

**REPORT ON INVESTIGATION  
OF THE OFFICE OF THE  
ATTORNEY GENERAL OF  
NEW JERSEY\***



**A Report by  
The New Jersey State  
Commission of Investigation  
January, 1973**

**\*Including Appendix of Volumes I, II and III**





**Chairman**

**JOHN P. McCARTHY, JR.**  
Chairman

**CHARLES L. BURTEN**

**WILFRED P. DIANA**

**STATE OF NEW JERSEY**  
**COMMISSION OF INVESTIGATION**

28 WEST STATE STREET  
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January 24, 1973

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Executive Director

**COUNSEL**

**B. DENNIS O'CONNOR**  
**CHARLES D. BARNHART**

**PETER CARTER**  
Executive Assistant

Honorable George F. Kugler, Jr.  
Attorney General of the State of New Jersey  
State House Annex  
Trenton, New Jersey

Dear General Kugler:

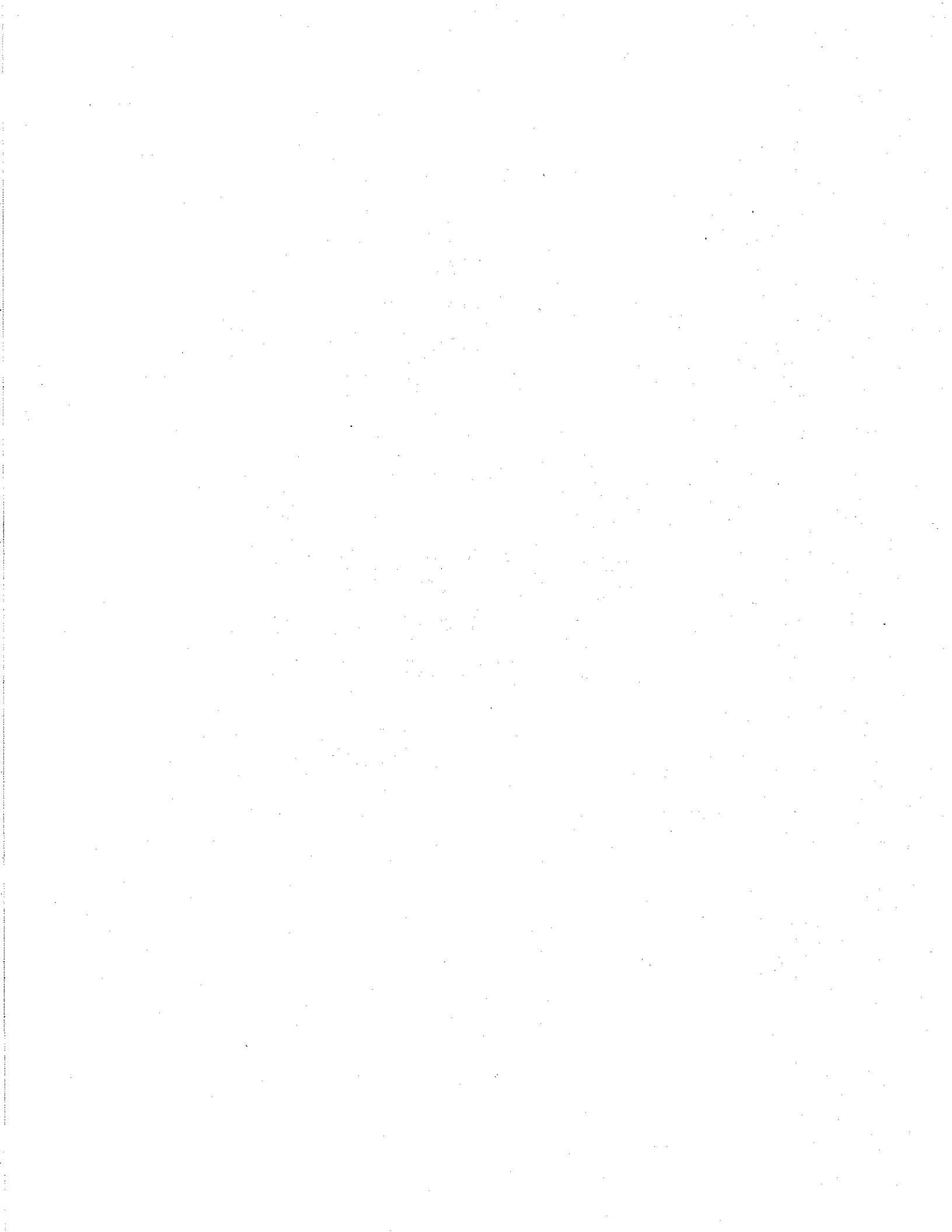
On August 1, 1972, pursuant to N.J.S.A. 52:9M-4, you made written request that this Commission conduct an investigation of your office relative "to certain allegations surrounding the handling of the Sherwin matter." Accordingly the Commission promptly conducted such investigation.

We transmit to you herewith by hand a copy of our Public Report. This report includes the entire testimony of all 22 witnesses testifying at our hearings, plus all exhibits marked for introduction. It is forwarded in accordance with N.J.S.A. 52:97-10 and 11. Copies of this report are also being delivered to the Governor, the members of the Legislature and the news media.

Sincerely yours,

**JOHN P. MC CARTHY, JR.**  
CHAIRMAN

JFM:dfc





COMMISSIONER  
 JOHN F. MCCARTHY, JR.  
 Chairman  
 CHARLES BOSTON  
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January 24, 1973

Honorable John L. Miller  
 Chairman, Senate Committee on Law,  
 Public Safety and Defense  
 State House  
 Trenton, New Jersey

Dear Senator Miller:

On August 2, 1972 the Senate Committee on Law, Public Safety and Defense apprised the public that it determined that the State Commission of Investigation was the appropriate bi-partisan agency to conduct a thorough investigation into "certain allegations surrounding the handling of the Sherwin matter" by the office of the Attorney General of the State of New Jersey. On August 3, 1972 then Senator, now Congressman Matthew J. Rinaldo, Chairman of that Committee, by letter advised this Commission of that determination and requested that we keep your Committee informed of the investigation's progress.

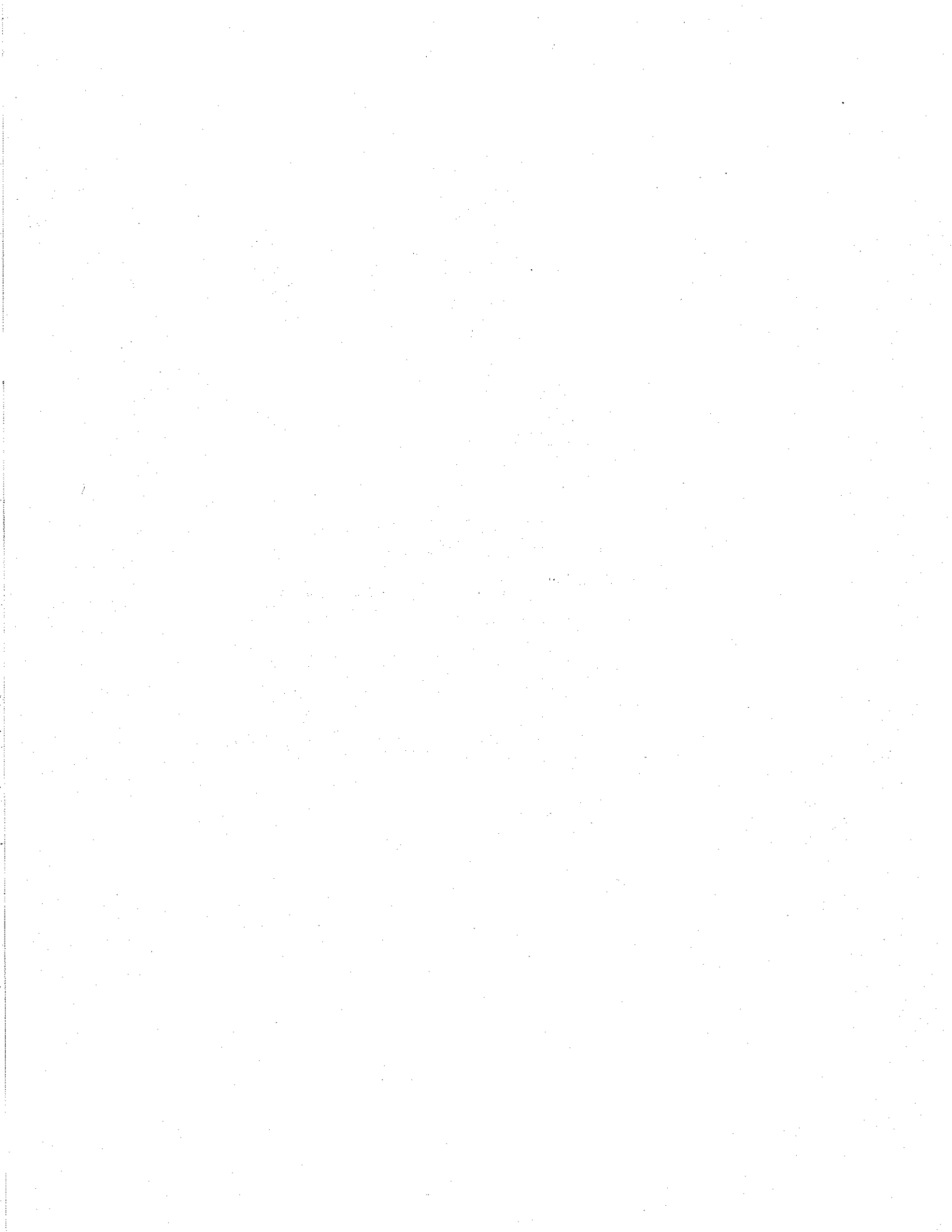
By Resolution dated January 24, 1973, this Commission unanimously decided to issue a public report, said report to include all exhibits marked for introduction at the hearings and all testimony of every witness who appeared before the Commission. We deliver to you and all members of the Legislature copies of that report.

We trust this detailed report of this extensive investigation fulfills your Committee's desire that there be a full and thorough examination of this matter and that your Committee be fully informed thereof.

Sincerely yours,

*John F. McCarthy, Jr.*  
 JOHN F. MC CARTHY, JR.  
 CHAIRMAN

JFM:dfc



**STATE OF NEW JERSEY  
COMMISSION OF INVESTIGATION**

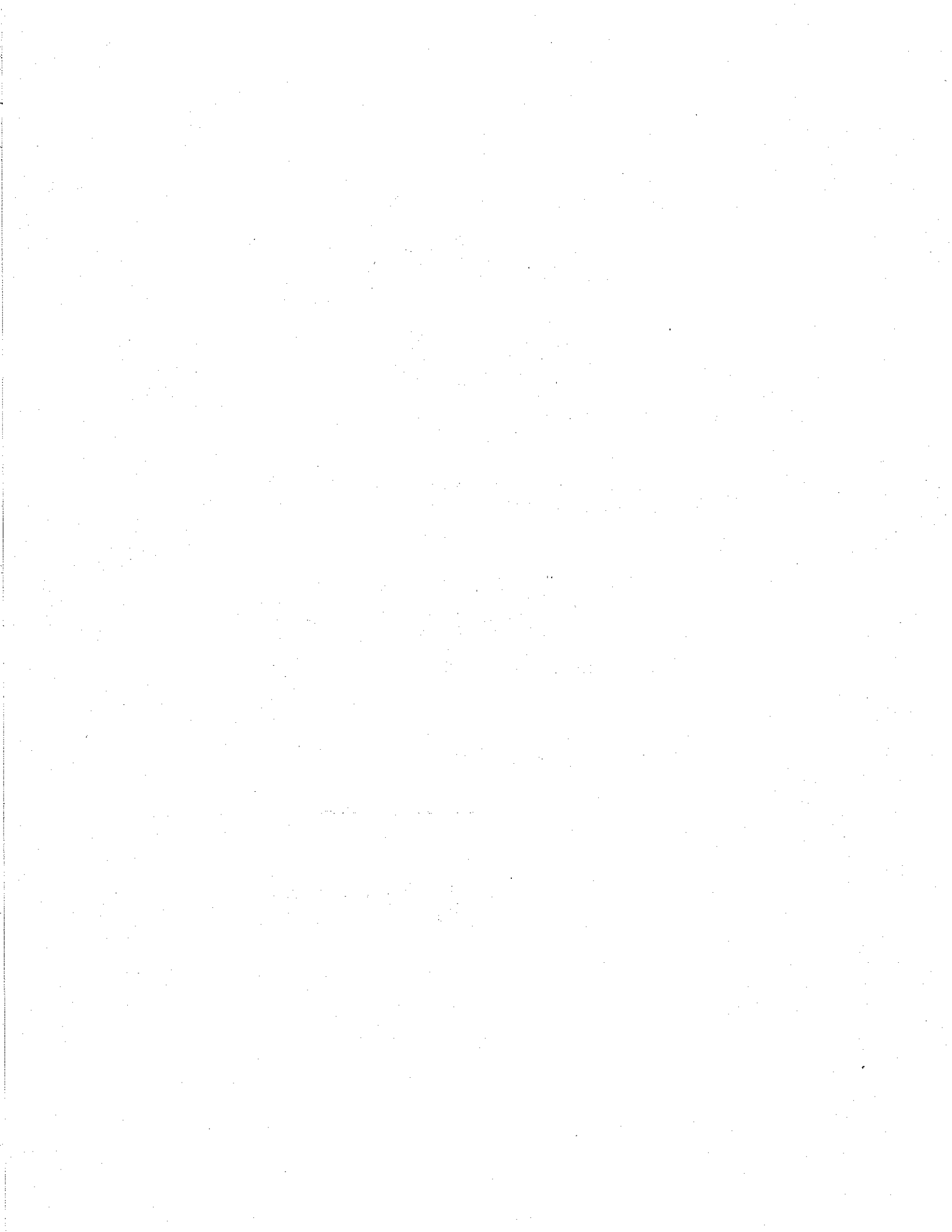
**28 West State Street  
Trenton, N. J. 08608  
Telephone (609) 292-6767**

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

**Pursuant to Section 10 of P.L. 1968, Chapter 266  
(N.J.S.A. 52:9M-10), the Act establishing the New  
Jersey State Commission of Investigation, this Com-  
mission is pleased to submit this Public Report relative  
to its investigation of the Office of the Attorney General  
of New Jersey.**

**Respectfully submitted,**

**JOHN F. MC CARTHY, JR.  
CHAIRMAN**





## RESOLUTION

WHEREAS, the Attorney General of New Jersey in a letter to this Commission dated August 1, 1972 invoked the provisions of N.J.S.A. 52:9M-4, requesting a thorough and complete investigation of the office of the Attorney General relative to certain allegations surrounding that office's handling of what has commonly been referred to as the "Sherwin Matter"; and

WHEREAS, the Senate Committee on Law, Public Safety and Defense, by letter to this Commission dated August 3, 1972 advised this Commission that on August 2, 1972 it determined this Commission to be the appropriate bi-partisan agency to conduct said investigation; and

WHEREAS it was incumbent upon this Commission to proceed with dispatch but in such a manner so as to safeguard the right of a fair trial in the then-pending "Sherwin conspiracy trial"; and

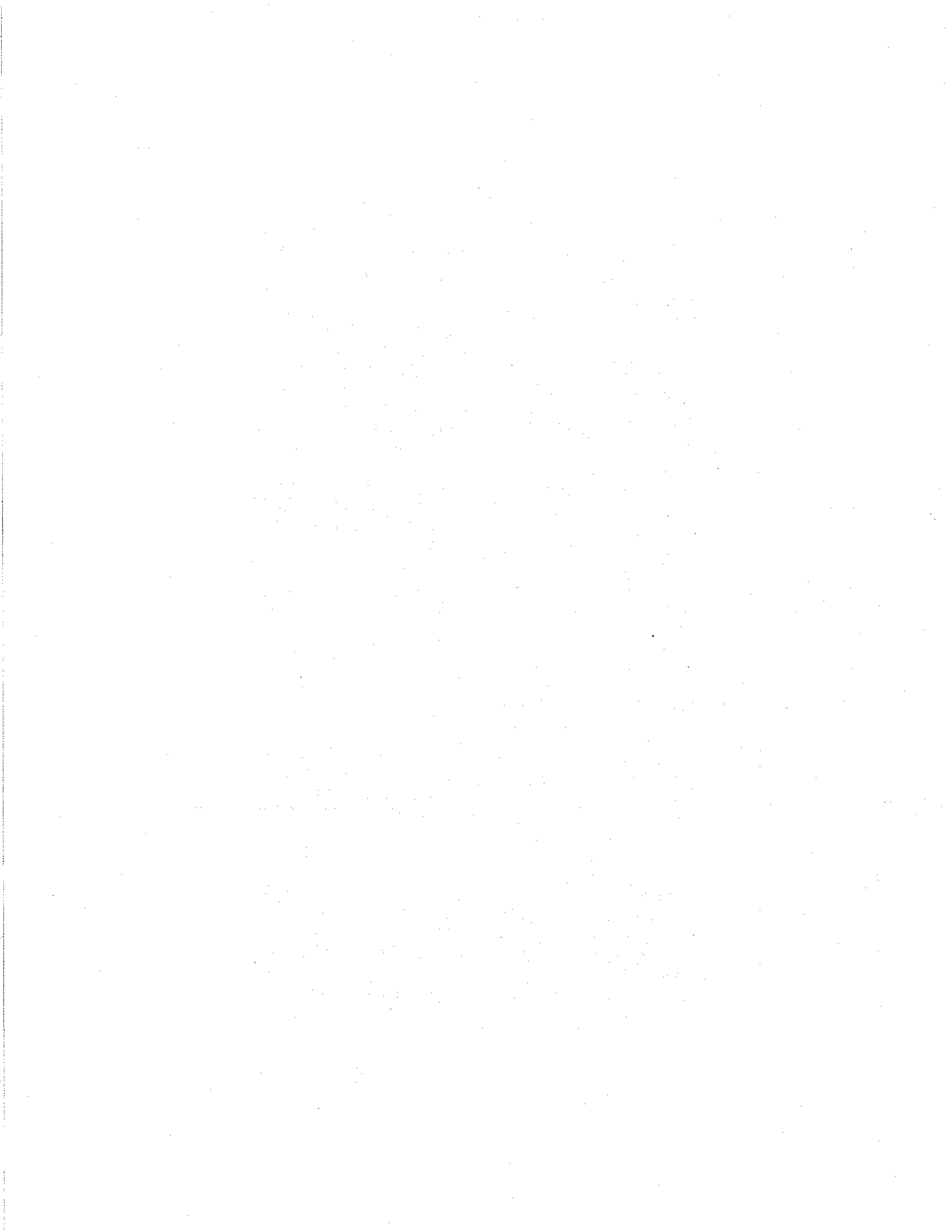
WHEREAS in the course of the investigation the sworn testimony of 22 witnesses consisting of over 1300 pages and 60 exhibits was taken before this Commission; and

WHEREAS this Commission, pursuant to its obligation to the people of this State and their elected and appointed officials, desires to make a full and complete disclosure of its investigation; and

WHEREAS such disclosure may now be made since the State trial referred to above has been completed and since the United States Attorney has publicly advised that the Federal indictment would not be moved, thereby eliminating any danger that any disclosure by this Commission would deny any defendants or the Government a fair trial; and

WHEREAS the Commission considers its investigation to be completed;

NOW, THEREFORE BE IT RESOLVED that pursuant to the foregoing the New Jersey State Commission of Investigation shall issue a public report relating to its investigation, which report shall include the testimony of every person who appeared before this Commission in its entirety, together with all exhibits



introduced and marked; and

**BE IT FURTHER RESOLVED** that this report shall be directed to the Attorney General of the State of New Jersey and copies transmitted to the Governor of the State of New Jersey and members of the Senate and General Assembly of the State of New Jersey as a whole, and specifically to the Chairman of the Senate Committee on Law, Public Safety and Defense; and

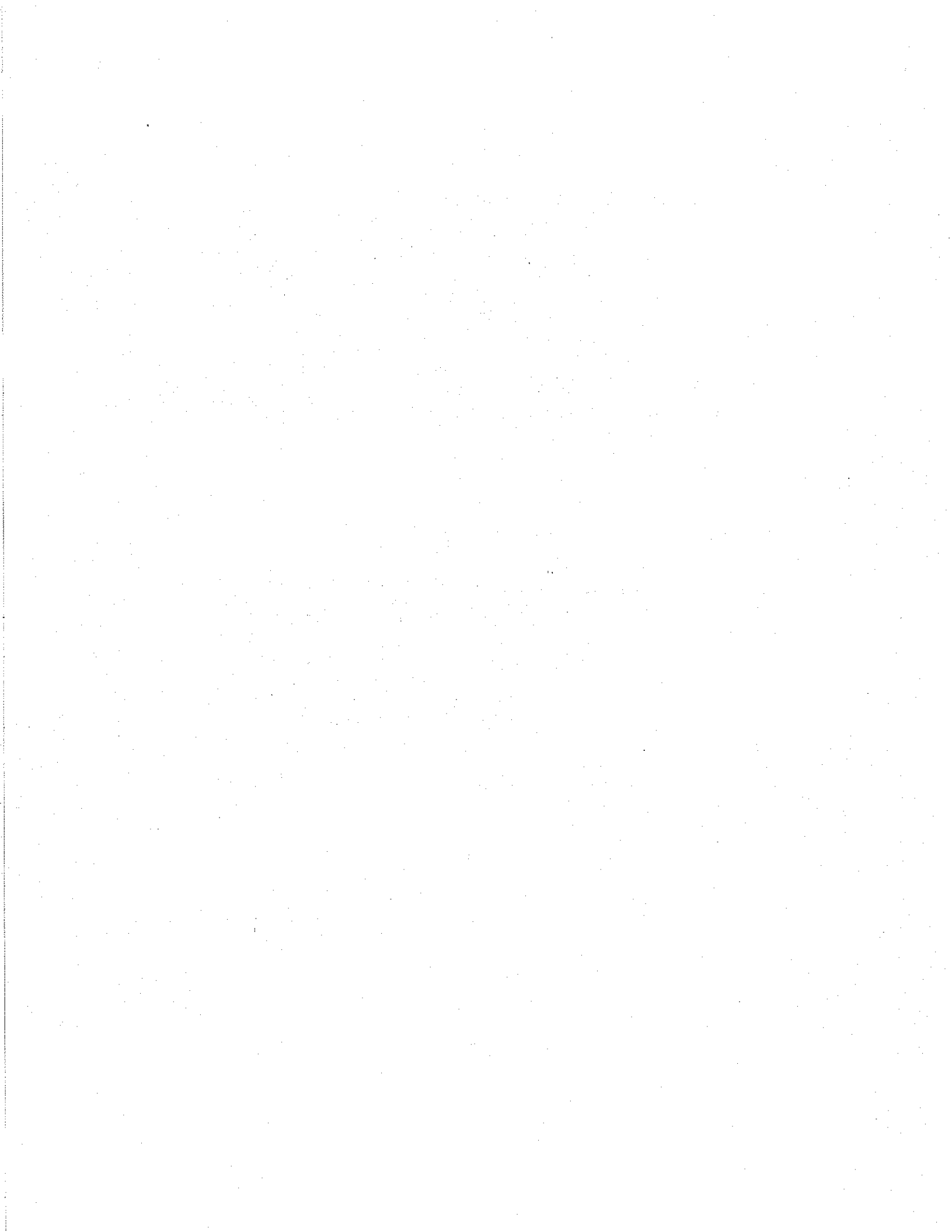
**BE IT FURTHER RESOLVED** that sufficient copies of this report be made available to the news media, that 12 copies be filed in the New Jersey State Library and that additional copies be kept at the offices of the Commission.

