initially recognize this problem?*

A. Yes, that's correct.

The Commission's investigation also concerned itself with outright false or fictitious bill claims by some of the laboratories. Two instances of such claims were examined at the public hearing, again through the testimony of Mrs. Duffy who said the two samples were symptomatic of a more general pattern of abuse. In the first instance, Mrs. Duffy testified that the Park Medical Laboratory billed Medicaid for alleged performance of a P.B.I. test which is used to determine the amount of iodine bound to protein in the human blood. The Medicaid fee schedule allowed at that time for that test was \$10.

The documents relative to this instance showed that Park had in the case of this particular patient subcontracted for three other tests performed by the Center for Laboratory Medicine but had not subcontracted for a P.B.I. Furthermore, Mrs. Duffy testified that Park could not by itself have performed a P.B.I. test:

*Q. All right, now, Mrs. Duffy, do you know whether or not the Park Medical Laboratory performs the P.B.I. test on its own premises?*

*A. No, it doesn't.*

*Q. How do you know that?*

*A. I saw that they didn't have the equipment for the reagents to perform it and the director told me it wasn't performed on the premises.*

*Q. Is that director Mr. Edward Gibney?*

*A. That's right.*

*Q. Well, Mrs. Duffy, again back to the physician's report and request sheet belonging to Park Medical Laboratory for the Medicaid recipient Q. W. Do you see a P.B.I. result reported?*

*A. Yes, I do.*

*Q. What is that result?*

*A. 5.8 micrograms per cent.*

*Q. But you said you see no indication that a P.B.I. was actually performed?*

*A. That's correct.*

*Q. Would it be your conclusion, then, that the P.B.I. result reported on this claim for Medicaid recipient Q. W. is fictitious?*

*A. Yes.*

The documents relative to the second false-billing instance examined at the public hearings related to a test called a rubella titer which is simply a test for German measles. As a public health service, the State Department of Health performs this test free of charge. Mrs. Duffy testified to an instance where Park Medical took advantage of this free service and then billed and received from Medicaid the maximum reimbursement fee of \$15 for a rubella titer test:

*Q. And how much would Medicaid allow for the German measles test?*

*A. \$15.*

*Q. Can you tell from this claim form whether or not Medicaid paid the \$15 for this German measles test?*

*A. Yes, I can.*

Q. All right. Mrs. Duffy, I show you a record from the New Jersey Department of Health and ask you whether or not you can identify it for us?

A. Yes, I can.

Q. Does that relate to Medicaid recipient A. B.?

A. Yes, it does.

Q. Does that indicate to you that a rubella test was done at the State Department of Health laboratories?

A. Yes, it does.

Q. How much does the State Department of Health charge for performing these tests, Mrs. Duffy?

A. Nothing.

Q. Is it your testimony, then, that Medicaid was billed, and paid, \$15 for a test that was actually performed in a State facility and by State employees for nothing?

A. That's correct.

\* \* \* \*

Q. Mrs. Duffy, again as to your familiarity with the present Medicaid manual as it pertains to laboratory services, is there anything in that manual which, to the best of your knowledge, would preclude a laboratory from billing for a test that was actually performed by the state laboratory for free?

A. No.

Q. No restrictions at all, to the best of your knowledge?

A. No restrictions.

Q. Then any laboratory could do it, couldn't it?

A. That's correct.

The previously mentioned Edward Gibney, the Director of the Park Medical Laboratory, conceded under questioning at the public hearings that it would be fair to state that during 1974 alone, there were 197 instances where Park billed Medicaid \$15 for rubella titer tests performed free of charge by the state.

Mr. Gibney also conceded under questioning at the hearings that Park did indulge in the overbilling practice of billing Medic-

aid for component-part results of a test as if they were separate, including one instance where seven component-part results from a SMA-12 blood chemistry test, for which Medicaid then allowed a maximum reimbursement of \$12.50, were billed to Medicaid for at a total of \$58. The SMA-12 test was performed for Park by the automated Center for Laboratory Medicine for \$3.40.

Additionally, Dr. Rosario Tamburri, Director of the Fair Lawn Clinical and Cytology Laboratory, confirmed in his testimony that Fair Lawn, indeed, had indulged in overbilling Medicaid by billing for the component-part test results of an SMA-12 test as if they were separate tests.

## FINANCIAL INDUCEMENTS TO DOCTORS

The tests performed by independent clinical laboratories are used by medically trained personnel, principally physicians practicing either alone or in group practices or clinics, in the treatment and prevention of disease. In matters so directly affecting the health of human beings, it would be hoped that the relationships between the laboratories and the doctors referring test business to the laboratories would be on a highly professional and ethical basis, with the laboratories receiving the test work because of the quality and performance offered.

The Commission's investigation, however, found that, while some of the laboratories were operating in a scrupulous manner, others were offering financial-inducement type payments to the doctors to lure test business and that those laboratories engaging in those rebate payments were among the largest recipients of Medicaid dollars. Indeed, as this phase of the Medicaid investigation progressed, it became clear that certain independent clinical laboratories were rebating a fixed percentage—usually on the order of 25 to 35 per cent—of Medicaid reimbursements to the referring physicians. The attempts to mask and/or justify these financial-inducement type payments often involved the guise of paying the salaries of personnel in the doctors' offices or "renting" space in those offices.

Furthermore, it became evident that a laboratory's Medicaid-funded business could increase dramatically if the laboratories employed the service of a middleman-salesman who knew which physician or physician groups would throw business to the laboratory offering a substantial rebate percentage payment.

The Commission was appalled, especially in light of its public statement about deplorable conditions in some of the clinical laboratories, that physicians would compromise not only ethical considerations but also the best interests of their patients by awarding test business not on the basis of judging the quality and performance of a laboratory but rather on the basis of personal financial gain from rebate payments.

### *Methods of Payment*

The Commission called as witnesses at the public hearings officials of several independent clinical laboratories who testified that their laboratories did not indulge in paying rebates or kickbacks to physicians. Some of their testimony demonstrated that a laboratory not playing the financial-inducement-payment game could get relatively little Medicaid-funded test work. Additionally, from the experience of sales personnel of these laboratories in the field, the officials were able to testify knowledgeably about the practice in the industry of obtaining sizeable amounts of Medicaid-funded business by financial-inducement payments to physicians.

Dr. Paul A. Brown, a physician and Chairman of the Board of MetPath Inc., a very large, highly automated independent clinical laboratory with headquarters in Hackensack, testified that during 1974, his laboratory in New Jersey alone did approximately \$2 million worth of test work for physicians and hospitals but received only some \$10,000 during that year from New Jersey Medicaid. Dr. Brown testified further that his marketing-force personnel told him the reason for MetPath's not receiving more Medicaid-funded business, despite the laboratory's charging lower prices than many other laboratories, was that providers of health services to Medicaid patients were "looking for something from the laboratory" in return for referral of test work, a practice in which MetPath declined to indulge. Dr. Brown testified his staff found four basic kickback-type techniques were being used in the industry:

- (1) Cash payments known as "greens" which are made by the laboratories either directly to the doctors or indirectly to them via their nurses.

- (2) The providing of personnel to the doctors by the laboratories and the paying of the salaries of those personnel by the laboratories for work allegedly performed in the doctors' offices.

(3) The renting of the laboratories of space, such as a closet, in the doctors' offices, with the "rent" often being determined as a percentage of the amount of Medicaid-funded test work referred to the laboratories by the doctors.

(4) The providing of goods and services to the doctors by the laboratories, including surgical supplies or miscellaneous items such as cigars and cigarettes.

Murray A. Blaivas, General Manager of the Roche Clinical Laboratories, Division of Hoffman-LaRoche Inc., testified that the approximately \$60,000 in New Jersey Medicaid reimbursements received by the Division during 1974 represented a miniscule percentage of the total business done annually at the Division's main laboratory in Raritan. Mr. Blaivas testified further as to why the Division's Medicaid segment was not more substantial:

*Q. Is there any reason why you would characterize it as a small amount of Roche Clinical Lab?*

A. Well, I believe it's because we do not participate in any of the practices that have been described here.

*Q. Well, would you for us please enumerate those practices which you feel are a detriment to your sharing in a bigger segment of the Medicaid program?*

A. Well, it has come to my attention that there are arrangements such as rental of office space, which is not commensurate with the space being rented, but rather with the volume of dollars that are generated. The supplying of employees or technical personnel or clerical personnel to physicians' offices. Payment in some form for filling out of laboratory forms and/or collection of blood samples. In some instances furnishing non-laboratory supplies, but rather medical supplies to the physician. Those are the ones that I can think of right now.

*Q. Well, you have testified that Roche Clinical Labs is not a participant in that activity?*

A. None whatsoever, sir.

Q. *Why?*

A. Well, it's against Roche policy for one thing. And for another thing we feel that these practices are unethical.

Lawrence Gallin, a partner in the South Jersey Diagnostic Center, an independent clinical laboratory in the City of Camden, testified that the principal reason for his laboratory's receiving a relatively large amount of Medicaid-funded test business—\$129,000 during 1974—was that the laboratory is located right in the middle of an indigent urban area where the instance of Medicaid patients is exceptionally high. He testified that he, too, knew of financial-inducement-payment practices in the industry and described them much in the same manner as did Dr. Brown and Mr. Blaiyas. Mr. Gallin testified further:

Q. *All right. Mr. Gallin, does your South Jersey Diagnostic Center lab engage in the activities to which you have just testified?*

A. No, we do not.

Q. *And why don't you, Mr. Gallin?*

A. Well, I think there's no one answer. I think there's several answers. I think the most important reason is that we are a lab that's located right in the middle of a large Medicaid area. We are actually in—our location is such that it is.

Q. *Well, let me ask you this, Mr. Gallin: Do you consider these activities ethical or unethical?*

A. Categorically, I would say that if—these activities are unethical, and they could be even illegal if the reason for the activity is to generate specimens. If the reason is—if it has no impact on generating specimens, well, it's a normal business practice. But I would say the reason they're done is to procure business, and I don't consider that ethical.

### *Rebate Techniques*

As previously noted, the financial-inducement payments from the laboratories to the physicians are often made under the guises of paying for work performed in doctors' offices or the "renting" of space in those offices. The Commission at the public hearings

explored some of those rebate techniques through the testimony of some of the officials of those laboratories. The appropriate records and documents, including cancelled checks, were marked as exhibits in each case to document the flow of Medicaid monies from the laboratories back to the physicians.

Saul Fuchs, Director of the previously mentioned Physicians Laboratory Service, Inc., an independent clinical laboratory in Passaic, testified that he had arrangements to pay back to two doctors 20 per cent of Medicaid reimbursements received for test business referred to the laboratory by those doctors and a similar arrangement to return to a medical-clinical group 30 per cent of the Medicaid dollars received for test business referred by that group.

In the case of one of the doctors, identified by Mr. Fuchs as Dr. Malcolm Schwartz with offices in Paterson, Mr. Fuchs contended the 20 per cent rebate was based "on the service that he would fill out the forms" but did not include any drawing of blood specimens on the doctor's part. In the case of the other doctor, identified by Mr. Fuchs as a Dr. Conti with offices in Garfield, the 20 per cent rebates were paid to a Chris Pardo, trading as C.M.P. Enterprises, who, according to Mr. Fuchs, drew blood in Dr. Conti's office and filled out Medicaid forms there. Mr. Fuchs was examined further about his relationship with Mr. Pardo and Dr. Conti:

*Q. Mr. Fuchs, at anytime during your relationship with Mr. Pardo did you ever check the accuracy of the gross receipts and his work as to his work?*

*A. I don't understand what you mean by the accuracy of his gross receipts.*

*Q. Well, you were paying him on a percentage basis?*

*A. Yes, sir.*

*Q. 20% of all that he brought in?*

*A. Yes, sir.*

*Q. Okay. Did you ever check with him on the accuracy of the amount of business he was giving you?*

*A. Well, he only got paid when I got paid. I mean, when I got paid, from Medicaid, I checked to see which ones were from Dr. Conti, and then from this figure he got paid.*

Q. *And were these patients, or were these patients in Dr. Conti's office Medicaid recipients?*

A. I assume so. They had—

Q. *And did you—I'm sorry. Go ahead.*

A. I mean, they had Medicaid forms.

Q. *And did you submit independent laboratory claim forms for these patients?*

A. Yes, I did.

Q. *And when you received the reimbursement for the cash balance that claim from Medicaid, is that where you derived the 20% for Mr. Pardo?*

A. Yes, sir, and that was after expenses, too.

Mr. Fuchs testified that he rebated some \$12,000 in Medicaid money during 1974 to the Park Medical Clinic in Paterson, under the 30 per cent arrangement with that clinic. He stated that he had a secretary on his payroll who filled out Medicaid forms at the clinic and that through a company known as International Drugs, Inc., he paid rent for space at Park Medical. It was Mr. Fuch's testimony that a William Stracher and a Harvey Sussman are owners of both International Drugs and Park Medical. Mr. Fuchs was examined about the International Drug-Park Medical arrangement:

Q. *Now, how did you arrive at a given figure 30 per cent to pay Park Medico?*

A. It was a lease rental. Percentage rental or lease. Percentage lease arrangement. In other words, we couldn't agree on how much rent I should pay there, so it was suggested that it would be done on a percentage basis; the amount of work that came out plus any supplies that I needed down there, they gave to the clinic, they supplied.

Q. *Could you identify them as supplying the clinics?*

A. International Drug.

Q. *Now, to whom did you make your checks payable?*

A. International Drugs.

Q. *And why didn't you make them out to Park Medico?*

A. Because they told me to make them to International Drug.

Q. *Pardon me?*

A. I said, I was told to make them to International Drug.

Q. *Who told you that, sir?*

A. Mr. Stracher and Mr. Sussman.

Q. *Did they give you any reason why you had to make them out to International Drug when they rented space and supplies were being done in the clinic?*

A. No, sir.

Q. *Did you rent any space, for whatever purpose, in International Drug, Inc., the drugstore?*

A. No, sir.

Q. *And it's fair to say that the rental portion of your payments to International Drugs did not include any shelf space, closet space or room in International Drugs, Inc.; is that correct?*

A. Correct.

The previously mentioned Edward Gibney, Director of the Park Medical Laboratory in Montclair, was questioned as to why his small, largely unautomated clinical laboratory received only \$346 in New Jersey Medicaid reimbursements during 1973, with that figure then soaring to \$164,849 during 1974 and to \$205,852 for the first one-third only of 1975. His answer was that during 1974, he became associated with M.B.S. Sales, whose principal is Seymour Slotnick of Teaneck. The testimony of Mr. Slotnick, who holds himself out as offering "marketing services" to laboratories, will be reviewed after further discussion of Mr. Gibney's testimony. Suffice it to state here that Mr. Gibney first met Mr. Slotnick briefly during 1973 when Mr. Gibney had an association for three months with Scott-Cord Laboratories, of which Mr. Slotnick was then an officer. Mr. Gibney testified that during 1974, Mr. Slotnick approached him as a principal in M.B.S. sales and that an "agreement" was made for Park to retain the services of M.B.S.. Mr. Gibney denied he had any arrangement for a percentage

split of Medicaid reimbursements with Mr. Slotnick and stated he did not know what specific "marketing services" Mr. Slotnick engaged in for Park, other than to bring in a large amount of Medicaid-funded business from some physicians. Pertinent excerpts from Mr. Gibney's testimony are presented below:

Q. Did he (Slotnick) later discuss with you what the financial arrangement might be?

A. Yes.

Q. And what was the substance of that conversation?

A. He said he would bill me for what he considered a fair amount for his services.

Q. Did he mention a particular figure?

A. No.

Q. And you agreed to that arrangement?

A. Yes.

Q. Based on his integrity that he would bill you what would be a fair amount?

A. I agreed to that arrangement.

Q. What was it based on?

A. I just agreed to that arrangement. I don't know what it was based on at that time.

\* \* \* \*

Q. Mr. Gibney, again referring to C-10, the chart, in 1974 Park Medical Laboratory received \$164,849 in Medicaid billing. Do you have knowledge of what Mr. Slotnick received out of that 164,000?

A. M.B.S. Sales received \$96,000. I believe he is the principal.

Q. And \$96,000, I think we decided in yesterday's hearing, represents somewhere around 59 per cent of \$164,000. Would your arrangement with Mr. Slotnick have been a 60/40 deal?

A. No.

Q. Did you ever discuss a percentage, 60 per cent—

A. No.

Q. —of Medicaid billings to him and 40 to you?

A. No.

\* \* \* \*

Q. You say that when you initially entered into the arrangement with Mr. Slotnick, he agreed to provide services to you for, quote, what would be a fair amount, I think was your testimony. Have you an opinion on whether, for instance \$4,586.42 for one week of services is a fair amount?

A. I was satisfied with the amount.

Q. Do you think it was fair?

A. I have no opinion as to whether it's fair or not. I was satisfied.

Q. On that final bill, again I'm referring to the invoice for 12/30/74, there is an asterisk at the bottom and after the asterisk it reads as follows: "Due to increased costs we must raise our fees for services. The increase will be reflected in your next bill." Did you have any discussion with Mr. Slotnick relevant to that footnote?

A. Yes, I did.

Q. And what did you say to him and what did he say to you?

A. I said I didn't want any increases, and I got a negative response. I don't know exactly what he said.

Q. Was the response essentially take it or leave it?

A. Essentially that.

\* \* \* \*

Q. And that essentially Mr. Slotnick is a middleman between the physicians and your lab; that is, he acquires business and brings it to you?

