

**FRAUD AND ABUSE IN PENSIONS AND
RELATED EMPLOYEE BENEFIT PLANS**

HEARING
BEFORE THE
SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
FIRST SESSION

NOVEMBER 4, 1981

Printed for the use of the Select Committee on Aging

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FRAUD AND ABUSE IN PENSIONS AND RELATED EMPLOYEE BENEFIT PLANS

WEDNESDAY, NOVEMBER 4, 1981

**U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
Washington, D.C.**

The committee met, pursuant to notice, at 9:45 a.m., in room 2118, Rayburn House Office Building, Hon. Claude Pepper (chairman of the committee) presiding.

Members present: Representatives Pepper of Florida, Rinaldo of New Jersey, Mica of Florida, Lantos of California, Albosta of Michigan, Boner of Tennessee, Tauke of Iowa, Wortley of New York, Daub of Nebraska, Craig of Idaho, and Carman of New York.

Also present: Representative Bennett of Florida.

Staff present: Charles H. Edwards III, chief of staff; Val Halamandaris, senior counsel; Kathleen T. Gardner, professional staff member; Roger Thomas, professional staff member; Marie Brown, executive secretary; Dayle Berke, special counsel; Linda Eaker, secretary; Walter Guntharp, minority staff director; Paul Schlegel, deputy minority staff director; and Nancy E. Hobbs, minority staff director, Subcommittee on Retirement Income and Employment.

OPENING STATEMENT OF CHAIRMAN CLAUDE PEPPER

Chairman PEPPER. The committee will come to order, please.

Those who follow the events in Congress are aware of the fact that some time ago, this committee initiated legislation to aid retired people in having sufficient funds to live comfortably upon after their retirement.

By proposing, one, that there be a universal pension system so that everybody would be covered by pension and, two, encourage savings by Government subsidy on the part of primarily the working people of the country who generally don't have an opportunity to lay back much in savings.

We're concerned very much with this subject of pensions because about 50 percent only of the working people of this country are even covered by pension plans.

About 20 or 25 percent of the people who are covered by pension plans for one reason or another haven't any pension when they retire.

One of the reasons is, in most cases, you have to be covered by a pension plan for 10 years before the pension plan vests. So if you move from one employer to another, you may lose an opportunity

for the vesting of your pension, therefore, not receive anything when you later retire.

So, we are very much concerned about this matter because we want to try to supplement what seniors receive from social security through pensions and by savings as much as we can.

Some 28 percent of the people who receive social security benefits have no other source of income whatsoever and even with social security, about 16 percent of the elderly people of this country, people over 65 have incomes above the poverty level.

So you can see how important having a pension is to the retired person in our country.

So, today we are concerned with the integrity of those pension funds and what can be done to prevent and to correct fraud and abuse in these plans.

Whether established by private employers or through the collective bargaining process, employers and employees agree to set aside certain amount of wages in trust to pay for health care to purchase life and disability insurance and to pay retirement benefits when workers retire.

These trust funds are managed by individuals, fiduciaries, who are legally responsible to protect such funds against fraud, abuse, waste, and mismanagement. There are approximately 1.5 million employee benefit plans in the United States at the present time with combined assets of some \$600 billion, the largest reservoir of private capital in the United States today.

Needless to say, therefore, this tremendous pool of money is inviting prey for the sharks of the financial world. From the late 1950's to the present, there have been recurrent indications that much of this money was being diverted into the pockets of the unscrupulous.

The Congress reacted in 1974 by passing the Employee Retirement Income Security Act [ERISA] which imposes on officers of these trusts a fiduciary duty to manage the funds as would a "prudent man" and makes them personally liable for any improper diversion of these funds.

The Congress has imposed the duty for enforcing ERISA's fiduciary provisions on the Department of Labor.

I regret to say that there is abundant evidence that the Department of Labor has been grossly derelict in its responsibility to enforce this and other provisions of ERISA.

It is also clear that employee benefit trust funds are being looted on a scale that few have dared to dream possible.

The committee of the Congress which has exposed these huge frauds and dereliction of duty by the Labor Department is the Senate Permanent Subcommittee on Investigations.

I am pleased that we have Senator Nunn with us this morning. Senator Nunn presided over these investigations and is to be commended for the hearings his committee has conducted and the reports they have released.

The purpose of this hearing this morning is to chronicle the categories of fraud and abuse, to explore the techniques involved, and expose the weaknesses in the pension and welfare benefit system which allow such abuses to take place.

I can imagine no issue of greater importance, not only to America's 25 million senior citizens, but to all working Americans. I can think of no more contemptible act than the conspiracy of those placed in positions of trust to divert the assets of trust funds upon which working Americans depend for their future security.

We have an impressive list of witnesses this morning. We plan to have additional hearings in the future and after gathering all the facts, we will, of course, make our report and recommendations and shall introduce corrective legislation which we hope will address the problems that we have identified.

Now I'll call on for a statement, my distinguished colleague, Mr. Rinaldo.

STATEMENT OF REPRESENTATIVE MATTHEW J. RINALDO

Mr. RINALDO. Thank you, Mr. Chairman. I listened with great interest to your opening statement and I have to agree that defrauding union and employee pension funds certainly is one of the cruellest crimes being perpetuated against the American worker.

It is not a new phenomenon of minor consequence. It is an old, and I might say, increasingly serious problem that touches millions of citizens. You mentioned, for example, that there are a million and a half such funds that contain an estimated \$600 billion primarily in worker and employee contributions.

As you further indicated, Mr. Chairman, because of the amount of money involved, these funds are inviting targets for abuse. Pension funds represent the single largest pool of money in the entire country.

The Employee Retirement Income Security Act is designed to insure these funds against fraud and abuse. The Department of Labor, as you stated, is empowered to oversee the proper handling of these funds and to maintain a vigilant program of investigations and prosecution to prevent the misuse of this money.

And I'm sure that we're going to hear today that the safeguards implemented to protect these funds are lacking in effectiveness and that there is need for additional legislation.

I'm sure we are going to come to the conclusion that there is a serious question as to whether or not the Government has been aggressive enough in investigating abuses of the funds, and as a result of this lack of aggressiveness, trustees of these funds have siphoned off countless millions of dollars through such devices as kickbacks, phony insurance schemes, fraudulent loans, and just plain outright theft.

The victim, unfortunately, is the worker who's faithfully contributed to the fund in order to enjoy the security of a pension on retiring.

To steal this security, to impoverish workers in their later years, is certainly a crime of the most despicable nature.

Yet, it occurs. And unfortunately, little is being done to prevent it.

Mr. Chairman, we do the aging worker a great service and I want to compliment you for holding this hearing, because what we're really doing here today is centering the light of public condemnation on these crimes and we should try to see that every

proper resource of Government is committed to the task of restoring honesty and reliability to the private pension system.

Before closing, I would certainly like to recognize and welcome two distinguished members of the New Jersey State government, Mr. Chairman, Mr. Robert DelTufo, former U.S. attorney who is both a witness and a member of the State commission of investigation and Mr. James O'Halloran, who is executive director of the State commission.

Both of these gentlemen are very, very dedicated in their endeavors and I welcome them here today this morning and look forward to their testimony.

Chairman PEPPER. Thank you very much, Mr. Rinaldo.

Mr. Albosta.

Mr. ALBOSTA. Mr. Chairman, I just want to thank you for having these hearings, I think they are going to be very productive and constructive in terms of the kinds of problems that we're going to have to address ourselves to in the future.

I have no other comments at this time.

Chairman PEPPER. Thank you, Mr. Albosta.

Mr. Tauke.

Mr. TAUKE. Thank you, Mr. Chairman. I have no opening statement this morning.

Chairman PEPPER. Thank you, Mr. Tauke.

Mr. Lantos.

Mr. LANTOS. Mr. Chairman, I just welcome the opportunity of paying public tribute to your leadership and creativity in bringing this issue to public attention.

Chairman PEPPER. Thank you very much, Mr. Lantos.

Mr. Craig.

Mr. CRAIG. Thank you very much, Mr. Chairman.

I, too, would like to join in thanking you for bringing this issue to a public forum, of course, this topic being one of great importance. I have a full statement that with unanimous consent, I'd like to have entered into the record.

Chairman PEPPER. Without objection, it will be received.

[The prepared statement of Representative Larry E. Craig follows:]

PREPARED STATEMENT OF REPRESENTATIVE LARRY E. CRAIG

While Congress has and must continue to devote significant attention to the status and stability of the Social Security system, enabling it to continue in its role of contributing to the financial security of older Americans, diligent and thoughtful attention must be devoted to the problems associated with America's private pension plans.

With the combined knowledge of private industry, the Committees of jurisdiction and the Congress, it is imperative that we together develop plans that can help insure retirement financial security for all Americans. Social Security should not be counted on to be the sole source of retirement income. It was designed as a supplemental source and must remain that.

Fair and equitable pension plans must be developed; access to them insured; and participation in them encouraged. The expansion of private pension plans can and should play the significant role that was expected of them when the Social Security system was originally established and presented to the American people. The combination of several retirement income sources will help insure the well-being of our population as any and all of us approach retirement.

Mr. CRAIG. Mr. Chairman, I think we all recognize that there is one thing that we can do as Members of Congress, it is to insure a stable and secure retirement for the senior members of our country. It is critical and it is important and I congratulate you on this.

Chairman PEPPER. Thank you very much, Mr. Craig.

At this time I would like to submit the prepared statement of Mario Biaggi for the hearing record. Hearing no objections, so ordered.

[The prepared statement of Representative Mario Biaggi follows:]

STATEMENT OF HON. MARIO BIAGGI

As both an original member of this committee and a cosponsor of the Employee Retirement Income Security Act of 1974 (ERISA), I am especially pleased to participate in this first of a series of hearings investigating fraud and abuse in America's private pension system.

This hearing is particularly timely given the increasing demands on the public pension sector, the Social Security System, which we all know is in serious trouble. Historically, the Social Security System has been viewed as one part of the national retirement security program—which encompasses both the public and private security retirement systems. From social security's inception, it was anticipated that the private pension system would play a significant role in supplementing the public system.

In order to ensure that our Nation's older people will upon retirement receive the benefits which they anticipate and are entitled to, we must leave no stone unturned. We must vigorously investigate the problems and alternative remedies of both the private and public retirement systems. Our enduring commitment to our older Americans must compel us to continue our probing until we can assure our retirees that the retirement which they have worked towards and anticipated may be theirs to enjoy as they so deserve.

Fraud and abuse in the pension system is not new. These problems provided the impetus for the passage of ERISA in 1974. Unfortunately, 7 years after the enactment of ERISA, severe problems still exist in the private pension system, including allegations of extensive fraud and abuse.

There are several major problems which still exist in the private pension area. These include the lack of employee coverage as reflected in the fact that only one-half of the private sector workforce is covered by a plan; vesting requirements cause about one-half of that 50 percent to be denied a benefit upon retirement; one of every six covered employees suffer reduced or eliminated private pension benefits because of social security integration rules; one-half of employers offering pension plans freeze benefit accrual and contributions at age 65 thereby encouraging early retirement and discriminating against older workers.

Another area of major concern in the System involves massive unfunded trust fund liabilities which cast doubt as to whether working people will receive their full benefits upon retirement.

Enormous sums of money—as much as \$600 billion—are invested in pension trust funds covering some 50 million participants. Investigations by the Senate Permanent Subcommittee on Investigations have revealed that many employee benefit trust fund assets are being depleted by false and fraudulent loans, inflated service contracts, fraudulent insurance schemes, multiple billings and kickbacks.

A disproportionate amount of adverse publicity has been accorded to union sponsored pension, health and welfare plans. Recently, however, it should be noted that attention has been directed to unfunded pension liabilities of major U.S. corporations such as General Motors, Chrysler, Westinghouse and Sears. Allegations include the use of pension fund money for short-term operating expenses in derogation of their duty to future retirees. This neglect of responsibility may cause many corporations to be unable to make pension payments to their retirees by the year 2000.

Three reports and several recommendations have been issued by the Senate Permanent Investigations Subcommittee. Legislation to reform ERISA has been introduced by this committee.

Much remains to be done in order to remedy abuses and close the System's loopholes. We must be constantly watchful to ensure that the private sector's sacred covenant to its employees and members will remain intact.

Chairman PEPPER. Now we will have our first witness, Senator Sam Nunn, distinguished Senator from the great State of Georgia, who did monumental work as chairman of the U.S. Senate Permanent Subcommittee on Investigation.

He compiled a great mass of data upon this very critical subject and is kind enough to come today to give us a summary of the disclosures that were made before his committee.

Senator Nunn, we are very grateful to you for coming and rendering this distinguished service to our country. We welcome your statement.

STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM THE
STATE OF GEORGIA

Senator NUNN. Thank you very much, Mr. Chairman, and members of the committee. I'm very appreciative of the opportunity of being here to discuss with you the organized crime in the pension and welfare benefit plans.

You mentioned a moment ago, Mr. Chairman, that some \$600 billion is involved in the overall pension plans of America. There was a book that came out about 3 years ago called "The Unseen Revolution," and one of the dramatic points made in that book, and there were many, is that we really have had an unseen revolution in America because the working men and women of America, indeed, own a huge proportion of the equity of America today.

And I think that it is one of the things that makes our country so strong and one of the things that gives us such hope for the future, because we do have a tremendous equity ownership by the people in this country who perform the work and do the labor and I think it is up to us, as you have undertaken today, to make sure that we do everything possible to protect those assets and to see that they are safeguarded, as well they should be.

So I want to commend you and the members of the House Select Committee on Aging in undertaking this inquiry. You are addressing one of the most challenging problems the Nation faces.

Our challenge is to insure that private pension and welfare plans are properly managed, free of criminal exploitation and that they return to their beneficiaries all the benefits that are due them.

It is altogether correct for this committee to examine this issue. If criminal exploitation is allowed to permeate the private pension and welfare benefit industry, retirement plans eventually will be forced to reduce benefits or may even become insolvent.

The victims of such a catastrophe would be our Nation's elderly, the men and women who, during their working lives, paid into these funds and who have every right to expect to receive every benefit promised them.

So for my part, Mr. Chairman, I welcome your committee's interest in this field. I pledge my assistance to you in any way possible, and I think that without any doubt, the staff on our subcommittee will be glad to help and work with your staff in every way possible.

I was chairman and now I'm ranking member of the Senate Committee on Investigations. In that capacity, and in carrying out the subcommittee's mandate to investigate labor management racketeering and organized and syndicated crime, I've had an op-

portunity to take a close and continuing look for several years at the problems that organized crimes can inflict on unions and union benefit plans.

We have been making inquiry into union benefit plans since 1975. I would like to share with you for just a few moments this morning some of the things that we have found.

Thirty years ago, labor racketeering tended to be involved in the more traditional-type crime, such as embezzlement of union funds, illegal payoffs, and extortion.

These crimes still exist. They haven't disappeared. Our hearings earlier this year on waterfront corruption revealed that the shipping industry on the Atlantic seaboard is riddled with corrupt practices.

However, there is an entirely new dimension to labor racketeering that goes far beyond the crimes of the past. This is due, it seems, to the rapid growth in recent years of pension funds and welfare benefit plans.

As the economic status of workers has improved, union negotiators began focusing more attention on winning benefit increases for their members.

This was natural and it certainly has occurred very rapidly. Working men and women want their wages to be supplemented by improved benefits.

The funds that provide these benefits are an attractive target for organized crime figures.

Union benefit plans grow very rapidly. In the multiemployer plans, hundreds and sometimes thousands of employers make periodic payments. In the massive Teamsters' Central States Pension Plan, for example, the second largest in the Nation, 10,300 employers contribute about \$51 a month on behalf of each of some 400,000 workers. In 1979, employer contributions in the Central States fund totaled more than \$606 million. So we're not talking about small amounts of money.

It should surprise no one that with so much money at stake, organized crime figures have been specially drawn to the Central States fund. It is a mistake, however, to perceive the problem as being limited to the joint plans like that one of the Teamsters.

Organized crime has compromised much smaller plans managed by individual union locals. And, of course, these are much more difficult to investigate and much more difficult to come to grips with.

The permanent Subcommittee on Investigations identified, for example, an especially lucrative scheme masterminded by a self-styled insurance executive named Louis Ostrer. This investigation occurred several years ago.

The Ostrer plan, which was used in about 16 union locals, was based on the sale of costly individual whole life insurance policies when group coverage would have been much cheaper.

We found that from 1970 to 1975, the Ostrer plans generated more than \$5 million in employer contributions to purchase individual whole life policies for more than 14,000 workers. Of the \$5 million, \$3 million was paid in commissions and an additional \$743,377 was paid in fees.

In one 1,400-member local, the Ostrer-type plan insurance had commission costs of \$800,000. Had the union local purchased group

life, commission costs would have been \$10,000. Incidentally, the commissions were paid to brokers who included Ostrer's sister and other close associates. And of course these commissions and fees involved a great number of kickbacks which were well-documented in our hearings.

Another self-styled insurance agent, Joseph Hauser, went a few steps further than Ostrer. Mr. Hauser actually purchased the insurance companies and then he sold health and disability coverage to about 20 union benefit funds.

He and his associates looted the insurance companies of about \$11 million. As a result, the companies went bankrupt. Policyholders, including thousands of union members, were deprived of the protection they had paid for.

The biggest victim in the Hauser scheme was the Teamsters Central States Pension Fund, which lost \$7 million.

Along with the profitable schemes and fraud used to extract large sums of money from pension and welfare benefit funds, organized crime figures also have relied on another device to steal from union plans. That method is to infiltrate the fund from the inside and persuade the trustees and officers to invest in highly questionable projects.

Once the questionable investment is made, the crime figures use a variety of techniques to siphon off money from the project. Foreclosure often follows.

The most vivid examples of this strategy was the Teamsters Central States Pension Fund, which was created in 1955 by Jimmy Hoffa and others and which was significantly influenced by Allen Dorfman, Morris Shenker, and other well-known persons reputed to have organized crime affiliations.

The permanent Subcommittee on Investigations has been urging reform of the Central States Pension Fund for 6 years. Because of its size and the notoriety of many of its borrowers, the fund has received a lot of attention.

But it is not the only fund in need of reform. The problem is occurring with tragic frequency and is more and more common.

What is the solution? First of all, it is my firm belief that Government cannot solve the problem by itself. Unions themselves, working closely with employers, must provide oversight and established procedures that make thievery, illegal schemes, and questionable investments difficult.

In that regard, Mr. Chairman, I was gratified yesterday when the AFL-CIO president, Lane Kirkland, testified before the Investigations Subcommittee on his own belief in the need for safeguards against racketeering in unions and union benefit funds.

Mr. Kirkland testified that he supports our efforts in this field, and endorsed the Labor-Management Racketeering Act of 1981, legislation which I and other members of the subcommittee introduced.

I will have more to say about that legislation in a moment.

Similarly, the new executive director of the Teamsters Central States Pension and Health and Welfare Funds, George Lehr, testified last week before our subcommittee. He expressed a willingness to take certain important steps forward in achieving needed reform

in both funds. He also endorsed in general terms the objectives of the Labor-Management Racketeering Act of 1981.

He also testified that he was disassociating the fund from the connection with Allen Dorfman, who has been well-known for many years in this area.

There is also, of course, an important role for Government. The Federal agency with the principal duties in this effort is the Department of Labor.

The Investigations Subcommittee has had sharp disagreements with the Labor Department over how assertive the Department ought to be in investigating fraud in unions, particularly in union benefit plans.

The Department claimed it had limited responsibility. We said the Department had wide authority. In fact, we said, the Labor Department was the principal investigating agent, under both Landrum-Griffin and ERISA.

And I know you alluded to that responsibility this morning in your opening statement.

Last week, Labor Secretary Donovan came before the subcommittee and made several very encouraging remarks. He said the Department has a duty to detect, investigate, and properly refer for prosecution evidence of criminal wrongdoing in pension and benefit funds.

He said he realized the high priority that task should assume—and he said he would give it that priority.

Secretary Donovan is not the first Cabinet officer who came before Congress to say the mistakes of past administrations would be corrected. Mr. Chairman, looking back upon your distinguished career as a Senator and now in the House, I know that you have heard similar assertions more times than you might wish to recall—only to see the same mistakes made again by the new administration. I hope that will not happen.

Nonetheless, with a degree of healthy skepticism, I am heartened by Secretary Donovan's assurances, which I hope will be justified by future events. He seems to have an awareness of the need to protect union pension and benefit funds—and the good sense to know that the most effective way to remove crime figures from benefit funds is to remove them to a secure Federal penitentiary.

Secretary Donovan also endorsed the Labor-Management Racketeering Act of 1981. In conclusion, I would like to describe briefly the legislation, S. 1785.

The measure is designed to help ease the problems of corruption in unions and benefit and pension plans. It increases criminal penalties for violations of the Taft-Hartley Act and provides for the immediate suspension of convicted persons from union offices.

Labor payoffs under current law are punishable only as misdemeanors. The proposed legislation would make any payoff of more than \$1,000 a felony, punishable by up to 5 years in prison or a fine of up to \$15,000, or both.

The bill attempts to rid labor organizations and benefit plans of the influence of persons convicted of criminal offenses. Current disbarment provisions—29 U.S.C. 504 and 29 U.S.C. 1111—are expanded by enlarging the categories of persons affected by the disbarment provisions; increasing the duration of time of the disbarment

from 5 years to 10; and providing for disbarment immediately upon conviction, rather than after appeal.

Mr. Chairman, just last night on NBC news and maybe on some of the other stations, too, they did carry a report of the hearing and in the report, they mentioned what we have pointed out for several years and that is the fact that down in Miami, Fla., in one of your local very important unions there, there are at least five people in top positions in that union who have been convicted of felonies and they remain in power in that union today.

In fact, the convictions took place over 2 years ago and they are now pending appeal. All of us recognize that our judicial process has fallen into a state where appeals can go on for years and years and years.

And what this legislation would principally provide is that once a conviction occurs, then that particular convicted felon is no longer eligible to hold a fiduciary position in a union or pension plan. If, later, on, the conviction is reversed on appeal, the bill, fully protects the salary and benefits of that individual by providing that his salary be placed in escrow pending his appeal.

We think this is a very important provision that would not only eliminate much of the abuse that takes place now, but it also would serve as a deterrent.

The measure clearly spells out the responsibility and authority of the Labor Department to actively and effectively detect, investigate, and refer for prosecution any evidence of criminal activities in benefit and pension plans. We want to clarify that in the law once and for all.

I also would like to introduce in the record a rather lengthy statement that my staff has prepared, giving the results of our investigations over a period of 5 or 6 years and in that statement, we will also attach the recommendations that we made after the Ostrer investigations, which I alluded to, and the Hauser investigation which I alluded to.

Some of these recommendations have been implemented and some of them have not. So there is a whole area here that needs a great deal of emphasis and oversight.

Again, Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you and I pledge my total cooperation in working with you.

[See appendix 1, p. 77 for material submitted by Senator Nunn.]

Chairman PEPPER. Well, we are very much indebted to you, as all good Americans are, because of what you and your committee have done to discover the fraud and abuses perpetuated in this area.

I'm glad to hear you say you are proposing legislation which will certainly have our sympathetic support to tighten up the laws relative to this subject, make the penalties more severe and to root out cases such as those you have mentioned in Miami or other parts of the country to prevent people like that from having the trust of being the head of a union and their responsibility for trust funds as has happened in the cases you have pointed out.

We're very much indebted, as all the Congress is, to your committee for the excellent work that you have done in this field and we'll try to be helpful in every way that we can.

We're profoundly grateful to you for coming today and giving us a summary of what you found out in the Florida investigation that you made.

Are there any other questions, Mr. Rinaldo?

Mr. RINALDO. No, Mr. Chairman. I have no questions. However, I would like to compliment Senator Nunn in giving us this very, very fine background material to the hearing that is going to take place this morning.

I would like to recommend, Mr. Chairman, that we have the staff on this committee to take a look at the Labor-Management Racketeering Act of 1981 and to give us their conclusions as to the efficacy of that legislation in combating the particular problems that we're talking about and, if so, perhaps you and I could jointly send it out and start the ball rolling on this side of the aisle.

Chairman PEPPER. Very good. I think that is a very excellent suggestion.

Mr. Albosta.

Mr. ALBOSTA. Thank you, Mr. Chairman, and I, too, want to thank Senator Nunn for appearing here before this committee and giving us some background on some of the past history of the problems of pension funds across the country and some of the people who are involved in them.

I think that I want to go on record, Mr. Chairman, if you will, in total agreement with the Senator, pertaining to the types of mandatory sentencing, if you will, that may be necessary to deter the types of crimes that seem to be occurring amongst the people that administer these particular pension funds.

It's been a philosophy of mine for a long time that we cannot deter crime without punishment and that it is necessary to have it. Particularly in the case of these individuals that seem to be able to exploit those people who work their lifetimes for some type of security and finally do not have it.

So, again, I thank you, Senator, for appearing and I want to throw my cooperation entirely with you and on the other side of the Hill and with this committee here, Mr. Chairman, in total agreement that we must do something to alleviate this problem.

Chairman PEPPER. Thank you.

Senator Nunn, we specially concur with the view that you expressed and that your committee entertained that the Department of Labor was intended by Congress, to be the prime investigative authority in this area.

They are a continuing body. They have, or should have, the ability to carry out an effective investigation in this particular field. I was gratified that the Secretary gave you assurances that he was going to give priority to this matter.

Our committee, I think, would like to express our own feelings in support of your reports that the Department of Labor should effectively carry out enforcement of its supervisory and investigative authority.

Senator NUNN. Mr. Chairman, I think that would be very important. I recall back in 1975 when there was a suggestion made by then Senator Robert Griffin from Michigan that our subcommittee undertake any comprehensive investigation into the pension fund, because there were a lot of abuses alleged.

We refrained from doing that on the strong assurances of the Labor Department that they were going to do the job, undertake it and do it thoroughly and that they would cooperate with Internal Revenue Service and the Justice Department.

Last September, we filed a lengthy report indicating a review of the Labor Department's role in that investigation and our report was very, very critical of the Labor Department.

One thing that can be said in the past, the Labor Department has been consistent and has been very bipartisan, no matter who is in office, Republicans or Democrats, they did a consistently poor job in this area.

Chairman PEPPER. Thank you very much.

Mr. Craig.

Mr. CRAIG. Thank you very much, Mr. Chairman. I think, Senator Nunn, you have just touched on the question I was going to ask. You alluded in your statement that errors of the past have not been corrected. Perhaps you could expand on that for the committee for the record.

The kinds of errors that we've seen in the Department of Labor, not in themselves, but at least in the absence of correcting them, have allowed these kinds of problems to emerge.

Is there any area that you would wish to expand on?

Senator NUNN. I would say that our report goes into a great deal of detail and I won't bore you with the details, but I would say that generally speaking, there's been a lack of coordination between the Labor Department and the Internal Revenue Service and the Justice Department. That is first.

Second, the Labor Department has taken the view until Secretary Donovan testified last week, consistently that they had no responsibility in the criminal area or very little responsibility in the criminal area. Yet they are the ones who have access to the records.

If the Labor Department does not pursue criminal allegations, no one does. So those are the two major areas, their failure to coordinate and their refusal to accept criminal investigations as a Labor Department responsibility.

The Internal Revenue Service bears some of that burden also, and, the whole question of criminal jurisdiction. They have said until very recently that they had very little criminal jurisdiction and that is contrary to our reading of the law. This is the reason in this bill we're clarifying that, but we believe the existing law under ERISA places that responsibility clearly on the Labor Department.

Chairman PEPPER. Our committee has supervisory jurisdiction in areas that affect the aged so it may be that with our two committees both keeping in contact with the Department of Labor can induce the Department to effectively discharge these responsibilities.

Senator NUNN. Thank you, Senator, and Mr. Chairman.

Mr. MICA. Mr. Chairman, as a Representative from the State of Florida, with one of the most elderly populations in the United States, I have constant complaints and comments about various pension programs that my constituents have been involved in that have had financial problems.

So I think cataloging these problems and trying to focus attention on them is really a service to all Americans, of course not only senior citizens.

Thank you, Mr. Chairman.

Mr. ALBOSTA. If the gentleman would yield just briefly, I do have a question before I have to leave that I overlooked in asking the Senator and I find it almost unbelievable that only 20 percent of all people who have contributions made into pension plans ever get a pension in the end.

Now, I have this statement before me that was put together from my staff. Obviously that must be the case.

Would you understand it that way, Senator? Would you care to comment on that?

Senator NUNN. I'm not familiar with that particular statistic. That must relate to the vesting notice, the fact that there is so much turnover in personnel in various companies that vesting never takes place.

But that is certainly something I think ought to be looked into, the whole question of vesting. I think ERISA has addressed that, but that is not an area that we got into in great detail.

Mr. ALBOSTA. I thank you for your comments and, Mr. Chairman, I think if I still have some time, I see Mr. Mica from Florida has left and I will continue on with this a little bit.

I think it would be well, also, to note for the record that if that is the case, it even makes our social security system even more necessary for those people that retire and find that they don't, and that this is accurate, that 80 percent of the people who pay into funds do not ever receive anything from them, at least up to this point.

Chairman PEPPER. Thank you very much.

Mr. Tauke.

Mr. TAUKE. Thank you very much, Mr. Chairman.

Senator, you gave us some excellent background to begin these hearings and I want to thank you for coming over to relate to us this information that you already put before us in the Senate.

My first question relates to the status of that inquiry in the Senate. Could you give us a brief update as to what the status of the investigation being conducted by the Permanent Subcommittee on Investigations is at the current time and, second, what the status is of the legislation that is being proposed is at the current time?

Senator NUNN. On the latter question, the legislation has just recently been introduced. It has now received the endorsement of the Reagan administration through the Secretary of Labor.

It has also received the endorsement of Lane Kirkland, speaking for the AFL-CIO. It also received a personal endorsement from Mr. Lehr, although this is certainly not binding on the Teamsters Union itself.

Mr. Lehr is the new director of the Teamsters Pension Fund. So it is off to a good start although all of us know it takes a long time for legislation to work its way through the field and I think there is no doubt about it, we would welcome someone on this side taking the legislation and introducing it and pushing it and, of course, changing it in any way you saw fit.

On the question of the status of the investigations we had, the Ostrer investigation I alluded to, has already been completed. That was several years ago. We have got the results of that and our recommendations, some of which have not been implemented.

The Hauser investigation was a very lengthy investigation that lead its way to the Teamsters Pension Fund. Joseph Hauser, as some of you probably know, after our investigation became a government informant and has played a very major role in many of the organized crime scam-type operations of the FBI.

I understand you may have him appearing before this committee, so that investigation was completed.

The oversight investigation of the Teamsters Central State Fund, I don't know that it will ever be completed. I think it will be a continuing responsibility of our subcommittee to continue our oversight of that fund and its operation and also of the Labor Department, IRS, and Justice and how they go about their task.

So, I would say that that one is open ended but we did get very encouraging results from both the testimony of Mr. Lehr, the new executive director of that fund, and his pledge to work with the Labor Department to enter into a consent decree for continuing independent investors handling the funds of the Central State Pension Fund, which has been the case for the last 3 or 4 years.

He also testified that he was going to sever their relationship with Amalgamated. That is a company run by Allen Dorfman, who allegedly has had organized crime connections for a long time and who has exercised his constitutional privileges before our subcommittee on several occasions.

So that is a continuing investigation. We also have had a very lengthy waterfront investigation that helped lead to this legislation and that investigation has now been completed and we have a report that has been filed on that.

So all of those are in the nature of completed investigations but we do intend to continue in this area and we'll probably have new hearings sometime next year.

Mr. TAUKE. Considering what has happened over the past several years, there seems to be a remarkably soft outcry from workers across the country. Is that because workers are not aware of what is happening to their pension plans?

Senator NUNN. I think that is correct. I think most workers are not aware that their retirement funds, and future is in jeopardy when these type occurrences happen. But I think there is an increasing awareness and I think that an awareness has come about partially because of the abuses that have taken place, partially because of our hearings.

But it is an area that needs a great deal of attention because the ultimate safety here and the ultimate accountability here is when an alert rank and file union membership across America recognize that the funds that are being abused are their funds and the kickbacks and bribes and corruption that is taking place jeopardizes their future. When that kind of educational campaign is completed and the rank and file recognize that, we will see, I think, a great increase in the accountability of the stewards of those funds.

Mr. TAUKE. Thank you.

The CHAIRMAN. Thank you very much, Mr. Tauke. Mr. Boner? Mr. Daube.

Mr. DAUB. Thank you, Mr. Chairman. I very much appreciate the leadership of this committee in this area, Senator Nunn, particularly for you taking time to come up and develop this issue with us. I really have no questions of you, Senator, but I would want to comment just briefly, Mr. Chairman, that I spent the better part of my professional life in the pension and profit-sharing area.

As a lawyer, I had a chance to work on many kinds of programs for employees. I had the chance to deal with a number of union pension plans, as a matter of fact. As well, I had the opportunity to kind of watch ERISA grow up to the devastating impact of fixed benefit plans versus the profit and pension-sharing plans and very, very serious need for reform of this particularly.

There is a kind of a fraud, a kind of a cheating that I think is going on that may not be focused on this hearing when we look at the actual format of the hearing with the detectors on the outside of the hallway and some of our potential witnesses in the truer sense of some of the fraud we have read about in the newspaper.

This is the fraud that I call underfunding. It is a serious mismanagement problem, where particularly political subdivisions of government are responsible by virtue of their cash flow problem, and they don't, for firemen and policemen, properly fund the annual contributions and as the entitlements grow and as consumer price indexes or other kinds of formulas are used, those responsible management teams start to plead lack of funds, 2, 3, 5, 20 years down the road, because of that serious criminal, conduct in my judgment.

I think it is a kind of a fraud that we ought to look into as well for the security of future pensioners. I think liquidity is another serious problem in the money markets the way trustees invest those funds, I think that is criminal because I don't think they seek the proper kind of advice for the investment of their portfolios of individual worker's contributions to these plans.

I think that another serious or criminal kind of conduct is the fact that even though the law is quite specific, the managers of these funds fail to inform the beneficiaries of their rights and requirements that they have that change from time to time and when the trustees decide to change a package they should adequately inform the potential beneficiaries of their rights.

I think these are crimes of the kind that might not be focused on today but that this committee ought to look at. I for one am interested in this area and would offer any expertise you might have to the staff of the committee as they work on these very serious problems for our future.

The CHAIRMAN. Thank you very much. I am glad to learn of your experience in this area. We will ask you to work with us to see what we can do to be helpful. Just one other question, Senator. You have spoken about what we feel is the derelict conduct in the Labor Department in carrying on its investigations. What about the criminal prosecutions by the Department of Justice; have there been many people convicted?

Senator NUNN. There have been very few convicted in this area. There have been some. That is one of the things that we recom-

mended so strongly that the Labor Department, with the authority under the law to receive reports from these funds and with the investigatory capability to investigate these funds, is in the unique position among all Federal agencies to be the prime mover in first detecting and then following through on investigations.

Once they have detected and followed through to a certain stage it is up to them to refer these type allegations to the Justice Department. But that kind of gap between Labor and Justice is one of the things that is most serious, and it has not resulted in smooth coordination in the past.

The CHAIRMAN. Thank you, Senator. Again we want to thank you for coming to help us on this. We want to work with your committee and be of any assistance we can. Thank you very much.

Senator NUNN. Thank you.

The CHAIRMAN. Next we have a panel. If you gentlemen will come up to the table, please, please. First is Jerry Levitoff, age 64, from Los Angeles, Calif. He has worked for Universal Auto Electric in Canoga Park, Calif., for the past 7 years. Reportedly, his former employer has just been found guilty of arson and other charges. The firm is in bankruptcy and apparently there is nothing left of the pension fund.

Would you have a seat, Mr. Levitoff.

Mr. LEVITOFF. Thank you very much.

The CHAIRMAN. May we introduce the other members of the panel. Mr. Ted Katsaros is a member of Local 282 of the International Brotherhood of Teamsters, located in New Jersey. Mr. Katsaros will testify to several fraudulent loans and investments that have been made by the trustees of this local pension fund. Accompanying Mr. Katsaros is Mr. John Kuebler, a 40-year member of the local, who will testify as to the effects of these transactions on any potential pension he might receive.

Last on the panel, Robert McGinnis. He is a trucker and member of the Teamsters Local 710 in Chicago. He is a participant in the local pension and health and welfare plans. He will testify about fraudulent loss of assets in these plans as well as certain provisions of ERISA which have been exploited by the trustees of these plans so that many participants will never vest in their pension plan.

First will be Jerry Levitoff. We will be glad to hear you. Any of you gentlemen, our rule is that if you have a prepared statement, you may read the statement, if you prefer, but we always are a little pressed for time. If you care to put the statement in the record where it will be carried in full and summarize it, and then subject yourselves to questions, we will be pleased to have you do that, whatever is your pleasure.

Mr. Levitoff.

STATEMENTS OF JERRY LEVITOFF, LOS ANGELES, CALIF.; TED KATSAROS, MOUNT VERNON, N.Y., JOHN KUEBLER, MOUNT VERNON, N.Y., AND ROBERT MCGINNIS, CHICAGO, ILL., VICTIMS OF PENSION/EMPLOYEE BENEFIT ABUSE

STATEMENT OF JERRY LEVITOFF

Mr. LEVITOFF. Thank you. Mr. Chairman and members of the committee, I have a short prepared statement. My name is Jerry

Levitoff. I live in Los Angeles, Calif., and I am 64 years of age. I have been employed for the last 7 years with a company called Burbank Generator. The firm has done business under the name of Universal Auto Electric and is located at 21300 Sherman Way in Canoga Park, Calif.

The firm has been in business in excess of 17 years or so, remanufacturing automobile starters, alternators, and generators. The number of employees at this plant has fluctuated from 30 to 90. Most of the time we have averaged about 50 people.

The firm is owned by Mr. David M. Kaye and his son, Robert J. Kaye. Robert was responsible for the day-to-day operations. His father was seldom around. About 5 years ago they set up a pension plan for employees. It was a noncontributory plan. The owners set aside money on behalf of the workers and they received a break on their income tax for doing so.

The trustees of the fund were the father and the son. The services of a reputable outside administrator were obtained to help manage this fund. Problems with the fund began to surface about a year ago. The administrator could not get the information needed to prepare annual reports for the fund which must be supplied to the Internal Revenue Service. There were rumors that the company was late or had not paid what was required into the pension fund.

The problems with the fund became worse when two of our employees, Harvey Wateru and Barbara Stein, tried to retire at the end of 1980. Both of them were disabled. They were constantly told that their retirement benefits would be forthcoming but the money never came through. This led to more questions.

Despite our best efforts, we were never given an accounting of the money we had in the fund. This controversy continued when the administrator terminated services.

On July 28 the company went into bankruptcy and filed under chapter XI of the bankruptcy statute. We were told that the money in the pension fund was gone.

The bookkeeper for the company told us that there should be about \$300,000 in this fund. Harvey Wateru said that he knew that in one year alone \$106,000 had been deposited in the pension fund. We speculated that this figure multiplied by five suggests that we should have about \$500,000 in the fund.

Needless to say, there was a great concern, particularly among those of us who are at retirement age. I will be 65 in February. Aside from what I have told you, there were other facts which may or may not have something to do with the present problem. The son, Robert Kaye, who was in charge of the day-to-day operation of the company, was convicted on Federal charges allegedly relating to arson and conspiracy. He has begun serving his sentence.

I am here on behalf of all the workers at this place to ask for your help. We fear that someone has stolen the proceeds of our pension fund. In fairness, we don't know what has happened to the money or how much was in the fund. All we know is that it is done.

Tomorrow morning, November 5, the plant and all the equipment in it will go on sale at a public auction. Someone has told me that the owner, Mr. David M. Kaye, has said the proceeds will be

used to repay the pension fund. I hope that this is true. We would appreciate anything that you can do to make sure that we do not lose out on the money that we have worked for and expected to receive in our retirement years.

I truly do not know how my wife and I would survive without this pension money. We worked for it. We were counting on it and we will be in tough shape without it. I know that all the other workers feel the same way.

We will be grateful for your help not only with our problems but for the enactment of legislation to make it impossible for others to experience these kinds of abuses.

The CHAIRMAN. Mr. Levittoff, yours is the particular situation of working people who have relied upon this pension fund for their retirement, then something happens to it, somebody squanders it, defaults with it, something, and that is the reason we are holding these hearings, to see what we can do to give protection to people like you.

We will see what we can do with the various agencies that may be involved to be of help to you employees. We will do what we can.

Mr. LEVITOFF. We will certainly appreciate it.

The CHAIRMAN. Thank you for coming here today.

Mr. LEVITOFF. It was my pleasure.

The CHAIRMAN. If I may say so, let's reserve our questions until we have finished all the panel.

The CHAIRMAN. Next is Mr. Katsaros, whom I have already introduced.

STATEMENT OF TED KATSAROS

Mr. KATSAROS. Yes. I have a brief statement as well. I would like to thank the committee for the opportunity of appearing here today. My name is Ted Katsaros. I reside at 358 Summit Avenue, Mount Vernon, N.Y. I have been a member of local 282 International Brotherhood of Teamsters for the past 21 years.

In 1975, a group of rank-and-file members of local 282 decided to band together to fight back against the corrupt and repressive administration of John Cody, the president of local 282. We called ourselves FORE, an acronym for "Fear of Reprisal Ends."

From the outset, we knew that we had to gather information and data that would allow us to analyze our pension funds and we were forced to do this on our own, without the help of any Government agency. We learned from brother members working in the field that many employers were not contributing their share to the pension fund; that is, men working for these firms were being denied their pension benefits.

We have learned that three such employees currently sit on the board of trustees for the local 282 pension fund. We also learned through our own initiatives that the administrators and trustees of our pension fund were using our moneys to invest in imprudent and questionable ventures.

In order to spare this committee the details of all that we have discovered and accomplished from 1975 through 1978, I have submitted to you a copy of the Central States Teamsters Fund hearing

before the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives on March 22, 1978. The information contained in that testimony will provide you with an accurate statement of what we have faced and what we have attempted to change within our local.

Following that hearing, Congressman Pickle demanded that the Labor Department take action in blocking a \$20 million loan deal for a Las Vegas gambling casino. This investment would have squandered more than one-third of our pension funds assets. It was ultimately ruled by a Federal judge to be "an act of gimmickey."

My concern today is that despite our continuous efforts to fight against the corrupt and inept use of our pension funds, we have received no further help from the Labor Department. Many of our members in local 282 thought that as a result of stopping the Las Vegas casino loan, the Labor Department would have continued to monitor our pension moneys to guarantee that they were being administered in a reasonable and prudent manner.

Instead, Labor Department officials were nowhere to be found when 7 months later our pension fund administrators made another loan to the Des Plaines Bank of Chicago, a loan which resulted in a \$1.6 million loss to the local 282 pension fund. The pension fund trustees were clearly negligent in this loan, since the Des Plaines Bank loan had insufficient collateral to back it up and an earlier Federal Government audit had resulted in a warning that the bank was in jeopardy of going bankrupt, which it finally did.

Since June of 1981, the Labor Department has not even bothered to ask any further questions about what has been going on the local 282 pension fund. And yet, when Grumman Aircraft, seeking to avoid a takeover by a Texas company, sought to use pension funds to buy up loose stock on the market, the Labor Department stepped in and filed suit within a matter of days. Why did it file suit in a case such as that, and not in local 282? Is it ineptness on their part or are there other reasons?

I would have to say that the buck stops at Congress. You are the people who oversee the various branches of the Labor Department. The laws exist to protect against these frauds. They simply need to be enforced. What you see before you today, John Kuebler and myself, are two hard-working American citizens who are having their hard-earned money squandered in one bad investment after another for the sole purpose of enriching the likes of John Cody and his associates.

Through our own initiative and ingenuity we have educated ourselves to the extent that we could now effectively administer and invest the moneys of local 282's pension fund. We feel that the Labor Department should be forcing our pension fund administrators to provide the members with three things: one, complete information concerning our pension fund; two, access to the minutes of trustee meetings; and three, full disclosure as to investments, loans, losses, and gains.

I and others in my local are not about to sit back and watch all of our efforts to go down the drain because of a few frustrated racketeers. I am here today to make sure that our plight within local 282 is known and on the record. What you as representatives of our Government intend to do about it remains to be seen. To do

nothing would be to further the belief of many Americans today—that our Government is incapable of action. I choose to believe that our Government will respond.

Pension funds are established for the sole purpose of providing a financially secure retirement for the working people of this country. Any deviation from this worthy goal should result in swift and decisive action by the Federal Government. I am counting on your help in protecting the future retirement of local 282's members.

The CHAIRMAN. Mr. Katsaros, you have made a very fine and courageous statement. I want to commend you and your colleagues who have been working with you for the courage that you exhibited as good Americans in trying to protect your legitimate interests and right. You have been entitled to the help of the Government that you haven't had. We will see if we can be helpful. Thank you very much.

The next witness is Mr. Kuebler of Mount Vernon, N.Y.

STATEMENT OF JOHN KUEBLER

Mr. KUEBLER. Mr. Chairman, I would like to thank the committee for the opportunity of appearing here today. My name is John Kuebler. I reside at 223 Sullivan Avenue, Farmingdale, N.Y. I have been a member of Local 282, International Brotherhood of Teamsters since 1942. After coming out of World War II, I went back to driving a truck in local 282 for Concrete Block Co. in the Bronx, where I was appointed shop steward of my barn. I am at an age in my life where I find that after working all these years I don't belong to a union—I belong to a group of men under autocratic rule. I don't have a say in my union of how our pension fund moneys are invested.

Throughout my 40 years as a union member, I have walked numerous picket lines and fought hard to build a strong union in which I was proud to be a member. It was always my belief that unions were the only protection workers have to fight off greedy employers. It seems that today it's just the opposite. The officials of my union are using the same tactics that many employers once used to destroy the growth of the labor movement.

We sit before you today as examples of what happens to you when you chose to become the lion among the sheep. We tried to live within the system and it is very frustrating. We are honest, hard-working Americans out to feed and educate our families so they can live a more fulfilling life and in turn raise their families in a healthier atmosphere.

Before coming here, I had some discussions with my fellow workers back in New York. They all say, "John, we admire your courage but you are wasting your time. You can't fight city hall." Gentlemen, I am here to disprove their beliefs. I still believe in this Government and this country. I went to war when I was called upon, and I expect you to go to battle when we as hard-working Americans are attacked through our pension funds.

The officials of our local operate behind a closed-door policy. It wasn't long ago that our pension fund tried to invest \$20 million in the construction of a Las Vegas gambling casino. The fund administrators were going to lend our moneys to Hyman Green, who had

already defaulted on \$42 million of public Teamster pension moneys. We petitioned the U.S. Department of Labor about this scheme and the Labor Department sued in Federal court and had the loan overturned.

Mr. Chairman, I spoke out and chose to fight the officials of my local. They tried to have me and my coworkers expelled from local 282 and failed. They forged records and tried to have me fired from my prior job and also failed. These matters are awaiting an enforcement decision from the National Labor Relations Board [NLRB] and have been in litigation for the past 4 years. To date, I have not received a back wages reward. The way our judicial system works, "I just hope I live long enough to be able to collect my moneys."

Our dues moneys and benefit plan trust funds should be used for our benefit as intended—not for disproportionate administrative expenses or legal fees to pay attorneys to take actions against our interests.

In closing, I would like to say that if teamsters are to enjoy good and solid pensions in their remaining years, the funds must be prudently administered. We must collectively root out corruption and encourage democracy and disclosure within our unions and I look to you gentlemen to help us accomplish this.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Kuebler. I thought when Congress passed the legislation that we call ERISA a few years ago that we had gone into this area and we were going to clean up the practices in the pension system and welfare funds. I thought that we were going to bring some relief to the people who were being abused in the regard to their pensions.

It is disturbing to me to hear summaries like that given by Senator Nunn about the findings of his permanent investigating committee and what you gentlemen say here today. The Government apparently is not being alert, not only not being alert but not being responsive, even when informed of these abuses, to try to protect the citizens. That is what Government is primarily for, is to protect the citizens in the enjoyment of their rights.

I don't know what will be the pleasure of the committee, but my own inclination would be for us to send each one of your statements to the Department of Labor, the Department of Justice and want to know what has been done, what are you prepared to do about what these men say about what is being done in their union and in our country. So we will consider the matter and we are very grateful to you, Mr. Kuebler, for your statement.

The CHAIRMAN. Mr. McGinnis.

STATEMENT OF ROBERT MCGINNIS

Mr. MCGINNIS. Mr. Chairman and members of the committee, ladies and gentlemen. Thank you for the opportunity to testify today. My name is Robert McGinnis. I have worked in the trucking industry in the Chicago area since 1938 and I am currently a participant in the Teamsters Local 710, health welfare and pension plans, which is a multiemployer plan.

I know that the purpose of this hearing is to examine pension fraud and abuses, which are certainly at work in the plan under which I am covered. Before detailing my allegations regarding these abuses, I would like to direct your attention for a minute, Mr. Chairman, to a different type of abuse or fraud which is being perpetrated against the millions of American workers who are covered by pension plans.

That is the fraud or fiction that after the passage of ERISA, the Employee Retirement Income Security Act of 1974, working men and women would be assured that they will receive their retirement benefits. Mr. Chairman, that fraud, that illusion, could not be further from the truth. Millions of persons covered by plans will never vest in a pension benefit and that is the cruelest fraud of all, because it is being perpetrated by our Federal Government. Let me describe my situation under the present law with my plan.

I am 59 years old—old enough to retire under many Teamster pension plans. Yet I can't find out from my plan and administrators whether or not I'm entitled to a pension, and if so, how much. This is because of section 105(d) of ERISA. This provision lets multiemployer plans off the hook. It states that the Secretary of Labor or the Secretary of Treasury has to issue final regulations on section 105 to make it effective for multiemployer plans to comply. The Secretary of Labor and the Secretary of Treasury has not yet issued final regulations on this subject since ERISA's enactment in 1974.

I brought this matter up personally to Mr. Ian Lanoff in 1979 and he said he would take care of it. Nothing ever happened. Congress did not intend for Local 710 or Local 705 to hide behind this flaw of not informing me of my benefits if I asked.

In the area of questionable or possibly imprudent activities, I can recite a litany of abuses of which I am aware. In examining annual report 5500 forms for the Local 710 Health and Welfare Plan, which are filed with the Department of Labor and the Internal Revenue Service, I discovered that the assets of the Health and Welfare fund went from \$14 million at yearend January 31, 1978, to \$10 million at yearend January 31, 1979, and finally to \$2 million at yearend January 31, 1980. Anyone examining this report can figure out that something terribly wrong had happened.

The first thing that was done by the trustees to shore up the situation was to put in a \$100 deductible for each participant and his dependents. That was not enough so they instituted a change of operations whereby employees are detailed to new jobs under a new local and plan. These men were brought into the plan to fatten it up.

The trustees also issued a new pensioners summary plan description booklet, which I will submit as evidence. This summary plan description—SPD—discloses that in order to be a participant in the pensioners health and welfare plan, you have to be employed for at least 10 years in Local 710. To my knowledge, no other health or welfare plan requires vesting of its employees before they can retire and receive benefits.

These changes of operations bring men into the two funds at different times so that their eligibility either to vest a pension benefit or to participate in the health or welfare funds do not coincide, so

that they are required to work longer before they are entitled to both benefits. Mr. Chairman, I might add that these abuses are perfectly legal according to ERISA, and that is one of the areas that bears further examination by this committee.

Another factor which contributes to the failure of health and welfare plans is delinquent employer contributions. The trustees are letting certain employees become delinquent in health, welfare and pension contributions. I have alerted all Local 710 trustees—one of whom is also a trustee in Central States, Mr. Robert Baker; they have linking trustees—for many years. They have either just laughed or ignored my complaints. Yet, in the Indianapolis area alone, I'd say the employees are at least half a million dollars in arrears, and that's a conservative figure. That is money that rightfully should be in the trust fund to support the plan.

In May 1978, I requested copies of the Local 710 fund's annual 1976 plan-year report—also known as 5500—from the Local 710 administrator. After receiving them, I discovered a loan of \$5.2 million to H. & S. Associates which the annual report listed as "non-collectible or in default." I also discovered on the same page of the 5500 report that an unexplained listing of \$233,914 for the Canaryville project was listed as FHA mortgages.

I went to LMSA—Labor Management Services Administration of the Labor Department, Chicago, Ill. I complained that pages listing these loans were not legible, although they eventually sent legible copies when I complained; and I also complained there were many delinquent contributions. These delinquencies were part of a sweetheart deal between employers, union, and the fund. I also said to LMSA that some teamsters were getting illegal pensions because they were in good graces with the union.

I also told a Chicago Tribune reporter about the defaulted loan of \$5.2 million to H. & S. Associates, a partnership that included a Teamster official and underworld businessmen. The LMSA and the Justice Department held a grand jury investigation during this time.

The LMSA investigation proved the following men were part of H. & S. Associates:

1. Barry Marlin, a man with a string of Federal indictments; 2. Ben Stein, convicted of labor racketeering charges and currently holding the janitorial contract to both Federal buildings in Chicago; and 3. Dominic Sencese, IBT Local 703 Secretary Treasurer, also on Joint Council 25.

There is a fourth partner, it is Gerald Kaufman. I wrote and got the Freedom of Information Act. On page 72 of the Freedom of Information Act record which I obtained, it states that they got the \$5.2 million loan without an application. The Labor Department closed its investigation—it was a grand jury investigation—on the basis that the loan was made pre-ERISA. This is the Freedom of Information Act, and they have income here which they never declared on the 5500 forms which I am getting into.

In mid-1978, the fund foreclosed on the defaulted loan and assumed an ownership interest in the Sherman House Hotel in downtown Chicago. On the annual report—form 5500—for the plan year ending January 31, 1979, I discovered there was no rent income declared from the Sherman House. I went to LMSA again and made

these allegations which I know are true. At a regular union meeting in January 1980, from the floor during our union meeting, I asked Mr. William Joyce, "Did you collect rent from the Sherman House?"

He said, "Yes, we did."

I asked, "Then why wasn't the rental income declared in the annual report—form 5500?"

He turned red, and he never answered my question.

After the loan to H. & S. Associates went into default, the fund tried to sell the Sherman Hotel property to the city of Chicago which wanted to condemn it.

I am not a very good reader.

In order to sell the Sherman Hotel property to the city, however, the fund had to have clear legal title. The fund had to buy out two other interests that clouded its title to the property. In a document which I received under FOIA, Mr. Neal, the city solicitor who brought the condemnation suit, said that the fund had to pay an additional \$3 million to clear the title. But in the fund's 5500 reports, no such transactions are listed. Why didn't the Labor Department investigators notice such a glaring omission? Why weren't the trustees' actions for this omission investigated?