#### **CERTIFICATION**

The undersigned Executive Director of the New Jersey State Commission of Investigation does hereby certify that the above RESOLUTION was adopted unanimously by the Commission at a duly constituted meeting of the Commission held on January 24, 1973, in fulfillment of the requirements of the act establishing the Commission, and that said RESOLUTION is in full force and effect and has not been revoked.

In witness whereof I have hereunto affixed my signature.

**MARTIN G. HOLLERAN**



## **THE REPORT OF THE COMMISSION**

**The State Commission of Investigation having undertaken an investigation of the Office of the Attorney General of New Jersey in connection with its handling of an alleged attempt by certain persons unlawfully to interfere with the award of a contract by the Department of Transportation for the widening and resurfacing of a portion of State Highway Route 46, submits this Report thereof and its findings thereon.**



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## I.

### The Role of the Commission.

On June 28, 1972 the State and Federal Grand Juries returned separate indictments against Paul J. Sherwin, Secretary of the State of New Jersey, William C. Loughran and Michael J. Manzo charging that in October and November 1970, in consideration of the payment of \$10,000 by Manzo Contracting Co., Inc. to the State Finance Committee of the Republican Party, they unlawfully conspired to bring about a rejection of all competitive bids which had been submitted to the Department of Transportation of the State of New Jersey by a number of construction companies seeking to qualify as the lowest responsible bidder for a contract to be awarded for a roadway improvement project on Highway Route 46, Warren County, New Jersey. The indictments alleged, among other things, that the defendants' purpose in seeking rejection of the bids was to bring about a rebidding for the contract which would provide Manzo Contracting Co., Inc. with a second opportunity to become the low bidder thereof, it having failed to achieve that status in the original bidding competition.

As the result of statements appearing in the public press shortly after return of the indictments, which suggested that the Attorney General of New Jersey and his office not only did not exercise proper diligence in investigating the alleged criminal offense, but in fact engaged in a "cover-up" of the crime, this Commission was requested by State Senator James H. Wallwork to conduct an immediate inquiry into the matter. We declined to initiate such an undertaking at that time fearing a pos-

sible adverse effect on the right of the defendants and the State to a fair trial of the indictments. However, on August 1, 1972 Attorney General George F. Kugler, Jr. wrote the Commission<sup>1</sup> saying that while he appreciated our concern on the fair trial issue, since the integrity of his office had been questioned, he felt that the public interest called for an investigation of the matter. To that end he invoked the provisions of *N.J.S.A. 52:9M-4*. On August 2 we advised the Attorney General that in accordance with the mandate of the statute referred to, "a thorough and complete investigation" would be conducted. We noted also that consistent with our previously announced policy, care would be exercised to safeguard the fair trial rights of the indicted defendants and the State.

On August 3 the Senate Committee on Law, Public Safety and Defense, through its Chairman, Senator Matthew J. Rinaldo, informed the Commission of its active interest in the conduct and outcome of the investigation. The Committee was advised on August 9 that pursuant to the request of the Attorney General the investigation had begun, and that the Committee could expect cooperation to the fullest extent permitted by the Commission's enabling statute.

It seems worthwhile at this point to take notice of comments that have appeared in the press and elsewhere about the respective positions of the Attorney General and the Commission in the structure and operation of State Government. Statements have been made in the press that the Commission is a subordinate of the Attorney General, that it is subject to his authority, that he is its "boss," and for that reason it bowed to his "order" to investigate after declining to do so upon the request of a member of the Senate. Obviously such comments stemmed from a misunderstanding of the nature of the Commission as created by the Legislature, its place in the governmental structure, and the origin of the duty it is obliged to assume with respect to the investigation requested by the Attorney General.

The Commission was established on September 4, 1968, by Chapter 266, L. 1968, *N.J.S.A. 52:9M-1 et seq.* as

an independent, autonomous agency of the State. Among other things, it was given the power to conduct investigations in connection with "the conduct of public officers and public employees." In particular, section 4 of the statute provides that at the request of the head of any department of the State, the Commission shall investigate the management or affairs of such department. Thus, whenever the head of any department of the State government requests us to investigate the management or affairs of his department and the request is within the apparent intention of the Legislature as exhibited in the statute, the Commission is obligated to undertake the investigation. As a consequence, when the Commission honors a department head's request to investigate, it bows to the mandate to do so imposed by the Legislature. The request of the department head is the event which triggers the Commission's obligation to investigate, but the force of the request is spent when the Commission embarks upon the performance of its investigatory burden; the conduct of the investigation and the results thereof are within the control of the Commission. However, it must be kept in mind that, as the Supreme Court said, the Commission is not an "accusatory body." Its function is to find facts within the limited scope of the required investigation, which may be used subsequently "as the basis for legislative and executive action."<sup>2</sup> And if it appears that there is cause "for the prosecution for a crime, or for the removal of a public officer for misconduct," the Commission is directed to refer the evidence to the officials authorized to conduct the prosecution or to remove the public officer. Section 8, *N.J.S.A. 52:9M-8*. In this connection, lest there be any further misunderstanding, attention is called to the fact that the issue of guilt or innocence of Sherwin, Loughran or Manzo is beyond the scope of the inquiry imposed upon the Commission by reason of the Attorney General's request.

In the course of the investigation, in accordance with its usual practice, the Commission and its staff in executive session have examined a substantial number of witnesses, compiled over 1300 pages of testimony and

put into the record 60 pertinent exhibits. In all of this material there is only one alleged telephone call and a memorandum of the person who said he made the call, which allegedly brought any information, concerning attempted Sherwin intervention in the proposed Route 46 road construction project, to the Attorney General. And, as will be seen, the information involved therein would in no way justify a conclusion that the Attorney General failed in the exercise of his official duty to the State. However, in order to indicate the scope of our investigation we shall detail herein the material revealed in the hope that the public interest may benefit thereby. The entire record, as well as this Report, will be filed and made available without limitation to the public and the press.

## II.

### Department of Transportation — Administration of Highway Program.

For purposes of perspective it may be helpful to set out some basic data about the Department of Transportation and its function with respect to construction and maintenance of roads in New Jersey.

The Department of Transportation is one of the principal departments of State Government (*N.J.S.A.* 27:1A-2) and the Commissioner as its head is a member of the Governor's cabinet. Among other broad powers, it has control over all works of improvement, reconstruction and resurfacing of highways, subject to conditions prescribed in pertinent legislative enactments. *N.J.S.A.* 27:7-11. The primary offices of the department are located in Ewing Township, Mercer County, about three miles from the State House in Trenton. Among department officers and employees this geographical separation has given rise to the expression "Downtown" when referring to any matter connected with the State House offices and personnel. The term has no invidious connotation.

The Department has between five and six thousand employees from laborers to top professional staff.

Included among these, around the period under discussion, were 18 Deputy Attorneys General assigned by the Attorney General to handle its legal affairs. One such Deputy Attorney General, David A. Biederman, has been designated Chief Counsel.\*

The present Commissioner of Transportation, John C. Kohl, was appointed to the post on February 1, 1970. He is an engineer by profession and brought with him his considerable practical consulting and academic experience in the transportation field, including service as a Professor of Civil Engineering and Director of the Transportation Institute at the University of Michigan.<sup>3</sup> In passing, it may be noted that he had never been active in politics, a fact which he mentioned prior to his appointment. He testified that on doing so Governor Cahill told him he was interested in a professional administration of the Department of Transportation, not a political one, and that there would be no political interference with the operation. Com-

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\* Biederman became a deputy attorney general in August 1961 in Governor Robert B. Meyner's administration. In September 1963 he returned to private practice, and in May, 1966, he was reappointed a deputy attorney general by Attorney General Arthur Sills while Governor Richard J. Hughes was in office. During these periods deputy attorneys general were permitted to engage in some private practice which did not conflict with their public duty.

When Governor William T. Cahill was elected in 1970, George F. Kugler was appointed Attorney General. Being of the opinion that all deputy and assistant attorneys general should devote full time to their official work, he advised all candidates for appointment or reappointment to his staff of that fact, and promulgated a rule to that effect as of June 1, 1970.

Biederman was a Democrat, and had been serving, without tenure, at the pleasure of Attorney General Sills. Under Attorney General Kugler membership in the Republican Party was not a prerequisite to appointment on his staff. If the candidate was considered qualified he was appointed without regard to political party. Biederman was reappointed without being asked whether he was a Republican or a Democrat. He thought the "practice \* \* \* was, to be frank, wonderful because politics didn't enter into it at all."<sup>2a</sup>



missioner Kohl said he was pleased at this because he considered the assurance to be a progressive outlook on the part of a state official. He commented further that at no time thereafter did the Governor, directly or indirectly, violate that commitment to him.<sup>4</sup>

Obviously, a department which engages in widespread operations throughout the State comes into contact and sometimes into conflict, real or imagined, with many citizens. Transportation Department officers and employees have come to recognize as a normal incident of their work that affected citizens, taxpayers, bidders, local officials and members of the Legislature may ask questions or make complaints about road projects or claimed injustices associated with them. Transportation Department people accept as part of their public duty an obligation to deal with the questions and complaints and to resolve them fairly, and ordinarily such complaints are not considered as improper or as political interference.<sup>5</sup>

One such complaint and its resolution are worthy of mention here not only for purposes of illustration, but also because Deputy Attorney General Biederman at one point in his testimony before the Commission referred to the matter as an indication of improper political pressure by a Cabinet officer, although at another point he conceded it produced a fair and just result, and he did not consider that anything wrong was done.

On July 20, 1970 an inter-departmental memorandum<sup>6</sup> on the letterhead of Secretary of State Sherwin was sent to Secretary of the Treasury Joseph McCrane concerning a complaint by the Manzo Contracting Company that it was being treated unfairly by the Department of Transportation.\*

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\* Actually the memorandum was prepared and sent by Helen Mann, Confidential Secretary to Secretary Sherwin, without his knowledge. Miss Mann had obtained the information recited in the memorandum in a telephone call from William Loughran and sent it to Mr. McCrane's office over her initials. Loughran (a public relations man and a sometimes fund raiser and arranger of balls and parties for the Republican Party) had telephoned Miss Mann earlier saying that the Manzo Contracting Co. "wanted to get back

The memorandum noted that J. R. Schuyler, the State Highway Engineer, had written Manzo saying that his company had sublet a previously awarded road construction contract on Route 12 in violation of departmental and contract requirements and that unless a satisfactory explanation was made by the end of the July 24 workday, rejection of its low bid on the Route 22 contract would be recommended to the Commissioner on the ground that the company was not a responsible bidder.

McCrane referred the memorandum to Commissioner Kohl. Further inquiry by Kohl into the allegation that Manzo Contracting Co. had subcontracted its entire Route 12 contract showed to the satisfaction of the Department that the allegation was unfounded and that the Department regulations had not in fact been violated. Consequently Manzo was not disqualified as a bidder and the Route 22 contract was awarded to his company as the lowest responsible bidder.<sup>7</sup> No one claims that this result was not a just one, nor can it be said reasonably on the record before us that the July 20 memorandum constituted improper political pressure on the Department of Transportation by a foreign cabinet member.

However, the last paragraph of the July 20 memorandum received further attention, and because a memorandum dated November 4, 1970 from the Attorney General to Deputy Attorney General Biederman which resolved the problem raised by that paragraph was thought by some persons, including members of the press, to have a possible relation to the Route 46 project to be discussed fully hereafter, we turn to that paragraph and its problem at this point. The paragraph said:

**"Per Loughran, Manzo refuses to join a group of road contractors who agree among themselves**

**on the bidders list."** At Loughran's request, Miss Mann transmitted the information to Florence (McCrane's secretary). The July 20 memorandum contained the additional information, i.e., Manzo was complaining that although his company had submitted the lowest bid for a Route 22, Section IE road project it was being denied award of the contract.

to only bid certain jobs. The other contractor, whose name he (Manzo) will not divulge is going to get the job when they get rid of Manzo."

That statement was considered to be an allegation of existence of collusive bidding among contractors, and (as will appear) Schuyler<sup>8</sup> and Biederman<sup>9</sup> felt that it warranted investigation.

Biederman sent a memorandum dated August 7, 1970 to the Attorney General (with a carbon copy to Commissioner Kohl) suggesting that the Manzo allegation of collusive bidding be investigated immediately. Although he did not specify the method of doing so, he concluded by saying "Please advise if there is anything further you wish me to do in the matter."

Later, on October 9, Biederman dispatched a supplemental memorandum to Attorney General Kugler on the subject. In it, after referring to the allegation of collusive bidding on State Contracts, he advised that the Department had scheduled tentatively a meeting with Manzo for October 14 to consider several other matters. He said it might be propitious at that time to "invite Manzo to discuss with a representative from Mr. Jahos' (Director of Division of Criminal Justice) office the collusive bidding allegation." He concluded with "Please advise." A copy of the memorandum went to Jahos.<sup>10</sup> \*

Prior to this note of Biederman's, Commissioner Kohl had written Secretary of State Sherwin on October 5 reminding him that a meeting (obviously the one

\* The Division of Criminal Justice was of recent origin. It was created by Chapter 74, L. 1970 and became effective May 21, 1970. N.J.S.A. 52:17B-97. It is under the immediate supervision of a director appointed by and to serve at the pleasure of the Attorney General. All of the functions, powers and duties of the Attorney General relating to the enforcement and prosecution of the criminal business of the State are required to be exercised by him through the Division of Criminal Justice and its Director who is charged with administration of its work. N.J.S.A. 52:17B-99-101. Evan W. Jahos, Esq., a man of considerable experience in administration of the criminal law, became active head of the then embryonic Division on June 15, 1970. At the time his staff consisted of two or three deputy attorneys general; now there are 51 deputies.

referred to by Biederman) was being set up to discuss the problems of the Manzo Contracting Co. Kohl referred to Sherwin's background memo to Treasurer McCrane "in this matter" dated July 20, 1970, and asked Sherwin to identify for purposes of the meeting "Florence" and Bill Loughran, names appearing therein. On October 29 Sherwin replied rather curtly saying as noted above that "Florence is the secretary to Joseph McCrane and Bill Loughran is merely a friend." Kohl's October 5 memo was stapled to this reply.<sup>14</sup>

After consulting with the Attorney General, Director Jahos instructed Biederman to handle the investigation of Manzo's allegation of bid rigging at the tentative October 14 meeting. It may be noted that the Department of Transportation had on its staff four full-time investigators (at this time under Biederman's supervision), who were to be available for any matter affecting its operation.<sup>11</sup> The meeting with Manzo, apparently primarily to discuss contract and other claims his company had against the State on road projects, including one on Route 35, was held sometime after 1:00 p.m. on October 20, instead of October 14. Biederman reported about it in writing to the Attorney General and Jahos the next day.\*

Manzo attended with his attorney John Dimon, Esq. and when Biederman asked him to "expand or explain" his statement about "collusion in bidding practice, . . . he could not recollect anything about (it)." Biederman advised also that Mr. Dimon promised to discuss the matter with Manzo and let Biederman know "if his client had any additional information to offer." Biederman concluded by repeating his earlier recommendation that "perhaps (Manzo and Loughran) should be subpoenaed to testify before the State Investigation Commission," and by asking if Kugler and

\* It should be noted that although this meeting took place on October 20 which was after the Route 46 project had been set in motion, after Sherwin had written his October 8 letter to Kohl about rejecting all the bids that had been received, and on the same day as Biederman's meeting with the President of Centrum Contracting Company, to be discussed hereafter in chronological order and logical continuity, the Route 46 project was not at all the subject of the October 20 conference.<sup>15</sup>

Jahos wished him to do "anything further on the matter." 12 Biederman did not communicate again with either Manzo or Dimon about it. 13

Conversations were held between Kugler and Jahos on the subject both before and after the October 20 meeting, and the inquiry was closed by a memorandum from the Attorney General to Biederman on November 4, 1970. It was entitled "Manzo Contracting Company," as were the other memos referred to above, (except that of Biederman of October 21, 1970 which added to its title "Route 35, Section B,") and it said:

"Neither the Director of Criminal Justice nor I feel there is any further action required in the above matter." 16

On the basis of all the evidence introduced at the Commission's hearings it may be said with absolute certainty that this November 4 communication related only to the subjects initiated by the July 20, 1970 memorandum from Sherwin's office to Secretary of the Treasury McCrane. It had no connection direct or indirect, proximate or remote, with the Route 46 project of the award of the contract to Centrum Contracting Company as the low bidder on that project. All of the testimony, including that of David Biederman, the witness most hostile to the Attorney General in our basic inquiry, and all of the surrounding circumstances put this conclusion beyond question. 16A.

We have stressed at this point the absence of connection between the Kugler to Biederman November 4 memorandum and the Route 46 project not only because chronologically it belongs here, but also to put to rest questions fairly raised by the local press which suggest that some handwritten notations on the memorandum create at least an inference that the Attorney General was telling Biederman that no further investigation was required on the Route 46 contract matter. 18

The questions arose when a copy of the November 4 document found in the Department of Transportation files had certain handwritten notations on it in two different hands. In the upper right hand corner "File,

Route 46, Section 19-A & 2-B & C-1, Route 35," had been written. About halfway down, also on the right hand side of the paper in different handwriting appeared, "Centrum Construction Company, award of contract."  
17

This handwriting was not put on by Attorney General Kugler or by any one at his direction, nor did he know about it. It did not appear on his original file copy, or on the copy Biederman received which was found later in his Manzo Route 35 file. But it did appear on the file copy in the Department of Transportation which Commissioner Kohl produced for the United States Attorney in April or early May 1972.

Commission investigators traced the written notations to Mrs. Marian Lyons who was and still is a Secretarial Assistant and to Mrs. Mary Carnival, who was and still is a principal file clerk in the Department of Transportation. It was Mrs. Lyon's task to index papers to be filed. In November 1970 she had two files, Route 46 and Route 35, Manzo Contracting Company. She had no personal knowledge of the significance of the two files, so when papers came through to her referring to Route 46 or Route 35 or Manzo Contracting Company, she would put them in one of the files and then cross-index it to maintain a reference in all the files. To accomplish this she wrote on the upper right hand corner of the November 4 memorandum when it came to her for filing, "File, Route 46, Section 19A & 2B \* C1: Route 35." No one instructed her to make the notations. It was simply her method of filing.

The other notation on the November 4 memorandum, "Centrum Construction Company, Award of Contract" was written by Mrs. Carnival prior to the actual filing. Mrs. Lyons had put the document in the file basket, Mrs. Carnival believes she saw the Route 46 reference on it, looked at that file, saw correspondence relating to the Route 46 contract award to Centrum Construction Corp., including a letter of the same date, November 4, to the Federal Highway Administration signed by James J. Malloy, Assistant Supervising Engineer of the Department of Transportation, requesting concurrence in the award of the Route 46

contract to the low bidder Centrum Construction Corp., and then she added the cited note in her handwriting. On the Malloy letter she had also written "award of contract, Centrum Const. Corp.—resurfacing." Making the notations was a routine, mechanical act on her part; no one instructed her to do it and it had no significance beyond filing convenience. 19

There is not the slightest reason for doubting the credibility of these two faithful and wholly ingenuous employees of the Department. Moreover, their testimony completely dissipates any notion that the allusions by them to Route 46 and Centrum Construction Corp. on the Attorney General's November 4 missive to Biederman indicate responsibly that he was referring to the Route 46 project. On the contrary they leave undisturbed the unavoidable conclusion that he was letting Biederman know that he saw no reason to pursue the collusive bidding allegation any further. The evidence having demonstrated to our satisfaction that the November 4 memorandum has no relevancy or probative force in connection with this Commission's inquiry into the Attorney General's action or inaction in the Route 46 matter, we put it aside and now turn directly to the circumstances surrounding the award of the contract on that project.

### III. The Route 46 Project.

This project involved reconstruction of about eight miles of Route 46 from Paulins Kill to Route 31, (sometimes described as from Buttzville to Columbia), in the Townships of Knowlton and White, Warren County. In the summer of 1970 Commissioner Kohl and some Department personnel visited the area described in response to complaints of Senator Wayne Dumont and local citizen groups about the dilapidated and hazardous condition of the roadway, and Kohl was told that the state of disrepair had resulted in a number of traffic accidents and some fatalities. On the occasion of the inspection tour his group was picketed by local residents, who demanded some relief from the danger.