A. Yes.

Q. Without you, he cannot really do anything; he needs you or someone else that is certified?

A. Someone else or me.

Q. Right. So, essentially, he's a person that brings business into your lab?

A. Yes.

Q. *And he's been the cause of literally a geometric explosion in your business from 1973 up into 1974; is that correct?*

A. Yes.

Q. *And of the \$164,000 that you received in 1974, you were willing to pay him, as a salesman essentially, \$96,000 of that money?*

A. I didn't pay him, excuse me, as a salesman. He is a private businessman and he billed me for his services. I had no choice but to pay him or discontinue his services.

Q. *And you felt that by paying him there was still enough left for you to make the proposition worthwhile?*

A. Yes.

Q. *But do you feel in the public sense that \$96,000 of \$164,000 of Medicaid dollars is a fair amount to go to him?*

(Whereupon, the witness confers with counsel.)

A. I, I don't know what the term "fair" can mean in this instance. It was fair in the sense that if I didn't give it to him, I wouldn't have the business.

Q. *So it was fair to you as an individual?*

A. Yes.

Q. *But I'm talking in fairness to public funds. Do you think, as a professional man, that of \$164,000 of Medicaid dollars, that \$96,000 should be going to this man that is doing nothing more, really, than bringing the business to you?*

(Whereupon, the witness confers with counsel.)

A. I have no comment. I just don't know what, how to answer that question.

Q. *You would agree that your relationship with Mr. Slotnick is not really a bilateral relationship, is it?*

A. That's true.

Q. He comes in and gives you a bill and you either pay it or Mr. Slotnick is gone?

A. That's true.

\* \* \* \*

Q. Just a question or two. In your relationship with Mr. Slotnick, are you aware of Mr. Slotnick's arrangements with his clients?

A. No, I'm not.

Q. Did you ever ask how he was managing this explosion in your business?

A. Yes.

Q. And did he give you any explanation for it?

A. Yes.

Q. Did he tell you of his relationship with Dr. Greenspan?

A. Not in particular.

Q. Did he ever tell you that he was paying over \$7500 a year for rental space which he couldn't define?

A. No.

Q. Did he ever give you a breakdown of that \$7500 in terms of rental space or services?

A. I never knew of any rental space for services.

Q. When did you first hear about it?

A. I heard about it now. I wasn't at the hearings yesterday. I was upstairs.

Q. Is this the first time you are aware, then, that there is such an arrangement between Mr. Slotnick and his clients?

A. It is.

Mr. Slotnick at the opening of his testimony at the public hearing described himself as being an independent contractor who, under the firm name of M.B.S. Sales Co., Teaneck, provides "certain services" to laboratories and other different people in the medical field. The services, he said, involved marketing, sales and messenger.

However, Mr. Slotnick stated under questioning that as of 1974-75, Mr. Gibney's Park Medical was his only independent

clinical laboratory client and that his services principally were attempts to make sure that "accounts" with physicians referring Medicaid-funded test business to Park continued to do so. The services included renting of space in doctors' offices and supplying of sales personnel to some doctors.

Like Mr. Gibney, Mr. Slotnick denied splitting Park Medical's Medicaid reimbursements on a percentage basis, with 60 per cent going to Mr. Slotnick and Park's retaining 40 per cent. He did so even though he, like Mr. Gibney, was presented at the hearings with the fact that the \$96,000 paid by Park Medical to Mr. Slotnick in 1974 was on the order of 60 per cent of the \$164,000 in Medicaid reimbursements received by Park Medical during 1974.

Mr. Slotnick's charges for "services" were highlighted at the hearings by his being questioned about a \$5,248 bill he submitted to Park Medical for the week of November 18 through 23, 1974 and about his subsequently even raising his charges:

*Q. The total bill for services for that week is \$5,248; is that correct?*

*A. That's correct, sir.*

*Q. And that includes 37 hours of marketing service at \$100 per hour?*

*A. That's correct, sir.*

*Q. And \$750 a week for the messenger service?*

*A. Yes, sir.*

*Q. And 19 and one-half hours at \$40 an hour for the sales service?*

*A. Right, sir.*

*Q. And then there is a miscellaneous expense for \$18?*

*A. Okay, right, sir.*

*Q. Who conducts the sales service for M.B.S.?*

*A. Myself, my wife. I have several salesmen employed?*

*Q. You have several salesmen employed?*

*A. Yes, on commission.*

*Q. And who conducts the marketing service?*

*A. Basically, marketing is again myself and my wife, and I suppose that would be more—most of it. Salesmen do some, also.*

Q. Are the bills to Park Medical going to increase? Well, have they increased since 12/74?

A. 12/74. I believe because of increased costs that I incurred I raised my prices to Park Medical Laboratories. I can't tell.

Q. What are your prices now for marketing, for instance?

A. I believe it's \$150 an hour.

Q. \$150 an hour?

A. Yes, sir.

Q. And how about sales service; is that still \$40 or is that different?

A. I believe that's \$75 an hour. Or I believe.

Q. 75?

A. I believe so, yes.

Q. So that it was a thirty-five dollar raise?

A. Right, sir. I hired more drivers, so I increased my messenger service costs also.

Mr. Slotnick testified that as part of his marketing services on behalf of Park Medical, he leased space in the offices of two physicians whom he identified as a Dr. A. Suarez from Hoboken and a Dr. Bernard Greenspan from Paterson, and also in the Passaic Medical Center on which, he stated, he owned a lease. Mr. Slotnick stated he paid Dr. Greenspan \$750 per month for "rental and services" but examination showed the rental arrangement to be a vague one at best:

Q. How much do you pay Dr. Greenspan a month?

A. \$750.

Q. And is that broken down for rental and services in any manner?

A. Do I break it down personally?

Q. Yes.

A. And specify, no, I do not. I give him—

Q. Do you know whether or not he breaks it down?

A. I wouldn't know.

Q. Did you make any separate agreement on what the amount of the rent would be as opposed to what the amount of the services would be?

A. No, I did not.

*Q. What services does he perform for a portion of the \$750?*

A. Well, he performs: A. The blood is drawn; all the forms are filled out correctly; when they are returned, they are placed in the files correctly so that if anybody ever wants to see them, they are there, including the doctor; he makes sure that all my supplies are—I never run out of supplies; performs a variety of services.

*Q. Do you know whether he gets paid by Medicaid for drawing blood?*

A. I don't know any, you know, his arrangements with Medicaid.

\* \* \* \*

*Q. Who do you pay this \$750 a month to, by the way?*

A. I drop——what do you mean by “who”?

*Q. Do you pay it directly to Dr. Greenspan as an individual?*

A. No. I pay it to——

*Q. Do you pay it to Dr. Greenspan as a professional association, doctor of osteopathy?*

A. No, I do not.

*Q. Do you pay it to Bi-County Medicaid?*

A. That's the one I pay it to.

*Q. Is Bi-County Medicaid a corporation in which Dr. Greenspan is the sole stockholder, to your knowledge?*

A. I'm not cognizant of who owns Bi-County Medicaid.

*Q. Do you know where Bi-County Medicaid is?*

A. I assume it's on 85 Presidential Boulevard.

*Q. Do you know that it's next door adjacent to Bernard Greenspan, Dr. of Osteopathy, Professional Association?*

A. I don't. If that's not—I don't know where it is, then.

Q. Do you know whether the premises you rent are, in fact, located in Bi-County Medicaid?

A. Do—I don't know, no.

\* \* \* \*

Q. Do you have a verifiable space in Dr. Greenspan's premises?

A. I believe. Do I? Yes, sir. Your man—well, agents of this Commission went around and saw the space that I lease, yes, sir.

Q. All right. Would you tell me what the limits of the verifiable space are in Dr. Greenspan's premises?

A. Well, I can't say. What do you mean by that? Do you mean is it one 10 by 10? As I said to you, now, my specimens are in—I think he has four examining rooms. They're in those four examining rooms. I don't know where the girls fill out the paper work, if it's there or in the front.

Q. How many square feet of Dr. Greenspan's premises do you occupy?

A. Well, I'd say in all the rooms—you want me to throw out a number?

Q. I don't want you to throw out anything, Mr. Slotnick. I want a straight answer, if you can give one,——

A. I can't.

Q. —to a direct question.

A. You're saying how many space do my samples——

Q. How many square feet of space do you occupy in Dr. Greenspan's premises?

A. I can't give you an exact.

Q. Do you know the rate per square foot that you're paying for that occupancy?

A. Well, I'm not only paying for the occupancy, sir. No, I don't know.

Q. Do you know the breakdown between the square-foot rental and the service for which you claim you're paying?

A. No, sir.

Q. Do you have any attribution of cost for either one, that is rent as opposed to services?

A. No, I do not.

Q. You have no lease for the premises for which you say you are occupying?

A. No, sir. Dr. Greenspan and I are old friends.

Q. Do you know if you have a month-to-month tenancy?

A. I would assume that that would be it, you know.

Q. Is there any notice provision in your arrangement with him?

A. It's a handshake deal, Mr. Lucas.

Counsel and the Commissioners attempted at the hearings to have Mr. Slotnick delineate just exactly what he did in the marketing area for \$100 per hour and later for \$150 per hour for Park Medical:

Q. Well, marketing generally has a concept that has a defined limitation to it?

A. Right.

Q. Within the traditional concept of marketing, what do you do, and what does your wife do for \$100 an hour?

A. Well, we'll do—in other words, if there's any brochures.

Q. Have you done any brochures?

A. Well, I did one for Sy-Ed Laboratories.

Q. Now, you're charging Park. Now, what have you done for Park?

A. What brochures? I haven't done any, you know, illustrative color brochures, but I just—well, in other words, in the traditional concept of marketing that you're referring to where you can, many of these companies can get a big ad agency, and they will bill X dollars for marketing and illustrative brochures, I'm selling, the only thing, I won't say the only thing, the basic thing I sell or that I consider marketing once I have achieved a customer is good service and good work, and that's what I consider they're paying for.

\* \* \* \*

*Q. Have you done any written advertising for Park?*

A. I think they're too small. When you say, "written," you mean like advertising blurbs and things? Not really, sir.

*Q. Have you done any market research in the form of written submissions to Park?*

A. No, sir.

*Q. Have you ever done an analysis for Park as to improving its methodology?*

A. I think in the time I have been, I have worked with Park, in other words, offered them my services, I think I have only lost two or three accounts. So you say, "methodology." You're referring to the type of work. I think they do pretty good work and I think you can verify it.

*Q. Really, what marketing means to you is holding on to existing accounts?*

A. And getting them.

*Q. Getting them is sales?*

A. Yes, holding on, making sure they're happy with supplies, getting there if there is a problem. I say "getting there," I mean physically, me.

*Q. You felt that the professional service that you rendered warranted an increase in the \$100 an hour to \$150 an hour?*

A. Costs went up, sir.

*Q. And your wife, how many hours a week does she work in the marketing and sales?*

A. Maybe 10, 15. It's hard to say. I can't. I do most of it.

The Commission's investigation showed that still another independent clinical laboratory, North Hudson Clinical Laboratory, West New York, also had engaged in percentage type rebate payments to physicians referring Medicaid-funded test work to that laboratory. Robert Kupchak, who served as president of that laboratory, testified that North Hudson was founded for the specific purpose of serving some of the laboratory testing needs of the growing Hispanic community in the northern part of Hudson

County. In response to a Commission request, Mr. Kupchak had prepared a list of doctors from which North Hudson received test business, with a double asterisk signifying doctors who were referring substantial Medicaid business to North Hudson and receiving a 25 per cent "discount" payment back from North Hudson for "services rendered."

Those services, he testified, were principally for processing specimens in the doctors' offices. Mr. Kupchak was shown a series of checks (Exhibits Nos. C-83 to C-96) paid by North Hudson to twelve doctors, and he identified them as representing 25 per cent payments to those physicians. Under questioning, he identified the checks in relation to the various doctors:

A. (Continuing) C-87, Dr. Vega, again for services rendered, 1912.99; C-90, Dr. Orbegozo, 731.52; C-94, Dr. Perez, 921.12; C-91, Dr. Lacap, 1861.20; C-89, Dr. Silva, 740.36; C-92, Dr. Espina, 461.88; C-95, Dr. Perez, 2464.07; C-84, Dr. Builla, 2978.45; C-83, Dr. Escalante, 576.09; C-93, Dr. Silva, 513.78; Dr. Ramos, 718.38; C-88, William Visconti. This Exhibit C-88 is representative of rent payments we make for an authorized collection station.

\* \* \* \*

*Q. Do these checks include payments on the percentage agreement which these doctors—do these include payment for services rendered on Medicaid patients?*

A. They are for services rendered on patients.

*Q. Do the doctors represented by these checks process specimens to you where they were drawn from Medicaid patients?*

A. Yes.

Mr. Kupchak also produced a list of North Hudson employees, some of whom worked in physicians' offices. One such North Hudson-paid employee turned out to be the wife of a doctor:

*Q. And is one of those a person identified on that list as Carmen Sesin?*

A. Yes.

*Q. And what is the name of the doctor for whom she works?*

A. Felix Sesin.

Q. *Felix?*

A. Sesin.

Q. *Sesin. Okay. Now, to your knowledge, is Carmen Sesin related to Dr. Sesin?*

A. Yes. I believe that's his wife.

Q. *And this woman is on North Hudson's payroll; is that correct?*

A. Was on North—

Q. *Was?*

A. Excuse me. Was on North Hudson's payroll.

Q. *All right. At the time that she was working in Dr. Sesin's office was she ever on your payroll?*

A. Yes, she was.

Q. *And how many hours a week did she work for you while she was with Dr. Sesin?*

A. Estimating that out, I would say, the equivalent of Dr. Sesin's office hours.

Q. *And how much did you pay her?*

A. We were calculating that on a percentage of the work sent in.

Q. *On the work forwarded to North Hudson from Dr. Sesin's office?*

A. That's correct.

Q. *What was the function of Carmen Sesin, your employee, at the office of Dr. Sesin, her husband?*

A. Receptionist, clerical, assisting with patients, and that would be about it.

### ***A Kickback Is a Kickback***

By 1969 James Dimitrion had accumulated some ten years of experience in the clinical laboratory field by holding posts in various hospitals in New Jersey. As of that year, he was associated with Fair Lawn Hospital in Bergen County, as was the previously mentioned Dr. Rosario Tamburri, a pathologist. The two had a conversation in which they agreed to go into the independent clinical laboratory business. Accordingly, Mr. Dimitrion renovated the basement of his house, replete with a new entrance. That

fixed-up basement in the residence on Ackerman Drive\* then became the Fair Lawn Clinical and Cytology Laboratory, with Dr. Tamburri, according to his own testimony, serving as the figure-head Director of the laboratory and with Mr. Dimitrion actually running the laboratory and its fiscal affairs as Laboratory Supervisor.

The laboratory, as the S.C.I. investigation showed, was relatively small and largely unautomated and did indulge in some of the overbilling practices discussed previously in this report. By 1972 Fair Lawn was doing a modest amount—\$27,114—of Medicaid-funded test business. But, during 1973, that figure jumped to \$127,707 and during 1974 to \$253,855, with Fair Lawn, thereby becoming the highest recipient of Medicaid dollars of any of the New Jersey independent clinical laboratories for that latter year. Dr. Tamburri stated in his testimony at the public hearings that the reason for Fair Lawn's sudden rise to the top of the Medicaid-funds ladder was that in 1973 Fair Lawn retained Harry Hirshman\*\* of Wayne as the laboratory's middleman-salesman.

As will be brought out in more detail below, it was Mr. Hirshman who made the initial contacts with the medical groups and physicians with whom Mr. Dimitrion was subsequently to enter into arrangements for Fair Lawn's kicking back 25 to 35 per cent of the Medicaid-funded test business referred to Fair Lawn by those groups and individual practitioners.

When Mr. Dimitrion was first called as a witness during the investigation at a private session of the Commission, he invoked his Fifth Amendment privilege when questioned about the Fair Lawn laboratory's operations and fiscal affairs. He did likewise when called as a witness at the first of the three days of the public hearings in June, 1975. However, after the testimony at the public hearings had begun to be developed, Mr. Dimitrion through his attorney indicated to the Commission that he could be highly informative and specific as to his laboratory's kickback practices, if he were granted witness immunity for his testimony in that area.

The Commission after deliberation decided that the facts which could be placed on the public record by Mr. Dimitrion's testimony

\* The S.C.I. investigation revealed that the laboratory was operating in violation of the local zoning code which zoned the Ackerman Drive area as residential.

\*\* Mr. Dimitrion testified that he first became acquainted with not only Mr. Hirshman but also Seymour Slotnick when they were both associated with Scott Cord Laboratories and, at the same time, Mr. Dimitrion owned 1,500 shares of that laboratory, said shares purchased at \$1 each.

were of such significance and public import as to warrant a grant of immunity to overcome Mr. Dimitrion's Fifth Amendment invocations. Accordingly, the Commission approved a resolution conferring immunity on Mr. Dimitrion. After being interviewed at length by Commission Counsel during the morning of the third and last day of the public hearings, Mr. Dimitrion was called during the afternoon as the final witness at those hearings.