Excessive and unwarranted legal fees have also drained away money from our trust funds. I once asked at another union meeting about the legal fees paid to the fund's outside counsel, Thomas Burke, to defend the eminent domain suit. I've read that Burke spent only 22 hours of work on the case. I was told by fund officials, "We hire the best, and pay the best."

A Chicago newspaper later reported that Thomas Burke gave back \$500,000 of this legal fee to Thomas Tulley, an attorney and former assessor of Cook County, who is now the object of a grand jury investigation. Moreover, the legal fee reported on the annual report—\$990,117 for 22 hours' work—does not correspond with the fee reported by Burke in the circuit court of Cook County—\$950,116. There is a discrepancy of \$40,001.

Mr. Chairman, these abuses are not confined to local 710. I know of a Milwaukee local in which some drivers are forced to pay 2 mills per mile—road drivers—and 10 cents an hour contribution rate in local 200 health and welfare plan. This comes out of their own pay. They are not declared on the 5500 report, and if they take \$7 a week out and they are putting \$4 into the plan. The other \$3 goes to—nobody knows where it goes.

But whether they involve outright illegal fraud or manipulation of ERISA, these abuses have one thing in common. They cheat the worker out of his pension. I know that these plans receive generous tax breaks, but the beneficiaries of these tax breaks, just like the beneficiaries of the pensions, are few and far in between.

Thank you.

[See appendix 2, p. 159 for material submitted by Mr. McGinnis.]

The CHAIRMAN. Thank you very much, Mr. McGinnis. That is a tragic situation, as you disclose. It certainly, it seems to me, imperatively requires something to be done to protect the workers against that kind of abuse. Somebody is going to have to have close supervision over all of these funds because they are trust funds,

they are intended for the benefit of the workers at retirement or at disability time.

Let me ask just a few questions, if I may. Mr. Levitoff, looking back on the situation, was there anything you as a plan participant might have done which might have led to prevent the looting of your plan? Are there any lessons to be learned from your situation?

Mr. LEVITOFF. Well, I think the plans of any pension should be made public to the people that are participating, which was not done so in this particular instance. Nobody knew where they were going. In fact, today I don't know how much money I have got coming. I have heard \$25,000 to \$40,000 for the time, vested interest.

But I wouldn't know today. I called the Design Incentive, which was administering the plan. They quit, they weren't getting paid, they weren't getting any courtesy answers when they would call. And really, there was just no cooperation at all. And I do think anybody that is in a pension plan, I believe they should, not day to day, but I think they should certainly know from a reasonable period to another reasonable period how much they have vested in a certain plan.

The CHAIRMAN. Thank you very much.

Mr. Katsaros, what is your impression of the enforcement posture and activity through the Department of Labor and the Internal Revenue Service generally and with respect to your plan?

Mr. KATSAROS. Well, first we went through the transition in which the Labor Department, the IRS, to hold the records, and the IRS won't give us the records. It treats the records almost like it treats a private person's income tax forms. It will mail them to you, but it takes forever. You have to write three or four letters to them. They don't want to handle it. They claim they are not equipped. There has been this argument and battle going on between them. The Labor Department takes the view that the pension fund is a kind of a private entrepreneur investment system and that unless it finds something is criminal or civil, it won't disclose to you what is happening inside of it.

Just recently, under the suit that we took out against the trustees of the pension fund for this bank deal, we requested information under the Freedom of Information Act. The papers that we got from them, after something like 10 years of investigating our officials were almost childish. They looked like scribbles from a kindergarten class. You couldn't make head or tail of it. We now have a law student trying to sift through that. We don't know what they did during this period of time.

The other thing is that they take the view that if there are double vested companies not paying into the pension fund in the area—which is quite common on Long Island—they don't want to get involved in that area, since it may put some employer out of business. So it is OK if they steal from the fund. They indicted one employer and let him go on a misdemeanor after it was proven that he cheated the fund.

The CHAIRMAN. If the Department of Labor is not going to set up effective machinery to vest the operation of these funds and protect the rights of the beneficiaries, maybe we could consider the possi-

bility of extending the investigative authority of bank examiners. They examine banks, trust institutions, to protect the depositors. These are trust funds. They are skilled and expert in knowing what goes on, checking up to see whether the operations are fair, proper, and legal, or not. Anyway, I can see very well what crying emergency there is for effective supervision of this critical area.

Thank you very much.

Mr. KATSAROS. I have one other thing, if I may.

The CHAIRMAN. Yes.

Mr. KATSAROS. I have one other thing that I would like to say that is likely to happen. Our officials in the International Brotherhood of Teamsters use a group called the Labor Beacon, who call us stool pigeons, squealers, and many of you gentlemen, degenerates and whatever. You ought to see some of their publications that are put out and distributed throughout the country by Teamsters officials in an attempt to discredit us, as if there is something wrong with us coming to government and saying, "Hey, we see somebody stealing our money."

The CHAIRMAN. Do the States have enforcement machinery in these cases? Did the State do anything at all to protect you all's rights?

Mr. KATSAROS. No, none whatsoever. As soon as ERISA came into being in the State of New York, and we had a fairly good program in the State of New York, they just gave up and stopped keeping records and all. They just turned it over to the Federal Government.

The CHAIRMAN. Thank you very much, Mr. Katsaros.

Mr. Kuebler, as you approach your retirement, do you have any fears that you will not get your pension or that your pension will be markedly reduced because of the fraudulent activities associated with your fund? Do you have any idea what the aggregate or annual losses to your plan have been?

Mr. KUEBLER. It is very hard for me to hear you, Mr. Chairman. But I think what, if I am correct, what you asked us is, what my worries are about getting old with the pension fund and am I worried. With the people administering it, the system that the particular people administering the pension fund right now is, No. 1, the president of the fund is also the president of the local that I belong to, with an extensive criminal background, organized crime affiliations.

Second, there are three employer trustees with a long history of delinquent contributions. Intercompany ownership within the union. And there is no way for us to know what goes on behind closed doors.

When you ask, you are told don't rock the boat. We don't belong to—we belong to a union up in New York. We have already had one business agent found in the trunk of a car in LaGuardia Airport, and we have another business agent that the Government has indicted; one named Harry Gross, has a record of corruption as long as this table. My wife of 35 years says she doesn't know if I am brave or if I am a nut. Where do we go?

By the time you go to the Labor Department, by the time it gets lost in paperwork, you go to anybody in New York, do you know what you are told? Don't rock the boat.

They forged my records for 4 years. I have just merely been earning a living. In 1977, after 37 years in this union, I earned \$2,294. They can blackball you, pick up a phone and call an employer, say, "Look, you want heat? Don't put him to work." Where do you go? By the time you get into the system, they are long down the road.

They have plenty of money. They don't care about the money, because they get their high-priced salaries, cars, and stuff like that. They don't care how they use the money to make you any example to people out there—"Don't rock the boat." This is why we come to this committee, hoping that our Government will look in and protect us, all the Indians out there, because the chiefs are the ones that are putting the heat on us. Believe me, it is a proud day of my life to be able to afford and come down and speak to you.

The CHAIRMAN. Thank you, Mr. Kuebler.

One last question of Mr. McGinnis. You have entered a copy of your plan summary described in the record of this hearing. Do you think that this document, which is supposed to explain your rights and obligations under your plan, adequately and fairly does so? In your opinion, is it understandable to the average plan participant covered by your plan, which is the standard provided in the Department of Labor's regulations?

Mr. McGINNIS. Mr. Chairman, no, it does not. For one thing, the summary plan description says there is a reciprocity. In my case, I worked for the same company for 12 years. I am not vested. I went in 1973 from one local union which had its own pension plan, 705, to 710.

On a Friday I went to work as 705 member, on Monday I went to work as a 710 member. They said there was reciprocity. The summary plan says there is reciprocity. There is no reciprocity for vesting, which you can read that book until you are blue in the face and you will not see it. It is not there. That is the clause. When you go from one plan to another.

Now, all the trucking companies have change of operations. In a change of operation they ask for economic reasons, they want to move men from one area to the other. You could be in the western conference in one plan, in the western conference for 9 years. They would have a change of operation. This is a way of bilking people out of the pensions. The same people sit on these change of operations in the unions, representing the unions and companies, also trustees in most cases. They never turn a change of operation down.

You could have 9 years in the western conference, they could move you into the Central States. You are not vested in the western conference. You go into the Central States, work 9 years, you go into local 710's plan, for instance; you work 9 years there. You have 27 years in the industry. You are not vested. You get no pension. It is the same case as mine. I have 38 years I am not vested.

Mr. DAUB. Mr. Chairman, may I get a little bit more information?

Are you talking about vesting or portability in vesting?

Mr. McGINNIS. Vesting, portability in vesting.

Mr. DAUB. In other words, the language of your plan document description says that vesting does not occur even in a proportion until after 10 or 12 years?

Mr. MCGINNIS. No, sir. If you read this booklet, they say they got reciprocity. When you transfer from one, a participant—I know more than the average participant. A participant does not when he moves in these change of operations, for instance, you could have 27 years and not be vested.

Mr. DAUB. I am looking for a term of description. I think perhaps I might find it in the plan which you have made of record. But I think it is important for everyone to understand the difference between reciprocity, as it may come in as a percentage of vesting, and portability, which you may or may not have as a percentage of vesting. Portability would be the vesting of rights you have accrued from one jurisdiction to another. Reciprocity would deal totally within the trustees to define that, as to what the degree of vesting is.

I want to be sure you understand that portability is one of the biggest problems we have got, vesting becomes one that is subject to definition by the plan.

Mr. MCGINNIS. Well, there is nothing ascribed to portability. But reciprocity, they say there is reciprocity between the plans. But when you move, there is no reciprocity.

Mr. DAUB. What is their definition of reciprocity that anything you had coming would go with you?

Mr. MCGINNIS. It is not words, the way it is worded in this summary plan description it is not words that people would understand. And furthermore, the vesting part is not there.

Mr. DAUB. Were you ever given a layman's booklet on the plan that you thought you were covered by, written in less than the legal terms of the plan summary?

Mr. MCGINNIS. Yes, sir. I have it with me. The plan summary you mean?

Mr. DAUB. No; I am talking about a booklet.

Mr. MCGINNIS. No.

Mr. DAUB. Summarized in less than the descriptive terms of the plan itself.

Mr. MCGINNIS. No, sir.

Mr. DAUB. You never were offered one voluntarily?

Mr. MCGINNIS. No, sir.

Mr. DAUB. Did you ever ask if there was such a booklet available?

Mr. MCGINNIS. I have asked a lot of things that include my benefits, and they won't give me no answer.

Mr. DAUB. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Now I want to ask each one of you gentlemen just one question. Each of you was a member of a local. I presume each member of that local had a right to vote for the officers of the local. Each member of that local, I assume, was similarly affected to the way you were affected; that is, his or her rights were involved. Were you not able to get your fellow workers in the local to work with you so as to vote out corrupt or incompetent authorities that were managing your funds? Why were you not able to get redress in the democratic way through your own locals? Start with Mr. Levitoff.

Mr. LEVITOFF. Mr. Chairman, I was in sales. I did not belong to a local. I wasn't in a local.

The CHAIRMAN. In your case you had an employer relationship. The rest of you gentlemen—Mr. Katsaros.

Mr. KATSAROS. Well, Monday night 12 of us, which is our entire slate, were nominated at the most rowdy kind of meeting you could ever hear. We were berated, challenged, and practically came to physical blows. The incumbents supporters were shouting and yelling.

This is the third time we have run. The biggest problem we have with the membership is convincing them that their own brother members, people from among their ranks, other truck drivers, are capable and competent of taking over the local and administering it honestly.

One of the consistent complaints that they have is this: They say that if a guy ducks under the turnstile—New York lingo—if a guy ducks under the turnstile and there is a cop there, he grabs him. How can they steal all this money you are talking about with bad investments, and the Government doesn't step in and do anything about it? That is the difficult part we have. We hope we will overcome that on December 6.

The CHAIRMAN. You can't hire auditors or any group of you couldn't get together and hire an auditing firm to audit these books for you?

Mr. KATSAROS. We are dealing with—we looked into this a number of years ago. We now have a law firm who has taken out a suit. We will be getting into looking at their books. It is a great financial problem in financing that. We don't have the money. The lawyers that tend to help us are good guys, so they don't charge a lot of money. It is a real problem—no offense.

Mr. DAUB. Mr. Chairman, again may I just offer a comment to this very fine witness' testimony; that is, that provisions of many State laws as well as some Federal law allow attorneys' fees of the lawyers that take on these kinds of suits and win them. And I personally participated in one of those such suits with the "dissident members." The local didn't have the money to get rid of the people that were mismanaging their pension plan.

So I think that if you don't know this or maybe the lawyers you now have aren't aware of this, that potential exists to be able to get—the chairman's question is very good. It is an educational process. I appreciate the problem you are going through. I personally saw that happen. It took 6 years to get the rank and file just to be really trusting of somebody besides the people they had elected in the first place.

Do you have an outside trustee that is on your side, out of the three people in your plan?

Mr. KATSAROS. No. The one we did from the General Contractors Association of New York in 1977, when the casino loan came through, quit. He walked off of it. So the main employers, Schiavone Construction and those people, don't want to have anything to do with it.

Mr. DAUB. Under ERISA, any plan you are in, you have three outside trustees. One is an outside member, one is an employee and one is for the "union management." Don't you have an outside trustee who is a—

Mr. KATSAROS. No; we don't have an outside trustee. We have four and four; four from management and four from the union.

Mr. DAUB. Nobody outside of those two entities.

Mr. KATSAROS. No.

Mr. DAUB. Is that right?

Mr. KATSAROS. That is correct.

The CHAIRMAN. Mr. Kuebler, what would you say to my question?

Mr. KUEBLER. Well, in the last election, first of all, our local is spread out all over New York City proper and Long Island, which, from one end of New York City to the end of Long Island, is approximately 150 miles. We also have members out in New Jersey and Westchester, which are the surrounding other territories. As far as the size of the election, the type of election, we don't have a word, we don't have a say. They tell us this is what it is going to be. They pick two polling spots. They have one spot by LaGuardia Airport. There is no public transportation. You have to come by automobile.

The other one is out in the middle of the Island, men have to drive 50 to 60 miles on a Sunday morning to vote. Last year at the election site, they also appoint shop stewards. So actually when you say the fix is in, they own everybody. You have a shop steward, they appoint him. It is not elective. In the old days you used to be able to elect your shop steward and had more representation. He wasn't owned by them. The shop stewards in every barn, they work hard, their intimidation is strong.

When you come to the election site—last year was a very cold day, there was only maybe 12, 14 men were able to stand outside at a time before they go in. They have, they call them election committee—they are receptionists. They walk up to you at the booth, put their arms around, stuff like that, it is like trying to beat down Gibraltar with your fist. We are standing out there like a lot of men do, you know, when you have a mortgage, a few kids, in this day and age you have to think twice. This is what we are up against.

But we publish our own inter-union newspaper. We have the membership's address but no cooperation from them. We have been informing the membership but as Teddy said, we are waiting for Government to prove that what we say and how bad they are and the things that go on. But they feel there is no way you can beat them and everybody is afraid. That is what it comes down to, apathy.

The CHAIRMAN. Mr. McGinnis.

Mr. MCGINNIS. Mr. Chairman, they use Hitlerism tactics when you go against them to try to run against them, especially these giant funds like 710, where you have about \$800 million. It is just like Roy Lee Williams in Las Vegas. There was no chance to get him out of there. If we went the same way—the only way they can get put out of office is criminal convictions, in my estimation. And there is enough evidence to get some of these people out on criminal convictions. That is the only way to get them out.

Thank you.

The CHAIRMAN. Thank you very much. Mr. Rinaldo.

Mr. RINALDO. Thank you very much, Mr. Chairman.

Your last question, the question prior to this one, was an interesting one, and I would like to confine most of my questioning to Mr. Katsaros and Mr. Kuebler. The chairman asked at that time if you had any idea what the aggregate or annual losses to the plan have been? While it was a lengthy answer, the question wasn't answered. So maybe I can reframe it in this fashion because I have a line of questioning that I want to pursue.

Can you tell the committee exactly the size of the trust fund at the time you began to look into it, and the size of the trust fund at this time?

Mr. KATSAROS. It was in 1975. To the best of my recollection it was about \$45 million and it is about \$68 million today. That depends on how you want to look at it, because a lot of the properties they own are greatly inflated. They can't sell them at the price that they say they are worth. That is a difficulty.

Mr. RINALDO. Do you have any estimate as to the amount of money that has been lost to the fund through unethical or illegal transactions?

Mr. KATSAROS. Well, in the area—there was a trial that one of the employers was indicted on mail fraud for not reporting to the fund contributions that he should have been reporting on behalf of the members. He had a double-vested company, a company without a union contract. I think that was about \$50,000 he was caught on. He maintained at this trial that everybody does this, so in order for me to stay in business, I have to go along with it.

We would estimate that between \$2 and \$3 million a year is lost in our fund through contributions not being put into the fund that should be by this double-vested situation.

I have here two newsletters that we recently published. While some of it is political hype, in the back, are some cases that give stark accounts of people who have complained that their contributions aren't being paid in by another company. The union says there is nothing they can do about it because they don't have a contract with that company.

Mr. RINALDO. Well, what you are saying is that \$2 to \$3 million is illegally siphoned off. Is the \$2 to \$3 million a guesstimate on your part or have you arrived at that figure through a series of calculations of individual cases where money was illegally taken out of the fund?

Mr. KATSAROS. An educated guesstimate based on the number of employers and the employees. It was \$162 a week per person donated into all of the benefit programs of local 282, if you work 40 hours. That's a lot of money.

Mr. RINALDO. I want to go back to your testimony you said, "Our concern today is despite our continuous efforts to fight against the corrupted and inept use of our pension funds, that we receive no further help from the Labor Department. The Labor Department officials were nowhere to be found and 7 months later, our pension fund administrators made another loan to the Des Plaines Bank of Chicago, a loan which resulted in a \$1.6 million loss to the 282 pension fund."

Then you say that since June of 1981, the Labor Department has not asked any further questions about what's been going on in the local 282 pension fund.

Now, what I would like to know and what I would like you to tell the committee is who in the Labor Department has refused? Who have you contacted and the names of the individuals in the Labor Department that you have spoken to?

Mr. KATSAROS. Well, I'll have to supply that to you later. I don't have them with me right now. There is a couple of things.

First—

Mr. RINALDO. Let me say this as a preface to your comment. We have an educated guess as to the amount of funds that were siphoned off, but I think it is a very serious charge when you say that you received no help from the Labor Department despite the fact that they are the investigatory arm, the people that should be overseeing this and despite the fact, according to you, you have made numerous requests to them. Yet you don't have the information here, I would like, Mr. Chairman, to request unanimous consent that the record remain open so that we can have a statement by Mr. Katsaros as to the number of requests, when they were made and to whom they were made and by whom they were made so that this committee at a subsequent date, very possibly, can look into that aspect of it which I think is key to this entire issue.

Mr. KATSAROS. Well, one such incident comes to mind with Barry Silvers' from the Eastern District strikeforce in which we complained that under the ERISA Act, 1977, the fund administrator, that was to be his principal job.

Mr. RINALDO. Will you identify Barry Silvers for the record?

Mr. KATSAROS. Barry Silvers is an agent of the U.S. Labor Department in Brooklyn.

Mr. RINALDO. To the best of your knowledge, is he still employed by the Labor Department?

Mr. KATSAROS. I believe so. He's been given this information. They have been receiving our newsletters all along, which has detailed a lot of it. Specific things are asked, for instance, as to the illegal payments to the fund administrator, John Cody, which is a conflict under the act and nothing has been done about that.

Specifically, in my testimony, what I'm talking about is that after we found out about the Des Plaines loan through internal means, the Labor Department did not find out about it, that this \$1.6 million was lost, we then took a suit out.

Specifically, they have not stepped in to try and put the fund under some kind of court order to cease and desist from doing this. I hear rumors from some of the people that I get my information from that they may have since that time ventured into another loan.

I don't know if that is true. We can only find out in time and that is what I mean.

It was a public thing. It was in the newspapers. We wrote for the Freedom of Information Act in regards to this—my attorneys did. I don't know who they talked to, George Nash or whoever was talked to in New York City, and they have not taken any civil action.

They keep coming up with this thing that we can't take civil action while there is a possibility of criminal action.

Well, there's been a possibility of criminal action for 15 years so they don't take civil action.

Mr. RINALDO. You mentioned June 1981. A new administration took over in January. Have you personally or any member of your group, I believe the acronym is FORE, ever written or contacted Secretary Donovan, for example, to urge his support in your efforts and to complain about the lack of efforts to him on the part of the Department of Labor?

Mr. KATSAROS. Well, I don't have very much confidence. I worked in local 282 in the area that Mr. Donovan came out of and I got my lumps and gave a few back with Harry Gross who was involved with him and there are some questionable practices there and I really just don't trust the man.

That is my personal opinion. Take it for what you will.

Mr. RINALDO. Did you ever write to him?

Mr. KATSAROS. No, sir, I didn't.

Mr. RINALDO. Did you ever write to any Under Secretary or Deputy Secretary?

Mr. KATSAROS. Not in recent times.

Mr. RINALDO. When was the last time you wrote or contacted anyone in Washington in the Department of Labor?

Mr. KATSAROS. I would have to say sometime in 1980, but we have dealt on the local level if we have.

Mr. RINALDO. Well, it seems logical to me, if you are dealing at the local level and you are not getting any response, you would go over their heads and go to the Department of Labor in Washington.

Mr. KATSAROS. If you will look at our testimony that I placed in the record before the Committee on Ways and Means in the House of Representatives, you will see just the detailing that we did do with Ballard and people like that.

If we put enough people on them, they get removed. I believe a couple of them were removed. We switched chairs around and everybody promises that they are going to do something about it, something's going to happen.

We are more interested in educating our rank and file and our membership and trying to get them to trust us and not so much in burning up a lot of time running after the Government when we know they know.

Mr. RINALDO. Well, you said a few moments ago in your testimony or Mr. Kuebler did, that one of the reasons you were here was that you felt you needed governmental intervention to show the rank and file that there really was a serious problem, that there was misappropriation of funds. Yet, on the other hand, you are now responding to my question by saying that you didn't think it was that important.

Mr. KATSAROS. Well, Congressman, I'm saying that it is important that they know about it. I know they know about it. They read the newspapers. I'm not about to keep knocking down their door and begging them to listen to me and getting ridiculous letters back which don't amount to anything.

Thank you very much for your letter, we're looking into the matter. When we wrote for Freedom of Information Act, they said we couldn't have them. Now that we have again and informed them of our lawsuit which our attorneys had to do, we've had no response.

They have been told about this. We see just a continuing pattern. I'm not the enforcement or the oversight. I have no power to do that.

They don't want to listen to me.

Mr. RINALDO. Do you have any of these letters with you that you have written?

Mr. KATSAROS. No, I don't.

Mr. RINALDO. Mr. Chairman, I request unanimous consent that the record remain open and that the gentleman, Mr. Katsaros, submit copies of all correspondence during the last 5 years with the Department of Labor requesting any and all investigations or inquiries and any responses that he's received from the Department of Labor.

Chairman PEPPER. It is requested.

Mr. KATSAROS. No problem on my part.

[See appendix 3, p. 185 for material subsequently submitted by Mr. Katsaros and Mr. Kuebler.]

Mr. RINALDO. Has the Department of Labor or any other Government entity ever recommended replacing the local 282 trustees?

Mr. KATSAROS. Not to my knowledge, no.

Mr. RINALDO. You mentioned that the Labor Department officials were nowhere to be found when a loan was made to the fund of the Des Plaines Bank of Chicago, which subsequently went bankrupt. Can you tell the committee exactly what you asked the Department of Labor to do at that time and what you feel they should have done to prevent the loan?

Mr. KATSAROS. Well, I would say that—

Mr. RINALDO. You did contact them, I assume?

Mr. KATSAROS. Well, we contacted them when we took the suit, because under law in ERISA, we had an obligation to do that. The attorneys contacted them and furnished them with the facts.

Mr. RINALDO. You mentioned your group, FORE. I guess that stands for Fear of Reprisal Ends?

Mr. KATSAROS. That's correct.

Mr. RINALDO. What reprisal did you fear? Why did you name it Fear of Reprisal Ends?

Mr. KATSAROS. I didn't like the term because it was there when I came there, but I've kind of grown accustomed to it because I've been out of work for 9 months. I was fired by my employer and it went before the National Labor Relations Board.

Currently it will be reviewed by the National Labor Relations Board in Washington.

Mr. RINALDO. How many members does FORE have?

Mr. KATSAROS. I would say about 50 people who stand up to it. We have many more members, but we don't want them to come out front. We don't want them to get fired.

Mr. RINALDO. In other words, most of the people who belong to your group are subsequently fired or denied work?

Mr. KATSAROS. Quite a few.

Mr. RINALDO. Have you and other members of FORE tried to replace the trustees of the pension fund yourselves?

Mr. KATSAROS. Under the trust agreement, it is the executive board of the union that appoints the trustees from the union, which is usually themselves, to administer the fund and the em-

ployers have an election of their own in which they select the trustees under that trust agreement.

So we have no participation in that. What we're proposing to the membership is that at least we begin by having three observers elected by the rank and file to be in attendance at trust meetings where all of these decisions are made and where prudent judgment is to be used.

Mr. RINALDO. Are you familiar with ERISA and the authority it gives to the Department of Labor?

Mr. KATSAROS. Somewhat, but it is a difficult law to get interpreted.

Mr. RINALDO. Do you feel that the Department was negligent in its statutory obligations in this matter, that is in regard to the investigations that you have requested or do you feel that the Department needs increased authority under the law before they can proceed in the manner you would like them to?

Mr. KATSAROS. As I see the law from a layman, no. I think they have proper authority to act. I think they don't have the trained personnel. They don't have the institution to back them up. I see that as one of the problems.

The lawyers that go to work for the Labor Department, as many other branches of Government, is like a revolving door. In the Central States Pension Fund, I think the law has changed over a number of times so you had a new attorney coming in who was unfamiliar with the case and was just completely stymied.

Now whether that was done deliberately as it was suggested to some extent that it might have been done deliberately by the permanent subcommittee, I don't know.

Mr. RINALDO. But do you feel there was any negligence in the Department, any deliberate attempt not to conduct the type of investigation that you feel was warranted?

Mr. KATSAROS. It certainly looked that way to me.

Mr. RINALDO. I have no further questions, Mr. Chairman.

Chairman PEPPER. Thank you very much.

Gentlemen, we thank you very much for coming and I want to say to Mr. Levitoff, if he's still here, I just asked my chief of staff to get in touch with the Department of Justice or some of the agencies that might be involved and see if we can be of some help in respect to the pension fund being protected and that sale and the distribution of the assets provided from the sale.

Mr. KATSAROS. Thank you very much.

Chairman PEPPER. Thank you, gentlemen, very much for coming.

Mr. KATSAROS. Thank you very much.

Chairman PEPPER. Our next witness is Mr. Albert B. Lewis. Will you please come forward to the table, sir, Mr. Albert B. Lewis, chairman, Pennsylvania Crime Commission, who will testify about abuses and related employee plans. Accompanying him will be Investigator Franklin Booth and reputed organized crime leader James Fratianno who will testify about the techniques involved in pension fraud and his involvement in it.

Also, Mr. Thomas Carroll, acting chief counsel of the New York State Commission, who will describe the commission's investigation into abuses and employee benefit plans.

Mr. Robert DelTufo, commissioner, New Jersey State Commission on Investigation, will testify about recent investigations into abuses in prepaid health and dental plans.

First, we'll welcome the statement by Mr. Lewis.

STATEMENTS OF ALVIN B. LEWIS, CHAIRMAN, PENNSYLVANIA CRIME COMMISSION, ACCOMPANIED BY JOHN CONTINO, COUNSEL; FRANKLIN BOOTH, INVESTIGATOR; AND JAMES FRATIENNO

STATEMENT OF ALVIN B. LEWIS

Mr. LEWIS. Thank you, Mr. Chairman, members of the committee. My name is Al Lewis. I was special counsel and chief counsel to the House Select Committee on Assassinations a few years ago, which investigated the murders of President Kennedy and Martin Luther King.

The Pennsylvania Crime Commission is an independent State agency charged with the investigation of organized crime and public corruption in the State of Pennsylvania.

There is a staff, about 65 people, of which about 38 are full-time investigators. We appreciate the opportunity to testify today because the problem we have recognized in about a 3-year investigation that is of major proportion throughout the United States.

During the investigation, the commission found that the influence of traditional and nontraditional organized crime in the health care industry has become a serious national problem. Fraud in this industry is on the increase and it contributes to the skyrocketing costs of health services.

The commission's investigation documented links between organized crime and health care plan organizations that service union and employee groups in over half a dozen States. In addition, we found that groups of individuals not associated with traditional organized crime are participants in fraudulent activities in some health care companies. These nontraditional organized crime groups can include doctors, dentists, and attorneys, and are indicative of an increasing wave of white collar crime.

In addition, our agents found that, in some instances, union trust officials involved in awarding these health care contracts displayed a wanton lack of fiduciary responsibility. In several instances, they were involved in complicated relationships with the health care plan organizations and received monetary and other benefits for assuring the award of the contracts.

Our findings, coupled with those of other State law enforcement agencies, lead us to the conclusion that this industry is under-regulated, and therefore, susceptible to fraudulent activity.

It would be difficult to overestimate the costs to the American taxpayer of these types of fraud. If a municipal union is defrauded, we ultimately pay the bill through higher taxes. If a labor union's health care costs are high, the employer must pass on those high costs to the consumer who buys his products.

Moreover, as the popularity of these types of plans increases, so does their profits and their attractiveness to criminals. This is just one more example of entrepreneurial criminal activity that can be seen today. The fact that so-called traditional organized criminals

have considered this field a lucrative one in which to be involved gives us some indication of the profits that can be made. It also shows that these traditional organized criminals are, indeed, becoming more sophisticated and are looking toward white collar crimes as a new area in which to perpetuate their fortunes.

Let me explain how these health plans work very briefly. This field encompasses contracts entered into by union or employee groups with companies that arrange or provide for medical and/or dental services, at least in the ones on which we specifically focused.

A union, for example, might pay \$10 per member per month to a health care company. When a union member needs medical or dental services, he contacts a physician or dentist or the health care plan organization.

The health care company would then be billed for the services the union member had received. If the services cost more than the company allotted for that particular type of work, the union member would be required to make up the difference between the actual cost and the allotment unless, of course, the benefit contract allows for total reimbursement of the received service.

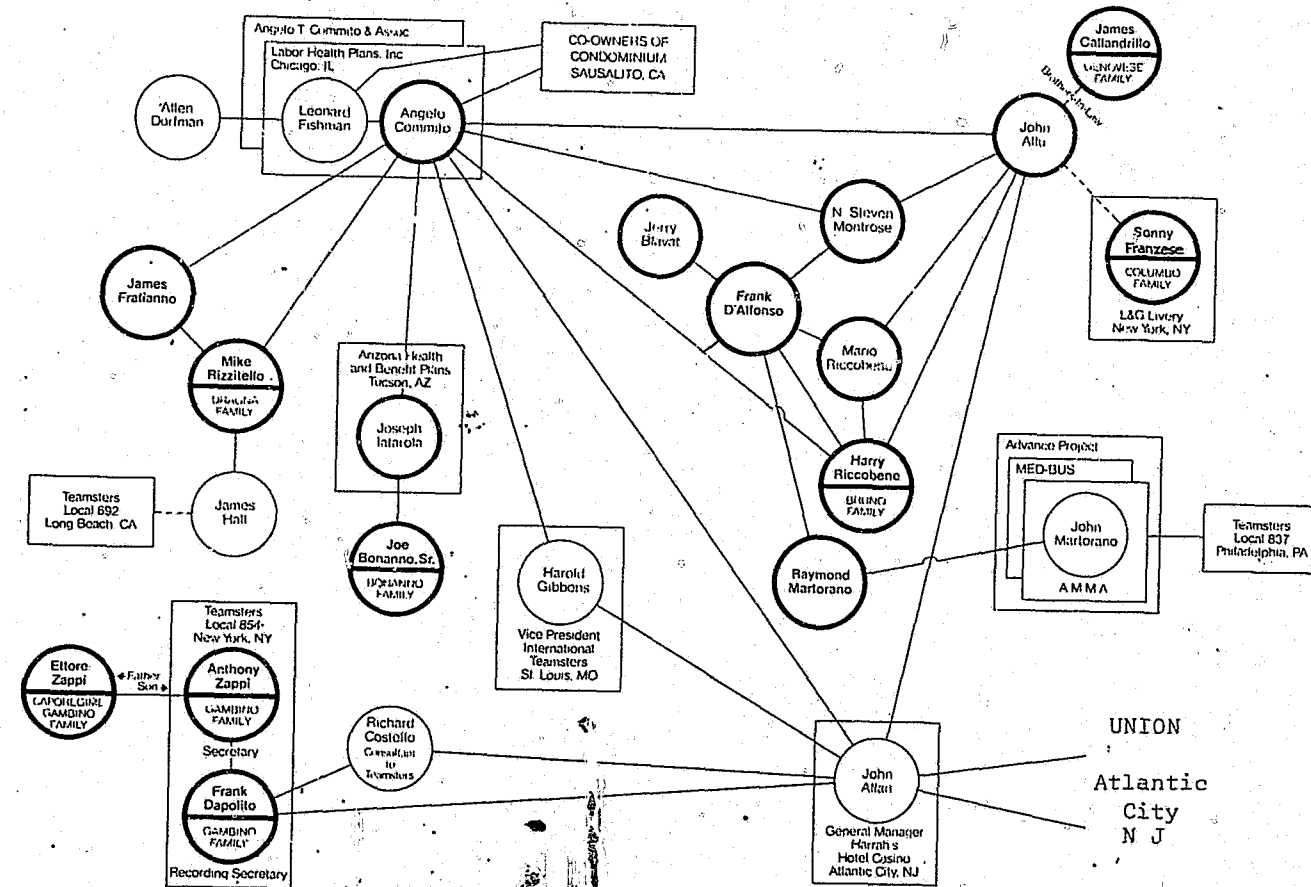
The profit margin for the health care company is primarily dependent upon the level of usage of the plan by union members. The less usage, the higher the profits.

I have brought with me today several charts which will illustrate the connections of organized criminals to the health care plan industry, and some examples of fraudulent activity within some health care companies.

I also have with me some photographs which Frank Booth, who's been an investigator with the Commission for some time, has on the easel.

The first chart, which we will call for these purposes exhibit 1, details some of the relationships of traditional organized criminal families to health service providers.

☒ Member of LCN "family" ☐ Associate of LCN Member(s) ☐ No LCN association



UNION
Atlantic
City
N. J.

Mr. LEWIS. You will see on the chart, which I think is difficult for you to see from this distance, but I think all of you have an attachment to the statement which we distributed as an exhibit to that document.

But it shows members of the Cosa Nostra and Frank is now pointing them out to you, such as Rizzitello, Callandrillo, and various members of organized crime families of the traditional type, which are illustrated by a line through the circle.

They are assisted by associates of the traditional organized crime family who are identified by broad circles around their names and then other people who are not specifically members or associates of organized crime families who assist in finding these contracts.

This chart, very briefly and cursorily, shows the links of organized crime as it spreads throughout the United States from New York, Pennsylvania, New Jersey.

It goes to the Midwest in Chicago, to the Southwest, Arizona, and to California and this just scratches the surface.

But it shows you the national link of the organized crime families to the control and infiltration in the health care industry and the union health and welfare benefit programs.

These individuals, in some cases, aided the organizations in obtaining union contracts. In other instances, they were involved in companies which provided or arranged for benefits.

I heard Congressman Rinaldo asking questions of the prior witnesses as to involvement of the unions and whether or not they reacted to this type of infiltration by organized crime and the type of fraudulent activity we found.

We found in many instances they did not react, but resisted. We are met with a lawsuit in Pennsylvania that has prevented us from showing you in the lower right-hand corner the union which is involved in this program, this scam, because it is now pending litigation.

So not only do they not assist in cleaning house, but they actually resist in at least some instances that we found by, in fact, taking this into court to prevent it.

This chart resulted from an investigation into Labor Health Plans, Inc., a Chicago-based company operated by Angelo Commito. Mr. Commito and his company came to the attention of the Pennsylvania Crime Commission after his meetings with several major Philadelphia organized crime figures.

The Commission learned that, in his efforts to gain contracts in Pennsylvania and southern New Jersey, Mr. Commito contacted Cosa Nostra member Harry Riccobene and other influential organized crime figures, including Frank D'Alfonso and John Allu. D'Alfonso has been identified by law enforcement agencies as a leading figure in Philadelphia organized crime, who has risen to power since the murders of former family bosses Angelo Bruno in March of 1980 and Phillip Testa in March of 1981.

You will see in the next photograph a meeting between Commito and D'Alfonso. These are actually undercover surveillance photographs taken by the Pennsylvania Crime Commission.

They were obviously not posed and the figures on the photographs did not know they were being taken. But it shows the actual contact between these people.

Incidentally, for those of you who don't know the Philadelphia region in the organized crime family, or the Angelo Bruno family, has been experiencing genocide or fratricide in the last year since Bruno's murder in March 1980.

At least 9 or 10 major organized figures in that family have been murdered and just a few days ago, Frank D'Alfonso, who you see in this picture, who many law enforcement figures believe has become the head of the family, was beaten almost to death with a blunt instrument in the streets of Philadelphia.

So we are experiencing violence within the organized crime family.

Incidentally, there is another photograph of Commito meeting Riccobene and Commito meeting D'Alfonso. That, too, is a surveillance photograph.

An in-depth investigation into Commito's company and his associations showed that he had used the services of influential organized crime figures in other attempts to procure contracts for pre-paid health care benefits by unions.

In a recent public hearing held by the Commission on July 28, 1981, Aladena "Jimmy the Weasel" Fratianno, former acting co-boss of the Dragna crime family in Los Angeles, testified that he had introduced Commito to union officials in California in an effort to get business for Commito.

Fratianno, who is in the Federal witness protection program, had been introduced to Commito by another Dragna family member, Michael Rizzitello.

Just as an aside, Fratianno is the subject of a recent book, "The Last Mafioso." He is one of the major organized crime figures in the sense of a person who has risen to the highest level of the organized crime family structure to turn to a Federal witness informant and has provided great testimony in a number of areas, particularly this one.

Fratianno's public hearing testimony went on to describe conversations and meetings between himself and Jack Presser, vice president of the International Brotherhood of Teamsters, in which Fratianno asked Presser to "help him (Commito) in any way, it would mean money for us." According to Fratianno, Presser is closely associated with Cleveland crime family boss Jack Licavoli and Presser told Fratianno that he would do what he could for Commito.

The investigation also uncovered a link between Commito and Arizona Health and Benefit Plans in Tucson, Ariz. That entity was operated by Joseph Iatarola, an associate of Joseph Bonanno, Sr., who was formerly leader of a New York crime family.

While Commito's efforts to secure contracts in Philadelphia were unsuccessful, a Pennsylvania company with ties to organized crime has, in fact, obtained at least one local health care contract in major proportion.

That company was A.M.M.A. Health Center, Inc. There is an interesting aside, when they wanted originally to call it A.M.A. Health Plan. They decided that was too obvious and so they called it A.M.M.A.

A Crime Commission investigation found that A.M.M.A. was operated by John Martorano, whose brother, Raymond, also called "Long John Martorano," is associated with members of the Bruno

organized crime family. Moreover, further investigation uncovered evidence which leads us to believe that Raymond Martorano was also involved in some of the activities of A.M.M.A.

You will see a surveillance photograph showing Long John Martorano taking union officials on a tour of the health clinic used by A.M.M.A.

Chairman PEPPER. Could you hold it up just a little bit so we can see it?

Mr. LEWIS. We can circulate those photographs to the committee if you'd like. It is interesting to note that the location of A.M.M.A., its office, 2001 South 29th Street in Philadelphia, is also the location, that same address, of John's Wholesale, a tobacco product wholesaler which employed Angelo Bruno before his death as well as other known organized criminals.

John's Wholesale is also owned by John Martorano.

This is known by the two gentlemen on either side of me. It employed allegedly Angelo Bruno for a number of years whenever he testified he would describe himself as a cigarette salesman who worked for John's Wholesale.

It is a front and that is the office where A.M.M.A. provides its health care plan services to the union.

The photograph which is being shown is the offices of A.M.M.A. health care plan, which is the tobacco company warehouse of John's Wholesale.

After the Commission discovered these links between organized crime and A.M.M.A., our accounting specialists studied the financial records of this health plan company. We found that, in its dealings with the International Brotherhood of Teamsters Local 837, A.M.M.A. inflated the usage reports which were given to the union as a basis for setting the cost of the health care contract.

We will show our next chart, which is a bar chart, exhibit 2, attached to our testimony, entitled A.M.M.A. numbers of visits and dollar billings.

As you will see, it shows a wide disparity between the actual and the reported visits and the dollar billings, and over the 28 months that we covered, and our accounting specialists examined, reported billings amounted to \$254,715 more than the actual cost of the services.

A.M.M.A. Number of Visits and Dollar Billings

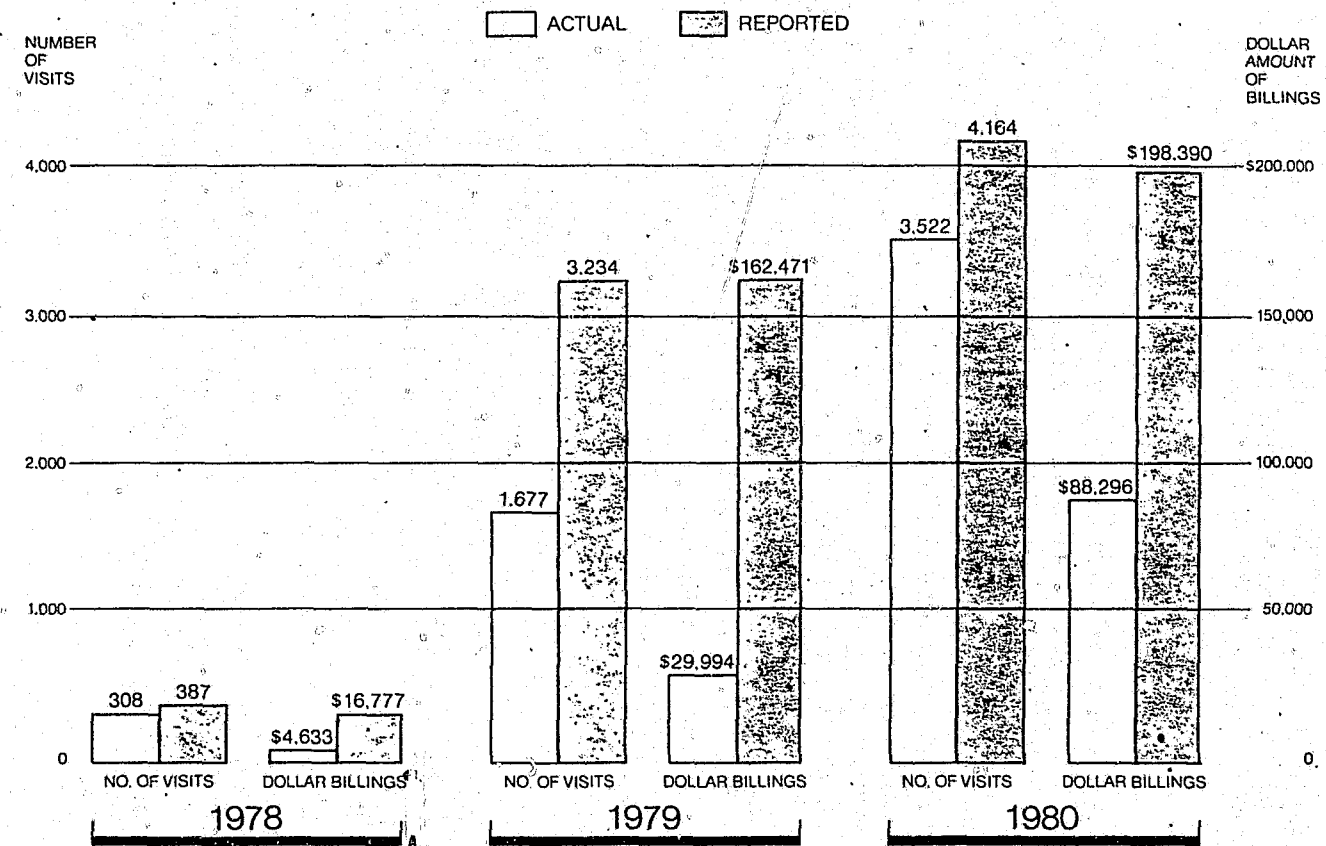


EXHIBIT 2

Mr. LEWIS. While the company reported profits of \$84,000 over the period to the union and they reported those profits to the union, the actual profits were \$334,000, or 62 percent of the total contract costs.

As you see, obviously, if they suggest that the actual figures were far, far less than the reported figures, then they suggest to the union that more members of the union are using the services and, therefore, the premiums should be higher.

The situation is so simple it is ridiculous and amazing that the regulatory agencies shouldn't have seen it earlier.

Testimony by union officials showed that A.M.M.A. did not provide the union with figures on reported use until the spring of 1981, even though it had a contract with Local 837 since 1978 and, in fact, had renegotiated a contract with them for a higher per member rate in 1980, without even asking for statistics by the members on the usage.

When those figures did surface, the union trust fund officials accepted them unquestioningly. The lack of interest displayed by union officials in the first years of the contract and their willingness to accept, without audit, the A.M.M.A. figures may show, in the best light, a lack of financial sophistication on their part. In the worst light, they may have betrayed the trust placed in them by their members and by law.

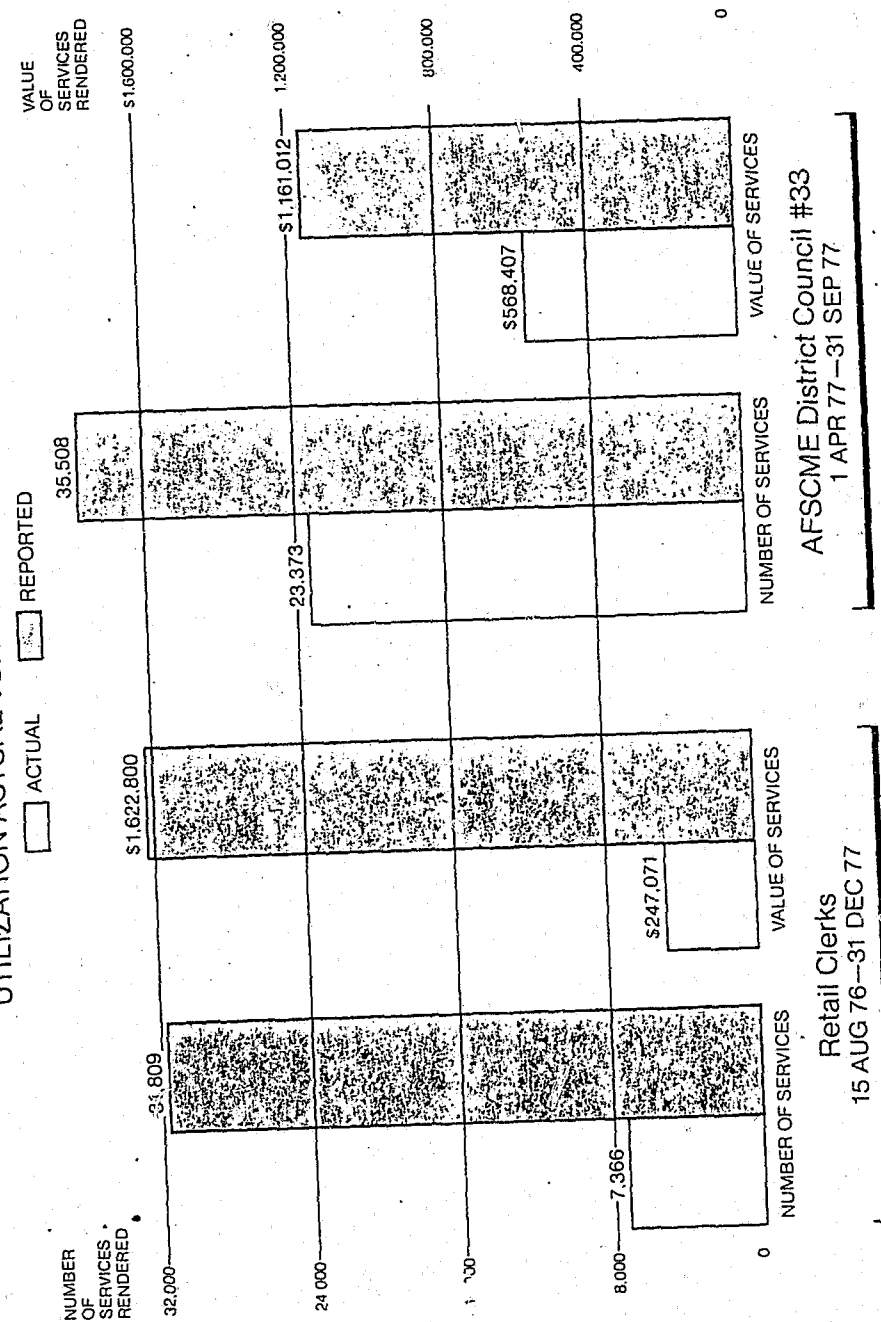
The Crime Commission investigated a third health care insurance provider, American Health Programs, Inc. (AHP). In this instance, no direct ties to traditional organized crime were found. However, the same pattern of over-reporting services rendered to the union was found.

This is particularly significant since AHP had contracts with several municipal employee unions and associations, which means that the taxpayers of the city of Philadelphia were the people who were eventually defrauded.

These contracts amount to millions per year. This bar chart shows the substantial difference between the supposed services and the actual services regarding research contracts with AHP.

The second bar chart, exhibit III, shows the substantial difference between the reported costs and actual costs of services received during AFSCME and retail clerks contracts with AHP. The total amount of over-reported costs during 16 months amounts to nearly \$2 million. Actual figures were only 29 percent of the figures reported to the union.

AMERICAN HEALTH PROGRAMS, INC.
UTILIZATION ACTUAL VS. REPORTED FIGURES*



* Figures pertain only to basic and complex services; specialty services are not included.

EXHIBIT 3

Mr. LEWIS. When asked why these figures were inflated, one employee testified that it was done because the services rendered were not high enough to justify the existence of the contract.

Once again, as with A.M.M.A., the reported figures were accepted by the unions without an independent audit to assure their accuracy. In total, the Commission's investigation uncovered excess reporting of \$2,326,725 on only three contracts over a 28-month or less period.

In addition to these fraudulent activities, the Crime Commission uncovered unsecured loans, nonrepaid loans, questionable investments, and unethical marketing techniques perpetrated by these health care provider companies.

One instance, for example, was a payment of \$30,000 a month to an automobile dealer who had introduced the health care provider to a municipal union leader, \$30,000 a month to the automobile dealer who had no experience in health care planning at all for a period of 2½ years or \$600,000 finder's fee.

These abuses are allowed to occur because of a lack of State and Federal laws regulating the health care plan organizations. In addition, the Federal Employee Retirement and Income Security Act, ERISA, does not cover municipal or public sector labor union trust funds and should be amended to cover them.

Also, union and trust fund criminal statutes (29 U.S.C. 501 and 18 U.S.C. 664) should be amended to provide for automatic suspension of union officers, employees, or trustees indicted for their roles in such a scheme and for civil recovery of damages by the government.

Laws in many States do not regulate business procedures of the health care plan organizations. The Commission is also recommending to the Pennsylvania Legislature changes which should be enacted in its jurisdiction.

In conclusion, the Commission is now preparing a report which will enumerate the details of its investigation and will be available in several weeks, probably it will not be as long as our major work on organized crime which was published 1 year ago, but it will be something on this order, with photographs and charts, and if you like we will submit it to the members of this committee for your future reference.

It is now my opportunity, as I understand, Mr. Chairman, to introduce to you Mr. Fratianno who will testify under the tight security measures imposed by the Federal Protection Service, and to this end I would like to introduce to you Inspector John Washington of the U.S. Marshal's Service, if you please.

The CHAIRMAN. Mr. Fratianno came with you today, Mr. Lewis, and you have used his testimony in other instances and so has the Government?

Mr. LEWIS. I am sorry, sir?

The CHAIRMAN. I am saying has Mr. Fratianno been used by the Government and by crime commissions in other instances?

Mr. LEWIS. Yes, sir, he has been used as a witness in a number of criminal cases, the most recent of which was a week ago when his testimony was instrumental in convicting Bufalino who is one of the major organized crime figures in the United States out of northeastern Pennsylvania for conspiracy to murder.

Fратианно testified before our commission, a number of other committees, and a number of other trials. His testimony has been scrutinized by numerous law enforcement officials and we find it to be generally credible.

He is under very severe danger, however, because he will be used and his testimony will be used in the future and for that reason the Marshal Protection Service is very cautious about his security.

The CHAIRMAN. We will be pleased to hear Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman. My name is John Washington, Inspector with the U.S. Marshal's Office, Witness Security Division.

Mr. Fratianno is a relocated Government witness and presently an active participant in the U.S. Marshal's Witness Protection Program. Because of this I request of the committee that no pictures, motion or still, be taken of Mr. Fratianno as he enters the committee room, during his testimony and upon his departure from the committee room.

The CHAIRMAN. I think that is a reasonable request and I will ask all those who have the television cameras or the still cameras to respect this gentleman's security. This request is made by an official U.S. Government. Mr. Fratianno has been identified and commended by Mr. Lewis, an official of the State of Pennsylvania, and accompanied by Mr. Washington, an official of the U.S. Government responsible for the protection of this man under the witness protection program. Mr. Fratianno will be brought in and then he will testify.

You have requested that he testify from behind a screen?

Mr. WASHINGTON. That is correct, Mr. Chairman.

The CHAIRMAN. And you request that no cameras, either moving or still, take any pictures of him coming in and leaving the room or at the table?

Mr. WASHINGTON. That is correct, Mr. Chairman.

The CHAIRMAN. Will all of you gentlemen who are operating the cameras please observe that request and either remove yourself from your cameras or turn them in the opposite direction. I am sure you would not want to jeopardize the safety of this man who is trying to serve the public interest.

Mr. LEWIS. Mr. Chairman, in Pennsylvania the Marshal Service were so cautious that they required that he testify with a black hood on so that no one ever saw his face at all. So there is certainly some danger.

The CHAIRMAN. I understand.

Are there any still cameras in the room? Please observe the request of the marshal and the request of this committee and cooperate in the protection of the identity of this man.

Now, I think you can be assured that the cameras are pointed in the opposite direction and, Mr. Marshal, you may bring Mr. Fratianno in.