Kohl concluded that a remedial effort should be undertaken as soon as possible.

No budget provisions had been made for the work and Commissioner Kohl said they "scrounged literally" to find available State funds to meet half the contemplated costs, and then succeeded in qualifying the improvement for Federal aid for the other half.<sup>20</sup>

The basic plan was to widen the existing traveled way by the addition of two feet on either side and then to resurface the new dimensions and the shoulders. <sup>21</sup> The plans and design were prepared by the office of the Supervising Engineer of the Bureau of Maintenance. Upon their completion, specifications to be used for public bidding purposes were prepared and the engineers estimated the total cost thereof at \$580,262. These plans and specifications were deposited in the contract administration and classification section so as to be available to contractors who might be interested in submitting competitive bids for the contract to do the described work. Thus when notices were put in the public press seeking such bids, the filed plans and specifications provided the basis upon which prospective bidders were required to compute their specifications provided the basis upon which prospective bidders were required to compute their bids, and, of course, the bidders were entitled to assume that their bids would be analyzed and evaluated in light of their conformity with the items set out in the specifications.

After the plans and specifications had been completed and the total estimated cost determined by the State engineers, but before public advertising for bids had been engaged in, the Federal Highway Administration engineers made certain substantial requests for additional items of construction work either not included by the specifications on file, or which because of partial design changes, called for additional labor and quantities of materials beyond those already specified for bidding purposes. One change requested was a lengthening and superelevation of a 1000 or 1500 foot curve in the



roadway to effect better sight distances and to permit a vehicle speed increase from 30 to 40 miles per hour. To accomplish this, extra tons of bituminous concrete and additional labor would be needed.<sup>22</sup>

The second change sought by the Federal agency was the construction of storm drainage facilities which had not been contemplated or planned for by the State engineers as part of the roadway improvement, and which added a new dimension to the proposal.<sup>24</sup> According to James R. Schuyler, the then State Highway Engineer, the completed specifications made it necessary for prospective bidders to prepare their bids on the basis of 13 items of work; the Federal request for construction of drainage facilities added seven new and additional items not included in the completed specifications or figured in the State engineer's total cost estimate of \$580,262.<sup>23</sup>

The Federal request for the changes and the State's agreement to include them occurred before any advertising for bids was engaged in. However, because Route 46 resurfacing was considered a high priority matter by the Department engineers, and because the Commissioner wished to complete the work or as much of it as possible before the cold winter, it was decided not to amend the existing specifications to include the revisions and thus to delay the bidding, but to seek bids without notice to prospective bidders of the extras to be awarded to the successful low bidder for the work as advertised. The intention was to effectuate the substantial changes by means of a "changer order," which would necessarily result in additional costs to the State and additional payments to the contracting company whose low bid on the advertised specifications would bring about award of the contract to it.

The proposed truncated procedure was followed, bids were received, and on September 27, 1970 they were opened. It then appeared that the \$603,871 bid of Centrum Construction Corp. (hereinafter Centrum) was the lowest, and that of Manzo Contracting Co., Inc. was \$3,786 higher or \$607,657. The contract was awarded ultimately to Centrum under circumstances hereinafter outlined. Upon completion of the

project the total payment to Centrum, which included compensation for the extra items and labor for which there was no competitive bidding, amounted to \$731,175.07 or \$127,304.07, i.e. 20% in excess of the original contract price. The unusual fact to be noted is that according to Commissioner Kohl ordinarily he would regard a projected 10 to 15 percent increase as a sufficiently substantial alteration to warrant delay of advertising for bids until the specifications could cover the whole project.<sup>27</sup>

When identity of the low bidder was revealed, a routine check began to determine if Centrum qualified as the lowest "responsible" bidder. According to Schuyler he had some immediate reservations on that score because he knew of no substantial contract Centrum had previously had with the State. Such checks are engaged in with the knowledge that the pertinent statute calls for award of the contract or rejection of the bids within one month after their receipt. *N.J.S.A.* 27:7-33.

On Thursday, October 8, 1970, while matters seemed to be progressing toward award of the contract to Centrum, Commissioner Kohl received a letter at his home in Trenton from Secretary of State Sherwin. This letter which became the catalyst of the troublesome events which followed, said:

"Dear John:

I am attaching copy of Notice of Bid for Route U.S. 46 (1953), Sections 19A and 2B (Warren County), Federal Project No. RF-56 (17).

I understand that the budgeted amount for this contract was \$580,000, and since all bids were above that amount, there is an option on the part of the Transportation Department to review the higher bids and to seek bids once again for the contract work. On the other hand, I am told that you could accept the lowest bid since in this instance it is not too far removed from the maximum amount of \$580,000.

In this particular case, I would prefer that you reject the bids and request a rebidding and if you

will telephone me on Tuesday, I will be glad to give you the reasons for my request."

Sincerely yours,

Paul  
PAUL J. SHERWIN

The explanation give by Commissioner Kohl for the letter coming to his home instead of his office was that prior thereto he had been hospitalized with a virus infection, had been out of the office for some time, then out of the office off and on under doctor's orders to take it easy for a period. Consequently "a great deal of mail was delivered to (him) at home." He worked there and correspondence "shuttled back" and forth between home and office. As he put it it was not unusual for him to receive official letters at home at this time. 25 Other and more unfavorable reasons have been assigned by various persons in other agencies and tribunals for the home mailing, but it is not within the scope of the Commission's undertaking here to resolve those differences.

It was not the practice of the Commissioner to get into the award of a contract until the recommendation of the State Highway Engineer came to him. In this instance prior to receiving the Thursday, October 8 letter, he was not familiar with the bids that had been received on the Route 46 project. The name Centrum on the list attached to the letter was not familiar to him. Manzo Contracting Company "rang a bell" with him because he recalled earlier qualification problems of that firm and the charge that there had been some collusion among contractors to exclude it from earlier bidding. Since he was scheduled to be out of the office on Friday, October 9, and because he knew that Monday, Columbus Day, was a holiday and that the contract award was being expedited, he called his secretary and told her to notify Assistant Commissioner Russel H. Mullen to withhold action thereon until he could look into the matter the following week. 26 She did so (he said) in stronger language than that ordinarily employed by him, her memorandum saying:

"Stop everything on the award of contract for Route 46, Sections 19A and 2B until I can talk to you later this afternoon. Freeze everything." 28

Mullen immediately telephoned the message to the State Highway Engineer Schuyler. 28 These two men were the key officials in the highway program, with Schuyler usually reporting directly to Mullen. 29

As soon as Kohl came to the office on Tuesday morning, October 13, he talked with Mullen about the matter. Kohl was aware that there was a definite shortage of asphaltic materials on the east coast during the summer. Centrum was unknown to him and as he was deeply concerned about the Route 46 completion date, he wanted to be doubly sure performance would be on schedule. In the conversation with Mullen he said he was concerned with whether a small company like Centrum would have sufficient material to do the job, and asked him to look into it. 30 Then Kohl telephoned Sherwin.

At this juncture a short digression from the factual chronology in order to recall the Commissioner's place in the bidding process seems advantageous.

### III-A.

#### The Control of the Commissioner of Transportation over Bids on Highway Projects

It is common knowledge that before a contract could be awarded for a highway improvement of the magnitude contemplated in this instance, competitive bidding therefor was mandatory. *N.J.S.A. 27:2-1*. In such cases the Commissioner is required by the Legislature to advertise for bids by public notice published in specified newspapers, and the advertisement must give a brief description of the work and materials required. It must also specify where the plans and specifications can be seen and the time and place where the sealed proposals will be received and publicly opened and read. *N.J.S.A. 27:7-29*. The regulatory statute provides also that the Commissioner "may reject any or all bids not in accord with the ad-

vertisement of specifications, or for any other irregularity, or may reject any or all bids if the price for work or materials is excessively above the estimated cost, or for any other cause." The State Highway Engineer ( *N.J.S.A. 27:1A-9* ) is burdened with the task of preparing a list of the bids, including any rejected, and the cause therefor, and the Commissioner is directed to award the contract to the "lowest responsible bidder," *N.J.S.A. 27:7-30*, within one month after receipt of the bids. *N.J.S.A. 27:7-33*. Responsibility as a bidder involves moral integrity, experience, financial ability, facilities, and availability of materials, equipment and man power to do the work. 31

The statute confers on the Commissioner a broad discretion in passing upon the propriety of contractors' bids. He must exercise that discretion in the State's interest and when exercised the courts will not interfere in the absence of bad faith, corruption, fraud or gross abuse of discretion. 32

The bidding statute has a high content of public policy and courts have indicated that it serves the public interest to permit suits to enforce the policy. Thus taxpayers may sue to accomplish that end, or a bidder who claims to be entitled to the contract. And, of course, the low bidder must be heard before his bid is rejected. The Legislature has made it plain, however, that in all cases the statute is intended for the benefit of the taxpayer rather than the bidder or prospective bidder, and that a bidder's rights are subordinate to the primary interest of the State as a consumer. 33

### **III-B.**

#### **The Treatment of the Centrum Low Bid**

Returning to the events following the appearance of the Centrum low bid, as already noted Kohl telephoned Sherwin on Tuesday, October 13, as requested in his October 8 letter. Sherwin reiterated the request that all the bids for the Route 46 job be rejected and rebidding sought because they were above the engineers' estimate. Kohl told him that the bids were within a reasonable and customary tolerance, that there was

great pressure to complete the improvement within a limited time, and that the Department expected to award the contract to the low bidder if it could give assurance of an adequate supply of materials, *i.e.*, bituminous concrete, and could finish the job on schedule. Sherwin indicated he would regard it as "a distinct favor" if Manzo could be given "another crack" at the bidding because Manzo was a friend and a supporter of and had been a contributor to the Party.\*<sup>34</sup>

Fairness to all concerned for purposes of the Commission's inquiry suggests that a significant part of the conversation as it appears in Kohl's testimony be set forth:

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

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

Q. Is there any doubt in your mind at all about that?

A. No.

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\* Testimony given in February, March and May 1972 in a civil accounting action in the New Jersey Superior Court before Judge Joseph H. Stamler, between Manzo Contracting Co., Inc. as plaintiff and Warren Limestone Co., Inc. as defendant, and on June 23, 1972 before the State Grand Jury, revealed the fact for the first time in the framework of the present proceeding that the Manzo company in which Michael J. Manzo was the dominant figure, was a political contributor. In the civil suit it appeared that on September 10, 1970 the company had contributed \$1000 to the Warren County Republican Committee, and on the same day \$1000 to the Warren County Democratic Committee; also that on October 23, 1970 a company check for \$10,000 was given to the State Republican Finance Committee, and that a substantial contribution was made about that time to the Monmouth County Republican Committee, and to the Democratic Party. The manager of the Manzo company said the Monmouth contribution was for \$5000 by check dated October 28, 1970; also that "a couple" of \$5000 contributions had been made previously—"not too many of them," and that Manzo was a contributor to both parties. 37.

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

A. No.

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

A. Yes.

Q. Was there any request at that time, or at any other time, for that matter, that you ask your people in your department to find reasons to avoid awarding the contract to Centrum?

A. No.

Q. But you say you did tell him in that conversation that the work was urgent and that it was your intention to award the contract to the low bidder, if you found him on completion of your investigation to be qualified?

A. Right. 35

At the trial of the State v. Sherwin, Loughran and Manzo indictment in Monmouth County on October 18, 1972, the testimony revealed that Sherwin had dictated to his secretary a memorandum of the Kohl conversation and that she had typed it for the file. It corroborated Kohl in substantial measure, saying:

"Notation for file: October 13, 1970

Spoke to John Kohl to-day and he indicated some need to complete Route 46 this autumn inasmuch as there has been a great deal of pressure about the matter. However, he intended to talk to Centrum Construction to determine whether this firm could guarantee a sufficient amount of asphalt to perform the work and further guarantee the construction by this fall. If such a guarantee could not be given the work would be rebid and

Manzo Construction would have another opportunity to bid. \* \* \* " 35a.

After that one telephone call Kohl never talked to Sherwin again on the subject. <sup>36</sup> However, he did instruct his assistant Mullen and (through Mullen) the State Highway Engineer Schuyler to look into the question <sup>38</sup> of Centrum's capacity to perform the contract within the time schedule as well as its ability to supply the asphalt necessary for the resurfacing. Mullen being the administrative assistant to Kohl and not an engineer, relied upon Schuyler for the technical details of the problem.

### III-C.

#### The Asphalt Shortage

Much has been said about existence, actual or imminent, of an asphalt shortage during the summer and fall 1970, and about the desirability of obtaining assurances from Centrum that it would have an adequate supply of liquid asphalt available to fulfill the contract, if awarded to it. Whether the asphalt was in short supply, whether, if it was, the shortage provided a reasonable basis, in whole or in part, for a decision to reject all the bids on the Route 46 project and call for rebidding (designed to seek a contractor who could guarantee performance), and whether such believed shortage in good faith gave rise at least in part to the view of Mullen and Schuyler that rebidding should be sought, are not questions committed to the Commission for actual determination. Our function in that connection is simply to report the facts as our investigation has revealed them.

A number of the Department's engineers and the Director of the Division of Materials discussed at some length the existence of a threatened and to some extent actual asphaltic materials shortage in the summer and fall of 1970. While it is not entirely clear to the uninitiated, the basic trouble seems to have stemmed from a limitation on crude oil importation from the Far East. An element emanates upon refinement of crude



oil and is used in the manufacture of bituminous concrete, and according to Jack Freidenrich, an assistant State Highway Engineer, there is a necessary relation between the existence of an ample supply of crude oil and the ability to get bituminous concrete for the roadway resurfacing jobs such as that contemplated for Route 46. 39

On July 22, two months before the bids on the Route 46 contract were opened, J. C. Reed, Director of the Division of Materials, sent the following memorandum to Schuyler:

“July 22, 1970

MEMORANDUM TO: Mr. J. R. Schuyler

A conference yesterday with representatives of the Atlantic-Richfield Company of Philadelphia has thrown some additional light on the current reported shortage of bituminous materials, that has brought available crude stocks in the United States from an average 21-day supply to seven days.

It seems that a combination of causes has precipitated the current shortage, aggravated by seasonal demands that are up 20-30% above normal for asphaltic materials. The root of the trouble seems to be a combination of international politics and a world wide concern with pollution. Because of the political situation in the Near East, the amount of crude oil being produced and shipped has been sharply reduced. Tankers, not being able to transit the Suez Canal, travel around South Africa, consuming more time and much higher costs for shipping. Europe, like America, has a pollution problem and has greatly reduced consumption of coal, in favor of oil, as many of our power plants have done.

In order to augment the Mid-East fuel supply, Europe is taking high asphaltic crudes from South America and burning them as fuel. All of this adds up to a critical shortage of crude imports on our

Atlantic Coast, and especially affects asphalt production as asphalts are being made from crudes with a much lower asphalt content.

Of immediate concern to ARCO is the supply of asphalt cutback RC 800, normally carried in bulk stock at the Paulsboro Terminal where we can presample it and approve the material prior to use. Contractors in Southern New Jersey wishing to procure this material from ARCO will have to obtain it from their Philadelphia Refinery, where it is produced by blending the asphalt stock with a diluent through a computerized blender at the time of shipment. This precludes prior sampling and approval.

For the duration of the emergency we have given ARCO permission to ship the New Jersey contract work, including State Aid, at the producer's risk, pending approval of job samples. The Bureau of Plant Inspection plans to take random samples of RC 800 as opportunity permits, and will receive from ARCO their laboratory tests and copies of the automatically produced blender tickets. Because the asphalt stock at the Philadelphia Refinery used in blending may be a little harder than our specifications permit, we can expect some deviation in the penetration test at 77 deg. F. It is not expected that this deviation can be detected in the use and the performance of the material.

Copies of clippings from the 'Oil Daily' of July 14 and the 'Wall Street Journal' of July 15 are enclosed as additional information.

Signed J. C. R.

J. C. Reed

cc: R. H. Mullen  
J. Freidenrich  
J. R. Andrews

**A. A. Faxon  
Enclosures (2)"**

As noted, copies went to Assistant Commissioner Mullen and to Freidenrich.

In discussing the problem in his testimony, Schuyler said:

" . . . Well, first of all, the problem was the fact that subcontractors and/or contractors in some cases were not able, during this period of time,— summer of 1970, late spring of 1970—to acquire sufficient quantities of liquid asphalt from either the supplier and/or a plant, a refinery, to meet the requirements of some of the contracts that were currently underway for the New Jersey Department of Transportation.

Now, this was manifest by some contractors coming to us and asking for extensions of time; some, not too many contractors, asking for permission to use what they termed Canadian asphalt.

It was further manifest that there was a shortage of liquid asphalt by the facts that both the Associated General Contractors through their executive director and the New Jersey Bituminous Paving Association through their executive director, coming to the Department, and in some cases specifically to me, and pointing these conditions out and asking for every possible consideration to get them through this period of asphalt shortage.

Furthermore, in our own American Association of State Highway Officials we were receiving inquiries from our executive director, Alf Johnson, concerning answering specific questions of just what is the condition in your state, which all added up to the fact that generally people that

you talked with in the trade or the industry, who were knowledgeable, confirmed the fact that the summer and fall of 1970 would be a critical time for the production of bituminous concrete, which required liquid asphalt. So much for the manifestation." 41

On July 29, Freidenrich dispatched a further message to Mullen, with a copy to Schuyler. It follows:

"July 29, 1970

**MEMORANDUM TO: Mr. R. H. Mullen**

As a follow-up to your office being contacted by Senator Sears concerning an imminent shortage of bituminous materials, on July 27, 1970, I contacted, by telephone, Mr. Richard Cubby of Tri-County Asphalt and Mr. Ted Keller of Bosch-King Company and solicited the following information: The Humble Company has placed all of their bituminous producer customers on an allocation of 80% of last year's purchases. The Shell Company has allocated 50% of last year's purchases. The Chevron and Atlantic Companies have not as yet established any allocations.

To date the oil shortage has not manifested itself in any bituminous production stoppage. It appears that the shortage is due to the political situation in the Middle East; recent import quotas on crude oil and the current emphasis on the abatement of air pollution.

Mr. Keller suggested that perhaps our Governor could prevail upon the appropriate people in Washington to increase the import quotas and thereby alleviate the situation. He pointed out that if the bituminous concrete industry is curtailed because of material shortage, the impact on employment of minority groups would be significant.

Original Signed

Jack Freidenrich

Jack Freidenrich

Asst. State Highway Engineer

JF: co

CC: Mr. R. H. Mullen (1)

Mr. J. R. Schuyler"

In connection with the last paragraph of this memo, there is testimony before the Federal Grand Jury that on September 17, 1970, Sherwin wrote in the Governor's name to United States Secretary of the Interior Hickel about the asphalt shortage in New Jersey, and requested that something be done to relieve the situation. The Secretary replied that he was aware of the problem and was working on it. 43

And on September 18, six days before the Route 46 bids were opened, Schuyler sent instructions to the staff setting out procedures to be employed in coping with "this problem." Of particular pertinence here, the memorandum said among other things:

"on work for which bids have been taken and not awarded, and it is apparent with proper justification—especially on maintenance resurfacing projects—that a supply of asphalt is not available, work should not be allowed to commence unless there is a reasonable chance of a particular phase of paving being completed and available to traffic. This precaution will have to be investigated so we will not be confronted with open excavations which are annoyance to the travelling public and could possibly be hazardous if allowed to remain for any extensive length of time." 44

In light of the circumstances referred to, all of which preexisted the Route 46 bidding, it must be recognized that the Department was concerned about the bituminous concrete problem, that it had reason to be concerned, and that justification existed for a demand that a contractor seeking award of a road improvement contract, which required use of such concrete, furnish

satisfactory assurance of the availability of a sufficient supply of the material to perform the work within the time schedule.

### III-D.

#### **The Centrum Investigation and Biederman's Alleged Telephone Call to the Attorney General**

On October 13, 1970 Commissioner Kohl requested his assistant Mullen to look into Centrum's capacity to perform the Route 46 project with the necessary dispatch. Mullen immediately drew in Schuyler on whose engineering expertise he relied. In addition Mullen telephoned Sherwin and advised him of his investigatory mission. Sherwin reiterated his preference for having the bids rejected and readvertising pursued so that the second low bidder could have another opportunity to bid because Manzo had been a good friend and the State would get a better price and a lower bid. Mullen said that in such a situation the only course was to determine whether there was a basis for rejecting all the bids and readvertising. He advised Sherwin that he would check it out, particularly the prospect of oil shortage. He said also that there was nothing in the conversation to indicate that Sherwin's motive was more than the doing of a political favor. <sup>45</sup>

Mullen informed Schuyler of Sherwin's interest, and instructed him to investigate the matter completely. Schuyler, in turn, assigned members of his staff to work on the problem. Specifically, Freidenrich was assigned to study the facts respecting ability to supply "bituminous concrete contingent upon availability of liquid asphalt." Mr. R. H. Stelljes was directed to look into Centrum's equipment and man power. <sup>46</sup>

Stelljes found on examining Centrum's bid documents that a lack of adequate equipment to do the work was shown. He communicated with Centrum and in early October a conference was held with Richard M. Hale, its president. At that time it developed that Halecrest, another of Hale's corporations which had

done substantial road work for the State, had ample equipment on hand, and Hale guaranteed to make it available for Centrum's use. Stelljes accepted that statement. 47

Assurances were demanded that Centrum could fulfill the bituminous concrete demands of the project. The basic contract called for 38,000 tons, and the supplemental requirement arising out of the Federal Highway Agency demand for curve superelevation imposed a need for additional thousands of tons. On October 14, Hale in his capacity as president of Centrum wrote on its letterhead that

"Considerable effort has been made to obtain a definite commitment during this severe asphalt cement shortage from the major refineries and supplier in New Jersey.

Due to much effort thus far, I firmly feel that Centrum Construction Corp. will be granted at least equal opportunity for available supply. Understandably during the existing crisis, job award is an imperative requisite for the firmest commitment."