Mr. Dimitrion estimated in his testimony that by 1974, ninety per cent of Fair Lawn's business was received from four medical groups with which he had kickback type arrangements on Medicaid-funded test work. As the following testimonial excerpt indicates, Mr. Dimitrion had no problem with a kickback being called just that:

*Q. And did you have financial arrangements with these medical groups whereby Fair Lawn Laboratory would kick back or rebate certain of the portions of the moneys—*

*A. Yes.*

*Q. —which were paid by Medicaid to Fair Lawn?*

*A. Yes, sir.*

*Q. And in the general sense, what percentage was that kickback?*

*A. There were different arrangements made with each clinic or—*

*Q. In a general way, was it between twenty-five and thirty-five per cent for most of those groups?*

*A. I would say so, yes, sir.*

*Q. All right. How would you be able to add up the amount of work that each medical group gave you in order to come up with a percentage that you would kick back to the medical group?*

*A. We weren't so specific about it. We used to add up the claims at the end of each month on each doctor and then from there we proceed.*

*Q. And would you add up the claims by adding up the amounts of the claim forms that you received from the doctors?*

*A. No, the claim forms—actually, the money that we received from Medicaid.*

Q. I'm sorry. The claim forms would be put in by the laboratory?

A. Right.

Q. And you would add up those claim forms which had the doctor's name on them?

A. True.

Q. And then you would work on a percentage on that and rebate it back to the doctor?

A. Right.

Q. And that was done approximately every month, month and a half or two months, for instance?

A. Yes, sir.

One of the medical groups which, Mr. Dimitrion testified, had a kickback arrangement with Fair Lawn was the downtown Medical Group in Paterson. Mr. Dimitrion stated that Harry Hirschman told him to see a Virgil Argosino, who was a laboratory technician at that group and who was to represent Dr. Pablo Figueroa of the group, in order to obtain test business. Mr. Dimitrion subsequently met with Mr. Argosino on the porch of the medical group building in Paterson, and, according to Mr. Dimitrion, Mr. Argosino mentioned that the Fair Lawn laboratory could be given test work by the group, if Fair Lawn rebated on the Medicaid payments it received. A deal was struck, Mr. Dimitrion said, for Fair Lawn to pay Mr. Argosino \$150 per month. If any person were to inquire about the payments, the cover story to be used was that they were wages for the drawing of blood specimens at the medical group.

The \$150-per-month arrangement continued on an uninterrupted basis for some time until, according to Mr. Dimitrion, Mr. Argosino called Mr. Dimitrion and demanded a higher percentage payment. Mr. Dimitrion testified as follows about that incident, including his ultimately hearing that this medical group's business had been wooed away by Park Medical Laboratory through its marketing representative, Seymour Slotnick:

Q. Did there come a time towards the end of your relationship with Mr. Argosino that he called you?

A. Yes, he called me.

Q. And what did he seek in return from you at the time of that call?

A. Well, he asked me if I would raise up the price or otherwise I would have lost the account.

Q. *And did he mention a percentage of your gross income from Medicaid?*

A. Yes. He wanted 40-45 per cent, at least.

Q. *All right. This was only Medicaid work, is that correct, that was coming from Dr. Figueroa's office?*

A. That's right, very little cash work.

\* \* \* \*

Q. *And at the time he mentioned the 40 or 45 per cent of your gross Medicaid income, did you refuse that offer again?*

A. I refused that offer. He told me that he had another laboratory that would give him that amount. If I couldn't meet it, then he would have gone with that laboratory.

Q. *He said he had another laboratory that was all set to go into business with him?*

A. Yes, sir.

Q. *And they were willing to pay him the percentage that he had proposed to you?*

A. That's what he told me, if I wasn't coming out with it.

Q. *And he said if you could not meet that, then he was going to go with the other laboratory?*

A. Yes.

Q. *And did he mention the name of that other laboratory at the time?*

A. Yes, Park Medical Lab.

Q. *Did he mention a Mr. Slotnick's name in connection with Park Medical Laboratory?*

A. Yeah, he told me that Mr. Slotnick was there to see him and he was going to give him the money that he asked.

Q. *And you refused this offer again; is that right, Mr. Dimitrion?*

A. I sure did. Yes, I did.

Q. *And then did Mr. Argosino stop doing business with you, in fact?*

A. Yes, he did.

Mr. Dimitrion testified that the Paterson Medical group accounted for only about 10 to 15 per cent of the Medicaid-funded test-business referred to the Fair Lawn laboratory. Much more important to Fair Lawn's scheme of things, Mr. Dimitrion said, was the Broadway Health Group, a physicians group with offices in Newark. Mr. Dimitrion testified that some 50 per cent of the Medicaid-funded test business referred to Fair Lawn emanated from this group.

As in the previously discussed instance, it was Mr. Hirshman who once more made the initial contact with the medical group and arranged for communications between Mr. Dimitrion and a Mr. Halvorsen, said by Mr. Dimitrion to be the group's administrator. One of the discussions centered on a proposal that, at Fair Lawn's expense, several girls be placed at the medical group's offices to perform various services for the group, with the exact number of girls and their salaries keyed to the amount of Medicaid-funded test business referred to Fair Lawn by the group. Mr. Dimitrion testified further about the final arrangements for the kickback deal:

*Q. And did you agree on the number of girls at that time or not?*

*A. Yes, we did.*

*Q. And how many girls were agreed upon?*

*A. There were three girls on the payroll.*

\* \* \* \*

*Q. Well, who hired the girls?*

*A. They did.*

*Q. Did you have any control over the hiring of the girls?*

*A. No, I did not. I only met them occasionally when I was going down there to see how they were doing.*

*Q. How much did the first girl make? Did one of the girls make \$244 every two weeks?*

*A. Yes, sir.*

*Q. And did another one of the girls make \$180 every two weeks?*

*A. Yes, sir.*

*Q. And did the third girl make \$300 every two weeks?*

*A. Yes.*

Q. And that was a total of \$1450 per month, is that right, if you accept my mathematics?

A. Yes, I will accept it.

\* \* \* \*

Q. All right. If he had asked you for 25 per cent a month, for instance, for the work that he sent you, would you have given it back to him?

A. Yes, I would.

Q. So the girls were, in essence, an alternative to that arrangement; is that right?

A. Yes.

Q. And every time you provided girls to anyone, they were an alternative to a direct rebate or kick-back; is that right?

A. Right.

Q. And you said that they hired the girls. Did you have any supervision over the girls?

A. No, I did not, sir.

Mr. Dimitrion testified that this arrangement continued with the Broadway group during 1973 and until December, 1974 when Fair Lawn came under investigation by state authorities.

Mr. Hirshman was also instrumental in bringing the Newark Family Health Center, a medical group located on Newark Avenue in Jersey City, in contact with Mr. Dimitrion. At Mr. Hirshman's suggestion, Mr. Dimitrion, according to his testimony, met with Dr. Arthur Goldberg in the group's offices. Dr. Goldberg, Mr. Dimitrion stated, made it clear that Fair Lawn could have Medicaid-funded test work from the group, if Fair Lawn would agree to a rebate arrangement. The doctor, according to Mr. Dimitrion, had been approached by other independent clinical laboratories about possible similar arrangements and also was familiar with rebate deals of this type because of his association with a clinic in New York.

Under the final arrangement with the group, Mr. Dimitrion testified, Fair Lawn returned approximately 35 per cent of its gross Medicaid billings attributable to test business referred by the group by cash payments and paying the salary of a girl in the group's office. Mr. Dimitrion testified that under the agreement he made both cash payments and payments by check:

Q. All right. Now, with respect to the payments, what form were the payments in?

A. In money, green. Dollars, tens and twenties. I don't know. Whatever——

Q. Not check?

A. No.

Q. And how did you effectuate the payment? Did you go down to the medical group?

A. Yes, I did, went down the medical group.

Q. And you went into Dr. Goldberg's office; is that right?

A. Yes, Dr. Goldberg was there, yes.

\* \* \* \*

Q. And whatever it was, you would take currency out of your pocket and give it to Dr. Goldberg?

A. Yes, sir.

Q. And what did he do with it, to your knowledge?

A. I don't know, sir, what he did with it.

Q. Well, what would he do with it immediately?

A. Put it in his pocket I mean.

Q. Now, you say that you also had a girl in that office who was hired by them. How much did you pay her to start with?

A. \$120.

Q. All right. And did her term of employment continue at \$120 per week?

A. No, sir. They call me up. They told me I had to raise her salary to \$160.

Q. And why did they want you to raise her salary?

A. They claimed that she was working too hard drawing blood.

Q. She was going to leave, wasn't she, if she didn't get more money.

A. That's what they say.

Q. Did you agree to pay her 160 a week?

A. Yes, I did.

Q. And did you pay her by check?

A. Yes, I did.

Mr. Hirshman's salesman role for Fair Lawn also led him to introduce Mr. Dimitrion to a Pedro Rodriguez, identified by Mr. Dimitrion as the owner of Jersey Bio-Medics, a laboratory operating within the Downtown Medical Center, another medical group, located on Jersey Avenue in Jersey City. The laboratory, it turned out, had inadequate equipment for performing a wide variety of tests. Mr. Dimitrion testified that Mr. Rodriguez suggested that if Fair Lawn agreed to buy the laboratory for \$10,000 Mr. Rodriguez would steer the group's substantial Medicaid-funded test business to Fair Lawn. This proposition, Mr. Dimitrion stated, eventually became a working agreement whereby Fair Lawn made the \$10,000 purchase over a period of time by kicking back approximately 30 to 35 per cent of Medicaid reimbursements from the test business referred by the group.

When the time came that the \$10,000 had been paid in full, Mr. Dimitrion stopped sending payments to Mr. Rodriguez. This, according to Mr. Dimitrion, prompted a phone call from Mr. Rodriguez who demanded that Dimitrion pay \$100 per week for the salary of a girl employed at the medical group and also keep up a percentage kickback arrangement by remitting payments to a Mrs. Rivera, whom Mr. Dimitrion understood to be Mr. Rodriguez's mother-in-law. Mr. Dimitrion said he agreed to the demands and kept up the payments until December, 1974 when, as previously noted, Fair Lawn came under investigation.

Mr. Dimitrion testified that Mr. Hirshman brought in two other Medicaid business accounts from two individual physicians, a Dr. Inglesias with offices on Elizabeth Avenue in Elizabeth and a Dr. Zoila Cartoya with offices on 43rd Street in Union City. Mr. Dimitrion said that he never met with Dr. Inglesias but rather with Mrs. Inglesias and that, through her, an arrangement was struck whereby Fair Lawn payed back some 35 per cent of the Medicaid reimbursements generated by test business referred by Dr. Inglesias' office. Mrs. Inglesias, according to Mr. Dimitrion, eventually terminated the arrangement by calling him and stating that she was going to refer Medicaid-funded business to another laboratory which would give a higher percentage kickback. She did not name that laboratory.

It was Mr. Dimitrion's testimony that Dr. Cartoya asked for and eventually received from Fair Lawn some \$500 per month—\$200 for "rent" and \$75 per week for a girl who was drawing blood in the doctor's office—in return for Medicaid-funded business referred to Fair Lawn. Dr. Cartoya, according to Mr. Dimitrion,

eventually asked for an increase to \$85 per week for the girl's salary. He said he refused that request and lost the account.

### *The Competition Was Intense*

Mr. Dimitrion testified that competition to induce test business by kickbacks was intense. He stated that he secured the business of the West Side Medical Group in Jersey City by paying \$75 per week for a girl working in that office. Then the owner of that group one day informed Mr. Dimitrion that another laboratory, which turned out to be Park Medical, was willing to pay \$50 more per week for the girl's salary, and Fair Lawn lost this account, too. Mr. Dimitrion testified as follows about that loss:

*Q. All right. And how much more money did she want per week for the employee?*

*A. \$125.*

*Q. So she wanted \$50 more per week for the services of that employee?*

*A. Yes.*

*Q. And she told you, however, that she had another offer and she asked you if you could match it, is that right?*

*A. Right.*

*Q. Who was the other offer from?*

*A. Well, when I found out later, it was Park Medical Laboratory. Mr. Slotnick was that.*

*Q. And did you, in fact, lose that account?*

*A. Yes, we did.*

*Q. And did Mr. Slotnick, in fact, gain the account?*

*A. Pardon me?*

*Q. Did Mr. Slotnick—did Park Medical get that business?*

*A. Yes, sir.*

*Q. Was the lady's name at West Side Medical Center Ceil Partoa? Does that ring a bell?*

*A. Maybe that's her. Maybe.*

## *A Salesman's Testimony Is Coerced*

The previously mentioned Harry Hirshman of Wayne, salesman for Fair Lawn, was subpoenaed to appear before the Commission in private session during the latter stages of the independent clinical laboratory phase of the Medicaid investigation. At that initial appearance, he invoked his Fifth Amendment privilege when asked about his role as salesman for Fair Lawn. He subsequently was recalled at another private session of the Commission, at which time he was given a grant of witness immunity and ordered to give responsive answers to all questions. Mr. Hirshman, nonetheless, once more declined to answer the Commission's questions.

The Commission moved immediately and successfully in the Superior Court to have Mr. Hirshman judged to be in civil contempt and ordered by the Court to be incarcerated until such time as he purged himself of the contempt by testifying under the immunity grant. Mr. Hirshman then spent some 72 hours in the Mercer County Jail, said time coinciding for the most part with the Commission's three days of public hearings. Shortly after Mr. Dimitrion's public testimony at the hearings, Mr. Hirshman through his attorney notified the Court that he wished to purge himself of the contempt by testifying before the Commission. He was immediately released by the court on that promise to testify. Mr. Hirshman on July 3, 1976 did testify fully before the Commission at another private session. The Commission subsequently decided that Mr. Hirshman's testimony was of such substance and of such import to the full public record of the investigation as to warrant Commission approval of a resolution making the transcript of his private testimony a public-record document.

Essentially, Mr. Hirshman corroborated Mr. Dimitrion's testimony as to how Mr. Hirshman made the contracts which eventually led to Mr. Dimitrion's making kickback-payment arrangements to some medical groups and individual physicians who were referring Medicaid-funded test business to the Fair Lawn laboratory.

Additionally, Mr. Hirshman's testimony broke further ground in several areas. One area dated back to the time when he was a sales representative for the previously mentioned Scott Cord Laboratories and when the previously mentioned Seymour Slotnick was an officer of Scott Cord. It was Mr. Hirshman's testimony that he first solicited test business from the previously mentioned Downtown Medical Group in Jersey City on behalf of Scott Cord,

before doing likewise for Fair Lawn. Mr. Hirshman testified that, on behalf of Scott Cord, he and Mr. Slotnick met with the previously mentioned Pedro Rodriguez in a tavern in Jersey City and hammered out a deal whereby Scott Cord would kick back about 30 to 35 per cent of the test business referred by the group. The kickbacks were to be payed under the guise of the salary for a girl in the group's office and/or for the salary of a technician doing work at the group's offices. Like the subsequent arrangement with Fair Lawn, the money was not to be paid to the group but rather to Mr. Rodriguez, Jersey Bio-Medic Laboratory located at the same address as the group, according to Mr. Hirshman.

After leaving Scott Cord and before becoming associated with Fair Lawn, Mr. Hirshman did a stint as a salesman for another independent clinical laboratory known as North Jersey Bio-analytical. He said that laboratory had an arrangement to kick back 25 per cent of Medicaid-funded test business referred by some physicians. He also testified that the laboratory's operator, a Mr. Ramirez, was aware of the percentage and that he (Hirshman) solicited the accounts with the doctors and made the percentage kickback deals with them.

Additionally, Mr. Hirshman testified that he had a conversation with Mr. Dimitrion in which Mr. Dimitrion told of being threatened by two masked individuals who visited Mr. Dimitrion about June 21, 1975 as the start of the S.C.I.'s public hearings was at hand. Mr. Hirshman testified further:

*Q. Did he say whose interest these people had at heart?*

A. No.

*Q. He didn't know what account they were talking about?*

A. He told me there was a threat. I was with him one day. I believed him. He was very scared and upset. He said it was a threat on the whole family.

*Q. On his family?*

A. On both families.

*Q. Including your family?*

A. Yes.

*Q. They didn't mention a particular medical group or doctor?*

A. They just said watch how you speak Tuesday. He didn't tell me. He said there was a threat of life

if we talk when we go down Tuesday. This is how it was put to me, and I believed it to be sincere. That's why I didn't speak.

Q. Was there a threat prior to that?

A. Not to my knowledge.

### *The Excessive, Antiquated Fee Schedule*

The foregoing review of the costly, abusive practices of some of the independent clinical laboratories established conclusively that the maximum Medicaid reimbursement fee schedule for those laboratories was, at the time of the S.C.I.'s investigation, grossly over-generous. Without the welter of fat in that schedule, the laboratories could not have:

1) Marked up the cost of subcontracted tests several hundred per cent and collected the markups from Medicaid.

2) Paid more than 50 per cent of Medicaid reimbursements received for "marketing services" and still turned a profit.

3) Kicked back 25 to 35 per cent or more of Medicaid reimbursements to referring doctors and still turned a profit.

Quite naturally, therefore, the Commission's investigation dwelled at length on the full nature of this maximum reimbursement fee schedule, including its origins. This phase of the independent clinical laboratories probe showed clearly that New Jersey Medicaid, in the pell-mell rush toward making that new program operative in 1970, adopted summarily and in toto the Blue Shield 500 series fee schedule for clinical laboratory reimbursement as Medicaid's maximum for reimbursing independent clinical laboratories. If Medicaid officials then, as the S.C.I. did later, had paused to inquire about the Blue Shield 500 series, they would have found that that schedule in 1970 already was keyed to old, manual bench-test methods which were rapidly being replaced by more economical and productive test equipment of an automated nature.