We will take a 5-minute recess while the arrangements are being made for the witness to testify.

You with the motion picture cameras, once the screen is set up, of course, you can use the cameras any way that you will. It is only to protect his identity so that there won't be any photographs of

him coming into the room or leaving the room. Once he is behind the screen, of course, you can take pictures as much as you like.

[Recess.]

The CHAIRMAN. Bring him in and let him take a seat behind the screen.

Now, you may put your cameras back in motion because Mr. Fratianno is behind the screen. We would appreciate the same cooperation when he is ready to leave.

The CHAIRMAN. Mr. Fratianno, we appreciate your coming today and we welcome your statement. Would you speak as nearly into the microphone as you can so that all of us can hear what you have to say?

Mr. FRATIANNO. Thank you, sir.

The CHAIRMAN. You may proceed.

STATEMENT OF JAMES FRATIANNO

Mr. FRATIANNO. Mr. Chairman and members of the committee, my name is James Fratianno. I am 67 years of age. I am in the Government's Witness Protection Program. I have agreed to come here this morning to help this committee understand some of the ways to defraud pension plans. I have some direct, firsthand knowledge of these schemes. Before I begin, a few words about my background are in order.

I grew up in Cleveland, Ohio in the section called Little Italy. My parents were poor and I had to go to work at the age of 8 to help support my family. I sold newspapers. I worked with my father in a small trucking business. I worked in a speakeasy and held other jobs.

As far back as I can remember I was on the wrong side of the law. I was taught how to cheat at cards and how to shave dice. I guess you could say I fell in with bad company. I wanted nice clothes and the money and the respect. The only people that had these in my neighborhood were those on the wrong side of the law.

I learned early that there were two ways to make a buck, the hard way that my father did it and the easy way. I chose the easy way. I went into bookmaking and by the time I was 21, I was into some armed robbery.

In 1937 I was convicted of armed robbery and sentenced to do 10 to 25 years in the Ohio State Penitentiary. I was released in February 1945. I did approximately 7½ years. But I soon found my old friends in the Cleveland rackets and I did a little business on the black market.

In 1945 I headed for California to take advantage of new contacts I had made in prison. I made friends with Johnny Roselli, an associate of Chicago gangsters Al Capone and Frank Nitti. Roselli helped me become a member of his crime family in 1947. From then I continued participating in all the same rackets with one difference; now I was doing only what I was told I had to do.

I was into loansharking, protection, robbery and participated in several murders and murder attempts such as attempts to kill underworld figure Mickey Cohen.

In 1954, I was found guilty of conspiracy to extort. I spend 6 years and 4 months in prison. I was in Folsom, then in Soledad, and finally in San Quentin. I was paroled on July 17, 1960.

For the next 4 years I was on parole and had to stay clean. I had made up my mind that I was going to make it big and I was going to do it the honest way. I went into the trucking business. It was one of the few legitimate operations of my life. I had a slight edge in that I had excellent connections with the Teamsters Union and did not pay fringe benefits. I worked all over the West. I did extremely well. I enjoyed being president of my own firm. I would have been at it still but for a few bad breaks.

All of this turned to ashes in 1966 when I was charged with violating the public utility code. I agreed to plead guilty in exchange for a suspended sentence. The problem was that the court hit me with a full 3-year prison term. I appealed and it was not until August 5, 1970, that I began serving time. In the meantime I was convicted of conspiracy to file false statements in 1968 but got off with 3 years' probation and a \$10,000 fine.

I was in prison until August 28, 1973. When I got out it was business as usual.

In 1975 when the two top people in the California syndicate were sentenced to prison I was selected with Louis Dragna to head up the west coast operation. Three things happened to shake me from this powerful position in early 1977.

The former top man, Domonic Brooklier, was released and began to reassert his authority.

Time magazine carried a story about prominent criminals which mentioned me but no one else on the west coast. This created jealousy in the family.

I was caught in the FBI's undercover net. They had established a sting operation. It was a porno shop with the idea of detecting and prosecuting lawbreakers engaged in extortion to try to sell protection.

From May 1977 I began to feel that things were not right. Rumor had it that a contract had been put out on me. This was confirmed for me by the FBI in November 1977. Fearing I would be killed, I joined the witness protection program.

I pled guilty to all charges against me. I was sentenced to 5 years in jail. I served 21½ months of this sentence and I am presently on parole.

One of the conditions of my parole is that I do everything in my power to help the Government fight crime. I am required to tell the whole truth and nothing but the truth. If I tell a single lie, my parole could be revoked and everything that I have said could be used against me.

Mr. Chairman, I have spent 20 years of my life in jail. I do not want to go back. I have testified in nine cases. I have given the Justice Department information to help them make numerous other criminal cases. I intend to testify in some additional criminal trials. I have been qualified as an expert witness on the subject of crime for the purposes of Federal courts. My credibility with the courts and with the Justice Department is excellent.

In short, Mr. Chairman, I am not proud of my life of crime. I am sorry for what I have done but I am doing my very best to make amends.

I am here this morning to tell you a little about fraud in pensions and other employee benefit plans. I know this area well because I have participated in the racket myself.

Before I launch into this area I would like the public to understand that I am severely limited in what I can talk about because of ongoing criminal trials. Officials of the Justice Department are present and will object if questions are asked which intrude into this area.

Let me talk a little bit about the technique involved in this racket. There are billions of dollars sitting around in trust funds set up by employers and unions. All you do is find out who controls the money. Then you go see them and see if you can work out a deal. You do something for them and they do something for you. It works this way:

One, you can pay a union officer or a trustee some money up front.

Two, you can pay him a kickback when you get the contract.

Three, you can do him a favor. You can do a favor for a friend of his.

Four, if that doesn't work, you can find out who his superior is and put pressure on the man to come through.

Five, if this doesn't work you might try threats of physical violence.

Six, finally, if all else fails you might break the guy's leg or worse.

The technique is the same whether you are selling a dental plan, a medical plan, life insurance, or whether you are out to get a loan on highly favorable terms.

It might surprise you how easy it is to get a loan without signing any documents if you know the right people. The sad part is that the average employee doesn't have any remote idea of how much money is being stolen. He doesn't feel it. So money is stolen from the trust fund. So what? There is more where that came from. What happens is that the union asks for higher fringe benefits and the employer has to pay and the cost is passed along to the consumer.

With this process occurring over and over again involving huge amounts of money, is it any wonder that we have the kind of inflation that we have?

In my opinion the possible abuse of trust funds is a serious problem. The Justice Department and the FBI are doing an excellent job but they do not have the resources that they need to do the job.

I want to give you a few specifics. First of all I want to outline a couple of areas that I cannot talk about.

I met Jimmy Hoffa in 1952 at the convention in Los Angeles and I had a lot to do with giving him the power he acquired by introducing him to mob figures from Chicago and New York. I know about the operation of the Teamsters Central States Pension Fund and about some of the questionable loans that were made, but I cannot talk about it.

Nor can I talk about the Teamsters Central States Health and Welfare Fund and the activities of Joseph Hauser and the people he did business with.

What I can talk about is my specific involvement in this area. I can tell you about some other people who are involved.

In early 1975 I approached Rudy Tham who was the No. 2 man with the Teamsters in the Western States. Rudy had been grumbling to me that he was in deep trouble with the international union. He told me that he was having problems with Andy Anderson, the head of the Teamsters in the Western States. I made Rudy an offer. Incidentally, Rudy was in trouble with the international. I made him an offer. I told him I would straighten him out with the international union if he would give me the contract to provide dental care to the members in San Francisco.

There were about 8,000 members in the local involved. They were talking about paying a per capita payment of \$25 per member per month. This means that they would be paying \$200,000 a month or about \$2.4 million a year. I had the backing of some people who were going to provide the services and pay the claims that came due. I was going to get a sizable fee and \$10,000 a month from them, and other benefits.

I took the following steps to try to straighten out Rudy with the international and thereby get myself this contract.

I went to Cleveland to see my old friends in the family, Tony Dope Delsanter and Leo Mocer. I went to see them because they control Jackie Presser who was the right-hand man of Teamsters President Frank Fitzsimmons. They agreed to call Presser.

I went to see Presser who told me he would talk to Fitzsimmons and see what he could do to straighten out Rudy Tham.

A few months later I again met with Mr. Presser. At the time he asked me if I could control Rudy Tham, because he was a Hoffa man. I told him that I could. He confided in me that the problem was that Rudy was a Hoffa man. They didn't know if they could trust him.

The CHAIRMAN. In your statement you say that Hoffa was making a move to get back in power. Is that correct?

Mr. FRATIENNO. That's correct, sir.

I flew to Florida a few times to meet with my friends from Cleveland. They gave me a report on what they had been able to do and promised more help.

Some time later Presser called me and told me that a testimonial dinner was scheduled for Hoffa at the Fairmont Hotel and that I should make sure that Rudy did not attend. I told Rudy and he went fishing in Mexico. I told Rudy that I was responsible for him and that he should be careful not to cross me.

A few weeks later I was still trying to straighten out Rudy with the international. I finally got the job done by arranging for a meeting between Frank Fitzsimmons, Jackie Presser, Andy Anderson, and Rudy Tham at the La Costa Country Club. A quarterly meeting of the international board had been scheduled, but I arranged for the specific meeting about Rudy Tham. It worked. But Andy Anderson still seemed to be holding a grudge.

I began to try to figure out how to get to Andy Anderson. I went to see Sidney Korshak, an attorney, and asked for his help. Mr.

Korshak has strong ties to the Chicago mob. He said he would take care of the problem with Anderson.

My associate Mr. Rizzitello and I happened to be in Los Angeles a few weeks later and ran into Korshak. We had a brief conversation with him about his promise. The next thing I knew we was summoned to Chicago.

In Chicago I was escorted to see Joey Aiuppa, the top man in the Chicago mob, and Jackie Cerone, his deputy. They told me that they had gotten word that someone was muscling their man Korshak. They told me that someone had put a dead fish in his mailbox. They added that if I had any problems with their guy that I should come to them because they did not want him compromised by being seen with the likes of me. They promised to talk to Korshak about Anderson.

Meanwhile I had been pestering Rudy Tham about giving me the dental contract. He was giving me the stall, crying to me about Andy Anderson still not giving him respect. I told him I would work it out.

By the summer of 1977 I was pretty angry. I had spent \$35,000 of my own money and traveled all over the United States on this deal. My associate and I went to see Anderson at his headquarters in Burlingame, Calif. We did not announce ourselves; we just barged right in and started to lock the door. Anderson said that he would cooperate but that Rudy Tham was making it hard by continuing to bad mouth him all over town. I told him I would take care of that.

I went to see Rudy Tham and told him what Anderson had said. I also told him that I was tired of stalling and that it was about time he paid a visit to Jimmy Hoffa. Incidentally, Jimmy Hoffa was dead at that time. Rudy turned white as a sheet. He said that I had the contract.

After all of this effort I was unable to cash in because I had developed other problems of my own. I had to jump into the witness protection program in order to stay alive.

There were other contracts of this nature that I had to turn aside. For example, I had it worked out to get the dental plan from Teamsters Local 70 in Oakland, Calif. My associate Mike Rizzitello had made a deal involving the farmworkers in Santa Maria, Calif.

In addition, I was successful in obtaining the contract to provide dental services to a union in Warren, Ohio. Once again I did this through my friends in Cleveland, specifically Tony Delsanter. I called him and then I called Jackie Presser and that was about all there was to it. I did not have the opportunity to profit from this arrangement even though the same contract is ongoing for obvious reasons.

I would make a few other points. You have heard from the Pennsylvania Crime Commission about their investigation. I testified before them and I am happy to confirm what I told them. They asked me about a certain Angel Commito. I told him that he was introduced to me by my associate Mike Rizzitello.

Mr. Commito said he wanted to help in order to help him get medical and dental plans from unions. He said that if we were successful that I would be in for a cut. I was to be responsible to pay a

kickback to the trustee of the pension or welfare plan if this was necessary.

I introduced Mr. Commito to union leaders in California and I talked with Jackie Presser of the International Brotherhood of Teamsters and asked him to do whatever he could for Commito because we were going to be in business together. I arranged for him to meet with some influential friends of mine in Ohio. Commito told me that he had a contract in Columbus, Ohio, that he had arranged through a Cleveland leader named Angelo Felice.

I also met a fellow named Curly Montano. He was a friend of mine for 30 or 40 years. Curly Montano had a friend by the name of Carl Rizzo in the Buffalo area. They have a plan.

Incidentally, Mr. Rizzo, I don't know if he committed suicide or not, but he was found in the trunk of his car with a wire around his neck. It might have been suicide. I don't know. Curly told me many times how lucrative these employee benefit plans can be and I have no doubt about it in my own mind.

Mr. Chairman, this concludes my statement. I would like to return sometime when I can talk freely about this problem and others of concern to the committee. It should be obvious to you that something must be done to stop the fraud in pensions and related medical and dental plans. The Congress must act in this area for the good of the workingman and of the country.

Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Fratianno, for your very sad but at the same time very informative statement. It is sad that those conditions exist in our great and free America. They are a subject of grave concern to all of us as to how, when we talk about health care for people and yet it is being used as a source of corruption and fraud.

I suppose that probably the Department of Justice would prefer that we not ask questions of Mr. Fratianno.

Mr. COFFEY. Mr. Chairman, my name is Paul Coffey. I am deputy chief of the organized crime section. Our objection would be to areas in which there may be pending indictments on individuals pending trial. I am sure we don't have problems with general inquiries in this matter.

The CHAIRMAN. We appreciate your cooperation with us. We will accept Mr. Fratianno's statement and the statement that Mr. Lewis made.

Mr. Lewis, have you anything further to add to the statement made by Mr. Fratianno?

Mr. LEWIS. Well, we could go on for a week, but I am sure you don't have the time, Mr. Chairman.

No, we have nothing to add at this time. Thank you for having us.

The CHAIRMAN. Now, would you like for Mr. Fratianno to go now?

Mr. COFFEY. Mr. Chairman, I don't know what arrangements have been made to have the panel inquire specifically of Mr. Fratianno. My understanding was that there may be such inquiries. Our only concern was to get into particular Federal cases that might be pending.

The CHAIRMAN. You indicate questions you would prefer he not answer, if you will. I would like to ask just a few questions.

Mr. Fratianno, how widespread is corruption in union activities of the sort that you describe here today?

Mr. FRATIANNO. Mr. Chairman, I think it is all over the country. I know that in the Chicago area, St. Louis, Ohio. I am not too familiar in Pennsylvania. The only thing I know about Pennsylvania is that Commito, I know about most of his operations because he was introduced to those people through a friend of mine, but I would say it is all over the country in my own opinion.

The CHAIRMAN. What would you suggest as the way by which we could prevent that kind of corruption from taking place?

Mr. FRATIANNO. Well, I think you should have some kind of a law that they can't indulge in it. I don't know how you could do it. I happen to know quite a bit about the Teamsters. I was one of the founders of the Teamsters Union. I remember when there were only 25,000 members. They have controlled the Teamsters as far as I can remember, in the 1930's. You don't become president of the Teamsters unless certain people give the OK.

Mr. RINALDO. Mr. Chairman, would you yield for a moment?

The CHAIRMAN. Yes, sir.

Mr. RINALDO. On that question, if you, based upon your experience as a member of organized crime, had to come up with one single thing that you felt Government or legislators, people like ourselves, could do to stop organized crime infiltration of union pension funds, what would you say that would be?

This is similar to the question the chairman asked. In other words, do you think we need a new law? What is the most important thing that can be done to stop the infiltration and the control that is actually taking place in your opinion?

Mr. FRATIANNO. In my opinion the only way you can stop it is to have the Government control the money because they will put front men in. There is so many ways that they could do it. You will never know that this person was involved in it. I think the only way is when the Government stepped in.

I know I tried to get a loan in 1975 and Presser told me that they had a moratorium, they weren't giving no loans. I think the Government stepped in or something. They were controlling the money. I think that is the only way that it could be stopped because if they appointed people trustees they are always appointing people that they know that will go along with whatever they want.

The CHAIRMAN. Mr. Fratianno, did the people engaged in the kind of corruption that you have described fear the FBI or the Department of Justice, being caught, convicted?

Mr. FRATIANNO. Well, I think everybody fears the FBI and everybody fears going to prison, but they tried to work out a way that they can't get caught. So a lot of times they used front men and they are just in the background.

I know of one, for instance, where a guy got \$250 million. He did not have any credentials to get \$100,000, but he got \$250 million through somebody. He was a front man. But he did not know who was responsible for his loan and that was the fellow that had the Stardust Hotel.

So in answer to that question it is pretty hard. The only way I could see, they have been investigating them for years that I know of but they still maneuver to get loans. They use front people.

The CHAIRMAN. If there was some further investigation of all these funds including all the transactions, including loans, and like a bank examiner would inquire into what was the basis of this loan and look to see was there a proper application, was there proper collateral put up just as they do in the case of a bank; would something like that, if we had that degree of thoroughness and the investigation of all those transactions be helpful?

Mr. FRATIENNO. I think it would help, sir. I think it would help. But you know you have to remember you take these people that are involved in these families. They have millions and millions of dollars. They could put up the collateral probably.

The CHAIRMAN. Some of them could be corrupted also?

Mr. FRATIENNO. That is right.

The CHAIRMAN. Some of the examiners?

Mr. FRATIENNO. That is correct, sir.

The CHAIRMAN. There is not only kickbacks, for example, as you were trying to get a contract for a dental service to be rendered to members of a local union and I believe you mentioned that in the procedure or persuasion sometimes you get around to breaking a fellow's leg or something?

Mr. FRATIENNO. Well, sometimes you go to violence, but very seldom you have to do that. I know in my case all I needed was to be given the contract and I took care of the rest, and I would get a very sizable fee.

It is very, very lucrative and very few people would know that I had any involvement in it.

The CHAIRMAN. It takes a very thorough and persistent investigation by a competent authority to be able to ferret all this out, does it not?

Mr. FRATIENNO. That is right. That is correct, sir.

The CHAIRMAN. Do you feel that fraud and abuse with respect to pension plans and employee benefit plans is also carried out by forces outside of organized crime?

Mr. FRATIENNO. Yes, sir, there is, Mr. Chairman. I know a few people in California that have nothing to do with organized crime that have benefit plans.

Well, Joe Hauser, for instance. There is another guy by the name of Brown in Los Angeles. He has quite a few plans.

The CHAIRMAN. Do you feel that there may be some problems with respect to employer-sponsored plans and joint employer union plans rather than just the union plans?

Mr. FRATIENNO. I don't understand your question.

The CHAIRMAN. Do you feel that there may be some problems with respect to employer-sponsored plans and joint employer unions rather than just union plans? In other words, are there special problems that may arise with respect to employer-sponsored plans and joint employer union plans as well as exclusively union plans?

Mr. FRATIENNO. It could be worked just as easy with the employer, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Fratianno.

Mr. Rinaldo?

Mr. RINALDO. Thank you, Mr. Chairman.

I asked you a question before what could be done. Right now, under present law, the authority is vested with the Department of Labor. Now, in your opinion, are they doing an effective job in trying to end the situation that currently exists and in rooting out fraud in union pension plans or are they completely or partially ineffective?

Mr. FRATIENNO. Well, Mr. Rinaldo, in the last 3 or 4 years I don't know what they are doing, but I do know right after I went in prison certain persons got a lot of money.

I really don't know how it could be stopped, seriously, in regard to the Teamsters. I know they have been doing this for years and years and years.

Mr. RINALDO. You stated earlier it could be stopped—

Mr. FRATIENNO. If the Federal Government handled the money.

Mr. RINALDO. Or if someone monitored the money?

Mr. FRATIENNO. Yes, sir, they did it for a while.

Mr. RINALDO. I know, and all loans were refused?

Mr. FRATIENNO. That is the only way it could be stopped, I think.

Mr. RINALDO. Is the greatest problem in your opinion the unions themselves, the trustees that are appointed, or is it really just the strength of organized crime?

Mr. FRATIENNO. What do you mean?

Mr. RINALDO. In other words, the problem occurs because we have unethical trustees. They have to get involved in the actual operations of the pension plan. Now, are they put there, in your view, by the union leadership or is it because organized crime is so strong in this country that they want to make sure that they get a piece of the action?

Mr. FRATIENNO. Absolutely. Organized crime puts them in there. There is no doubt in my mind. Naturally some are there legitimately. I know Fitzsimmons appointed somebody as a trustee. I think his name was Sheaffer. I am not sure. He was from Indianapolis. He gave us a lot of problems.

Well, eventually they got rid of him. They put somebody in there on the square and he doesn't go along with certain programs, they get rid of him.

Mr. RINALDO. And you feel that our current laws are ineffective in stopping any of the abuses that are currently taking place?

Mr. FRATIENNO. What do you mean?

Mr. RINALDO. In other words, the laws we now have on the books are completely ineffective?

Mr. FRATIENNO. Absolutely not.

Mr. RINALDO. And you feel as far as the new laws, the most important one would be one that would insure that government control or, in the absence of actual control of the fund, would insure proper oversight. Would you then go along and say that periodic audits by the U.S. Government or Department of Labor would solve the problem?

Mr. FRATIENNO. You mean periodically you check it, audit?

Mr. RINALDO. You check the fund, all disbursements, you check any loans, all investments, a thorough and complete audit.

Mr. FRATIANNI. That would probably scare somebody not to do it, afraid that they might get caught. That could help.

Mr. RINALDO. I have no further questions.

The CHAIRMAN. Mr. Fratianno, let me add two things. One is I wish all young men in America, especially poor boys who try to make their way up in life, could hear your story and could see how the life that you chose ended for you, fearful of your life for the rest of your days.

The gains that you achieved are now almost forgotten, maybe the money used up in the more grievous concern you have, your life and your family.

Obviously the best way to avoid the kind of problem that we are talking about here today is for the membership of unions to see to it that high standards of integrity are observed in the leaders of those unions. They have a great trust, a great responsibility to all those people out there, not only to help them get jobs and keep their jobs and get good pay and the like, but also that their funds that are set aside for a better day in their old age shall be properly preserved and will be available to serve the purposes they are intended to serve.

That is the standard, I think, in most of the unions of this country. When it does not prevail, the membership of those unions ought to insist that it does prevail. Their leaders are accountable like the President of the United States, the Members of Congress, and others in authority and in positions of responsibility.

Let us hope that somehow we can tighten the law, make it more effective, and it will protect the rights of the people who are being victimized by such schemes as you have disclosed here today and also that there be a resurgence of Democratic strength on the part of the membership of the union insisting that there be high standards of integrity preserved by all officials.

The union is a great institution. I don't come from a State which is primarily a union State. Yet from the time I came to the Congress in 1936, or the Senate, I have supported unions because I thought the union rendered a necessary and a very valuable service to the American worker and through the worker to the American people and I still feel that way.

It breaks the heart of every union friend when we hear of instances like those that you have disclosed here today. I hope your disclosure will have some favorable influence in preventing the repetition of that sort of sad story in the years to come.

We thank you very much for coming today and helping us.

Thank you, Mr. Lewis, for bringing Mr. Fratianno. I thank the Federal officials for your cooperation here today.

Mr. Wortley?

Mr. WORTLEY. Thank you, Mr. Chairman.

Jimmy, your testimony related primarily to benefit programs that were controlled in the underworld by the Teamsters Union. Are there any other unions to your knowledge that have their benefit programs controlled by the world of organized crime?

Mr. FRATIANNI. Well, they get loans from the Plumbers Union. There is other unions. I have heard of other unions giving loans. I don't actually know for sure.

Mr. WORTLEY. There are a lot of areas in this country in which organized crime does not operate. Would you imply or suggest that in those areas organized crime has some way of getting in there to control those programs?

Mr. FRATIANNI. Not necessarily; no, sir.

Mr. WORTLEY. So we can't take a broad brush and say that all benefit programs of organized labor are controlled by criminal elements?

Mr. FRATIANNI. No, they are not; no, sir.

Mr. WORTLEY. Do you know of any employer benefit programs that are controlled by organized crime?

Mr. FRATIANNI. You mean any employers?

Mr. WORTLEY. Right.

Mr. FRATIANNI. I don't know what you mean by control.

Mr. WORTLEY. Like the Teamsters Union.

Mr. FRATIANNI. I know what you mean. I don't say a lot of them are controlled; but a lot of employers want sweetheart contracts and they do them favors.

I don't say that they are controlled by it. I would say that employers want sweetheart contracts and they stay friendly with whoever is in charge of the local.

I don't say they are all corrupt, you know, but I say a lot of them are.

Mr. WORTLEY. Do the ruling families of organized crime get together from time to time to compare notes on what lucrative sort of programs may be available that could be taken over by them or infiltrated?

Mr. FRATIANNI. I did it myself. Sure they do. I did it in New York. I would try to talk to somebody who had some locals in Jersey.

Mr. WORTLEY. How often do they get together and discuss this?

Mr. FRATIANNI. I don't say they all get together. I might go to New York and happen to be talking to somebody that is involved with a union or whatever. I don't say they would all get together but I would say it is discussed person to person. Some make suggestions.

Mr. WORTLEY. How long has this situation been going on, to your knowledge?

Mr. FRATIANNI. You mean these dental plans?

Mr. WORTLEY. Right, with organized crime actually controlling the purse strings.

Mr. FRATIANNI. Well, I know that they controlled one union since 1930. That is 50 years.

Mr. WORTLEY. Now, in terms of the people who render the services, the medical program, are they working with organized crime as well?

Mr. FRATIANNI. You mean the doctors themselves?

Mr. WORTLEY. That is right.

Mr. FRATIANNI. No. I never heard of that. I never heard of the doctors or the dentists being involved. It is always the person that has the program. You see they just give the dentists so much money for what they do and they keep the rest.

Mr. WORTLEY. Thank you very much.

The CHAIRMAN. Before you leave, Mr. Fratianno. I meant to add a moment ago when I was speaking about your record that you are obviously a man of ability sufficient to have made a very successful career and in any honorable occupation that you may have chosen.

I am glad that in the latter years of your life you have tried to render a public service. Thank you very much.

Mr. FRATIANNI. Thank you, Mr. Chairman.

The CHAIRMAN. Would you all please turn your cameras around? And now you may take Mr. Fratianno from the room if you will. Please turn them around.

Mr. LEWIS. Mr. Chairman, if I could just say while Mr. Fratianno is leaving I think the answers to most of the questions that you asked and Mr. Rinaldo and Mr. Wortley asked, we have investigated in fact. We can provide your staff with those answers and our report when it is published in December.

The CHAIRMAN. That is fine, gentlemen.

You may turn your cameras around now.

Mr. Lewis, if you will, just retain your position there and let me call these other commissioners.

Next, Mr. Thomas Carroll, acting chief counsel, New York Commission on Investigation, and the other is Mr. Robert J. DelTufo, New Jersey State Commission of Investigation, accompanied by Mr. James O'Halloran, executive director.

We will first ask Mr. DelTufo if you will let us have your statement.

STATEMENT OF ROBERT J. DELTUFO, COMMISSIONER, NEW JERSEY STATE COMMISSION OF INVESTIGATION, ACCOMPANIED BY JAMES O'HALLORAN, EXECUTIVE DIRECTOR

Mr. DELTUFO. Mr. Chairman, members of the committee, and the committee staff, I am certainly pleased to be here today. I am here on behalf of the New Jersey State Commission of Investigation. I have been a commissioner with that body for about 9 months now. In addition, I personally have been involved in State and Federal law enforcement off and on for about the last 20 years.

I am here with Mr. O'Halloran who is the executive director of the SCI.

Also here with us are Investigative Accountant Frank Zenino and Special Agent Richard Hutchinson from the State commission of investigation who are largely responsible for the investigative work that went into the SCI report.

The CHAIRMAN. The camera people have asked that we recess for a minute to allow them to readjust their position.

[Recess.]

The CHAIRMAN. You may proceed.

Mr. DELTUFO. All of us will be here to answer questions obviously. Mr. Zenino and Mr. Hutchinson have detailed information if the committee is interested.

What I shall do is briefly summarize the commission's inquiry into organized crime's infiltration of health care plan organizations and the resultant abuse of labor union health and welfare funds.

We have sent along to the committee copies of our full report on this matter and we have made available here today copies of the

report's introductory comments as well as its final recommendations. And I believe that those particular items certainly encompass the subject matter before the committee so I shall be very brief.

[See appendix 4, p. 241 for report by Mr. DelTufo.]

Mr. DELTUFO. As the SCI's year long investigation into the subject matter progressed there were two examples, one in the southern part of the State and one in the north that began to emerge as being fairly representative of the type of frauds that were being and could be inflicted upon labor union welfare plans. These two examples were highlighted at the commission's hearings last December, December of 1980, and formed, for the most part, the substance of the report that was compiled and has been submitted to the committee.

Now, with respect to the operation in southern New Jersey, the investigation concerned a dental care plan operated by the Great American Dental Plan with a company called Rittenhouse Consulting Enterprises, Ltd., as a consultant.

The investigation revealed that substantial moneys were extracted from this program by Rittenhouse Consulting Enterprises in return for very insubstantial consulting work and, in fact, probably the only work that was done was in initially obtaining the union trust fund contract for Great American Dental Plan.

The public hearing testimony confirmed the commission's investigative findings that the trustees of these health and welfare funds exhibited little or no responsibility in assessing other available dental care plans and carelessly, blindly, you might say, heeded the advice of individuals allied with organized crime in deciding with whom to contract with the dental care of their union workers.

The Rittenhouse founder and owner, a person by the name of Lawrence Smith, could not during his testimony at the hearing account for some \$150,000 that his company had accumulated out of a cash hoard of over \$800,000 in 1 year, the year 1978.

Further testimony demonstrated that much of this \$150,000 had found its way to Angelo Bruno, the organized crime boss in Philadelphia until his death in March of 1980, whose name has been mentioned here today by a somewhat circuitous route of organized crime middlemen which included Ralph Natali and also "Long John" Marturano.

This was a fairly straightforward scheme in the sense that moneys went from the union to this plan. Moneys were paid out as a consulting fee for little or no services to Rittenhouse Consulting and that money was drained off and found its way back to organized crime.

The CHAIRMAN. Kickback?

Mr. DELTUFO. It was certainly shared by the union representatives that were instrumental in having the fund placed there too, but a significant amount went to Bruno, the person to whom these people had allegiance.

The second part of the 4-day hearing dealt with the plan operating as a professional association known as John S. Sokol, DDS Professional Association, augmented by other suddenly born corporate entities that handled real estate matters, bought and sold dental equipment and even supervised janitorial services. That portion of

the hearings illustrated how this plan which operated out of about a dozen dental offices in the northern part of the State used advance men who were identified with organized crime, as well as a janitor who was a close friend of mob boss John Riggi and provided free services to organized crime members and associates.

The Sokol dental plans connection of interlocking clinics used a variety of fraudulent transactions for illicit gain including inflated invoices for equipment and fixtures, for office space and for payments of vendors and some of the vendors did not exist.

The scheme utilized one corporation as the provider and a flock of satellite corporations which were supposed to supply it with services and equipment, and to construct facilities.

The satellite corporations formed the basis for draining money out of the operation.

As a result of the public hearing and the conclusions of the Commission upon hearing the evidence, the Commission proposed a number of reforms and these recommendations are ones which we expect will formally be considered initially by standing committees in our legislature within the next few weeks.

One of the recommendations that we made and was considered absolutely essential by members of the Commission has already come to fruition, and that was the enactment of a State statute model on the Federal RICO statute, the racketeer influenced and corrupt organizations statute.

That has come to pass. There is one in New Jersey for the utility of State law enforcement. The Commission also proposed numerous revisions of the statute to regulate dental care plan organizations, a statute that was newly on the books but had not fully been implemented. The Commission thought that further changes should be made to the regulatory scheme.

The additional proposals would require the State insurance department to refuse to issue a certificate of authority to operate a dental care plan and to revoke or suspend an issued certificate if an individual connected with the plan was a member of organized crime as defined by statutory language similar to "career offender" and, "the career offender cartel" provisions of the New Jersey casino gambling control law and the State's cigarette licensing statute.

Other recommended amendments to this statute would require more adequate disclosure and more intensive independent auditing of dental care plan finances including debts or other liabilities than is presently mandated in the statute. The Commission's report recounts public hearing testimony demonstrating at length that mobsters and corrupt labor leaders should not be allowed to extract funds or be involved in corporate and individual financial manipulations. Their role as conduits for kickbacks and payoffs are also depicted in the report. And, in addition, the report recommends increasing the maximum civil penalties for violations of the law from \$1,000 to \$10,000 and making criminal violations a fourth degree crime under New Jersey's criminal code.

Now, in addition to these recommendations, I would add a suggestion, if I might. I know people connected with our agency and the Pennsylvania SCI have seen over the years, and I personally have seen over the years as a result of my law enforcement experi-

ences, a variety of fraudulent schemes which arise in the white collar crime and organized crime areas in order to funnel money out of a larger pot of money that is there. I am afraid that such practices are pervasive in our society these days, both with organized crime and with white collar crime generally. The cost to society is absolutely staggering. But putting that to one side, these schemes exist where there are large blocks of money. Where such large economic opportunities exist you are going to see organized crime people going after it. That is the nature of their business and the union pension and welfare funds are a prime target for that type of activity.

The CHAIRMAN. May I interrupt for just a minute? What percentage of the people who are participating in this kind of corruption are organized crime people?

Mr. DELTUFO. I cannot give you a percentage answer. I would say there are many people involved in this type of activity who are not necessarily connected with organized crime. But when one gets to the labor area I have found that most often there is a connection with organized crime. This SCI investigation detected a flurry of organized crime activity around the two particular examples highlighted during the course of the testimony. In the Sokol case, there was organized crime instigation from the outset and organized crime people were seeking to profit from it throughout.

I am afraid that labor racketeering and the great draw of the union pension and welfare funds is something that organized crime is very interested in and if I had to try to answer your question, and again it is a hypothesis, I would say that organized crime is very much involved in labor racketeering to a greater extent than nonorganized crime people.

I don't know what the ultimate solutions are. A change in societal attitudes at some point perhaps is important. But I will say this. Resources are important, accounting type resources, resources that can go out and identify badges of fraud and then pursue further those badges with the investigative work that is necessary to determine if criminal acts are occurring.

If you would take the Rittenhouse-Great American Dental Plan example, you will find a not very complicated fraud in the sense that right on the books there is a payment of a consulting fee and that ought to be a badge. But there is no way one can verify the fact that this is a fraud and that the money is funneling its way back into organized crime unless you get out into the field and take the interviews that are required. I think resources are required.

Mr. RINALDO. Mr. DelTufo, I want to commend you on what the State investigation has done and the suggestions you have made, but every one of the suggestions up to this point involve State level action which certainly is appropriate and with which I agree.

Could you differentiate for us now. I trust you are going into Federal areas when you talk about resources? Do you agree with what Mr. Fratianno said, that the real way to curb it is by, in effect, either Government controlling it or, in the alternative, by having very comprehensive audits of funds themselves?

Mr. DELTUFO. I think that independent audits, a lot of auditing information is absolutely essential and very, very important to the effort because you are not going to be able to detect these badges of

fraud unless you undertake that. The idea of the Government controlling the money is something which I believe we should think about further. It is certainly not akin to the American system and the labor union movement. But closer Government attention to those funds and to their disbursements and to regulating how they are used I think is essential because otherwise we are going to be continuing with this fleecing of resources of labor, union, people. I think that there have to be audits. I think that there have to be additional persons on the Federal level to undertake not only those types of audits but to review them and to conduct the second-, third-, and fourth-level interviews that are necessary to establish some type of fraud. I heard here this morning references to the Department of Labor and I think the Department to take a greater role and responsibility in dealing with these great masses of money, and in dealing with the Department of Justice to supply the necessary information that could result in criminal prosecutions.

I also agree with Senator Nunn's statements here this morning. The legislation that he has proposed sounds to me to be, again, very advantageous in this area, not only in the sense of increased criminal penalties but the idea of debarment upon conviction is something that should have seen its day 20 years ago.

When I served as U.S. attorney in New Jersey we sought to use civil remedies in conjunction with criminal prosecutions and in going after labor racketeers would seek entry of a civil judgment that would bar this person from dealing with any type of labor activity ad infinitum upon conviction of the crime. The effort was usually part of a plea to the indictment, and thus was a consensual type of thing to a certain extent. We also tried suits to the same effect but the statutory teeth were not entirely there. A statute that would, upon conviction of the crime, take these people and make them stay away from the unions directly or indirectly is very important.

So in summary, I believe the proposed legislation is important. I think there has to be much closer examination of the funds and how they are expanded and there have to be resources provided to follow up appropriate leads and the agency that is responsible for doing this has got to not only have the resources but the direction and the zeal to do what they are supposed to do in this particular area.

The CHAIRMAN. Mr. DelTufo, you mentioned something that has been of interest to me for a good long while. I have toyed with the idea as to whether if a man, say, was convicted of participating in organized crime, collaborating with other people engaged in similar activities, whether or not a civil injunction could be issued against him which would be within our constitution, enjoining him from any repetition of that kind of conduct from that kind of association, that kind of cooperation and conspiracy? Did you say that at one time that had been done or you had advocated that?

Mr. DELTUFO. You mean some kind of injunction that he would not do the same kind of act again?

The CHAIRMAN. Do you think that kind of thing would stand up in court?

Mr. DELTUFO. I imagine you could try something like that, but it would depend upon the good faith of the person dealing with it to a certain extent. What we did was to try to enter a judgment barring that person from holding any position of trust or officer-ship in a labor union. In other words, upon conviction of a Federal offense, that person, through this civil judgment, would not be able again to hold a position of responsibility in a labor union.

The CHAIRMAN. I am pretty sure that could be added as a new section to the labor legislation.

Mr. DELTUFO. There is a debarment provision now but it is of limited utility. It is certainly not in the ERISA statute. It is something else and I am sorry it slips my mind. We resorted to the civil remedies because it was a broader prohibition and I believe if there is a broader debarment in this pending legislation it certainly warrants close attention.

The CHAIRMAN. Thank you.

Is that all, Mr. DelTufo?

Mr. DELTUFO. Yes, sir, thank you very much, Mr. Chairman.

The CHAIRMAN. Now Mr. Thomas J. Carroll, acting chief counsel of the New York State Commission of Investigation.

Mr. Carroll.

STATEMENT OF THOMAS CARROLL, ACTING CHIEF COUNSEL, NEW YORK STATE COMMISSION OF INVESTIGATION

Mr. CARROLL. Mr. Chairman, members of the committee. I want to thank you for inviting our commission here, and I am going to be a bit brief but I do want to deal with a few matters. Quite simply the New York State Commission of Investigation conducted an investigation of the Teamsters Local 237 welfare fund. We have filed a public report on that matter. We have referred the matter to the local U.S. attorney. We have referred that matter to the local district attorney.

If I could just back up a touch, there are many people who work for the city of New York. Those employees belong to well over 100 unions. The city enters negotiations and enters collective bargaining agreements with those unions. Pursuant to those collective bargaining agreements, money is paid by the city of New York into welfare funds.

The sum of money that we are discussing by the municipality of the city of New York is in the neighborhood of \$140 million. There are well over 100 unions and approximately 100 welfare funds. The New York State Commission of Investigation analyzed only one such welfare fund, that being the Teamsters Local 237 Welfare Fund.

Pursuant to the report which we have distributed to the members of the New York Legislature and to the U.S. attorney and to the district attorney there may or may not have been crimes committed. If I could digress at this moment, since these employees worked for the government, that is the city of New York, they are what is called public employees. They are not private employees. And as such they are not covered under the Federal statute commonly referred to as ERISA.

[See appendix 5, p. 615 for report submitted by Mr. Carroll.]

In our analysis of this matter the major statutes, that is the statutes of 1935, 1947, and 1958 through 1961, including the Welfare and Pension Plan Disclosure Act, which was then subsequently superseded by ERISA effective in 1975, our analysis received no assistance from those Federal labor statutes.

Our analysis was predicated on almost the common law variation of the grand larceny statutes, that is grand larceny by false pretenses and grand larceny by false promise.

Our analysis further had to focus on Federal level statutes of mail fraud. The basic focus that we approached this subject matter with was that of fraud. The New York State penal law does not have a crime under the label fraud. It does not have that label. It is grand larceny by false pretenses and grand larceny by false promises.

In our analysis it came to our attention that the sums of money that we were talking about, and if I may, that particular welfare fund, local 237, received approximately \$5 million per annum from the city of New York, representing approximately 14,000 working men and women who worked for varying agencies but primarily the New York Housing Authority and the New York City Health and Hospital Corp.

Pursuant to one analysis there was an opinion that these men and women who are the beneficiaries of this fund were receiving in the neighborhood of 65 cents on the dollar. Now, I am sure all businessmen would agree that any organization has a certain administrative cost factor, but I doubt if they would agree that that administrative cost factor is in the nature of 35 percent. The New York State Insurance Department under article 3(a) of the New York State insurance law has jurisdiction over some welfare funds. In the 1950's there is an opinion rendered by the attorney general of the State of New York. Pursuant to that opinion it has been the view of the New York State Insurance Department that they do not have jurisdiction over unilaterally administered welfare funds.

This Teamsters fund avoided Federal regulation since it involved public employees. This Teamsters fund further avoided State regulation in that it had a unilateral board of trustees. It was not bilateral. Third, the comptroller of the city of New York apparently gave this matter low priority in terms of auditing and checking on it. Notwithstanding these statutory gaps, the New York State Insurance Department did, in fact, conduct an investigation not of the welfare fund but of the insurance carrier.

Now, although they did not have direct jurisdiction over the welfare fund they did have jurisdiction over the insurance carrier. Pursuant to that, they did conduct an investigation and they did take testimony and they did, in fact, recoup certain sums of money. However, as history moved along, that particular welfare fund went self-insured and now they are allegedly self-insured to save the money of paying a carrier. However, when they did go self-insured they retained the same brokers and service providers that they had when they had an insurance carrier. So the suggestion has to be raised, why did they go self-insured? Was it to cut their costs, the savings were minimal or did they go self-insured to terminate the jurisdiction of a regulatory authority that is the New

York State Insurance Department who had regulation over the New York State insurance carrier?

If I could take 2 or 3 minutes of your time. We have had a lot of discussion today about this area. Having worked extensively on this matter, I think the proper request is that all prosecutors, whether they be district attorneys or U.S. attorneys view this area with a view toward fraudulent crimes, particularly the crime of grand larceny, be that by false pretense or false promise or by the crime of mail fraud, which I am sure we all understand is a predicate crime for RICO.

There is a Federal case that says that fraud need not be defined. It is fertile as the human imagination. If we define it, someone will attempt to find a way around that definition and what I am really saying to you quite simply or requesting of you humbly is that when we analyze this material we all must adopt a common law perception of fraud as we have codified them under varying State grand larceny statutes and as we have adopted them into the Federal mail fraud statutes.

The Commission, as I have indicated, made several recommendations. Amongst those recommendations, in our analysis of this matter we found fraud. We found breach of fiduciary duty and we found waste at the Teamsters Local 237 local welfare fund. The New York State Investigation Commission recommended that the U.S. attorney institute criminal proceedings.

We recommended that Barry Feinstein, the chairman of the board of trustees and the other trustees at the time of the event resign. We recommended that the Local 237 welfare fund civilly sue the insurance carrier, the brokers and other responsible parties including the trustees themselves, if necessary, to recover their losses.

We further recommended that the comptroller of the city of New York institute a stepped up audit of the welfare funds. We further recommended that the New York Insurance Department continue to seek from the State legislature broader powers to control public, and I emphasize the word "public," employee welfare funds and that other agencies such as the banking department consider seeking similar authority.

We also recommended that the city of New York review the present system and consider instituting joint management of these funds, and also consider entirely different systems of providing benefits. The system that now exists is one that lends itself to difficulty. It is a system pursuant to a collective bargaining agreement where money is handed to welfare funds. The trustees are what we call unilateral, that is, they are all appointed by members of the union.

There has been a gap in the jurisdiction on a Federal level, on a State level and on a city level. I think frequently in this area that has become known as white collar crime this committee requests that local district attorneys and U.S. attorneys analyze these matters with a view toward fraud.

Thank you.

[The prepared statement of Thomas Carroll follows:]

PREPARED STATEMENT OF THOMAS CARROLL, ACTING CHIEF COUNSEL, NEW YORK
STATE COMMISSION OF INVESTIGATION

The New York State Commission of Investigation ("the Commission") was established by the State Legislature in 1958 to serve as a special investigatory arm of the legislative and executive branches of New York State government. The Commission has the duty and power to conduct investigations in connection with:

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

The Commission, in its role as fact finder, has a responsibility to inform and advise the Legislature and the Governor of the State of New York of problems in the administration of government and to recommend remedial legislation, regulations or management practices.

In investigating the conduct of government, the Commission performs a unique service. No other New York Commission performs a unique service. No other New York State agency has the duty and authority to examine the administration of governmental programs in order to determine whether there are abuses; whether crimes have been committed; whether public officials and employees, either through wilful misconduct or negligent disregard of their responsibilities, have encouraged abuse; and whether risks of abuse can be reduced through new legislation, regulations or management practices.

The members of the Commission are Lola S. Lea (Chair), Earl W. Brydges, Jr., Thomas J. Culhane and Bernard C. Smith.

In 1980 and 1981, the Commission conducted an investigation of the Teamsters Local 237 Welfare Fund ("the Welfare Fund"). In March, 1981, the Commission issued a Report entitled "A Trust Betrayed: Fraud, Breach of Fiduciary Duty, and Waste at the Teamsters Local 237 Welfare Fund." The Report revealed how the Welfare Fund's insurance brokers and consultants, obtained "illegal commissions" under sham "service" and "promotional" contracts from the Welfare Fund's insurer, the Trans World Life Insurance Company of New York ("Trans World").

Teamsters Local 237 represents over fourteen thousand men and women working for the City of New York. It is the Nation's largest Teamsters public-employee union. Each year, New York City, pursuant to collective bargaining agreements with Local 237, contributes approximately \$5 million to the Welfare Fund established and managed by officers of Local 237. The Welfare Fund exists to provide important health and life insurance benefits to the workers represented by Teamsters Local 237.

In 1967, Barry Feinstein, ("Feinstein") became President of Teamsters Local 237 and Chairman of the Welfare Fund's Board of Trustees. As Chairman of the Board of Trustees, Feinstein selected William Wallach ("Wallach"), a long-time friend and relative by marriage, as the Welfare Fund's insurance broker and consultant.

From 1972 through 1978, Wallach and his associate, Calvin Winick were paid over \$2 million by Trans World to perform administrative and promotional services pursuant to sham contracts which were either not performed, unnecessary or performed by the Welfare Fund's internal administrative staff at a cost to the Welfare Fund exceeding \$400,000 per year. The payments actually represented illegal commissions paid to Wallach and Winick for placing the Welfare Fund's business with Trans World. These moneys were charged directly to the Welfare Fund by Trans World. In 1979 and 1980 Wallach and Winick were paid similar amounts directly by the Welfare Fund.

Wallach and Winick concealed from the trustees and beneficiaries of the Welfare Fund and the New York State Insurance Department, the illegal commissions they received while falsely representing that Trans World had been selected as the Welfare Fund's carrier on the basis of competitive bidding, and that all fees and commissions had been filed with and approved by the Insurance Department as required by law. As a result of the illegal payments to Wallach and Winick, and other excessive fees, Trans World's administrative charges to the Welfare Fund were more than 2½ times as great as the administrative charges ordinarily made by an insurance carrier to a welfare fund the size of 237's Welfare Fund.

Feinstein used his political influence in attempts to prevent the public disclosure of facts showing that Trans World, Wallach and Winick were grossly overcharging the Welfare Fund. At the same time, Feinstein used his influence over the trustees to perpetuate the arrangements which enabled Wallach and Winick to enrich themselves at the Welfare Fund's expense.

In early 1977, the investigation revealed, Feinstein learned that the New York City Comptroller's Office was auditing the Welfare Fund. When Feinstein learned that the auditors had concluded that "the Welfare Fund is not purchasing the best benefit package at the lowest cost," and had criticized other aspects of the Welfare Fund's management, he complained to Richard Wells, New York City Comptroller Goldin's former executive assistant. Arrangements were made for Feinstein and Wells to meet privately at lunch with the First Deputy Comptroller Martin Ives. Subsequently, the audit was suspended for over two years on the ground that the Comptroller's Office needed additional data from other funds concerning their administrative costs.

Feinstein continued to protect Wallach and Winick after learning from a New York State Insurance Department investigation that Trans World, Wallach and Winick had grossly overcharged the Welfare Fund. The investigation disclosed that Feinstein, in mid-1979, sent his attorney to complain to Superintendent Albert Lewis of the Insurance Department that the Department's investigation intended to "get Feinstein." The Insurance Department, however, pressed on with its investigation of Trans World, Wallach, and Winick. The investigation resulted, in March of 1980, in the return of \$1.3 million to the Welfare Fund by Trans World, Wallach and Winick, as well as payments to twelve other welfare funds of \$900,000. These payments represented a settlement whereby the insurance company and brokers paid about one-half of the commissions they had overcharged the Welfare Fund. The Settlement Agreement preserved the Welfare Fund's right to sue for the balance. The Commission's Report strongly commends Superintendent Lewis for his Department's investigation.

In early 1980, when the Insurance Department was negotiating this settlement with Trans World, Wallach, and Winick, the Welfare Fund through its counsel obtained a written opinion of an insurance consulting firm, William M. Mercer, Inc. ("Mercer"), that the settlement was "acceptable." The opinion was based in part on the totally erroneous assumption that Trans World, Wallach, and Winick had complied with laws requiring the filing with the Insurance Department of information about the fees being paid to Wallach, Winick, and others. Feinstein and the Mercer report assured the Board of Trustees of the Welfare Fund that the Insurance Department had reviewed and approved all fees paid by Trans World and received by Wallach and Winick. As a result, even after the Insurance Department's findings were known, the Board of Trustees voted in June, 1980 not to sue Trans World, Wallach, or Winick for the return of over \$2 million they still owed the Welfare Fund; and Wallach and Winick's company continued on as consultants and administrators of the Welfare Fund earning over \$270,000 a year. Subsequent to the Commission's public hearings, Mercer retracted its report.

The Commission's Report concluded that Feinstein dominated the trustees of the Welfare Fund and that the trustees relied entirely on Feinstein, Wallach and Winick in purchasing insurance benefits for the Welfare Fund. "At no time," the Commission's Report stated, "did the Trustees make independent efforts to determine whether less costly insurance could be obtained elsewhere, or whether Wallach and Winick were placing the insurance with Trans World solely to maximize their commissions." The Report added, "when facts were brought to their attention indicating that the Fund had been the victim of a 'ripoff' by Wallach and Winick, Feinstein was willing to continue using them as consultants, and the Trustees did not question Feinstein's judgment." Only after the Commission conducted public hearings in November, 1980, did the Trustees finally take action to discontinue the Welfare Fund's contractual relationship with Wallach and Winick.

The Commission's Report also disclosed that the Trustees have so mismanaged the Welfare Fund that only 65 cents of every dollar received from New York City from 1972-1980 went to the Welfare Fund's members as benefits. A substantial portion of the remainder was lost, the Commission says, due to fraud and wasteful practices.

The Report noted that public-employee welfare funds in New York State are largely unregulated. New York City contributes over \$140 million a year to over one hundred welfare funds. The funds are not regulated by federal law, and are subject to review only to the limited extent that the Insurance Department has jurisdiction over insurance arrangements made by some funds administered jointly by the City and the Union. The New York City Comptroller has the power to audit and to oversee the management of the welfare funds. But, as of now, such audits are of low priority, and the Comptroller has no independent enforcement powers with respect to any abuses found by an audit. The Commission's Report recommended that the Insurance Department and other agencies seek from the New York Legislature explicit powers to regulate public-employee welfare funds and that New York City

consider alternative methods of managing welfare funds and of providing benefits to New York City's public employees.

The members of the Commission thank the Committee and its Chairman, Claude Pepper, for the opportunity to submit this statement and for having heard our views at your public hearings and hope our work will be of assistance to the Committee. The Commission will be happy to provide any further assistance that the Committee desires.

Chairman PEPPER. Thank you very much.

Mr. Rinaldo.

Mr. RINALDO. Thank you very much, Mr. Chairman.

I just have a couple of questions that I would like to ask regarding the New Jersey SCI inquiry. As I understand it, it focused on labor controls in those plans.

Was there any similar fraud at nonunion plants? Was organized crime involved in those efforts as well? Was that area explored?

Mr. DELTUFO. I think Mr. Hutch could correct me if I am wrong as to the detail, I think the investigation, as we have finally loaned it down and moved to public hearing, focused on those two particular plans.

The one, a more or less closed plan, the unions were supposed to go through but I don't think it extended into the employer possibility, although I think that that certainly is something that is of possible consequence and I am sure can and does happen from time to time.

I don't think it was part of this.

Mr. RINALDO. So really because it wasn't part of it, it would be difficult to answer the question. I know Pennsylvania conducted an inquiry, New Jersey, New York. Do you all cooperate or is there duplication of effort involved in the investigations or do you share your resources and facts you come up with?

Mr. LEWIS. I guess we all say, I hope, the same thing. There is an excellent cooperative effort among our investigators throughout the three commissions. There is a national organization of investigating commissions that meets occasionally and the cooperation is good. Like in anything else in law enforcement.

Unfortunately, you do have duplication, you do have, we think we have avoided competition. But unfortunately, there is competition in law enforcement also, which is destructive. I suppose that the fact that we are here, three of us representing our three State agencies, and you could probably have invited California and Illinois, also, do essentially the same thing.

It shows what we are experiencing in all the major industrial States, and we need help nationally and statewide in regulation and legislation.

Mr. RINALDO. Mr. DelTufo, in the SCI investigation, would you say you were breaking new ground, so to speak, in rooting out organized crime, or do you think you were simply taking up the slack in an area neglected by the Federal Government or perhaps not properly handled by the Department of Labor?

Mr. DELTUFO. Let me try to answer that this way. There certainly have been criminal investigations into schemes similar to this in different parts of the country. The SCI entered into this investigation largely in the first instance with information supplied by State law enforcement who came to the conclusion that there might not

be sufficient evidence with these two particular matters to successfully pursue criminal prosecution.

So it was turned over to the SCI to look at from the broader social perspectives. I think the SCI inquiry was useful in highlighting this kind of problem and calling for some type of attention that should be given to it.

In the context of having State law enforcement, for example, and the SCIs being the agencies to ferret out this type of information in the first instance, again, it would seem to me that the oversight for these pension plans is the responsibility of the Department of Labor.

The fact that the schemes were not picked up through some routine audit or pursuit would suggest that responsibilities, were not being discharged as conscientiously or as comprehensively as possible.

Now, in defense of the Department of Labor, of anybody else in this area, resources are at a premium. It is very, very—these are not necessarily simple things.