Attached was a letter from Edison Asphalt Corp., it too signed by Hale as Secretary of that company. It said

"This is to confirm the availability of Edison Asphalt Corp. to supply material for subject job to Centrum Construction Corp during the years 1970 and 1971. . . . " 48

The sufficiency of these assurances was debated by Department people. On the one hand it was thought that while they did not amount to firm commitments, they were probably the best that could be gotten. However, Schuyler did not feel the assurances were adequate.

In the meantime Hale, being concerned over the delay in awarding the contract, telephoned Deputy Attorney General Biederman and made an appointment to see him on October 20. Hale had known Biederman for some time and had been a private client of his. In fact Biederman was then representing him in an uncompleted legal matter, unrelated to Highway

Department work, and at that time there was a bill for his services outstanding. In addition, after Biederman left the State service he appeared for Hale in a Department of Transportation matter. 49

At the October 20 meeting Hale told Beiderman about his problem, about the Department's request for assurance of the adequacy of Centrum's asphalt supply, and the efforts he had made to provide the assurance. Biederman advised him to furnish whatever was demanded of him and said that he would look into the matter. It is obvious from the record that until this meeting with Hale, Biederman was not aware of the Route 46 problem.

On the same day or the next day Schuyler told Biederman that the contract would not be awarded until the contractor assured the Department that it had a "sufficient supply of asphaltic material with which to do the job." On being so informed Hale said he had already given the assurance by letter, and Biederman suggested that he "contact Mr. Schuyler to meet whatever requirements the Department had." 50

On October 21 Biederman went to see Commissioner Kohl and inquired about the contract. Kohl showed him Sherwin's October 8 letter and told him that Sherwin was advocating the rejection of all the contractors' bids and a rebidding. Biederman said that after discussion of the matter, the Commissioner agreed with his position that Centrum as the low bidder should receive the contract and that Sherwin's request would be denied. Accordingly Kohl said that contract would be awarded to Centrum. Biederman testified later that same day he telephoned Attorney General Kugler, informed him of Sherwin's intervention, and of the fact that Commissioner Kohl had decided to reject the intervention and award the contract to Centrum. Biederman further testified that he "advised" Attorney General Kugler "that in his view Sherwin's action was in derogation of the policy of the bidding statutes," and he asked Kugler to "take the matter up with Sherwin." Kugler replied that he would not do so, but that the Commissioner "could" do so or "should" do so. 51



Attorney General Kugler testified that he has no recollection of this telephone call. On balance, it is his opinion that the telephone call probably never happened. 52 However, if the call had occurred, since the information conveyed was that the Sherwin attempted intrusion into the affairs of the Department of Transportation had been frustrated and was at an end, a refusal to speak to Sherwin or reproach him about it would have been consistent with his policy as Attorney General not to interfere in matters of administration of the department of a fellow cabinet member, as well as his belief that resolution of such matters should be left in the hands of the department head.

The Attorney General is a member of the Governor's Cabinet and head of the Department of Law and Public Safety of the State. *N.J.S.A. 52:17-B-2*. The Department includes a substantial number of divisions, such as: Division of Law, State Police, Alcoholic Beverage Control, Motor Vehicle, Weights and Measures, the 21 Professional Boards, Office of Consumer Protection, Division of Criminal Justice established as of May 1970, as well as many other boards and agencies of the State. See *N.J.S.A. 52:17B-3; 52:17B-99-101; 52:17B-5-6*. The Attorney General has the duty to give the Governor, to the members of the Senate and General Assembly, and to all other officers, departments, boards, bodies, commissions and instrumentalities of the State Government, legal advice on such matters as they may from time to time require; also to act as sole legal adviser and attorney for all officers, departments (such as the Department of Transportation, *N.J.S.A. 27:1A-2*); boards, bodies, commissions and instrumentalities of the State Government in all matters other than those requiring the performance of administrative functions entailing the enforcement, prosecution and hearing of issues as imposed by law upon them. *N.J.S.A. 52:17A-4 b and e*.

The Attorney General is authorized to appoint assistant and deputy attorneys general to aid him in the legal work of the State. About 90 appointees were authorized between June and December in 1970, and the number has increased significantly since then. These

appointees were assigned to particular branches or departments of government in accordance with an evaluation of their training and experience. To these men he committed the day-to-day supervision and handling of legal matters that arose in the particular department or agency. There were four supervisory assistant attorneys general to whom the deputies reported on urgent or important matters which they felt they could not handle. The Attorney General's intervention was sought only in the important and urgent problems which the supervisory echelon felt necessitated his attention.

Although the Attorney General is designated as attorney for and legal adviser to the many departments of government, obviously he has no control over, he does not intervene in nor is he expected to participate or intervene in, the routine day-to-day conduct or administration of a department. That is committed to the department or agency under the statute which created it. The same holds true for the Division of Criminal Justice. When Evan Jahos was selected to head the Division, the Attorney General who testified he had complete confidence in him and in his competence, left the responsibility of administering the criminal law aspects of the Law and Public Safety Department to him. As Jahos put it, if he had a particular problem which seemed to require the Attorney General's advice he would seek it. But Jahos made the routine decisions for the Division and the Attorney General did not engage in looking over his shoulder as he did so.<sup>55</sup> This method of operation comports with the legislative intention that the Division "shall be under the immediate supervision of a director . . . who shall administer the work of the division under the direction and supervision of the Attorney General." *N.J.S.A. 52:17B-99.*

On October 22, Biederman wrote a memorandum "to files" which he marked "Confidential." In it he set forth the events of October 20 as described above, and his asserted telephone conversation with Attorney General Kugler. Biederman had been described by witnesses before us as a person with a compulsive urge

to write and send and file memorandums, 53 with copies to various persons whether or not they were involved in the matter. But whatever may have been the worth or lack of it in other situations, so far as the October 22 memo is concerned his penchant for writing produced the most informative, most significant and in fact the only substantial item of evidence the Commission received on the crucial point of our inquiry, *i.e.*, did the Attorney General have knowledge of circumstances which would have moved a reasonably diligent and experienced prosecutor to begin to look for criminal conduct in connection with Sherwin's request for the rejection of the Route 46 bids, and particularly the low bid for Centrum.

The importance of the memorandum impels us to set it forth in full: 54

"October 22, 1970

#### MEMORANDUM TO FILES

On Tuesday, October 20, 1970, I received Mr. Richard Hale, President of Centrum Construction Company. Mr. Hale who has been the moving spirit in the citizens highway committee, recently established as a citizens aid to this Department, wished to know why the contract upon which he was the low bidder for Route U.S. 46 in Knowlton and White Townships, Warren County, had not been awarded. I investigated the matter.

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

I later discussed this matter with the Commissioner. The Commissioner advised me that

he had been requested by the Secretary of State, Mr. Sherwin, *not* to award the contract and to reject all bids so that the second bidder, Mr. Manzo represented by John E. Dimon, State Republican Chairman, would have another shot at this contract. While the low bidder was above this Department's estimates he was within the narrow percentage above said estimates used by Department as its criteria in awarding bids and would, therefore, receive the contract. In addition, the Department both publicly and privately (see newspaper articles attached) represented that the project would be built and construction to start over a month ago. After discussion with the Commissioner, the Commissioner advised that the award *would* be made to the low bidder—Centrum Construction Company and that Mr. Sherwin's request would be rejected. Later that day I discussed this matter with the Attorney General and advised him that in my view Mr. Sherwin's action was in derogation in policy of the bidding statutes. I further asked the Attorney General to take the matter up with Mr. Sherwin. His reply was that he would not do so, but thought that the Commissioner could do so.

s/ DAB  
DAB"

Thus this permanent record of what Biederman alleges was his telephone conversation of October 21, 1970 reveals he told Kugler of Sherwin's effort to persuade Kohl to reject all the bids on the Route 46 project, and that after discussion Kohl told him Sherwin's attempted intervention would be disregarded and that the "award *would* be made to the low bidder—Centrum Construction Company." The word "would" was underlined by Biederman for emphasis. Because of the cruciality of the memorandum facts, confirmatory references to them in his testimony before the Commission are also included here:

Question (to Biederman):

"Now, let's just look at the memorandum—

'after discussion with you (Commissioner Kohl), you advised that award would be to the low bidder, Centrum Construction Company, and that Mr. Sherwin's request would be rejected?' "

(Insertion added.)

A. Right.

Q. Is that correct?

A. Absolutely.

Q. And that's what he said to you?

A. That's what he said to me.

Q. All right. That's all I want to know

And then continuing with the 30th memorandum,\* down to the end of that paragraph, the subject matter deals with your October 22nd memorandum?

A. I believe so, yes. I believe so. I'll have to look at that.

On the previous answer when I said, 'No,' that wasn't to that question. That was to the fact that I convinced him of something, that the memo doesn't speak in those terms.

Q. Well, whether you convinced him or not \*\*\*

A. Yes

Q. \*\*\* he indicated that he had reached a decision to award \*\*\*

A. That's right.

Q. \*\*\* to the low bidder Centrum.

A. That's right.

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\* According to Biederman, the October 30th memorandum, to be discussed hereafter, which was addressed to Commissioner Kohl, was a chronology of events. In the forepart it recited the circumstances set forth in the October 22 memo, and then it continued with the events pertaining to the abortive rejection of bids and Biederman's protest at such action. As will appear hereafter, the October 30 memo was never given to Kugler nor seen by him until April 26, 1972 at a conference with United States Attorney Herbert Stern.

Q. And to ignore what Sherwin's request was?

A. That's what he concluded.

Q. And what we now say about it is consistent with your underlining of the word 'would' for emphasis?

A. Yes, sir." 56

Finally, it may be noted that when Biederman presented the Route 46 matter to Assistant United States Attorney Bruce Goldstein on April 20, 1972, in referring to his October 21 conference he reaffirmed his statement in the October 22 memo and in his testimony before the Commission that at that conference Kohl "agreed to award the contract to Centrum despite the request of Sherwin." Furthermore, at the Goldstein meeting he reiterated that on the day of Kohl's decision to award to Centrum he had a "discussion with Attorney General Kugler." 57 And all of the above is confirmed by his testimony before the State Grand Jury on June 22, 1972, as well as in his testimony on the trial of the State indictment in Monmouth County on October 18, 1972. 58

Biederman testified that after the telephone call of October 21 he never again spoke to the Attorney General about the bid problem, 59 the Centrum contract or Sherwin's involvement, and our investigation has not uncovered any substantial evidence to show that General Kugler gained additional information from any other sources until the Stern visit of April 26, 1972. Thus, the facts conveyed by the Biederman telephone call and the confirmation thereof contained in his October 22 memorandum provide the only direct evidence on which the Attorney General's subsequent conduct can be judged. It should be remembered that neither Biederman nor anyone suggests that the Attorney General received a copy of this memorandum.

Accordingly it may be said that the circumstances detailed above suggest that the Attorney General never received any knowledge from Biederman that would impose a duty upon the Attorney General to commence an investigation into the circumstances surrounding the Route 46 project. In the first instance, Kugler said he had no recollection of a telephone call from

Biederman on October 21 and he considered it unlikely that Biederman in fact called him. If there was no such call, it follows from the total record that Kugler knew nothing about the Route 46 project or Sherwin's attempted intercession in the bidding process until United States Attorney Herbert J. Stern came to see him with the Biederman memoranda on April 26, 1972, about 17 months after Kohl's November 2, 1970 decision to award the contract to Centrum.

We do not find it necessary to resolve the conflict in the testimony as to whether or not the telephone call was made. In our judgment a more definitive and dispositive conclusion can be reached by acting on the hypothesis that the telephone call was made and then appraising the Attorney General's conduct in light of that hypothesis. Accordingly, what information would have been brought into the Attorney General's awareness?

(1) Sherwin's request to Kohl for the rejection of all Route 46 bids and for rebidding; (2) Kohl's decision given to Biederman that the contract "would" be awarded to the low bidder, Centrum, and that Sherwin's request would be denied; and (3) Biederman's view that Sherwin's action was in "derogation" of the policy of the bidding statute, and his request that Kugler take the matter up with Sherwin.

In our judgment these circumstances of themselves would not justly support a conclusion that Kugler was derelict in his public duty as Attorney General in failing to institute an investigation to determine if there was probable cause to believe that Sherwin's request was criminal in nature. Assuming such a phone call was made, the sole indication was that Sherwin had made an apparently irregular request which Kohl had decided to deny and to award the construction contract to the low bidder. Within the framework of our hypothesis an evaluation of any decision that criminal investigation was not called for must be made against a backdrop of the then existing ambience. So considered it would not be unreasonable to feel that Sherwin's request viewed in its worst light signified that he would like to have all the bids rejected so that Manzo might

have a chance to compete again in rebidding competition, but that such efforts were quickly frustrated by Kohl's refusal to do so and his decision to accept Centrum as qualified to receive the contract. In this situation a reasonable law enforcement officer might well consider the matter at an end.

It must be remembered that historically a prosecutor has been vested with broad discretionary powers to be exercised in the conscientious discharge of the manifold responsibilities of his office in applying the comprehensive criminal laws to the myriad situations which come to his attention. Discretion in this context means power or right conferred by law upon the prosecuting officer of acting officially in such circumstances, and upon each separate case, according to the dictates of his own judgment and conscience uncontrolled by the judgment and conscience of any other person. Such discretion, however, must be exercised in accordance with established principles of law, fairly, wisely and with skill and reason. It includes the right to choose a course of action or non-action, chosen not willfully or in bad faith, but chosen with regard to what is right under the circumstances. The distinction between the exercise of discretion in good faith and a willful failure to act is to be judged by his conduct in the light of all the facts and circumstances. 60 Thus in the reasonable exercise of this well-defined and broad discretion, a prosecutor may conclude that circumstances presented to him are not of a sufficiently suspicious nature to warrant further investigation, or the pursuit of an indictment, or he may be of the opinion that the circumstances brought to his attention do not indicate that a crime has been committed.

Tested by these considerations the Commission's view is that (even assuming the alleged Biederman telephone call was made on October 21, 1970) it cannot be said justly that the Attorney General acted in bad faith or arbitrarily or that he unreasonably exercised his discretion in concluding that no such suspicious circumstances or probable cause to believe a crime had been committed had been presented to him as required criminal investigation or the pursuit of an indictment.



At this juncture also, it is our considered judgment that no facts have appeared which in any way reflect on his integrity or his good faith in the handling of the matter; nor have any credible facts or circumstances come to our attention which would support a claim that he had engaged in a so-called "cover-up."

Again on the assumption that the telephone call was made, the declination of the Attorney General to take the matter up with Sherwin, and his suggestion that Commissioner Kohl could or should handle it, does not militate against our opinion.\* As noted above, it was Attorney General Kugler's policy not to interfere with the routine administration of any department of State government, even though he is its attorney for purposes of legal advice or the handling of its legal affairs. Having concluded in the exercise of his discretion that in this instance there was no criminal involvement shown which required his attention, his feeling that on principles of interdepartmental comity Commissioner Kohl, a fellow Cabinet officer, should advise Sherwin not to interfere with the Transportation Department's award of highway contracts cannot be criticized as unreasonable.

### III-E

#### Events Subsequent to Biederman's October 22 File Memorandum—Award of Contract to Centrum

During the course of the Transportation Department's inquiry into Centrum's capacity to execute the construction contract if awarded, Assistant Commissioner Mullen again spoke to Sherwin. He advised Sherwin that up to that point Centrum's low bid seemed to be in order, but the asphalt shortage problem and Centrum's ability to obtain a sufficient supply for the job were still being looked into, and assurances in that regard were being sought from Centrum. According to Mullen, Sherwin indicated he was aware of the oil shortage, but the "Manzo people" had said they had no such problem either in supplying or obtaining the

\* Biederman testified that he conveyed the Attorney General's message to Commissioner Kohl. 60A

necessary supply of asphaltic material. 61 He told Mullen that Manzo was able to give any kind of a guaranty the Department wished, and he then suggested consideration of the possibility of disqualifying Centrum for lack of such sufficient assurance, and awarding the contract to Manzo, the next low bidder, without rebidding. Mullen discouraged the idea and never suggested it within the Department, because "there was absolutely no possibility of doing that under any circumstances whatever."

Schuyler, on whom Mullen relied for engineering and technical information, said he had received some assurances from Centrum about the liquid asphalt problem, but he was not completely satisfied with them. The two men then discussed without deciding, whether it was necessary or desirable to require Centrum to have sufficient asphaltic materials "actually in their storage tanks." 62

Schuyler who, as set forth previously in this report was aware of the nature of the asphaltic shortage, was familiar also with the need for assurances of an adequate asphalt supply. He said that the road widening work required excavation, and it was hazardous to leave open trenches on the sides of the road. In fact, he pointed out that a few days after the work was finally begun Department people issued a mandate that the contractor should not excavate more than could be filled in the same day. Schuyler testified also that the work was being done at the worst time of the year, the schedule was tight and the cold weather put greater pressure on everybody to have the necessary materials available so as to get the project completed. 63

Around the expiration of the 30-day period for awarding the contract, Mullen suggested to Schuyler the need for reaching a decision and that they should go over the facts that he had gathered to that end. The conference was held on October 23 and after discussion of the entire matter they decided to recommend to Commissioner Kohl that all the bids he rejected and rebidding called for. The specific grounds for the

rejection came from Schuyler, whose testimony before the Commission revealed among other things that the substantial changes in the bid specifications resulting from the Federal Agency's request, which the contractors had no opportunity to consider in computing their bids, constituted a material factor in the formation of his judgment that there should be rebidding. We mention this aspect especially because the changes referred to and particularly the drainage changes, constituted a substantial portion of the \$127,304 payment for extras above the Centrum bid of \$603,871. It was his feeling that they should "readvertise a contract which would have additional items of work involved in it, specifically those drainage elements." 64

Mullen and Schuyler agreed on six reasons for rejection of all bids, and on October 26 Mullen prepared and discussed with Commissioner Kohl a memorandum setting forth those reasons, recommending rejection and readvertising and asking him to advise if he concurred in the recommendation. The memorandum follows: 65

"October 26, 1970

MEMORANDUM TO: Commissioner John C. Kohl

As you are aware, the Department has been considering the award of a resurfacing contract on Route U.S. 46, specifically Section 19A and 2B, for some weeks. This project, which was not originally on our schedule for the current year, was added at the request of local officials as an 'emergency' project which, in the opinion of the Department's staff was warranted.

The original concept was to handle it on a rush basis, using bond funds, and to get the work underway by early September so that most if not all of the eight-mile project could be accomplished before winter. As the result of certain financial limitations, it became necessary to seek Federal participation, using a special classification of Federal funds only recently made available, and this delayed the ad-

vertising and receipt of bids for some four to five weeks.

During this same time interval, the asphalt shortage about which he had heard became more acute, and the State Highway Engineer thought it only proper, a decision in which I fully concur, to ask the successful bidder for some realistic and solid guarantee that he would be able to obtain the material with which to perform the work.

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

1. The low bidder was some 5% over the engineers' estimate.
2. The best rate of progress in good weather is estimated at approximately 900 feet per day.
3. The low bidder did supply the Department with a written statement regarding the availability of material which, in the opinion of the State Highway Engineer, did not represent the type of commitment he has requested.
4. Although the original contract called for completion of the entire project by Memorial Day 1971, it was contemplated that by far the major portion of the work could be accomplished before winter. This is no longer possible.
5. Some verbal conversations with other bidders have indicated that all bidders are inclined to give the Department almost anything that might be requested in the way of verbal assurances, but it is extremely unlikely in view of our own information regarding the materials problem that the Department can get a solid written commitment.

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

In view of all the foregoing, I feel obliged to recommend that the Commissioner reject all bids and readvertise. This can and should be justified in a public statement citing the facts that the bids were above engineering estimates; the materials shortage casts some doubt on the ability of the contractor to perform; and the lateness of the year makes it impossible to accomplish a major portion of the work before winter. I further recommend that the engineering staff be directed to rearrange the contract immediately with a view to holding to the Memorial Day terminal date and readvertising immediately with only preliminary work to be performed before winter. If you concur in this recommendation, please advise and I will authorize the State Highway Engineer to prepare the necessary documents for your signature.

Russell H. Mullen  
Assistant Commissioner, Highways

RHM:rb  
cc: Mr. Schuyler"

Both Mullen and Schuyler testified that these grounds were sound, advanced by them in good faith, and arose from a conscientious exercise of honest judgment. However, Schuyler, a most articulate witness in all else, added some statements which were not easy to follow. Our overall impression of their substance is this: He believed the Route 46 project was an emergency one which should be undertaken promptly, and although there were sound reasons for himself and the Commissioner to reject the bids and readvertise, he would have ignored them and recommended award of the contract to the low bidder, Centrum, at an early

stage in the proceedings. However, when he learned from his superior, Mullen, that Secretary Sherwin was interested in rejection of all bids and readvertising, and he got the impression—without pointing to any express words from which he derived the impression—that Mullen wanted a recommendation in order to accommodate Sherwin, he decided to advance the sound reasons that he conscientiously believed actually existed in order to provide the basis for recommending to Kohl rejection of the bids. In other words, he recommended an exercise of discretion by Kohl respecting the bids which he honestly felt was justified, but in view of the emergent nature of the project he would not have suggested that course of action but for his feeling that a person in a higher echelon of power wished a different result. If this analysis of Schuyler's mental operations is correct, then never was a supportable recommendation reached by a more tortuous process. 66

Mullen testified that when he discussed with Kohl the October 26 memorandum and the reasons set forth therein for rejecting the bids, Kohl concurred in the recommendation and told him to prepare a news release announcing the fact. Mullen prepared the release, the form of which Kohl approved. However, it had only an extremely limited distribution before it was withdrawn.