This advancing technology was to continue to surge ahead in ensuing years. Yet, New Jersey Medicaid was never once to make any major evaluation of its horse-and-buggy era maximum fee

schedule until the S.C.I. during 1975 brought to the fore the schedule's excessive and outmoded nature.

The testimony of Dr. Jerome C. Rothgesser, Vice President and Medical Director of New Jersey Blue Shield, brought out at the public hearings the origin and nature of the 500 series and the fact that the series was adopted by New Jersey Medicaid without any consultation with Blue Shield. In the following testimonial excerpts, it is established that because Blue Shield places a maximum limit of \$25 per year, per patient on clinical laboratory test payments, Blue Shield has not felt itself under any extreme pressure to update the 500 series. Medicaid, on the other hand, has no such per year, per patient limitation. Dr. Rothgesser testified:

*Q. And was it before 1970 or after 1970 that that fee schedule was first adopted by Blue Shield?*

A. The laboratory fee schedule was adopted in the early sixties. It was adopted for use with the plans then Rider A which preceded Rider J. This was a fee schedule for physicians only. At that time there were practically no labs and even if there were any, we were not authorized to pay laboratories. Our enabling act included clinical laboratories at a later date.

*Q. But at any rate at sometime in the sixties there was a Blue Shield 500-575 fee schedule adopted?*

A. It was 500 in those days. No five—

*Q. It was just called 500?*

A. That's right.

*Q. Later on you got to 575?*

A. That's right.

*Q. Are you also aware in 1970 the State of New Jersey Medicaid system adopted, in effect, the Blue Shield 500 fee schedule—*

A. Yes, sir.

*Q. —for laboratories?*

A. Yes, sir.

*Q. And if we can draw your attention to 1970 and to that fee schedule that you have referred to, did the fees and procedures set forth in the fee schedule reflect the cost saving and cost cutting that flows from automated technology?*

A. No, sir. The fee was made for non-automated technique which was the basic technique available

when it was made, and it did not—was never reduced to include automated proceedings.

*Q. And that non-automated technique is sometimes referred to as the bench—*

A. Bench technique.

*Q. —technique. Meaning a manual—*

A. That's right.

*Q. —testing technique; is that right?*

A. That's correct.

*Q. So New Jersey's Blue Shield fee schedule in 1970 represented a bench-type of small laboratory operation?*

A. That is correct.

*Q. And, by the way, in 1970, did Blue Shield pursuant to its various contracts have an overall maximum per patient per annum limit?*

A. Yes, sir.

*Q. And that was in the sum of what?*

A. \$25 for all laboratory work and three specified clinical studies; EKG, basal metabolism and electroencephalogram.

\* \* \* \*

*Q. Did New Jersey, to your knowledge, in its Medicaid system take and use that twenty-five limitation, twenty-five-dollar-limitation?*

A. I don't believe so.

*Q. But yet it did take a fee schedule from Blue Shield that was not reflective of cost cutting in the industry from automation?*

A. Yes, sir.

\* \* \* \*

*Q. And in 1970 did anybody from Medicaid come on over to Blue Shield and say, hey, fellows, tell us a little bit about what went into your fee schedule and tell us where it's good and where it's bad and where maybe we ought to watch out?*

A. There was no contact between Medicaid and Blue Shield concerning the schedules.

COMMISSIONER FARLEY: Other than taking it?

THE WITNESS: Without our permission.

Dr. Joseph E. O'Brien, Laboratory Director for MetPath Inc., the large, highly automated laboratory previously referred to, told the Commission that adoption of the Blue Shield 500 series in 1970 by New Jersey Medicaid was, in effect, a victory for the small, unautomated laboratories, despite Dr. O'Brien's attempt to have Medicaid adopt a more economical fee schedule geared to automation already in effect at some laboratories. He testified about the formation by the state of a Technical Advisory Committee on the compensation of independent clinical laboratories under Medicaid and how that panel was dominated by representatives of the smaller, ma-and-pa type laboratory:

*Q. And did the committee have a meeting?*

A. The committee had a meeting in September of 1969.

*Q. All right. Doctor, let me show you what's been marked here as Exhibit C-11A. I call your attention to the third page of this exhibit. I ask you whether or not you can identify it for us.*

A. Yes. These are the minutes of the meeting which occurred in September, 1969.

*Q. Did these minutes show yourself to be present?*

A. They do.

*Q. Do you recognize any of the other names of the people present?*

A. Yes, I do.

*Q. What profession or occupation were they?*

A. My memory was that all of them were in one way or another associated with clinical laboratories providing clinical laboratory services.

*Q. Would these be small laboratories, large laboratories?*

A. They were small laboratories.

*Q. Not automated for the most part?*

A. For the most part, not automated.

*Q. What were the conditions of MetPath in 1969 or '70? Were they an automated facility then?*

A. We were an automated facility then.

*Q. Doctor, was one of the purposes of this committee to determine a fee schedule for Medicaid reimbursement to independent clinical laboratories?*

A. Yes. That was a topic of great interest at this meeting, how reimbursement would be accomplished.

*Q. Do you recall any of the discussions at this meeting, Doctor?*

A. I recall that there was general approval for the proposal that the then current Blue Shield fee schedule be accepted.

*Q. Is that the Blue Shield schedule, Doctor?*

A. The Blue Shield schedule, be accepted as the schedule for Medicaid payments.

*Q. Did you have any opinion as to whether or not the Blue Shield schedule should be adopted?*

A. I suggested that those fee schedules were antiquated, did not take into account the cost advantages inherent in automation that technology has made possible.

*Q. What was the response of the other gentlemen on the committee, if you can recall?*

A. I remember that it was generally hostile and that I was subjected to some verbal abuse at that point.

\* \* \* \*

*Q. Did you have any experience, factors in your possession, which would have indicated that the schedule as then proposed was, in fact, outvoted?*

A. Yes. I had our own fee schedule at that time and I knew what hospital charged and what other laboratories were charging.

*Q. Was there any attempt to project any savings based on the projected schedule which you had in your possession as opposed to that one which was being pushed at the time?*

A. I made no progress at all at that meeting.

*Q. Well, more particularly, Doctor, do you recall that you tried to project any savings gained which could be projected against a schedule based upon your*

*experience factor as against that which was being proposed which you call an antiquated schedule?*

A. Oh, yes. I said that that fee schedule would be much too expensive.

*Q. All right. And can you give us any figures about what you might have talked either in terms of gross dollars or percentages which might be saved by the adaptation or adopting of your schedule as opposed to that one which was ultimately adopted?*

A. I would say based on my experience it probably could have saved 50 per cent.

COMMISSIONER LUCAS: No other questions of the witness.

William J. Jones was acting Director of the New Jersey Medicaid during part of 1970 and later served as Director of the program from May, 1971 to January, 1975 when he left state employment. Mr. Jones, at the public hearings, identified a memorandum dated June 22, 1970 as having been written by him and signed by his then superior, a Mr. Hahn.\* That memorandum promulgated the Blue Shield 500 series as the maximum fee reimbursement schedule for independent clinical laboratories. Mr. Jones confirmed that the decision to adopt the series was hammered out at the previously mentioned Technical Advisory Committee meeting. Mr. Jones recalled that he may have attended the meeting in part, but he stressed that the session was held in Mr. Hahn's office.

During the course of his testimony, Mr. Jones stated that, at one point, a suggestion was made that the rates of Blue Shield 500 series be cut 30 per cent for use by New Jersey Medicaid. He testified not only that this 30 per cent cut idea was rejected but also that another suggested cut of 20 per cent also was discarded. The Commission questioned Mr. Jones closely on the rejection of the 20 per cent cut proposal because of the existence of a letter, dated May 9, 1970, from Silvio A. Polella, President of the New

\*The Mr. Hahn referred to by Mr. Jones is Edwin F. Hahn, Jr. who held the post of Director of the State Medicaid Division from March, 1969 to November, 1970. Mr. Hahn testified at a private hearing of the Commission that the pressure was intense to get all phases of the Medicaid program into operation by January, 1970 and that adoption of the 500 series fees for laboratories was probably a quick attempt at establishing some sort of feasible reimbursement schedule for the laboratories. He stated he left state government before any real experience data relative to the fee schedule had been received.

Jersey Association of Bioanalysts, to Dr. Henry A. Kaplan who was then in charge of the Laboratory Services Advisory Committee of the State Medicaid Division. The association then represented about 80 of the then 140 independent clinical laboratories in New Jersey. In the letter, Mr. Polella wrote that all the directors (of the independent clinical laboratories) who had been canvassed had agreed to go along with accepting 80 per cent of the 1965 Blue Shield 500 series fee rates. Mr. Jones testified:

*Q. So with reference to that maximum outside limit, was the Blue Shield outside limit adopted 100 per cent or 80 per cent?*

A. It was adopted as printed, which would have meant the outside limit would have been the 500 Series.

*Q. So, therefore, the suggestion or consensus of the independent lab association to take less than 80 per cent, was rejected?*

A. It was not accepted.

*Q. Yes, sir. Now, were you involved as director of the division in that decision making? Do you know what people said and what they thought about?*

A. As director of the division?

*Q. Yes.*

A. No, sir.

*Q. You weren't?*

A. No, sir.

*Q. Do you know who made that decision on your staff?*

A. It was the director at the time, Mr. Hahn,—

*Q. I see.*

A. —who had to finally approve it.

*Q. Yes.*

A. But there was a great deal of activity, a great deal of research being done, and there are circumstances that led up to that decision.

*Q. So you think it was a good decision?*

A. I think it was, yes, sir.

Mr. Jones at various intervals in his testimony advanced two principal arguments as existing in 1970 in favor of adopting the 500 series at the 100 per cent level. First, he repeatedly stated that the Medicaid regulations placed a primary requirement on the laboratories to charge their "customary prevailing" fees which could be lower than the maximum fee schedule. Secondly, he stated that a conscious decision was made to keep the fee schedule at a level where it would support a maximum number of existing laboratories, including the small, bench-test laboratories, to the end that the fullest possible extent and range of laboratory services would be available to Medicaid recipients.

But Mr. Jones had to concede under questioning that the "common and prevailing" fees charged by the laboratories, as could be anticipated, soon "mated" or became equal to the maximum fee schedule. And he also had to concede that the decision to promulgate a maximum fee schedule geared to small, unautomated laboratories represented a conscious rejection of the savings attainable through automation advances.

A spokesman for the independent clinical laboratory industry testified at the public hearings that New Jersey's maximum reimbursement fee schedule for the laboratories had most certainly become outmoded by automation in the industry. John A. Boffa, representing the Regional Government and Professional Relations Committee of the American Association of Bioanalysts and a past President of the New Jersey Association of Bioanalysts, said his organization represented about 75 of the independent clinical laboratories in New Jersey. Mr. Boffa called for a constant monitoring of the fee schedule to keep it in line with changes in the industry:

*Q. Are you familiar from your occupation and your work, and also your membership in these associations that you describe, with the maximum fee schedule for laboratory charges of the New Jersey Medicaid system?*

*A. Yes, I am.*

*Q. And, of course, are you aware of the Blue Shield fee schedules in operation for clinical laboratories?*

*A. Yes.*

*Q. Do you have any opinion or insight that you could give us with reference to the Medicaid maximum*

*fee schedule as to the need, if such there be, to add new procedures to the fee schedule or the manual of procedures for Medicaid, or to delete, take out, all procedures? Do you have any guidance or insight you can give us on that point?*

A. Yes. There are procedures that are listed on the schedule that are outmoded. This is recognized by authorities in the field. They're outmoded because they have been replaced by newer and more specific procedures. They are outmoded because the results obtained from them are equivocal results. There are new procedures that are coming into existence almost monthly, and these new procedures do not have price tags put on them currently as they come out.

I would suggest that there would be a committee, a standing committee, who would constantly review and revise the schedule in order to incorporate the new procedures, and delete any that are outmoded by the criterion of experts in the field.

*Q. And these so-called old procedures that you described that should be deleted, does the continued presence of those old procedures in the fee schedule mean that New Jersey is paying, perhaps, excessive prices for some antiquated procedures?*

A. That's correct.

*Q. And to your knowledge, with reference to your suggestion about a committee of experts, is there such a committee, to your knowledge, at present, that works on the—*

A. I'm not aware of an advisory committee that works on a particular basis with Medicaid.

*Q. Do you think that the fee schedule for Medicaid has kept up with new procedures and, also, new prices that could result from new procedures?*

A. Obviously, it has not.

*Q. And would some of those new prices perhaps be, if instituted, lower than—*

A. Possibly.

## *Suggestions for Improvements*

As noted in the introductory part of this section of the Commission's report of the Medicaid investigation, the New Jersey State Health Department's Division of Laboratories played a crucial role in assisting the S.C.I. both with technical expertise and extensive application of staff time in the probe of the independent clinical laboratories. This generous assistance was afforded the S.C.I. under the auspices of Dr. Martin Goldfield, Assistant State Health Commissioner who oversees the operations of the Division. It was quite natural, therefore, that the Commission first at private hearings and then at public hearings called on Dr. Goldfield to give his analysis of problem areas in the independent clinical laboratory field and his suggestions for curing those problems. Dr. Goldfield saw the third-party payment system, whether it be Blue Cross, an insurance company, or Medicaid, as the genesis of some of the ills of the system:

A. Well, if you give me some latitude, perhaps I can say that this is much more broad than government and its failures. Really, these problems that we are discussing today begin when third-party payment systems were introduced to begin with. They were largely introduced by insurance companies and by the Blue Crosses. These fee schedules were designed often with excessive representation by the individuals who were to be reimbursed. Hence, and the organizations were largely led by the providers who were going to be reimbursed by these systems. The fee schedules that were set up were very often quite inept with respect to getting a fair share of the moneys expended with respect to the interest of the individuals paying for the services. There were no quality control mechanisms that were built into it since any increases in costs generally led to nothing more than a demand for increasing fees to be paid by the public which was to be served.

Hence, we have seen burgeoning increases in such costs over many years.

The third-party system did many other things when it was introduced without real quality control mechanisms built in. For one, in the laboratory field specifically there has been fantastic technological de-

velopment, which has resulted in tremendous decreases in unit cost of performance of a variety of laboratory procedures; and, incidentally, not only in decreasing their cost, in increasing the precision with which they could be performed. These have never been reflected by third-party systems, whether they be government funded or funded in the private sector, and instead we have permitted the fee schedules to fail to reflect such advances and they have ended up by being counter-productive in perpetuating the existence and the funding of small, cost-inefficient laboratories who probably, if they were competing in a general marketplace without third-party payment systems having been developed, would have disappeared by now.

What we have done, then, is artificially kept them alive, and even worse than that, we have markedly encouraged their continual existence because by the nature of the third-party payment systems they have received in New Jersey a lion's share of the third-party dollar.

\* \* \* \*

A. Now, there is no accident in this, because so long as the ma-and-pa lab bill for these services and bill at very high costs, there was a huge profit generated if that laboratory did not in itself perform those services but instead utilized the services of a cost-efficient laboratory.

We have seen large cost-efficient laboratories buy up eight or ten ma-and-pa stations such as that in order to obtain the benefit of the very considerable fee that would result, which is thousands of per cent in many cases higher than their cost.

Now, this excessive profit at the small laboratory level has made it exceedingly desirable for laboratories to get work loads. They, in turn, have shared portions of this vastly excessive profit with physicians, for example, or nursing homes in many guises, either by direct rebates or by a variety of other mechanisms, and this in turn has encouraged a small but significant group of physicians to wildly order fantastic amounts of laboratory work on relatively small groups of patients.

Dr. Goldfield also called for a reduction in the reimbursement fee schedule for the laboratories and stated that, in his opinion, the quality of performance in the laboratories would not suffer from reducing the fee schedule. He cited the previously mentioned New Jersey Clinical Laboratory Improvement Act as a statute which would provide powers to guarantee maintenance of quality-of-services standards in the laboratories.

The doctor testified that he favored a system of awarding Medicaid test business on a regional, competitive bidding basis as at least a temporary way of curing some of the ills of the system:

A. There must be enough resource spent to document what we have been able to document for you with a small sampling and a very small resource. But this would have to be done on a broader scale; one, to uncover the discrepancies; two, to setting up new systems to reduce these abuses; and, three, to develop a climate of compliance in the State of New Jersey.

This is not easy. It requires an expenditure of resource that may be difficult to achieve. It is for this reason that I recommend that, at least temporarily, because I do not believe that it is a long-term solution to our overall medical care problems, but as a temporary solution, to clean the mess we have up I strongly suggested that we, too, in New Jersey place contract services on a regional basis by some bidding mechanism to be developed with the full understanding that the 2.2 million for Medicaid, that Medicaid expends for independent laboratory services represents so small a fraction of the total dollars that are spent for laboratory services in New Jersey that it could not in any way destroy those who are not funded with the exception of relatively few labs who have specialized in building up very extraordinary workloads with respect to Medicaid patients.

*Q. And are not those labs those which we have found to be the most abusive in the Medicaid?*

A. Well, let us say this; that we have not done a survey and have not here presented information on the laboratories that abuse the system most. It was a totally arbitrary decision that was made to go down

the line and examine laboratories merely on the basis of the amount of money reimbursed. Hence, it is possible that we have even more serious abuses down, further down the line.