A criminal investigation in this area could take years. So you really do need manpower, and you need skilled manpower.

Mr. RINALDO. That means money.

Mr. DELTUFO. That means money. That is not easily come by these days in terms of the Federal priorities and various budgetary restraints.

Mr. RINALDO. Mr. Chairman—

Mr. CARROLL. Mr. Rinaldo, may I also add on the question of skills, I would just like to agree with that. The particular reason I would like to agree with the need for particularized skills in this area is that in our investigation, not only did we determine that there was a fraudulent scheme involved, what we have also determined is that that fraudulent scheme had been concealed.

If I could just continue with the Chair's permission for one or two moments. Although this particular fund was not, in fact, subject to ERISA, it had voluntarily submitted ERISA information and ERISA forms and on those forms varying fees were disguised from the members of the union, the beneficiaries.

Also, in the filing with the State insurance department, there was certain concealment of what was, in fact, occurring.

I would just like to ascribe to Mr. DelTufo's comment that you do need skilled investigators in this area because if anyone is to pick up the ERISA form, 5500, or D2 under the Welfare and Pension Plan Disclosure Act, it merely has certain categories known in commissions.

Then it has other matters called administrative fees. Frequently the money that ends up in the broker's hand is in reality a commission, but is disguised as an administrative fee.

And to be able to analyze that and make that distinction requires the eye of a trained investigator. Further, when you do penetrate this on the level of the misfiling or misrepresentations of filings with the State insurance department, you are obviously entering a highly technical area geared to each particular State.

Again, in New York State, for example, there is a decremental commission scale. One of the cases you involved 2 hours ago in this room involved a situation where someone was taking—individual

life insurance is different from group insurance, varying with the commission.

The scheme we uncovered in this particular event was proper in the sense that there was group insurance, but it was improper in the sense that there were illegal commissions that were being disguised under administrative fees, under service agreements, under maintenance contracts, under a whole host of other names. Those names, they can dream up new names 5 years from now.

That is why it takes a lot of particularized skill in this refined area.

Mr. RINALDO. I agree. Mr. Chairman, I had another meeting at 12:30. I hope it is still going on. But before leaving, I do want to compliment the witnesses.

I think they have come up with some excellent suggestions, and all of them, I think, to get at the root causes of the problem, and particularly those from the witnesses from New Jersey.

I have looked over the summary of the proposals in your document, and I certainly think the State has the resources to implement what are very, very sound recommendations. If you take those, combined with what can be done at the Federal level, it appears to me that we won't have to throw up our hands and say it is an impossible task. Instead, it would be very, very workable, and hopefully we would be able to get the problem under control.

Thank you very much.

Mr. DELTUFO. Thank you very much, Mr. Rinaldo.

Chairman PEPPER. Thank you.

Gentlemen, I want to ask each of you three commissioners what do you think could be done on a Federal level to combat the fraud and abuse in pension and employee benefit plans.

Start with Mr. Carroll.

Mr. CARROLL. Thank you, Mr. Chairman. In the first instance, I think this committee and Congress should consider PERISA, P-E-R-I-S-A, a Public Employee Retirement Insurance Act.

In the second instance, I think that this committee should give consideration to requesting U.S. attorneys throughout this Nation to analyze welfare funds with a view toward mail fraud.

I realize, of course, that may mandate a certain staffing issue and a certain expertise, both in the area of labor law and in the area of insurance practices.

I respectfully urge this committee that the U.S. attorneys throughout this country have specialized units with those particular skills and that they bring to bear the power of their office on a criminal basis, and that they, in fact, analyze this material precisely the way the New York State Investigation Commission did.

It is my personal perception that the U.S. attorneys throughout America, if they made a concerted effort at doing this, there would be a lot of indictments and a lot of convictions, and there would be a lot less problems.

Chairman PEPPER. Thank you.

Mr. Lewis.

Mr. LEWIS. Mr. Chairman, I would echo what Tom just said and expand on it just a little. As we indicated, the public employee union sector is virtually unregulated, and that certainly needs attention.

Second, with respect to all union activity, or these types of funds, whether they be coemployer-employee, and we incidentally found not an awful lot of difference between the two, there should be a greater degree of reporting required so as to ferret out the conflicts of interest that we find all over the place, the finder's fees that are so egregious in certain instances, the disclosures in advance that are necessary, or at least on an annual basis which really reflect in this kind of thing, the reporting aspect of it.

I would agree with Mr. DelTufo that in many areas, the penalty sections could be increased for criminal convictions.

But finally, I guess in the final analysis, it resolves around the enforcement and the investigative ability of those charged with doing just that, the Department of Labor, U.S. attorneys as well as local district attorneys.

Many tools are in place. The RICO tools exist, the fraud statutes exist. I think those ought to be used more vigorously in this area.

Mr. DELTUFO. I guess I will echo some of those comments and not take a lot of time, Mr. Chairman.

Certainly some types of reporting requirements could be boosted so at least either you will find out the information, or you will have some basis for taking some action about it. But again, I think you have have all the—ERISA is a fairly, a substantial statute.

Other Federal labor legislation, there is a lot of teeth to it. I know that the Federal strike force that I supervised when I was U.S. attorney, had a priority in labor racketeering and welfare frauds and that type of thing.

There are many statutes in title 26 that deal with this, and we use them successfully in some cases. But the important thing is to get the information.

That involves having the audit capacity, having the means to go out and look, and then find the fraud, conduct the second-level interviews and prosecute.

So I think that is the most important thing that has to be pursued. And in the long run, the cases can be so complex that criminal prosecution per se is not necessarily going to be the ultimate deterrent.

There has got to be something short of that on the civil side. And I think reporting, closer scrutiny by skilled investigative accounts is the way to go.

I have to confess to not having much knowledge about what is in the statute on this subject as of the present time, but certainly the strictures surrounding management of the money are important to be reviewed and to see if there is some way of insuring that industries are appointed to manage it.

As I say, I am not sure what is in there now, but that would certainly be an area to explore.

Chairman PEPPER. Quickly now, how have the workers been affected by the fraudulent practices you have uncovered?

Mr. DELTUFO. I am sorry, can you repeat that?

Chairman PEPPER. How have the workers, people covered by these, protected by these pension funds, how have they been affected by these fraudulent practices you all describe?

Mr. DELTUFO. Yes, the union members have lost some of their resources. And until some of these investigations nipped some of

these plans in the bud, they were facing the prospect of greater types of depletions of resources.

Chairman PEPPER. To your knowledge, have suits been filed by the workers in any case seeking redress?

Mr. DELTUFO. I can't think of any.

Mr. LEWIS. We can't think of any in Pennsylvania, either.

Mr. CARROLL. I have received information that in the case that I have referred to, a civil lawsuit has, in fact, been filed.

Mr. DELTUFO. May I make a comment on that? You know, there is—the union people can ultimately lose money because the resources, the moneys that are going into these plans for their benefit can be depleted because the people controlling these enterprises aren't interested in providing dental care.

They are interested in getting money out. So the potential for loss is there. Union members may not see it that way early on. That may be part of the problem.

They look at it largely that it is the employer's money and who cares, so long as I go next Tuesday and somebody cleans my teeth, everything's fine.

They don't see the long-range problem. I think that for this problem and for a lot of other union problems, you are going to have to get union people attuned to the fact that they are being taken, that organized crime is not interested in them and that in the long run, they are going to lose.

You may not see any immediate financial drain, but it is there. I mean, I can account to you that after convicting Tony Provenzano and talking to people fairly recently, there are people in that local in New Jersey who still think that everything was much better when he was there.

Obviously, crazy. But it is education and it is getting people with some responsibility in the union movement to stand on their feet and do something about some of these things.

I think that is really where the solution ultimately lies.

Chairman PEPPER. As I understand it, there are three kinds of plans. An employer plan, a joint employer-union plan, and a union plan. Now, do these fraudulent practices that you have described occur in all three of these types of plans?

Mr. LEWIS. We have seen them in all three, yes, sir.

Chairman PEPPER. Is that the observation of you other gentlemen?

Mr. DELTUFO. The investigation that we conducted was with union plans. I have information from prior law enforcement associations about it being broader than that, and I think Mr. Rinaldo asked this question before. I think you can expect to see it in all of those areas.

In many of the investigations that were conducted and in which I participated, employers are simply concerned about conducting their business and not having anybody on their back.

If it costs a few more bucks, they are willing to go—you would make arrangements with the devil.

Chairman PEPPER. I just want to ask one other question of each one of you in conclusion.

Is the Federal Government participating in trying to prevent and trying to correct these fraudulent practices as much as you feel it should?

Start with you, Mr. Carroll.

Mr. CARROLL. No.

Chairman PEPPER. Mr. Lewis?

Mr. LEWIS. Certainly, in a word, no, or they wouldn't be existing. The Department of Labor has been cooperative with our investigations. Certainly the strike forces in the U.S. attorney's offices and the FBI have been very cooperative.

But I guess as Mr. DelTufo and Mr. Carroll have said, there are just so many resources to apply to the project.

It is difficult. We would like more.

Chairman PEPPER. Mr. DelTufo.

Mr. DELTUFO. Department of Labor has some good people and there are some good investigators out there in the field. They certainly need more of them.

But they are not the easiest agency to deal with. They could be more zealous and more conscientious.

Chairman PEPPER. What about the Department of Justice?

Mr. DELTUFO. My experience with the Department of Justice is that this is a priority area, that resources are being expended in this area, and that if the information that is necessary to prosecution is developed, the will and zeal to prosecute is there.

I think the Department of Justice is doing its job.

Chairman PEPPER. Is it in your opinion or not?

Mr. DELTUFO. It is, in my opinion, doing its job. It is hampered by, in this particular area, by not having access, ready access to a lot of information that would be necessary to the pursuit of criminal proceedings.

I am talking about audit information, that type of thing.

Chairman PEPPER. Does the Department of Labor and Department of Justice work with your commissions to get that commission in order to do an effective job of prosecution? Do they work closely with you all?

Mr. DELTUFO. I really don't have any experience with that. I don't think there was Department of Labor participation in this investigation. I believe there was some assistance given to our commission in the course of this investigation.

Chairman PEPPER. Do you all report, turn over any information you discover in these areas, to the Department of Justice and to the Department of Labor?

Mr. DELTUFO. As far as our report is concerned, it started in its incipient stage because there was information which was important, but which State law enforcement felt could not support a criminal prosecution. The absence of books and records and a lot of problems that were encountered during the course of this investigation, and I commend the skills of the investigative people that are here today in being able to piece it together at all, suggested that probably criminal prosecution would not be possible on the record that was developed. Information was made available to Federal and State authorities. The Federal Strike Force in Newark conducted an investigation into Local 906, United Auto Workers, Mahwah, N.J., and as a result, the local financial secretary,

Eugene Roerher, was indicted on two counts of embezzlement. The investigation of local 906—which had a dental care plan with Dr. Sokol—continues. And the New Jersey Board of Dentistry has commenced an investigation of Dr. Sokol.

Chairman PEPPER. Here are investigating commissions in three great States, New York, Pennsylvania, and New Jersey. I would think it would be a mine of valuable information for the Federal Government if they have primary responsibility in the field in the information you discover.

It would seem to me that they would be working very closely to ferret out these cases and go ahead and prosecute where it is the Federal function to prosecute, and call upon you to help them to provide the materials to carry out a successful prosecution.

Do they do that?

Mr. LEWIS. Mr. Chairman, the evidence we uncovered is now under consideration in several grand juries in eastern Pennsylvania, both Federal and State. But I would certainly concur with the implication in your question that we could use more vigorous prosecution in this area.

Mr. CARROLL. Mr. Chair, I also join with Mr. Lewis in that all the evidence, all the material that we developed in our investigation was turned over to the U.S. Attorney. I would just like to note that since we have been discussing this on two levels, both the Federal level and the State level, that ERISA is preemptive.

And that, therefore, if you have a welfare fund under ERISA, I can see where a local district attorney would develop a criminal case against the parties defrauding a welfare fund, and I can further see an astute defense attorney walking into court and saying, "Mr. State D.A., you do not have jurisdiction over this matter since it has been preempted by ERISA."

Now, you asked earlier varying recommendations. I would suggest that the committee consider that since ERISA is preemptive, that they build in an exception, and that exception regarding criminal activity, so that that criminal activity can be approached on a State level through grand larceny, and also on a Federal level through mail fraud.

They are different. They are very similar crimes, but they are different in theory and there are different burdens of proof. I would hate to see the day 6 months down the road where a case was brought on one level and dismissed because the burden of proof was not met.

I mean, it would be kind of caught betwixt and between the right hand and the left hand.

Chairman PEPPER. I am glad you brought that out. I wasn't aware of the extent that the Federal law preempted State jurisdiction. It would seem to me that we should clarify that by withdrawing the preemption of the Federal legislation and allow clearly the States to proceed as and when they will when they think they should open an investigation or prosecution.

Mr. CARROLL. There was a decision by a Federal justice, Werker, New York, Southern District Court. I do not have the citation with me at this particular time, but I am sure counsel is familiar with that particular case that dealt precisely with that issue.

Chairman PEPPER. We are glad to get that. Well, gentlemen, thank you very much. And all of you who have come here today. I appreciate all of it, the valuable help you have given our committee.

[Whereupon, at 2 p.m., the select committee was adjourned.]

APPENDIXES

APPENDIX 1

[From the Congressional Record, Senate, Wednesday, October 28, 1981]

By Mr. NUNN (for himself, Mr. CHILES, Mr. ROTH, Mr. RUDMAN, Mr. NICKLES, Mr. DeCONCINI, Mr. STENNIS, Mr. JOHNSTON, Mr. PRYOR, Mr. HOLLINGS, and Mr. HATCH):
S. 1785. A bill to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor; to the Committee on Labor and Human Resources.

LABOR MANAGEMENT RACKETEERING ACT OF 1981

Mr. NUNN. Mr. President, on behalf of myself and Senators CHILES, ROTH, RUDMAN, NICKLES, DeCONCINI, STENNIS, JOHNSTON, PRYOR, HOLLINGS, and HATCH, I am today reintroducing the provisions of S. 1163, the Labor Racketeering Act of 1981. S. 1163 was originally introduced by me on May 12, 1981, and was designed to help ease the problems of corruption on the Nation's waterfront. Since introducing S. 1163 in May, we have consulted with many groups both inside and outside of Government. We have received many recommendations and suggestions to clarify and tighten S. 1163. The bill which I am introducing today contains all of the essential provisions of S. 1163, but with what we believe to be substantial improvements which represent the views and input of all parties.

The technical changes we are making have no substantive effect on the provisions of S. 1163. The main provisions of that bill remain intact in this bill. Those main provisions are:

First, making the Taft-Hartley Act a felony for all violations involving \$1,000 or more;

Second, requiring immediate removal upon conviction of an individual convicted of enumerated crimes and crimes relating to his official position;

Third, broadening the definition of the types of positions an individual is barred from upon conviction of enumerated crimes;

Fourth, increasing the time of disbarment from 5 to 10 years;

Fifth, escrowing a convicted official's salary for the duration of his appeal, in case the conviction is reversed; and

Sixth, clarifying the jurisdiction of the Department of Labor with respect to its responsibility for detecting and investigating criminal violations relating to ERISA.

The changes made in S. 1163 which are incorporated into this new bill are, as I said, largely technical. Section 3 of S. 1163 is changed in the following way. That bill calls for the immediate removal of any person who has been convicted of any felony or any other crime, including misdemeanors, which involve the use or misuse of that person's labor union or employee benefit plan affiliation.

We have altered that language by enumerating the particular officeholders subject to this provision, and by leaving the lists of disqualifying crimes now in 29 U.S.C. 504 and 29 U.S.C. 1111 as they are presently written. We have added to the end of the list of crimes a catchall phrase requiring removal if the individual is convicted of any Federal or State felony involving abuse or misuse of his official position.

In S. 1163, in sections 3 and 7, are lists of nine positions which an individual is prohibited from holding if he has been convicted of an enumerated crime. We believe that several of these positions were overly broad and as such might have caused problems such as inhibiting the payment of union pensions or even prohibiting union membership. This new bill contains a subsection replacing the original

list with what we feel is a description more accurately reflecting the type of positions we intend an individual to be barred from.

The main change was in the last sentence which stated:

"No person shall knowingly permit any other person to serve in any capacity in violation of this section."

It has been brought to our attention that the word "permit" may inadvertently be construed by a court to mean that union officials who deal with a disbarred individual hired by a private entity may have some responsibility or criminal liability and alternatively employers who deal with disbarred union officials may have some criminal liability for their dealings.

We therefore reworded the last sentence to read:

"No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this section."

This more accurately places the burden on the entity or individuals who actually employ persons who have been disqualified by virtue of a conviction.

This bill also contains some minor corrections of typographical errors we found in S. 1163 and which I will not enumerate here.

On October 28 and 29 the Senate Permanent Subcommittee on Investigations will conduct hearings during which we hope to hear the views of the Labor Department and the AFL-CIO on this bill. We are hopeful that we may gain their support for its swift passage by this Congress. It is imperative that Congress itself act swiftly to halt the growing corruption on our waterfronts. This bill is a significant step in that direction. It should serve as a signal to organized crime and corrupt union leaders that the American public will no longer tolerate their manipulation of our waterfront economy for criminal ends.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1875

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Labor Management Racketeering Act of 1981".

SEC. 2. Subsection (d) of section 186 of title 29, United States Code, as amended, is amended to read as follows:

"(d)(1) Any person who willfully violates any of the provisions of subsection (a) or (b) of this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than \$15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in violation(s) of the provisions of this section does not exceed \$1,000, he shall be guilty of a misdemeanor and be subject to fine of not more than \$10,000, or imprisoned for not more than one year, or both."

SEC. 3. Subsection (a) of section 1111 of title 29, United States Code, as amended, is amended by adding the following after "No person" and before "who has been convicted":

"who is an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or representative in any capacity of any employee benefit plan or who provides goods or services or who is a consultant or advisor to any employee benefit plan."

SEC. 4. Subsection (a) of section 1111 of title 29, United States Code, as amended, is amended by adding the following after "the Labor-Management Reporting and Disclosure Act of 1959":

"or any other felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes; or attempt to commit any such crimes, or a crime in which any of the foregoing crimes in an element, shall serve or be permitted to serve:

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to any labor organization or employee benefit plan,

"(3) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

"(4) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization,

"(5) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization or employee benefit plan, or

"(6) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets or property of any labor organization or employee benefit plan during or for ten years after such conviction or after the end of imprisonment on such conviction, whichever is the later, unless prior to the end of such ten-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in paragraph (1) through (6) would not be contrary to the purposes of this subchapter. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice to such proceedings by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ or otherwise place any other person to serve in any capacity in violation of this section."

SEC. 5. Subsection (b) of section 1111 of title 20, United States Code, as amended, is amended as follows:

"(b) Any person who intentionally violates this section shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

SEC. 6. Subsection (c) of section 1111 of title 20, United States Code, as amended, is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability or 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) The term 'consultant' means any person who, for compensation, advises, or represents a labor organization or an employee benefit plan or who provides other assistance to such organization or plan, concerning the establishment or operation of such organization or plan.

"(3) A period of parole shall not be considered as part of a period of imprisonment."

SEC. 7. Section 1111 of title 29, United States Code, as amended, is amended by adding at the end thereof the following:

"(d) Where any person, by operation of this section, has been barred from office or other position in a labor organization or employee benefit plan as a result of a conviction, upon the filing of an appeal of that conviction, any salary which would be otherwise due him by virtue of said office or position, shall be placed in escrow by the individual or organization responsible for payment of said salary. Payment of said salary into escrow shall continue for the duration of the appeal or for the period of time during which said salary would be otherwise due, whichever period is shorter. Upon the final reversal or said person's conviction on appeal, the amounts in escrow shall be paid to him. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization who was responsible for payments of those amounts. Upon final reversal of said person's conviction, said person shall no longer be barred by this statute from assuming any position said person was previously barred from."

SEC. 8. Subsection (a) of section 504 of title 29, United States Code, as amended, is amended by adding the following after "or a violation of subchapter III or IV of this chapter":

"or any other felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes, shall serve or be permitted to serve:

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to any labor organization or employee benefit plan,

"(3) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

"(4) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization.

"(5) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in

whole or substantial part devoted to providing goods or services to any labor organization or employee benefit plan, or

"(6) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets or property of any labor organization or employee benefit plan during or for ten years after such conviction or after the end of such imprisonment, whichever is later, unless prior to the end of such ten-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clause (1) through (6) would not be contrary to the purposes of this chapter. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this section."

SEC. 9. Subsection (b) of section 504 of title 29, United States Code, as amended, is amended to read as follows:

"(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than five years, or both."

SEC. 10. Subsection (c) of section 504 of title 29, United States Code, as amended, is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) The term 'consultant' means any person who, for compensation, advises, or represents a labor organization or an employee benefit plan or who provides other assistance to such organization or plan, concerning the establishment or operation of such organization or plan.

"(3) A period of parole shall not be considered as part of a period of imprisonment."

SEC. 11. Section 504 of title 29, United States Code, as amended, is amended by adding at the end thereof the following:

"(d) Where any person, by operation of this section, has been barred from office of other position in a labor organization or employee benefit plan as a result of a conviction, upon the filing of an appeal of that conviction, any salary which would be otherwise due him by virtue of said office or position, shall be placed in escrow by the individual employer or organization responsible for payment of said salary. Payment of said salary into escrow shall continue for the duration of the appeal or for the period of time during which said salary would be otherwise due, whichever period is shorter. Upon the final reversal of said person's conviction on appeal, the amounts in escrow shall be paid to him. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization who was responsible for payments of those amounts. Upon final reversal of said person's conviction, said person shall no longer be barred by this statute from assuming any position said person was previously barred from."

SEC. 12. The title of section 1136 of title 29, United States Code, is amended to read as follows:

"§ 1136. COORDINATION AND RESPONSIBILITY OF AGENCIES ENFORCING ERISA AND RELATED FEDERAL LAWS"

SEC. 13. The first full paragraph of section 1136 of title 29, United States Code, is amended by adding the following at the beginning of said paragraph:

"(a) COORDINATION WITH OTHER AGENCIES AND DEPARTMENTS.—"

SEC. 13. Section 1136 of title 29, United States Code, is amended by adding the following subsection after subsection (a):

"(b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF ERISA AND RELATED FEDERAL LAWS.—The Secretary shall have the responsibility and authority to detect and investigate civil and criminal violations related to the provisions of this subchapter and other related Federal laws, including but not limited to the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws."

Staff Statement

of

Fred Asselin, Investigator

I. Summary of Staff Statement

Mr. Chairman, I am Fred Asselin. I am an investigator on the staff of the Senate Permanent Subcommittee on Investigations. Since 1969, I have been associated with the Subcommittee, on a fulltime basis as a staff investigator, or on loan from the personal staff of Senator Ribicoff.

I have a lengthy statement which I request be entered into the hearing record as read and that I be given the opportunity to summarize the statement.

The Subcommittee was prepared in 1975 to investigate allegations of organized crime influence in the Teamsters Central States Pension Fund; or to support a Senate resolution creating a select committee to undertake a nationwide inquiry into allegations of labor racketeering, including those regarding the Central States Pension Fund.

The Labor Department, using for the first time the landmark pension reform statute of 1974, the Employee Retirement Income Security Act, gave the Subcommittee every assurance that it would proceed with its own inquiry into the Central States Pension Fund in a professional, procedurally sound manner.

The Subcommittee was informed that Labor Department investigators would work closely with the Criminal Division of the Justice Department. The inquiry was referred to by Labor Department officials as a joint undertaking between the Labor and Justice Departments.

With these assurances in mind, and with the realization that two panels investigating the same subject would face difficulties, the Subcommittee decided not to conduct its own inquiry. Similarly, the resolution setting up the select committee was not adopted.

While deferring to the Labor Department in the Teamsters Central States Pension Fund case, the Subcommittee embarked on its own investigations into fraudulent welfare benefit programs such as health and life insurance, severance pay and other benefit plans.

The Subcommittee documented fraud in several union benefit plans. The Subcommittee began to note a pattern of indifference on the part of Labor Department officials. It was apparent that they did not feel that their mission included the detection and investigation of crime in employee benefit plans.

In addition, the Labor Department was found to be organized in such a way as to not encourage personnel to make crime detection and investigation a priority. For example, the Labor Department's files, containing hundreds of thousands of reports from unions and union benefit plans, were not arranged to detect bogus and highly questionable insurance programs being used in union locals.

In 1978, the Justice Department was disappointed to learn that the Labor Department intended to reduce sharply the number of agents assigned to organized crime strike forces around the country.

Strike Force attorneys testified before the Subcommittee. They cited the increasing encroachment of organized crime figures into union activities and pointed to the need for more, not less, Labor Department investigators. As a result of the Subcommittee's hearings, the Labor Department reconsidered its earlier decision and the reductions in Strike Force assignments were not made.

But the effort to cut back on Strike Force allocation of agents reflected the Labor Department's commitment to a policy that was in effect to ignore evidence of criminal wrongdoing. Labor Department officials told this Subcommittee the department had no role to play in detecting and investigating Title 18 violations such as embezzlement and fraud in union benefit plans. That was, officials said, the responsibility of the Justice Department.

The policy was firmly entrenched in the Labor Department. Forgotten were the assurances the Subcommittee had been given about the close cooperation with the Justice Department in the Central States Pension Fund case. It was revealed by this Subcommittee, for example, that federal prosecutors came to believe that Labor Department investigators were under orders not to even discuss the Central States case with the Justice Department's Criminal Division.

Virtually all the Labor Department's investigative resources which had been assembled for the Central States inquiry were shifted to support the civil suit, which had been filed against the fund's former trustees in February of 1978.

The possibility of criminal prosecutions was out. Third party investigation was not pursued. Fundamental investigative techniques were not adhered to. Persons in the Solicitor's Office with little criminal investigative training took charge of the inquiry. Of the several reputed organized crime figures who had been party to highly questionable Central States loans, very few of them were even interviewed by Labor Department agents and none was named in the civil suit.

Fending off criticism of the department's policy of doing no work in the criminal investigative area in the Central States Pension Fund case, Labor Secretary F. Ray Marshall told this Subcommittee that he doubted the value of sending people to prison if, in so doing, the government did not force those who were responsible for the fund's losses to make restitution. By 1981-- now six years after the Labor Department first got into the case-- no one had gone to jail because of the department's inquiry, and not a single dollar of mismanaged money had been returned to the pension fund.

In its final report on the subject, the Subcommittee termed the Labor Department's investigation a failure. Moreover, it will be months, possibly years, before a judgment is reached in the civil suit. Secretary Marshall acknowledged to this Subcommittee in 1980 that even if the department wins the civil suit, which is not a certainty--but even if it wins, the fund will not be made whole because the defendants, the former trustees, have neither the resources nor insurance sufficient to restore the fund to the financial status it would have had had the mismanagement not occurred.

Further documenting the absence of the Labor Department in the government's effort to rid unions and union trust funds from organized crime's influence, the Subcommittee held hearings earlier this year on waterfront corruption on the East Coast and Gulf Coast docks.

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The hearings revealed the pervasive use of payoffs, bribery, extortion and other illegal methods and the central role in the corrupt environment played by numerous senior members of the International Longshoremen's Association.

Federal prosecutors, FBI spokesmen and several maritime executives testified about an important waterfront investigation--known as UNIRAC, for union racketeering--that led to the convictions of more than 20 ILA leaders, including Anthony Scotto, George Barone, Fred R. Field, Jr., and several more officers of the ILA international.

Thomas (Teddy) Gleason, the ILA president, insisted the corruption that had been revealed in UNIRAC was not typical of the union leadership or reflective of a chronic corruption problem in his union.

The corruption that was commonplace on the waterfront--among ILA leaders and management as well--was not a matter that had occupied the resources of the Labor Department. There was no indication that Labor Department representatives had taken any steps to bring reform to the corruption-ridden waterfront.

In one instance, a shipping firm executive went to a senior Labor Department officer in New York and reported on the existence of a racket in workmen's compensation claims. The racket was so costly that it was threatening to put his business into bankruptcy.

According to the testimony of the shipping executive, the Labor Department officer acknowledged the existence of the racket but said there was nothing he could do to help. It is not known whether the Labor Department did anything to bring to the attention of its own compliance officers or the FBI or any other investigative organization information regarding the workmen's compensation racket.

In summary, over the past six years the Subcommittee has shown corruption and irregular practices to exist in certain Teamsters Union locals, certain ILA locals and certain other locals and their benefit and pension plans.

While demonstrating corrupt practices in these labor organizations, the Subcommittee has, at the same time, recommended that the Labor Department assume a more aggressive role in combatting questionable practices where they exist. The Labor Department has not followed the Subcommittee's recommendations. Moreover, the Labor Department would have reduced its role further had this Subcommittee not intervened when the effort was made to decrease the number of compliance officers assigned to Organized Crime Strike Forces.

It is the view of the Subcommittee staff that labor racketeering is a principal source of revenue and power for organized crime. Unless checked, organized crime figures will continue to steal from welfare and pension funds of union locals, leaving many working families without the benefits and pensions they count on.

It is also the view of the Subcommittee staff that the Labor Department will change direction and take on a more assertive role in investigating labor racketeering only when forceful leadership comes from the office of the Secretary of Labor and only when that leadership is supported by senior and mid-level officials with experience in and enthusiasm for investigative work.

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II. Staff Statement Recounts Subcommittee's Work In Labor-Management Field Since 1975

This staff statement recounts the work the Subcommittee has performed in the labor-management field over the last six years and reports on the recurring disagreements that have existed between the Subcommittee and the Department of Labor as to how the department should proceed in response to evidence of corrupt practices in the labor-management field.

The statement is supported by 26 documents. I request that they be received as exhibits. Unless otherwise noted, they are for reference only and are not to be printed in the record.

Exhibits

1. Justice Department memorandum on motives in abduction and presumed murder of James R. Hoffa. Sealed.
2. "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Senate Permanent Subcommittee on Investigations, August 3, 1981.
3. "Staff Study of the Severance Pay-Life Insurance Plan of Teamsters Local 295," Senate Permanent Subcommittee on Investigations, May 10, 1976.
4. "Supplemental Staff Study of Severance Pay-Life Insurance Plans Adopted by Union Locals," Senate Permanent Subcommittee on Investigations, March 21, 1977.
5. Hearings, "Severance Pay-Life Insurance Plans Adopted By Union Locals," Senate Permanent Subcommittee on Investigations, March 21, 1977.
6. Hearings, "Labor Union Insurance," Part I, Part II, Senate Permanent Subcommittee on Investigations, October 10, 11, 12, 17, 18 and 19, 1977; and October 28, 31, November 1, 2 and 4, 1977.
7. "Labor Union Insurance Activities of Joseph Hauser and His Associates," report of the Senate Permanent Subcommittee on Investigations, November 26, 1979.
8. Indictment, United States of America v. Arthur A. Coia, et al.
9. Hearings, "Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, July 18 and 19, 1977.
10. Hearings, "Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, August 25 and 26 and September 29 and 30, 1980.
11. Memorandum by LaVern J. Duffy, Assistant Counsel, Senate Permanent Subcommittee on Investigations, January 17, 1978. Sealed.
12. "Laws Protecting Union Members and Their Pension and Welfare Benefits Should Be Better Enforced," report by General Accounting Office, (HRD-78-154) September 28, 1978.

13. Letter from F. Ray Marshall, Secretary of Labor, to Comptroller General Elmer Staats, May 14, 1979.
14. Letter from Kevin D. Rooney, Assistant Attorney General for Administration, to Comptroller General Staats, June 18, 1979.
15. Hearings, "Labor Management Racketeering," Senate Permanent Subcommittee on Investigations, April 24 and 25, 1978.
16. "Investigative Authority of Secretary of Labor Under LMRDA and ERISA," study by American Law Division of Library of Congress, April 13, 1978.
17. "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," interim report of the Senate Permanent Subcommittee on Investigations, May 20, 1981.
18. Letter from Raymond J. Donovan, Secretary of Labor, to Senator Nunn, July 9, 1981.
19. Hearings, "Waterfront Corruption," Senate Permanent Subcommittee on Investigations, February 17-19, 25-27, 1981.
20. Chart showing convictions of ILA leaders.
21. S. 1163, Labor Racketeering Act of 1981.
22. S. 1182, Longshoremen's and Harbor Workers' Act Amendments of 1981.
23. Labor Department memorandum on organized crime, January 1975.
24. Eighteen Washington Post articles on BRILAB, 1980 and 1981.
25. Washington Post article by Joe Pichirallo, "Laborers Union Official Indicted in Kickback," September 25, 1981, p. A-6.
26. Joint statement by Senators Nunn and Rudman on "Anti-Corruption Legislation" affecting labor unions and union benefit and pension funds.

The Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs is, by present and past Senate resolutions, authorized to examine alleged criminal activity in labor-management relations.

The Senate created the Select Committee on Improper Activities in the Labor or Management Field in March of 1957. The Select Committee was an extension of the Permanent Subcommittee on Investigations.

The Select Committee Chairman, Senator John McClellan of Arkansas, was also Chairman of the Investigations Subcommittee. Three of the other Senators on the Select Committee also served on the Investigations Subcommittee. The Select Committee staff included personnel assigned from the Investigations Committee. The Select Committee's rules and procedures were those of the Investigations Subcommittee.

The Select Committee issued interim reports in 1958 and 1959 and a four-part final report in 1960.

The principal accomplishment of the Select Committee's work was passage of the Labor Management Reporting and Disclosure Act, commonly referred to as the Landrum-Griffin Act.

The Landrum-Griffin Act, landmark legislation, was designed to assure democratic practices in unions and to give government tools for the investigation and prosecution of union leaders who abused their positions.

III. Teamsters Central States Pension Fund

The Teamsters Central States Pension Fund was created in February of 1955. As of December 31, 1980, the fund had about \$2.6 billion in assets and about 500,000 active participants and retired pensioners. Employee contributions totalled about \$586 million a year. Pension payments came to about \$323 million a year.

Management of the Central States Pension Fund was a source of controversy almost from its creation. Critics of the fund's trustees said far too much of the fund's assets were invested in risky real estate ventures.

It was also charged that the trustees were influenced by organized crime figures in their investment decisions. Similarly, law enforcement officers said the loans themselves were frequently made to organized crime figures or organized crime fronts.

In 1975, the Department of Labor decided to investigate the pension fund. Two events of that year contributed to the government's decision to investigate the Teamsters Central States Pension Fund.

First, a new reform law went into effect. Second, former Teamsters president Jimmy Hoffa was abducted and presumably murdered in what seemed to be a gangland kidnap-slaying. The Hoffa disappearance came at a time of growing concern in Congress and among the public that the Central States Pension Fund was a billion dollar corpus in the hands of gangsters.

Hoffa's disappearance had a Central States Pension Fund tie-in. After having served a federal prison sentence for Central States Pension Fund fraud, Hoffa had tried to regain the Teamsters presidency he had given up when he was sent to jail. While they never solved the crime, FBI agents and federal prosecutors theorized that Hoffa was done away with in an organized crime attack provoked because gangsters feared Hoffa might tell the public what he knew about the Central States fund and might try to ride a fury of reform back to power. In order to maintain control of the fund, mobsters had to silence Hoffa for good, prosecutors theorized.

The newly enacted pension law, the Employee Retirement Income Security Act of 1974, known by its acronym ERISA, gave federal authorities the responsibility to oversee the operations of most employee benefit plans and to go to court if there were no other means to rid the fund of mismanagement or corruption.

Equally important, the statute gave the Labor Department unprecedented access to and authority over employee benefit trusts such as the Central States Pension Fund. It was anticipated that this access to fund operations would be of historic importance to the Justice Department in mounting prosecutions against persons alleged to be guilty of criminal exploitation of pension funds.

In the Senate, the Investigations Subcommittee was considering the possibility of investigating the pension fund; and Senator Robert P. Griffin of Michigan had introduced legislation, S. Res. 302 of November 18, 1975, to create a bipartisan, select committee to look into the national problem of labor-management racketeering, including allegations of wrongdoing in the Central States Pension Fund.

To discuss what its own course of action should be, to evaluate Senator Griffin's proposal and to receive a briefing on the Labor Department's investigation, the Investigations Subcommittee met in executive session on December 11, 1975.

The Subcommittee was briefed on the Labor Department investigation by James D. Hutchinson, Administrator of Pension and Welfare Benefit Programs in the department. Hutchinson had general supervisory and policy authority over pension reform programs in the Labor Department.

Hutchinson's responsibility under ERISA included enforcement authority over the fiduciary standards of the new law. Allegations that the trustees of the Central States Pension Fund had violated their fiduciary trust were his responsibility to look into.

Hutchinson's section also had the authority to initiate civil litigation against a fund alleged to have violated ERISA and to refer evidence of criminal wrongdoing to the Justice Department.

Hutchinson stressed the point that the Labor Department would work in close harmony with the Justice Department in the pension fund inquiry.

Hutchinson gave every assurance that the investigation would be run in a professional, procedurally sound manner by lawyers, accountants and agents who were experienced in government inquiry and who were skilled in assembling data for use in both criminal and civil trials.

The Hutchinson presentation was comprehensive and well received by the Subcommittee. While not recommending against a Senate investigation, Hutchinson had pointed out that two inquiries -- one by Labor, the second by the Subcommittee -- would cause some problems such as duplication of effort and difficulties when both bodies tried to use the same witnesses and documents.

As a result of the Hutchinson briefing, the assurances that the Labor Department's investigation would be effective and the realization by Senators that problems would arise if two teams of investigators were looking into the same subject, the Investigations Subcommittee decided not to conduct its own inquiry, and Senator Griffin's resolution to form a select committee was not acted upon.

It appeared that the Labor Department, cooperating at every step with Justice Department prosecutors, was embarking on a successful investigation. The Subcommittee later changed its opinion of that investigation. As the Subcommittee noted in its recent report on the Labor Department's inquiry, "On paper, then, the investigation looked good. But it did not turn out as planned or promised."^{1/}

In deciding not to investigate the Teamsters Central States Pension Fund, the Subcommittee announced its intention to monitor the progress of the Labor Department's inquiry. The Subcommittee also said it would conduct its own investigations into other welfare and pension trust funds.

^{1/} "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Senate Permanent Subcommittee on Investigations, August 3, 1981, p. 162.

IV. Severance Pay-Life Insurance Scheme

With the decision not to investigate the Central States Pension Fund but to monitor the progress of the Labor Department's inquiry, the Investigations Subcommittee, under the direction of its Acting Chairman, Senator Nunn, and Senator Percy, the Ranking Minority Member, began to examine other union trust funds. Hearings were held and a series of reports was issued.

The first of these, entitled, "Staff Study of the Severance Pay-Life Insurance Plan of Teamsters Local 295," was issued on May 10, 1976 and addressed welfare benefits of Teamsters Local 295 which served the truck drivers and certain other workmen who delivered air cargo to and from and around New York City airports.

Located on the outskirts of the John F. Kennedy International Airport, Local 295 had about 1,400 members and had been one of the "paper locals" created in the mid-1950's which Jimmy Hoffa used to mount his successful campaign for the Teamsters presidency. Local 295 had a history of being influenced by organized crime figures such as Anthony (Tony Ducks) Corallo, John (Johnny Dio) Dioguardi and Harry Davidoff.

The Subcommittee's investigation revealed that Davidoff, a felon and secretary-treasurer of the local, joined with another felon, Louis C. Ostrer, in concocting a severance pay-life insurance benefit that was designed more to benefit Ostrer and his associates and the insurers than the union membership.

The life insurance purchased under the terms of the plan was individual whole life on each member. The whole life concept resulted in excessively high premiums and agent commissions.

Administrative and legal fees were also excessively high. A more conventional group life insurance plan would have been far less expensive and the overall benefits to workers and their families far greater.

The Subcommittee asked the General Accounting Office to evaluate the benefit plan. GAO said the commission costs, which were \$800,000, would have been about \$10,000 if the coverage had been group rather than individual whole life. The study concluded:

Thus, the use of individual policies rather than the less expensive group plan cost the fund approximately an additional \$790,000 in commissions. ^{1/}

Especially critical of the conduct of the Local's secretary-treasurer, Harry Davidoff, and the mastermind behind the scheme, Louis Ostrer, the Subcommittee study said that instead of being primarily increased compensation for workers, the fund served as a means for improperly obtaining monies from the severance fund.

The excessive agents' commissions and the administrative costs -- and the very concept of whole life policies -- were the avenues through which Ostrer, with Davidoff's concurrence, was able to extract hundreds of thousands of dollars from management at the expense of the workers, the study said, adding:

A severance pay-insurance plan provides a wide variety of probably legal but certainly questionable methods for mobsters to obtain huge amounts of funds. A mobster who can speak for organized labor in pursuit of an apparent legitimate union demand -- such as a severance fund -- enjoys considerable protection against detection and prosecution. That is one reason why organized crime has been attracted to the union movement for many years. ^{2/}

Another finding of the Subcommittee staff study was that no effort had been made by the Teamsters International to reform Local 295, an organization well known for its ties to organized crime.

The study noted that Harry Davidoff had been associated with Local 295 for about 16 years, that he had longtime organized crime connections and that the mere fact he was able to stay on for so long was sufficient evidence on its face to demonstrate that the corruption that was rampant in the local more than a decade ago had not been cleaned up.

The study went on to say that the Teamsters Union had never lived down the bad reputation it received in the public mind as a result of the activities of Dave Beck, Jimmy Hoffa and their associates. Moreover, the Subcommittee study said, the

^{1/} "Staff Study of the Severance Pay-Life Insurance Plan of Teamsters Local 295," Senate Permanent Subcommittee on Investigations, May 10, 1976, p. 35.

^{2/} Ibid., p. 35, 36.

Teamsters International, if it had the best interests of its members at heart, could have, and should have, seen to it that Local 295 was rid of gangster elements. But the International had done nothing to reform the local, the study said, asserting:

The International should be determined that each of its local chapters is run for the benefit of its members and certainly not be led by persons who are associated with organized crime. Hundreds of thousands of men and women who are law abiding members of the Teamsters throughout the nation deserve no less.^{3/}

The staff study said a man with Louis Ostrer's reputation -- he had defrauded a Canadian insurance company of \$300,000 and, with John Dioguardi, was found guilty of stock fraud -- never should have been allowed to manage the severance fund program. "Conscientious labor leaders would have noted his ties with organized crime and the fact that he had lost his agent's license in a criminal matter," the study said.

Also called to task were insurance companies that Ostrer contracted with for the Local 295 coverage. The companies should have made it their business to know of Ostrer's reputation and refused to allow him to represent them. By doing business with Ostrer, the insurance companies showed that selling 1,400 individual life insurance policies was more important to them than the ethical considerations of how the policies were being sold and who, in reality, was selling them, the staff study said.

In issuing the study, Acting Chairman Nunn said that, while this staff study concerned itself solely with the severance pay-life insurance benefit of Local 295, independent inquiry by the Subcommittee staff had revealed that similar welfare benefit plans had been designed for other union locals.

Senator Nunn said the potential for abuse in the welfare benefit fund area was a subject requiring further examination by the Congress and the Department of Labor. He said the Subcommittee would continue its inquiry into severance trust funds and related fringe benefit programs in other union locals.^{4/}

^{3/} Ibid., p. 36.

^{4/} Ibid., p. iii, Senator Nunn's memorandum of transmittal.

V. Additional Severance Pay-Insurance Schemes

On March 21, 1977, the Senate Permanent Subcommittee on Investigations issued a second staff study on the problem of Ostrer-type severance pay-life insurance plans by local unions.

The supplemental study was authorized following release of the May 10, 1976 staff study regarding Teamsters Local 295. The second study was to determine whether severance pay-insurance plans comparable to the Local 295 plan had been adopted by union locals elsewhere in the nation.

The supplemental study identified 11 additional instances in which other local unions adopted severance pay plans comparable to the Local 295 plan.

The second study focused attention on an effort to market the severance pay plan to benefit plans of locals of the Teamsters Union, including Teamsters Local 299 in Detroit.

Also examined was whether the interests of union members were properly represented by Frank Fitzsimmons, president of the Teamsters International, and vice president of Local 299, during consideration of the plan by the local.

Finally, the study questioned the adequacy of the records management system of the Department of Labor as it related to the handling of annual, financial and other reports required to be filed by labor-management severance pay plans and other employee benefit plans.

The Subcommittee identified Ostrer-type severance-insurance programs in Teamsters locals in Detroit^{1/}; St. Louis; West Paterson, New Jersey; Paterson, New Jersey and Philadelphia.

Similar plans were noted in four North Miami Beach, Florida locals of the Southeast Florida Laborers' District Council; in three North Lindenhurst, New York, locals of the Industrial Production Employees Union; in a Machinists Union local in New York City; a New York City Airline, Aerospace and Affiliate Employees local; and a Miami local of the International Association of Bridge, Structural and Ornamental Iron Workers Union.^{2/}

^{1/} Detroit Teamsters Local 299 had two Ostrer-type plans.

^{2/} "Supplemental Staff Study of Severance Pay-Life Insurance Plans Adopted By Local Unions," Senate Permanent Subcommittee on Investigations, March 21, 1977, p. 8.

The staff study indicated that from 1970 to 1975, the Ostrer plans, including the one provided in Teamsters Local 295, generated more than \$5 million of employer contributions to purchase whole life insurance coverage for more than 14,000 workers.

Of the \$5 million, \$3 million was paid in commissions and an additional \$743,377 was paid in fees. A total of about 76 percent of the \$5 million was paid out in the form of commissions and fees.

The Ostrer plans examined by the Subcommittee were found to have the same kind of individual ordinary whole life coverage as did the Ostrer plan at Teamsters Local 295 and led the staff study to conclude:

...the adoption of the Ostrer-type severance plans reviewed herein raises a serious question as to whether the trustees of the plans involved acted in the best interests of the beneficiaries of their plans.... 3/

The second staff study said the same Louis C. Ostrer who masterminded his severance pay-life insurance scheme at Local 295 also made a major and largely successful effort to market the plan elsewhere, using one of his marketing agents, Donald Fitzsimmons, Frank Fitzsimmons' son, to sell the plan to Teamsters Local 299 in Detroit and other Teamsters locals. Ostrer profited from his marketing effort.

The study said that evidence developed by the Subcommittee staff showed that Ostrer and Donald Fitzsimmons sought the assistance of Allen Dorfman, Mrs. Rose Dorfman and Sol Schwartz in the marketing of the plan. Dorfman was associated with the Amalgamated Insurance Agency, Inc., of Chicago and was actively involved in Teamsters welfare benefit plan programs, including the Teamsters Central States Health and Welfare Fund. Schwartz was Dorfman's accountant.

The Subcommittee staff was able to identify the Local 295 severance-insurance plan and the additional Ostrer-type plans through its own investigation. The Subcommittee asked the Labor Department to identify other applications of the Ostrer-type plan. The Labor Department could not do so. The department had no way of knowing whether there were any other applications of the plan.

3/ Ibid., p. vi.

In enacting both the Welfare Pension Plan Disclosure Act of 1958 and ERISA, the Employment Retirement Income Security Act of 1974, Congress intended to protect the interests of workers and their beneficiaries in employee welfare and pension benefit plans.

The laws required disclosure and reporting of the financial facts and other information needed by participants for a full understanding of the covered plans in which they had invested a portion of their earnings.

The Labor Department was to be able to provide this information and, at the same time, be able to give Congress reliable, current data for use in the exercise of its responsibility to oversee the quality of employee benefit plans.

As noted in the March of 1977 Subcommittee staff study, effective enforcement of the many labor laws and regulatory programs administered by the Department of Labor required efficient records management and ready availability of a wide variety of information. The study said:

The information retrieval system employed by the Department of Labor should also be able to respond promptly and selectively to the needs of Congressional inquiry. 4/

In its investigation, the Subcommittee staff found the Labor Department unable to respond to a request for data on Ostrer-type severance pay-life insurance plans.

The Labor Department's files contained 350,000 annual reports filed by employee benefit plans from 1972 to 1977. But the 350,000 annual reports on file were not stored in such a way as to allow for an efficient and timely retrieval according to types of plans. The staff found that a thorough review of the data reported on any single type of plan required a manual search of thousands of reports.

In sum, the Labor Department could not identify other welfare benefit plans which were based on individual whole life insurance.

4/ Ibid., p. 49.

Herbert Harris, a General Accounting Office accountant who worked with the Subcommittee staff in preparing the second study, testified about the obstacles Congress faced in obtaining information from the Labor Department about welfare and pension plans.

He said the Labor Department organized its files according to each local union's reports and had no way of retrieving data on general categories. Harris said Subcommittee investigators would have had to review manually all the department's 350,000 annual reports. "We got no help from the Department of Labor as far as isolating the severance-type plans," said Harris.^{5/}

Harris also noted that in reviewing Labor Department files on pension and welfare fund reports he found "crucial documents" to be missing or incomplete on such matters as the size of insurance premiums, the size of commissions and who received the commissions. He said:

I think this is very important for a rank-and-file member to try to determine how much money is being paid out for these services to know exactly where he stands as far as his insurance plan.^{6/}

In its finding on the records management problem, the Subcommittee staff questioned the ability of the Labor Department to evaluate properly the annual reports that it had on file so that it could protect rank-and-file union members "against not only the abuses inherent in the Ostrer plan, but abuses of other employee benefit plans that may affect many more [working] men and women."^{7/}

^{5/} Hearings, "Severance Pay-Life Insurance Plans Adopted By Union Locals," Senate Permanent Subcommittee on Investigations, March 21, 1977, p. 18.

^{6/} Ibid., p. 19.

^{7/} "Supplemental Staff Study," p. vi.

VI. Hauser-Type Insurance Schemes

Following the investigations of the Ostrer-type severance pay-life insurance plans, the Subcommittee examined the activities of Joseph Hauser, an insurance executive who sold coverage to union benefit trust funds.

Operating in Florida, Indiana, Massachusetts, Arizona and Illinois, Hauser used the tactic of taking over insurance companies. He would loot the companies by pocketing premiums or diverting them to other entities as they were paid by policy holders. He would pay off claims by obtaining new business from labor union benefit trust funds. Eventually his insurance companies were bankrupted. Labor union benefit trust funds and their members and thousands of policy holders lost millions of dollars. In most of his transactions, Hauser had several accomplices.

The Investigations Subcommittee examined Hauser's sale of life, health, accident and other insurance programs to 20 labor union health and welfare plans throughout the country. Eleven days of hearings were held in October and November of 1977.

The insurance contracts which were the subject of the Subcommittee's investigation were solicited and obtained by insurance companies either controlled by or associated with Joseph Hauser.

The Subcommittee showed that of about \$39 million in insurance premiums obtained by the Hauser companies, \$11 million was diverted to other firms in the form of questionable commissions and commission advances, worthless and questionable investments, conversion to cash, and the payment of personal expenses and legal fees. As a result of this looting, the Hauser companies were forced into receivership or bankruptcy causing losses of millions of dollars to several union trust funds.

Hauser's most significant victim was the Teamsters States Health and Welfare Fund, which suffered a loss of about \$7 million. Several Laborers' Union health and welfare funds located in New England and Florida suffered losses totaling more than \$1 million.

In addition, thousands of individual policy holders suffered financial loss and personal hardship when their insurance companies failed because of Hauser's looting. For example, about 20,000 policy holders of Hauser's Farmers National Life Insurance Company had their insurance cancelled and lost the cash surrender values of their policies. About two-third of Farmers' policy holders were uninsurable or were so old or of such a low income that they had great difficulty obtaining new insurance except at very high prices.

Much of Hauser's success in promoting his insurance companies within the labor movement stemmed from his personal contacts. The Subcommittee learned that Hauser gained access to the union trust funds by cultivating fund trustees and labor union leaders, or persons influential with such officials. Some of those influential with union leaders whom Hauser cultivated were an insurance consultant to fund trustees, attorneys employed by trust funds and relatives of labor officials.

The Subcommittee found that Hauser paid off persons who could help him by giving them favors, arranging finders' fees and commissions for them and promising them consulting contracts with other unions.

Once the insurance contracts had been awarded to the Hauser companies, Hauser and his associates converted large amounts of the premiums to their own use before the claims built up.

The Subcommittee said that as the claims mounted against the premiums which had been diverted to other uses, a portion of the premiums from newly acquired labor union business was used to pay the outstanding claims against the old business. In such a scheme, Hauser was under constant pressure to sign up new unions. When the new business didn't materialize, the only recourse was bankruptcy or receivership.

Using information developed in part by the Subcommittee's investigation, a federal grand jury in Phoenix indicted Joseph Hauser and three of his partners in June of 1978. Charged with

conspiracy to conduct a racketeer-influenced and corrupt organization (RICO) and interstate transportation of stolen and unlawfully received funds, Hauser pleaded guilty.

His complex and wide ranging schemes having been brought to the attention of law enforcement by the Subcommittee, Joseph Hauser became an important witness in two major cases.

He assisted the government in a series of prosecutions known under the generic name of BRILAB, for bribery-labor.

Hauser was also a key witness for the government when a federal grand jury in the Southern District of Florida indicted New England crime family boss Raymond L. S. Patriarca and four others -- Arthur A. Coia, Arthur E. Coia, Albert LePore, and Joseph J. Vaccaro, Jr. -- on charges that they conspired to defraud health and welfare funds of the Laborers International Union of North America in Massachusetts, Maine, New Hampshire, Vermont, Rhode Island and Florida.

The Subcommittee report on Hauser noted some similarities in the insurance programs marketed by Louis Ostrer and Joseph Hauser, particularly in the efforts by both men to persuade labor leaders to buy high premium whole life or permanent insurance for their members, rather than the more conventional and less costly group term plans.

However, the Subcommittee report also said Hauser's operation was much larger, more sophisticated and significantly more complex than Ostrer's.

Ostrer's approach was to sell only one product, individual whole life insurance policies, to a specialized type of fund, severance pay trust funds. Hauser and his accomplices dealt with unions' general health and welfare funds. If Hauser could not sell a fund whole life insurance, he would sell it group term life, as well as health, accident and disability insurance.

The Subcommittee report said that, while the Ostrer plan was largely dependent for income on commissions from the insurance companies which placed the insurance, Hauser and his

associates acquired and ran their own insurance companies. The Hauser group had access to and use of the full premium payments from the business they generated, including the reserves for future claims.