Mullen said that his joining with Schuyler in the rejection recommendation was an honest one. He felt there were two alternatives available, each an honest one and that each one had its own problems. But he decided to tell the Commissioner that there was sufficient basis for rejecting and readvertising if "we changed the contract" to eliminate some of the problems. He maintained that the telephone conversations with Sherwin were not the inspiration for his decision; he was not concerned with what Sherwin wanted. But he was interested in what the Commissioner wanted and he thought that on account of Sherwin's request, Kohl wanted to reject and readvertise if there was a justifiable basis for doing so. Kohl did not express this to him in words; it was an impression. It was Mullen's feeling that Kohl wanted a

fair and honest opinion, representing Mullen's good faith judgment; he wanted from Mullen the basis for rejecting and readvertising, if such basis existed, "certainly not, if it didn't exist." 67

Mullen was aware of the additional work to be required of the successful contractor which was not included in the bid specifications. He said, however, that instead of withdrawing the advertisement for bids, the Department simply took the chance and went ahead with the plans and specifications as noted in the advertisement, intending to take care of the problem by a change order. He said this was done "knowing there were things that would have to be corrected because this job itself was a political commitment to Senator Wayne Dumont, and we were behind with it and it was a rush to get it out before winter started." 68

Events moved rapidly after Kohl's October 26th decision to reject all bids. There is conflict in the testimony as to who spoke to whom and when and where, and as to the sequence of the happenings. Apparently, Biederman learned of the decision on October 26 either through the Commissioner or the news release. On October 30th Schuyler notified Hale, President of Centrum, of the rejection of his bid. On the same day Biederman wrote a memorandum marked "Personal and Confidential," to Commissioner Kohl about the contract. As Biederman later described it, it was a chronology of happenings up to that time, and it concluded with his statement as to the "best and proper course" to be taken. Except for a few minor changes not affecting the substance, all but the last two paragraphs of it were taken from his October 22nd memorandum which had noted confidentially for the file that Kohl had decided to deny Sherwin's request and to award the contract to Centrum. The two additional paragraphs of this supplementary document deal with the October 26th decision to reject all bids. These say to Kohl:

"Apparently on Monday, October 26, 1970, you reversed your decision to reject Mr. Sherwin's request. In light of the circumstances reviewed above I must object to the latter decision. This is to

confirm my earlier verbal advice to you that Mr. Sherwin's request could be considered as part of a conspiracy to violate the bidding statutes regardless of the rationale utilized to throw out the bids if the prime motivation was simply to get Mr. Manzo another shot at this contract. Action in accordance with that request could be a direct violation of those statutes.

"The best and proper course to take would be to award the contract to Centrum and fulfill the Department's promises to the local community with regard to the subject project." 69

The original of this memorandum did not note that copies were being set to any other persons. Later Biederman had copies marked "b.c.c." (blind carbon copies) "Evan Jahos, James Petrella" (Associate Counsel to the Governor); another copy was marked "b.c.c. Evan Jahos." 70 The reason he assigned for withholding from Kohl the fact that copies were being sent to other persons marked "blind" (so they would realize that Kohl was being kept in the dark about the knowledge being imparted to them), was that he did not "trust" Kohl; he did not want Kohl (who Biederman said owed his job to Sherwin) to divulge to Sherwin the criticism of his conduct contained in the memorandum. The logic of this is nebulous. Advertising for rebidding had not been arranged yet. If Biederman thought rejection of Centrum's low bid and refusal to award the contract to it were improper, obviously impartation of knowledge to Kohl that the Director of the Division of Criminal Justice and an Assistant Counsel to the Governor were being advised of the alleged impropriety would tend to put psychological pressure on Kohl not to order rejection of all bids, but to proceed with award of the contract to Centrum.

There is considerable uncertainty in the testimony as to when and where Biederman first talked to Kohl about the October 30 memorandum or delivered it to him. In any event, Kohl did see and discuss it with Biederman on Monday, November 2nd. According to Kohl, Biederman indicated that "while it was perfectly legitimate to reject the bids," Sherwin's request



"could" give the action the appearance that it resulted from interference with the bidding process, and that this "peripheral interference" could raise a serious question. 71

After discussion in which Kohl told Biederman he had talked with Schuyler and Mullen again about the problem and had reviewed the file, Kohl said he had come to the conclusion that Centrum probably could perform, and therefore the bids should not be rejected. Consequently rather than run the risk of further delay and possible higher prices on rebidding, he had decided to award the contract to Centrum. 72 Kohl who was ill at the time, then told Biederman to so advise Mullen and direct him to make the necessary arrangements.

Kohl testified that it was in this same conversation that Biederman informed him of the Attorney General's message of October 21, 1970 to the effect that Kohl should talk to Sherwin and tell him to stay out of the Department of Transportation and not to interfere with its bidding process. Kohl said he replied by requesting Biederman to discuss the matter with Judge Garven. 73

On November 4 Biederman sent a memorandum to Mullen with a copy to Kohl instructing him to carry out the decision to award the contract to Centrum. The memorandum follows: 74

*"RE: ROUTE 46, Section 19A & 2B Contract*

The Commissioner discussed the above captioned matter with me on Monday, November 2, 1970, and due to his illness asked me to confirm his decision in the matter to you by this memorandum.

Although initially persuaded by your memorandum of October 26, 1970, to reject all the bids on the subject contract, the Commissioner's review of the file subsequently led him to the decision to award the contract to the present lowest responsible bidder, namely Centrum Construction Company. You may recall that you personally have been quoted in the public press and have represented to the local community and their

elected representatives that this contract would be awarded in September and that it should cost approximately \$750,000. The low bid is approximately \$148,000 under your estimate and although it is some 5% over the engineers' estimate it has been the Department's custom to normally award contracts to the low bidder who is within that percentage.

In addition, some progress in building the road is better than no progress since the Department made a public commitment to begin this project in September the Commissioner felt that we should fulfill that commitment regardless of the technical objections you raise in your memorandum.

You are, therefore, authorized to proceed immediately in accordance with the Commissioner's instruction in this matter.

s/ DAB  
DAB

cc: Commissioner John C. Kohl"

Mullen relayed the message to Schuyler promptly and instructed him to request concurrence of the Federal Highway Administrator in the award to Centrum. The formal award document was signed on November 5 by Schuyler. 75

The testimony reveals that on November 4 Biederman discussed the Sherwin interference with Judge Garven and asked him to speak to Sherwin. Judge Garven, whose testimony was taken at home on account of his illness, confirmed the making of this request. We sense in the testimonial references to Judge Garven and the attitude of people toward him, that he is leaned on for help and guidance or for mediation in matters which do not depend for resolution on knowledge of the law alone. For example, in this connection, in reference to the Attorney General's statement in their October 21 telephone conversation that Kohl "should straighten Sherwin out," Biederman said " \* \* \* John Kohl is a very human being, but he's a very mild fellow, and for him to straighten out that guy

who got him his job I really didn't think was in the works. But I felt that when Garven saw that, that he probably would speak to Sherwin. It was a logical sequence of events." 76

Biederman testified that he regarded Judge Garven "as the number two man" in the Cabinet, "and he was, in my view, the brightest, most articulate and the most able man in the Cabinet that I had met\*\*\*."

"Q. You regard him as being a thoroughly honest person —

A. Absolutely.

Q. — that you could take this to?

A. Absolutely.

Q. And that he would do the right thing?

A. Absolutely without reservation."

Commissioner Bertini:

"Is that still your opinion?"

The Witness:

"Yes sir." 77

In recounting the conversation of November 4, Judge Garven said that Biederman asked him to tell Sherwin of the award of the contract; Biederman indicated also that Kohl wanted Garven to speak to Sherwin and advise him that Kohl did not want others involved in Department of Transportation matters. Garven said "he would be happy to speak to Paul." In a further explanation Garven said:

"\* \* \* the impression I received was that the contract was going to be awarded to the lowest bidder, whatever the name is; Sherwin had made a request for rebidding and Kohl rejected, as simple as that. Kohl apparently was somewhat hesitant to go back and pick up the phone. That's all he had to do was pick up the phone and call Sherwin—the lowest bidder's going to get it. That's it. But he didn't. Now, that, plus again my own impression, is that John felt that Sherwin was getting involved in the Transportation Department, and like any other department head, I suppose, he didn't like it. And I think by coming to me—I don't like to see frictions between department heads if they can be avoided,

and sometimes communication is the greatest thing. It can eliminate it."

Garven made plain in his testimony that he did speak to Sherwin shortly thereafter, and although he could not recall the exact conversation, he conveyed Kohl's message 78 to him.

Sometime thereafter, according to Kohl, at one of their many meetings on other matters, Judge Garven said he had talked with Sherwin, and that there would be no further interference with any of the Department's contracts. 79 Garven said this conversation "could have happened" because he was sure he had spoken to Sherwin, but he did not have any recollection of it. He was certain that Biederman never spoke to him again about the matter although they saw each other a good many times after November 4. Moreover, Garven never told the Attorney General of the Biederman November 4 visit, and to his knowledge, Kugler never did know of it until an April 26, 1972 meeting in the Governor's office (to be discussed later). And he never heard Kugler at any time make a statement that the Centrum contract affair was the only time the administration had any trouble with Sherwin. 80

Returning now to the stream of events relating to the Route 46 project—as related above, the contract was awarded to the low bidder, Centrum. That company proceeded to do the work, putting on an extra effort in doing so in order to complete it properly and within the time schedule. It was successful in those respects. In view of the asphalt supply guaranty sought from Centrum and the inquiry as to the adequacy of its equipment to do the work, it seems proper to note that Hale's company, Edison Asphalt Co., did not furnish the asphalt; it was purchased from Warren Paving Co. Nor was much of the Halecrest Company's equipment utilized; necessary equipment was rented from Warren Paving Co. 81

The Commission was not asked as part of this investigation to make a finding or to express an opinion as to whether on all the facts known to Commissioner Kohl on October 26, 1970, a decision could or should be

declared an arbitrary or bad faith exercise of the discretion committed to him by the statute to accept or reject bids on public contracts. However, it seems proper to say, in view of the testimony about (1) the asphalt shortage and the desire to engage a contractor who would be in a position to assure availability of a sufficient supply to fulfill the contract within the time required, (2) the evidence indicating inadequate advertising for competitive bids, because of substantial work changes known to be necessary before the advertising, and (3) the fact that upon completion of the project the contractor was paid \$127,304.07 or 20% in excess of the bid for which the contract was awarded, a substantial portion of which represented additional specifications not the subject of competitive bidding, that a reasonably arguable legal issue could have been presented in civil litigation in support of an attack upon the legal propriety of awarding the contract on the basis of the limited bids submitted. But, of course, the existence of such an issue for civil litigation purposes would not excuse the criminality (if it existed) of a monetary payment by a third person or an arrangement by a public official for such payment in return for the exertion of his influence to bring about a rejection of all the bids and rebidding for the contract.

### III-F

**Developments Between Award of the Contract to Centrum and Biederman Visit to the United States Attorney's Office on April 20, 1972.**

Biederman testified that on November 4, 1970, after advising Assistant Commissioner Mullen of Commissioner Kohl's order to award the contract to Centrum, he gathered and stapled together a "package" of pertinent documents. They were (1) Sherwin's October 8, 1970 letter to Kohl respecting rejection of all bids, (2) an interdepartmental memo from Kohl to Sherwin dated October 5 (referred to above) about the tentative meeting to discuss Manzo problems with the Department—unrelated to the Route 46 project, (3) some press clippings about the project, (4) Mullen's October 26

memo to Kohl giving reasons for rejecting the Route 46 bids, (5) Biederman's October 30 memo to Kohl about the rejection, (6) Biederman's November 4 memo to Mullen reversing the decision to reject the bids and directing award of the contract to Centrum. One copy of this package he said was intended for James Petrella, Esq., Assistant Counsel to the Governor (and he noted on the October 30 memo "b.c.c. James Petrella"); the second copy was for Evan Jahos, Director of the Division of Criminal Justice. (Here too he put the b.c.c. notation on the October 30 memo.)

Biederman said that on the same day, November 4, he set out to deliver one package to Petrella, but on arrival decided to give it to Judge Garven instead. He testified that on finding Garven in he showed him the package, "flipped" through the papers and referred to Sherwin's October 8 letter saying he thought Garven might be interested in seeing it. He said Garven looked at it and, saying he was interested, thanked Biederman for bringing the matter to him and accepted the package. According to Biederman, that was the end of the conversation and he never talked to Garven again on the subject.<sup>82</sup> He denied that he had the discussion set out above in the outline of Judge Garven's testimony; particularly he denied asking Garven to speak to Sherwin or that he said the contract had gone to Centrum.

On the other hand Judge Garven denied that Biederman showed or handed him a package of documents, or "flipped" to the Sherwin October 8 letter, or left any package of documents with him. He said Biederman told him about the October 8 letter and that was the extent of the reference to papers.

The sharp conflict in the testimony was apparent immediately to the Commission. According to Biederman, he had two "packages" of papers with him, one of which he allegedly gave to Judge Garven, the other was for Evan Jahos. Each package was stapled and they were not in an envelope. The Chairman asked him:

"Q. And you had to go from West Trenton to the office of Judge Garven with papers like that?"

(A distance which he said he walked.)

A. Sure

Q. Not in an envelope?

A. No, I don't believe they were in an envelope.

Q. Not in a folder?"

Then probably sensing the doubting attitude of the examiner, he said:

"A. They may have been, yes. They may have been in a folder. You know, one of those, I guess, like the one you have, Mr. Chairman, sitting at your lap. I think they were probably in that. In fact, we did use those folders and I carried them around. I think that's the way they were transmitted." 83

Our study of the testimony and of the attitude and demeanor of the two men as witnesses, in light of the circumstances present on November 4 when Biederman came to Garven's office, convinces us that Biederman is unworthy of belief, both as to his statement that he gave a package of documents to Garven and as to his denial that he asked Garven to speak to Sherwin. The facts in their totality show credibly that Kohl asked Biederman to request Garven to speak to Sherwin. Moreover, Biederman's expression of belief that Garven would speak to Sherwin—even without an express request—after reading the contents of the package, contrasted with Garven's recital of the conversation between them, as noted above, fits into a cohesive pattern which in our judgment clearly establishes Garven's credibility. It is inconceivable to us that after allegedly showing the package to Garven and referring to the October 8 letter, a person of Biederman's loquacity would have said nothing more about the whole bidding issue or Sherwin's intrusion into the matter. And further, with respect to the documents, our conclusion is fortified by his conflicting statement to Bruce Goldstein, Esq., Assistant United States Attorney, that he had *sent* a copy of his October 30 memorandum to "Pierre Garven, Counsel to the Governor."

Further, Biederman testified that he never reported to Kohl at any time that he had asked Garven to speak

to Sherwin. Here again, it is impossible to believe that the two men who had been intimately involved in the bid controversy and whose offices were practically next door to each other, and who saw each other constantly, would have been silent about the matter. And we do not believe that they were. The record discloses a notation in Kohl's handwriting on the memorandum of October 29, mentioned above, which says: "Biederman discussed with Garven, 11/4. Garven to speak to Sherwin." Furthermore, Commissioner Kohl testified that Biederman told him that he had spoken to Garven as Kohl had suggested.

Biederman testified that after leaving Judge Garven he went to Jahos's office to deliver the other "package" of documents. It was then late in the afternoon of November 4. He said he had telephoned Jahos a day or two earlier saying "I've got something for you to see. It concerns a cabinet officer." Jahos replied, "Sure, bring it down or send it down." <sup>84</sup> At another point in his testimony in discussing the alleged telephone call Biederman said he "was going to send it (the package) over to him. <sup>84a</sup>

Jahos testified that he had no recollection of any telephone call from Biederman on November 4 or on one of the earlier days suggested as a possible time by Biederman. Jahos required his secretary to keep a record of all incoming telephone calls in a New Jersey Lawyers Diary. At the Commission's request this diary and Director Jahos's secretary, Mrs. Mary Brennan, were produced. Mrs. Brennan had neither recollection nor diary record of a call from Biederman. We examined the diary and had the pages from October 29 through November 6, 1970 xeroxed. <sup>85</sup> These pages show the incoming and outgoing telephone calls for each day as well as the Director's office visitors and outside meetings. No Biederman telephone call is recorded, although calls from him are shown on October 15, November 13 and 17.

Biederman said on arrival at the office the secretary told him Jahos was not in. So he gave her the "package" saying "Van's expecting this. Would you please give it to him." Mrs. Brennan, who knew



Biederman, testified that no such visit was made by him, no package of documents was given to her, and her diary shows no note of the visit or delivery. The diary page for November 4 contains 17 notes of telephone calls and visitors, all in her handwriting. Mrs. Brennan said also that all letters and documents are stamped by her on receipt, with the date and "Received Division of Criminal Justice."

In late June or mid-summer 1972 Jahos asked her to get from the files all memorandums received from Biederman. She did so and found in the "Bid Procedure" file Biederman's October 30 memorandum to Commissioner Kohl which had stapled to it some newspaper clippings about the Route 46 project. It has no "received" stamp on it, but at the top right hand corner in Director Jahos's handwriting appeared: "File bid procedures." 86 Mrs. Brennan does not know how it got into the file without being stamped. She surmises that someone handed it to Jahos and that he marked it to be filed.

Jahos had no recollection of receiving any documents from Biederman on November 4 or of ever seeing or reading the Biederman October 30 memo or the copies of newspaper articles clipped to it, or his November 4 memo to Mullen directing award of the Route 46 contract to Centrum, or any other documents Biederman asserted were included in the package. He first learned of them in the course of his investigation in the summer of 1972. This investigation was activated as the result of information received from Superior Court Judge Joseph Stamler on May 31, 1972.

Before and after October 30, 1970, Jahos and Biederman had been studying ways and means of protecting the State from the embarrassment of permitting bidding on public projects by contractors whose activities were under criminal investigation, or who had been indicted for or convicted of crime, or the embarrassment of permitting the award of State contracts to such persons or companies. And Biederman had submitted memoranda on the subject, some concerning matters of that kind, such as the Mal Bros. Contracting Company who disqualification as a bidder

for lack of moral integrity he had accomplished. Jahos had a thick file on the subject and it was there that the October 30 memo turned up, but without the November 4 memo or Sherwin's October 8 letter to Kohl (which Jahos said he was certain had not been delivered to him and that he had never seen until the summer of 1972). It is worthy to note in this connection that when United States Attorney Herbert J. Stern showed the October 8 letter of Sherwin to Kohl, to Jahos on June 13, 1972, there was no indication that he had ever seen it before. 85a

The fact is inescapable, however, that Jahos did have at least the Biederman October 30 memorandum in his hands and marked it for the bid procedure file. The only inference suggested is that he looked at it in superficial fashion, felt that it was related to the bidding study he and Biederman were pursuing, and assigned it to that file. In this connection one of the Commissioners, after finding out that Biederman never spoke to Jahos on November 4, or since then about the matter, asked him whether, since he said he had handed the package to Jahos's secretary, he could be certain that Jahos ever received it. Biederman answered:

"Except for that and perhaps my girl had sent it in the ordinary course of business, because that one memo I saw when Mr. Cowan (Criminal Division attorney) interviewed me had the BCC on it. I think we went over that in our preliminary talk—and scratched alongside of it, it said, 'DOT bidding procedures,' or something like that." (Insertion ours.)

Commissioner Bertini:

"Which would indicate where it was filed?"

The Witness:

"Yeah. And as I said we had been sending stuff to him on bidding procedures in connection with the other thing. When I first saw it, I thought, 'My God.

Maybe they misfiled it. That was my natural reaction." 86

Since we are so thoroughly convinced that Biederman did not hand any so-called package to Judge Garven, here again in view of Biederman's statement that perhaps his girl had sent "it" in the ordinary course of business, we have serious doubt that he actually delivered anything to Jahos's secretary. The limited number of papers found stapled together in the bid procedure file suggests the likelihood that they were transmitted as an interdepartmental communication or by ordinary mail, and ultimately got into Jahos's hands without having been stamped as received in the Division. In any event, since Jahos testified he was certain he had never seen Sherwin's October 8 letter to Kohl indicating a preference for rejection of all the Route 46 bids, before his investigation was under way in June 1972, in weighing the testimony for purposes of appraising Jahos's conduct, in our judgment the greater weight of the evidence does not support a finding that he received anything more than the October 30 memorandum and the newspaper clippings attached to it. The presence of those papers in the bid procedure file bearing the notation admittedly in his handwriting at a time when the matter was under investigation, invests Jahos's statements and those of Mrs. Brennan with a cloak of credibility. If moral integrity, the pursuit of which was the aim of the file, were not present in its keepers, it would have been far simpler to destroy the documents than to face possible adverse implications that might arise from their retention. Furthermore, their retention gives support to an inference either that in the experienced view of Jahos they were not susceptible of a sufficient suspicion of criminality on Sherwin's part to warrant an investigation, or that through inadvertence they were simply filed without more than a cursory perusal of their contents.\* And finally, it may be said that if their

\* The testimony is clear that memoranda and letters on the bid procedure and moral integrity matter were passing between Biederman, Garven, Jahos and the Attorney General around this period. 92 Biederman said:

retention can justify adverse inferences, such inferences are at odds with an insinuation of "cover-up."