We have not in any way found these to be the greatest abusers, but heaven help us if the patterns we have seen here exist throughout the entire system.

At the conclusion of Dr. Goldfield's testimony at the public hearings, the Chairman publicly expressed the Commission's gratitude to the doctor and his staff for the aid they had rendered the Commission.

Because New York City had had some untoward experiences in Medicaid, too, in the flow of Medicaid dollars to independent clinical laboratories, the Commission called as a witness at the public hearings Dr. Martin Paris, Deputy Director of the city's Medicaid Bureau. Dr. Paris testified that concern in New York over skyrocketing costs of Medicaid for tests performed by independent clinical laboratories had led to an analysis and reorganization in that area of the program. A principal finding of the analysis, he stated, was that 16 of the 280 licensed laboratories in the city were getting 70 per cent of total Medicaid billings from all the laboratories. As a result of the analysis, New York Medicaid decided to shift to a system of awarding test business to independent clinical laboratories on the basis of competitive bids from the laboratory on a regional plan based on the city's five boroughs.

The bids under the new system were to be awarded to the lowest aggregate bidder in each region. In addition, the successful bidding laboratories had to agree to be bound by certain performance and reporting criteria. Dr. Paris testified how the regional concept could produce huge savings:

*Q. Have you considered any other alternatives other than the regional lab?*

*A. That's minimum.*

Yeah, we considered the creation of one central laboratory, not four, and for a variety of public health reasons, and including the obvious one of centralizing on that kind of scale, we decided it would be better to set up one laboratory in each borough of New York City rather than one for the entire city. We also con-

sidered the possibility of just slashing the fees across the board because it was no secret to anyone that the fees were extraordinarily high and that the centralized labs that were already working in New York City, not that we had to create, but the laboratories that were already working in the city, were performing these tests that we were paying \$12 and \$15 for three to 400 per cent less.

We discounted that because we were at this point very high on the centralized laboratories system because of the patient profile, the utilization review primers that we could get, the increased quality controls because we were afraid just decreasing the tests, the reimbursement for the test would give us a savings for a year or two and then we would gradually increase because all one has to do if one is just interested in maximizing revenue is just slightly shift the proportion of tests. So instead of doing two tests, one does one expensive test and two inexpensive tests and you have absorbed the cost. And because instead of ordering two tests you order three tests, the cost would significantly increase once again. The beauty of a centralized laboratory system was there is an absolute maximum and we knew what the cost would be. You couldn't increase over that.

*Q. What about the effect of the centralized laboratory system in the small ma' and pa' labs, so to speak; any problem in that area?*

A. To be frank, that's the object of a lot of heated discussion in New York right now. There's no doubt about the fact that there would be an economic impact solely because we would not be paying for whatever tests they would be asked to do. It was our feeling that the economic impact would be deluded solely because seventy per cent of the money was going to sixteen laboratories already and that as a normal matter of business we would normally get phone calls from the laboratory saying, look, I just opened up a laboratory in this neighborhood and I can't get any business because it's all tied up by sixteen large laboratories. Can't you do something? This sort of thing.

We felt that we were trading off—we were preserving some—well, we were preserving freedom of choice, creating freedom of choice for the provider than a greater instance that existed now solely because it's competitive bidding and everybody has a chance, which doesn't exist now where the arrangements were kind of made more or less surreptitiously.

MR. DICKSON : No further questions, gentlemen.

The freedom-of-choice issue referred to by Dr. Paris has formed the basis for litigation to attempt to halt imposition of regional, competitive bidding systems for awarding Medicaid-funded test business. The Commission, however, agrees strongly with Dr. Paris and other advocates of those systems that there is no freedom of choice under the old system of work being farmed out to various laboratories for various reasons and that regional, competitive bidding of Medicaid awards to independent clinical laboratories represents a needed improvement and economy in the system.

## PROBLEMS OF SYSTEM INTEGRITY

The responsibility for insuring the integrity of all aspects of the Medicaid program in New Jersey, whether it be independent clinical laboratories or some other element of the system, rests primarily with the Director of the State Medicaid Division who, in turn, relies on the Division's surveillance and utilization-review functions to ride herd on system integrity on a day-to-day basis. The Division is empowered to issue and enforce the rules and regulations for proscribing and governing the operations of those health providers receiving reimbursement via Medicaid. Those rules and regulations are embodied principally in manuals relating to various phases of the Medicaid program, such as the previously mentioned manual applicable to the independent clinical laboratories.

The Division's enforcement tools for use, once a violation of regulations is discerned, vary from a letter of reprimand and warning to suspension of the offending health provider from the Medicaid program, recovery of Medicaid dollars improperly received, and reference to the Attorney General's Office for prosecution of possible criminal law violations.

The Division is also responsible for monitoring and insuring the integrity of the operations of the state's fiscal intermediaries, whether they be Blue Cross or the Prudential Insurance Company, which are used as New Jersey's agents for receiving Medicaid claims from various health providers and, with their computer capabilities and expertise, for checking and processing the claims and remitting appropriate payments to the providers. As will be seen in further discussion below, one of the areas of Medicaid for which Prudential acts as the fiscal intermediary is the independent clinical laboratories field.

Thus, the actual achievement and maintenance of system integrity for Medicaid payments has two key points—the pre-payment processing level at the fiscal intermediary under what should be the ever watchful eye of the State Medicaid Division and the post-payment level where the surveillance and utilization-review functions of the Division are responsible for detecting and disciplining various infractions by the health providers.

### *The Manual Had Deficiencies*

In reviewing the abuses of overbilling, false billing and kickbacks on earlier pages of this report, note was taken that the New Jersey Medicaid Manual applying to independent clinical laboratories, as that manual existed in the first half of 1975 when the S.C.I.'s probe of the laboratories was in progress, lacked sufficient specificity and tautness in its various rules and regulations to estop clearly and comprehensively such abusive practices. The S.C.I.'s investigation showed that from the promulgation of the original manual in 1970 until February, 1975\* when the S.C.I. probe was in full swing, no major, meaningful attempt had been made to improve the manual in light of experience gained in monitoring the independent clinical laboratories.

One major example of a deficiency in the manual was brought out at the public hearings through the testimony of Boniface (Ben) Damiano, Chief of the Medicaid Division's Bureau of Medical Care Surveillance. Mr. Damiano, who became Chief of that Bureau in 1970, testified that the unit had only six staff mem-

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\* Under the then newly appointed and now current Director of the Medicaid Division, Gerald J. Reilly, the first major revision of the Medicaid manual was undertaken during the winter of 1975. Mr. Reilly's testimony relative to that revision and how manual changes were made to attempt to cope with abuses as uncovered by the S.C.I. will be reviewed in a later section of this report.

bers as of 1972 and that that staff had been increased only recently to 17, including a part-time physician-consultant. Mr. Damiano stated that it was not until mid-1973 that the Bureau was able to bring any intensive surveillance effort to bear on the flow of Medicaid dollars to the independent clinical laboratories.

The staff, Mr. Damiano testified, quite promptly discovered the subcontracting and mammoth markup practices of some of the laboratories. He testified further as to the lack of specificity in the manual about this subcontracting practice and his superiors' doubts about having any authority to cope with the problem:

*Q. And that's what we referred to as subcontracting?*

A. Subcontracting.

*Q. Or referencing, depending on how pretty a label we want to put on it?*

A. Right. I know when this staff—when this particular problem was brought to my attention, I, of course, brought it to the attention of the division director and our staff.

\* \* \* \*

*Q. And you began to talk about that with your superiors as you learned about it?*

A. Yes.

*Q. Because it was something that troubled you?*

A. Right.

*Q. And did you discuss with them whether there was available in the manual at that time any regulation by which you could cut this business out or disallow some of this charging or subcontracting? Was that your concern?*

A. Well, there was nothing in the manual which addressed itself to one laboratory's sending work to another laboratory to be done. There was nothing in the manual at that point.

And the other point where it said that the laboratory cannot charge more than its usual and customary charges to practitioners for that same service to the Medicaid program, using that regulation we tried to perhaps reduce fees to laboratories, yes.

Q. With reference specifically to the subcontracting or referencing practice, was it your concern or interest to determine if the Bureau of Medical Care Surveillance could recapture any moneys when the wholesale price charged, let's say, was three-fifty and then the state was billed twelve-fifty? Was that an interest of yours at that time?

A. Most certainly it was, yes.

Q. And did you take that interest up with your superiors?

A. Yes.

\* \* \* \*

Q. And was it of concern to you to determine whether you had the power, pursuant to the manual, to recapture this kind of payment when three-fifty is the wholesale price and twelve-fifty is the retail?

A. Yeah, I thought, it was my opinion we did have the authority and the power.

Q. And in discussing it with your superiors, what conclusion did they give you?

A. Well, there was some question about whether or not the wording of the manual still specifically did give us the authority or not.

Q. So, therefore, there was a concern then as to the possible need for revision of that portion of the manual to make it clearer and more emphatic as to whether you could recapture that money?

A. There was much discussion about that, yes.

The discussion and talk remained just that until the winter of 1975 when, as footnoted previously, a major revision of the manual was undertaken by the present administration of the Division. Indeed, Mr. Damiano testified that Richard J. Gasior, who was with the State Medicaid Division from 1970 to 1974 and served under Mr. Damiano during 1973, made specific written suggestions\* to revise the Medicaid manual to cope better with the subcontracting and other problem areas and that those suggestions, which Mr. Damiano felt were good and valid, were never implemented. Mr. Gasior decided to submit his Medicaid manual

\* Mr. Gasior testified privately before the Commission about his suggestions, including a recommended 30 to 50 per cent reduction in the maximum fee reimbursement schedule for independent clinical laboratories.

revision suggestions to the State's suggestion agency which compensates state employees for generating novel ideas for improving state government. He subsequently was notified that his award request was being rejected by the agency because it had been told by Medicaid Division officials that his suggestions allegedly were not original and had been the subject of discussion within the Division. Mr. Damiano testified about being summoned to a meeting with the previously mentioned William J. Jones, then the Division Director, to discuss Mr. Gasior's suggestions for revising the manual:

*Q. You had a discussion with reference to the merits of Mr. Gasior getting compensated for suggestion?*

A. I think I can explain to you and then——

*Q. Go ahead.*

A. I was called into Mr. Jones's office and I was shown this document and the fact that it came through the Suggestion Award Committee, and I was asked if I knew who prepared it because it has no name on it. They delete the name. And I tried to say, "Well, it's anonymous. I don't know." But I really couldn't. I said, yes, I knew where it came from; it was Mr. Gasior.

And I think he was a little upset at the fact that—in fact, I try to quote him. He said, "Why is it that you allow a member of your staff, who is working in the laboratory area, as we all are now at this time, to submit a suggestion award on things that probably will be adopted or decided upon eventually, anyway?"

And I said that, well, I don't really know what the policy is, and if Mr. Gasior would develop and go out of his way to make a complete revision of the manual and put his own ideas in it and do it on his own time, I see nothing wrong with having him submit it in this fashion. And the total discussion evolved on the merits of whether he should have submitted this through the Suggestion Award route or was part of his job, and I took a hands-off policy and I said, "Well, this is how he did it."

*Q. Did you indicate that you thought there was merit in those proposed revisions?*

A. Yes, I did. Yes.

*Q. Were the proposed revisions ever adopted by the division in 1973 or 1974?*

*A. No, they weren't.*

*Q. Do you know of any good reason why they weren't adopted in 1973 or 1974?*

*A. I don't know of any good reason.*

*Q. What was the reason that was given, as you understand it?*

*A. Why were they—*

*Q. For not adopting them.*

*A. Oh, at the time of my discussion with Mr. Jones there was quite a bit of activity going on in the laboratory field at that point. This was in December of 1973, and we had a meeting with the laboratory association at the end of October of '73, and the laboratory association at that time promised that they would meet with us on a regular basis; they would help develop guidelines, rules, regulations for the program. So there was much activity going on, and I think that Mr. Jones felt that rather than take a suggestion as this he would wait to see what would be developed on all the total component parts that we're working on in the laboratory area.*

*Q. By "activity" you mean there was a lot of meetings and a lot of conferences?*

*A. There was a lot.*

### *The Need for Expertise*

Mr. Damiano stated in his testimony that when the Bureau of Surveillance began intensive analysis of the independent clinical laboratories field, the Bureau's personnel lacked the experience and expertise to fathom fully the technical data involved, including the descriptions of complex laboratory procedures. He testified that experience gained by 1974 was of some help to the Bureau in this area but that it was not until 1975, when, under the auspices of the previously mentioned Dr. Goldfield, the State Health Department personnel expert in clinical laboratory methodology and terminology rendered advice to Mr. Damiano's Bureau, that various billing irregularities and other failures and abuses by some of the laboratories could be pinpointed graphically and in full

detail. Mr. Damiano agreed that sufficient expertise is essential to maintaining system integrity both at the pre-payment and at the post-payment levels:

*Q. So, therefore, I gather it would be your opinion that it is very essential to the working of the Bureau of Medical Care Surveillance in the field of laboratory that you have input and guidance and assistance from those who have specialization and expertise in that field?*

A. Yes.

*Q. Do you think that kind of guidance and expertise is also important for the work of the Prudential staff?*

A. Yes.

*Q. To your knowledge, or do you know whether the Prudential staff has that kind of expertise available to it at present?*

A. I've been told that they do not have it.

As the following excerpts from the testimony of the previously mentioned Mr. Reilly indicate, he too, agreed with the proposition that sufficient technical expertise is vital to maintaining system integrity at both the pre- and post-payment levels:

*Q. Do you think there are areas in which the Prudential, which we have discussed in the several days of hearings, where the Prudential's performance might be improved and could be improved and have you been working with them to date?*

A. Certainly. I don't think there's any system that can't be improved, and I think that we have to have a constant dialogue with both of our intermediaries. We have to carefully watch them and we have to urge them to action once in awhile. It's—that's part of our responsibility. I think that in the area of laboratories it's quite clear that some technological expertise that gets down to the claim processing end of the business is necessary. That doesn't mean that a physician has to process claims, but it means that persons who know what they are looking for and can understand how one might disguise a claim and so forth

are looking at these things periodically. We have to provide—

\* \* \* \*

*Q. Now, sir, I thank you for helping us with those explanations. But before we conclude, I'd like to ask you for any other comments or insight or suggestions you might have. If you can help us with that.*

A. Well, I would think in some of these, I may have touched upon them earlier, but just for completeness sake, I think that the Health Department needs to be provided with sufficient resources to enable them to effectively enforce the new Clinical Laboratory Improvement Act, number one. Number two, I think that we have to place on staff, as we have in most of the other disciplines, pharmacy, dentistry, medicine, technical laboratory know-how. That is an absolute must. Number three, we must continue to work with Prudential to ensure that we correct any system flaws that may result in statistically significant errors. Number four, I think that we have to periodically review the effectiveness of our policies and systems including the revisions that we are discussing here today. I think we have to be as inventive as an unethical person might be who is attempting to exploit our system. The person who's bent on exploitation may also be one step ahead of us, but we can't permit them to be three steps ahead of us. We have to get most of it at the pass. And number five, I would like to comment on the fairness of the S.C.I. in dealing with the division on this issue and the painstaking detail that you have gone to in bringing these issues to the fore. I don't think there's any way that we could have, with the resources available to us, done a similar kind of in-depth review of several particular providers, and I think that I want the Commissioners to know that we are grateful for this thorough job that you have done.

### *Pre-Payment Processing Errors*

Because of the importance to system integrity of detecting and flagging billing improprieties and abuses at the pre-payment level,

the Commission, again with the expert assistance of personnel from the State Health Department's Division of Laboratories, principally in the person of the previously mentioned Mrs. Gerda Duffy, undertook an extensive analysis of aspects of the state's fiscal intermediary receiving, processing and paying claims from independent clinical laboratories—the Prudential Insurance Company. At the Commission's behest, Mrs. Duffy and some of her associates visited the Prudential's computer-processing center in Millville to familiarize themselves with that operation and also received and analyzed thousands of Medicaid payment claim forms which had been processed and paid by Prudential.

This extensive analysis indicated that, despite well developed and up-to-date clerical and computer systems to prevent errors which would lead to unjustified claim payments, numerous instances had occurred where there had been overpayment of some Medicaid claims submitted by some of the laboratories. For example, Mrs. Duffy testified at the public hearings to the following sample instances which she said were each indicative of more numerous or systematic instances which she discerned of overpayment by Prudential:

1. A laboratory's claim for a *Trichomonas* test for detecting the presence of a type of parasite in a specimen was miscoded by Prudential in a way that the computer approved a Medicaid-funded payment of \$5 for a screening culture process, when, in fact, this was a test consisting of microscopic examination of a smear and was compensable only at \$3 by the then existing Medicaid maximum fee schedule.

2. Another laboratory claim requested payment for a sequential or "fast blood" sugar test for which the Medicaid fee schedule allowed \$5 for the first blood sugar and \$3 for second, sequential blood sugar. Prudential, however, had miscoded the claim so as to treat this one sequential test as two separate tests and had paid \$5 for each test.

3. A third sample-instance laboratory claim requested payment for a triglyceride test at the rate of \$10. Yet, Prudential processed and paid the claim at the maximum Medicaid fee schedule of \$15.