The Subcommittee report said reputable insurance companies used most of their premiums to pay claims and to set up reserves which were placed in investments. In contrast, the technique used by Hauser was to channel large labor union trust fund insurance premiums into his insurance companies. He would then convert large amounts of these union premium monies to his own use before the claims caught up. The report added:

As claims mounted against the premiums which had been diverted to other uses, a portion of the premiums from newly acquired labor union business would be used to pay the claims against old business. As a result, new business had to be generated constantly to bring in new premium dollars to pay claims, the reserves for which had been diverted to other uses. In this respect, the Hauser operation resembled a "Ponzi Scheme," or never-ending chain in which the later victims suffer the greatest loss. In this case, the last purchaser of insurance from the Hauser group was the Teamsters [Central States Health and Welfare] Fund which also suffered the largest single loss -- \$7 million. ^{1/}

The Subcommittee report pointed out that when the Hauser group had largely exhausted the labor union business available to it in a given state, it entered into a type of reinsurance agreement, known as a "fronting," with a company licensed in other states.

Hauser would then sell insurance to labor union trust funds in additional states, using the policies of the fronting company, but reinsuring all or most of the risks into one of his companies. Most of the premiums would also be passed on to the Hauser company.

From an investigative point of view, looking into Joseph Hauser's operations was a difficult task. The Subcommittee spent one year examining the highly complex and widespread nature of Hauser's activities. The Subcommittee served 100 subpoenas and

^{1/} "Labor Union Insurance Activities of Joseph Hauser and His Associates," report of the Senate Permanent Subcommittee on Investigations, November 26, 1979, pp. 58, 59.

reviewed voluminous records and files. Extensive field work was conducted preparing for the 11 days of hearings at which 27 witnesses testified in connection with more than 60 exhibits in a public hearing record of 1,209 pages. ^{2/}

As the Subcommittee became more involved in the examination of welfare benefit trust funds -- first in the investigation of Ostrer-type plans, then in the Hauser approach -- it was becoming apparent that the Department of Labor had a vitally important role to play in protecting union members from being victimized by costly, highly questionable, often illegal insurance programs.

It was also apparent to the Subcommittee that the Labor Department was not fulfilling its duty to prevent the marketing and sale of such insurance programs.

Certain obvious questions were asked, for which Labor Department spokesmen offered unsatisfactory replies. The simple matter of reporting on welfare benefit plans became an issue, for example. How effective was a welfare benefit plan reporting system that could not tell the Labor Department how many Ostrer-type severance-life insurance plans were in operation? Having studied the spread of the Ostrer-type plan for months, the Subcommittee staff was convinced there were more than 12 applications of it, as noted in the two Subcommittee investigations, but the Labor Department had no way of finding out. Impatient with the Labor Department's reporting system, a Subcommittee staff member testified:

I know that there are other plans in existence. I don't know how many other plans and I cannot characterize whether or not it is likely that there are many other plans....[The Labor Department] is the source of the problem. Each of these plans is required to file annual reports with the Department of Labor. That would lead one to the conclusion that it would be a matter of just reviewing the plans that they would have available and identifying those plans and then coming to the conclusion of how many plans are in existence.

However, when we...initiated that process, the Department of Labor was unable to identify the number of plans that are in existence and that pointed out one of the findings of the study, that

^{2/} Ibid., p. 58.

it doesn't make a great deal of sense to require the severance plans to report if we are not able to identify...how many reported, what type of severance plan it is and a number of other relevant facts.^{3/}

The Hauser investigation raised similar doubts about the effectiveness of the Labor Department's ability and willingness to use the reporting system to pick out information suggesting questionable and illegal insurance practices. How effective was a reporting system that could not flag questionable and illegal health and welfare benefit plans?

Of equal importance was the Labor Department's ability and willingness to protect union members from persons of known questionable reputation. When he sold and promoted some of his most flagrant insurance programs to welfare benefit funds, Joseph Hauser was under indictment, having been charged in California in March of 1975 with bribing union officials to do business with his firm, National Prepaid Health Plans.

When, in 1974, National Prepaid Health Plans went bankrupt, it left more than \$2 million in debts and unpaid union and other medical claims.

Despite the troubles in California with federal and state authorities, Hauser was able to acquire and maintain control of more insurance companies and market his scheme to more union health and welfare funds in Florida, Indiana, Massachusetts, Arizona and, finally, in Illinois where, at Teamsters Central States Health and Welfare fund offices, he perpetrated his biggest sale, a \$23 million group life insurance contract. The entire Hauser operation collapsed shortly thereafter and the Teamsters Fund lost \$7 million.

The Subcommittee continued looking into the effectiveness of the Labor Department's investigations of criminal statutes pertaining to labor organizations. Paralleling this investigation, was the Subcommittee's continuing interest in monitoring the progress of the Labor Department's investigation of the Teamsters Central States Pension Fund.

^{3/} Subcommittee hearing, "Severance Pay-Life Insurance Plans Adopted By Union Locals," p. 17.

A review of developments that began to emerge in 1977 indicated that the Labor Department had strong views on what its duties were in the labor-management field. The department's views differed sharply from those of the Subcommittee, the General Accounting Office and the Department of Justice.

The Subcommittee, GAO and the Justice Department believed the Labor Department was obliged to detect, investigate and properly refer to Justice information indicating criminal wrongdoing in union benefit and pension plans.

The Labor Department took a nearly opposite position, asserting, in general, that it wished to cooperate fully with federal prosecutors, but that it had very limited statutory criminal investigative responsibility and authority, particularly in the area of welfare and pension fund fraud.

Most recently, the Subcommittee disputed the Labor Department's view in its report on the Teamsters Central States Pension Fund.^{4/} But the point was made earlier and often. In the Hauser report, for example, the Subcommittee said:

The Subcommittee finds that the Department of Labor takes an unduly narrow view of its responsibility to detect and investigate violations of Title 18 criminal provisions relating to ERISA plans.^{5/}

The Subcommittee report went on to say:

In order to have an effective criminal enforcement program, it is necessary for the Department of Labor to have a comprehensive program to detect potential violations and to make appropriate preliminary inquiries prior to referring cases to the Department of Justice for further criminal investigation. Without this initial inquiry process by the Department of Labor, it is inevitable that many criminal as well as civil violations will go undetected.^{6/}

^{4/} "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," pp. 159-189.

^{5/} Hauser report, p. 35.

^{6/} Ibid., pp. 35, 36.

VII. Labor Department Officials Testify On Inquiry

In July of 1977, the Investigations Subcommittee held two days of public hearings to measure the progress of the Labor Department's investigation of the Central States Pension Fund.

Senator Percy, at the time the Ranking Minority Member of the Subcommittee, said in his opening statement that the government's inquiry into the pension fund was already 18 months old and it was appropriate for the Congress to take a close look at what had been achieved.

Describing the pension fund's history as reflecting a "pattern of mismanagement, cronyism and faulty judgement on the part of former trustees," Senator Percy said the fund had invested millions of dollars in Las Vegas gambling casinos, a Florida dog track, racetracks in Ohio and Pennsylvania, a jai-alai center in Connecticut, a luxurious California resort frequented by Teamsters officials and a failing Chicago hotel whose construction was financed by a bank which had a pension fund trustee serving on its board of directors. In another instance, he said, millions of dollars were loaned to a firm which allegedly gave one pension fund trustee a gift of substantial stock. Senator Percy added:

Associates of organized crime figures were allegedly loaned enormous sums. Reportedly, an associate of Meyer Lansky was loaned \$15 million [and] \$150 million went to 35-year-old Allen Glick, mostly for Las Vegas gambling casinos which were subsequently investigated for skimming from slot machines. At the time of the loans, Glick had no substantial business experience.^{1/}

Fund investments resulted in a 4.9 percent rate of return between 1960 and 1974, compared with 7.5 percent on Treasury notes, Senator Percy said, adding that 29 pension fund loans were listed as in default as of December of 1975 and many more were uncollectible.

Senator Percy said 71 percent of fund assets were in high-risk real estate ventures. By comparison, most pension funds limited their real estate investments to five to ten percent of

^{1/} Hearings, "Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, July 18 and 19, 1977, pp. 4, 5.

their portfolios. About half of the fund's loans were to a small number of persons and more than half the loans were for ventures in California and Nevada, Senator Percy said. He went on to say:

Certainly, from the standpoint of the fiduciary's responsibility, this would seem to be totally out of line for normally accepted standards that should be established by the fiduciary.^{2/}

There was concern on the part of some federal officials that because of unwise investments the pension fund might have lost \$500 million to \$700 million, nearly one half its assets, Senator Percy said.

He pointed out that bad investments and declining assets had led fund officials to warn that future employer contributions might have to be increased by about 20 percent to \$37 a month for each new employee. Teamsters members, currently able to retire with full pension after 20 years of service or age 57, might further suffer from the fund's mismanagement by not being able to retire will full pension until 30 years of service or age 65.

Senator Percy said the fund's problems stemmed, in part, from "consummate arrogance" and "excessive secrecy," He explained:

It is an arrogance borne of too little attention by the former trustees to their obligations on behalf of the rank and file. It is a secrecy that appears deliberately intended to conceal their reckless investment decisions.^{3/}

To further his goal of ending the secrecy that he felt had for too long concealed pension fund operations, Senator Percy pressed Labor Department witnesses on the need to reveal details of what the fund was doing and how the investigation was moving.

But, while Labor Department Secretary F. Ray Marshall and his aides were willing to discuss in general terms what they knew about the pension fund and how their inquiry was going, they refused to give facts and figures about what their investigators had learned.

^{2/} Ibid., p. 5.

^{3/} Ibid., pp. 5, 6.

Referring to a "joint" Labor Department-Justice Department investigation, Secretary Marshall traced the history of the probe to date -- describing its start in 1975, the cooperative agreements worked out by his department with the Justice Department and the Internal Revenue Service, the revocation of the fund's tax exempt status, his decision to make "protection of fund assets" the primary objective of the investigation, the resignations of the fund trustees and the turning over to outside investment managers control of much of the funds assets.

Marshall said his investigators now would begin third party investigation. Third party investigation is that point in an inquiry when agents move beyond the original documentation and sources in the case and begin to interview and obtain evidence from persons who have knowledge of and participated in events central to the subject under examination. In the Central States case, for example, third party investigation would have meant interviewing borrowers, taking depositions from them and from persons who knew what the borrowers had done with the loans. Marshall's words on the point of third party investigation were as follows:

At this time our investigative activity is shifting from a review of fund records and documents to a search for evidence in the possession of others such as individuals associated with the fund. Much of what we discovered in the asset management phase of our investigation will be relevant to this second phase.

Marshall stressed the point that his agency was cooperating fully with the Justice Department by periodically turning over to Justice evidence that might warrant prosecution under federal criminal laws.

Marshall did not say, however, that his agents were being allowed to investigate evidence of criminal wrongdoing before referring it to the Justice Department. Nor did he give details about the manner in which the referrals were being made; or how many of them there had been. These issues became important to the Subcommittee in the months and years ahead.

4/ *Ibid.*, p. 15.

Some four year later, in a final report on the Labor Department's investigation, the Subcommittee criticized the Labor Department 1) for not conducting the third party investigation that had been promised; 2) for not conducting investigation of evidence of criminal wrongdoing; 3) for not referring evidence of crimes to the Justice Department in a formal, procedurally sound manner; and 4) for making very few referrals.^{5/}

But in the July 1977 hearings it was not yet completely apparent to the Subcommittee the long range consequences of the Labor Department's policy on crime in pension and welfare benefit funds.

That policy was articulated at the hearings by Monica Gallagher, a Labor Department lawyer who, in 1977, was Counsel for Enforcement.

Senator Jackson, citing the pension fund's \$180 million in Nevada gaming houses, asked if the Labor Department's investigators were looking into the possibility that there had been any illegal acts connected to such a huge commitment of resources to the gambling industry.

Gallagher's reply was that the Labor Department's inquiry was being conducted under authority of ERISA and that ERISA was a civil statute, not criminal. Criminal investigation was for the Justice Department. Senator Jackson tried to get Gallagher to acknowledge that the Labor Department had a responsibility to do the preliminary investigation of crime in pension funds, but she refused.

Senator Jackson asked if there were criminal penalties in ERISA and their discussion went like this:

Gallagher: There are criminal provisions in ERISA relating mainly to reporting and disclosure violations, Senator. The criminal provisions which are most likely to be in the forefront of your thinking are those related to embezzlement which are provisions of Title 18 and enforced by the Justice Department.

5/ Hearings, "Oversight of Labor Department's Investigation," August 25, 1980, p. 71. GAO said that in the entire five-year life of the Labor Department inquiry only 11 formal referrals were made to the Justice Department.

Senator Jackson: What about a clear violation of a fiduciary relationship in which the conduct is such to certainly bear on criminal conduct? Are these provisions in ERISA dealing with that kind of situation?

Gallagher: Senator, the ERISA provisions for fiduciary violations are provisions allowing participants to seek restitution and return of profits, but those are civil provisions, not criminal.

Senator Jackson: If there is a criminal conduct on the part of trustees which clearly violates the fiduciary responsibility, are you saying that that would not be a violation of federal criminal law?

Gallagher: No, sir, not at all. It would be a violation of federal criminal law, but it would be that part of the federal law which is codified in Title 18, and which is enforced by the Justice Department.

Senator Jackson: But there is no separate penalties provided for in ERISA of a criminal nature?

Gallagher: For fiduciary violations.

Senator Jackson: What about clear course of conduct that may involve conversion to one's own use or a means by which enrichment can occur to those who are supposed to be the trustees and in fiduciary capacity?

Gallagher: Senator, that conduct is already prohibited by Title 18.

Senator Jackson: I understand. I am aware of Title 18. Are you saying there are no special provisions in ERISA?

Gallagher: No, sir.^{6/}

That exchange between Senator Jackson and Monica Gallagher was typical of the debate that was to occur frequently over the next four years. The Subcommittee would want to know what the Labor Department was doing in the investigation of alleged crimes in the Central States Pension Fund. The Labor Department would respond by saying criminal investigation was not what it was supposed to do under ERISA, that its mandate was civil and that crimes were the province of the Justice Department.

The debate was not disagreement over an abstraction. The point of contention -- the responsibility of the Labor Department to detect, investigate and properly refer criminal cases to the Justice

^{6/} Ibid., pp. 18, 19.

Department -- had important implications. At stake was the question of whether or not persons who had allegedly looted the Teamsters Central States Pension Fund of hundreds of millions of dollars would ever be brought to justice. The answer to the question was no. Criminal charges have been brought against none of the principal borrowers or other major third parties as a result of the Labor Department's investigation.

Secretary Marshall summed up his agency's policy on criminal investigation when he told the Subcommittee in 1977 that he was aware of the problem of illegal conduct in pension fund activities and that he had directed that his investigators give complete cooperation to the Justice Department but it would accomplish little to send pension fund looters to prison and not collect the money that had been lost. He explained:

It doesn't do you a lot of good in many cases to put somebody in jail if you don't recover the funds, because you need to do both.^{7/}

Marshall's view would be called into question four years later when the Subcommittee found that the Labor Department's investigation had resulted in no one going to prison and no funds being collected.

It was the Secretary himself who admitted in 1980 that even if the government should win judgement against former trustees charged in a civil suit with fiduciary breach that the defendants will not be able to repay the lost monies. The former trustees, Marshall said, had neither the personal resources nor the insurance to make the fund whole.^{8/} The department's initial policy of not investigating culpable third parties resulted in this anomaly in which the only defendants charged are those who cannot afford to reimburse the fund.

^{7/} Ibid., p. 26.

^{8/} Hearings, "Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, August 25 and 26 and September 29 and 30, 1980, p. 290.

VIII. Staff Memorandum On Differences
With Labor Department

The Subcommittee's mounting concern over the Labor Department's passive attitude toward labor racketeering, particularly in the employee benefit fund area, was the reason for Senator Nunn's direction that the staff prepare a memorandum drawing as precisely as possible the lines of fundamental disagreement between the Subcommittee and the department.

The memorandum, written by Assistant Counsel LaVern J. Duffy, was submitted on January 17, 1978.

The memorandum provides a summation of the philosophical and legal differences between those persons who do not believe the Labor Department has major responsibility to investigate labor racketeering and those persons who believe the department does have such major responsibilities.

Duffy, whose experience with the Subcommittee includes service on the Select Committee under Senator McClellan, said that in 1959 when the Landrum-Griffin Act (Labor Management Reporting and Disclosure Act) was passed, the Labor Department created the Labor Management Services Administration (LMSA) and gave the new entity enforcement responsibilities for the new law.

The act contained numerous criminal penalties for embezzlement, fake reporting, false or non-existent record keeping, violence against union members, and criminal sanctions under the Taft-Hartley Act, Section 320, which prohibited bribing of union officials by employers.

In 1962, the responsibility for enforcing the Welfare and Pension Disclosure Act was given to LMSA.

And in 1974, the pension reform act, the Employee Retirement Income Security Act (ERISA), was given to LMSA for enforcement.

Duffy said the following criminal sanctions of Title 18, U.S.C., were applicable to violations of the 1962 Welfare and Pension Plans Disclosure Act and ERISA: 18 U.S.C. 664, embezzlement; 18 U.S.C. 1027, fake reporting and destruction of records; and 18 U.S.C. 1954, bribery and kickbacks.

Duffy said there was a widespread feeling among Labor Department officials that department policy, as reflected by LMSA, was to stress civil remedies and to neglect criminal enforcement. He said:

The individuals subject to LMSA's scrutiny have developed the impression that the department is not taking its enforcement responsibility seriously, and the statutes are violated to an astonishing degree. The Field Audit Program, to verify the accuracy of financial reports filed by union and pension plans, is almost non-existent. This was a prime source for criminal prosecution. Because investigations and prosecutions have decreased within the past few years, the Labor Department has stopped publishing the results of its criminal investigations.

Duffy said prosecutions of labor racketeering resulting from information from the Labor Department had decreased. The department, he said, had not supported adequately the Organized Crime Program of the Justice Department.

The Labor Department had agreed to supply the Organized Crime Strike Forces with compliance officers -- Labor's term for investigators -- who were expert in the detection and investigation of criminal violations of labor laws.

Recognizing the important contribution the Labor Department could make in this regard, Congress appropriated funds to enable the department to support the Strike Forces. Duffy said:

In this connection, responsible Labor officials state that despite the fact that Congress has appropriated funds to the Labor Department in fiscal year 1977 to support 64 investigators, only about 35 actually are performing this work nationwide. In many cities there are no LMSA investigators actually performing Strike Force work, although on paper it would appear that people are assigned.

Justice Department spokesmen advised the Subcommittee that on November 29, 1977 they met with Francis X. Burkhardt, Assistant Secretary of Labor, in an effort to persuade him to make sufficient numbers of compliance officers available to the Strike Forces.

The Justice Department felt a fair number of compliance officers for the Strike Forces would be 115. Labor Department officials replied that they could supply only 15.

The Labor Department commissioned the Decision Studies Group, a division of Science Management Corporation of Washington, D.C., to conduct a study entitled, "Evaluation of the Delivery of LMSA Field Services."

The Subcommittee obtained a copy of the draft report that was given to the Labor Department on October 7, 1977. The draft report criticized the Labor Department for its lack of support of the organized crime programs.

The report said the Labor Department had down played the importance of the organized crime effort to such an extent that it caused diminished morale among compliance officers who were assigned to Strike Forces. The report said:

The view expressed by many field personnel was that LMSA should either support OCP [Organized Crime Program] properly or get out of the program entirely.

The Decision Studies Group went on to say:

The basic issue of whether or not LMSA is to participate in the Organized Crime Program must be decided. While OCP is a mandated program, support to OCP has fallen to such a low level in some offices that even ardent supporters question the viability of the program under the present circumstances....OCP priorities are the lowest within LMSA in many area offices. Rotation of COs [compliance officers] between OCP and regular LMSA casework has been detrimental to the Organized Crime Program. Overall direction for OCP has been inadequate to properly manage the program.

The report added:

There appears to be a lack of direction of the anti-Organized Crime Program by either the Department of Labor or the Department of Justice. The program tends to become self-perpetuating and is typified by a lack of commitment from either area of Regional Administrators or by the ARA [Area Regional Administrator] for LMSA.

IX. GAO Report On ERISA Enforcement

On November 29, 1977, the Subcommittee asked GAO to study the Labor Department's investigation into criminal violations of the law in the operations of labor organizations and pension and welfare benefit plans.

The GAO report, issued on September 28, 1978, disclosed shortcomings in the Labor Department's criminal and civil enforcement programs. In the report, "Laws Protecting Union Members and Their Pension and Welfare Benefits Should Be Better Enforced," GAO found that most of the Labor Department's efforts and priorities in 1977 dealt with subjects other than criminal violations; that most of the effort under ERISA was devoted to activities other than enforcement of either the criminal or civil provisions of ERISA; and that the department used its national office computerized reporting process and desk audit system to achieve voluntary compliance with the laws.

GAO found the following weaknesses in the investigations and audits of labor organizations and employee benefit plans:

1. Lack of coordination in investigations of criminal and civil violations under both the Labor Management Reporting and Disclosure Act and the Employee Retirement Income Security Act.
2. Lack of formal procedures for notifying the Justice Department of cases under investigation.
3. Little investigative effort by regional offices to follow up on reasons for deficient reports submitted by unions and employee benefit plans.
4. Lack of sufficient field audit work at labor organizations and benefit plans.
5. Insufficient staff to enforce both LMRDA and ERISA and little formal training provided to regional office investigative and audit staffs.

The second finding -- that of a lack of formal procedure for notifying the Justice Department of cases under investigation -- would be proven correct frequently. The Labor Department was later found to have erected such a stubborn barrier to communication with

the Criminal Division of the Justice Department that ultimately federal prosecutors came to believe that the Labor Department's investigators were under orders not to speak to them about their work.^{1/}

In addition, GAO found that, in fiscal year 1977, the department unit with the duty to investigate unions -- the Labor Management Services Administration -- spent only one percent of its man-days on field audits of labor organizations and only three percent of its man-days on field audits of pension and welfare funds.

GAO put forward the following recommendations for corrective action:

1. Secretary of Labor F. Ray Marshall should ask Congress to give his department additional resources so that he could enforce the criminal provisions of the LMRDA and ERISA.
2. The department should strengthen area office audit activity by increasing the number of on-site field audits of unions and employee benefit plans and assure that consistent, high quality audits are made.
3. The department should improve the timeliness of area offices' investigations of cases with potential for criminal violations.
4. The department should establish procedures to require direct, continuous coordination between criminal and civil investigative activities in unions and pension and welfare plans by area offices.
5. The department should set up procedures to notify the Justice Department of its investigative efforts.
6. The department should review the training of its field staff to insure that auditors and investigators -- known as compliance officers -- had the skills needed to carry out their assigned duties.

Secretary Marshall's response to GAO's report was to adhere to his position that the Labor Department had a very limited role to play in criminal investigations.

^{1/} Hearings, "Oversight of Labor Department's Investigation," August 25, 1980, p. 14.

In a letter to Elmer Staats, the Comptroller General, on May 14, 1979, Marshall said he was committed to "aggressive programs" to enforce LMRDA and ERISA provisions for which his department was responsible.

He said his department was implementing a comprehensive training program for employees in ERISA enforcement and would soon begin a training program in audit procedures for LMRDA compliance officers.

Otherwise, Marshall would not acknowledge any deficiencies in the Labor Department's enforcement program or address GAO's specific findings of shortcomings and GAO's recommendations for corrective action.

Marshall rejected the idea of stepping up the field audit program as too costly. He added:

...I have serious doubt about the efficiency of simply throwing additional staff at the problem.

It was a "fundamental misconception" by GAO to suggest that ERISA gave his department extensive criminal duties, Marshall said, explaining:

...from this department's perspective, ERISA is primarily and essentially a civil statute, although we do have certain criminal responsibilities. It was, I feel, unfortunate for the [GAO] report to proceed on such a misconception.

Marshall was critical of GAO for language that "might lead the casual reader" to believe embezzlement from a union or union fund was a crime under ERISA. As will be noted later in this presentation, it has been the Subcommittee's position that whether embezzlement from a welfare fund is covered under ERISA is not the issue. The issue is that the Labor Department is obliged to be on the alert for evidence of embezzlement, to document it where it exists and to make an investigation of the evidence and then to properly and formally refer the information to the Justice Department in a timely and procedurally sound fashion. That point was made several times by the Subcommittee to Secretary Marshall but his opinion continued to be that embezzlement was not specifically covered by ERISA and that, therefore, the Labor Department was not

mandated to investigate. Embezzlement was only one of the many crimes not specifically covered under ERISA. No crimes, except those having to do with reporting and disclosure, were covered by ERISA, Marshall explained, as he told Staats:

As you are aware, ERISA is a statute whose principal remedies are civil and whose primary purpose is to protect plans and their participants.

It is useful to point out that every criminal offense against a pension fund is a civil violation. There can be no more blatant a fiduciary breach, for example, than embezzlement.

From Marshall's words, it was apparent that he did not consider it a form of protecting plans and their participants by investigating union fund embezzlers and other criminals with an eye toward putting violators in prison.

Marshall had doubts about using more investigative resources to find labor racketeers. He preferred to learn more about the "root causes" of crime in the labor movement and to use the "appropriate civil and/or criminal remedies" to deny unscrupulous persons from assuming positions of trust in unions or trust funds.

Marshall did not enlarge upon how he intended to find the "root causes" of labor racketeering or how the data would improve the ability of the Labor Department to combat it.

Kevin D. Rooney, Assistant Attorney General for Administration, offered a different response to the GAO report in a letter of June 18, 1979 to Comptroller General Staats.

Rooney said the Justice Department agreed with the GAO in its conclusion that the Labor Department did not feel its priorities included detecting and investigating crimes in labor unions and union employee benefit funds.

Under ERISA particularly, Rooney said, Labor Department compliance officers were not encouraged to undertake criminal investigations.

Rooney spoke out against "substantial and potentially harmful delays" caused by the Labor Department's Solicitor's Office inserting itself as a reviewing agent between any information passed from a compliance officer to the Justice Department. Rooney said

the Solicitor's Office at Labor was interested primarily in initiating civil cases and had failed to recognize the potential for criminal prosecution in some cases.

Discussing the Labor Department's system of filing reports submitted by labor organizations, Rooney said the department did not use desk audits of these reports in such a way as to try to detect instances of irregularities that might lead to criminal cases.

Compliance officers working on criminal investigation frequently were reassigned in the middle of their inquiries to work on civil cases and contested union elections, Rooney said, adding that investigative reports that did find their way to the Criminal Division of the Justice Department were often of inferior quality, a reflection of the fact that many Labor Department investigators needed more training in how to prepare a criminal inquiry.

The Criminal Division had recommended creation of a special category of criminal investigative compliance officer or an intensified training program in criminal investigation but Labor Department officials were cool to the idea, Rooney said.

X. Testimony Of Strike Force Attorneys

The Subcommittee held two days of hearings in April of 1978 to continue its evaluation of the government's ability to combat racketeering in the labor-management field.

Witnesses included Organized Crime Strike Force attorneys who were called before the Subcommittee to evaluate the effectiveness of the Labor Department's efforts to stop the intrusion of organized crime into the labor movement.

Newark and Buffalo

A summation of the problem of labor racketeering and the need to have the Labor Department help combat it was put forward before the Subcommittee by Robert C. Stewart, the attorney in charge of the Newark and Buffalo Offices of the Criminal Division in the Department of Justice.

After describing several instances in which organized crime figures had taken over local labor unions, Stewart concluded his testimony by pointing out that labor racketeering was as serious a problem today as it was in the 1950's when the McClellan Committee and other investigating panels brought the issue to the attention of the American public. The situation was worse than ever, Stewart said, adding:

It is a serious mistake to believe that the circumstances portrayed in Marlon Brando's movie, On The Waterfront, of the 1950's are somewhat passe.^{1/} The only real difference today is that captive labor organizations have a host of CPA's and very capable labor attorneys who are both able and willing to fight the government to a standstill. The books always balance and there is always an authorizing resolution in due form of law for every questionable expenditure. Yet the assets of a captive labor organization can be depleted without the knowledge of the CPA's by sophisticated financial manipulations.

What we have today is the exact same problem as in the 1950's involving many of the exact same suspects but the problem has become infinitely more difficult because of the financial sophistication which has been developed to circumvent the labor reform legislation.

^{1/} Stewart's reference to the corruption portrayed in the movie, On The Waterfront, was intended to apply in a figurative sense to certain pockets of lawlessness in the labor movement in general. However, as the Investigations Subcommittee was to document three years later, waterfront corruption on the East Coast and Gulf Coast docks was rampant and virtually uncontrolled. The Subcommittee's hearings on waterfront corruption are discussed later in this staff statement.

And the prize today is some \$40 billion in benefit fund assets which are not adequately protected because the government does not have the legislative tools and the investigative and prosecutorial resources to enforce the regulatory legislation which is on the statute books.^{2/}

Like many other federal prosecutors, Stewart was disappointed in the lack of interest the Department of Labor had shown in labor racketeering. Impatient with the Labor Department for foot dragging, Stewart recommended that Labor be given one more opportunity to investigate labor racketeering and if it failed to live up to its commitment, the responsibility it has in the field should be transferred to the FBI and the Criminal Division of the Justice Department.

Stewart testified:

The Department of Labor has recently offered to augment its personnel commitment to the labor racketeering program of the Department of Justice and to eliminate some of the bureaucratic problems which have been criticized by prosecutors. The Department of Labor should be given an opportunity to fulfill its pledges in this regard. But, if the practical and policy difficulties which have obviously prevented the Department of Labor from achieving any significant results over the past 20 years are not corrected, the enforcement responsibility should be transferred to the Federal Bureau of Investigation and the Criminal Division in the Department of Justice.^{3/}

Stewart said that unless steps are taken to protect welfare benefit trust funds and to remove gangsters who control them, the nation will face "a benefit default of catastrophic proportions." Stewart was of the opinion that this fate awaits the country unless there is "a drastic improvement in the government's enforcement capabilities."^{4/}

^{2/} Hearings before the Senate Permanent Subcommittee on Investigations, "Labor Management Racketeering," April 24 and 25, 1978, pp. 69, 70.

^{3/} Ibid., pp. 70, 71.

^{4/} Ibid., pp. 74, 75.

Chicago

Peter F. Vaira, attorney in charge of the Organized Crime Strike Force in Chicago, offered the Subcommittee a discouraging assessment of the extent of organized crime's inroads into the labor movement in the Chicago area.

Vaira testified that in the Chicago area nearly every major local union of three international unions was controlled by the Chicago crime syndicate.

Vaira said the officers of these unions answered directly to, or were actual lieutenants in, the crime syndicate. He said other unaffiliated unions were also controlled by the syndicate. He added:

The degree of corruption in the labor movement in Chicago is among the worst in the country.^{5/}

Vaira said the history of the infiltration of the unions could be traced to the Al Capone era. Through the years, he said, the power of hoodlums had increased. He said the most disturbing aspects of organized crime's control over the unions was that the corrupt labor leaders were accepted by many persons as legitimate members of the business community. Corrupt labor leaders were able to exercise significant political power, Vaira said.

Vaira was critical of the Department of Labor. He said the department's compliance officers had been unable to develop, or contribute to, many labor racketeering cases. He said there had been some compliance officers who did try to do effective work in labor racketeering cases but the Labor Department had restricted them and offered them no encouragement to continue in these efforts.

Vaira said the Labor Department had no current information on organized crime's intrusion into the labor movement. He cited one instance in which compliance officers were using 10-year-old data on the impact of organized crime figures on unions. The Labor Department had no method for keeping up to date on union corruption in the Chicago area, Vaira said.

^{5/} Ibid., p. 82.

Vaira said that what investigation the Labor Department did into union racketeering was poorly executed and frequently marred by serious errors of fact. Vaira said compliance officers were not familiar with labor violations, were guilty of conducting interviews in an unprofessional manner and were forced by Labor Department requirements to conduct narrow and incomplete investigations.

The Labor Department did not keep the U. S. Attorney's Office in Chicago informed of investigative progress, or lack of it, Vaira said, pointing out that the Labor Department closed cases with criminal prosecutive potential before sufficient information had been gathered.

Similarly, he said, at the close of one of its cases, the Labor Department was supposed to bring it to the attention of the U. S. Attorney. Instead, the Labor Department wrote to the local union and informed it of the questionable acts.

Vaira cited another inquiry in which an employer complained to the Labor Department that he was being forced to employ unneeded personnel under the threat of violence. The Labor Department closed the investigation of the complaint by informing the union of the employer's allegation, and identifying the complaining businessman by name. Vaira said that several weeks later the employer's business was bombed. Then the business was attacked by persons who tried to pour acid over the furnishings.^{6/}

Vaira said the FBI had tried to investigate labor racketeering in the Chicago area and had had some success. But the FBI did not have the broad statutory access to union records that the Labor Department had. The Bureau had to rely on grand jury subpoenas to acquire union records.

Vaira went on to say that a team of Labor Department investigators, well staff and experienced, could accomplish much more than the FBI could in the field of labor racketeering. He said:

It is essential that the Labor Department become active in the uncovering of union corruption. This DOL [Department of Labor] effort would complement the FBI activities and produce good results for both agencies.^{7/}

^{6/} Ibid., pp. 83, 84.

^{7/} Ibid., p. 85.

Cleveland

Douglas P. Roller, attorney in charge of the Organized Crime Strike Force in Cleveland, said his city was predominately a blue collar community with a high degree of unionization of workers. He testified that corruption and organized crime involvement were commonplace.

Roller said:

A great number of the union officials in this area are either organized crime personalities in their own right, or are associates of organized crime figures. These corrupt union officials constitute a virtual web of interlocking associations and diverse major labor organizations including the Teamsters, the Laborers, Longshoremen and the building trades. This interconnection extends also to the civic and political strata of Cleveland.^{8/}

Roller said the connection between the labor movement in the Cleveland area and the organized crime elements of the region had a long history dating back to the late 19th Century. Roller added:

This is not to say that by any means that every local union is infiltrated or controlled by organized crime, but rather to point out the close association between certain elements in the labor movement and organized crime. The impact upon the community of organized crime by control of substantial blocks of union members is self-evident.^{9/}

Roller criticized the Labor Department's work in organized crime-labor racketeering cases. Compliance officer did generally satisfactory work in straight audit and embezzlement investigations, Roller said, but they received little or no support from Labor Department national offices in Washington, D.C. in more complicated cases such as when there was a need for subpoenas or additional manpower or when appropriate investigative procedure called for third party interviews.

"Almost non-existent" was the way Roller described the intelligence upon which the Labor Department decided which unions to audit. Labor Department manpower allocations to the Cleveland area for criminal investigations were already below what was needed and any further reductions would be "absolutely devastating," Roller said.^{10/}

^{8/} Ibid., p. 89.

^{9/} Ibid.

^{10/} Ibid., pp. 91, 92.

Manhattan

Michael Q. Carey, attorney in charge of the Organized Crime Strike Force in Manhattan, said labor racketeering in the Southern District of New York occurred in a certain number of the locals in virtually every international union represented in his area.

George Nash, the former Labor Department representative on the Strike Force, told him that serious labor corruption existed in local unions of three particular international unions, Carey said, adding that spokesmen from other federal agencies participating in the Strike Force had found corruption in the unions mentioned by Nash and in others as well.

Carey said the resources provided to investigate the entire field of union corruption in his jurisdiction were "totally inadequate to the task."^{11/}

Of all the agencies working in the Manhattan Strike Force, the Labor Department had the lowest number of personnel, Carey said.

Carey opposed the idea that the FBI could take over the responsibilities of the Labor Department in labor racketeering investigations for three reasons.

First, [Carey said] no agency, other than the Labor Department, has the accumulated expertise in criminal labor investigations necessary to conduct the type of sophisticated investigations which are waiting to be pursued.

Second, the FBI does not have the authority to begin an audit of a labor union, but must rely upon an allegation that criminal activity has occurred before they may initiate an investigation.

And, third, the FBI does not have sufficient manpower to conduct labor corruption investigations without reducing its commitment to other areas of organized crime prosecutions.^{12/}

Carey stressed the need for using investigators in labor corruption cases who were familiar with the operations of unions, who understood how pension and other welfare benefit plans work and

^{11/} Ibid., p. 111.

^{12/} Ibid., p. 112.

could evaluate union records. Only those Labor Department compliance officers with this kind of experience and training were helpful on labor racketeering cases, Carey said.

Citing the need for more experienced compliance officers and pointing to a decline in the value of data provided the Strike Force by confidential informants in the labor corruption field, Carey said there had not been enough independently developed information to justify FBI audits and that made it all the more important that the Labor Department have the resources and the commitment to conduct the audits.

An audit that showed no sign of corruption was still a valuable exercise, Carey said, because it let the union know the monitoring process was close at hand and that it actually served as a deterrent to those who might try to commit a fraud in the absence of government scrutiny.

Carey estimated that it would require 15 investigators working fulltime on labor corruption cases in New York City several years to even begin to make a dent in the organized crime problem.

He noted two recent major convictions -- of International Longshoremen's Association General Organizer Fred R. Field, Jr., in a \$100,000 bribery case and of New Jersey Teamsters officer Anthony (Tony Pro) Provenzano in a \$300,000 kickback scheme -- as examples of successful prosecutions that called for substantial commitments of government resources.

Carey said the compliance officers assigned to his Strike Force became sufficiently experienced to do competent work after a minimum of a year on the job.

Carey said that in one on-going investigation of a "very important and well known" international union, every one of the international's New York City locals had been found to be infiltrated by organized crime.

Brooklyn

Thomas Puccio, attorney in charge of the Organized Crime Strike Force in Brooklyn, told the Subcommittee that only experienced Labor Department compliance officers had the know-how to mount the kind of comprehensive investigation needed to prepare for union racketeering prosecutions.

Puccio said that the removal of, or any decrease in, the Labor Department's commitment to the Strike Force in the Eastern District of New York would have "disastrous affects on our overall fight against labor racketeering."

Twelve Labor Department compliance officers were assigned to the Strike Force in the Eastern District, Puccio said, noting that these same 12 agents also worked for the Organized Crime Unit of the U. S. Attorney's Office in the Southern District of New York.

Puccio said one proposed solution to the shortage of compliance officers was to use agents working out of the Labor Department's regional offices in New York. Puccio strongly opposed the idea. He said the Labor Department did not coordinate the investigative work of its regional office in New York with the Department of Justice. Justice was not informed on the progress of investigations. Instead, the cases are referred to the Solicitor's Office in the Labor Department's national offices in Washington where the decision was made as to whether or not to refer the matter to Justice for possible prosecution.

Valuable time was lost in this process, Puccio said, noting that, because prosecutors were not called in early in the inquiry, the quality of the cases was usually diminished. The cases referred to him in this manner were few in number, were not of much consequence and frequently had to do with minor embezzlement and technical reporting violations involving lower echelon employees of labor unions. Puccio said these cases generally were not of interest to Assistant U. S. Attorneys.

Taking a historical view, Puccio said labor racketeering had reached a level similar to what it was in the late 1950's and early 1960's when the government, prodded in part by information

developed by the McClellan Committee, placed great emphasis on organized crime and labor racketeering investigations.

Puccio said that no Administration since that of President John Kennedy had approached labor racketeering prosecutions with needed enthusiasm and commitment of resources.

Puccio went on to say that the reduction in investigative resources and the emergence of corrupt labor officials who controlled large financial holdings had combined to make labor racketeering a problem of "even more immense proportions." He added:

Our recent experience in the Eastern District of New York corroborates these facts. Statements of witnesses and testimony obtained in numerous investigations conducted by our office, as well as reliable intelligence information provided to us by a variety of sources, have established that labor racketeering is pervasive.

In addition, more allegations of illegal labor-related activities are received by our office than on any other organized crime matter. Even more significantly, those allegations are almost always substantiated by investigation.

In fact, most labor racketeering investigations, which begin with an initial allegation of extortion, embezzlement or the making of illegal payments, branch off into investigations of other significant violations as well.

Thus, it is clear that the labor racketeering problem is most severe and that the need for an effective law enforcement response is essential. ^{13/}

Puccio recommended assigning more Labor Department compliance officers to the Strike Force in the Eastern District of New York. He said the FBI was trying to develop investigative expertise in labor cases but was still operating at a disadvantage in the field.

Philadelphia

Joel Friedman, attorney in charge of the Organized Crime Strike Force in Philadelphia, described labor racketeering in the Eastern District of Pennsylvania as an "awesome problem." He said organized crime had infiltrated many major unions and that some of the captured unions were "deeply entwined with our local political power structure."^{14/}

^{13/} Ibid., pp. 76, 77.

^{14/} Ibid., p. 105.

Especially troubling to Friedman was the control organized crime figures had over pension fund assets. He warned that if criminals continued to spend fund assets, the funds could be bankrupted. In order to check the intrusion of organized crime into benefit funds and other aspects of the labor movement, comprehensive, time consuming investigations, staffed by competent, experienced personnel, should be conducted. In that regard, the Labor Department had failed to make the needed contribution to the government's effort, Friedman said.

Focusing its resources more and more on civil cases, the Labor Department's commitment to the Philadelphia Strike Force was declining and the result had been that the Strike Force attack on labor racketeering had been "haphazard and fragmented," Friedman said.

The Labor Department was not structured in such a way as to encourage racketeering investigations, Friedman said. He pointed out that the Labor Department considered investigations of alleged irregularities in union elections to be of a higher priority than were inquiries into labor racketeering. There was a flaw in the department's reasoning, Friedman said, explaining:

It should be noted that these election complaints usually arise in unions where there is sufficient democracy to permit some dissident voices to be heard. However, this type of election protest is rarely heard in those unions which are Strike Force targets due to the fear and terror usually associated with trying to take over power from the hands of organized crime.

Thus, the victims of organized crime -- the memberships of these unions -- get less attention from the Labor Department than the members of other unions where dissident factions have sufficient freedom to openly oppose incumbents whose policies or practices displease them. This is a complete reversal of the priorities intended for combatting the power and influence of organized crime in the labor movement.^{15/}

^{15/} Ibid., pp. 107, 108.

Boston

Gerald E. McDowell, attorney in charge of the Organized Crime Strike Force in Boston, called the Subcommittee's attention to an extreme barrier to communication which the Labor Department had erected. He said that in Boston the Labor Department had laid down rules requiring compliance officers assigned to the Strike Force to speak only to their Labor Department supervisor and preventing them from conversing with the supervising Strike Force attorney.

McDowell said compliance officers had been reprimanded for disclosing important intelligence information directly to the Strike Force. Such rules were in direct contradiction to the basic concept of the Strike Force, which was to emphasize a close working relationship between investigators and attorneys from the start of the inquiry forward.

McDowell said that forcing the compliance officers to report through their Labor Department supervisors prevented a complete and direct line of communication between investigators and Strike Force attorneys.

McDowell said the Labor Department had an unfortunate habit of closing out investigations referred by the Strike Force with short one-page memoranda indicating that no evidence of a violation was found but failing to record whether any interviews were conducted or whether any other investigative efforts were made.

The Boston Strike Force had developed a great deal of information about labor racketeering, McDowell said, but, he added, for this information to be translated into criminal prosecutions considerable investigative work had to be done. Much of this investigative effort could be performed only if the Labor Department would make the necessary commitment of compliance officers -- and only if the Labor Department personnel would be allowed to communicate directly with Strike Force attorneys, McDowell said.^{16/}

^{16/} Ibid., pp. 159-162.

Miami

Marty Steinberg, an attorney in the Miami Strike Force of the South Florida Strike Force, said labor racketeering was "rampant in at least four or five major South Florida labor unions."

He said confidential informants who were highly regarded in organized crime circles had informed the Strike Force that southeast Florida had been declared an "open territory" by organized crime, indicating that all La Cosa Nostra or Mafia crime families would tolerate each other competing for "business" there.

The result, Steinberg said, was that organized crime figures who had engaged in all manner of criminal conduct in New York, Chicago and elsewhere had converged on South Florida and resumed their illegal activities.

One favorite target for them was labor unions where federal prosecutors had already proven the misappropriation of millions of dollars of union and union trust fund money. Steinberg said prosecutors had shown other crimes in union-related cases, including violent extortion schemes, kickbacks to labor leaders, murder, theft of materials and supplies, phony insurance and service contracts. Steinberg added:

The impact of this pervasive use of labor racketeering on the economy is staggering. Construction, tourism, transportation, labor insurance, and other related fields absorb the tremendous inflation of corrupt union practices.

Every home, business or other item that has to depend on union labor or trust funds run by labor racketeers bears the cost of embezzlement, kickbacks, extortions and the like. All these "costs" of doing business are passed on to the consumer. In labor racketeering trials, employers have frankly admitted that these "costs of doing business" are passed on to the consumer and deducted from their taxes. The economic impact is severe.^{17/}

Steinberg, who became Chief Counsel of this Subcommittee and is now Chief Counsel to the Minority, said the depletion of union trust funds by corrupt labor leaders left the members with reduced benefits after years of contributions.

^{17/} Ibid., p. 97.

He said many union members had come to federal agents to complain that after 20 to 30 years of paying into the pension funds there was no money left in the trusts for their retirement. In addition, he said, since the government insured some pension funds, federal tax dollars were used to reimburse the looted trusts.

Many union members tolerated the incursion of mobsters into official positions in unions under the mistaken impression that gangsters bargain harder, Steinberg said. Union members who believed that should consider the losses they suffer over the long run. Along with the higher wages he may have won for workers, the racketeer has also entered into sweetheart deals with management, extorted employers, and stolen from the union and union trust fund, Steinberg said.

Asserting that Labor Department compliance officers had done good work in South Florida, Steinberg said they brought to labor racketeering cases an expertise essential to successful prosecutions. However, he said, the Labor Department was reducing its commitment of compliance officers in Miami from four agents to one at a time when 10 to 20 investigators could be kept busy on a fulltime basis. Cases had been opened but remained uninvestigated because there were no compliance officers to work them, Steinberg said.

Even though the FBI was assuming more responsibility in labor racketeering cases, the Bureau could not fill the need for having fulltime Labor Department compliance officers on the case, Steinberg said, adding:

These Labor Department agents deal with union and trust funds on a daily basis. Their specialized knowledge and training in these matters make their aid essential. Their access to and understanding of reports filed by unions and trust funds is also important. Most important of all is their constant exposure and ability to open lines of communication and develop avenues of information that lead to significant investigations that are not available in other quarters.^{18/}

^{18/} Ibid., p. 103

Steinberg enlarged upon a point made by Joel Friedman, Strike Force attorney in Philadelphia, who had complained about the Labor Department's decision to focus more and more attention on civil investigations and civil suits and, in so doing, removing resources from criminal investigations.

Steinberg also noted the Labor Department's shift away from criminal inquiry and to civil cases and had this criticism to level against it.

Steinberg said the substitution of civil investigations for criminal enforcement was not feasible. The preferable sequence, he said, would be to have civil teams "back up or mop up behind the criminal investigations."

In this way [he said] not only do you have the salutary effect of convictions of labor racketeers to discourage similar acts, but you would have civil teams recovering funds and removing officers and trustees after conviction.^{19/}

Civil action would never be as effective as criminal prosecution in labor cases, Steinberg said, pointing out that criminal inquiry was necessary to seek out those sophisticated labor racketeers who used complex schemes to extract money from or through unions.

In addition, he said, criminal investigations had the advantage of the use of grand juries to compel testimony and records, the use of informants, court-ordered electronic surveillance and other investigative techniques not available to civil investigators.

Steinberg said civil investigations took longer than criminal, that criminal cases had priority in the judicial system and move forward rapidly while civil cases remained in court for years at a time. He said:

...the objective of a civil investigation may not have the same impact a criminal case will. A civil suit to remove a trustee or recover money long ago dissipated has no appreciable effect on the labor racketeer. The penalty of a removal and threat of civil liability which is traditionally compromised or forgotten completely once the trustee is removed means little to a labor racketeer who has misappropriated millions of dollars. In fact, the minimal nature of the threat to the labor racketeer encourages him and others to commit more crimes.

^{19/} Ibid., p. 101.

The tools available through a criminal investigation and prosecution are much more formidable and have much greater impact. First and foremost, the perpetrator goes to jail, which is an object lesson in and of itself....Not only does criminal prosecution and conviction punish the offender, but it serves to put others on notice not to commit the same acts.

Another advantage...is that criminal investigations are self-initiating inquiries to unearth irregularities. They do not depend on prior discovery of wrongdoing as in a civil matter.

Also, the economic impact on a defendant can be immediate and devastating. If the RICO statute (18 U.S.C. 1963), is used, the government can move to forfeit money, positions and property to the government upon conviction. If the defendant is tried for the tax consequences of his illegal acts in the same case, which is preferable, he faces monumental tax problems upon conviction.

The results of the use of these criminal tools have a much more immediate consequence to the defendant than any civil action could possibly have. In addition, the defendant loses freedom and assets. The law under RICO has established (in the Rubin case) that the defendant will also forfeit the positions he held with the unions or trust funds.^{20/}

Steinberg said there was a serious shortcoming in the Labor Department's policy of focusing exclusively on the civil enforcement features of the pension reform statute, the Employee Retirement Income Security Act (ERISA), to the virtual exclusion of enforcement of the Taft-Hartley Act prohibition against payoffs to union officials and the enforcement of federal laws against misappropriation of union funds and extortion and kickbacks.

Prohibitions against misappropriation of union funds and the Taft-Hartley Act anti-payoffs provision were important statutes and should be enforced by the Labor Department, Steinberg said. Moreover, while the FBI also had jurisdiction in kickback and extortion cases, traditionally these crimes arose out of labor racketeering investigations and had been handled by Labor Department compliance officers, Steinberg said. He went on to say:

If the theory is that the civil ERISA teams will proceed civilly and then refer everything criminal they find to the Justice Department, this process will not work.

^{20/} Ibid., p. 102.

First of all, without the special aid of a prosecutor in the investigative stages many complicated sophisticated schemes may be overlooked.

Second, I am unaware of any cases which have been referred from the Labor Department for criminal prosecution.

In my opinion, none of the cases which have been investigated and prosecuted criminally in Southern Florida would have seen the light of day if this were the procedure that was employed.

I believe you could ask anyone who has dealt in the criminal enforcement of the labor laws about the necessity for criminal as opposed to purely civil action and they would concur.^{21/}

^{21/} Ibid., p. 103.

XI. Civiletti And Marshall Had Differing Views
On Strike Force Issue

In the same hearing, Benjamin Civiletti, the Acting Deputy Attorney General, also spoke about the problems his agency faced in getting the Department of Labor to carry out its responsibilities to detect, investigate and properly dispose of cases of alleged labor racketeering.

Civiletti said the Justice Department was trying to persuade the Labor Department to increase the participation of "compliance officers" -- that is, Labor Department investigators -- in the Organized Crime Strike Forces.

Citing a drop in the assignment of compliance officers from 199 in 1972 to 44 in 1977, Civiletti said the Labor Department investigators had responsibility to monitor labor organizations and in that capacity were uniquely equipped to detect criminal violations. The problem was in getting the Labor Department to do what it could do best.

No other component of government could detect criminal violations of labor unions as well as the Labor Department if only the department would make a commitment to do it. Civiletti said the FBI, for example, had neither the statutory authority nor the expertise to monitor union activity.

When he learned that the Labor Department intended to further diminish to 15 compliance officers its participation in Strike Forces, it "sent a chill up my spine," Civiletti said. After considerable protests from the Justice Department and this Subcommittee, the Labor Department, citing a misunderstanding, announced that 125 investigators would be assigned to the field of organized crime and labor racketeering. But Civiletti was not convinced. He told the Subcommittee that the personnel assigned to this field existed only on paper as far as he knew and he would consider the assignments a reality when the compliance officers were actually working on labor corruption cases.^{1/}

^{1/} Hearings before the Senate Permanent Subcommittee on Investigations, "Labor Management Racketeering," April 24 and 25, 1978, pp. 13-19.

The debate between the Labor Department and Justice was not an isolated event. Nor was it strictly an argument over the allocation of compliance officers to labor racketeering investigations. At issue was a fundamental and sharp difference in opinion and philosophy as to what was important and what were priority concerns.

The Labor Department did not place a high priority on eradicating crime from the labor movement. Conversely, the Justice Department made that objective a very high priority, believing that labor racketeering was an important aspect in the overall existence of organized crime in the United States. The Investigations Subcommittee had noted the difference in opinion and had generally endorsed the view that the Labor Department could be and should be doing more in combatting the intrusion of organized crime into the union movement.

In his April 1978 testimony before the Subcommittee, for example, Civiletti said the Justice Department had made labor racketeering "a primary target" in its efforts to control organized crime.^{2/}

Giving the Subcommittee another point of view at the hearings was F. Ray Marshall, the Secretary of Labor from 1977 to 1981, who testified following Civiletti and the Strike Force attorneys.

Marshall said the Labor Department fully supported the Justice Department's drive against labor racketeering. But, that being said, Marshall made clear his skepticism about the entire effort -- and the need for it. He suggested that the Justice Department had exaggerated the problem of organized crime's encroachment into the labor movement and that, in fact, the problem was a small one.

Pension funds and other benefit plans were, in fact, more secure now than they had ever been, Marshall said, testifying:

Now I would have great difficulty believing that the funds are as vulnerable, with the passage of the Labor Management Reporting and Disclosure Act [Landrum-Griffin], with the reporting of ERISA, as they were at the time of the McClellan hearings. I find that almost incredible.

^{2/} Ibid., p. 13.

I know that we have done some things to protect the major funds and that we, as you know, have the ability to remove trustees from a fund. We have the ability to enjoin transactions that we think will jeopardize the funds, and we have done that.

We also have the ability to require restitution to those funds and to require better information about them.

...I have great difficulty believing that after the passage of LMRDA, and all we are doing to try to insure the democratic procedures within organized labor, that those procedures are no more secure than they were in the 1950's. I find that incredible.^{3/}

Marshall did not accept the assertion made by several Strike Force attorneys that organized crime had captured certain union locals and had infiltrated certain international union organizations. For example, in his prepared remarks, Marshall was careful to say that some unions were "tainted" by organized crime but avoided words like "captured" or "controlled" or any other word suggesting that gangsters were actually in charge.

Moreover, Marshall felt that the way to remove organized crime from a union was to study the problem first and then try to understand why organized crime figures had succeeded in one union and failed in most others. In any event, he said, organized crime's intrusion into the labor movement affected less than one percent of the local unions in the country. Such limited success by criminal elements indicated to him that this was "not a major problem."

In depicting the organized crime problem as a small one, Marshall had used statistics first given the Subcommittee by Acting Deputy Attorney General Benjamin Civiletti. In his testimony, Civiletti had described the labor movement as being generally free of organized crime but that where the problem did exist it was of considerable dimensions. Civiletti said there were about 75,000 local unions in the nation and that about 300 of them were "severely influenced by racketeers." This would indicate that less than one-half of one percent of the locals were controlled by gangsters. But, Civiletti added, "300 is an awful lot of racketeering influence in local unions."^{4/}

^{3/} Ibid., p. 205.

^{4/} Ibid., p. 9.