We have been conscious throughout the above analysis of the evidence; of a need to appraise Jahos's conduct as if he had received and scrutinized Biederman's October 30 memorandum to Kohl and that of November 4 to Mullen. The October 30 memorandum criticized the decision to reject all the bids and the proposed order for rebidding. It suggested that such action in light of Sherwin's request might constitute a conspiracy to violate the bidding statute; and it said that "the best and proper course to take would be to award the contract to Centrum (Biederman's client) and fulfill the Department's promises to the local community with regard to the subject project." (Insertion ours.) The November 4 memo to Assistant Commissioner Mullen reveals that Kohl had discussed the matter with Biederman on November 2, the next working day after October 30, and that "although initially persuaded by Mullen's memorandum of October 26, 1970 to reject all bids on the subject contract, the Commissioner's review of the file subsequently led him to the decision to award the contract to the present lowest responsible bidder, namely Centrum Construction Company. \* \* \* In addition \* \* \* the Commissioner felt that we should fulfill that commitment regardless of the technical objections you raise in your memorandum." Then Mullen was instructed to proceed with the award. 87

In view of Jahos's position as Director of the Division of Criminal Justice and the person immediately charged with administration of the criminal law problems of the Department of Law and Public Safety, and his expertise in criminal law matters,\* we

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"At that time we were sending down to him in connection with these moral integrity debarment things, materials, because of his expertise, either an affidavit for contractors to sign or some type of prequalification on the moral integrity thing, and he was trying to work that out, so he wanted materials in our bidding procedures and all of that, so we had been in contact on that." 93

\* Jahos has an impressive experencial record in administration and practice of criminal law. He became a deputy attorney general

considered it advisable to obtain his opinion of his obligation as a prosecutor on the hypothesis that he had received and read the October 30 and November 4 Biederman memorandums. Referring to the October 30 document first he said he probably would have inquired as to what happened, whether there was "indeed" interference with bidding procedures. If the attempted interference had no effect and the contract went to the low bidder, (and he testified he probably had some indication of this), and the inquiry produced no indication of "any quid pro quo," he would not have been "spurred" into an investigation. <sup>88</sup> Further, since the October 30 memorandum could not have been received by him until the later afternoon of November 4 (according to Biederman's testimony) any inquiry at that time would have revealed, as the November 4 memo established, that Kohl had decided to award the contract to the low bidder Centrum and Sherwin's request had come to naught. So, assuming the facts set out in the November 4 memo, and again, absent anything to

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in 1959 and remained as such for three years. During part of that time he was assigned to the Criminal Investigation Section and tried criminal cases throughout the State. He acted as prosecutor of Ocean County for seven or eight months because of a vacancy in that office. Thereafter he returned to private practice for two or three years and at the request of Attorney General Sills rejoined his staff as Director of Criminal Investigation Section for about two years. During that period CIS was a small bureau consisting of two or three lawyers who handled the criminal law activities of the Attorney General. In that tour of duty he acted as prosecutor of Somerset County and upon promotion to Assistant Attorney General was put in charge of the Prosecutor's Office of Atlantic County for 17 or 18 months. Then he resumed private practice where he remained until the Legislature in 1970 created the Division of Criminal Justice in the Department of Law and Public Safety and provided for appointment by the Attorney General of a Director to assume responsibility of a much broadened area of administration of the criminal law at the State level.

Jahos was appointed Director by Attorney General Kugler and took office June 15, 1970, at which time his staff consisted of the two or three deputies who had been active in the CIS. From June to the end of 1970 most of his time was spent looking for good men to man the Division. By the end of the year he had recruited about 10 or 11 attorneys for both the trial and appellate sections. Since that time the number has increased five fold.

suggest a *quid pro quo* as a motivating factor for the bids rejection request, he would not feel moved to institute a search for possible criminal involvement. <sup>89</sup> Moreover, before reaching a decision not to pursue the matter, he would not have felt obliged to discuss it with the Attorney General. In his opinion, the Division of Criminal Justice is valuable to the extent that it is independent, and if he thought there was a criminal matter warranting investigation he would do so without first discussing it with the Attorney General. This would be true even if a cabinet member were involved; if in his judgment an investigation was warranted he would proceed without seeking clearance from the Attorney General. <sup>90</sup>

Jahos mentioned another factor to be considered. He had known and worked with Biederman for a long time. If Biederman had anything of importance in mind, he would call and discuss it. In October and November 1970 they were working closely on establishing bid procedures on public contracts, particularly in the area of moral integrity of bidders. It was Jahos's thought that if Biederman believed the October 30 memorandum (which was in fact pertinent to their joint study) was important enough to signify a need for criminal law violation appraisal as distinguished from consideration in the regulatory bid procedure area, he would have done more about it with Jahos than simply send a blind copy to him. After pointing out that Biederman was Chief Counsel to the Department of Transportation, and almost as if he were thinking out loud about the problem, Jahos testified, "I could very easily have thought, 'Well, Mr. Biederman has the matter under control and when it becomes important, he will call me.' " <sup>91</sup>

We conclude that his inaction upon the receipt of the October 30 memo was the result of his failure to read said memo or a superficial reading causing it to be misfiled. We further conclude that Jahos's conduct, although understandable in light of all the circumstances, might also be considered careless and improvident. However, in our opinion on all of the facts pertaining to Jahos's conduct, it cannot be said that he

abused his prosecutorial discretion, or acted in bad faith or wilfully failed to proceed with an inquiry. We see nothing that reflects on his integrity and certainly nothing at all to support a finding that he engaged in a "cover-up" of criminal activity on the part of Sherwin. An indication of his ordinary activity as a prosecutor was furnished in response to Judge Stamler's telephone call on May 31, 1972 concerning the introduction of testimony that day in a case being tried before him to the effect that a \$10,000 payment or contribution had been given to the Republican Finance Committee to influence the award of a Route 46 road construction project. The same day Jahos had a deputy attorney general in the judge's courtroom, and the investigation which followed swiftly produced the indictment of Sherwin, Manzo and Loughran less than a month later. "It may be noted here also that in an interview with Counsel to the Commission, Judge Stamler expressed the opinion that the Attorney General's Office operated very quickly and efficiently when the matter was brought to their attention on May 31, 1972." 91a

That performance would appear to justify the opinion of one witness that Jahos is "a completely dedicated law enforcement officer." We acknowledge that our judgment of Jahos's inaction was made sharply perceptive by the fortuitous acquisition of information furnished by Judge Stamler 19 months thereafter indicating that a political contribution may have been made to influence a rejection of all competitive bids on the Route 46 project.

The appearance of Biederman's October 30, 1970 memorandum in the bid procedure file bearing Jahos's handwritten direction to file it there, without an express explanation about the circumstances which produced that disposition, is most regrettable. Hence we further conclude that the Division should establish some regulatory measure which would assure that the receipt of a meaningful "personal and confidential" memorandum would receive official consideration and action. It should be said, however, that our investigation has uncovered no significant evidence in this instance from which the conclusion could be drawn

fairly that the filing was done to avoid investigating the Sherwin matter or in an attempt to coverup known or reasonably suspected criminality.

### **III G**

**Additional Significant Events after Award of the Contract to Centrum; the Ethics Violation Charge against Mr. Biederman and his complaint to the United States Attorney's Office on April 14, 1972.**

Once the contract was awarded to Centrum the matter seemed at an end. Biederman never discussed it again with anyone in the State government, including the persons who had been active in the bidding controversy. Apparently he was satisfied that the "best and proper course" had been taken in the interest of the State and his client Hale. He remained with the Department thereafter until November 14, 1971, at which time he resigned because of passage of the conflicts of interest law by the Legislature. *P.L. 1971, Chapter 182, N.J.S.A. 52:13D-12 et seq.*, effective January 11, 1972.

Incidents involving Biederman which occurred in the ensuing 17 months after the contract went to Centrum, moved him to bring the bid matter to the attention of the United States Attorney.

On July 1, 1971, Biederman wrote Attorney General Kugler about the work of the Department of Transportation and the efficient manner in which it was being conducted. Much of this he said was due "to the excellent personnel you have given me and the virtual free hand I have had in operating my section." Then he pointed out that he did not have tenure in his position and the possibility existed that the next administration might drop him, at which time he would be in his middle forties and "will have absolutely nothing to offer a firm in private practice." Therefore he was renewing his request for a tenure position. Copies of the letter were sent to Commissioner Kohl and the First Assistant Attorney General. The Attorney General who had a limited number of tenure positions available, declined to grant tenure to him at that time. In the present



proceeding on being asked if he would have remained in the State service had he received tenure, he said he thought he would have, although it was open to significant doubt because, among other things, he had "some handsome offers." And he indicated he felt no animosity toward the Attorney General because of the denial of tenure. 95

The testimony reveals also that on a number of occasions Biederman importuned Judge Garven to recommend him for a judgeship — which was not done. 96

Then in 1971 a conflicts of interest statute was introduced in the Legislature. Biederman was concerned about the adverse affect it might have on his ability to deal with State agencies if and when he returned to private practice. Upon its adoption he decided to resign and form a partnership with another Deputy Attorney General. The two men had a conference with a press representative and expressed their opposition to the law. According to Biederman, Attorney General Kugler criticized them severely for this as being contrary to regulations of his department. 97

On September 1, 1971 Biederman submitted his resignation to Kugler saying that he read the conflict law "as one which will be liberally construed by the courts" and in its then form would seriously interfere with his ability to practice law privately unless he left the Department before the act became effective. So he wished to resign prior to January 11, 1972, its effective date. The requested arrangements having been made, he left the service on November 14, 1971. On doing so he took with him eight crates of memorandums and briefs, among them all the Route 46 memorandums. 98a Thereafter he practiced for a time with the Deputy Attorney General mentioned above, under the firm name of Biederman & Mulligan.

Toward the end of 1970 Biederman as Chief Counsel to the Department of Transportation had conducted a hearing before Commissioner Kohl, the purpose of which was to determine whether Mal Bros. Contracting Company should be disqualified as a bidder on department contracts on the ground that it lacked

moral integrity. On December 2, 1970 the Commissioner found that the company lacked the moral integrity to qualify as a responsible bidder and ordered its disqualification.

The disqualification grew out of Mal Bros. involvement with Kantor Supply Company which figured prominently in the criminal trial of former Newark Mayor Hugh J. Addonizio and others. At that trial the Kantor Company was shown to have been a dummy corporation which existed only for the purpose of siphoning moneys out of construction contracts as "kickbacks" to public officials. Mal Bros. was named there as having delivered checks to Kantor Supply against fictitious invoices. Louis and George Malanga were indicted subsequently and charged with falsifying Mal Bros. income tax returns as to the amount of purchases included in the cost of goods sold. It appeared also that George Malanga had been held in contempt by the United States District Court for failing to produce certain Mal Bros. records for Grand Jury inspection. <sup>99</sup>

On the record established by Biederman the Commissioner found the Malanga explanation of its involvement with Kantor Supply to be "incredible." In ordering the disqualification Kohl said that even though moral integrity was not specifically made a precondition to bidder qualification by the statute, that attribute had to be considered as directly related to responsibility as a contractor on public work. An appeal was taken to the Appellate Division where Biederman again argued successfully that Mal Bros.' explanation of its involvement with Kantor Supply was incredible, that the facts sustained a finding of lack of moral integrity, a quality which is required of public bidders. *Mal Bros. Contracting Co. v. Kohl*, 113 N.J. Super. 144 (App. Div. 1971). In its opinion the Appellate Division said:

"The Commissioner found Mal's explanation to be incredible, and we agree. In short, we conclude that there was substantial competent and relevant evidence in the record to support the Commissioner's finding of lack of moral integrity on the

part of Mal." 113 *N.J. Super.* at 147.

The record made before us shows also that during Biederman's incumbency as Chief Counsel, one Aldo J. Baresi had a condemnation claim pending arising out of a taking by the Department of property allegedly owned by him in the Meadowlands area along Route 3 in East Rutherford.

Less than three months after Biederman resigned he notified an Assistant Attorney General that his firm represented Baresi and wished to discuss a possible settlement of his claim. In the letter he said: "Apparently nine years have passed since the State took his property and this man has not seen a quarter yet. I am certain you are as shocked as I am to learn that a litigant has not been able to get his 'day in court' for nine years in a case where constitutional rights are involved. An expeditious settlement would cure this matter to, I hope, everyone's satisfaction." 100

After some further correspondence 101 between Biederman and an Assistant Attorney General, the matter was called to the attention of Attorney General Kugler who agreed that Biederman's appearance as Baresi's attorney constituted a conflict of interest. At Kugler's direction Biederman was told that he could not appear for a person whose interest was adverse to the State and would have to withdraw, which he then did.

Around this time the New Jersey Supreme Court sustained orders of Commissioner Kohl disqualifying two construction companies as bidders on Transportation Department contracts, one operating in corporate form and the other under a trade name, whose principals were under State or Federal indictments. The records in the cases showed that defendants were given an opportunity at a hearing to present evidence as to the truth of the charges, and that they declined to do so. *Trap Rock Industries, Inc. v. Kohl*, 59 *N.J.* 471 (1971)

On December 29, 1971 and January 5, 1972, Biederman sent congratulatory notes to the Attorney General about the "splendid victory," saying among other things that he concurred "completely" in his policy against the State doing business with contractors

who lack moral responsibility. 102 Copies were sent to a Deputy Attorney General assigned to the Department of Transportation, and blind copy to "Pierre Garven, Counsel to the Governor."

In spite of the withdrawal from Baresi's case and the letters about the Trap Rock case, on March 22, 1972 Biederman wrote Commissioner Kohl as attorney for Crescent Construction Co., Inc., the new name for Mal Bros. Contracting Co., but with the same principals, George and Louis Malanga. The letter was a formal request for the reinstatement of Crescent as a contractor qualified to bid on public contracts. It informed Kohl that the two Malangas had pleaded *nolo contendere* to one count of the four-count indictment referred to in the disqualification proceeding mentioned above, and that the other three counts were dismissed; as a result each brother was fined \$5,000, given a two-year suspended sentence and put on probation for three years. The remainder of the letter contained a typical attorney's argument of reasons why the Malangas should be relieved of their disqualification and be awarded "immediate reinstatement." A copy of the letter was sent to Judge Garven.

Five days after Biederman's appearance for Mal Bros. (Crescent), Deputy Attorney General Alfred L. Nardelli, after discussing the matter with Assistant Attorney General Greenberg, advised Biederman that such representation at a reinstatement hearing would involve a conflict of interest. On the same day Biederman wrote Commissioner Kohl supplementing his earlier letter "requesting the reinstatement of Crescent Construction Company as a qualified contractor for the Department of Transportation. We now request a formal hearing on this matter. Please schedule same at your earliest possible convenience."

In the next paragraph Biederman advised of the substitution of another attorney, saying that since "I represented the Department at the earlier hearing, which resulted in the disqualification of Crescent

Construction Company, my representation of Crescent may constitute a conflict of interest." 103 Biederman sent a copy of this to Judge Garven.

On April 5, 1972 the reinstatement hearing was held before Commissioner Kohl. Biederman appeared with the new attorney, he did not sit at the counsel table with him but sat a few feet away. At the conclusion of the hearing Commissioner Kohl noted Biederman's presence and asked whether he was there as an interested observer or in some other capacity. Biederman replied that he was present as an interested observer but "would like to make a comment for the record." Then he proceeded to make a summation in favor of reinstatement of the Malangas saying among other things that:

"\* \* \* the United States Attorney's office has given these gentlemen a clean bill of health, no further investigations, and that matter is completely laid to rest. If there is any doubt, I suggest you call Mr. Stern and find out for yourself. The U.S. Attorney approached them to plead and assured them that that would be the end of it \* \* \*." 104

No member of the United States Attorney's staff supported Biederman's assertion that the Malangas were given a clean bill of health. The \$5,000 fine on each brother with the suspended two year sentences and five year probation period hardly qualifies as a clean bill of health. In fact when Jonathan L. Goldstein, Esq., First Assistant to Mr. Stern, testified before us he said counsel for the Malanga brothers had made a request for a change of some kind in the probation status so they could bid for State contracts. As to this Mr. Goldstein said: "And I don't mind telling you that we advised their counsel that under no circumstances would we so consent." He thought also it would be fair to say that a statement that his office had given the Malangas a clean bill of health was "a little on the exaggerated side." 105

Commissioner Kohl denied the application for removal of the Crescent company's disqualification as a bidder.

Biederman's conduct in the Malanga brothers' company's disqualification matter was inquired into at our sessions as an incident of our obligation to judge his reliability and credibility. On being questioned about the original disqualification proceeding which he handled within the Department and in the Appellate Division, he indicated that personally he did not think the Malangas' explanation of its dealings with the Kantor Supply Company was "incredible." For example:

"Q. But, in any event, the explanation that was offered at that hearing by Mal-Bros. you regarded as incredible and argued as incredible, did you?

A. Well, the Court regarded it that way, and the Commissioner in his decision regarded it that way. I advocated that position as an advocate does.

Q. By this, what I take to be a qualification, do you mean that the Commissioner said it was incredible, the Court said it was incredible, but you simply argued it without feeling that it was incredible?

A. Well, a lawyer advocates. He doesn't judge and he doesn't make policy." 106

Then he lashed out at Commissioner Kohl, (as he had done earlier in his testimony when he stated he did not trust him), saying that at the conclusion of the original disqualification hearing Kohl told him he had decided not to bar Mal Bros. and that Biederman should prepare a memorandum voicing that result. Thereafter, according to Biederman, while he was in the course of writing that determination, Kohl came to his office and told him he had a phone call from "downtown" and that the decision had to go the other way. So, as Biederman put it, he "had the intellectual exercise of being halfway through an opinion not to debar them, to debar them, and the court upheld the second one, which is an interesting commentary on justice." 107 Kohl unequivocally denied this testimony.

In this connection our record contains another of Biederman's memorandums. The one dated November 6, 1970 was directed to Judge Garven, Attorney General

Kugler and Director Evan W. Jahos on the subject of Mal Bros. Contracting Company. It outlines for the recipients the company's difficulty stemming from the Addonizio trial and the resulting temporary suspension from dealing with the Department of Transportation. After noting the absence of any substantial explanation by Mal Bros. of the Kantor dealings, it continues:

"Under the circumstances, the Commissioner will continue with the suspension of the contractor.

You may recall, that there is no case in this State which holds that an indictment without conviction shall be sufficient to support a charge of moral integrity (sic) against a contractor justifying a suspension from bidding. Mal Bros.' attorney has indicated that he will certainly appeal the suspension of his client.

If you concur in the Commissioner's opinion and wish this Administration to make this case a test case which would establish a standard for treating other contractors dealing with State Government, please advise." 108

As noted above, the Commissioner's decision continuing the disqualification was rendered on December 2, 1970.

After the April 5, 1972 reinstatement hearing which had been initiated by Biederman, then serving Mal Bros.' successor, Crescent, as a private client, the Attorney General, feeling that Biederman's conduct was unethical and that "someone has to further impress on (him) that he cannot act on both sides of a case on alternate dates," sent a memorandum about it to Edward B. McConnell, Administrative Director of the Court. In the memorandum, dated April 6, 1972, he asked that the usual procedure for discipline be pursued. On the same day Kugler notified Biederman of his action. 109

The matter was referred to the appropriate county ethics committee for consideration. Shortly thereafter, according to Commissioner Kohl, Biederman came into his office one morning "storming" about it and saying that he was going to take some step against the At-

torney General "to get even." Some weeks later Kohl ran into Biederman at the State House cafeteria. Biederman talked about his predicament, the fact that he was still trying to find a way to get himself cleared of it, and "get even with people," primarily the Attorney General, at whom he was still "mad." 110 Oddly enough, in the course of this conversation his anger at the Attorney General did not keep him from expressing the hope that Kohl "would see fit to reinstate Mal-Bros." 111 It may be added here also that in the course of his testimony Judge Garven said he talked with Biederman in March 1972. At that time Biederman asked Garven to intercede with the Attorney General to put his client Mal Bros. back on the bidding list. 112

On April 14, 1972, eight days after Biederman was notified by Kugler of the ethics proceeding, he made a complaint to Bruce I. Goldstein of the United States Attorney's Office in Newark about the contract award proceedings on the Route 46 road construction project. This was 17 months after the award and five months after Biederman's departure from the Department of Transportation. On this day certain memorandums were given to Goldstein by Biederman. They were:

(1) The October 8, 1970 letter from Sherwin to Kohl suggesting rejection of all bids on the Route 46 project and rebidding;

(2) a letter from Kohl to Sherwin of October 5, 1970. This letter is worthy of a comment at this point. Goldstein says in his memorandum of April 20 detailing the conference that:

"Apparently this (meaning the Sherwin October 8 letter about the bids) had been the subject of some discussion prior to the writing of this memorandum since Kohl sent a letter to Sherwin three days before referring to a discussion of the 'Manzo' matter and also referring to a background memorandum which Sherwin had sent to him \* \* \*. Biederman did not present me with a copy of that background memorandum."

Obviously Biederman led Goldstein to believe or encouraged him to infer that the October 5 letter related



to the Route 46 project. No one knew better than Biederman that the letter had nothing whatever to do with Route 46. It arose from the July 20, 1970 memo which, as the earlier discussion in this Report so plainly shows, concerned a Route 22 project and an allegation by Manzo about collusive bidding. It is not without significance with respect to Biederman's animus against the Attorney General that he did not deliver the July 20 document.

(3) The two letters of October 14, 1970 from Centrum and Edison Asphalt Company concerning the asphalt shortage;

(4) Biederman's memorandum of October 30, 1970 to Kohl objecting to the rejection of all Route 46 bids and the proposed rebidding. Here again, Biederman's animus appears. He omitted the October 22 file memo marked "Confidential," which he sent to no one and which, as we have already shown above, contains the information he had to know was favorable to the Attorney General;

(5) The Department's abortive press release about the rejection of the Route 46 bids;

(6) Biederman's November 4, 1970 memo reporting the award of the Route 46 contract to Centrum, the low bidder.

Goldstein notes also:

"It is my understanding that a copy of the Biederman memorandum was sent to Pierre Garven, counsel to the Governor."

The reference here seems to be to the October 30 memo, although it is not entirely clear. But obviously the reference is to one memorandum. At this point the observation must be made that Biederman seems to have forgotten what he swore to before us, i.e., that he hand delivered a "package" of letters and memorandums to Judge Garven at his State House office on November 4, 1970.