Another area of error by the fiscal intermediary dealt with independent clinical laboratory claims involving test situations

where a specific claim charges over the Medicaid allowance for one procedure and under that allowance for another procedure. Unless the Prudential clerks handling this type of claim make a proper reduction in relation to both the over and the under approaches before putting the claim into the computer, the computer will end up overpaying an "ineligible" amount to a claimant laboratory.

Mrs. Duffy testified that her examination of 2,273 Medicaid claim forms from a sampling of the independent clinical laboratories for two-month periods during 1974, showed that "ineligibles" had been paid by Prudential in 519 instances in amounts ranging from 50 cents to \$11. Specifically she found thirty-three instances each involving 50-cent amounts, eighty-three each involving \$1, eleven each involving \$1.50, thirty-four each involving \$2, fifty-nine each involving \$2.50, twenty-two each involving \$3, five each involving \$3.50, fifty-three each involving \$5, seven each involving \$5.50, three each involving \$6, two each involving \$7, and one each at \$8 and \$11.

Mrs. Duffy testified she was at a loss to explain why these "ineligibles" were so consistently paid by Prudential, although she stated that it was her understanding that the Prudential clerks handling claims from the laboratories were hired by the company as high school graduates.

### *Prudential Officials Testify*

The decision by New Jersey and many other states to use firms active in the health insurance field and possessed of extensive computer capability as fiscal intermediaries in Medicaid has been based on the rationale that this was a more prudent and efficient course than the states' attempting to build up a similar level of experience and technical capability. In accord with that rationale, much emphasis has been placed by the insurance company intermediaries and by the State of New Jersey on keeping the cost of intermediary operations relative to numbers of Medicaid claims handled at as low a level as thought to be compatible with maintenance of a proper degree of system integrity.

The previously mentioned Gerald J. Reilly, the present Director of the Medicaid Division, testified that, on balance under the minimum cost rationale, Prudential had performed well in the fiscal intermediary field but that cost minimization should not be the sole standard adhered to:

*Q. Yes, sir. Now, Mr. Reilly, with reference to Prudential, there has been received, we have received testimony relevant to the quality of performance by Prudential as an intermediary and I'm sure you were here a short while ago when we received some comments as to whether it was a good idea even to use private companies, an intermediary, as opposed to perhaps having a government agency doing it. So, therefore, I think it's very relevant for this Commission to obtain your insight as the Commission attempts to make an evaluation as to the usefulness or not of intermediaries in general, and Prudential in particular, in the laboratory field.*

*I would like your comments on that.*

A. Well, I think that going back to 1969, 1970, the period in which those two decisions were made as to whether to do this in-house or do it out-of-house, I think if I could transport myself to those times and think those things those persons were thinking, it would appear reasonable to attempt to utilize the techniques and the processing techniques and skills of people who had experience in this business of processing millions of claims for hundreds of thousands of persons on a timely and efficient basis. And the decision was made to choose in New Jersey, after a bidding process, two intermediaries, Blue Cross—excuse me. Yeah, Blue Cross and Prudential.

I think, as I read the history of the program over those five years, on the balance, they have performed in an excellent manner and in a very cost-efficient manner. I think it was pointed out that perhaps that's an incorrect imperative for them to be responding to cost efficiencies. I think if it is, the governmental agencies who supervise them have to share in the blame for setting that perspective because I think we are constantly interested in cost, cost reduction and balancing the service to cost and quality.

I think, however, oftentimes the intermediaries will come to us with a proposal for major systems, enhancement for example, and they present it in terms of the cost and the benefits. What this will cost in front-end investment and what it will yield in results.

So I think it's fair to characterize us or the contractor as just pursuing the lowest cost to produce the widget no matter what and not looking at the consequences. I think that if we find an area where the application of additional resources would yield the better program, I think we ought to put them there. Unfortunately, we are in an acutely different budget situation and we are confronted with the possibility of curtailing the amount of resources that we can make available to the intermediary in the coming fiscal year. We might have to find different ways of doing this. There's just not sufficient funds to go around.

Thomas J. Beatty, Administrative General Manager in charge of Prudential's Government Health Programs Department, and James Long, Director of Claims in the same Department of Prudential, testified on behalf of the Company at the Commission's public hearings. Mr. Beatty stressed that Prudential saw its responsibilities in the Medicaid program to be the processing of the claims on a timely basis at the most reasonable cost the Company can achieve for the taxpayer of New Jersey. Mr. Beatty testified that it was the State's rather than Prudential's responsibility to develop the manuals of rules and regulations governing various phases of Medicaid, including the independent clinical laboratories, and to monitor the adequacy of fee reimbursement schedules:

*Q. Mr. Beatty, can you tell us what function Prudential plays, if any, in connection with the independent clinical laboratory manual? Anything?*

*A. Yes.*

*Q. What function?*

*A. Every three weeks a representative of our department meets with the division, and in that capacity we are providing recommendations for the entire Medicaid program. The director encourages the contractors to give their input, and we do it. Very frequently it will affect the manuals or other items of significance to the program in the State.*

*Q. All right. Now I'm going to read a part of the contract between the State of New Jersey and Prudential. I would like you to give me your opinion, if*

*you can, as to what it means to Prudential. This particular section deals with Article III, "Duties of the contractor." I guess it's subpart P. "Develop, revise as necessary and distribute appropriate instructional manuals, subject to the approval of the department, to eligible providers."*

A. Well, I have never seen our responsibility to develop these manuals. I have seen it to assist, advise and help, and certainly to print and distribute. The final responsibility with these manuals lies with the State.

Q. *All right. Mr. Beatty, can you tell us what responsibility, if any, Prudential has in connection with the maximum fees paid to independent clinical laboratories under the Medicaid program in New Jersey?*

A. We have none.

Q. *Is that the responsibility of the State to adopt fees?*

A. Yes, sir.

Q. *And monitor fees to see whether or not fees are reflective of conditions in the industry?*

A. Yes, sir.

Q. *In connection with that, Mr. Beatty or Mr. Long, can you tell me whether or not you are aware of any formalized efforts on the part of the Division of Medical Assistance and Health Services since Day 1 of the Medicaid program to review the fee schedule which is used as a maximum for Medicaid reimbursement?*

A. (By Mr. Beatty) For independent labs?

Q. Yes, sir.

A. (By Mr. Long) To review the fee schedule?

Q. Yes, sir.

A. (By Mr. Long) No, not to the best of my recollection.

Q. *Do you have any recollection, Mr. Beatty?*

A. No.

Mr. Beatty testified that four Prudential clerical personnel, who are girl graduates of high schools, had at the time of the hearings the responsibility of properly preparing claims from independent clinical laboratories for input into the computer and that the computer process had built into it various screening and check-point elements to attempt to insure the integrity and accuracy of the claims prior to payment. The girls preparing the Medicaid claims for input into the computer are classified by the company as coders. Mr. Beatty stated that such clerical personnel are normally recruited as high school graduates and, after a period of time for the company to evaluate their competence, they are sent to the company's training program for instruction in medical verbiage, anatomy, physiology and the techniques and requirements for accurate claim coding. Mr. Beatty, however, conceded that occasions do occur where the company does not send a coder through the training program but rather assigns the individual to actual coding operations on an on-the-job-training basis. Both Messrs. Beatty and Long testified that they did not know whether any of the four girls then serving as independent clinical laboratory claim coders had received the formal training program.

Messrs. Beatty and Long were questioned at some length about how the pre-payment processing level at Prudential might better detect some of the deceitful or "trick" billing practices of some of the laboratories, particularly the previously reviewed abuse of billing for the component parts of one test as if each component were a separate test, a practice sometimes referred to as "a la carte billing." A claim form from the previously mentioned Fair Lawn Laboratory for \$88 was used as reference point for much of the questioning in this area. Fair Lawn in that claim had billed for nine component parts of a SMA-12 blood chemistries test as separate tests and had been paid the \$88, when the maximum Medicaid fee for a SMA-12 was \$12.50 and the test had been subcontracted by Fair Lawn at a fraction of that amount. Mr. Beatty testified as follows:

*Q. Okay. How much did you pay in that particular instance on this particular claim, can you tell, for the laboratory services requested? Was it \$88?*

*A. Yes.*

*Q. The full amount requested?*

*A. Yes.*

Q. Well, didn't they put one over on you?

A. Yes.

Q. If you had a consultant on your staff on a part-time or full-time basis who were a little versed in laboratory procedures, do you think you might have been able to have caught that clean before it went through or before it was paid?

A. There is no doubt that we do need a lab consultant to catch this kind of billing. But, in my estimation, the primary cause of this kind of billing lies with the lab.

Q. All right. But what can Prudential do, now or in the future, to try to stop Fair Lawn, Park, some of the others that we have seen breaking down SMA-12's into components and billing?

A. Well, let me put it this way: that if a lab acquired an SMA-12 and continued to, for an extended period of time, bill on a component basis, then, in my judgment, that's deceitful billing.

Q. Okay. Do you know whether or not Fair Lawn at the time this claim was submitted had an SMA-12?

A. No, sir, I don't.

Q. You have to pretty much accept what they give you on faith, don't you?

A. Yes, sir.

COMMISSIONER FARLEY: But isn't that your function, to pick up deceitful billing? Forget about Fair Lawn.

MR. BEATTY: Yes. We try. This is a large program. We try to help the State, who has the primary job, for fraud detection and utilization control.

I mentioned, or maybe I didn't mention, but thus far this year we have processed almost 4 million Medicaid claims for \$120,000,000. The laboratory claims, and it's not an excuse, were a small portion of that.

Mr. Jones' testimony earlier, I sat there listening to it. You're trying to balance, cost quality

and service, and that's not excuse for what happened with Fair Lawn at all.

Messrs. Beatty and Long testified that, in their opinion proper administrative practice requires that a fiscal intermediary not get into the position of establishing control procedures which would be so costly that their expense would be more than the dollars saved by their institution. The Prudential officials agreed, however, that the facts disclosed about abusive billing practices by some of the laboratories signaled a cause for some improvements at the pre-payment processing level:

COMMISSIONER LUCAS: Let me ask you a question, Mr. Beatty.

MR. BEATTY: Surely.

COMMISSIONER LUCAS: And I hope you will appreciate the lack of sophistication. By your figures, you are processing, I take it, grossly 86,000 independent lab claims a year, okay? And I don't know what that amounts to in terms of dollar volume. But is there a philosophy, and you have been, I think, extremely candid with us up to this point, is there a philosophy in Prudential which says we can absorb a 1% or 2%, up to 5% writeoff for this kind of unfairness, this kind of cheating or this kind of collusion?

MR. BEATTY: No, there is not. That is not a philosophy at all.

I said earlier that our thought, our responsibility was to process these claims providing the best cost and service and quality we could provide.

COMMISSIONER LUCAS: Yes.

MR. BEATTY: What I have omitted is that we have not paid enough attention to what has happened in the volume in the independent lab area. We have in other areas.

BY MR. DICKSON:

*Q. All right. Mr. Beatty, taking your point, I think it is well taken that some of this is deceitful billing. But again addressing myself to what I*

*labeled the component-part problem, it's true, I think, you would agree, that the State can recover a good deal of these monies, but I'd suggest to you that perhaps the State might have to spend additional monies in order to do that, and I'm just wondering whether in an overall system we had to spend a little bit more, that might not be best spent at Prudential in having someone with laboratory knowledge assist in the screening of claims.*

A. I said much earlier, we definitely see the need for lab technician, and we definitely see that we have to pay more attention to the lab problem and revision of the manual.

COMMISSIONER FARLEY: Mr. Beatty, I just am a bit mixed up. You're not claiming that the deceitful billing is an exculpation of Prudential in its claim work. As I understand it, that's essentially one of your functions, to detect it. Now, if you don't detect it, that goes to the facts surrounding the case, right? But I mean, the fact that a deceitful bill has been submitted to you certainly is not an escape valve for paying it?

MR. BEATTY: That's correct.

COMMISSIONER FARLEY: I mean, the real issue is to how to detect the deceitful bills.

MR. BEATTY: That's correct.

COMMISSIONER FARLEY: And in that area, perhaps, with the knowledge that we're gaining out of these hearings, perhaps we can put in some procedures that would lessen that exposure.

MR. BEATTY: There are certainly some changes to the manual, some discussions that I have heard earlier, that will lessen that exposure in the laboratory area, yes.

COMMISSIONER LUCAS: From your viewpoint.

MR. BEATTY: Yes.

Mr. Beatty testified further that Prudential has been developing an on-line computer system which, he stated, will give the company important new capabilities in obtaining the history of both patient profiles and provider profiles to better detect patterns of abusive practices.

On the question of the "ineligible" amounts being overpaid by Prudential, as testified to previously by Mrs. Gerda Duffy, Mr. Beatty disclosed at the public hearings that Prudential had undertaken a systematic, random sampling of all independent clinical laboratory Medicaid claims from 1970 to mid-1975. The sampling process and technique, he stated, were reviewed for Prudential by a University of Delaware professor expert in statistics and computer science and involved selection and review of every 100th claim. Mr. Beatty testified that this random sampling showed that "clerical error" had resulted in about six per cent of the claims having been overpaid, a percentage factor which translated to approximately \$10,000 per year or about \$56,000 for the five-and-a-half-year period covered by the sampling.

The Commission questioned Mr. Beatty on the matter of why Mrs. Duffy's sampling of claims found more than twice as high a percentage of incidents of paying "ineligible" amounts than did the Prudential's sampling:

*Q. Mr. Beatty, I don't particularly want to put you on the spot. I want to protect a record that we have developed here. Yesterday Mrs. Duffy, an obviously competent, disinterested person in this field and with respect to this investigation, testified that she screened 2,273 claims with respect to laboratory work and found 519 basically clerical mistakes, not fraud.*

*Now, how can we reconcile—I concede that you're a statistician as to the Prudential and everything like that. But how do we reconcile testimony like that with your statements?*

A. The only thing I can conclude, Commissioner, is that the claims that were selected by the S.C.I. were for a two-month period and were for these laboratories that are the more unusual laboratories. Let me put it that way.

I assure you that the sample that we took was totally random and the selection method has been validated by a statistician, and the error rate and error amount is, and I'll quote from his letter, at ten per cent—ten per cent either way at ninety per cent comprehensive, ten per cent variable. That's the word.

*Q. So that leads us to the conclusion, then, that we have to look more to the profile of the particular lab and make our deductions or inductions from that.*

A. And there's time periods involved in this. I think periodicity is very much at work perhaps in the claims that were selected by the S.C.I. whereas we selected them over the entire five-and-a-half year period.

COMMISSIONER FARLEY: Thank you.

EXAMINATION BY THE CHAIRMAN:

*Q. Mr. Beatty, wouldn't it be true, just to follow up on that, that the explosion has been occurring in the recent years '74 and '75. That to spread the statistic back to 1970 when the incidences were very low would naturally tend to reduce the error factor or the error potential?*

A. I think not because on the systematic sampling basis when the explosion occurs you're getting more claims selected than you would, for example, in the year 1970.

*Q. You're still taking one out of a hundred.*

A. Yeah, but you have processed more, many more claims in '73-'74. So statistically you're going to have more claims in the sample for that time period.

Mr. Beatty testified that Prudential's operations had been reviewed and audited as many as eight times in recent years and had been validated by those reviews and also by comparisons with the error-occurrence rates in the Medicaid systems of some other states. During part of his testimony, Mr. Beatty was permitted to place on the record excerpts he had brought with him from reviews of Prudential operations by the Bureau of Health Administration and by the Social Security Administration and audits by the Arthur Young firm and by the Arthur Andersen firm. Mr. Beatty testified:

A. Mr. Dickson, could I make one statement. We have talked about errors where we have been exposed and now we're on an error that is a clerical error, and I want to assure you, gentlemen, that we watch our error rate and cost and service very closely, and,

in fact, in front of me I have a comparison of occurrence error rates for New Jersey, North Carolina and Georgia for the Medicare Program. This data is sent into the Social Security Administration where national averages are constructed. And I also have the same occurrence rate of error in New Jersey Medicaid, and the occurrence rate for the first quarter of '75 in Medicaid, by our own-in-house quality, was 4.1; in Medicare it was 4.5 and 4.2.

The point I'm making is that we have processed 8 million claims last year in these four locations and these pieces of paper, they're subject to human error, and we want to minimize them, but you can never eliminate them, and I don't care whether doctors approve the claims. In fact, the cost would be astronomical.

*Q. Again, just the precut or the process of having the girl look at the claim to see whether or not there is an ineligible involved, I suppose, is a fairly time-consuming process?*

A. It's an exposure and time consuming.

*Q. Costly?*

A. Yes.

*Q. Adds to your administrative costs?*

A. Yes. Mr. Dickson, I don't know whether it's appropriate or not, but we're on the age-old question of quality and cost and service, and I brought with me today a number of reviews that we have gone through and some excerpts from them, and if you would permit me, I would just like to read a couple of these quotes.

*Q. I would rather have you file them with the Commission as far as the record, if you like.*

A. Okay.

## FINAL RECOMMENDATIONS

### AN IMMEDIATE CORRECTIVE RESPONSE

After hearing and evaluating the testimony of the witnesses who appeared during the four days of public hearings, the Commission issued an adjournment statement which, on a preliminary basis, outlined reforms necessary to insure that the Medicaid laboratory program would function in the public interest. Many of these 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 prescribe the practice by which small laboratories subcontracted particular tests to large reference facilities then, in many instances, marked-up the cost by more than 300 per cent and reaped windfall profits at the taxpayer's expense. Steps were taken to make the manual explicitly prohibit the breakdown of automated component-part tests into separate ingredients 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 is currently being developed.