Enlarging on that point, Civiletti had said most of the 300 locals were concentrated in about five or six international labor organizations and the crimes that showed up in them included no-show or ghost employees who were frequently organized crime members paid for doing no work; kickbacks to trustees of pension funds in return for loans to shaky investment projects which were in turn looted; payoffs to union officials in return for which an employer's labor costs were kept to a minimum; and embezzlements from union treasuries. Civiletti added:

All of these activities cost someone, if not everyone, money. They cost either the consumer who must pay higher prices because the cost of labor is inflated by payments which the employee never received, or they cost the employee who does not receive the wages he should because the employer has a sweetheart contract or because his pension fund has inadequate resources to pay the pension he has been counting on for his retirement. Underlying all of these monetary costs, which are substantial enough by themselves, are the fundamental costs of loss of workers' freedom, physical safety, and even lives when mobsters exercise or obtain control through violent means.^{5/}

Marshall was persuaded neither by Civiletti's description of the problem nor his point that the 300 corrupt and controlled locals were largely in five or six internationals, making their impact on the labor movement itself of greater force than their numbers might suggest. Instead Marshall stressed the need for more study of the problem and a realization that merely prosecuting gangsters and removing them for union positions was no solution because they would only be replaced by other gangsters. That approach had been tried 20 years ago and had failed, Marshall said. His testimony on these points was as follows:

...it seems to me that one of the most important things this committee can do and we can all do working together is to put the problem in the proper perspective; that is, to find out how serious the problem is, how widespread it is and some of the dimensions.

I notice conflicting testimony on that fact. And I think the beginning of our understanding of the problem ought to be first to try to say how pervasive it is; and, second, we ought, as part of that process, to ask ourselves where is it located and why is it located where it is.

^{5/} Ibid., pp. 9, 10.

It seems to be it would be very difficult for us to do much about any problem unless we first analyze its root causes, and to see if it is concentrated in particular places, as it appears to be, what are the reasons for that and what can we do to change those particular causes, basic root causes that are at work here.

If, for example, we find that most of the crime in the labor movement is concentrated, as it appears to be, in less than one percent of the local unions in the labor movement, and concentrated in relatively few international unions, we ought to follow that by asking ourselves the question, what are the circumstances in those places that lead to the infiltration of criminal elements?

I think the fact that it is not randomly distributed throughout the labor movement suggests that the problem is not a major problem but that it has basic causes. We would probably find that a basic cause is the availability of funds which have not been adequately controlled and where accountability has not been adequately enforced. Other possibilities include opportunities for bribery and kickbacks, and those opportunities are usually related to the ability to make decisions about which employers get labor and which workers get jobs.

Now these are not circumstances that are pervasive in the labor movement. But it seems to me we need to undertake that kind of systematic investigation in order to be able to isolate the basic areas within the labor movement where we have a serious problem with organized crime and try to strike at those.

I emphasize that because it seems to me that if we do not do that, then 20 years from now we will be back making the same kinds of statements we are making now....

Let me suggest, however, that the mistake might have been 20 years ago to assume that the problem was randomly distributed throughout the labor movement and not to look at areas of basic causation. Because if that is all you do -- in other words, if your basic objective is simply to arrest criminals and incarcerate them, then you won't ever solve the problem in my judgment. I think you have got to do more than that. That is an important part of the program.

But if you only do that, and if there are basic causes that tend to produce criminal elements, then new criminals will take the place of the old. Sometimes they are related to the old. You are not really doing things to root out the basic causal forces at work in the problem.^{6/}

^{6/} Ibid., pp. 190, 191.

XII. Library Of Congress Study

With the Labor Department's unyielding view that it had little or no responsibility to detect and investigate crimes under the Employee Retirement Income Security Act (ERISA), the Investigations Subcommittee sought the judgment of the American Law Division of the Library of Congress.

In an April 13, 1978 research paper submitted to the Subcommittee by American Law Division Legislative Attorney Vincent Treacy, the Library of Congress concluded that both LMRDA and ERISA conferred on the Labor Department the responsibility to detect and investigate evidence of criminal wrongdoing in the activities of unions and union trust funds.

The Library study said the Congress intended that the reporting and disclosure provisions of both LMRDA and ERISA were to be major tools to be used by the Secretary of Labor to detect the possible existence of violations.

The Library study found that the Labor Department had the responsibility to turn over to the Justice Department any evidence developed by Labor investigators which warrants consideration for criminal prosecution under federal law.

It was the finding of the Library study that, while the Justice Department was responsible for the prosecution of those who illegally used the assets of unions and pension and welfare funds, it was the duty of the Labor Department to take the initial action to see that such alleged violations as fraud, embezzlement, misapplication, conflict of interest and other criminal acts involving those assets were exposed and brought to the attention of the Attorney General for prosecution.

In commenting on the findings of the Library of Congress study, Senator Nunn expressed the Subcommittee's long standing opinion on this subject when he said in October 14, 1978 remarks in the Senate:

The key to effective enforcement of the criminal provisions applicable to LMRDA and ERISA is the initial detection of a potential criminal violation. The government cannot investigate or prosecute a criminal violation unless it is first detected.^{1/}

^{1/} Congressional Record, October 14, 1978, p. S.19549

XIII. Interim Report Issued On
Roy Lee Williams

On August 25 and 26 and September 29 and 30, 1980, the Investigations Subcommittee held hearings on the efficiency and effectiveness of the Labor Department's five-year inquiry into the Teamsters Central States Pension Fund.

One of the witnesses at the hearings was Roy Lee Williams, who was then president of the over-the-road truck drivers Teamsters Local 41 in Kansas City, Missouri and vice president of the Teamsters International. Williams, who had been a member of the board of trustees of the pension fund for 22 years, was frequently mentioned as a likely successor to Frank Fitzsimmons as president of the union.

In his appearance before the Subcommittee, Williams was questioned about court-authorized electronic surveillance tapes and other information developed by law enforcement indicating that he was an organized crime "mole," a pawn of gangsters who had been given senior positions in the Teamsters Union and in the Central States Pension Fund to look out for the interests of Kansas City crime boss Nicholas Civella and other mob figures.

To each question the Subcommittee asked Williams about his reported ties to Civella and other gangsters, Williams invoked his Fifth Amendment privilege, saying that if he responded his answer would incriminate him.

Frank Fitzsimmons died on May 6, 1981. Williams was appointed to succeed him as president on an interim basis pending an election at the Teamsters five-year convention that was to take place in Las Vegas in June of 1981.

The Investigations Subcommittee issued an interim report on May 20, 1981 -- about two weeks before the Teamsters convention -- devoted to Williams' appearance before the Subcommittee, his reported ties to organized crime figures and his invocation of the Fifth Amendment privilege when asked about his alleged link to mobsters and about his conduct as a union fiduciary, both as a member of the Central States pension fund board of trustees and as a senior officer of the union.

It was the Subcommittee's view that it was obliged to speak out against Williams before Teamsters delegates voted on his candidacy for union president.

After recounting the information it had received on Williams' reportedly being controlled by Nick Civella and other organized crime figures, the Subcommittee's interim report recommended that the Department of Labor initiate legal action that would require Williams to either waive his Fifth Amendment privilege and give a full and sworn accounting of his conduct as a union fiduciary or step down as an officer of the union.

The Subcommittee based its recommendation on a course of action the Labor Department had followed in forcing the resignation of William Presser from the board of trustees of the Central States pension fund.

When, early in the department's investigation of the fund, William Presser invoked the Fifth Amendment privilege during a deposition with government lawyers, the Labor Department demanded his resignation.

The department did not question his right to invoke the Constitutional privilege against self-incrimination but it did question his right to be a union fiduciary -- that is, a member of the pension fund board of trustees -- and not give a full and sworn accounting for his actions taken in the fiduciary role.

Rather than test the issue in court, William Presser resigned from the board.

In its recommendation in the interim report, the Investigations Subcommittee said the Labor Department should invoke the same principle with Roy Lee Williams.

The Subcommittee pointed out that Williams, in addition to his fiduciary role as a pension fund trustee for 22 years, was, by federal statute, a fiduciary of the union by virtue of his senior position.

It was, the Subcommittee said, the responsibility of the Labor Department of bring Williams before a legal proceeding and give him the opportunity once again to respond to questions

about his fiduciary role. If he again invoked his Fifth Amendment privilege, the department should begin action to try to remove him from office on the grounds that he would be in breach of his fiduciary obligations by refusing to account for his conduct as a fiduciary.

In the interim report recommendation, the Subcommittee said:

The Labor Department was able to persuade one of Roy Williams' colleagues, William Presser, to resign from the board of trustees of the Central States pension fund. William Presser would not answer questions the Labor Department asked him about his fiduciary conduct. The Labor Department argued that trustees are obliged to account for their conduct as fiduciaries. If they refuse, they can be accused of being unsuitable to continue to serve as fiduciaries. When confronted with a department demand that he resign, William Presser chose not to test the issue in court and stepped down from the board.

The Labor Department's position was that a fiduciary, a person entrusted with the money of union members, must be held accountable as to how he handled that money. The Subcommittee believes the Labor Department should apply the same legal reasoning to Roy Lee Williams and his fiduciary conduct.^{1/}

In the recommendations, the Subcommittee noted the Constitutional right of any citizen to refuse to incriminate himself. Care was taken to stress that it was not Williams' right to invoke the privilege that the Subcommittee was questioning. The issue the Subcommittee raised was Williams' right to remain a fiduciary while refusing to give a full and sworn accounting of his conduct as a fiduciary. The Subcommittee said:

The federal government, by statute, has granted labor unions and their officials many benefits no other entity enjoys. As a result, those officials have important responsibilities and duties as fiduciaries. If these officials do not live up to these responsibilities, there is no legal reason that the labor union official should enjoy these federally mandated benefits by virtue of their retaining their fiduciary role.

^{1/} Interim Report, "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, May 20, 1981, p. 13.

The Subcommittee is not suggesting that an individual be penalized merely for asserting his Fifth Amendment privilege. It is suggested, however, that a fiduciary has certain obligations, among them the obligation to fully disclose matters affecting his fiduciary responsibilities. If a fiduciary breaches this duty, he may be removed. It is not our purpose to comment on the reason a fiduciary refuses to disclose, such as the invocation of the Fifth Amendment privilege. The reason for refusing to account for his conduct as a fiduciary does not eliminate his responsibility to abide by his fiduciary duties. Any breach of his fiduciary duties may be grounds for removal regardless of the reason for the breach. Any such refusal to respond, coupled with factual allegations of misconduct, should be aired in a full and fair due process hearing to determine if such a fiduciary should be removed. Federal labor law grants the Department of Labor the right to apply to a federal court for removal of fiduciaries.^{2/}

The Subcommittee referred the interim report to the Department of Labor and asked the department to let the Subcommittee know what it intended to do in response to the recommendation regarding Roy Lee Williams in 60 days.

In subsequent meetings between the Subcommittee staff and officials of the Labor Department, the department rejected the Subcommittee's recommendation. Department officials said federal law did not give them uncontested authority to initiate legal action to remove union leaders for alleged fiduciary breach.

In formally responding to the Subcommittee's interim report, the Labor Department, in a letter of July 9, 1981, again rejected the recommendation. The letter, signed by Secretary Raymond J. Donovan, said the department did not have lawful authority to carry out the Subcommittee's recommendation.

^{2/} *Ibid.*, p. 14.

XIV. Final Report Of Subcommittee
On Labor Inquiry

The final report of the Subcommittee regarding the Labor Department's investigation of the Teamsters Central States Pension Fund was filed on August 3, 1981 by Senator Roth, the Chairman, on behalf of himself, Senator Nunn, the Ranking Minority Member, and other Members of the Subcommittee.

The Subcommittee pointed out that the Labor Department's inquiry did lead to four positive results:

1. The department was successful in clearing the board of trustees of men who were alleged to have abused their fiduciary trust.
2. The department was successful in removing most of the fund's assets from the hands of the trustees and placing them in the control of independent asset managers.
3. In the period beginning in late 1975 to January of 1981, the fund's financial picture improved considerably.
4. The Labor Department instituted a civil suit to obtain recovery of funds lost due to alleged mismanagement.

However, after citing the positive results of the investigation, the Subcommittee criticized the Labor Department's handling of the inquiry on a wide variety of points.

The Subcommittee disagreed with the Labor Department's "narrow and limited" investigative approach. Because the investigation was so narrow, it was ultimately doomed to fail. The Subcommittee said the Labor Department failed to provide for long-term reform and protection of the fund. The department's limited approach brought temporary relief without treating the underlying problems, the Subcommittee said, listing these specific shortcomings in the department's effort:

1. The investigation was incomplete.
2. Third party investigation was limited and eventually called off.
3. There was a lack of coordination with the Justice Department.

4. There was a deemphasis on criminal matters.
5. Inexperienced personnel were permitted to take control of the investigation.
6. The Labor Department failed to obtain any enforceable agreement with the fund.
7. Despite the fact that the Labor Department succeeded in removing the trustees, it left the fund vulnerable by failing to take part in, or require the approval of, the selection of the new trustees.
8. Despite the fact that the Labor Department succeeded in bringing suit against fund trustees and officials, it failed to lay the foundation for a successful result in the litigation because it limited the investigation to certain transactions, thereby ignoring many areas of abuse; it limited the suit to fund officials and failed to pursue culpable third parties; and it failed to name financially secure defendants who could reimburse the fund.

The Subcommittee report went on to say:

The Department of Labor's approach to attempting to protect fund assets was incomplete and inconsistent with well recognized investigative techniques. The narrow approach employed by the Department of Labor failed to achieve the lasting results necessary to reform the fund and protect the beneficiaries. It also ignored the pervasive evidence of organized crime's influence over the fund.^{1/}

This last point -- the assertion that the Labor Department ignored pervasive evidence of organized crime's influence over the fund -- was one of particular concern to this Subcommittee, which, along with its jurisdiction in labor-management racketeering, is also charged with the duty to investigate organized and syndicated crime.

Because of its own experience in the field of organized crime, the Subcommittee was aware of the many long standing links between the Central States Pension Fund and some of the nation's most notorious organized crime figures.

^{1/} "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Senate Permanent Subcommittee on Investigations, August 3, 1981, p. 168.

The Subcommittee was not alone in noting the connections of organized crime figures to the Central States Pension Fund. It was also a point made in January of 1975 in a study prepared by the Labor Department. The study, based on information already contained in Labor Department files, provided a primer on the extent to which organized criminals were believed to have infiltrated the pension fund.

Disclosed in the study were multimillion dollar loans the fund had made to hotels, resorts and other entities which had gone bankrupt; loans to high risk gambling establishments and resort developments; and several major prosecutions which had been mounted by the federal government against organized crime figures associated with the pension fund.

Describing Morris Shenker, Jimmy Hoffa's lawyer, as a "well known St. Louis attorney who is a millionaire as a result of his dealings with the pension fund," the study went on to note the ties to the fund of men like Shenker, Allen Dorfman, Allen Robert Glick, Alvin Baron, Irv Weiner, the later Irvin J. Kahn and other persons reputed to be affiliated with mobsters.

The Labor Department study said the fund would not reform itself. It summed up the problem this way:

Events...indicate that there will be no change in the operation of the fund, since the lending policies have not changed. In spite of the scandals, criminal prosecutions, bankruptcies and widespread involvement of criminal syndicates in the operation of this fund, it continues to operate as before. It would appear that the continuation of the lending policies, the makeup of the trustees, and the continuing presence of people such as Allen Dorfman, Al Baron, Morris Shenker, etc., will guarantee that the funds intended for the pensions of the Teamsters will be in jeopardy.^{2/}

The Subcommittee's investigation and hearings demonstrated in clear terms the effort by the Labor Department to avoid any aspect of inquiry that might have resulted in the development of information of a criminal nature.

^{2/} Ibid., p. 162.

The department's inquiry was begun in late 1975 under the direction of experienced Justice Department lawyers who had thought that developing criminal information was part of their assignment. However, during the first year of their work it became more and more apparent to them and their associates that the Labor Department had no intention of allowing criminal cases to be developed. For that reason, and several others, the officials heading up the inquiry resigned from the Labor Department.

The Investigations Subcommittee was also misled as to the intentions of the Labor Department. The Subcommittee received testimony indicating that criminal information would be developed and referred to the Department of Justice. This assurance was given the Subcommittee in an executive session briefing on December 11, 1975 by James D. Hutchinson, Administrator of the Pension and Welfare Benefit Programs in the Department of Labor.

From the Subcommittee's point of view, there was a flaw in the Labor Department's policy on criminal investigation as expressed by Secretary Marshall and Monica Gallagher. The flaw was seen in the fact that ERISA and other federal statutes gave the Labor Department access to welfare and pension trust funds. No other component of the government had that access. The department should use that access to develop more criminal cases whenever appropriate.

Moreover, no other component of government had the knowledge of welfare and pension trust funds that the Labor Department had. A competent Labor Department investigator was the best trained, best equipped and the most experienced person in government to make inquiry into welfare and pension trust funds.

The Subcommittee believed that it was required of the Labor Department that it make every effort to detect and investigate crime in trust funds; and then that it formally refer the results of its investigations to the Justice Department. The Subcommittee made this point in its final report on the Central States Pension Fund investigation.

The failure of the Labor Department to carry out its responsibility to detect, investigate and properly refer to the Justice Department allegations of criminal wrongdoing resulted in

an historic lost opportunity, the Subcommittee noted, saying:

On balance, the [Labor] Department's investigation was a failure because the real villains in the affair -- the reputed organized criminals who systematically looted the fund of millions and millions of dollars for the past two decades -- were not brought to justice. Their names were rarely referred to Justice. Nor were they subjected to civil liability.

To Secretary Marshall this was strictly a civil matter. The only problem with the fund was one of possible civil violations of ERISA. To this Subcommittee's thinking, it was an inept, narrow, naive approach.

It is regrettable that the Labor Department, from January 1977 to January 1981, was guided by a policy that interpreted the ERISA statute with tunnel vision. The department's narrow interpretation of ERISA ignored the spirit and intent of the statute and made a mockery of the Congress's primary purpose -- to protect the interests of union members and fund beneficiaries.^{3/}

^{3/} Ibid., pp. 178, 179.

XV. Subcommittee Hearings On Waterfront Corruption

Waterfront corruption was the subject of six days of hearings the Subcommittee held in February of 1981. The hearings showed that corrupt practices were commonplace on the East Coast and Gulf Coast docks and that the U. S. Department of Labor had not taken the initiative in trying to bring reform to the waterfront.

Witnesses at the hearings cited criminal activity within the International Longshoremen's Association and the American shipping industry. They described the struggle for economic survival in ports that were riddled with a pervasive pattern of kickbacks and illegal payoffs to union officials.

Witnesses testified that payoffs were a part of virtually every aspect of the commercial life of a port. Payoffs insured the award of work contracts and continued the life of contracts already awarded, according to witnesses.

Payoffs were said to have been made to insure labor peace and to allow management to avoid future strikes. Payoffs were reportedly made to control a racket of workmen's compensation claims. Payoffs were reportedly made to expand business activity into new port and to enable companies to circumvent work requirements.

Organized crime, in the form of La Cosa Nostra or Mafia crime families, was found to have significant influence in the operation of the ILA and several shipping companies.

Some shipping firms, because of fear or a willingness to participate in highly profitable schemes, were shown to have learned how to prosper in the corrupt waterfront environment. They were shown to have treated payoffs as a cost of doing business, a cost they were said to have passed on to consumers.

The Subcommittee received testimony indicating that the free enterprise system had been thrown off balance in the shipping industry. Contracts were not awarded on the basis of merit. The low bid did not win out over the competition. Profitability was not based on efficiency and hard work but rather on bribery, extortion and questionable connections.

Testimony indicated that much of the corruption on the waterfront stemmed from the control organized crime families exercised over the ILA, a state of affairs that reportedly had existed for at least 30 years.

In the mid-1950's, the Senate Select Committee on Improper Activities in the Labor or Management Field looked into labor racketeering on the eastern docks.

Pointing to allegations of corruption on the waterfront, the Subcommittee noted that many ILA leaders had criminal records. Thomas (Teddy) Gleason, who was General Organizer of the ILA at the time, testified with Captain William V. Bradley, who was then ILA president.

Gleason and Bradley told the Subcommittee they were doing the best they could with their union and that it was not their job to run a police department that made crime fighting its top priority.

Gleason, president of the ILA since 1963, appeared before the Subcommittee in February of 1981 and again defended his union against charges that it was controlled by organized crime figures. He said:

In regard to the information reported in the press about the ILA being dominated by organized crime figures, I am here today to deny that, emphatically, categorically and without any reservation whatsoever.^{1/}

Gleason went on to say that witnesses before the Subcommittee had asserted that the ILA was controlled by gangsters but that nowhere in the hearing record was there evidence to support such allegations. Gleason said:

You have up to now drawn or permitted to be drawn an inference that the union and I are so dominated [by organized crime]. There is no direct, unequivocal, or reliable evidence of any such dominance. Certainly none has been produced here.^{2/}

^{1/} Hearings, "Waterfront Corruption," Senate Permanent Subcommittee on Investigations, February 17, 18, 19 and 25, 26, 27, 1981, p. 458.

^{2/} Ibid., p. 458.

Gleason's protestations were countered by considerable testimony and evidence indicating that certain ILA locals were controlled by organized crime figures. In his own situation, Gleason reluctantly admitted that in an appearance before a federal grand jury examining waterfront corruption that he had refused to testify, invoking the Fifth Amendment privilege against self-incrimination. He said:

I went before the grand jury in New York. On the advice of my counsel, I exercised my constitutional right.^{3/}

Gleason was shown a chart naming and identifying more than 20 ILA leaders who had been convicted in the government's union racketeering, or UNIRAC, investigation and prosecutions. Among the convicted ILA leaders were Anthony Scotto, General Organizer and president of Brooklyn Local 1814; George Barone, International Vice President and president of Miami Local 1922; seven other International Vice Presidents; and several other officers of the International.^{4/}

Another revelation that came out of the government's inquiry was the extent to which senior officers of the ILA were controlled by organized crime figures.

Certain senior ILA officers were found to be "made" or inducted members of organized crime families or family associates. Court-authorized electronic surveillance revealed many corrupt acts by ILA leaders and was persuasive in demonstrating the organized crime ties certain ILA leaders had.

William H. Webster, Director of the Federal Bureau of Investigation, testified that the intrusion of organized crime figures into the ILA had been a calculated and largely successful effort by the mob to take over the union. Webster said:

The scope of this waterfront conspiracy is now quite clear. Organized crime had seized control of major elements of the ILA and they had done so with impunity. Whether responding out of fear, mere weakness or the promise of

^{3/} Ibid., p. 468.

^{4/} Ibid., pp. 189, 190

unlawful gain, many elected officials of this important union betrayed the trust of the members whom they represented and opened their organizations to the control of the professional criminal.^{5/}

Webster said the corrupt union officers could not have gotten away with their profitable schemes for as long as they did had they not had willing accomplices in the management of the shipping companies. Webster said some executives found it easier to make cash payoffs and pass on the resulting costs to the public rather than to fight the system. He added:

In some instances, we found that industry officials did not wait for the solicitations of union officials but rather adopted an aggressive posture and sought to make payoffs in an effort to gain an unlawful advantage over their competitors.^{6/}

Testimony from businessmen who had been victimized by waterfront corruption and from federal prosecutors indicated that the Labor Department appeared to have taken no initiatives to try to rid the docks of corrupt practices.

S. Michael Levin, attorney in charge of the Organized Crime Strike Force in Miami, was involved in the UNIRAC investigation and prosecution. Levin told the Subcommittee that he found no evidence that the Labor Department had ever addressed the problem of labor racketeering on the waterfront. He said:

With regard to the latter question, whether or not the Labor Department had been addressing the problem with respect to the waterfront industry, specifically the ILA, the answer is we found no evidence of that in our investigation. As far as their participation in the [UNIRAC] investigation is concerned, no, they [the Labor Department] did not participate in the investigation. However, we do have good relations with Office of Inspector General who have about five agents, five personnel at this time assigned to the Miami area.

It was just not appropriate to have them working in this investigation at that time, but the overall big question, Has the Department of Labor addressed the problem? The answer is no.^{7/}

^{5/} Ibid., p. 10.

^{6/} Ibid., p. 11.

^{7/} Ibid., p. 36.

Levin said the FBI did not have sufficient resources to constantly monitor the waterfront for signs of widespread corruption. The Labor Department was better equipped to do the job, he said, adding that the UNIRAC prosecutions "should catch the Department of Labor's attention to monitor what is going on in that industry."^{8/}

Neal L. Harrington, chief executive officer of a Miami shipping company that was caught up in waterfront corruption, decided to cooperate with the government and gave testimony in successful prosecutions of ILA officials.

Harrington said he rarely saw Labor Department representatives on the Miami waterfront and that when he did hear from them they impressed him as being preoccupied with protecting the rights of labor unions.

Impatient with suggestions that the Labor Department would ever assume a more constructive role on the docks, Harrington said his recommendation was that the department be abolished.^{9/}

Walter D. O'Hearn, president of a stevedoring company in Brooklyn, said his firm was on the verge of bankruptcy because of the high costs of a workmen's compensation racket that was controlled by organized crime figures in league with the ILA.

O'Hearn told the Subcommittee that he asked the Labor Department for help. After hearing details of the racket from O'Hearn, the senior Labor Department official in the area explained to him that he "knew something was going on." But, O'Hearn recalled, the officials said he "felt there was little that the department could do about it, given the provisions of the act."^{10/}

The fact that the Labor Department administered the workmen's compensation program under the Longshoremen's and Harbor Workers' Act did not lead the official to feel the department could do anything to stop the racket.

^{8/} Ibid., p. 37.

^{9/} Ibid., p. 98.

^{10/} Ibid., pp. 386, 387.

O'Hearn said the law placed the burden of proof not on the workmen claiming injury but on the employer, who had to show that the injury was feigned or exaggerated. He said the Labor Department's approach in evaluating claims was to support the workers' claims, even though there was mounting evidence that millions of dollars in claims were fraudulent. O'Hearn told the Subcommittee:

The general attitude of the Department of Labor in administering the act has been one which favors workers over employers. By virtue of that attitude, the presumption of validity under the act has been seriously overplayed, even in the face of the astronomical rise in insurance and claim costs.^{11/}

O'Hearn said that when the Labor Department could not help, company officials solved the problem themselves. They began paying off Anthony Scotto, president of Brooklyn ILA Local 1814, \$5,000 a month, with an additional payoff at Christmas, and almost immediately the workmen's compensation claims declined to a more reasonable level.

Workmen's compensation costs rose from \$230,000 a year in 1972 to \$1.4 million in 1974. Then, O'Hearn began making the payoffs to Scotto. The claims began dropping and by 1978 they were down to \$375,000. O'Hearn said he gave Scotto 18 payoffs totalling \$210,000.^{12/}

^{11/} Ibid., pp. 390, 391.

^{12/} Ibid., p. 388.

XVI. Labor Racketeering Act of 1981

As a result of the Subcommittee's investigations into pension fund and welfare benefit plan fraud and waterfront corruption, legislation was introduced by Senator Nunn, the Ranking Minority Member; Senator Rudman, the Vice Chairman; and Senator Nickles, the Chairman of the Subcommittee on Labor and Human Resources Committee.

The measure, S. 1163, the Labor Racketeering Act of 1981, is designed to help ease the problems of corruption in unions and benefit and pension plans. It increases criminal penalties for violations of the Taft-Hartley Act and provides for the immediate suspension of convicted persons from union offices.

Labor payoffs under current law are punishable only as misdemeanors. The Nunn-Rudman-Nickles measure would make any payoff of more than \$1,000 a felony, punishable by up to five years in prison or a fine of up to \$15,000, or both.

The bill also attempts to rid labor organizations and employee benefit plans of the influence of persons convicted of criminal offenses. Current disbarment provisions (29 U.S.C. 504 and 29 U.S.C. 1111) are expanded by enlarging the categories of persons affected by the disbarment provisions; increasing the duration of time of the disbarment from five years to ten; and providing for disbarment immediately upon conviction, rather than after appeal.

The bill provides the salary otherwise payable would be placed in escrow pending the appellate process.

The measure clearly spells out the responsibility and authority of the Department of Labor to actively and effectively detect, investigate and refer for prosecution evidence of criminal activities in union benefit and pension plans.

APPENDIX 2

(Material submitted by Robert McGinnis, Chicago, Ill.)

TRANSFER LOCAL 710 HEALTH AND WELFARE PLAN

The surplus assets of the Local 710 Health and Welfare Plan have gone from \$14,000,000.00 in plan year 1977, to \$10,000,000.00 in plan year 1978, to \$2,000,000.00 in plan year 1979. (Plan year runs from Feb. 1 through Jan. 31.)

The Local 710 Health and Welfare Fund Trustees have taken the following actions in order to shore up our sagging plans finances.

- (A)... Established a \$100.00 deductible fee per participant per plan year and for each of his or her covered dependents.
- (B)... Eliminated all step-children as covered dependents.
- (C)... Established a 10/90% co-insurance plan for the first \$5,000.00 of any and all hospital stays for the participant and each of his or her dependents. Thus costing a participant up to \$500.00 per hospital stay.
- (D)... Established a 10 year vesting rule for all Local 710 Retirees. In order for a retiree from Local 710 to be eligible for the Non-Medicare/Medicaid coverage the retiree must have been a participant in the Local 710 Health and Welfare Plan for the 10 years immediately preceding retirement.
- (E)... Encouraged additional "Changes of Operation", Transfers, in order to get more participants into the Plan, but without telling these men about the 10 year vesting rule.
- (F)... Diverting \$4.00 per week per participant of the employers pension fund contribution from the pension plan, prior to depositing the contribution into the pension fund account, and depositing that \$4.00 into the health and welfare plan account. The problem here is the fact that there are some 4,000 pension plan participants who are not participants in the health and welfare plan and as such they are subsidizing the health and welfare plan and reducing the funding and benefits of the pension plan.

The real reasons for the collapse of the Local 710 Health and Welfare Plan is as follows;

- (A)... The escalating medical costs.
- (B)... The failure of the plan trustees to collect delinquent employers contributions, from selected "Sweetheart" employers.

NOTE: See the enclosed letter to Mr. Robert Nigle of the Pension Benefit Guaranty Corporation, and his reply letter, concerning the diverting of Pension Plan contributions from the pension plan to the Health and Welfare Plan. This diversion adversely affects the funding and benefits of the Pension Plan and is a violation of ERISA regulations.

TEAMSTER LOCAL 710 PENSION PLAN

In addition to the enclosed newspaper articles there are the following unanswered questions;

- (A)... How could Local 710 Pension Plan Trustees loan H & S Associates \$5,250,000-.00 to stay off foreclosure on a defaulted loan, with a closed and shuttered hotel, the criminal records of the H & S Associates Partners, under any kind of reasoning let alone the ERISA provisions of a "Prudent Man"?
- (B)... Why did the Local 710 Pension Plan pay the real estate taxes and other expenses on the Sherman House Hotel when H & S Associates weren't paying the interest or principal on their \$5.25 dollar loan?
- (C)... Why did the Local 710 Pension Plan Trustees wait until 1978 to foreclose on H & S Associates?
- (D)... What happened to all of the rent monies from the 20 business tenants of the Sherman House Hotel from 1974 thru 1978 when Local 710 took possession of the hotel?
- (E)... What happened to the "Other Income" that was generated by the Sherman House Hotel from 1974 thru 1978 when Local 710 took over the Sherman House?
- (F)... When Local 710 took possession of the Sherman House Hotel in Mid 1978 the 20 business tenants of the Sherman House Hotel were notified by mail that they were to stop paying their respective rent monies to H & S Associates, 65 E South Water, and to start paying their respective rent monies to CORE MANAGEMENT, 65 E. South Water, Local 710's real estate management firm. (The principal partners of CORE MANAGEMENT is none other than Ms. Barbara Feddor, private secretary of Mr. Gerald Kaufman, principal partner of H & S Associates, and Mr. Gerald Kaufman himself.) Why would anybody in their right mind have the same people who had just defaulted on a \$5.2 million dollar loan to you to manage the same piece of property for you? Doesn't the ERISA "PRUDENT MAN" rule prevent this type of activity? There were 20 business tenants in the Sherman House Hotel's ground floor, one of which was paying in excess of \$3,000.00 per month rent. A conservative estimate would indicate that the total monthly rent was at least \$20,000.00 times the 15 or so months that Local 710 had possession of the Sherman House, equals out to around \$300,000.00 in rent income. Why is that this income has never been declared on any Local 710 IRS TAX FORM? Who got the money? Who paid income taxes on it, if anybody did, and why didn't that money go into the Local 710 Pension Fund where it belonged?
- (G)... Why wasn't legal fees of some \$950,116.00 for some 100 to 200 hours of work ever questioned by ERISA division of the D.O.L.?
- (H)... Why did the Local 710 Pension Plan Trustees pay attorney Thomas Burke \$990,117.00, some \$40,001.00 more than the court authorized? What happened to that extra \$40,001.00?
- (I)... Why doesn't the Local 710 Pension Plan IRS 5500 Report show the additional \$3,500,000.00 that was spent to buy out the remaining partners in the Sherman House Hotel property so they could sell the property to the city of Chicago?
- (J)... Why doesn't the Local 710 Pension Plan IRS 5500 Report show the \$13,200,000.00 in income that it received from the city of Chicago for the sale of the Sherman House Hotel?

TEAMSTER LOCAL 710 PENSION PLAN

- (K)... Why does both the Department of Labor and the Internal Revenue Service allow Teamster Union Locals to file IRS 5500 reports that are untimely, incomplete, incorrect, illegible, and unsigned?
- (L)... Why has the Local 710 Pension Plan Trustees hired most if not all of the attorneys who are presently representing the defendants in the D.O.L. Central States Pension Fund Lawsuit? None of these attorneys have worked for the Local 710 Pension Fund before. Nobody knows what if anything these attorneys are doing for the Local 710 Pension Plan.
- (M)... Why does the ERISA division of the D.O.L. allow the Local 710 Pension Plan Trustees to divert \$4.00 per week per participant from the Local 710 Pension Plan over to the Local 710 Health and Welfare Plan? Particularly when this diversion adversely affects the funding and future benefits of the Pension Plan and when some 4,000 Local 710 Pension Plan Participants are not Participants in the Local 710 Health and Welfare Plan? (These diversions are taken from the employer contributions to the pension plan prior to it's being deposited into the pension fund account. In fact the employers are doing it for the union when they make out the checks or package the cash.)
- (N)... Why won't the Federal Agencies who have jurisdiction, responsibility, and the authority to investigate these activities do so?

NOTE: We have also brought to the attention of the D.O.L. and the I.R.S. the fact that Local 710 rents out parking spaces, almost every week, to people who go to events across the street at the International Amphitheater. Local 710 charges \$3.00 to \$5.00 per parking space yet none of this income, which amounts to thousands of dollars per year, has ever been reported on any of Local 710's IRS tax forms and/or reports. We have even supplied pictures and license plate numbers to the D.O.L. and the I.R.S. but they can't be bothered. In fact they tell us to bring them the names of everybody involved and then maybe they will take a look at it!

June 29, 1981

Mr. Robert E. Nagel
Executive Director
Pension Benefit Guaranty Corp.
PO Box 2454
Washington, DC 20013

Dear Mr. Nagel:

I am a participant in the International Brotherhood of Teamsters Local 710 Health, Welfare and Pension Fund. I've come across many suspicious things that the trustees of the plan have done. I've alerted the LMSA, Mr. James Banages in Chicago, IL, also others, the problem that I've been trying to find out recently. I cannot get an answer from (1) my contributing employer (2) the trustees (3) Mr. James Banages (4) Ms. Rhonda Davis, LMSA and (5) various people in LMSA. Maybe I'm wrong but I'll give you the same facts. I believe you have some jurisdiction and I've alerted the trustees and LMSA people that by PBGC not having an office in Chicago to make these changes in the plan the PBGC should have been notified.

The Health and Welfare Plan was getting low on funds through I believe, bad planning by the trustees in the plan years. They went from 14 million in 1977, 10 million in 1978, 2 million in 1979 in the past 3 years. So you can see they are and were in trouble. The trustees made a deal with the contributing employers taking \$2.00 per week per contributing participant from the pension contributions to the health and welfare contributions effective April 1, 1979. I'm told I've nothing to verify when it went into effect however it can be easily proven as to exact date. I received a letter from the trustees which I'll include with this letter. The part of this letter which I'm told by the trustees is an amendment that I'm concerned about. It is the 2nd paragraph beginning with we hope that this plus the changes we are making in the contribution rates, now nothing in this amendment or letter tells me as a participant that they made a deal on contribution changes of \$2.00 per week with my employer from the pension plan to the health and welfare plan.

I understand that all amendments have to be worded so participants are to understand them, this does not. I found out about \$2.00 per week change approximately September, October, November 1980 and asked how and why it was done. All the trustees I asked said it was legal and none of my business. My employer told me the same plus the deal was made with union representative Mr. Wsol. Mr. Frank Wsol is my business representative of Local 710. He is also a pension trustee of 710. My employer also told me the deal was made with Local 710 and the Illinois Trucking Association. Mr. Robert Baker is President of Illinois Trucking Association. He is also a trustee in Local 710. Also a Central states pension plan trustee Mr. Amos Massa is also an officer in the Illinois Trucking Association. He was also a trustee in the Central states pension plan. He's been indicted under his other name, Arnold Massa along with Roy Lee Williams in the indictment.

At the time of this change in our 710 plan, Mr. Massa was also an employee of the Central states pension plan. There are approximately 15,000 active participants in the 710 pension plan. There are approximately 13,000 active

participants in the 710 health and welfare plan. The reason for the 2,000 difference is there are some pension plan participants who have employers with their own health and welfare plan. One of which is United Parcel Service, Inc. I believe and have brought this up to Ms. Rhonda Davis and others in LMSA that the planners of this switch of \$2.00 from one plan to the other discriminates against the participants who don't have any rights to the health and welfare benefits yet their collectively Bargained pension contributions are being put into something they have no part in, is this illegal? It should be! Is this a fiduciary breach? It should be!

My 2nd discovery is that as of April 1, 1981, \$4.00 is being taken from the pension contributions and put into the health and welfare fund. Under these terms the trustees could defer any given amount and get away with it. Also it seems to me this is a means to see if it works. In this plan they could use the Domino System in other plans with these interlocking trustees in two plans.

Didn't congress intend to protect our plans with ERISA. Let's get rid of these practices. 15,000 members x \$2.00 per week amounts to \$30,000 per week or \$1,560,000 per year, after April 1, 1981 it'll amount to \$60,000 per week or \$3,120,000, per year. Commerce Clearing House Pension Plan Guide paragraph 91 10320 states the PBGC may disprove of a plan amendment only if it determines that an amendment creates an unreasonable risk of loss to plan participants, beneficiaries or the PBGC. Also this diversion of funds can and will effect the funding of this pension plan. This should be stopped. I know the PBGC is not aware of this until now, but what's wrong with the IRS and Labor Dept., has the authority and LMSA who also has the authority why didn't they reject these amendments or prohibit transactions which ever they are, why didn't both departments notify the PBGC which they should have. Our pensions should be protected from these scheming teamster plan trustees. Please let me know if any action is taken on this letter.

Thanking you I remain,

Sincerely,

Robert J. McGinnis

Robert J. McGinnis
6319 S. Laverne
Chicago, IL 60638

Local 710 Health, Welfare and Pension Funds

UNION TRUSTEES:

Wm. D. Joyce, Chairman
John Altepeter
Frank Wsol

EMPLOYER TRUSTEES:

Robert Baker, Secy.-Treas.
Michael P. Murphy
John J. Barranco



4217 SOUTH HALSTED STREET
CHICAGO, ILLINOIS 60609
TELEPHONE 254-2500

458

July 1, 1980

Dear Member:

Due to the high and continually escalating costs of Hospital and Medical services combined with the depressed condition of your contributing companies, and in order to keep your Health and Welfare Fund financially sound, the Board of Trustees have made the following changes. Effective July 1, 1980, \$100.00 deductible for each individual each year on all Out-Patient, Emergency, Hospital and/or Clinic, Diagnostic Laboratory, X-Ray and Major Medical Expense Benefits.

We hope that this plus the changes we are making in the contribution rates will stabilize your Funds and that we will be able in the near future to eliminate this \$100.00 deductible.

We are very happy to report that your Pension Fund is in very excellent condition and we were able to increase all the Regular and Normal Pensioners \$25.00 per month.

Be assured that we will monitor these Funds very closely so that when you have need of these benefits they will be available for you.

Sincerely yours,

THE BOARD OF TRUSTEES:

William D. Joyce, Chairman
Robert Baker, Secy.-Treas.
Frank Wsol
John Altepeter
John J. Barranco
Michael P. Murphy



Pension Benefit Guaranty Corporation
2020 K Street, N.W., Washington, D.C. 20006

August 17, 1981

Mr. Robert J. McGinnis
6319 S. Laverne
Chicago, Illinois 60638

Dear Mr. McGinnis:

This will refer to your letter regarding the Teamsters Local 710 Health, Welfare and Pension Fund.

Since the matters that you raise appear to be in the purview of the Department of Labor, I have referred your inquiry to that Agency for further consideration.

Sincerely,

Robert E. Nagle
Executive Director

[From the Chicago Tribune, June 24, 1979]

NAME SHERMAN HOUSE HIDDEN PARTNERS

(By Chuck Neubauer)

A top Chicago Teamsters official and an ex-convict businessman, both with ties to organized crime, were hidden partners in a group that owned the Sherman House hotel when it obtained a \$5.25 million loan from a Teamster pension fund, The Tribune has learned.

Domenic Senese, president of Teamster Local 703, and Ben R. Stein, millionaire owner of a janitorial firm who served a prison sentence for paying off Teamster officials, were secret partners in H.S. Associates, the financially troubled partnership that borrowed \$5.25 million in 1974 from the pension fund of Teamsters Local 710.

At the time of the loan, H.S. Associates owned the Sherman House, at Randolph and Clark Streets, which had closed its doors in 1973.

The partnership failed to repay the Teamster loan as scheduled in 1975, and nearly four years later, the pension fund still has its money tied up in the shuttered building.

Both Senese and Stein apparently used their partnership interests in H.S. Associates to provide a legal tax shelter that allowed them to pay no federal income taxes in 1970 and 1973 and substantially lowered their tax bills for other years, records show.

Neither Senese's name nor Stein's appears on a list of partners in H.S. Associates recorded in January, 1974. By law, such partnership agreements are supposed to contain the names of all partners.

A federal grand jury here is investigating the loan from the Teamsters to determine if any kickbacks were paid to pension fund officials or employees.

The Tribune reported last July that the Teamster fund had made the loan at a time when the Sherman House owners were about to lose their property to an insurance company for failure to pay off \$3 million on a mortgage.

The Teamsters made the loan in August, 1974, when the hotel was shuttered, the fixtures had been sold, and it was not generating enough cash to pay even its property taxes, financial records showed. A year earlier the owners had reported losses of \$7.7 million to the Internal Revenue Service.

The federal investigation is being conducted by the Justice Department's Organized Crime Strike Force in Chicago, headed by Douglas Roller. He declined to comment on the investigation.

Senese is a close associate of members of the Chicago crime syndicate, including Joey Glimco, a longtime syndicate power in the labor movement. Senese was described by authorities in the 1950s as a "slugger" for Glimco in the Fulton Street markets.

In 1959, Senese refused to answer questions about his union and business activities before the Senate Rackets Committee.

His power in the Teamsters reportedly extends beyond his local, whose members are nursery drivers and produce haulers for the Fulton Street markets.

Stein also has had ties to Glimco and the Teamsters. Once known as "king of the janitors," he was convicted in the late 1960s of giving gifts to Teamster officials in violation of the Taft-Hartley Act. He said that he gave a TV set to Glimco, who heads Teamsters Local 777. Stein has bragged in the past of his connections with Chicago gangsters.

Senese and Stein apparently became partners in H.S. Associates in 1973, around the time the insurance company that held a mortgage on the Sherman House began foreclosure proceedings and the partnership needed another source of funds.

Public records do not indicate how much Senese and Stein paid for their interests in H.S. Associates. In 1973, Senese's interest had an approximate value of \$30,000 and Stein's a value of \$120,000.

Both were able to take advantage of the losses from the partnership to shelter their other income from federal taxes, records indicate. Senese reported losses from the partnership for 1973, 1974, and 1975 totaling \$105,666, and Stein reported partnership losses totaling \$351,368 for 1973 and 1974. Such real estate partnership deficits are "paper" losses, involving such items as depreciation.

Both men apparently used their 1973 losses to wipe out their 1970 and 1973 tax bills and to reduce their 1971 taxes, according to records.

By using his H.S. Associate losses, Senese paid only \$5,485 in federal income taxes on a union salary totaling \$118,600 for the years 1970, 1971, 1973, 1974, and 1975.

Efforts to reach Senese and Stein for comment were unsuccessful. The Tribune also was unable to reach Gerald Kaufman, the general partner of H.S. Associates, for comment.

As of July, 1978, the partnership owned the Teamsters more than \$8 million in unpaid principal, unpaid interest, and advances for property taxes, according to the union foreclosure suit.

The State of Illinois' plan to buy the Sherman House as part of the site for a proposed state office building will probably result in the union's getting back most of its funds. The city, acting for the state, has filed a condemnation suit against the property.

[From the Chicago Tribune, Jan. 8, 1980]

SHERMAN HOUSE PURCHASE OK'D

The acquisition of the Old Sherman House hotel for a new State of Illinois office building was upheld Monday by the Illinois Appellate Court in Chicago.

Tenants of the building had sought to stop the acquisition, contending that the City of Chicago had no authority to purchase the property under its eminent domain rights.

But the Appellate Court said the purpose of the city's action was to rid the Loop of a blighted area.

According to the city's Department of Planning, only 8 per cent of the commercial space in the building, located at Clark and Randolph streets, is occupied.

The city has agreed to purchase the building for \$13.2 million from the Teamsters Union pension fund. After demolition, the property will be turned over to the state for its new office building.

[From the Chicago Tribune, Nov. 15, 1979]

CITY ASKS FOR TITLE TO SHERMAN HOUSE

(By Charles Mount)

The city asked Circuit Judge Thomas J. Janczy Wednesday to grant Chicago immediate possession of the Sherman House hotel, for which it is to pay \$13.2 million to a Teamsters Union local.

The city plans to convert the hotel, at Randolph and Clark streets, into a government center housing more than 50 state agencies, then be reimbursed by Illinois. The plan's financial details have prompted at least one lawsuit.

On Oct. 17, Janczy approved an order in which the city agreed to pay \$13.2 million to the pension fund of Teamsters Local 710 for the hotel, which closed in 1973 but has stores operating on the first floor.

Last week, Melvin B. Lewis, attorney for one of the stores, filed a brief with the Illinois Appellate Court charging that \$13.2 million was an inflated price and included real-estate costs taxpayers should not bear.

Lewis, a John Marshall Law School professor, said the city offered \$7.6 million in January, designated the hotel as a blighted commercial area in February, and then nearly doubled its offer, without explaining why.

He said the Teamsters, who acquired much of the hotel when a group defaulted on a \$5.2 million loan, bought out other owners for unknown amounts during condemnation proceedings.

Lewis said an attorney for the city reported that the Teamsters, before buying out other owners, claimed a \$9 million investment in the hotel, \$2.7 million of it in post-acquisition taxes.

"It is doubted that a less-favored litigant would be entitled to have his valuation include an allowance for the taxes that he had paid over his years of ownership," he said.

[From the Chicago Tribune, Nov. 18, 1979]

CHALLENGE CITY'S PRICE FOR THE SHERMAN HOUSE

(By Charles Mount)

The \$13.2 million for which the City of Chicago plans to buy the Sherman House from a Teamster local is an inflated price, according to a suit filed in the Illinois Appellate Court.

The price, according to Melvin B. Lewis, an attorney representing 20 businesses still operating in the hotel building, includes \$3.4 million in taxes, insurance costs, and other extras not usually figured into property values and which constitute a "gift" to the Teamsters from taxpayers.

The suit is an attempt to halt the purchase, which was approved by a lower court.

According to the suit, a breakdown of inflated costs shows:

\$2.7 million in property taxes the Teamsters paid on the hotel.

\$242,000 in "interest."

\$237,000 in insurance payments.

\$113,000 in legal fees.

\$105,000 for a lien on the property.

\$7,500 for an appraisal of the property.

The Sherman House has been closed since 1973. The city plans to buy it and the block on which it stands, then to turn the property over to the State of Illinois for a state-government center on the site. The city is to be reimbursed from \$30.9 million the legislature has appropriated for the purchase, planning, and demolition costs.

Lewis is to appear Wednesday at a hearing before Circuit Judge Thomas J. Janczy on the city's request for immediate possession of the hotel.

The city defends the \$13.2 million as a fair price for the hotel and its block, bounded by Randolph, Clark, Lake, and La Salle streets.

It says the hotel is a blighted commercial area "in the center of an otherwise vital central business district," and every day of delay in starting the project costs \$25,000.

On October 17, Judge Janczy approved the agreement between the city and Teamsters Local 710, the hotel's owner, for the purchase.

Lewis, whose clients want to stay in business at their old, still-profitable stands, told The Tribune the purchase price reflects "a political decision to ball out the Teamsters pension fund."

Lewis charges the Oct. 17 hearing before Janczy lacked that American-courtroom specialty, adversary proceedings.

"It seems to me that what they did was to agree on a value and then find people to support it," he said.

The four witnesses at the hearing were called by the city, he said, though the Teamsters didn't have to call anybody since the city was making the union's case for a high price.

Lewis said the city does not explain why it offered \$7.6 million for the hotel in January, then nearly doubled its offer to \$13.2 million after having the hotel designated a "blighted commercial area."

He said Teamsters attorney Thomas T. Burke Jr. is a former law associate of Earl Neal, special city corporation counsel in the matter, and Burke cross-examined only one witness at the hearing.

At the hearing, Neal said the Teamsters local got possession of the hotel when the former owner, H&S Associates, did not meet payments on a \$5.2 million loan held by the Teamsters since 1974. He said the union now had an \$8.9 million investment in the hotel.

At the hearing, the city's witnesses gave the property a value ranging from \$13.2 million to \$13.5 million. One witness said the square-foot value of the Sherman House site was \$196, while other buildings in the downtown area have been sold for rates from \$148 to \$371 a square foot.

Burke said he cross-examined only one city witness because he did not know the man, a Loop real-estate broker. As for the others, he said, "It would be very foolhardy to try and impeach their testimony."

Burke said he produced no witnesses at the hearing "because we were in the area of a settlement." He said the city first offered \$7.6 million, but he asked for "considerably more" than \$13.2 million before that was agreed to "after several months of negotiation."

He said nobody addressed the question of "extra costs" being part of the selling price, but "I would bet \$100,000 that the appraisers' figures did not include them."

[From the Chicago Tribune, Jan. 26, 1980]

\$1 MILLION LEGAL FEES IN HOTEL SALE

(By John O'Brien and Charles Mount)

Circuit Judge Thomas Janczy awarded nearly \$1 million in legal fees on Friday to a politically well-connected attorney who represented Local 710 of the Teamsters Union Pension Fund in its sale of the Sherman House Hotel to the city.

The attorney, Thomas T. Burke, did not submit the usual detailed fee petition in which attorneys list every hour they spend on a case and what they did during that hour. He submitted a two-page document requesting the release of the \$13.2 million that Chicago had deposited with the Cook County treasurer on Nov. 7 after the city and Teamsters agreed Oct. 17 on a price for the Sherman House.

Burke, a foremost attorney in property-condemnation cases and a brother-in-law of former U.S. Atty. Thomas Foran, asked \$950,116 in legal fees for himself, and \$335,326 in unpaid real estate taxes for the county treasurer—both sums to come out of the \$13.2 million.

Melvin Lewis, an attorney representing about 20 businesses still operating on the first floor of the otherwise empty Sherman House, objected to Burke's fee request, saying it was "excessive." Lewis said the money came from taxpayers and repeated earlier charges that the sale price of the hotel was inflated.

Janczy denied Lewis' objection, and later said he granted Burke's request because the Teamsters had decided what to pay Burke.

"If they agree, I'm not going to inquire as to why. The city has to pay them the \$13.2 million anyway, so the Teamsters can do what they want with the money," he said.

[From the Chicago Tribune, Oct. 18, 1979]

COURT OK'S SHERMAN HOUSE SALE TO CITY

(By Helen Draeger)

Sale of the old Sherman House hotel and other properties in the same block of the city for \$13.2 million was approved Wednesday in Circuit Court.

The sum will go to the Teamsters Local 710 pension fund, which took over the vacant hotel after a group of developers defaulted on a \$5,250,000 loan.

It will be paid by the State of Illinois, which wants the entire block for a new Loop office building costing more than \$100 million.

Earl Neal, special counsel for the city, said the property acquired from the union pension fund covers about 60 percent of the block bounded by Randolph, Clark, Lake and La Salle.

Only the La Salle Plaza parking garage and the small, run-down Astor Hotel still must be obtained to gain title to the entire block, he said.

Circuit Court Judge Thomas J. Janczy signed an order approving the condemnation award Wednesday after three real estate men testified for the city.

They told Judge Janczy that the price of \$196 per square foot was fair, reasonable, and in line with recent sales of Downtown sites.

The \$13.2 million award needs formal approval from the Illinois Capital Development Board, headed by former U.S. Atty. Samuel K. Skinner.

But Dan Bramlet, land acquisition agent for the state board, said the proposed award had been discussed in advance with a subcommittee of the board.

The award to the Teamsters pension fund is 74 per cent higher than an offer made by the city for the same property last Jan. 9.

Neal said, however, that the Jan. 9 offer was a "preliminary estimate" designed to open negotiations. "You have to make some kind of offer before you can file a lawsuit," he added.

Bramlet said the \$7.6 million offer nine months ago was "based on sales we were aware of at the time."

Neal told the court that the Teamsters fund had invested a total of \$8,951,000 in the Sherman House property since foreclosing on its 1974 loan.

In addition to the original \$5,250,000 note, he said, the fund had paid \$2.7 million in real estate taxes and lesser amounts for interest, legal fees, appraisals and other costs.

Neal stressed that the \$8.9 million investment by the union represented only part of the property being conveyed to the city.

In addition, he said, the pension funds owns 40 feet of frontage on Lake St. and holds long-term leases on two small parcels of land in the same block.

The 1974 loan by the Teamsters pension fund to H.S. Associates, a partnership that took over the Sherman House after its doors closed in 1973, is being investigated for possible kickbacks by a federal grand jury. Two top union officials with ties to organized crime reportedly were partners in the development group when the loan was made.

Gov. Thompson has pushed for using the Sherman House block for the new state office building, saying it would eliminate an "eyesore." Last year, his Democratic opponent, Michael J. Bakalis charged that Thompson's efforts were tied to Thompson's surprise endorsement by Local 710 and other Teamster unions.