Goldstein's report of the conference concludes by noting that the information and documents had been furnished in support of Biederman's request for an investigation by the United States Attorney. 113

On the basis of all that has gone before in this Report, we are satisfied that if Biederman had been given tenure as a Deputy Attorney General, or if he had been granted a judgeship, or if he had not been required to withdraw from the Baresi and Mal Bros. matters, or if the Attorney General had not presented the ethics complaint against him, he never would have reported the Sherwin matter to the Federal attorney's office. In our view his visit there was a retaliatory measure,\* and grew out of animosity toward the Attorney General and a desire to embarrass him and the Administration he represents. We do not wish the conclusions expressed in this paragraph to be misinterpreted. They must be looked at within the focus of the Commission's investigation. As we said at the outset of this Report, expression of an opinion as to guilt or innocence of the indicted, and now convicted, defendants, is beyond the limits of the task the Commission was obliged to assume under the mandate of the statute, and it would

\* When asked if the ethics complaint made him angry he said he was not "delighted" about it; then that he resented it, but it was "absolutely not" in retaliation for the ethics complaint. On being asked if there was a causal relationship between that complaint and his visit to the Federal attorney's office he replied: "Let's say rather than discouraging me, it prompted me there. I walked a little faster perhaps." 114 He said he thought he had acted properly in the Baresi case and in the Mal Bros. reinstatement application, and he professed not to know about section 17 of the Conflicts of Interest Law, N.J.S.A. 52:13D-17, which provides:

"No State officer or employee \* \* \*, subsequent to the termination of his office or employment in any State agency, shall represent, appear for or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, \* \* \* any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee \* \* \* shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed 6 months, or both."

be highly improper for us to venture into that field beyond reciting such relevant facts disclosed by our investigation as enable us to appraise the conduct of the Attorney General and his office within the framework of our assignment. We recognize, of course, that from the standpoint of administration of the criminal law, the motives of an informer ordinarily will not stand in the way of prosecution for crime, nor excuse guilt of the offender if it exists. But within the ambit of our investigation there are issues of credibility and reliability between Biederman on the one hand and Garven, Jahos, Kohl and Kugler on the other. And we accept as our burden here the duty to uncover and evaluate all facts which throw any light on those issues.

For the purpose stated we have admitted into our investigatory record the facts and circumstances set out in this subdivision, III-G, of the Report. The additional material has served to confirm the negative view of Biederman's credibility and reliability as a witness in the areas of conflict between his testimony and that of Garven, Jahos, Kohl and Kugler on which, as hereinabove noted, we feel obliged to accept the statements of the latter four persons as more trustworthy.

### III-H

#### Events Subsequent to the Intervention of the United States Attorney.

After the Biederman complaint and before any investigation was begun, the United States Attorney Herbert J. Stern arranged for and held a meeting with Attorney General Kugler at his office in the State House Annex, Trenton, on April 26, 1972. In making the appointment Stern did not advise the Attorney General of the subject he wished to discuss. He and his first assistant Jonathan L. Goldstein brought with them to Trenton the Biederman documents and Bruce Goldstein's memorandum referring to them and his conversations with Biederman.

After some unrelated preliminary discussion Stern embarked upon the Route 46 contract matter. According to his testimony, he handed Kugler the

Biederman material and Bruce Goldstein's memorandum for examination, and waited while Kugler "perused" them. The scene was a rather tense one and there was very little conversation. Stern testified, however, that at one point during the perusal of the papers, Kugler looked up and said Biederman had spoken to him about it, and (quoting Stern) "I remember these words—"that this was the only *time* we had any difficulty with Sherwin; that Garven \* \* \* had stopped it." At another point Stern said: "I think that was it. That was the message I got. I don't remember the exact words." 114a Jonathan Goldstein in his testimony, introduced a month and four days later, gave his recollection of the statement as "This is the only *problem* that we had with Mr. Sherwin and that Mr. Garven had spoken to Mr. Sherwin and had put a stop to it." 115 In an undated memorandum of the conference dictated by Stern (according to Goldstein) "probably several days or a couple of weeks thereafter," the recollection of the statement was put in this form:

"Attorney General Kugler acknowledged to us that Mr. Biederman had personally brought this matter to his attention. He indicated to us that this matter had also been brought to the attention of Mr. Pierre Garven counsel to the Governor and that Mr. Garven had spoken to Mr. Paul Sherwin and had stopped Mr. Sherwin's activities in *this* matter." 116

The conference then discussed investigatory procedures and whether the State or Federal authorities should move ahead with the investigation. Stern felt that since a State cabinet officer was involved and there had been no State inquiry up to that time it would be better if his office proceeded alone. To this Kugler replied that perhaps that would be the best way of handling it, but he wanted some time to think about it before giving a final answer, and as soon as a decision was reached Stern would be informed. At Stern's

request Kugler agreed not to inform Sherwin or Jahos about the incipient investigation. According to Kugler, he told Stern, however, that he would have to talk to the Governor who was his superior, and he expressed the thought that the "first" thing the Governor would do would be to call in Kohl and Sherwin and inquire about the matter, \*118 since they were two of his cabinet officers.

In his testimony before us the Attorney General denied that all of the documents given to Bruce Goldstein by Biederman were handed to him at the April 26 meeting with Stern. In addition, he was emphatic about the memorandum Bruce Goldstein had made concerning his conference with Biederman on April 14, 1972. When Goldstein's memo was handed to him at our session he said, "I have never seen that before in my life. I'm positive of that." 120 On April 26 Stern did give him the Biederman October 30, 1970 memorandum about the bids rejection; that was the first time he had ever seen it. The Commission investigation has not found any evidence to the contrary. On April 26, 1972 Kugler was shown also the October 8 Sherwin-to-Kohl letter and the November 4 Biederman-to-Mullen memorandum ordering award of the Route 46 contract to the low bidder Centrum. He had neither seen nor discussed those documents with anyone previously. In addition, Kugler on April 26, 1972 was shown some newspaper clippings about the project, but he did not believe he saw the Centrum and Edison Asphalt Co. letters of October 14, 1970, or the Kohl-to-Sherwin communications of October 5, and he had only a vague recollection of seeing some Department press release.

Kugler said that Stern never indicated to him that he thought Kugler knew about the matter, and there was no indication in the conversation that any money or other type of consideration was involved. On the basis of what was shown to him his impression was that

\* Even Biederman expressed a similar idea about the Governor's reaction. He said:

"If the Governor thought there was anything wrong here, he would have thrown people through the glass doors of the State House." 119

Sherwin was trying to do a favor for a constituent. And he said such impression was confirmed by Kohl later that day at the Governor's office. According to Kohl, he was asked to do the favor if he could, but after consideration, he decided it should not be done, and so the contract was awarded to the low bidder. Kugler said that at the time of the Stern meeting he had no idea there was any money involved, and he did not think anyone else had such an idea. In an earlier portion of his testimony the Attorney General asserted that if he had been given the information that Biederman said in his file memorandum of October 22 was the subject of their alleged telephone call the previous day (i.e., that Sherwin had asked Kohl to do a favor if he could, and Kohl decided it could not be done), it would have been Kugler's thought that Kohl should tell Sherwin so; under those circumstances Kugler would have felt that the matter "was none of (his) business." 121

Kugler said there was neither discussion about nor reference to Judge Garven at the April 26 meeting with Stern and Jonathan Goldstein. He denied emphatically that after looking at the memorandums he said to Stern that this was the only time the administration had any difficulty with Sherwin and that Garven had spoken to Sherwin and stopped it, or stopped "his activities in the matter." He said he had a "very clear" recollection that he had never said anything like that. He denied also saying that Biederman had brought "this matter" to his attention. He said he told Stern he knew nothing about the matter referred to in the memos. But he recalled and so told Stern that he had at some earlier time discussed with Biederman a Manzo problem having to do with alleged bid rigging, and that his department had some memos about it. 122

This inconsistency in the testimony will be analyzed more fully hereafter with the aid of additional facts which throw light upon the probative force to be accorded the recollection of the parties.

Kugler informed Stern that he had filed an ethics violation charge against Biederman, and that it un-

doubtedly prompted the Route 46 complaint to the Federal office. However, both men agreed that whatever Biederman's motive, the United States Attorney was required to investigate.

After Stern and Goldstein left the Attorney General's office, they stopped and chatted with Jahos on their way out of the building. Kugler visited the Governor's office almost immediately and informed him of the conference with Stern. As was expected, the Governor telephoned Commissioner Kohl and told him to bring down his Route 46 file as he wished to talk to him about it. Kohl appeared with the file and removed its contents. One document dated October 29, 1970 had handwritten on one side, "Biederman discussed with Garven. 11/4. Garven to explain to Sherwin." (This 10/29 memo pertained to the Route 22 Manzo collusive bidding allegation.) Kohl explained that this memo happened to be the top paper on the file and he had made the notation on it. There was no connection between the memo and the notation, which was made simply to record that Biederman had complied with his request to speak to Sherwin about the contract award to Centrum, and that Garven had indicated a willingness to do so. Kugler had never seen the notation before, nor had anyone ever told him that Garven had such a discussion either with Biederman or with Sherwin.

Prior to Kohl's arrival, Attorney General Kugler asked the Governor not to tell him or Sherwin about Stern's visit. The Governor agreed and did not disclose it. However, during the conversation Kohl volunteered that he had been asked to come to the United States Attorney's office the next day or two days later to discuss the matter. The Governor told him to cooperate fully with Stern at the time of their meeting, and to produce whatever records were requested. The record shows that Kohl did go to the Federal Attorney's office and brought his file with him. (This file contained the October 29 memo on the side of which Kohl had made the notation "Biederman discussed with Garven. 11/4. Garven to explain to Sherwin.") Stern said he telephoned Kugler to say Kohl had been interviewed and "we got all the records." 123

The Governor then called Secretary of State Sherwin and without telling him the purpose, asked him to come to his office. Before Sherwin arrived, it was Kugler's recollection that Judge Garven, who was in and out of the office during the interview, took Kohl's file and had it xeroxed. Kohl then went into another room and was not present when Sherwin appeared and conferred with the Governor. 124

Sherwin's version was that he was trying to do a favor for a constituent. Sherwin said he was aware of the asphalt shortage and the fact that the bids on the Route 46 project exceeded the engineer's estimate, and in his October 8 letter to Kohl and the telephone conversation a few days later, he tried to accomplish the favor by asking Kohl to cancel all the bids and call for rebidding if it could be done legally. Later, when he found out that the favor could not be done and that the contract was going to the low bidder Centrum, he thought that was the end of it. 125 The Governor told him to cooperate in any investigation of the matter.

That same afternoon Attorney General Kugler telephoned Mr. Stern advising that since a fellow cabinet officer was involved, he agreed with the suggestion that the Federal authorities should conduct the investigation and that he (Kugler) should stay out of it. He told Stern also that he had consulted the Governor who had called in Kohl and Sherwin and, among other things, told them to cooperate in any inquiry. Stern indicated he would proceed and would keep Kugler advised of developments. 126

On this same day a subpoena duces tecum issued out of the United States Attorney's office for the production of the Manzo Contracting Company's books and records. They were produced and apparently were in the course of being examined when the matter took an unexpected turn.

On May 31, 1972, a little more than a month after the Kugler-Stern meeting, Director Jahos received a telephone call from Superior Court Judge Joseph Stamler. From that call Jahos learned that an accounting action was being tried before Judge Stamler in which Manzo Contracting Co. was plaintiff, and Warren



Limestone Co. was defendant. According to Judge Stamler, Michael Manzo, president of the Manzo company, was seeking recovery of all or a part of a \$10,000 contribution to the State Finance Committee of the Republican Party which the company made on behalf of the joint venture of the two companies. On the previous day, May 30, John Perrucci, Jr., an officer of the defendant Warren Limestone, had testified that Manzo told him he had paid the \$10,000 in order to have rejected the bids that had been submitted on a Route 46 road resurfacing project by his and other companies so that Manzo's company, which was then the second low bidder, would have another chance at the competitive bidding.

At the direction of Jahos on May 31, 1972, Deputy Attorney General Cowan visited Judge Stamler at the Court House in Morristown. There he learned the general substance of the testimony of Michael J. Manzo and John Perrucci, Jr. and was allowed to see a check, dated October 23, 1970, of the Manzo Contracting Co., Inc. for \$10,000 payable to the Republican Finance Committee. With Judge Stamler's permission, Cowan ordered a transcript of pertinent excerpts of the testimony of Manzo and John Perrucci and a photocopy of the \$10,000 check. Perrucci's testimony was transcribed on June 9 and Manzo's on June 21. Both transcripts and the copy of the check were delivered to Jaho's division on June 21.

In the meantime, the investigation into the matter was going forward under the direction of Jahos. It seems important to set down here that Jahos had not been informed about the subject or purpose of the United States Attorney Stern's meeting with Attorney General Kugler on April 26. Although Jahos knew of the Stern and Jonathan Goldstein visit, Kugler, keeping his word to Stern, had simply told Jahos that they had discussed whether the State or Federal authorities should conduct a planned investigation. Having given Jahos this unspecific information, Kugler apparently saw no purpose in telling him about his agreement with Stern to allow the Federal officers alone to investigate the Route 46 contract award. Kugler left for Europe on

June 8, a day before the Perrucci testimony was transcribed, and 13 days before it was delivered to Cowan. Either the day before or the day of Kugler's departure while the two men were in the cafeteria, Jahos said that Judge Stamler had telephoned informing him that in a civil suit before him a witness testified that he had given a large contribution to the Republican Party "to get a matter taken care of." Kugler told Jahos to "get somebody up there right away, because it did not sound good," to which Jahos replied that he already sent Cowan up. Kugler testified he did not connect this conversation with the subject matter of the Stern visit, and so did not tell Jahos the investigation should cease because of his agreement with Stern. 128 After this Kugler heard nothing more of the matter until he returned from Europe on June 17.<sup>129</sup>

But in the interim Jahos and his assistants were pushing their investigation efforts. On June 12, in the course thereof, Cowan interviewed Biederman who produced additional copies of the various memorandums including that of October 30, 1970. But, as was the case with his complaint to the United States Attorney's office, he did not hand over his file memo of October 22 which recited the only information he allegedly ever transmitted to Attorney General Kugler. On this occasion, however, he took another tack. He told Cowan that he had given a copy of the October 30 memo to Kugler. We find no truth whatever in that statement. He did not so testify under oath before us. On the contrary, he said that after the alleged October 21 telephone call he never again spoke to Kugler about the Route 46 contract. And, in spite of his passion for multitudinous carbon copies and blind copies of memorandums, his October 30 memo bore no notation whatever of any kind of copy to Kugler, although copies of one kind or another were noted for Jahos, and then Jahos and Petrella. And even when he made his complaint and submitted his various supporting memorandums to Assistant United States Attorney Goldstein, he did not allege any delivery of the October 30 memorandum to Kugler. In short, in our view, his statement to Cowan

about giving that memo to Kugler is completely empty of credibility.

On June 17, Jahos, Stier and Richards (two deputy attorneys general assigned to the Division of Criminal Justice), came to Kugler's home. By that time the investigation prompted by Judge Stamler was pretty well completed. On the basis of the information given to him by the three men, Kugler became aware that it involved the case about which Stern had come to see him, and also an allegation of a connection between a \$10,000 payment to the Republican Party by Manzo and his effort to have the bids rejected on the Route 46 project. 130 This was the first substantial evidence of possible unlawful conduct in Manzo's efforts to have Sherwin persuade Kohl to reject all the Route 46 bids and order rebidding.

In early June one or both of the Perruccis told a Federal Bureau of Investigation agent of his testimony before Judge Stamler, 130a and the United States Attorney's investigation stepped up its pace. In a short time it was discovered that both State and Federal agents were interviewing the same witnesses, which, understandably, upset Stern because it seemed to him that Attorney General Kugler had broken his agreement to allow the Federal authorities to proceed alone. As a result, a conference was held in the United States Attorney's office in Newark on June 13 to resolve the question. Present were Stern and his two assistants Jonathan Goldstein and Bruce Goldstein, and representing the State were Jahos, Edwin H. Stier and Peter R. Richards, deputy attorneys general assigned to Jahos's Criminal Justice Division. At the beginning of the meeting the atmosphere was rather tense, undoubtedly because the Federal attorneys felt the State investigation constituted a breach of faith. In addition, the relations between the State and Federal offices were not harmonious because of a dispute then and still pending as to whether the United States Attorney had granted immunity to a prosecution witness in a recent criminal trial involving Jersey City political figures, without proper notice to or the consent of the State Attorney General, and which the State authorities fear

may adversely affect a pending State indictment against the witness. 131 The tension eased, however, when Jahos informed Stern that he was not aware of any agreement by the Attorney General to refrain from investigating; he had not been informed of the specific subject matter of the Stern-Kugler April 26 meeting, and, in any event, he had not begun any investigation until after he received Judge Stamler's telephone call on May 31. 132 In testifying before us, after reexamining a report which Stern said Bruce Goldstein had made as a memorandum of the entire June 13, 1972 meeting, Stern expressed some doubt as to whether Jahos had said he did not know of the specific subject matter of the Stern-Kugler meeting. However he indicated he was satisfied that the State investigation did not begin until around June 1 and then "solely" as the result of Judge Stamler's call which alerted the State to the Manzo and Ferrucci testimony and the \$10,000 check to the Republican Party. 133

The two groups then decided they would coordinate their investigations. Thereafter they cooperated fully and ultimately indictments against Sherwin, Loughran and Manzo were handed down on the same day by the State and Federal Grand Juries.

The theory of the prosecution was that in return for a \$10,000 contribution to the Republican Party, Sherwin agreed that he would endeavor to persuade Commissioner Kohl to reject all contractors' bids on the Route 46 project and order rebidding so that Manzo's company, the second low bidder, would have another chance at the competitive bidding. Sherwin, the only defendant who testified at the subsequent trial, denied any such agreement. He maintained that his only effort was to do a favor for Loughran and that he was unaware of the \$10,000 contribution.

It is appropriate at this point to return to a consideration of two statements attributed to Attorney General Kugler at the Stern-Kugler meeting on April 26, 1972, and to appraise their significance and probative force as factors bearing upon our investigation.

In testifying about that meeting Mr. Stern was

relying on his recollection and also following the undated memorandum he dictated "probably several days or a couple of weeks thereafter." 133a He said that Attorney General Kugler acknowledged that Biederman "had personally brought this matter to his attention." According to Kugler the only comment he made to Stern about conversations with Biederman was that at some prior time he had discussed with Biederman a Manzo matter which involved alleged bid rigging, and that his department had some memos about it. But he disclaimed knowledge of Biederman's October 30 and November 4 memorandums respecting Kohl's bids rejection decision, the reversal of that decision, and the award of the contract to Centrum.

If it is assumed, as was done earlier in this Report, that Biederman had talked to Attorney General Kugler about Sherwin's activities in the Route 46 problem, what factual matter appears? Biederman, the only witness in this regard, and patently an unfriendly one to Kugler, alleges he spoke to Kugler just once by telephone on October 21, 1972, the day after he (Biederman) learned about the matter. And he testified that at that time he informed Kugler in general terms of Sherwin's request at an unspecified time to Kohl to reject all the Route 46 project bids so Manzo could have another chance at the bidding, that he (Biederman) spoke to Kohl about it on October 20 and was told by Kohl that Sherwin's request would be rejected and the contract would be awarded to the low bidder. It must be reiterated here, that our investigation produced neither witness nor memorandum to show that Kugler ever received any information about the Route 46 contract beyond Biederman's telephone conversation, the alleged content of which, as noted above, is set forth in Biederman's file memorandum of October 22. Obviously, it could not be inferred from the statement Kugler concedes he made to Stern about a conversation with Biederman relating to collusive bidding, or the assumed content of the alleged telephone conversation with Biederman, that if he did say to Stern that Biederman brought "this" matter to his attention he could possibly have meant he knew the content or the

substance of the letter of Sherwin to Kohl of October 8, 1970, and the memorandums of October 30 and November 4. Kugler would not have admitted what he denied knowing, in his testimony before us, which denial is not refuted or challenged by any evidence revealed in our investigation, and which is supported by the written memorandum of Biederman, the only witness known to have spoken to Kugler about the Route 46 contract. Moreover, since Stern said he could not remember the exact words used and since his memorandum was not dictated until several days or a couple of weeks later, in the absence of some particularization, concerning the exact words used, it would be unjust to regard a possible adverse inference from a generalized and disputed statement, which may not have been in the precise form in which it is now recollected, as sufficient to overcome substantive and uncontradicted evidence which makes it unlikely that the statement would have been made in the form alleged. We are convinced that United States Attorney Herbert J. Stern thought that Attorney General George Kugler was referring to the Route 46 matter and we are equally convinced that in speaking of "this matter" the Attorney General was referring to the collusive bidding allegation.

We have considered with care also Kugler's positive and unequivocal denial that he made the second statement attributed to him. More particularly he denied he "indicated" as the undated memorandum puts it that "this matter had also been brought to the attention of Mr. Pierre Garven counsel to the Governor and that Mr. Garven had spoken to Mr. Paul Sherwin and had stopped Mr. Sherwin's activities in this matter," or that he uttered the similar statements testified to by Stern and Jonathan Goldstein. 134

Here again there is evidence which negatives the idea that such a statement was made. All of the pertinent facts revealed by our investigation show that Attorney General Kugler did not know that Judge Garven had spoken to Sherwin about the Route 46 contract until Kugler went to the Governor's office on the day of, but after, the Stern-Goldstein visit. There he learned from Kohl and Sherwin about Sherwin's

request for rejection of the Route 46 bids, and for the first time he saw Kohl's note on the side of the October 29 memorandum that "Biederman discussed with Garven, 11/4' Garven to explain to Sherwin." Although Judge Garven was in and out of the room during the Governor's meeting with Kohl and later with Sherwin, Kugler recalled no questions being put to or statements by Garven about his conversation with Sherwin. Those present accepted Kohl's explanation that he had asked Biederman to ask Garven to tell Sherwin that a decision had been made to award the contract to Centrum. 135

Our study of the entire record leaves us convinced that prior to his meeting with Stern and Jonathan Goldstein on April 26, 1972 Kugler was not aware that Judge Garven had spoken to Sherwin about the Route 46 contract. Moreover, the testimony reveals that when Biederman spoke to Judge Garven about Sherwin's conduct in seeking rejection of the bids, the decision had already been made by Kohl to award the contract to the low bidder, Centrum, that the order had been given by Biederman, acting as agent for Kohl, to engage in the necessary formalities to effectuate the award, that both Assistant Commissioner Mullen and State Highway Engineer Schuyler had responded immediately to formalize the award, and that a formal notification of the award decision dated November 4, 1970 was submitted to the Federal Highway Administration with a request for concurrence in the award to Centrum, which concurrence was given the next day, November 5. 136 Thus, even if Kugler did know about Garven's admonition to Sherwin, it is probable that he would not have spoken of it in the terms of the subsequently dictated Stern memorandum, i.e., that Garven "had stopped Mr. Sherwin's activities in this matter." The fact is as disclosed by Garven's testimony and as corroborated by his later statement to Kohl, that Kohl's purpose in seeking Garven's aid and Garven's purpose in giving it, was to impress on Sherwin to refrain from attempting interference in the affairs of the Department of Transportation in the future. Here, it should be recalled also, that, as noted above, Kohl testified that shortly after

the contract award to Centrum, he was told by Garven that he had spoken to Sherwin, and there would be no more interference in his Department.