The Division has taken steps to insure that laboratories fully identify the procedures performed and for which payment is requested. In this regard, a requirement has been 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 has taken a hard line with respect to the flow of inducement type payments in any form whatever between laboratories and physician customers. The relevant Medicaid program rule reads as follows:

## 205. LABORATORY REBATES

205.1 Rebates by reference laboratories, service laboratories, physicians or other utilizers or providers of laboratory service are prohibited under the Medicaid program. This refers to rebates in the form of refunds, discounts or 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.

As the Commission pointed out in its adjournment statement, these financial relationships amount to an inherent conflict of interest in that the physicians have an inducement not to judge the quality and performance of the laboratories, but rather to send test business to the laboratory on the basis of personal financial gain.

The Division has very recently cured a glaring weakness by obtaining for its surveillance staff a person with expertise in clinical laboratory processes and procedures. 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 which appeared on the face of the claim sheet. They were also capable of making informed judgments as to the quality of care being provided to Medicaid patients by various laboratory facilities. We are pleased that the Division of Medical Assistance and Health Services now has similar capabilities of its own.

The Commission applauds the efforts so far taken by the Division which will go far in placing a halt to Medicaid program abuses documented by the Commission in its investigation. On a broader plane, the Commission recognizes that both the executive and legislative branches of state government deserve considerable credit for the reforms effected in the entire clinical laboratory industry by the enactment of the New Jersey Clinical Laboratory Improvement Act subsequent to a detailed Commission statement in support of the legislation. This statement called attention to instances of potentially dangerous poor performance and ineptness on the part of certain facilities in New Jersey, which were allowed to flourish due to a vacuum in state law.

## MORE MUST BE DONE

Notwithstanding the fact that considerable efforts already have been expended by the Division of Medical Assistance and Health Services and the legislature, more remains to be done to adequately protect the public interest.

The Commission is not aware of the promulgation of a standardized schedule of tests clearly defined as to component parts. We again recommend that the Division clearly indicate to participating laboratories that a given multi-component test shall include but not necessarily be limited to certain specified sub-parts. Tests not containing the prescribed elements should not be reimbursed at the same level as tests meeting the criteria.

To simplify investigative procedures for the surveillance unit and to further deter overutilization, physicians ordering the tests should be required to indicate the suspected or established diagnosis which substantiates the medical necessity for all of the tests ordered. Invoices which do not conform to the above procedure should be disallowed.

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.

In the adjournment statement, 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 as to impractical restrictions of federal law before several Congressional bodies. We again recommend that the State pursue the avenue of competitive bid to effectuate even further savings.

The Commission recommends that the Division take steps to ascertain the identity of the provider with which it deals. Disclosure should be required from providers and all having stock or equitable interest in a given facility. Providers should also fully disclose the nature and extent of any business relationships with other Medicaid program participants. Such information would be

helpful to surveillance personnel in identifying potential areas of abuse and keeping those who have been barred from direct program participation from indirectly receiving Medicaid moneys. This information should be updated periodically and penalties should be imposed for any false or misleading statements made by the providers.

The New Jersey Legislature must provide new statutory tools to deal with problems documented 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.

That Code reads in part:

. . . any rebate, refund, commission preference, patronage dividend, discount or other consideration, whether in the form of money or otherwise, as compensation of inducement for referring patients, clients or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom such patients, clients or customers are referred is unlawful.

The Commission further indicated in its adjournment statement that to simply recover money obtained by program providers through overbilling and false billing was an inadequate remedy. We advocated that the State be given the power to levy fines on labs engaging in those abusive practices as an additional deterrent factor. Moneys so recovered could be used to help defray the high costs of complex Medicaid fraud related investigations and to supplement decreasing State budget allocations for necessary health services for the poor. Such legislation is currently pending. Assembly Bill No. 1455 proposes to amend the State Medicaid law to provide for the recovery of civil penalties including interest payments on moneys inappropriately received, payment of a penalty amounting to no more than three times the amount of the moneys wrongfully paid, and payment of \$2,000 for each excessive claim submitted. The Commission strongly supports the concept

and substance of this measure and recommends its immediate adoption.

To facilitate the conduct of fraud related investigations resulting in monetary recoveries and fines, the Commission recommends that the Division's surveillance unit be increased to include accountants. These positions are necessary to give the Division the capability to monitor Medicaid program providers for financial abuse. In order to secure necessary financial data from suspect participants, the Division of Medical Assistance and Health Services should be given subpoena power. Presently, providers have a choice of showing documentation supportive of medical claims to Division staff or face suspension.

The most comprehensive legislative scheme, however, is only as effective in safeguarding the public interest as its enforcement procedures. The Commission lastly recommends that all State agencies having an interest in medical practice statutes generally, and Medicaid specifically, aggressively pursue those who would take untoward advantage of the public and private purse. With respect to the laboratory aspect of the Commission's investigation, cartons of documents and thousands of pages of transcript were turned over to State and Federal enforcement agencies in July of 1975. We hope and trust that the State Board of Medical Examiners, the State Division of Criminal Justice and the U.S. Attorney's Office are, within the ambit of their statutory powers, aggressively pursuing those who appear to have so flagrantly flaunted the public's interest.

**CHART SIX**  
**MEDICAID PAYMENTS TO**  
**CERTAIN INDEPENDENT CLINICAL LABORATORIES**  
**(1972-1975)**

	1972	1973	1974	1975 (Jan.-April)
Fair Lawn Clinical & Cytology Lab .....	\$27,114	\$127,707	\$253,855	\$39,650
Park Medical Laboratory .....	35,565	346	164,849	205,852
South Jersey Diagnostic Center .....		88,694	129,117	60,759
Ludlow Clinical Lab, Inc. ....		4,700	118,747	113,080
North Bergen Clinical Lab. ....	199	52,839	111,893	204
Laboratory Procedures .....	15,183	22,632	84,820	48,156
North Hudson Clinical Labs., Inc. ....			75,591	80,495
Paterson Diagnostic Center .....	38,982	147,574	62,027	
Roehe Clinical Lab .....	38,895	40,527	60,638	45,926
Elizabeth Bio-Chemical Lab .....	24,572	26,416	59,492	769
Center for Laboratory Medicine .....	12,302	30,389	53,253	33,313
Physicians Lab, Service Inc. ....	1,509	19,300	52,466	14,377

## CHART SEVEN

### MAXIMUM MEDICAID REIMBURSEMENT FOR CERTAIN LABORATORY TESTS

<i>Code</i>	<i>Name</i>	<i>Maximum Medicaid Reimbursement</i>
8628	Complete Blood Count, hemoglobin white cells, red cells and/or hematocrit, differential	\$5.00
8710	Protein Bound Iodine (PBI)	10.00
8719	SMA 12/60	12.50
8751	T-3	10.00
8752	T-4	10.00
8961	Pregnancy Test—Immunologic	7.50
8962	Pregnancy Test—Animal (rabbit or rat)	10.00
8652	Cholesterol, total	5.00
8654	Cholesterol, total and esters	7.00
8761	Triglycerides	15.00
8936	Urine Analysis (complete routine chemical and microscopic)	2.00
8722	Glucose (sugar) quantitative or 2-hour pp/3-hour pp	5.00
8675	Flocculation tests (Kline, Mazzini, each VDRL, etc.)	2.50
8476	Ova and parasites, concentrated method	2.50
8459	Culture with sensitivity studies, bacterial disc technique, up to 10 antibodies	15.00
8911	Cytological Study (Papinicolaou smear)	5.00
8745	Urea nitrogen (or N.P.N.)	5.00
8664	Creatinine or creatine	5.00

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

## INTRODUCTION

Beginning in 1974 and continuing into 1975, the Commission received a number of complaints about possible abuses and ripoffs of the pre-parole release programs of the New Jersey State Correctional System. The complaints came from a variety of sources both in public life and in the private-citizen sphere. In order to evaluate fully the complaints, the Commission found that its preliminary inquiries were extending in depth into standards and operations of the various programs—furloughs, work-releases, educational releases and community releases. By September, 1975, information gathered by the inquiries clearly indicated to the Commission that these basically worthy programs aimed at successful re-introduction of inmates to society had become riddled with weaknesses which led to exploitive abuses in contravention of the effectiveness and goals of the programs. 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 investigation included the examination of literally tons of records and other documents both in the Commission's offices and in the field. These records and documents included applications for entry into release programs, classification committee papers used in deciding on entries into the programs, monthly reports on 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, and the correspondence of various program coordinators and superintendents and business remittance records of inmates. 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 Institutions and Agencies.

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 question under oath inmates and other individuals in an intense and thorough manner which in numerous instances left witnesses with the option of either testifying fully or facing coercive contempt proceedings in the courts. As a result, the Commission at four days of public hearings in May, 1976, was able to present factually exploitations of the pre-parole release programs in the following areas: 5?

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.

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 programs. 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 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.

The Commission in its opening statement credited the State Institutions and Agencies Department with making meaningful efforts to correct deficiencies in the programs while the S.C.I.'s investigation was in progress. These efforts included restriction of the type of inmates eligible for releases, removal of inmate

clerks from certain sensitive procedures 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. However, the Commission stated that its investigation demonstrated 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.

## THE COMMISSION'S ADJOURNMENT STATEMENT

Since the transcripts of these public hearings were not available in time to edit them and codify them into a full review of these sessions, the adjournment statement made by Chairman Joseph H. Rodriguez on behalf of all the Commissioners is presented below in full as a way of partial review of the hearings and of presentation of the Commission's preliminary recommendations. A full review of this investigation will be included in a subsequent report by the Commission. Mr. Rodriguez's statement follows:

The five days of public hearings which we adjourn today most certainly justify an urgent call for prompt improvements of a fundamental nature in the pre-parole programs of the New Jersey prison system. We use the word "fundamental" because the cumulative factual record of these hearings demonstrates that a bandaid-here and a bandaid-there approach to treatment of abuses and exploitations of the program will neither succeed in insuring their effectiveness and integrity nor engender the public confidence they need and deserve.

Rather, in the Commission's opinion, the fundamentally worthy nature of pre-parole release programs must be re-emphasized. The Commission takes this opportunity to strongly emphasize the essential value and critical importance of the pre-parole release programs. With such re-emphasis as a goal and guide, specific and sufficient check and balance procedures and systems can be fashioned to present a more foolproof barrier to the various rip-offs of the programs as described in detail at these public hearings. The system must not, as it has in

the past, virtually invite abuse and exploitation. The system must in the future contain security, surveillance and double-check mechanisms which will defy defeat by the schemers and the con artists.

Certainly, additional non-inmate personnel, funded by additional dollars, will be needed to operate soundly improved programs. The testimony and other evidence disclosed at these hearings offers factually documented and compelling reasons for the legislative and executive branches to provide sufficient personnel-funding.

But important as that factor may be, the Commission considers even more important the institution of improved policies, procedures and systems along the lines reviewed on a preliminary basis later in this statement. While the same are being implemented, thereby providing a greatly improved measure of public-interest protection, the fight for additional funds and personnel can be carried forward.

The Commission discusses avenues of improvement in this adjournment statement on a preliminary basis, pending the preparation and issuance of a final report and recommendations on this investigation. However, the Commission believes the facts aired at these hearings and the preliminary recommendations set forth in this statement provide an adequate basis for taking prompt corrective actions.

The proposed improvements we now review fall into two major areas. Both are of equal importance to meaningful reform. The first major area of necessary reform is as follows:

The revision of procedures and systems to insure that all the records for all the inmates in all of the state correctional institutions are kept in a totally accurate, verified, up-to-date and secure basis so that those called on to make decisions on the basis of those records can rely on the integrity of the data before them. There must be absolutely no question that the records reaching the State Parole Board have been kept safe from any tampering, falsification or errone-

ous calculations by inmates or correctional system employees.

The second major area of necessary reform is as follows:

Rededication to the standard that pre-parole releases—whether they be furloughs, work release, or educational or community release—are privileges granted at the discretion of the state and are not an inalienable right and that each release will be granted on a thoroughly researched, evaluated and verified finding that it will contribute to the attainment of discernable and legitimate correctional goals. Pre-parole releases represent programs through which an inmate's alienation from family and community may be minimized. Additionally, performance on pre-parole releases, through gradual exposure to community life under proper safeguards and checks, should provide a realistic measure of the parole-release readiness of an inmate. The pre-parole release program will suffer from anemia, failure and public distrust if releases are granted simply because a certain time has come in service of sentence or because more bed space is needed, and if they are not carefully administered and evaluated.

To elaborate on the first major area, we suggest that the testimony at these hearings shows that merely removing the inmate clerks from the pre-parole release process and introducing some new forms and verification procedures do not constitute sufficient, fundamental reform to achieve ironclad confidence in the verity and integrity of the inmate records on which pre-parole and parole decisions are based. We heard testimony at these public hearings that inmate porters and wing runners can gain access to sensitive records. Additionally, we heard private testimony indicating that at Trenton State Prison inmates had a particular ploy for tampering with their files. An inmate at that institution who desired to review and purge his file would merely have to schedule

an appointment with the prison psychologist. The file would then be shipped for pre-conference review to the Psychology Department where an inmate departmental clerk, or the subject inmate, would obtain access to the inmate's file material.

The Commission recommends that the State Correction and Parole Division immediately initiate and enforce a policy 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. We endorse the good efforts already made to date to implement such a policy.

But the total integrity and reliability of the records cannot be assured solely by their isolation from the hands and eyes of inmates. For example, the testimony at these hearings indicated that the presence of the bogus Appellate Division opinion in an inmate's file and computations supposedly based on that phony document bore relation to the activities and contacts of a Correction and Parole Division employee. It is obvious, therefore, that there must be instituted forthwith a centralized record keeping system which is subject to the most sophisticated and thorough checking and verification and security procedures as can be devised by experts in that field and which is effectively executed by employees of assured integrity, assisted by an applicable computer technology.

The Commission specifically recommends that all records and other papers—or verified copies of those records and papers—relating to all inmates in the prison system be placed in a centralized file subject to maximum security precautions. The Commission during this investigation was dismayed to have to locate an inmate's file at several different locations in order to obtain information concerning furloughs, work releases and legal actions. The Commission recommends additionally that the central file contain chronological inventory sheets detailing documents placed in any inmate's file and the date when so

placed, and that authors of entries in any inmate's file in the central file be documented by the authors' signatures. The Commission was disturbed to find that entries concerning such crucial matters as time computations for parole consideration could be made anonymously. With anonymity, there can be little accountability.

The Commission also recommends that all persons having a valid reason to have access to the central files record their names and date of access on an appropriate ledger or card-like document. And, of course, 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.

Turning to the second major area summarized above, we emphasize again that no pre-parole releases should be granted unless the valid correctional goals of such release have first been determined and that the release be subject to proper checks, safeguards and evaluations. To that end, we recommend that, as a precedent to granting a furlough, the Classification Committee must find, or the Classification must agree with the finding of the furlough coordinator, that the purpose of the proposed furlough is legitimately consistent with basic furlough policies and will contribute to the attainment of correctional goals by being a positive force in the adjustment process of the inmate. The Commission suggests that the success of the decision-making of the Classification committees could be enhanced by including institutional parole officers in the decision-making process, since these officers possess important insights concerning inmates applying for pre-parole release.

The Commission strongly endorses the new policy of the Division of Correction and Parole to eliminate the practice whereby prison superintendents were allowed to exercise unfettered discretion to overturn the judgments of the respective Classification committees. The Commission heard testimony that the prior practice caused justifiable frustration and

understandable suspicion among the inmate population. Also, we strongly recommend re-examination of the practice of utilizing so-called "community release" programs to allow superintendents and others, often without adherence to any meaningful standards, to grant pre-parole release privileges to favored inmates who are unqualified for either work release or furlough.

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 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, however, that it is determined such release will facilitate the transition from penal institution to community life and, of course, consistent with various legal processes.

What we are stressing at this point is that furloughs, as well as other types of pre-parole releases, should be awarded under a system of clearly set forth rules which should be uniformly applied and administered. An inmate should on an objective basis either qualify under the rules or not qualify. The system should be immunized from the type of barter and influence peddling by specially favored inmates, a subject on which we heard extensive testimony at these hearings.

The Commission recommends further that requests for furloughs be required to be submitted three weeks in advance of the proposed effective date of the furlough so that the requests can be checked and evaluated as to their legitimacy, as to their consistency with basic furlough policies, and as to their potential contribution to the attainment of valid correctional goals. Prior to a furlough grant, the police in the locality to be visited by the inmate and the appropriate county prosecutor should be contacted. The purpose of this

contact would be to give notice that the inmate will be in the jurisdiction and to obtain any new information, the Classification Committee should have available when they consider whether to approve the furlough. In the event the police chief and/or the prosecutor indicate a belief the furlough is not appropriate in their opinion, the Classification Committee may still approve the furlough but that panel must then, in a memo to the inmate's file, document the rationale for so doing.

The Commission recommends additionally that to be eligible for a furlough, an inmate must have enjoyed full minimum custody status for 60 days and be within six months of a firm parole date. An exception to this rule could be made by 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 the prison psychiatrist or psychologist to determine his emotional reaction to the release, with a report of the conference being forwarded to the Parole Board. In order to provide for a gradual, well evaluated exposure to community life, the Commission recommends further that inmates initially be given a designated number of escorted furloughs in a finite time period before being deemed eligible for additional unescorted furloughs.