Outside the courtroom, Neal was asked why the city was condemning the property rather than the state. He said it was not unusual, fits into a provision for inter-government co-operation in the 1970 Illinois constitution and is comparable to the city's acquisition of the University of Illinois Chicago Circle campus.

[From the Chicago Sun-Times, May 18, 1980]

TULLY SHARED \$1 MILLION HOTEL FEE

(By Art Petacque)

Former Cook County Assessor Thomas Tully shared in a \$1 million fee received by a Loop attorney in the Sherman House land condemnation case, even though Tully's contribution to the case appeared to be extremely limited.

The Sun-Times learned that the fee was shared with Tully by Thomas T. Burke, a lawyer whose clients have included several big real estate developers.

Burke confirmed that he retained Tully—now a lawyer in private practice—for work on the Sherman House case after Tully completed his four-year term as assessor in 1978. Burke said he retained Tully because of Tully's legal expertise.

Burke would not say how much Tully was paid. Told that reports were circulating in legal circles that the Tully fee was as high as \$500,000—or half the total sum paid to Burke—Burke said such speculation was false but that he could not comment on the precise sum because of a federal grand jury investigation of Tully's dealings.

Tully also has cited the grand jury inquiry in declining to answer questions about this and other matters.

Burke said in his law practice deals principally with condemnation cases and that he never sought any tax adjustments for his clients during Tully's term as assessor.

Burke represented the Teamsters Local 710 Pension Fund, owner of the decaying Sherman House and adjacent Loop property, when the city acquired the tract for \$13.2 million in a Circuit Court condemnation proceeding. The site, now being cleared, will be used for construction of a new State of Illinois office building. The state is to reimburse the city for the purchase price.

Asked what expertise Tully provided in the Sherman House case, Burke said he made many court appearances and generally worked hard on the case.

However, Earl Neal, a onetime law associate of Burke and recently the special assistant corporation counsel who handled the Sherman House case for the city, said he couldn't remember having seen Tully in court during last year's proceedings.

Burke countered that Neal himself didn't attend every court session and that Tully actually did make several court appearances.

Another lawyer, Marvin Lewis, who followed the case closely as the attorney for Sherman House ground-floor business tenants who opposed the condemnation, said he saw Tully only once in court. On that occasion, Lewis said, Tully appeared briefly and consulted with other lawyers but did not actually participate in the proceedings.

The city's takeover of the Sherman House property ended years of controversy about the tract and its unusual cast of owners.

In 1974, the year after the landmark hotel was shut down, it was owned by H. S. Associates, a partnership whose secret members included two people known as pals of crime syndicate gangsters: Dominic Senese, the president of Teamsters Local 703, and Ben Stein, the millionaire owner of a janitorial firm who served a prison term for paying off Teamsters officials.

The partnership borrowed \$5.25 million in 1974 from the pension fund of Teamsters Local 710. Ultimately, the pension fund took over the property after the part-

nership defaulted on more than \$8 million in unpaid principal and interest. The pension fund was bailed out of its financial dilemma by the \$13.2 million sale of the hotel property to the city.

Burke, in detailing Tully's legal role in the Sherman House case, said he retained only Tully and did not deal with Tully's law partner, Joseph Roddy. Tully and Roddy have been law partners both before and after Tully's service as assessor. When Tully left the then-relatively small firm to become assessor, he sold his interest in it for a reported \$450,000 to be paid during a five-year period.

Roddy, it was learned, is regarded by investigators as a key figure in the over-all Tully investigation because he handled many cases that came before the assessor's office while Tully served there.

It also was learned that Roddy has engaged the services of Howard L. Stone, a former assistant U.S. attorney, to represent him in connection with the investigation.

Federal investigators, meanwhile, are continuing to quiz businessmen who have been represented by a coterie of lawyers known to have had ready access to Tully's office when he was assessor. The lawyers have come under scrutiny because of their impressive track records in gaining tax breaks for clients.

The group earned reputations as "lawyers' lawyers" on La Salle Street because their law colleagues referred many clients with tax problems to them.

Among members of the group are several lawyers who served with Tully when he was prosecuting criminal cases as an assistant state's attorney. Others were known to have made substantial contributions to Tully's campaign coffers when he first ran for assessor and again when he raised \$500,000 shortly before his surprise 1978 announcement that he would not seek re-election.

[From the Chicago Sun-Times, Nov. 21, 1979]

ORGANIZED CRIME TIED TO CITY COLLEGE SITE

(By Harlan Draeger and William Clements)

Two men with ties to organized crime are the principal owners of a building at 65 E. South Water St. that is being acquired for a new City College.

The men are Dominic Senese, president of Teamsters Local 703, and Ben R. Stein, a businessman who served time in prison on labor racketeering charges.

The two earlier had been identified as secret partners in a group that until 1978 owned the Sherman House, now being acquired for a new state office building site.

Close business relationships have been uncovered by The Sun-Times among other people who figure in the recent history of both Loop buildings.

One of them testified as an expert witness for the city last month in favor of a \$13.2 million condemnation award for the Sherman House property.

Gerald S. Kaufman, formerly a part owner of the two buildings, calls the situation "a horrible coincidence."

Last February, the city started condemnation proceedings to obtain the Sherman House site so that the state can erect a new office building on the block.

Two months later, the City Colleges of Chicago started a condemnation suit to secure the 24-story building at 65 E. South Water for a new Loop campus.

The \$13.2 million award for the Sherman House property was approved by Circuit Court Judge Thomas J. Janczy on Oct. 17. Under Janczy's order, the sum will go to the Teamsters Local 710 Pension Fund, which took over the property last year after foreclosing on a \$5.2 million loan.

Small, ground-level tenants in the Sherman House have appealed Janczy's order. But their attorney, Melvin B. Lewis, said the appeal will fail if Janczy grants the city's motion to evict his clients at a hearing Wednesday.

The Teamster pension fund took over the Sherman House from a limited partnership known as H.S. Associates. Kaufman was the general partner in H.S. Associates. Senese and Stein were identified last June as secret partners in the group.

Meanwhile, the City Colleges lawsuit to condemn the 65 E. South Water building is scheduled for trial Dec. 5 in Circuit Court.

In an extensive investigation of both proposed land acquisitions, The Sun-Times turned up these facts:

The building sought for a new Loop College is effectively owned by 65 East Associates, a limited partnership formed in March, 1978. In the original partnership agreement, Senese and Stein together had 60 percent of the \$500,000 investment. Stein's listed contribution was \$200,000, and Senese's share was \$100,000.

Barbara D. Fedor, Kaufman's longtime assistant, is the general partner of 65 East Associates. She and Kaufman both say that he is not part of the group. But Kaufman said that the 65 E. South Water building was purchased last year from a New York group, Esquire Realty Corp., of which he was the general partner.

Howard Ecker, who runs a large office leasing agency under his name, was called by the city as an expert witness in the Sherman House condemnation hearing. He testified on Oct. 17 that \$13.2 million was a "fair and reasonable" price for the Sherman House property. Ecker has a \$15,000 investment in 65 East Associates, the Senese-Stein group. He also is leasing agent for 65 E. South Water St., where his offices are located.

Since the summer of 1978, small business tenants in the Sherman House paid rent to the Core Management Co. Barbara Fedor, Kaufman's assistant, is president and sole director of the company. The company shares Room 802 and a common phone number at 65 E. South Water with Kaufman. H.S. Associates and Marquee Enterprises Inc., another of Kaufman's business ventures. Fedor and Kaufman insist that he has no interest in the real estate management firm.

Oscar Shabat, veteran chancellor of the City Colleges system, says that he personally chose 65 E. South Water St. site for the new Loop College. Shabat said the building can be renovated for \$14 million and is linked by a bridge with the overcrowded existing college at 64 E. Lake. He said the move was approved last February after it became clear that Gov. Thompson would not provide an estimated \$50 million to build a new Loop College on the south end of the Loop. Shabat says that Kaufman is not a recorded owner of 65 E. South Water and did not approach him to offer the building for a college.

Earl L. Neal, an attorney for the city, Thomas T. Burke, attorney for the Teamsters fund, agreed amicably on the \$13.2 million value placed on the Sherman House property on the effective date of last Feb. 15. That figure is nearly double a written \$7.6 million offer by the city last Jan. 9. It is not clear whether the offer 10 months ago was based on formal appraisals, and Neal has said it was just a "preliminary" figure to open negotiations. But the figure coincides almost precisely with the \$7,653,390 "book value" investment listed by the Local 710 fund last January in its latest report to the Internal Revenue Service.

Under the \$13.2 million award approved by Janczy, the Teamsters fund will receive \$196 per square foot for 67,464 square feet of property. This is roughly 60 per cent of the entire block, which the state wants for its office tower. Yet Olcott's Land Values for 1979, widely respected as the "Bible" of Chicago-area real estate, projects the value of the entire block at about \$13 million. Olcott's estimates the current value of the Sherman House itself, which makes up the bulk of the Teamsters tract, at \$150 to \$170 per square foot.

The actual price tag for securing a cleared site from the Teamsters is much higher than the \$13.2 million figure. Costs of demolishing the buildings are not covered in the sum going to the union pension fund. Illinois taxpayers will have to foot the bill for this additional cost, estimated by experts at \$2.6 million. If demolition costs were included, the over-all cost of obtaining the cleared site would rise to \$15.8 million—or more than \$234 per square foot. This price would place it higher than five of the seven downtown sales singled out by the city's appraiser for comparison purposes.

Two preliminary cost estimates made by appraisers for the Illinois Capital Development Board in 1976 showed much lower values for the entire Sherman House block than the city now is paying. One estimate was \$121 per square foot, and the other was \$135 a square foot. Real estate experts said there has been no sharp escalation in value of the Sherman House area in the intervening period. Officials of the Capital Development Board have refused to furnish the earlier appraisal reports because the issue still is "in litigation."

Senese, whose Teamsters Local 703 represents produce drivers, is a cousin of former Chicago syndicate boss Anthony (Big Tuna) Accardo and a longtime associate of mob figures. He serves on Teamsters Joint Council 25, along with Local 710 President William D. Joyce, and lost a bid on Nov. 6 to unseat veteran Council President Louis F. Peick.

Stein, once known as the "king of janitors," formerly headed firms providing maintenance services to McCormick Place. In 1966, he was convicted of making illegal payments to Teamster officials and given an 18-month prison sentence. Like Senese, he had close ties to former hoodlum labor boss Joseph (Joey) Glimco.

Kaufman said that he knows Senese and Stein personally but has "no idea" who is involved in 65 East Associates, owner of the 65 E. South Water building. He reported dealing only with Barbara Fedor, general partner in the group, when 65 East Associates bought the property.

It would be illegal, Kaufman said, for him to sell his interest in 65 E. South Water to a group that included himself. Kaufman said he has fought the condemnation suit by the City Colleges "every inch of the way."

Kaufman said that Core Management Co., which has collected rentals from the Sherman House for more than a year, is strictly Barbara Fedor's company. "She's a sharp lady on her own and doesn't look to me to make all her money," he added. "She's a broker, an agent and manages a couple of buildings."

Neal, who represents the city in the Sherman House proceeding and the City Colleges in the other, agreed with Kaufman that H.S. Associates lost its interest in the Sherman House in mid-1978. He said the only party with an interest in the \$13.2 million award is the Teamsters pension fund. He said the Teamsters had invested nearly \$9 million in the hotel and later bought the hotel annex and former Civic Center Bank site for another \$3.5 million.

Ecker said he saw nothing improper in his testimony on the Sherman House and his relationship with Kaufman. "In fact, I've seen him once in the last four months," he added. Ecker said that some attorney, whose name he could not recall, had pulled the 65 East Associates partnership together.

TRANSTER LOCAL 710
 T.R.S. 5500 REPORT DISCREPANCIES

- 1975 PLAN YEAR... PAGE # 1.
 ITEM # 1, (b)... EMPLOYER IDENTIFICATION NUMBER # 36-2377656.
- 1976 PLAN YEAR... PAGE # 1.
 ITEM # 1, (b)... EMPLOYER IDENTIFICATION NUMBER # 51-6046982.
- 1977 PLAN YEAR... PAGE # 1.
 ITEM # 1, (b)... EMPLOYER IDENTIFICATION NUMBER # 51-6046982.
- 1979 PLAN YEAR... PAGE # 1.
 ITEM # 1, (b)... EMPLOYER IDENTIFICATION NUMBER # 36-2377656.
- 1980 PLAN YEAR... PAGE # 1.
 ITEM # 1, (b)... EMPLOYER IDENTIFICATION NUMBER # 36-2377656.
- PAGE # 4...
 ITEM # 14, (d), 3... REITS, None declared, also no other income declared.
- PAGE # 5...
 ITEM # 22, (a), 1... ASSETS, No schedule attached to explain.
- PAGE # 5...
 ITEM # 22, (a), 5... TRANSACTIONS IN EXCESS OF 3%, No attached schedule to explain.
 (\$3.5 Million Sherman House Hotel buy-out expense.)
 (\$13.2 Million Sherman House Hotel sale to the city of Chicago income.)
- 1980 PLAN YEAR SCHEDULE # 1...
 (\$990,117.00 Legal Fee to attorney T. Burke for Sherman House Hotel sale.)
 (New Local 710 Pension Plan Attorneys, Manet, Coglein, Calihan, Luplow, and Tenelbaum. All represent defendants in the D.O.L. verses Central States Pension Plan Lawsuit.)

Form 5500		Return/Report of Employee Benefit Plan (With 100 or more participants)		1975					
Department of the Treasury Internal Revenue Service		This form is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 and section 6058(a) of the Internal Revenue Code, referred to as the Code.		This Form is Open to Public Inspection					
Government use only		[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]
For the calendar plan year 1975 or fiscal plan year beginning		FEBRUARY 1, 1975		and ending		JANUARY 31, 1976			
<p>▶ All pension benefit plans with 100 or more participants file one copy of this form with the Department of Labor (DOL) and one copy with the Internal Revenue Service (IRS). File a separate form for each plan. Legible reproduction copies are acceptable.</p> <p>▶ Welfare benefit plans with 100 or more participants file this form with DOL only.</p> <p>▶ Pension benefit plans complete all items. However, annuity arrangements of certain exempt organizations and individual retirement account trusts of employers complete only items 1 through 6, 9 and 10.</p> <p>▶ Welfare benefit plans complete only items 1 through 18 and item 24.</p> <p>▶ Note: Do not file this form for: ▶ Keogh (H.R. 10) plans with fewer than 100 participants and with at least one owner-employee participant. File Form 5500-K instead. ▶ Other pension benefit plans and certain welfare benefit plans with fewer than 100 participants. File Form 5500-C instead.</p>		Please complete every applicable item on this form. If an item does not apply, enter "N/A."							
1 (a) Name of sponsor (employer if for a single employer plan)		BOARD OF TRUSTEES I.R.S. LOCAL NO. 710 PENSION FUND		1 (b) Employer identification number		36-2377656			
Address (number and street)		4217 SOUTH HALSTED STREET		1 (c) Telephone number		(312) 554-2500			
City or town, State and ZIP code		CHICAGO ILLINOIS 60609		1 (d) Employer taxable year ends		N/A			
2 (a) Name of plan administrator (if other than sponsor)		SAME		1 (e) Business code number		4210			
Address (number and street)		FEB 24 1977		2 (b) Administrator's employer identification no.					
City, town, State and ZIP code				2 (c) Telephone number					
3 Name, address and identification number of <input type="checkbox"/> sponsor and/or <input type="checkbox"/> plan administrator as they appeared on the last report filed with DOL or IRS if not the same as in 1 or 2		N/A							
4 Check appropriate box to indicate the type of plan entity (check only one box):									
(a) <input type="checkbox"/> Single-employer plan		(c) <input checked="" type="checkbox"/> Multiemployer plan							
(b) <input type="checkbox"/> Plan of controlled group of corporations or common control employers		(d) <input type="checkbox"/> Multiple-employer-collectively-bargained plan							
		(e) <input type="checkbox"/> Multiple-employer plan (other)							
5 (a) Name of plan: INTERNATIONAL BROTHERHOOD OF TEAMSTERS UNION LOCAL NO. 710 PENSION PLAN		5 (b) Plan number: 0 0 1							
6 Check at least one item in (a) or (b) and applicable items in (c):									
(a) Welfare benefit plan: <input type="checkbox"/> (i) Health insurance (ii) Life insurance (iii) Supplemental unemployment									
(iv) <input type="checkbox"/> Other (specify) ▶									
(b) Pension benefit plan:									
(i) Defined benefit plan—(Indicate type of defined benefit plan below):									
(A) <input type="checkbox"/> Fixed benefit (B) <input type="checkbox"/> Unit benefit (C) <input type="checkbox"/> Flat benefit (D) <input checked="" type="checkbox"/> Other (specify) ▶ (SEE SCHEDULE)									
(ii) Defined contribution plan—(Indicate type of defined contribution plan below):									
(A) <input type="checkbox"/> Profit-sharing (B) <input type="checkbox"/> Stock bonus (C) <input type="checkbox"/> Target benefit (D) <input type="checkbox"/> Other money purchase									
(E) <input checked="" type="checkbox"/> Other (specify) ▶ CONTRIBUTIONS DETERMINED BY COLLECTIVE BARGAINING AGREEMENT, UNIT									
(iii) <input type="checkbox"/> Defined benefit plan with benefits based partly on balance of separate account of participant (section 414(k) of the Code)									
(iv) <input type="checkbox"/> Annuity arrangement of a certain exempt organization or a governmental unit (section 403(b) of the Code)									
(v) <input type="checkbox"/> Custodial account for regulated investment company stock (section 403(b)(7) of the Code)									
(vi) <input type="checkbox"/> Trust treated as an individual retirement account (section 408(c) of the Code)									
(vii) <input type="checkbox"/> Employee stock ownership plan not part of a qualified plan (section 301(d) of the Tax Reduction Act of 1975)									
(viii) <input type="checkbox"/> Other (specify) ▶									
(c) Other plan features:									
(i) <input type="checkbox"/> Thrift-savings (ii) <input type="checkbox"/> Keogh (H.R. 10) plan									
(iii) <input type="checkbox"/> Employee stock ownership as part of a qualified plan (check only if you checked a box in (b)(ii) above)									
Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.									
Date: 1/7/77									
Signature of plan administrator: [Signature]									
Date: 1/13/77									
Signature of plan administrator: [Signature]									

CONTINUED

2 OF 8

4/E 1/31/80 PLAN No. 001
E.I. No. 36-2377656

BOARD OF TRUSTEES OF
LOCAL No. 710 PENSION FUND

1. Bonding:

(a) Was the plan insured by a fidelity bond against losses through fraud or dishonesty?
If "Yes," complete (b) through (f); if "No," only complete (g).

(b) Indicate number of plans covered by this bond ONE

(c) Enter the maximum amount of loss recoverable \$5,000,000

(d) Enter the name of the surety company UNITED Pacific Insurance Company

(e) Does the plan, or a known party-in-interest with respect to the plan, have any control or significant financial interest, direct or indirect, in the surety company or its agents or brokers? X

(f) In the current plan year was any loss to the plan caused by the fraud or dishonesty of any plan official or employee of the plan or of other person handling funds of the plan?
If "Yes," see specific instructions. X

(g) If the plan is not insured by a fidelity bond, explain why not N/A

17 Information about employees of employer at end of the plan year. (Plans not purporting to satisfy the percentage tests of section 410(b)(1)(A) of the Code complete only (a) below and see specific instructions):

(a) Total number of employees N/A

(b) Number of employees excluded under the plan because of:

(i) Minimum age or years of service N/A

(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining N/A

(iii) Nonresident aliens who receive no earned income from United States sources N/A

(iv) Total excluded, sum of (i), (ii) and (iii) N/A

(c) Total number of employees not excluded, (a) less (b)(iv) N/A

(d) Employees ineligible (specify reason) N/A

(e) Employees eligible to participate, (c) less (d) N/A

(f) Employees eligible but not participating N/A

(g) Employees participating, (e) less (f) N/A

18 Is this plan an adoption of:

(a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan or (e) ☐ Bond purchase plan?
If "Yes," enter the four or eight digit IRS serial number (see instructions) N/A

19 (a) Is it intended that this plan qualify under section 401(a) or 405 of the Code?
(b) Have you requested or received a determination letter from the IRS for this plan?
(c) Is this a plan with Employee Stock Ownership Plan (ESOP) features?
(i) If "Yes," was a current appraisal of the value of the stock made immediately prior to the contribution of the stock or the purchase of the stock by the trust?
(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?
(iii) If (ii) is "No," was the appraisal made in accordance with the provisions of Revenue Ruling 59-60?
N/A

20 If plan is integrated, check appropriate box:
(a) ☐ Social security (b) ☐ Railroad retirement (c) ☐ Other N/A

21 (a) Is this a defined benefit plan subject to the minimum funding standards for this plan year?
If "Yes," attach Schedule B (Form 5500).
(b) Is this a defined contribution plan, i.e., money purchase or target benefit subject to the minimum funding standards? (If a waiver was granted, see instructions.)
If "Yes," complete (i), (ii) and (iii) below:
(i) Amount of employer contribution required for the plan year under section 412 of the Code
(ii) Amount of contribution paid by the employer for the plan year
Enter date of last payment by employer Month Day Year
(iii) If (i) is larger than (ii) subtract (ii) from (i) and enter the funding deficiency here, otherwise enter zero. (If you have a funding deficiency file Form 5330.) N/A

22 The following questions relate to the plan year. If (a)(i), (ii), (iii), (iv) or (v) is checked "Yes," schedules of such items in the format set forth in the instructions are required to be attached to this form.

(a) (i) Did the plan have assets held for investment? X

(ii) Did any non-exempt transaction involving plan assets involve a party known to be a party-in-interest? X

(iii) Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectable? X

(iv) Were any leases to which the plan was a party in default or classified during the year as uncollectable? X

(v) Were any plan transactions or series of transactions in excess of 3% of the current value of plan assets? X

PLAN: F.B. & T. Union Local No. 710 Pension Fund PLAN NO. 001
PENSION: Board of Trustees F.B. & T. Union Local No. 710 Pension Fund EIN NO. 36-2377656
YEAR ENDED 1/31/80

5500 SCHEDULE #1

12 Did any person who rendered services to the plan receive, directly or indirectly, compensation from the plan in the plan year?
If "Yes," furnish the following information:

(a) Name	(b) Official plan position	(c) Relationship to employer, employee organization or person known to be a party-in-interest	(d) Gross salary or allowances paid by plan	(e) Fees and commissions paid by plan	(f) Nature of service code (see instructions)
THOMAS HAYES, JR.	Acting Director	N/A	0	63,452	10
ALGER, GEORGE W. STAL	ATTORNEY	N/A	0	96,200	22
BERNARD MARLET	ATTORNEY	N/A	0	17,262	22
COLEMAN, JAMES W. NEWIS	ATTORNEY	N/A	0	25,283	22
EDWARD COLLINS, JR.	ATTORNEY	N/A	0	10,220	22
RUSSELL LUDLOW	ATTORNEY	N/A	0	15,000	22
LOVELL, WILFRED STAL	ATTORNEY	N/A	0	3,977	22
CRANE, WENDEL E. SON	ATTORNEY	N/A	0	990,117	22
DONALD F. CAMPBELL	ATTORNEY	N/A	0	25,700	11
RO. SUTHERS	PROBATIONARY	N/A	0	33,410	16
SUB-TOTAL			0	1286,423	
REIMBURSEMENT TO F.B. & T. UNION LOCAL NO. 710					
HEALTH AND WELFARE FUND FOR SHARED EXPENSES					
REQUESTED BY F.B. & T. UNION LOCAL NO. 710					
HEALTH AND WELFARE FUND					
			278,772	0	
NON-REPORTABLE ITEMS					
			0	805	
LESS: AMOUNTS CAPITALIZED					
			0	(975,026)	
TOTAL					
			278,772	312,202	
ITEM REFERENCE					
			146.1	146.11	

[From the Chicago Sun-Times, Nov. 2, 1981]

TULLY PROBE FADES; CHARGES UNLIKELY

(By Art Petacque and Hugh Hough)

Scratch a big name—that of former County Assessor Thomas M. Tully—from the ranks of imperiled politicians.

We've learned that it's now virtually certain Tully won't be indicted by the federal grand jury that has been investigating his business affairs.

The investigation, under way for almost two years, has centered on allegations that Tully made huge profits from real estate deals with property developers who got tax breaks while he was assessor.

But we're told the grand jury inquiry has developed on evidence of criminal violations on Tully's part. Several lawyers retained by developers linked to Tully also have received signals that the investigation is being wound down.

We're learned further that there remains just one slim hope for striking pay dirt in the Tully case. That's the possibility that the Rev. John Smyth, a Roman Catholic priest and boyhood friend who represented Tully as a trustee in some real estate deals, might produce something the Justice Department could use against Tully before the grand jury. But that possibility seems remote.

The investigation is being overseen by Greg Jones, first assistant to U.S. Attorney Dan K. Webb. Webb disqualified himself from any role in the Tully inquiry because his former law partner, Matthias K. Lydon, represented a witness called by the government.

The Tully investigation is reminiscent of one faced by his political patron, the late P. J. "Parky" Cullerton. Parky endured one of the longest and most publicized inquiries in Cook County history before it was quietly dropped.

Bottom line: Still to be determined is what Tully will do with the \$500,000 political kitty he gathered at a fund-raiser before his stunning resignation as assessor in 1978. His own political future appears too dim for Tully to spend it on himself.

FALN DEFECTOR TIPPED FEDS ON CRIME

Alfredo "Freddie" Mendez, the first and only member of Chicago's FALN terror group to spill its secrets, gave federal investigators an early indication that violent radicals were banding together to pull big-money crimes—such as the deadly Brink's robbery in New York. Mendez, who traded FALN secrets for release from a prison cell last May, wasn't able to supply the feds with plans for specific crimes, such as the robbery that led to the deaths of two police officers and a Brink's guard. But he made it clear that his fellow Puerto Rican radicals had a cozy relationship with other terrorists, such as the tag ends of the Weather Underground movement.

... AND TERROR REMINDER IS TIMELY

A souvenir of the early days of FALN terror is now being carried by Sgt. Frank Kasky, a member of the Chicago police bomb and arson squad. It's a Timex watch, the timing device that was to set off four sticks of dynamite found in the midst of 14 long-stemmed roses at the Standard Oil Building early on Oct. 27, 1975. Because Kasky risked his life in dismantling the deadly floral package, FALN foes led by Assistant U.S. Attorney Jeremy Margolis recently presented it to him as a keepsake.

\$1 MILLION ROAD RACE WITH WINTER

To complete critical road construction projects before the snow flies, the state has been paying time-and-a-half Saturday wages of more than \$23 an hour and double-time Sunday wages of almost \$31 an hour to members of Local 150 of the Operating Engineers. In all, it's costing state agencies more than \$1 million in overtime to finish key Toll Road and other projects such as the "spaghetti bowl" interchange near the Chicago Post Office. Thus, it now becomes clear Gov. Thompson's role was more than that of a labor peacemaker when he stepped in several weeks ago to help end the long summer strike by Local 150 members. Thompson could see even higher state costs ahead for these and other public projects as winter approached, plus lengthy lines of irate, snowbound motorists.

COPS ALERT FOR PIMPS AT BREADLINES

The local economic crunch, dramatized last week by food lines in the Uptown community, has Chicago vice detectives keeping an eye out for human vultures—pimps who prey on hungry women as targets for prostitution. The watch is on because of past patterns of such recruiting during hard times.

BRAIN DAMAGE SUIT TARGETS ALDERMAN

Ald. Niles Sherman (21st) is the target of a lawsuit by a mother who contends her son, now 14, suffered brain damage as an infant by eating paint from walls of a Sherman-owned building at 1113 W. Chestnut. In checking with Stuart W. Opdycke, the lawyer who filed the suit Oct. 1 on behalf of Annie Woods, we were told that process servers have been unsuccessful in serving Sherman with a copy of the complaint.

WOODS TURNS DOWN ANOTHER POST

Joseph I. Woods, described here last week as mulling a shot at his old sheriff's job, stepped aside in favor of Des Plaines cop Joe Kozenczak, who had a virtual lock on the nomination before GOP slatemaking began. Now we've learned that ex-FBI man Woods had an offer of another justice-type job—as a member of the state Prisoner Review Board—but also shunned it in favor of remaining on the Cook County Board. The \$30,000-a-year review board post has been vacant since July, when Gov. Thompson accepted the resignation of Donald J. Turner after an OutFront disclosure that Turner had come under investigation while serving as Alexander County sheriff.

APPENDIX 3

(Submitted for the record by Ted Katsaros and John Kuebler.)

December 23, 1981

Honorable Claude F. Pepper,
Chairman
Select Committee on Aging
U.S. House of Representatives
Washington D.C. 20515

Re: Pension Fraud Hearings

Dear Congressman Pepper:

On behalf of John Kuebler and myself, I would like to thank you for allowing us to appear before your Committee on November 4, 1981 and for the keen interest you and other members of the Committee (as well as Senator Nunn), expressed in the issue of "Pension Fund Fraud".

If you recall, Congressman Rinaldo asked that the record be left open so that we could discuss further certain issues. Accordingly, with your permission, I would like this letter, along with the attachments thereto, to become part of the permanent record of this Hearing.

Specifically, this letter addresses three basic issues:

- I. How much, and in what ways, have the Funds of Teamsters Local 282 suffered losses;
- II. What attempts have we made to inform the Department of Labor, and in particular, Secretary Donovan, about corruption in our Local and Benefit Funds;
- III. What steps do we feel the Department of Labor should take regarding this corruption.

(185)

I. TEAMSTER LOCAL 282 BENEFIT FUNDS HAVE LOST SUBSTANTIAL SUMS OF MONEY IN AT LEAST FOUR DIFFERENT WAYS.

A. Employers have been allowed to Under-pay into the Funds.

As both John Kuebler and I discussed in our testimony, we have uncovered evidence that demonstrates that employers have not been paying their fair share into our funds. In 1979, one employer, Sante Nicolia of Elm Transit Mix, pled guilty to criminal charges arising out of his highly successful effort at avoiding payments into the Fund that were demanded by the collective bargaining contract. The federal indictment charging him with various criminal offenses, a copy of which is attached as Exhibit A, outlines the following scheme that was used to beat the Fund: Under the collective bargaining contract between Local 282 and Elm Transit Mix, all Elm employees would belong to Local 282 and Elm would make payments into the Local 282 pension and welfare funds based on the number of hours or days worked by each employee. Sante Nicolia set up two non-union corporate shells. He then allocated a substantial percentage of the hours worked by Elm Transit employees to the payroll records of these corporate shells, when substantially all of the work done by the employees was performed for Elm Transit.

Our research, and Sante Nicolia's own statements, show that Elm Transit Mix is not the only company that is engaging in these practices. Part of Nicolia's defense at trial was that most other employers were doing this as well. He further contended that the Union's policy of allowing certain employers to circumvent payments owed to the Funds had helped drive two large companies out of business.

Sante Nicolia agreed to repay over \$75,000 to our funds. We estimate that our funds have been cheated out of at least three million dollars by this method.

B. The Fund Lost Substantial Amounts of Money Because of Expenses Paid out in Connection with a Proposed Loan of \$20 million to Hyman Green for a Las Vegas Casino.

At the outset, I refer this Committee to the testimony on Local 282's Funds that I and another individual gave before the House Ways and Means Oversight Subcommittee on March 22, 1978 ("Central States Teamsters Fund", Hearing Before the Subcommittee on Oversight of the Committee on Ways and Means, House of Representatives, 95th Congress, Second Session, March 22, 1978, pages 121, 122 and 196 through 209, hereinafter "Ways and Means Testimony") and the opinion of the Honorable Jacob Mishler in

Marshall v. Teamsters Local 282 Pension Trust, 458 F.Supp. 986 (E.D.N.Y. 1978).

The Ways and Means testimony and court decision provide background on a proposed \$36 million deal between the Local 282 Pension Fund and Hyman Green, a controversial businessman who had previously defaulted on \$42 million in loans from the Teamsters Central States Pension Fund.

As the testimony shows, we had uncovered documents showing that the Fund had agreed to lend Green this money and had asked Secretary of Labor Marshall to enjoin it. Up until the day we testified, we had received no reply from the Secretary. At the conclusion of our testimony, Congressman Gibbons wrote to the Secretary demanding action. Shortly thereafter, the Department of Labor filed suit to enjoin the deal.

In ruling in the Secretary's favor, Judge Mishler found that the \$20 million portion of the loan deal represented over 36 percent of the Fund's assets and was clearly too risky.

Before this ruling, the Fund had spent over \$100,000 in expenses relating to the deal. In addition, our Union President wrote to the Fund's two investment advisers in November, 1977, requesting that they liquidate

\$1.75 million within two weeks! These letters, which are attached as Exhibits B and C, put intolerable pressure on the advisers, who were under a duty to carry out a prudent investment strategy. Such action may very well have cost our Funds additional thousands of dollars.*

The Labor Department never sought to recover the \$100,000 and related losses. However, we have demanded that the Trustees reimburse the Fund in an ERISA complaint that we filed in July of this year, a copy of which is attached hereto as Exhibit D.

The Ways and Means testimony traces some of the previous communications we have had with the U.S. Department of Labor in the course of our attempts to enlist their aid in efforts to clean up our Funds.

I want to emphasize that myself and other members of our Local have always been available to assist the Department of Labor in any investigation of our Fund. We know that Labor Department investigators have received and read the newsletters that we have published over the past six years in which we have documented our charges of

* See the Ways and Means testimony for information that raises grave suspicions about the selection of these investment advisers.

corruption. Furthermore, members of our Local have given detailed information on corruption in our Union and in our benefit funds to several Department of Labor investigators assigned to the Brooklyn Strike Force.

- C. The Fund has Held a Large Piece of Non-Income Producing Property for Nearly a Decade.

As the Ways and Means testimony and an earlier article in Long Island Newsday (attached as Exhibit E) detail, the Fund has owned a country club for years. The Fund has repeatedly either lost money on its operation or made a minuscule profit.

- D. The Fund Lost Over \$1.6 Million on a Loan to a Small Illinois Bank that Recently Collapsed.

Only five months after Judge Mishler enjoined the \$20 million Las Vegas Casino deal, the Trustees were entertaining a loan request from a controversial Illinois banker, whose bank was in serious financial trouble. As a Newsday article of April 16, 1981 (a copy of which is attached as Exhibit F), reported, in January, 1979, Anthony Angelos, the Chairman of the DesPlaines (Illinois) Bank came to Long Island to meet with our Trustees. Shortly thereafter, he received a \$2 million loan. On March 14, 1981, federal and state banking authorities shut the Bank

down, leaving the Fund near the end of a long line of creditors. As Newsday put it:

The unanswered question is how a small bank's holding corporation in the suburbs of Chicago got together with a Teamster Local in the suburbs of New York.

What steps did our Trustees, who had been criticized by a federal judge just 5 months before, take to investigate the background and credit-worthiness of Mr. Angelos and the DesPlaines bank? The full story is not in yet, but Newsday (Exhibit F) quoted an Illinois banking expert as saying that:

Queries to Chicago banking authorities in 1979 should have returned the report. "Don't touch that [bank] with a 10-foot pole."

The Village Voice (see attached Exhibit G, Village Voice article of May 13-19, 1981) reported that:

Documents on file with the FDIC in both Illinois and Washington show that federal and state bank examiners had already completed three highly critical audit reports on the Des Plaines Bank in the 14 months prior to the \$2 million loan.*

* The Voice article went on to charge that convicted felon Allen Dorfman may have brought Angelos and Cody together.

Reports in the Chicago Tribune (see articles of April 16 and July 12, 1981, attached as Exhibits H and I) discussed Angelos' controversial past.

II. THE DEPARTMENT OF LABOR HAS BEEN GROSSLY NEGLIGENT IN PURSUING ALLEGATIONS OF CORRUPTION IN OUR LOCAL AND ITS BENEFIT FUNDS.

A. We Have Informed Secretary Donovan of This Corruption.

Because of the neglect of our Trustees and the lack of action by the Department of Labor, we filed suit under ERISA on July 14, 1981 seeking the recovery of various losses. (A copy of our complaint in this action is attached as Exhibit B). Pursuant to the appropriate provision of ERISA, 29 U.S.C. 1132(h), we sent a copy of our complaint to the Secretary of Labor (certified mail #P32-7099308) and the Secretary of Treasury (#P32-7099309). Well before we filed suit, our attorney discussed our intention to do so with Robert Eccles, a Department of Labor attorney who specializes in ERISA litigation. Shortly thereafter, we sent Mr. Eccles a copy of an FOIA request (see Exhibit J) to the Department for records that would assist us in preparing our suit.

To date, we have heard nothing from the Department of Labor.

Clearly this notice to Secretary Donovan and Mr. Eccles does not exist in a vacuum. As my Ways and Means testimony and the discussion above in Part IB indicate, we have corresponded and talked with Department of Labor personnel numerous times over the past several years. In addition, our activities and our information documenting our allegations of corruption have been widely disseminated, both in our own newsletters and in various news media accounts (see the discussion in Part IIC, below).^{*} Finally, as I discuss below, since Secretary Donovan has been directly involved in numerous dealings with our Local, he has a firm understanding of the extent of corruption in Local 282.

^{*}The Angelos loan for example, was not only discussed in the Village Voice and Long Island Newsday, but on the front-page of the Sunday edition of the Chicago Tribune.

B. Secretary of Labor Donovan Has First-Hand knowledge of the Corruption in Teamsters Local 282 Yet Has Refused to Act.

Secretary of Labor Donovan was subjected to intensive investigation and questioning before his nomination was formally ratified by the Senate (See generally, "Nomination Hearings", before the Committee on Labor and Human Resources, United States Senate, Ninety-Seventh Congress, First Session, January 12 and 27, 1981, hereinafter, "Nomination Hearings"). There, he was questioned about corruption in Local 282, specifically about whether his firm, the Schiavone Construction Company, had been extorted by Harry Gross, a Local 282 Business Agent and thus forced to place Gross' chauffeur on Schiavone's payroll as a no-show employee.* See generally, "Nomination Hearings", pages 114-150.

In the course of these hearings, Secretary Donovan told the Senate panel that Gross had threatened him the one time that they had met.

Mr. Donovan: I met him /Gross / once in my life. I didn't know his name. I happened to be on the 63d Street project....There was a job stoppage while I was there...I asked the steward what happened and why, and he said, "You had better ask Mr. Gross." ...

"I went up to Mr. Gross and introduced myself. He said, "Oh, you're the tough guy." I said, "No, I'm not, Mr. Gross. I consider myself fair. But why have you done this?" He said, "Well, you're supposed to put two teamsters on the elevator." I said, "I have no idea what you're talking about. But you're taking such extreme action like this, I resent it."

He said, "Hey, wise guy. We have ways to take care of people like you." I said, "Mr. Gross, if you push

*Gross, a convicted labor extortionist, was investigated by the McClellan Committee in the late 1950s which discovered that he had been shaking down companies, including the New York Times, for labor peace. He was indicted for racketeering on May 21, 1981, (a copy of his indictment is attached as Exhibit K). Among the charges is one that alleges that he forced Schiavone to give his chauffeur a no-show job.

me, I'll punch you. If you punch me, I'm going to kick you someplace."

He said, "My friend, keep your headlights on high beam when you get in your driveway at home." I said, "Mr. Gross, get off this project or I'll have you arrested for threatening my life." I walked away and he left the project.

Nomination Hearings, page 133.

C. By Virtue of His Responsibility For Labor Relations at A Major New York City Area Construction Firm, Which Employed Large Numbers Of Local 282 Members, Secretary Donovan Clearly Has Knowledge of Corruption in Local 282.

At his confirmation hearings, Secretary Donovan described his broad experience in the field of labor relations in the Construction Industry in the New York City area.

He and Ronald Schiavone were the two partners who built the Schiavone Construction Company from a company with a net worth of less than \$20,000 in 1959 to a company that will complete about \$150 million in contracts in 1981. (Confirmation Hearings, page 18). The two men together own about 90% of the company's stock. (id, page 18). Ronald Schiavone is a highly trained civil engineer with prime responsibility for the engineering and technical areas of the business (id, page 19). Secretary Donovan's prime responsibilities were: "banking relationships, bonding company credit relationships, acquisition of new companies, areas of investment, labor relations, and labor negotiations." (id, page 19). As Secretary Donovan explained to Chairman Hatch, his end of the business was the "finances and labor-management relations", and to Senator Riegle, Donovan explained:

Senator Riegle. I don't want to pursue this, but just as a point of fact, am I correct in understanding you were in charge of labor relations within the company? Mr. Donovan. Well, in charge of labor relations in the sense that I was deeply involved in the labor negotiating processes, mainly with the GCA, which is the association of general contractors, and I served on labor committees in the negotiation of agreements.

Nomination Hearings, page 138.

The GCA is a non-profit New York corporation consisting of employer-members who are engaged in construction work throughout the Metropolitan New York area. The GCA serves the function of negotiating and administering collective bargaining agreements on behalf of its members with various labor organizations including Local 282.

According to our research, Schiavone is one of the ten largest employers of Local 282 members and a major contributor into our pension and welfare funds. Local 282's activities are of crucial importance to all construction companies in the Metropolitan New York area because its members deliver all building materials, including sand, gravel and concrete, to job-sites. If our Local slows down or stops the deliver of such goods, then a construction site grinds to a halt.

Secretary Donovan has negotiated with Local 282 officials, employed its members and paid into its benefit funds. He has every reason in the world to keep his eyes and ears open for news concerning Local 282. As the following list of media coverage of Local 282 reveals, one could not go far in the construction industry in the New York area in the last several years, without hearing numerous allegations of corruption involving Local 282 and its officers:

1. On November 30, 1975, Long Island Newsday ran a lengthy investigative report (Exhibit E) on our Fund's purchase of the Southampton Country Club. It stated that Newsday had uncovered "a close and continuing relationship between John Cody,...., and Carlo Gambino, the No. 1 man in organized crime in the United States."
2. The Ways and Means testimony discussed above was covered in the Newark Star-Ledger, New York Times, New York Daily News, Newsday, and the Mt. Vernon Daily Argus.
3. The media also covered the decision of Judge Mishler in August, 1978 in Marshall v. Teamsters Local 282 Pension Trust Fund.
4. On September 27, 1978, Bruce Kay, a Local 282 Business Agent (and the chauffeur for Local President John Cody) was indicted for murder along with two other Construction Industry Union officials (See exhibit L, an article from Newsday discussing the charges).
5. On November 6, 13, and 20, 1978, the Village Voice ran front-page articles on corruption in Local 282.
6. On December 3, 1978, 60 Minutes did a 17-minute piece on corruption in Local 282.

7. On April 6, 1979, Sante Nicolia was indicted. This was covered by the new media.
8. On June 6, 1979, Local 282 Business Agent Bruce Kay was found murdered in the trunk of a car at JFK Airport, on the eve of his trial for murder.

As the other Exhibits that we have attached show, the publicity surrounding corruption in our Local has continued right up to the present.

III. THE LABOR DEPARTMENT SHOULD TAKE STRONG STEPS TO ROOT OUT CORRUPTION IN LOCAL 282.

The Labor Department should sue the Trustees of Local 282's Funds and seek the following relief:

- A. Reimbursement of all monies lost in connection with the Hyman Green deal;
- B. Reimbursement of all losses suffered as a result of the Des Plaines deal.
- C. Ouster of the current Trustees and the appointment of independent professionals to run the Fund and take the following steps:
 1. Send to the membership an initial accounting, IN PLAIN ENGLISH, of the Fund's condition, any irregularities or shortages and follow-up quarterly reports;
 2. Systematically audit all employers and set up strict auditing procedures;
 3. Devise a plan to make the most out of the Southampton Golf Course.

I beg the Committee's forgiveness for the length of this submission. Both John Kuebler and myself thank you for your interest in the well-being of American workers and their families.

If I can be of any further assistance to this Committee, please let me know.

Very truly yours,


Ted Katsaros

TPP:KFM:gak

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

SANTE NICOLIA,
ELM TRANSIT MIX, INC.

Defendants.

SUPERSEDING
INDICTMENT

Gr. No.
(18 U.S.C. §1027
18 U.S.C. §1341
18 U.S.C. §2)

THE GRAND JURY CHARGES:

INTRODUCTION

At all times material to this Indictment and specifically from on or about January 1, 1974 to on or about December 31, 1977:

1. Local 282, International Brotherhood of Teamsters, Chauffeurs and Warehousemen ("Local 282") was a labor organization headquartered at 1975 Linden Boulevard, Elmont, New York, within the Eastern District of New York, and was an employee organization engaged in commerce and in an industry affecting commerce within the meaning of Title 29, United States Code, Section 302, 303, 1002 and 1003.

2. The Local 282 Pension Trust Fund ("Pension Fund"), Welfare Trust Fund ("Welfare Fund"), and Supplemental Unemployment Benefit Trust Fund ("SUB Fund"), also located at 1975 Linden Boulevard, Elmont, New York, were employee benefit plans (hereinafter collectively referred to as the "Local 282 Funds") within the meaning the Title 29, United States Code, Sections 203, 303, 1002 and 1003.

3. The Local 282 Funds were required to publish and file annual reports with the Secretary of Labor pursuant to the provisions of Title 29, United States Code, Sections 304 to 307 and 1021 to 1026.

4. The defendant ELM TRANSIT MIX, INC. ("Elm Transit"), located at 315 Cord Avenue, Babylon, New York, was a ready mix concrete company incorporated within the State of New York that had a collective bargaining agreement, known as the Ready Mix Concrete, Sand, Gravel, Asphalt and Bulk Cement 1972-1975 Contract (and renegotiated for the years 1975-1978), whereby all Elm Transit truck drivers were to be represented exclusively by Local 282.

5. Nicolia Ready Mix, Inc. and Advanced Ready Mix, Inc. were corporations incorporated within the State of New York.

6. Defendant SANTE NICOLIA was the principal officer, operator and employee of ELM TRANSIT, Nicolia Ready Mix, Inc. and Advanced Ready Mix, Inc. and was a signatory to the collective bargaining agreement between ELM TRANSIT and Local 282.

7. A condition of the exclusive collective bargaining relationship between SANTE NICOLIA, ELM TRANSIT and Local 282 was that ELM TRANSIT would remit pension, welfare and supplemental unemployment benefit contributions to the Local 282 managed Pension, Welfare and SUB Funds on behalf of employees, and such contributions were calculated on the basis of the number of hours or days worked by each employee.

8. To facilitate the collection of contributions, the Local 282 Funds provided SANTE NICOLIA and ELM TRANSIT with pre-printed monthly remittance forms (hereinafter "remittance statements") on which to report the number of hours worked by each employee during that period and to calculate the amount of the employer's contribution to the Funds.

9. The remittance statements submitted by ELM TRANSIT to the Local 282 Funds for the year 1974 were documents required to be kept as part of the records of the Funds pursuant to the Welfare and Pension Plans Disclosure Act of 1958, as amended by Public Law 87-420 of 1962 (hereinafter "the WPPDA"), and were documents necessary to verify, explain, clarify and check for accuracy and completeness the annual report required for that year.

10. The remittance statements submitted by ELM TRANSIT to the Local 282 Funds for the years 1975 and 1976 were documents required to be kept as part of the records of the Funds pursuant to Title I of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), and were documents necessary to verify, explain, clarify and check for accuracy and completeness the annual reports required for those years.

COUNT ONE

On or about and between the 1st day of January, 1974 and the 31st day of December, 1974, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT did knowingly, wilfully and unlawfully make false statements and representations of fact in the monthly remittance statements submitted by ELM TRANSIT to the Local 282 Funds for the year 1974, knowing them to be false, and did conceal, cover up and fail to disclose facts, the disclosure of which was required by the WPPDA and was necessary to verify, explain, clarify and check for accuracy and completeness the annual report for the year 1974, by making and causing to be made false statements and omissions of material facts on the aforesaid remittance statements.

(Title 18, United States Code, Sections 1027 and 2).

COUNT TWO

On or about the between the 1st day of January, 1975 and the 31st day of December, 1975, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT did knowingly, wilfully and unlawfully make false statements and representations of fact in the monthly remittance statements submitted by ELM TRANSIT to the Local 282 Funds for the year 1975, knowing them to be false, and did conceal, cover up and fail to disclose facts, the disclosure of which was required by ERISA and was necessary to verify, explain, clarify and check for accuracy and completeness the annual report for the year 1975, by making and causing to be made false statements and omissions of material facts on the aforesaid remittance statements.

(Title 18, United States Code, Sections 1027 and 2).

COUNT THREE

On or about and between the 1st day of January, 1976 and the 31st day of December, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT did knowingly, wilfully and unlawfully make false statements and representations of fact in the monthly remittance statements submitted by ELM TRANSIT to the Local 282 Funds for the year 1976, knowing them to be false, and did conceal, cover up and fail to disclose facts, the disclosure of which was required by ERISA and was necessary to verify, explain, clarify and check for accuracy and completeness the annual report for the year 1976, by making and causing to be made false statements and omissions of material facts on the aforesaid remittance statements.

(Title 18, United States Code, Section 1027 and 2).

COUNT FOUR

On or about and between the 1st day of January, 1977 and the 31st day of December, 1977, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT did knowingly, wilfully and unlawfully make false statements, and representations of fact in the monthly remittance statements submitted by ELM TRANSIT to the Local 282 Funds for the year 1977, knowing them to be false, and did conceal, cover up and fail to disclose facts, the disclosure of which was required by ERISA and was necessary to verify, explain, clarify and check for accuracy and completeness the annual report for the year 1977, by making and causing to be made false statements and omissions of material facts on the aforesaid remittance statements.

(Title 18, United States Code, Sections 1027 and 2).

COUNT FIVE

1. At all times material to this Indictment, the defendants SANTE NICOLIA and ELM TRANSIT devised and intended to devise a scheme and artifice to defraud the Local 282 Funds and employees of ELM TRANSIT and Local 282, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, well knowing that the pretenses and representations were false when made.

2. The scheme and artifice to defraud, so devised and intended to be devised, was in substance as follows:

(a). It was a part of the scheme and artifice to defraud that SANTE NICOLIA and ELM TRANSIT would and did enter into collective bargaining agreements with Local 282 obligating them to report the true number of hours worked by each employee and to remit to the Local 282 Funds the amount of the employer's contribution due to the Funds, well knowing that they intended to understate the number of hours worked by the employees and the amount of contribution due to the Funds.

(b) It was a further part of the scheme and artifice to defraud that, in addition to the payroll records of ELM TRANSIT, SANTE NICOLIA maintained payroll records for Nicolia Ready Mix, Inc. and Advanced Ready Mix, Inc., two companies controlled by SANTE NICOLIA but which did not have collective bargaining agreements with Local 282.

(c) It was a further part of the scheme and artifice to defraud that SANTE NICOLIA would and did arbitrarily allocate a substantial percentage of the hours worked by ELM TRANSIT employees to the payroll records of Nicolia Ready Mix, Inc., and Advanced Ready Mix, Inc., when in truth and in fact all or substantially all of SANTE NICOLIA'S business operations were conducted by ELM TRANSIT and all or substantially all of the work performed by said employees were performed for ELM TRANSIT.

(d). It was a further part of the scheme and artifice to defraud that SANTE NICOLIA and ELM TRANSIT would and did fail to record some of the hours worked by ELM TRANSIT employees on the payroll records of any of the three corporations -- ELM TRANSIT, Nicolia Ready Mix, Inc., or Advanced Ready Mix, Inc.

(e) It was a further part of the scheme and artifice to defraud that SANTE NICOLIA and ELM TRANSIT would and did ~~make~~ and cause to be made false entries on the monthly remittance statements submitted to the Local 282 Funds by failing to report on said statements the work hours of employees allocated to Nicolia Ready Mix, Inc. and Advanced Ready Mix, as well as failing to report the work hours of employees not reflected on the payroll records of any of the three corporations, thereby understating the true number of hours worked by each ELM TRANSIT employee and understating the corresponding amounts due and owing to the Local 282 Funds, and causing certain ELM TRANSIT employees to receive no credit toward their pensions under the Pension Fund during periods when they were entitled to such credit.

(f) It was a further part of the scheme and artifice to defraud that SANTE NICOLIA caused false entries to be made in the books and records of ELM TRANSIT, Nicolia Ready Mix, Inc., and Advanced Ready Mix, Inc., in order to make the books and records of ELM TRANSIT consistent with the false monthly remittance statements.

3. On or about and between the 1st day of January, 1974 and the 31st day of December, 1974, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, knowingly placed and cause to be placed in an authorized depository for mail matter letters from ELM TRANSIT to the Local 282 Funds containing the remittance statements for the year 1974 which were transmitted approximately once each month, delivered by the Postal Service according to the directions thereon.

(Title 18, United States Code, Sections 1341 and 2).

COUNT SIX

1. Paragraphs One and Two of Count Five of this Indictment are hereby realleged and incorporated as though set forth herein.

2. On or about and between the 1st day of January, 1975 and the 31st day of December, 1975, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, knowingly placed and caused to be placed in an authorized depository for mail matter letters from ELM TRANSIT to the Local 282 Funds containing the remittance statements for the year 1975 which were transmitted approximately once each month, to be sent and delivered by the Postal Service according to the directions thereon.

(Title 18, United States Code, Sections 1341 and 2).

COUNT SEVEN

1. Paragraphs One and Two of Count Five of this Indictment are hereby realleged and incorporated as though set forth herein.

2. On or about and between the 1st day of January, 1976 and the 31st day of December, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, knowingly placed and cause to be placed in an authorized depository for mail matter letters from ELM TRANSIT to the Local 282 Funds containing the remittance statements for the year 1976 which were transmitted approximately once each month, to be sent and delivered by the Postal Service according to the directions thereon.

(Title 18, United States Code, Sections 1341 and 2).

COUNT EIGHT

1. Paragraphs One and Two of Count Five of this Indictment are hereby realleged and incorporated as though set forth herein.

2. On or about and between the 1st day of January, 1977 and the 31st day of December, 1977, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SANTE NICOLIA and ELM TRANSIT, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, knowingly placed and caused to be placed in an authorized depository for mail matter letters from ELM TRANSIT to the Local 282 Funds containing the remittance statements for the year 1977 which were transmitted approximately once each month, to be sent and delivered by the Postal Service according to the directions thereon.

(Title 18, United States Code, Sections 1341 and 2).

A TRUE BILL.

FOREMAN

EDWARD R. KORMAN
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

LOCAL 282 - WELFARE AND PENSION TRUST FUNDS

1975 LINDEN BOULEVARD - ELMONT, NEW YORK 11003 - (212) 343-3322 - (516) 285-6650

November 16, 1977

Mr. Martin D. Sass
American Management Enterprises Inc.
475 Park Avenue South
New York, New York 10016

Dear Marty,

There is a strong possibility that the Fund will have to withdraw from the portfolio that you manage, approximately \$ 1,750,000.00 on or about December 1, 1977 and \$ 8,250,000.00 on or about April 1, 1979.