We considered the apparent conflict between Kugler and Stern and Jonathan Goldstein (who initialed Stern's memorandum about the April 26 meeting) with the belief that there was no willful fabrication involved. We were conscious, however, that during the course of our inquiry there were many witnesses who frankly conceded, or whose statements made apparent, an absence of recollection, a dim recollection, an awareness of possible inaccuracies in recollected statements of their own or of other persons or events. Consequently, in a proceeding like the present one, in evaluating witnesses statements for the purpose of determining where the greater weight lies, a just fact finder cannot ignore the vagaries of the human recollection. Nor should such a fact finder reach a conclusion which would be prejudicial to either protagonist of conflicting statements unless support for the one statement as against the other is clear and convincing.

As has been set forth above, we have found no persuasive evidence that Attorney General Kugler was aware that Garven spoke to Sherwin about the Route 46 contract before the meeting with the United States Attorneys. We are aware also that the testimony shows that Kohl went to the United States Attorney's office with his file a day or so after the Kugler-Stern meeting and the meeting in the Governor's office. This first visit (Jonathan Goldstein said there were two visits) undoubtedly preceded the dictation of the Stern memorandum which took place several days to a couple of weeks after the Stern-Kugler meeting. Kohl's file contained the memorandum bearing the notation "Biederman discussed with Garven. 11/4; Garven to explain to Sherwin." And, as Kohl said, Garven told him later that he had spoken to Sherwin and there would be no more interference in his department. It is not unreasonable to assume that Kohl, who had been told by the Governor to cooperate fully with Stern, gave the information about the Garven action to the Federal authorities and that by my mistake or inaccurate



recollection it was referred to as having come from Kugler.

Examination of the testimony on the subject of recollection generally is a required exercise in such situations.

It was testified that after the Kugler-Stern meeting of April 26, 1972, Stern dictated a memorandum of his recollection of it. The memo is undated; Stern did not say when he dictated it; Goldstein said several days or a couple of weeks later. When Goldstein testified briefly on the occasion of his first appearance, he said that sometime after he and Stern returned to their office after the meeting, Stern dictated the memorandum and the two men reviewed it afterward at which time the contents coincided with Goldstein's recollection. On Goldstein's second appearance as a witness when an inquiry was made about the absence of a date on the memorandum and he fixed the time as several days to a couple of weeks after the meeting, he then added that on returning to the office on April 26 Stern made some notes of the meeting which agreed with Goldstein's recollection of the event. On the other hand, Stern made no reference to the making of notes prior to dictating his memorandum; nor were any notes produced, although Stern did bring with him some handwritten notes of his conversation with Sherwin prior to Sherwin's Grand Jury appearance.

Both Stern and Goldstein recollected before us that at the meeting Stern had given to Kugler Bruce Goldstein's memorandum of his conference with Biederman (which, among other things, indicated that a copy of "the Biederman memorandum" had been sent to Garven). Kugler denied receipt and on being shown the memorandum said in his appearance before us that he had never seen it before. It is noted that the Stern memorandum says that

"We showed certain documents and memoranda which Mr. Biederman had brought to our office to Attorney General Kugler."

It does not report that the Bruce Goldstein memo was handed to Kugler although in his testimony Stern said

he gave it to him with the Biederman papers.

Further examples of the ephemeral quality of recollection appeared. For example, Stern in testifying before us said that when he handed the memos to Kugler "he perused them in our presence." 138 Farther along in his testimony the Commission Chairman asked him how long Kugler looked at the memos, saying "I think you used the word 'he perused it.'" Stern replied, "I don't remember what word I used anymore." 139 Again, in testifying about Kugler's alleged statement about Garven Stern said " \* \* \* and I remember these words - - - that this was the only time that they had any difficulty with Sherwin; that Garven had stopped it." A few minutes later the Chairman inquired on the same subject,

"Q. And he left it with the statement that Judge Garven had taken care of it and stopped it?

A. I think that was it. That was the message I got. I don't remember the exact words." 141

At another point in his testimony Stern was asked if Kugler had copies made of the documents handed to him at the meeting. He said:

"Gosh, it's awfully tough to remember. I don't think he did make copies. I know he made no copy of Bruce Goldstein's memorandum, and I do not believe any copies were made of the Biederman memoranda." 142

Further study of the delicate subject of frailty of recollection takes us to the June 13, 1972 conference of State and Federal attorneys and the memorandum of it prepared the next day by Assistant United States Attorney Bruce Goldstein. This memo was produced by Stern, used by him to refresh his recollection while testifying, and he described it as a record of the "entire" conversation. At the end of his testimony it was given to the Commission to be marked as an exhibit. 143

In the memorandum Goldstein wrote that Stern began the meeting by explaining to the State at-

torneys how his office got into the investigation initially, referring to the Biederman memorandums. "and then he set forth with particularity how he thereafter visited Attorney General Kugler and informed him of the allegations of the Biederman memoranda, showing Mr. Kugler all of the documents which had been given to us pertaining to the allegation of corruption, including the letter from Paul Sherwin to John Kohl asking that the contract be awarded to Manzo." Assuming Stern made the italicized statement, and he did not qualify it in his testimony, obviously he was mistaken about the Sherwin letter or his recollection of it was faulty. The letter did not ask that the contract be awarded to Manzo; it referred to the options open to the Department of Transportation with respect to the bids received on the Route 46 project, and stated Sherwin's preference for rejection of all the bids by Kohl and a request for competitive rebidding. 144 Obviously Stern would not intentionally mistate the content of the letter; it had to be inadvertent.

The memorandum recorded also that in speaking of the Manzo-Perrucci litigation Stern said his investigation showed that: "\* \* \* Perrucci was then involved in a law suit before Judge Joseph Stamler of the Chancery Division in Morris County both Perrucci and Manzo admitted that Manzo had paid \$10,000 to the Republican Party in order to have the State throw out the bids on the Route 46 job since Manzo was not the lowest bidder; that these facts were confirmed by telephone call with Judge Stamler." The fact is, as appears beyond question from the transcript of Manzo's testimony before Judge Stamler (which was marked Exhibits C-48 and 49 before this Commission), that Manzo made no such admission as Stern suggested. Manzo testified that he made a contribution of \$10,000 to the Republican Party for reasons of good will, and he maintained that position despite extensive interrogation by Judge Stamler. Moreover, Manzo held to that same position before the United States Grand Jury on examination by Stern's first assistant, Jonathan Gold.

stein. 145 (Manzo's credibility on the subject is not an issue in this context. The Report at this point is concerned only with whether Manzo made the admission suggested by Stern.) Further, the making of such an admission by Manzo could not have been "confirmed" by a telephone call to Judge Stamler. As Judge Stamler said to Mr. Charles D. Sapienza, counsel to the Commission, the only clear indication of a "possible pay-off" came from the May 30 testimony of John Perrucci.

We have no doubt that the Stern statements just discussed were not made willfully. They were obviously inadvertent misstatements.

Our investigation demonstrates that in this matter Stern acted in the public interest and as a diligent and competent prosecutor. Upon receipt of the batch of memorandums selected by Biederman for delivery to him, he initiated an investigation into possible involvement of unlawful conduct by the various persons involved in the Route 46 contract proceedings, and we commend him for that action. The fact that neither Attorney General Kugler nor the Director of the Criminal Justice Division Jahos ever received the same batch of materials from Biederman, nor the fortuitous circumstance that the substantial evidence of criminal involvement came to the fore in the civil accounting suit before Judge Stamler in any way detracts from his deserved commendation.

The above circumstances provide perspective for review of the conflicts in the testimony of Kugler and Stern. It is our view that in fairness to both men, an affirmative resolution of the conflict is not necessary. We cannot say on analysis of all the facts that it has been shown by clear and convincing evidence or by the greater weight of the evidence that Kugler either knew or volunteered spontaneously without questions or prompting that Sherwin's intervention in the Route 46 contract bids was the only problem or only time the administration had any difficulty with him and that Garven spoke to him and stopped it. Moreover, even if we were satisfied and as just stated we are not satisfied, that the statement was made by Kugler, in

the absence of specific proof as to when he acquired the information on which it was based and just what the precise information was, it would be wholly unjust to conclude that in some way he was derelict in the performance of his supervisory criminal law enforcement duties, or even more to the point of our investigatory burden, that any credible basis exists for a conclusion that he engaged in some cover-up of a criminal activity.

#### IV. CONCLUSION

The Commission and its personnel have spent considerable time in an effort to ascertain the facts and to recreate the situations and the circumstances surrounding the ultimate award of the Route 46 contract to the low bidder Centrum, and to the extent to which they appeared to the Attorney General and Jahos, the Director of the Division of Criminal Justice. As we have endeavored to make plain above, we find no reliable evidence whatever to reasonably justify a conclusion that Attorney General Kugler was derelict in his law enforcement obligations. We find nothing which reflects in any way on his integrity as a public official, and, of equal importance, we find no basis for concluding that he engaged in an attempted "cover-up" of a criminal activity of a fellow cabinet officer.

With respect to Jahos, we have expressed the view that he might have been more alert on November 4, 1970 in his examination of Biederman's October 30 memorandum and thus been moved to some inquiry, at least as to Biederman's complaint about Commissioner Kohl's decision to reject all the Route 46 bids and to order rebidding. We are aware, of course, that if he had telephoned Kohl, for example, on November 4, he would have learned that on November 2, one working day after the October 30 memorandum, the Sherwin interference had been frustrated and the contract awarded to the low bidder Centrum. Jahos testified that assuming the existence and immediate disclosure to him of such facts, and nothing to suggest involvement of a quid pro quo, in his opinion

as an experienced law enforcement officer he would not have concluded that a need existed for initiation of a criminal investigation. And, even if there were honest differences of opinion among prosecutors as to whether the October 30 memorandum plus the facts disclosed by the November 4 memorandum directing the award to Centrum should call for further investigation, it cannot be said that the Jahos view and his inaction were so devoid of the quality of reasonableness as to warrant a finding of abuse of prosecutorial discretion and dereliction of duty. But of more pertinence to our inquiry we see no reasonable support for a finding that Jahos willfully failed to perform his public duty or engaged in a cover-up or attempted cover-up of another public official's criminal activity.

An overriding factor in the background of this unfortunate affair and in the many similar ones which are constantly appearing on the public scene is the political contribution. It is common knowledge that altruism is rarely one of its characteristics. In our judgement the political contribution, direct or indirect, by individuals, associations or corporations holding or aspiring to hold contracts for public work, supplies or services, and the acceptance of the contribution by appointed or elected officials or by political parties, is a malignant cancer rapidly metastasizing through the blood stream of our political life. Unless the giving and the receiving of such contributions are made criminal under a statute which provides a reasonable mechanism for discovering and preventing them, our governmental structure is headed for most unpleasant erosion. 146

## FOOTNOTE REFERENCES

1. Exhibit C-1.
2. *In re Zicarelli*, 55 N.J., 249, 258 (1970).
- 2a. Transcript, Vol. 3, p. 453;
3. Legislative Manuel, State of New Jersey (1971), p. 314
4. Hearing transcript, Nov. 13, 1972, Vol. 1, pp. 11, 12.
5. *Id.*, pp. 20-22; 134, 135.
6. Exhibit C-2; Transcript, Vol. 3, p. 473.
7. See J.R. Schuyler's letter to Commissioner Kohl, August 4, 1970 (Exhibit C-3); Biederman memorandum to George F. Kugler, Attorney General, August 7, 1970. (Exhibit C-4).
8. Exhibit C-3, *supra*.
9. Exhibit C-4.
10. Exhibit C-32.
11. Hearing transcript, *supra*, p. 13; *Id.* Vol. 4, Nov. 16, 1972. pp. 758-759.
12. Exhibit C-35.
13. Hearing transcript, Vol. 3, Nov. 15, 1972, p. 482.
14. Exhibit C-9.
15. Hearing transcript, Vol. 3, Nov. 15, 1972, p. 488; Vol. 2, Nov. 14, 1972, pp. 412, 413; Exhibit C-28.
16. Exhibit C-30A.
- 16A. Transcript, Vol. 3, p. 491; 552.
17. Exhibit C-30.
18. Exhibit C-29. Newark Ledger Article, Aug. 9, 1972.
19. Transcript, Vol. 2, Nov. 14, 1972. Mrs. Lyons, pp. 419-426; Mrs. Carnival, pp. 429-438; Exhibit C-31.
20. Transcript, Vol. 1, November 13, 1972, pp. 29-31.
21. Transcript, Vol. 2, Nov. 14, 1972, p. 221.
22. Transcript, Vol. 1, Nov. 13, 1972, pp. 38, 39, 45, 46.
23. Transcript, Vol. 2, pp. 242-252 (*Passim*).
24. Transcript. Vol. 2, p. 247.
25. Transcript, Vol. 1, pp. 59-61; Exhibit C-5.
26. Transcript, Vol. 1, pp. 60-61.
27. Transcript, Vol. 1, pp. 55-56; compare *Hillside Twp. v. Sternin*, 25 N.J., 317, 324-328 (1957).
28. Exhibit C-14; Transcript, Vol. 1, p. 115.
29. Transcript, Vol. 1, p. 67.
30. Transcript, Vol. 1, pp. 62-63.
31. *Trap Rock Industries, Inc. v. Kohl*, 59 N.J., 471 (1971); *Veneri Co. v. Paterson Housing Authority*, 29 N.J. 392, 403 (1959).
32. *Commercial Cleaning Corp. v. Sullivan*, 47 N.J. 539 (1966); *Motorola Com. & Electronics v. O'Connor*, 115 N.J. Super. 317 (App. Div. 1971).
33. *Trap Rock Industries, Inc. v. Kohl*, 59 N.J. at 479, 481.
34. Transcript, Vol. 1, pp. 64-65; State Grand Jury p. 34.

35. Id. pp. 65-66.
- 35a. State v. Sherwin, et al., Transcript, Vol. 3, Feb. 18, 1972, p. 393.
36. Transcript, Vol. 1, p. 70
37. C-48, Transcript, Manzo Contracting Co., Inc. v. Warren Limestone Co., Feb. 29, 1972; C-49, Transcript, March 27, 1972; State Grand Jury Transcript, June 23, 1972, pp. 11, 18.
38. Transcript, Vol. 1, pp. 67-68.
39. Transcript, Vol. 2, pp. 401-402.
40. Exhibits C-21; C-27.
41. Transcript, Vol. 2, pp. 222-223
42. Exhibit C-22.
43. U.S. Grand Jury Transcript, June 19, 1972, pp. 17-18.
44. Exhibit C-20; Transcript, Vol. 2, p. 224; Vol. 1, pp. 179-181.
45. Transcript, Vol. 1, pp. 129-132.
46. Transcript, Vol. 2, p. 235.
47. Transcript, Vol. 1, p. 189.
48. Exhibits C 18, C-19.
49. Transcript, Vol. 2, p. 373, 385.
50. Exhibit C-59.
51. Transcript, Vol. 3, pp. 521-522; 530-532; 537; Vol. 5, p. 961; Exhibit C-35, p. 3.
52. Transcript, Vol. 4, pp. 770, 771.
53. For example, Transcript, Vol. 8, p. 1320.
54. Exhibit C-59.
55. Transcript, Vol. 4, p. 872.
56. Transcript, Vol. 3, pp. 531, 532.
57. Exhibit C-35, Vol. 3, p. 535.
58. Transcript, State Grand Jury, June 22, 1972, p. 50; Transcript, State v. Sherwin, et als, Vol. 3, pp. 484, 488.
59. Transcript, Vol. 3, p. 537.
60. See, State v. Conyers, 58 N.J. 123, 147 (1971); State v. Laws, 51 N.J. 494, 510 (dissent) (1968); State v. LeVien, 44 N.J. 323, 326-327 (1965).
- 60a. Transcript, Vol. 5, p. 932.
61. Transcript, Vol. 1, pp. 132, 133.
62. Transcript, Vol. 1, p. 136; Vol. 2, p. 319; Exhibit C-25.
63. Transcript, Vol. 1, pp. 235-238.
64. Transcript, Vol. 1, pp. 262-263.
65. Exhibit C-6.
66. Transcript, Vol. 1, pp. 265-271; 273-274; 277-282.
67. Transcript, Vol. 1, pp. 142-145.
68. Transcript, Vol. 1, p. 156.
69. Exhibit C-8.
70. Transcript, Vol. 4, pp. 882, 893; Vol. 3, p. 547.
71. Transcript, State Grand Jury, June 23, 1972, p. 38; Commission Transcript, Vol. 1, pp. 88, 89.
72. Transcript, Vol. 1, pp. 87, 88
73. Transcript, Vol. 1, p. 88



74. Exhibit C-16.
75. Exhibits C-10 and 17.
76. Transcript, Vol. 5, p. 961.
77. Transcript, Vol. 5, p. 949.
78. Transcript, Vol. 8, pp. 1329; 1305-1306; 1308.
79. Transcript, Vol. 2, pp. 336-337.
80. Transcript, Vol. 8, pp. 1338, 1340-1342.
81. Transcript, Vol. 2, p. 355; Vol. 1, p. 205.
82. Transcript, Vol. 5, p. 947.
83. Transcript, Vol. 5, p. 946.
84. Transcript, Vol. 5, p. 966.
- 84a. Transcript, Vol. 3, p. 553.
85. Exhibit C-54.
- 85a. Transcript, Vol. 3, pp. 641-642.
86. Transcript, Vol. 5, pp. 967, 1024.
87. Exhibit C-7.
88. Transcript, Vol. 7, pp. 1120, 1124.
89. Transcript, Vol. 4, pp. 885-890.
90. Transcript, Vol. 7, pp. 1121-1122.
91. Transcript, Vol. 7, pp. 1123-1124.
- 91a. Exhibit C-60.
92. Transcript, Vol. 7, pp. 1097-1098.
93. Transcript, Vol. 5, pp. 964-965.
94. Exhibit C-40.
95. Transcript, Vol. 5, pp. 971-973.
96. Transcript, Vol. 8, pp. 1320-1323; Vol. 5, pp. 1010-1011.
97. Exhibit C-42.
98. Exhibit C-41.
- 98a. Transcript, Vol. 5, p. 978.
99. See, *Mal Bros. Contracting Co. v. Kohl*, 113 N.J. Super. 144 (App. Div. 1971).
100. Exhibit C-55.
101. Exhibit C-56.
102. Exhibit C-43-44.
103. Exhibit C-12.
104. Exhibit C-45 (Transcript - Crescent Hearing).
105. Transcript, Vol. 7, pp. 1227-1228.
106. Transcript, Vol. 5, p. 984.
107. Transcript, Vol. 5, p. 995.
108. Exhibit C-57.
109. Exhibits C-38, C-39.
110. Transcript, Vol. 1, pp. 109-110.
111. Transcript, Vol. 1, p. 111.
112. Transcript, Vol. 8, p. 1325.
113. Exhibit C-35.
114. Transcript, Vol. 5, pp. 1006-1008; 1012.
- 114a. Transcript, Vol. 3, p. 664.
115. Transcript, Vol. 3, p. 621, 622; Vol. 7, p. 1190.
116. Exhibit C-51.
117. Transcript, Vol. 3, pp. 621-627.

118. Transcript, Vol. 4, 784.
119. Transcript, Vol. 5, p. 960.
120. Transcript, Vol. 4, p. 826.
121. Transcript, Vol. 4, p. 838; Vol. 3, p. 773.
122. Transcript, Vol. 4, pp. 781, 789; Id. p. 793.
123. Transcript, Vol. 4, p. 786; Vol. 7, p. 1242; Vol. 3, pp. 650, 656; Exhibit C-9.
124. Transcript, Vol. 7, p. 1242.
125. Transcript, Vol. 4, p. 787; Vol. 7, p. 1248; Vol. 3, p. 663.
126. Transcript, Vol. 7, p. 1251.
127. Exhibits C-46, 46A, 49, 50.
128. Transcript, Vol. 7, p. 1261.
129. Transcript, Vol. 7, p. 1262.
130. Transcript, Vol. 7, p. 1262.
- 130a Transcript, Vol. 3, pp. 589-590.
131. Transcript, Vol. 7, pp. 1276-1278.
132. Transcript, Vol. 4, pp. 894, 898, 903.
133. Transcript, Vol. 3, pp. 638-643.
- 133a Transcript, Vol. 7, p. 1185.
134. Transcript, Vol. 4, pp. 781; 789; Vol. 7, pp. 1252; 1254.
135. Transcript, Vol. 7, pp. 1241, 1250.
136. Exhibit C-31.
137. Transcript, Vol. 3, p. 621.
138. Transcript, Vol. 3, p. 621.
139. Transcript, Vol. 3, p. 658.
140. Transcript, Vol. 3, p. 622.
141. Transcript, Vol. 3, p. 664.
142. Transcript, Vol. 3, p. 657.
143. Exhibit C-36.
144. This Report, p. 22, supra; Exhibit C-5.
145. U.S. Grand Jury minutes, June 16, 1972, pp. 5-7; 9.
146. Compare, for example, Alcoholic Beverage Law, N.J.S.A. 33:1-35.