Candidates for furloughs shall have demonstrated a level of responsibility which will provide reasonable assurance that the offender will comply with furlough regulations and conditions. Candidates for furloughs also must 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.

The Commission also recommends that, prior to the granting of any furlough, the proposed furlough plan and purpose be verified as to its suitability and

legitimacy. The verification should include direct communication by Correction and Parole Division 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.

Additionally, the Commission recommends that, subsequent to each furlough and prior to the granting of any succeeding furlough, the success or lack of success 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. Copies of such evaluation should be made part of the inmate's file and forwarded to the Parole Board as a measure of the release readiness of the inmate.

Furthermore, the Commission recommends that a statutory requirement that an inmate be furloughed to a specific location be enforced by geographically limiting the furloughed inmate, as a condition of the furlough, to a specific location. Also, we recommend that there be established a night-hour curfew to be adhered to as a furlough condition. A furlough was never intended to be a license for an inmate to travel at will around the state and even across state lines at all hours of the night and day. There should be spot checks by Correction and Parole Division personnel to see that geographical, curfew and other furlough conditions are complied with. An inmate who fails to meet the conditions of his furlough should be subject to disciplinary action and loss of future furloughs, and serious abuses of the furlough privilege should by statute be made a criminal offense.

The testimony at these hearings clearly demonstrated that, without meaningful reforms, inmates on work release, sometimes with the connivance of their employers, can easily abuse and defeat the legitimate aims of this type of pre-parole release. To prevent further ripoffs of work releases, the Correction and Parole Division should initiate policies and procedures which emphasize more pre-release verification

of the legitimacy and usefulness of the employment situation, more employer responsibility and accountability, and increased spot-checking of inmates at their work release locations.

The Commission recommends specifically that prior to approving a work release for an inmate, Correction and Parole Division personnel thoroughly check out and evaluate the validity and usefulness of the employment situation and make a conscious determination that the particular work release opportunity will be of positive help to an inmate in reaching a legitimate correctional goal. This 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. If an employer's reputation is unknown or in any way in doubt, the Correction and Parole Division should ask for a State Police check on that employer. The Correction and Parole Division should also notify local police of a proposed work release to get additional information on potential employers and their other employees.

In order to fix employer responsibility, the Commission recommends that an employer provide to Correction and Parole Division officials, on a weekly basis and on pain of criminal penalty for giving wilfully false information, certification of the number of hours worked by the inmate and certification that the source of payment of the inmate for his work was the employer's business and that the employer was not reimbursed by the inmate or by another individual on the inmate's behalf.

We recommend further that the Correction and Parole Division require a work-release employer to sign a contract which would spell out the employer's supervisory obligations and which would stipulate that the contract could be canceled if the employer did not make appropriate records and other information available to Correction and Parole Division officials. We think this contractual obligation is in order, since employers can and do benefit from the use of work-release labor.

The Commission also recommends that work releases be authorized only for a normal eight-hour working day, plus travel time, unless the employer certifies, again with criminal penalty sanctions, that longer work hours are necessary for the proper conduct of the business. We know of no modern working conditions which would require work release from 6 a.m. to midnight on a seven-day-a-week basis.

We further recommend that Correction and Parole Division personnel physically check the work premises on an unannounced basis at least twice a month for all work release jobs to determine their continued validity and usefulness. And we recommend that the Division scrutinize and evaluate closely any work releases where an inmate is released to work for a relative or to conduct his own business.

The Commission recommends that, for educational and community releases, the Correction and Parole Division should, as in work release, initiate policies and procedures which emphasize greater pre-release verification of the legitimacy and usefulness of the release plan, greater assumption of responsibility for supervision of the released inmates, and more on-premises spot-checking to insure that inmates are adhering to the conditions and schedules of their releases. In instances of all educational releases, the Commission recommends that security personnel at the educational institutions at least be made aware by the Correctional and Parole Division of the presence of inmate pupils at the institutions and the inmate's schedules of hours of attendance and designated courses of study. We also recommend that it be mandatory for faculty members to record the attendance of inmates at their designated classrooms and courses.

The Commission has heard disturbing testimony about the traffic of narcotics and other contraband into the prisons. There must be instituted policies and procedures sufficient to make sure that the importation of contraband into the prisons is deterred by effective measures, including regular, systematic and mandatory searches of returning inmates, and aggres-

sive efforts to expose corrections personnel possibly involved in such importations. To insulate inmates participating in pre-parole release programs from the demands for contraband made by members of the general inmate population, ways and means must be found to separate the inmates participating in such programs from other inmates.

The Commission is also concerned by testimony at these hearings that prison officials at the middle-management level are left to make decisions as to whether pre-parole release violations and other possible offenses by inmates should be handled internally on an administrative basis, or brought to the attention of prosecutorial authorities. We recommend that there should be regular and sustained communication between Correction and Parole Division officials and the Attorney General's Office on the question of whether or not to prosecute offenses committed while on release or elsewhere. The prison system should be serviced by continuing legal input and should not just wait for a crime-of-the-century situation to consult with the Attorney General's Office.

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 overcrowding is a serious problem in the state correction system and is a constant pressure 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.

The Commission will make the records of this investigation and these hearings available to the State Parole Board, the State Department of Institutions and Agencies and the State Attorney General's Office for their judgments as to whether any further actions may be in order.

It is apparent to the Commission from these hearings that historically the New Jersey correctional system in its entirety has evolved with little overview or planning. To the contrary, the correctional system is operated on a day-to-day basis adjusting from one crisis to another. The present correctional system embraces the inter-relationship of various state and county agencies, including but not limited to, 21 county sheriffs, 21 county Probation Departments, a parole board, county jails and penitentiaries, the Department of Institutions and Agencies which operates the state prison system and the New Jersey Superior Court. It is quite evident that these interacting components have created a fragmentation within the correctional system which has resulted in a severe breakdown of effective communication, including guidelines, among the many agencies that in some manner relate to the correctional system. With respect to this problem, the Commission strongly urges that some form of a modernized master plan be prepared and evaluated 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.

## LEGISLATIVE RECOMMENDATIONS

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

### MANDATED STANDARDS FOR GREEN ACRES APPRAISALS

The Commission's investigation of the land purchasing practices of Middlesex County and the related appraisal review function of the State Green Acres Program, as reviewed on previous pages of this Annual Report, showed that the appraisers used by the County were not bound by any mandatory standards and guidelines in establishing appraisal values which would serve ultimately as a basis for grants of State Green Acres funds. The Commission recommends that this glaring weakness be corrected by enactment of a statutory requirement which would mandate that the administrators of the Green Acres Program promulgate binding and uniform rules and regulations for the maintenance of the highest standards in any appraisal work that is to be considered a factor in the granting of Green Acres funds.

The binding standards would apply to the selection of appraisers, the contents of appraisals submitted by appraisers, and the conduct of the post-appraisal review of the appraisals submitted. The criteria for and principal elements of such standards are discussed fully in the "Final Recommendations" section of the review of the Middlesex County-Green Acres investigation in this Annual Report. The standards promulgated by the administrators shall be binding for both Green Acres land acquired directly by the State and by application of the counties and municipalities for matching fund grants. The Commission believes that where the State has the power to grant money, it also should have the power to enforce standards used in key processes leading to the award of money.

### OUTLAWING FINANCIAL INDUCEMENT TYPE PAYMENTS

The Commission's investigation of independent clinical laboratories, as reviewed on previous pages of this Annual Report,

showed that some of the laboratories were kicking back to some doctors, either directly or under certain guises, a percentage of their Medicaid receipts to induce the doctors to send Medicaid-funded test business to the laboratories.

The Commission recommends statutory action to deter more effectively this type of improper and injurious use of funds. Specifically, a statute should be enacted to make the financial inducement type payments from the laboratories to the physicians—whether in private or government funded situations—a misdemeanor punishable by six months in imprisonment and/or a fine not exceeding \$500. The “Final Recommendations” section of the review of this investigation in this Annual Report suggests specific statutory language based on the California Business and Professional Code.

### **A STERNER BILLING ABUSE REMEDY**

The independent clinical laboratory investigation also uncovered the practice of some laboratories of bilking Medicaid by overbilling and false billing. The Commission recommends that the State be given the power to levy fines on laboratories engaging in those abusive practices as an additional deterrent factor. The Commission notes that legislation which would accomplish this recommendation is currently pending in the Legislature in the form of Assembly Bill Number 1455. The Commission urges enactment of this bill as a needed amendment to the State Medicaid law.

## COLLATERAL RESULTS FROM PREVIOUS INVESTIGATIONS

### LINDENWOLD OFFICIALS INDICTED

After holding public hearings in December, 1974 on corrupt and unethical practices related to land developments in the Borough of Lindenwold, 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, four times 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 further investigation which resulted in the indictments. Trial of the indictments was still pending when this Annual Report was published.

### 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 Smollok. The Commission heard testimony that Mr. Smollok made frequent purchases for the school through a middleman supplier who profited by grossly marking up the sales prices to the school above the prices he paid for the goods. It was the testimony of the middleman, Joseph Carrara, president of Caljo Construction Supply Co., Fairfield, that he paid kickbacks to Mr. Smollok in return for getting purchase contracts from the school. After referral of data from this probe to the State Criminal Justice Division, a State Grand Jury indicted Mr. Smollok on charges of taking nearly \$40,000 in kickbacks between 1968 and 1972. After trial in Superior Court, Essex County, in January, 1976, Mr. Smollok was convicted of nine counts of accepting bribes in connection with the \$40,000 in kickback payments. He has been sentenced to one to three years in state prison and fined \$9,000.

## **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.

## **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.

## **ATTORNEYS CHARGED IN FRAUD INDICTMENT**

The Commission's 1973 public hearings on abuses of the Workmen's Compensation included extensive testimony and supporting exhibits relative to the practice of the then Woodbridge law firm of Rabb and Zeitler of 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 that attorneys Richard J. Zeitler and William E. Rabb and their law firm's business

manager, Charles Haus, with conspiring with three doctors and others to submit false and fraudulent medical reports to insurance companies. Trial of the indictment was still pending when this Annual Report was published.

### **EX-JUDGE PENALIZED**

The same public hearings in 1973 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 stating that D'Auria's behavior was inherently wrong and that the constant accepting of free lunches "has a subtle, corruptive effect."

### **TAX COMPLAINTS AGAINST DOCTORS AND DENTISTS**

During the course of its investigation of Medicaid, the Commission Special Agents/Accountants discerned indications that a number of doctors and dentists were receiving substantial business income from Medicaid but might be failing to report the income under the New Jersey unincorporated business tax law. The S.C.I. staffers brought this investigative data to the attention of the State Division of Taxation which, working with State Deputy Attorney Generals, caused criminal complaints to be filed against 14 doctors and dentists and two partnerships for failure to file state unincorporated business tax returns on business income totaling \$2.7 million over a three-year period. Disposition of the complaints was still pending when this Annual Report went to press.

## 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, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation; and the commission may designate any of its members or any member of its staff to exercise any such powers;

d. Unless otherwise instructed by a resolution adopted by a majority of the members of the commission, every witness attending before the commission shall be examined privately and the commission shall not make public the particulars of such examination. The commission shall not have the power to take testimony

at a private hearing or at a public hearing unless at least 2 of its members are present at such hearing.

e. Witnesses summoned to appear before the commission shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the state.

If any person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, any judge of the superior court or of a county court or any municipal magistrate may, on proof by affidavit of service of the subpoena, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring him before the judge or magistrate, who is authorized to proceed against such person as for a contempt of court.

*52:9M-13. Powers and duties unaffected.* Nothing contained in sections 2 through 12 of this act [chapter] shall be construed to supersede, repeal or limit any power, duty or function of the governor or any department or agency of the state, or any political subdivision thereof, as prescribed or defined by law.

*52:9M-14. Request and receipt of assistance.* The commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by the state, or to which the state is a party, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

*52:9M-15. Disclosure forbidden; statements absolutely privileged.* Any person conducting or participating in any examination or investigation who shall disclose to any person other than the commission or an officer having the power to appoint one or more of the commissioners the name of any witness examined, or any information obtained or given upon such examination or investigation, except as directed by the governor or commission, shall be adjudged a disorderly person.

Any statement made by a member of the commission or an employee thereof relevant to any proceedings before or investigative activities of the commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander.

*52:9M-16. Impounding exhibits; action by superior court.* Upon the application of the commission, or a duly authorized member of its staff, the superior court or a judge thereof may impound any exhibit marked in evidence in any public or private hearing held in connection with an investigation conducted by the commission, and may order such exhibit to be retained by, or delivered to and placed in the custody of, the commission. When so impounded such exhibits shall not be taken from the custody of the commission, except upon further order of the court made upon 5 days' notice to the commission or upon its application or with its consent.

*52:9M-17. Immunity; order; notice; effect of immunity.* a. If, in the course of any investigation or hearing conducted by the commission pursuant to this act [chapter], a person refuses to answer a question or questions or produce evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the commission may order the person to answer the question or questions or produce the requested evidence and confer immunity as in this section provided. No order to answer or produce evidence with immunity shall be made except by resolution of a majority of all the members of the commission and after the attorney general and the appropriate county prosecutor shall have been given at least 24 hours written notice of the commission's intention to issue such order and afforded an opportunity to be heard in respect to any objections they or either of them may have to the granting of immunity.

b. If upon issuance of such an order, the person complies therewith, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that such person may nevertheless be prosecuted for any perjury committed in such answer or in producing such evidence, or for contempt for failing to give an answer or produce in accordance with the order of the commission; and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt.

*52:9M-18. Severability; effect of partial invalidity.* If any section, clause or portion of this act [chapter] shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and

no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

*52:9M-19.* There is hereby appropriated to the Commission the sum of \$400,000.

*52:9M-20.* This act shall take effect immediately and remain in effect until December 31, 1979.

## APPENDIX II

### MEMBERS OF THE COMMISSION

The Commission's activities 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. He succeeded John F. McCarthy, Jr., who had been Chairman since February, 1971 and a Commissioner since July, 1970. The other Commissioners as of July, 1976 were Thomas R. Farley, Stewart G. Pollock and Lewis B. Kaden. Charles L. Bertini left the Commission in June of 1976.

Mr. Rodriguez, of Cherry Hill, took his oath of office as Commissioner and Chairman in January, 1974. A graduate of LaSalle College and Rutgers University Law School, he was awarded an Honorary Doctor of Laws Degree by St. Peter's College in 1972. Mr. Rodriguez was a member of the Board of Directors of the Camden Housing Improvement Project during 1967-71. He was appointed to the State Board of Higher Education in 1971 and the next year was elected Chairman of that agency which oversees the operation and growth of the state colleges and university. Mr. Rodriguez resigned that Chairmanship to accept his appointment to the Commission. He is a partner in the law firm of Brown, Connery, Kulp, Willie, Purnell and Greene, in Camden.

Mr. Bertini, of Wood-Ridge, was sworn in as a Commissioner in January, 1969 following his appointment by former Governor Richard J. Hughes. A graduate of the former Dana College and the Rutgers University Law School, he was president of the New Jersey Bar Association when he was named to the Commission. Bloomfield (N.J.) College awarded him an honorary Doctor of Laws degree in 1970. Mr. Bertini conducts a general law practice in Wood-Ridge.

Mr. Farley, of West Orange, took his original oath of office as a Commissioner in March, 1973 following his appointment to the Commission by then Speaker of the State Assembly Thomas H. Kean. A graduate of the University of Notre Dame and Rutgers University Law School, Mr. Farley served as an Essex County Freeholder during 1968-70 and as Essex County Surrogate in 1971.

He has been an instructor in insurance finance courses at Rutgers University and St. Peter's College. His law firm, Farley and Rush, has offices in East Orange.

Mr. 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. 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 subpoena or other compulsory process.

(c) "Public hearing" means any hearing open to the public, or any hearing, or such part thereof, as to which testimony or other evidence is made available or disseminated to the public by the agency.

(d) "Private hearing" means any hearing other than a public hearing.

2. No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of this act, and a general statement of the subject of the investigation. A

copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the agency upon request therefor by the person summoned.

3. A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the agency shall ask the witness such of the questions as it may deem appropriate to its inquiry.

4. A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided the same is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

5. A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record of the investigatory proceeding.

6. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the agency or its counsel at such hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either to appear personally before the agency and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative at the option of the agency, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

7. Nothing in this act shall be construed to prevent an agency from granting to witnesses appearing before it, or to persons who

claim to be adversely affected by testimony or other evidence adduced before it, such further rights and privileges as it may determine.

8. Except in the course of subsequent hearing which is open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview conducted before a single-member agency in the course of its investigation shall be disseminated or made available to the public by said agency, its counsel or employees without the approval of the head of the agency. Except in the course of a subsequent hearing open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview before a committee or other multi-member investigating agency shall be disseminated or made available to the public by any member of the agency, its counsel or employees, except with the approval of a majority of the members of such agency. Any person who violates the provisions of this subdivision shall be adjudged a disorderly person.

9. No temporary State commission having more than 2 members shall have the power to take testimony at a public or private hearing unless at least 2 of its members are present at such hearing.

10. Nothing in this act shall be construed to affect, diminish or impair the right, under any other provision of law, rule or custom, of any member or group of members of a committee or other multi-member investigating agency to file a statement or statements of minority views to accompany and be released with or subsequent to the report of the committee or agency.