Kindly advise by return mail, if these amounts will be available when requested.

Also confirm, that if any securities have to be liquidated, that it will be done in an orderly fashion, so that the Fund will not sustain any losses as a result of the conversion.

Your prompt reply would be appreciated.

Very truly yours,

Local 282 Pension
Trust Fund

JC/jw

John Cody
Fund Manager

cc: J. Kenneth O'Connor, Esq.
Mr. David Garceau

LOCAL 282 - WELFARE AND PENSION TRUST FUNDS

1975 LINDEN BOULEVARD - ELMONT, NEW YORK 11003 - (212) 343-3322 - (516) 285-6650

November 16, 1977

Mr. J. Anthony Forstmann
Forstmann-Leff Associates
767 Fifth Avenue
New York, New York 10022

Dear Tony,

There is a strong possibility that the Fund will have to withdraw from the portfolio that you manage, approximately \$ 1,750,000.00 on or about December 1, 1977 and \$ 8,250,000.00 on or about April 1, 1979.

Kindly advise by return mail, if these amounts will be available when requested.

Also confirm, that if any securities have to be liquidated, that it will be done in an orderly fashion, so that the Fund will not sustain any losses as a result of the conversion.

Your prompt reply would be appreciated.

Very truly yours,

Local 282 Pension
Trust Fund

JC/jw

John Cody
Fund Manager

cc: J. Kenneth O'Connor, Esq.
Mr. Arthur Nickas

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
TED KATSAROS, JOHN KUEBLER, ROBERT :
TROT, LAWRENCE KUDLA, and CHARLES :
CURD, as participants in the : 21 Civ.
Teamsters Local 282 Pension Trust :
Fund, :

Plaintiffs, : COMPLAINT

- against - :

JOHN CODY, ROBERT SASSO, JOHN DEE, :
WILLIAM ARGENTQ, RALPH GUERCIA, :
HERBERT SCHNEIDER and LOUIS NAPPI, :
as Trustees of the Teamsters Local :
282 Pension Trust Fund, :

Defendants. :

-----x
Plaintiffs by their attorneys. HALL, CLIFTON and
SCHWARTZ, as and for their Complaint, allege as follows:

INTRODUCTION

1. This is an action, by participants in the Teamsters Local 282 Pension Trust Fund (hereinafter "Fund") for equitable and legal relief from breaches of defendants' fiduciary duties to the Fund. The relief plaintiffs seek includes restitution by the defendants to the Fund, and the removal of defendants from their positions of fiduciary responsibility with the Fund.

JURISDICTION

2. This action arises under the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), 29 U.S.C. §1001, et seq., and this Court has jurisdiction of this action under §502(a)(3) and (e)(1) of ERISA, 29 U.S.C. §1132(a)(3) and (e)(1). Venue of this action is properly laid in the Eastern District of New York under §502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1).

PARTIES

3. Plaintiffs TED KATSAROS, JOHN KUEBLER, ROBERT TROT, LAWRENCE KUDLA and CHARLES CURD are participants in the Fund

within the meaning of §3(7) of ERISA, 29 U.S.C. §1002(7). The Fund is an employee pension plan within the meaning of ERISA §3(2)-(3), 29 U.S.C. §1002(2)-(3) and subject to the coverage of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

4. Defendants JOHN CODY, ROBERT SASSO, JOHN DEE, WILLIAM ARGENTQ, RALPH GUERCIA, HERBERT SCHNEIDER and LOUIS NAPPI are members of the Fund's board of trustees and are fiduciaries with respect to the Fund within the meaning of ERISA §3(21)(A), 9, U.S.C. §1002(2)(A).

AS AND FOR A FIRST CAUSE OF ACTION

5. Plaintiffs restate and incorporate by reference each and every allegation of paragraphs 1 through 4 of the Complaint herein.

6. On or about November 15, 1977 defendants agreed to lend \$20 million, or approximately 36% of the assets of the Fund at that time, to a certain Hyman Green, in an arrangement by which \$3.5 million was to be used for the purchase of certain land in Las Vegas, Nevada, and \$16.5 million was to be used for the construction of a hotel and casino on the said Nevada land, and in addition said Hyman Green was to take title to some 1600 to 2000 acres of land in Long Island, New York, in exchange for a purchase money note in the amount of the purchase price of \$13.5 million.

7. The consummation of the aforescribed loans would have violated the requirements of §404(a)(1)(B)-(C) of ERISA, 29 U.S.C. §1104(a)(1)(B)-(C), that a fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and by diversifying the investments of the plan so as to minimize the risk of large losses.

8. On or about August 11, 1978, the Honorable Jacob Mishler, Judge of the United States District Court for the Eastern District of New York, permanently enjoined the Fund from making the aforescribed loans on the grounds that said transactions violated the fiduciary requirements of §404(a)(1)(B)-(C) of ERISA, 29 U.S.C. §1104(a)(1)(B)-(C), and the Trust Agreement covering the Fund's operation.

9. In the course of arranging the aforescribed prohibited transaction the defendants expended money from the Fund, in excess of One Hundred Thousand (\$100,000.00) Dollars.

10. The expenditure of said monies, in the arrangement of a transaction which breached defendants' fiduciary duties to the Fund violated the requirements of §404(a)(1)(B)-(C) of ERISA, 29 U.S.C. §1104(a)(1)(B)-(C).

11. The expenditure of said monies violated the requirements of §404(a)(1)(A) of ERISA, 29 U.S.C. §1104(a)(1)(A) of ERISA, 29 U.S.C. §1104(a)(1)(A) in that the expenses were not reasonably necessary to the administration of the Fund.

12. As a consequence of the aforescribed violations of defendants' fiduciary duties the Fund on whose behalf plaintiff brings this action, has been damaged in the sum of One Hundred Thousand (\$100,000.00) Dollars, for which defendants are personally liable pursuant to ERISA §409(a), 29 U.S.C. §1109(a).

AS AND FOR A SECOND CAUSE OF ACTION

13. Plaintiffs restate and incorporate by reference each and every allegation of paragraphs 1 through 12 herein.

14. On or about March 1, 1979 defendants caused the Fund to loan \$2 million to the Des Plaines Bancorporation, a holding company of which the Des Plaines Bank is a wholly owned subsidiary. The terms of the said loan included the following:

a) One Million Five Hundred Thousand (\$1,500,000) Dollars was to be used by the Des Plaines Bancorporation to repay indebtedness; the remaining Five Hundred Thousand (\$500,000) Dollars was to be added to the capital of the Des

Plaines Bank.

b) All shares of the Des Plaines Bank owned by the Des Plaines Bancorporation were pledged as collateral. The Fund was also given a secondary position on some of the real estate holdings of Anthony Angelos, then President and Chairman of the Board of the Des Plaines Bancorporation and the Des Plaines Bank.

c) The loan was to be repaid to the Fund by March 1, 1983.

15. Defendants' consummation of the aforescribed loan to the Des Plaines Bancorporation violated the requirements of §404(a)(1)(B) of ERISA, 29 U.S.C. §1104(a)(1)(B), that a fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing than a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims.

16. In or about February, 1981, defendants gave Des Plaines Bancorporation a four year extension on the repayment of the said loan made to the Des Plaines Bancorporation in March, 1979.

17. The aforescribed granting of an extension on the repayment of the loan to Des Plaines Bancorporation violated the requirements of §404(a)(1)(B) of ERISA, 29 U.S.C. §1104(a)(1)(B).

18. On or about March 7, 1981, the Federal Deposit Insurance Corporation and the Illinois State Commissioner of Banks and Loan Companies closed the Des Plaines Bank and declared it insolvent. As a consequence thereof the Des Plaines Bancorporation has defaulted on the payment of One Million Six Hundred Twenty Five Thousand (\$1,625,000.00) Dollars of the loan balance still owed to the Fund.

19. As a consequence of the violations of defendants'

fiduciary duties, as described in paragraphs 13 - 17 hereinabove, the Fund, on whose behalf plaintiff brings this action, has been damaged in the sum of One Million Six Hundred Thousand Twenty Five Thousand (\$1,625,000.00) Dollars for which defendants are personally liable pursuant to ERISA §409(a), 29 U.S.C. §1109(a).

20. Unless defendants are removed from their position as fiduciaries, defendants will continue to violate their fiduciary duties under ERISA §404(a)(1)(A), (B) and (C), 29 U.S.C. §1104(a)(1)(A), (B) and (C), and will continue to act in a manner which subjects a substantial portion of the Fund's assets to an unreasonable risk of loss, to the injury of the Fund, its participants and beneficiaries, and the public interest.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. enter a judgment declaring that by expending Fund assets in arranging the loan to Hyman Green defendants violated the fiduciary requirements of §404(a)(1)(A), (B) and (C) of ERISA, 29 U.S.C. §1104(a)(1)(A), (B) and (C);
2. enter a judgment declaring that by loaning Two Million (\$2,000,000.00) Dollars to Des Plaines Bancorporation in 1979 and extending the term of said loan four (4) years defendants violated the fiduciary requirements of §404(a)(1)(B) of ERISA, 29 U.S.C. §1104(a)(1)(B);
3. enter a judgment permanently removing the defendants from their positions as trustees of the Fund;
4. enter a judgment against defendants jointly and severally in favor of the Fund, in the amount of One Hundred Thousand (\$100,000.00) Dollars on the First Cause of Action and One Million Six Hundred Twenty Five Thousand (\$1,625,000.00) Dollars on the Second Cause of Action as compensatory damages, and One Million (\$1,000,000.00) Dollars as punitive damages on all Causes of Action; and

5. enter an order;

- a) awarding plaintiff the expenses incurred by them in bringing this suit, including reasonable attorneys' fees and litigation expenses;
- b) awarding costs and disbursements of this action;
- c) retaining jurisdiction of this action to oversee compliance; and
- d) granting such other and further relief which to this Court may seem just and proper.

DATED: New York, New York
July 10, 1981

HALL, CLIFTON & SCHWARTZ, ESQS.
Attorneys for Plaintiffs

BY:

Arthur Z. Schwartz
ARTHUR Z. SCHWARTZ, ESQ.
A Member of the Firm
401 Broadway, Suite 310
New York, New York 10013
(212) 431-8512

[From Newsday, Nov. 30, 1975]

TEAMSTERS MONEY AND A GOLF CLUB

STATE, FEDERAL INVESTIGATIONS OF THE PURCHASE OF A \$6 MILLION COUNTRY CLUB HAVE BEGUN

(By John Cummings, Joe Demma, and Drew Fetherston)

The pension trust fund of the metropolitan area's most powerful Teamsters Union local has poured more than \$6 million into a Southampton land venture despite warnings by the union's own attorneys that the investment might violate federal laws regulating the pension funds.

A Newsday investigation also has disclosed a close and continuing relationship between John Cody, the defacto boss of Teamster Local 282 and Carlo Gambino, the No. 1 man in organized crime in the United States.

Cody, in an interview, defended the land purchases as legal and proper, but the interview was terminated before he could be questioned about his association with Gambino, Cody said he would answer questions only about the acquisition.

The purchases by the local of almost 1,600 acres, including what is now the Hampton Country Club golf course, took place between 1970 and early this year. They were arranged by Cody, an ex-convict who is secretary-treasurer of Local 282 and now manages the local's multimillion-dollar pension fund. The money in the fund comes from employer contributions.

A four-month Newsday investigation has been paralleled by that of federal and state law-enforcement officials who are trying to find out if any money from the land deals found its way to organized crime figures. Police sources say that Cody, 54, who has a police record dating to 1938, is a close associate of Gambino, the top man among the country's crime-family leaders.

Cody's Local 282 drivers control the delivery of building materials in New York City and on Long Island, and the unions has a long history of strongarm tactics. Twice in the past—in 1958 and 1961—strikes by the local brought all building to a halt; the 1961 strike lasted two months and threw 50,000 men in other trades out of work.

Newsday has learned that law-enforcement agencies are investigating the Hampton Country Club to see if the club has become the newest in a number of sites used for private night time meetings involving politicians, mob figures, labor leaders and contractors. The \$600,000 clubhouse and outbuildings are more than a mile from Riverhead-Moriches Road, along a narrow, winding road.

The purchase by the Teamsters pension fund of the golf course and a huge tract surrounding it is similar in many ways to the development of the glittering Colonie Hill complex in Hauppauge by another powerful union: Local 138 of the International Union of Operating Engineers, long the fiefdom of labor boss William (Bill) DeKoning, and his son, William Jr. Both union and police sources say that Cody has now assumed the mantle once worn by the DeKonings as Czars of organized labor on Long Island. Colonie Hill was declared an imprudent investment for the funds by the New York State Insurance Department, which ordered officers of the funds to sell it. Newsday has learned that the Hampton Country Club venture is under similar scrutiny by the State Insurance Department.

The Newsday investigation of Local 282's land transactions revealed that:

The teamster local's pension fund, of which Cody is a trustee and since 1973 \$19,000-a-year business manager, was warned by its own lawyers that its land dealings might have violated federal labor laws, jeopardizing the fund's tax-exempt status, which could ruin the fund, that provides for union members' retirement.

Both the Internal Revenue Service and the New York Secretary of State's office, which regulates real estate brokers and salesmen, are investigating to determine if part of the real estate commissions from the 1970 land purchases found its way to organized crime figures.

The major broker in the deal, John G. Strong, had one story for Newsday reporters and another for the Secretary of State's office on how part of the \$340,000 commission was split.

The man who brought Strong and the Teamsters pension fund together, reputed Montauk motel owner Roy Norman, was not licensed to sell real estate or receive commissions at the time of the 1970 sale. After the sale, Norman apparently ran the golf course for a time, even though he had no official status with the club, union or pension fund.

Strong attempted, at Cody's and Norman's behest, to recover part of the 1970 commissions that had been paid to other brokers. Why Cody urged this is unknown,

since the brokerage fee would have been paid by the seller rather than the pension fund.

Cody has been arrested four times on burglary charges, once for grand larceny, twice for attempted robbery, once for attempted rape and once for attempted extortion. He was convicted for attempted robbery and burglary, for which he was given a sentence of two to four years in 1943, and was convicted of attempted extortion in 1959, which was overturned on appeal. While awaiting trial on that charge in Nassau County Court in 1960, Cody secretly paid for a fund-raising party for Nassau County Court Judge Paul Widlitz, who was running for the State Supreme Court. Widlitz, who did not attend the party, denied knowledge of Cody's actions.

Cody's relationship with Gambino, who resides at 34 Club Dr., Massapequa, is so close that Gambino was one of the official greeters at the \$51,000 wedding reception of Cody's son, Michael at the Huntington Town House on March 24, 1973. Police sources say that most of those who attended went in leased cars. The wedding reception was described as sumptuous, with guests drinking from a champagne fountain. Cordials were served in chocolate cups that could be eaten when the drinks they contained were finished.

Rented cars prevented police from checking license plate registration to determine the names of many who attended the wedding reception. Earlier, on Jan. 14, 1972, Nassau police spotted a car Cody often drives. It is a Mercedes Benz registered to Cody's daughter, Theresa, then 19, and was seen parked in front of the home of Ettore Zappi, a chief lieutenant of Gambino who lives next door to the crime boss in Massapequa.

It is the relationship between Cody and Gambino that particularly interests federal and state investigators as they dig into the pension fund's land dealings.

The local's control in the industry is such that union leaders can make or break individual contractors. Favorable treatment by Local 282 can mean success for a company at the expense of other companies that are held strictly to their contract terms. An example of how well a contractor can do with the local's blessing is Joseph Muratore of Twin-County Transit Mix in Smithtown. In recent years, Twin-County has prospered and expanded in a troubled and dwindling industry, partly because its drivers, who are not members of Local 282 and make lower wages than the local's members, have been allowed on job sites where other Local 282 men are working. That normally would result in a Local 282 job action. Complaints by Local 282 shop stewards to the main union office about Twin-County have been ignored.

As early as the late 1950s, Cody was a frequent guest at the Harbor Lights Social Club, which met at a restaurant of the same name in Amityville. The club, which met weekly, included labor leaders, contractors and members of organized crime. Public-works contracts and arrangements for labor peace in the industry were discussed at the meetings. At that time, Cody was the Long Island business agent of the local and chief lieutenant in the New York area for East Coast Teamster boss John O'Rourke.

Harbor Lights was formed by a group that included Commack businessman John Del Mastro.

A longtime associate of Del Mastro and a frequent guest of Harbor Lights was Bronx plumbing contractor Leo Imperial who police sources say is a close associate of Cody. Imperial now runs the Hampton Country Club.

The Hampton Country Club bears little resemblance today to the club that the pension fund bought in 1970. The original clubhouse—a modern design with huge beams and high vaulted ceilings—was nearly complete, but the union decided to replace it. The new building, much less stylish than that originally planned, was begun in 1973. It is brick, two stories tall, with a well-appointed restaurant, bar, locker rooms and offices. The golf course has been praised by players as first-rate.

Strong, the key broker in the original purchase of the club and 570 adjoining acres in 1970, was also the major broker in pension-fund purchase within the past year of more than 800 additional adjacent acres. He was indicted in 1972 in connection with Suffolk County's acquisition of parkland at Tianna Beach. Indicted with him were his brother, Thomas, then a county legislator; former Southampton Town Supervisor Robert Cameron, and then-County Attorney George Percy. The indictments were dismissed in 1973, on technical grounds, but they have been taken to the State Court of Appeals by the district attorney's office.

Strong, who had been trying to sell the golf course, said he was contacted in May, 1969, by Norman, whom he knew slightly. Norman arranged a meeting with Cody at the Howard Johnson's restaurant in Riverhead. From the meeting came an offer to buy the 183-acre course and the 570 adjoining acres for \$3.4 million in cash. The golf course, owned by a group that included some of the original organizers of the club under the name NGC Holding Corp., cost \$1.4 million. The adjoining land,

owned by a firm in which Strong had an interest, D.I.C. Realty Corp., was priced at \$2 million. Last year, with Strong again as broker, the union bought 819 acres more for \$2.94 million, according to tax stamps on the deed.

However, six months before the second purchase, the pension fund's attorney, Samuel J. Cohen, raised doubts about the legality of the entire land purchase. Minutes obtained by Newsday of the June 11, 1974, trustees' meeting show that Cohen cited "special problems" that could arise under the Taft-Hartley Act and the Internal Revenue Code. Cohen said that the doubted the fund could operate the club without losing its tax-exempt status.

"If the fund is engaged in an income-producing enterprise [like the club] . . . taxation should be expected. While no definite ruling is available on this subject, a possibility exists that the IRS may disqualify a pension fund, and this would cause forfeiture of all the tax benefits," Cohen said in a memorandum to the fund's trustees.

Cohen pointed out that loss of tax-exempt status would have grave consequences: all earnings by the fund on investments would be taxed. Money paid into the fund by employers would be considered part of a member's earnings, and therefore taxable. And, most serious, employer contributions would no longer be deductible as business expenses for tax purposes. Tax and labor experts consulted by Newsday said these consequences would cripple the fund. "What employer would contribute to such a fund if he couldn't deduct it for taxes?" one said.

If the opinion by their attorney gave the fund trustees pause, it is not reflected in the minutes.

Strong, who took a 10-percent brokerage fee on the sales, split his fees from the 1970 sales with other brokers who had been authorized to try and sell the property. Of the \$140,000 earned from the sale of the golf club, \$102,000 went to brokers Perry DeLalio and John Cataletto and lawyer Irving Kahn, under terms of a March 19, 1970, brokerage agreement.

Strong told Newsday that this agreement later angered both Norman and Cody and that Cody told him that the money paid Kahn, DeLalio and Cataletto "is our money." Strong said Norman told him repeatedly, "We have other partners," and that he put pressure on Strong to get the three men to return the \$102,500. Strong said he refused. But in a letter dated June 19, 1970, one week after the closing of title, Strong wrote to Kahn saying: "Since the closing of title the purchaser [the union] has informed me that I must do the right thing and obtain the commission that was taken from me in a fraudulent manner. He [Cody] has suggested that if the money is not returned to me immediately, he will insist on meeting with Kahn, DeLaid, Cataletto (and) myself . . ."

Why Cody or Norman should be concerned about the commission is a mystery to investigators, since the brokerage fee in almost all cases is paid by the seller, namely the golf club. It is one of the questions being pursued by the Internal Revenue Service, which refused comment. But sources close to the case say that the IRS has been trying to establish the ultimate disposition of the \$200,000 that Strong got as a fee on the D.I.C. property.

The IRS, like the secretary of state, sources say, is trying to determine "if any of these funds reached the hands of individuals connected with organized crime."

Strong told Newsday that he split the \$200,000 commission evenly with Shoreline Realty of Main Street, Sag Harbor, for which Norman worked as a salesman. The firm is headed by broker John Andersen. But in a letter to the secretary of state dated Nov. 24, 1970, when Norman applied for a broker license, Strong said: "The real estate commission which the office of Shoreline Realty received was \$30,000. Mr. Norman spent over one year on this transaction." Other sources familiar with the transaction believe that the amount paid to Shoreline may have been larger than the \$100,000 indicated by Strong.

The secretary of State's records also indicate that Norman did not actually hold a salesman's license at the time the golf course deal closed on June 12 and 13, 1970, and the license was not issued until a week later. It is illegal, according to a department spokesman, for a broker to share a fee with an unlicensed person.

Andersen also stated in Norman's application for a broker's license that Norman, reputed owner of the Port Royal Motel in Montauk, worked for Andersen in 1968 and 1969. Records filed with the Suffolk County clerk's office show that Andersen's name did not appear on papers filed in connection with Shoreline until April 1, 1969.

The club is now run by Imperial and George Morrison, the club's golf pro. under a very favorable lease arrangement. The terms call for \$500 a month rent until next June, after which it will be \$1,000 a month.

Just after the pension fund took over, the club's management was handled in a curious manner. According to filed court papers, Norman hired a group of teenagers

to run the club, reserving for himself the golf-cart concession, even though he appeared to have no official standing with the union, its pension fund or the club. He bought some of the golf carts from Morrison.

The contradictions remain unexplained. Andersen spoke only briefly with Newsday and would say only that he had given "a full, signed statement" to IRS investigators. Andersen has been reported out of town for the past several weeks and has been unavailable for further comment. Norman agreed to be interviewed by Newsday but failed, without explanation, to appear at the appointed time.

Cody told Newsday that the pension fund decided to buy the land because its investments in 1970, at the time of the first purchase, were "overextended in the [stock] market." He refused, however, to comment when asked if his son, Michael, a registered stock salesman received any commissions in connection with the purchase of stock by the union.

Cody, who was accompanied by fund trustee Robert Sasso from the union said that Cohen has raised the objections merely to remind the trustees that they could not go into any land venture that produced a profit such as a housing development. (The union pension fund does receive rent from a lease on the club with Imperial and Morrison). "We checked it out with all the lawyers . . . and they said it was OK," Cody said.

Asked if the pension fund has sought a ruling from IRS on whether the fund could own the club and still maintain its tax-exempt status, Cody replied: "I don't recall." As to how the broker's commission on the sale was split up, Cody denied any knowledge of it, saying "I'm not concerned [about the split]."

Cody did say that the fund was negotiating to either buy more property or trade off some with a neighboring property owner, but he gave no further details.

There are reports that the pension fund is considering buying additional land from a huge tract nearby owned by RCA Corp. Recently, Strong and a representative from RCA were at the golf club to discuss that possibility with fund members.

The money to replenish the fund comes from employer contributions. However, one of the biggest transit-mix firms on Long Island, Twin-County, does not contribute because its employees are not represented by Local 282. Its owner is Joseph Muratore, a close friend and a partner in two other business ventures with powerful Smithtown Republican Chairman *Nicholas Barbato*. There is, however, no evidence to link Barbato to Muratore's concrete firm or to Cody and his associates.

Muratore's employees are represented by Local 1424 of the Brotherhood of United Industrial Workers. In 1968 in a National Labor Relations Board proceeding, Muratore and Cody were accused of conspiring to force Twin-County employees into Local 282. In a consent decree signed by Cody and Muratore on Jan. 22, 1974, both men agreed to "cease and desist" from trying to force Twin-County employees to join Local 282.

The NLRB said that Twin-County, without an NLRB representation election, tried to force its employees to accept Local 282 as their bargaining agent and refusing to deal with Local 424. Three employees, who refused to go along, were paid \$1.10 less per hour than other employees, the NLRB said, and the company was ordered to repay these back wages.

Despite the fact that Muratore is still not affiliated with Local 282, and pays lower wages and benefits his company has had no problems with Cody, who normally calls his men off the job when a non-Local 282 truck enters a construction site. One industry source said: "Twin-County goes anywhere it wants . . . [a 282 shop steward] stopped a Twin-County truck because the driver didn't have a 282 [dues] book and called the union hall and asked them what to do, and the hall told him to mind his own goddam business."

Since the NLRB consent decree was signed, in January, 1974, Muratore has received contracts worth more than \$2.5 million for work on the Southwest Sewer District. He has recently been designated as the sole concrete supplier for the sewage treatment plant at Bergen Point, the district's largest single sewer project so far awarded.

Suffolk's Department of Environmental Conservation, which is building the project, estimates that 60,000 cubic yards of concrete will be required to build the treatment plant. At current rates Muratore is paid \$25 per cubic yard. In addition, in 1974 alone, Muratore's firm earned almost \$450,000 from the county for concrete used on county road jobs and for the Suffolk Community College's campuses under construction near Riverhead and Brentwood.

Muratore, who went broke in the 1950s, has risen coincidentally in stature with Barbato, who became Smithtown leader in 1965 and is now considered a man with political power equaled in Suffolk only by Perry B. Duryea (R-Montauk), the Assembly minority leader.

He is a business partner with Barbato in *Island Ford Tractor Sales Inc.* in Calverton, which sells heavy construction equipment along with farm implements, and in *Atlantic Helicopter* which advertises itself as a crop sprayer.

The house on the bank of Heady Creek is magnificent.

It is almost hidden from the street, but the view from across the quiet waters of the creek is unobstructed: the two stories of brick and shingle, the enormous stone chimney, the well-tended grounds sweeping down to the shore. John Cody has a house that he can be proud of.

The house, which is 125 feet long owes much to its builder-contractor, Herbert T. Schneider, who employs teamsters from Cody's Local 282. Although Cody denies that Schneider built it, Schneider's name is on the village building permit application as builder of the home. In 1968 when the home was built, the firm, H. T. Schneider Associates, did mostly curb and sidewalk work for larger contractors. Schneider has since become a major contractor himself, thanks mainly to Suffolk's huge Southwest Sewer District project, which has awarded his firm contracts of more than \$24 million. He also serves with Cody on the Local 282 Pension Fund board of trustees.

Nor is the house the only good turn that Schneider did for Cody. Two one-acre lots adjoining the house were bought by John Cody's son, Michael, in July, 1973, on favorable terms and at a favorable price. The seller was Ruth Schneider, Herbert's wife, who took a minor profit on the land, some of which she had owned for more than four years.

According to the building department files in Southampton Village, the cost of the house—built at a time when Cody was only making \$16,900 a year as a vice president of the union—was estimated by Schneider to be about \$35,000. (Cody had bought the 1.3-acre lot in 1967 for \$7,000.) However, village building inspector Eugene R. Romano said that the \$35,000 estimate was "a joke." Building experts consulted by Newsday said that the minimum cost of Cody's house to a builder would be \$85,000; the retail price to a buyer would have been higher still.

The house is well built and equipped. Newsday learned that the Suffolk district attorney's office had investigated the arrangements made for the concrete work on the house. The probe indicated that Schneider had personally called a concrete supplier, Gallagher Service Corp. of Setauket, and asked that it supply the concrete for Cody's house in Southampton at lower rates than are usually charged in eastern Suffolk.

Gallagher according to police sources, agreed to the request and delivered about 250 cubic yards—several times the amount needed for an average large house. The electrical work in the house is also on a grand scale: 159 lighting fixtures, 108 light switches, 100 receptacles and 19 dimmers. The plumbing, which includes a shower room with shower heads in all four walls, was installed by Cody's associate, Leo Imperial.

Just north of Cody's house are the two lots owned by his son. At the time of the sale by Mrs. Schneider to Michael Cody, she had invested almost \$32,000 in the property, including purchase price, interest on mortgages and real estate taxes. The terms of the sale gave her \$8,000 in cash, with a \$27,000 mortgage that is to be paid over five years.

The total purchase price to Michael Cody is \$40,000, because one lot still had a mortgage for \$5,000 on it. Several other lots in the subdivision are for sale at prices well in excess of the \$20,000 apiece he paid. For instance, a non-waterfront 2-acre lot in the subdivision is being offered for sale now for \$90,000. An inland one-acre lot is being offered for \$25,000.

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THE LONG ISLAND NEWSPAPER • SUFFOLK EDITION

LI Union's Loan to Ill. Bank Sours

By Kenneth C. Crowe

In 1979, Long Island-based Teamster Local 282's pension fund made a \$2-million loan secured by both all of the stock of a suburban Chicago bank and the personal guarantee of the chairman of the board of the bank's holding company.

In recent weeks, the bank, the Des Plaines Bank, has folded; and Anthony G. Angelos, chairman of the Des Plaines Bancorporation, has been accused of participating in a cloak-and-dagger scheme in which \$2,465,175 was taken fraudulently from the Nairobi branch of a British bank.

Yesterday, William C. Harris, Illinois state commissioner of banks and loan companies, said it was doubtful that the pension-fund loan would ever be paid from the defunct bank, which was closed in a joint move by his agency and the Federal Deposit Insurance Corp. on March 7 that declared it insolvent. Stockholders are the last to be paid in such situations.

Whether Angelos' personal guarantee can be translated into the \$1,625,000 still owed on the loan to the pension fund remains to be seen. This isn't the first questionable loan Angelos has guaranteed. A suit was filed against him in January in Illinois state courts for \$333,055 due on another loan he guaranteed in connection with the purchase of a trailer court.

On March 30, the Standard Chartered Bank Ltd. of London filed a complaint in Chicago's Circuit Court seeking to make Angelos a defendant in

a civil action to recover \$2,462,175 allegedly misappropriated through a wire fraud from the bank's Nairobi branch. In the court papers, Angelos was accused of traveling to Africa with a Chicago businessman, arranging to obtain a confidential telex and coding key, and using that to authorize the movement of the funds first to a New York bank and then to a Chicago bank—from which they collected it in cash in an armored truck. Scotland Yard and the Federal Bureau of Investigation were reported by Chicago newspapers to be investigating that case.

Angelos is described by Chicago sources as a "colorful person." In 1977, his suburban Winnetka mansion was bombed with a combination of dynamite and plastic explosives. Substantial damage was done to the house, but no one was injured. The bombing was never solved.

In the early '70s, Angelos was linked in investigations in Chicago to slum buildings, Skid Row saloons and flophouses and controversial stock deals, according to the Chicago Tribune.

Angelos and Jonathan T. Howe, attorney for both the Des Plaines Bank and its parent holding company, came to Long Island in January, 1979, to meet with Teamster Local 282's pension-fund trustees to arrange the loan.

Of the \$2 million lent to the bank holding company, \$250,000 went directly to Angelos, according to Federal Reserve Board records. The holding company owed the money to Angelos under an unsecured loan. Another \$1 million was to pay off a loan to the Cen-

tral National Bank in Illinois, and another \$500,000 was added to the capital of Des Plaines Bank.

The Federal Reserve records also show that during the balance of 1979, the Des Plaines Bank lent a total of \$321,137 to Angelos, his brother, Angeli Angelos, and to a firm in which Angeli was a principal.

Angelos was chairman of both the bank and the holding company until mid-1980 when the FDIC forced him out of his bank post, although he retained his position with the holding company. The FBI is investigating some of the bank's questionable loans.

The unanswered question is how a small bank holding corporation in the suburbs of Chicago got together with a Teamster local in the suburbs of New York City. Herbert Balin, an attorney for Local 282's pension fund, said, "I haven't got the slightest idea."

Local 282, whose president and pension fund administrator, John Cody, has a history of questionable dealings with its members' pension-fund money. For example, in 1978, U.S. District Court Judge Jacob Mishler issued a permanent injunction blocking the fund from lending \$20 million for a hotel-casino in Las Vegas, ruling that the deal was too risky. Angelos, Howe and Cody could not be reached for comment.

An Illinois banking expert said queries to Chicago banking authorities in 1979 should have returned the report: "Don't touch that [bank] with a 10-foot pole."

HOFFMAN IN PARADISE (TRAVEL SECTION, P. 69)

the village

VOICE

LET THE READER JUDGE

*Reprint of the
Entire Sweeney-
Lowenstein Story*

BY TERESA CARPENTER (P. 3)

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JOHN CODY



The Mega-Mafia and the Teamsters

AN INVESTIGATIVE REPORT

BY JOE CONASON & JACK NEWFIELD (P. 11)

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VOICE

John Cody, the Mega-Mafia, and the Teamsters

By Joe Conason & Jack Newfield

The International Brotherhood of Teamsters is not really a labor union in the traditional sense. It is more like a motorcycle gang that has taken over a bank. Two of the last three international presidents of the Teamster Union—Dave Beck and Jimmy Hoffa—went to jail on felony corruption convictions. The two most powerful regional barons of the union—Jackie Presser of Cleveland and Roy Williams of Kansas City—have both been connected by the Justice Department to the highest levels of organized crime. The Labor Department is presently suing the \$2.8 billion Central States Pension Fund and 18 of its trustees to recover \$300 million in improper loans made to gambling casinos and mob real estate developments. And last March, Jimmy "the Weasel" Fratianno, a mob executioner turned government informant, testified in a Cleveland federal court: "The Cosa Nostra runs the Teamsters. . . Jackie Presser told me himself, I don't do nothing unless Blackie tells me." Last year, more than 50 Teamster union officers across the country were convicted in corruption cases. George Snyder, secretary-treasurer of Local 806 on Long Island, was found guilty of stealing more than \$1 million from his local pension and welfare fund. Former attorney general Richard Kleindinst was recently indicted

on charges relating to Teamster pension fund monies. New Jersey Teamster boss Tony Provenzano has been convicted of arranging the murder of a union rival, and pension-fund kickbacks. His brother, Nunzio Provenzano, who replaced him as president of Local 560, was convicted by a federal jury two weeks ago of conspiring to kill labor peace for \$187,000 in payoffs from four interstate trucking companies. San Francisco Teamster boss Rudy Thum has been found guilty of misuse of union funds. The Teamsters union may be the only institution in America with a higher crime rate than the House of Representatives. The Teamsters have 1.9 million members among their 800 locals. With Tony Pro out of the running, the most thoroughly rotten Teamster local of them all might be Local 282, most of whose 4500 members drive the supply trucks to metropolitan area construction sites. The hegemony of



ABR-Dorfman



Local 282 president John Cody

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run from Staten Island to Montauk, with his headquarters in Elmont, Long Island.

John Cody is the president of 282, and the administrator of its pension fund. Unlike Hoffa, or the Sylvester Stallone character in the movie *F.I.S.T.*, Cody was never a working-class militant who made a Faustian compromise with the mafia in order to acquire union power. Cody was a thug from the start.

The first time Cody was arrested was in 1938, at the age of 17, when he was convicted of conspiracy and placed on probation. On January 10, 1939, he was convicted of committing a burglary while on probation and sentenced to a three-year term in a juvenile facility. On October 19, 1942, Cody was convicted of robbery and sentenced to a two-to-four-year stretch at Sing Sing. He was paroled on November 8, 1944.

By 1959, Cody had become a business agent for Local 282, and was once again indicted, this time for attempted extortion. A story published in *Newsday* on

In this shadow world, where businessmen, labor leaders, politicians, and racketeers are indistinguishable from each other, John Cody is a man of respect, with control over a pension and welfare fund of \$65 million.

Cody was a close friend of the late mafia don Carlo Gambino, who had an official role at the \$51,000 wedding reception for Cody's son, Michael, in March 1973. Cody frequently visits the luxurious Teamster-financed resort La Costa, near San Diego, where he mixes with Roy Williams, Jackie Presser, and Moe Dalitz. FBI wiretaps have also disclosed a close personal and business relationship between Cody and Allen Dorfman, one of the currency controllers of the mega-mob. Dorfman still has influence over billions of dollars in Teamster pension-fund assets. When

\$65,000 kickback on a \$1 million pension-fund loan.

Thugs, Goons, and Liars: Maintaining Control

John Cody was never a working class militant who made a Faustian compromise with the mafia. Cody was a thug from the start.

October 24 of that year described Cody as "one of Long Island's most notorious Teamster hoodlums." The indictment accused Cody of demanding \$200 a week in exchange for labor peace. He was convicted by a jury, but the conviction was later reversed on appeal.

Cody's Police Department record also shows arrests for attempted rape, assault, auto theft, and robbery. None of these led to convictions, but his rape arrest won him the nickname "lead pants," which union dissidents still use.

In November of 1978 we wrote a series of articles on Cody and Local 282. This is our follow-up on the violent felon who became the most powerful Teamster in the New York area. He has become a lavish living participant in the mystery, midnight economy of union pension funds, certificates of deposit, loans, mortgages, gambling casinos, Las Vegas skim money, gambling markers, real estate investments, finder's fees, insurance companies that process pension-fund claims, banks that launder illicit money, and cash contributions to politicians.

John Cody's abuse of Local 282 and its members would have ended years ago without the acquiescence, and even active support, of the union's other officers. Some are former dissidents of decades ago, co-opted with high salaries and other perks of officialdom. Others consistently help Cody to suppress union democracy because they've always seen the Teamsters as a business.

Harry Gross, a 63-year-old veteran labor racketeer, is probably the most notorious Cody flunky; he has been around the local since at least 1974, and was briefly appointed a business agent around 1978. Though his heyday is long past, Gross is well known to students of Teamster corruption. When his name surfaced in Senate confirmation hearings on labor secretary Raymond Donovan last March, Senator Edward Kennedy asked if this could be

"the Harry Gross." It was.

Gross briefly achieved national fame during the Donovan hearings because he had extorted a no-show job for his personal chauffeur from Donovan's company, Schiavone Construction. The chauffeur, Joseph Murray, was placed on the night-shift payroll at \$18,000 as a "working foreman"—only he did no work.

During the hearings, Donovan claimed that he knew nothing about this arrangement, although a vice-president of Schiavone had testified about it to a federal grand jury in 1978. Donovan testified that this payroll padding—at cost to the taxpayers—was mandated by the contract between Local 282 and the General Contractors Association, and heatedly denied that it was a form of extortion. But nowhere in that contract is there a provision for payments to union officials who do no work. Donovan's excuse was as believable as his contention that he knew nothing about the grand jury probe into the Gross shakedown.

Federal investigators think Gross received at least some of the money paid by Schiavone to Murray, and Gross is also known to have received two expensive automobiles as "gifts" from another contractor. These alleged violations of the Taft-Hartley Act have rendered Gross due for another indictment soon under the federal Racketeer Influenced and Corrupt Organizations (RICO) statute.

Harry Gross last made the headlines in 1959, during the McLellan Committee hearings on labor racketeering. His whole testimony then consisted of claiming his Fifth Amendment right against self-incrimination. But thanks to careful investigative work by Walter Sheridan, the committee was able to reveal some of Gross's history in the labor racket.

According to Sheridan's superb book, *The Fall and Rise of Jimmy Hoffa*, Gross first turned up with the Teamsters in Brooklyn during the late '30s and early



Local 282 president John Cody

'40s, as an official of Local 138, "organizing" grocery stores and other small businesses into a shakedown racket controlled by Murder, Inc. Convicted of extortion in 1942, he served three years in prison and was paroled in 1945.

Upon release Gross went back to the shakedown trade, this time with a company in Weehawken, New Jersey, called Neo-Gravure Printing, whose business was to produce Sunday supplements for newspapers. Though he apparently did no work, Gross was hired as a "platform foreman," whose real purpose was to ensure labor peace, at a salary of \$143 a week. But that wasn't all he got: there was also a monthly check for \$460, and jobs for three of his relatives at Neo-Gravure. From 1952

on, after settling a dispute between two Teamster locals and the Newspaper Drivers union, he received another \$4000 annually in cash. He also received \$5000 cash for arranging sweetheart contracts between Neo-Gravure and a local of the International Longshoremen's Association. (The ILA local official was also paid off.) And in September 1948, during a Teamsters strike, Gross arranged secret, scab deliveries of Sunday supplements to *The New York Times* and the *New York Mirror*, for which the newspapers paid Gross and an associate a total of \$45,000 over eight days.

When Sheridan caught up with Gross in 1959, the squat felon was in Miami Beach, signing sweetheart contracts and shaking down parking lots and gas stations under the banner of Local 320, whose charter was obtained from Jimmy Hoffa. Hoffa gave Gross a red Thunderbird and \$3000 a month for the local's salaries and expenses. He was still getting payoffs from Neo-Gravure, and cashing the checks in Miami.

On December 11, 1959, Gross was convicted in New York on six counts of income-tax evasion on the money he extorted from Neo-Gravure. But instead of expelling Gross from the Teamsters, Hoffa simply relieved him of his duties and had the union issue Gross a withdrawal card. As Sheridan put it, Gross went on a "leave of absence."

His leave was over by the early '70s, when he showed up in Local 282 not long after John Cody succeeded to the presidency upon the death of James Geoghegan. He made his first mark in the union by instigating an assault upon dissident Ted Katsaros at a union meeting in 1976. Six months later, Cody appointed Gross to the elective position of business agent. But when Cody's slate faced its reelection campaign against Katsaros in 1978, Gross was replaced by a cleaner candidate. The following year, he turned up as

Continued from preceding page
a \$400-a-week-plus-overtime "shop steward" on the payroll of the Fisher Brothers, a city building and realty firm. Again, he must have been appointed by Cody.

Harry Gross's career exemplifies how petty corruption feeds Cody's autocratic control. Gross was never elected, was always working a scam, and wouldn't flinch from kicking a dissenter knocked down to the floor of the union hall.

Robert Worhacz, a 282 shop steward for an asphalt delivery firm, represents a subtler sort of corruption. Several stops down the ladder from Gross, he has directly misused his official power to punish union dissidents and militants by depriving them of work.

In a 61-page decision handed down on October 10, 1979, Administrative Law Judge George McNerny of the National Labor Relations Board described in precise detail how shop steward Worhacz kept Local 282 members John Kuebler and Charles Curd from working at their trade during 1976 and 1977, and how Worhacz conspired to have Kuebler, Curd, Katsaros, and Lawrence Kudla expelled from the local on phony charges.

At first Worhacz—whom McNerny says lied repeatedly under oath and falsified evidence in the case—was simply interested in punishing Kuebler "in his pocket," for the driver's insistence that contract rules be enforced at Willets Point Contracting Corporation, where he and Worhacz worked. But the shop steward's animosity toward Kuebler and Curd eventually raged out of control when he learned that both had joined the 282 dissident group known as Fear of Reprisal Ends, or FORE. (As Judge McNerny put it, "an optimistic sentiment not warranted by the facts of this case.")

McNerny found that Worhacz had consistently distorted the seniority system at Willets Point to deprive Kuebler and Curd of their livelihoods, and then concocted a phony organizing drive at a nonunion employer in order to press internal union charges against the dissidents.

Worhacz's hypocrisy in accusing the dissidents of union betrayal is compounded by his own curious relationship with the owner of Willets Point.

Worhacz's wife, along with the wife of his assistant shop steward Carmine Tufano, were partners in a truck-owning corporation called "TWT." The third partner in TWT was the wife of Willets Point's owner Paul Tully, who rented a truck owned by TWT to haul asphalt for his company. Worhacz, who denied that he personally profited from this deal, admitted under oath that he was an officer of the TWT corporation.

During their feud with Worhacz, Kuebler and Curd had heard rumors about the TWT deal, and when they confronted Worhacz with it, he said, "I will bury you. You keep hanging out with those rebels, with FORE, you will get yours." What they ultimately got from McNerny's decision was reinstatement and back pay. But Worhacz's threat exposed how petty collusion is tied to the suppression of members' rights and internal democracy.

Until now, Worhacz has suffered no sanction for his sellout or his lying, beyond the embarrassment of the judge's admonishments. But Justice Department officials are now considering whether to indict him for perjury in his NLRB testimony. A conviction in the case might stem some of the rampant lying which goes on daily at the NLRB by both management and labor officials.

The attempted purge of the dissidents, which took place only months before the start of a hotly contested union election, was a display by Worhacz of loyalty to his "team." Local 282 shop stewards are appointed by the union president, not elected by the workers they supposedly represent. They might more appropriately be called "enforcers."

A Private Bank Called a Pension Fund

On March 1, 1979, John Cody, as fund manager of Local 282's pension fund, signed an agreement giving a \$2 million

loan to Anthony Angelos, chairman and president of the Des Plaines Bank of Illinois. Ex-con Cody had proposed the loan himself after Angelos had been recommended to him by ex-con Allen Dorfman, who has been identified in many books and articles as the original link between the Teamsters pension fund and the mafia. The \$2 million loan was secured by "all of the shares of stock of the Des Plaines Bank." In February of this year, the union gave Angelos a four-year extension of the loan.

On March 7 of this year, the Des Plaines Bank was closed by federal and state bank regulators because of conflicts of interest, massive irregularities, almost \$2 million in defaulted loans, and an alleged fraudulent transaction involving \$2.4 million misappropriated through a wire fraud from London bank. The collapse of the Des Plaines bank will cost the members of Local 282 \$1,625,000, the amount of the loan still not repaid.

The Federal Deposit Insurance Corporation insures deposits up to \$100,000, but not loans. William Harris, the Illinois commissioner of banks, says it is "highly doubtful" that the union will ever get its money back. He pointed out that the collateral of all the stock of a now insolvent bank is worthless.

At the time Cody negotiated and approved the loan to Angelos, it should have been obvious to any prudent lender that the Des Plaines Bank was a poor credit risk, and Angelos himself was a borrower of questionable character.

Documents on file with the FDIC in both Illinois and Washington show that federal and state bank examiners had already completed three highly critical audits on the Des Plaines Bank in the 18 months prior to the \$2 million loan.

The first FDIC audit—dated January 3, 1978—recommended that the bank's directors eliminate the personal lending authority of Angelos because he had

illegally made so many loans that went into default. More than 50 per cent of the bank's total capital had gone to restaurant loans. The FDIC also recommended a moratorium on all cash dividends to shareholders—and Angelos was the single biggest shareholder in the bank. The federal examiners warned the bank to improve its loan-to-deposit ratio, which was then at 72 per cent. In its second audit, the FDIC warned the bank that its loan-to-deposit ratio had increased to 75 per cent. The third FDIC audit pointed out that 119 per cent of the bank's assets had gone to restaurant loans, which meant the bank was in a negative cash flow.

The third FDIC audit also criticized loans totaling \$321,000 that the bank had made to Angelos himself, to his brother Angel, and to a company in which his brother held a substantial interest; it criticized two loans that were made by Angelos before they were even submitted to the loan committee for official consideration; and it said the bank was in such poor financial condition that it could no longer get bond insurance.

The March 1, 1979, loan from Local 282 to Angelos saved the Des Plaines bank from bankruptcy; \$1.5 million of the \$2 million went to repay existing loans the bank been granted by its parent holding company. The written loan agreement also includes a mysterious "loan origination fee" of \$10,000, and a payment of \$288,000 directly to Angelos. Federal investigators in Chicago are trying to establish if any of this money was kicked back to Cody, or to Allen Dorfman, the intermediary who put Cody and Angelos together.

Angelos is one of the principal targets of the Chicago Organized Crime Strike Force investigation code-named Pendorf—"pen" for pension fund, and "dorf" for Dorfman. Angelos was secretly recorded many times by court-authorized wiretaps on phones in Dorfman's company, the Amalgamated Insurance Agency Services, Inc. The company processes all insurance claims on the Teamsters Central States Pension Fund, for a fee of \$850,000 a month. Dorfman got this contract from the Teamsters the same month he received his state insurance license. (Dorfman's step-

father—Paul Dorfman—was an intimate of Jimmy Hoffa.) The U.S. Labor Department has been trying to set aside Dorfman's contract with the fund for years without success.

Anthony Angelos himself is not the kind of man a responsible fiduciary should lend \$2 million of workers' money to. His reputation is odious among bankers, reporters, and law enforcement officials in Chicago.

In 1973, Dan Walker, then governor of Illinois, appointed Angelos to be the state insurance commissioner. But Angelos was quickly forced to withdraw his name from consideration because he was serving as the treasurer of a company holding a state liquor license and had loaned \$100,000 to Walker's campaign. At that time, it was illegal in Illinois for any officer of a liquor licensee to contribute money to a political candidate. Angelos was also accused of mob connections at the time.

On July 18, 1977, an explosion caused by dynamite and a sophisticated timing device ripped apart the front of Angelos's two-story brick mansion in Winnetka, Illinois. No one was hurt, and police never found out who was responsible. In reporting the explosion the next day, the *Chicago Tribune* described Angelos's background this way:

"Resultant investigations have linked Angelos with slum buildings, Skid Row saloons and flophouses, a day-labor company, illegal aliens, controversial stock deals, and association with hoodlums. It was also learned that he had allegedly threatened a suburban banker."

Angelos also owns several nightclubs, and in 1968 he donated \$75,000 to Richard Nixon's presidential campaign.

On March 30 of this year, the Standard Chartered Bank Ltd. of London filed a complaint in federal district court in Chicago asking to make Angelos a defendant in a civil law suit to recover \$2,462,175 allegedly misappropriated through a wire fraud from the bank's Nairobi branch. In the motion papers, Angelos was accused of traveling to Africa, arranging to obtain a confidential telex and coding key, and using that to authorize the transfer of funds from a New York bank and then to a Chicago bank. Angelos is also accused of removing these funds from the Chicago bank in cash, and using an armored truck to transport them. Both the FBI and Scotland Yard are reported to be investigating this case.

Anthony Angelos was not the first dubious borrower to dip into Local 282's pension fund. There is the cautionary tale of Hyman Green.

On October 25, 1971, the trustees of Local 282's pension fund, on a motion made by Secretary-Treasurer Robert Sasso, voted unanimously to lend Hy Green \$20 million to finance a hotel and gambling casino in Las Vegas.

This did not seem to be a transaction in the best interests of the rank and file members of Local 282. First of all, Hy Green had previously borrowed \$42 million from various other Teamster pension funds—and had defaulted on all the loans! Green also had been indicted twice: once in Florida in 1962 on federal charges of transporting counterfeit securities from Miami to a bank in the Bahamas, and again in 1963, in connection with a fraud involving the FHA. He escaped conviction on both charges. The little-known Green is regarded as one of the mob's biggest money movers; he was a partner with Jimmy Hoffa in several real estate deals.

Also, the \$20 million casino loan to Green, at the time it was approved, represented 36 per cent of the total assets of Local 282 pension fund.

As a result of a series of stories in *Newsday* by Kenneth Crowe and pressure from Teamster insurgents, the U.S. Labor Department filed suit in federal court to block the loan. Labor secretary Ray Marshall said the loan to Green was "imprudent and would involve an unjustified risk to the assets of the fund."

A hearing was held before Eastern District Court Judge Jacob Mishler. Cody testified that he knew about Green's default on all his other Teamster loans, but that he thought Green had neglected to mention that detail to the seven other trustees of the fund. Finally, on August 14, 1978, Judge Mishler ruled that the loan was "too risky," and represented too large a portion of the fund's assets. Mishler pointed out that the union could invest in secure government-guaranteed mortgage certificates for the same rate of interest provided by the speculative casino loan.

In the early 1970s, Local 282's pension fund poured more than \$6 million into the purchase of a 1650-acre parcel of land in Southampton, Long Island, in Suffolk County. The money was invested even though the fund's own lawyers at the time warned that the purchase might violate federal laws regulating pension funds and jeopardize the fund's tax exemption. At the time of the deal, Cody ran the union from his positions as administrator of the fund and secretary-treasurer of the local—and through his organized crime connections.

In recent months, 282 has submitted plans to develop a 2000-unit residential community and a hotel-convention center.

Continued from preceding page

on the Southampton parcel. Toward this end, it has hired some political dealers with targeted influence.

One is the former Suffolk County Republican Party boss Edwin Schwenk, who is currently on trial in Brooklyn federal court. Schwenk is charged with income-tax evasion and conspiracy—including trying to fix an IRS investigation of Cody and himself. Local 282 has also contributed to Schwenk's legal defense fund, and Local 282's newsletter has published a thank you letter from Schwenk. The union is seeking three different zoning changes from Suffolk authorities for the deal—and Schwenk has been hired by the fund as a rezoning agent. Local environmentalists are strongly opposed to any rezoning of the area.

Cody has also hired Fred Hart as a consultant; Hart is the former air resources commissioner of New York City.

The union, meanwhile, is trying to work out an alternative deal on the land involving its purchase by the state with federal government funds. For this purpose, the pension fund has retained power broker lawyer Arthur Emil.

In 1978, Emil was Hugh Carey's campaign treasurer. He contributed \$61,000 to help pay off Carey's 1974 deficit, and he guaranteed another \$50,000 loan to Carey's 1978 campaign. Also, Emil's son now works for Carey's counsel, John McGoldrick.

Local 282 donated money to Carey's challenger in 1978, Republican Perry Duryea. So the union's hiring of Carey's treasurer and close friend seems to be motivated by a hopeful cynicism.

Decadence at the Top

Unlike his members, many of whom remain unemployed despite the recent upsurge in construction, John Cody has no problems with mortgage or car payments, with feeding his family or saving for vacations. He draws two hefty salaries, one from Local 282 and one as manager of the



Veteran labor racketeer Harry Gross



Bank president Anthony Angelos union pension and welfare funds. Each job provides its own American Express card.

He lives in an enormous, heavily guarded mansion in Seaford, Long Island, and drives a late-model Cadillac with a mobile phone. Bills for that phone often run over \$500 a month, and the union pays for it and the car.

As for the family, his daughter Theresa and his sister Eileen both have jobs at union headquarters. Theresa makes more than \$30,000 a year as an administrator of the welfare fund. Cody's son Michael has become wealthy as a young stockbroker, thanks to commissions from investments of pension funds of other Teamster locals—including Tony Provenzano's New Jersey Local 660.

And when John Cody wants to take a break from the wear and tear of the class struggle, he does it in style.

Last fall, for example, Cody and his girlfriend, 36-year-old Marilyn Taggart, took a tour of the better resorts between Florida and Hawaii. They took along both of John's credit cards.

The trip began with a week in early

October at the exclusive Mana Kai Resort and Spa in Maui. Not counting plane fare or other expenses, the week at Mana Kai cost \$1092, paid in advance. More than \$600 of that went to pay for the couple's enrollment in the "Pritikin Better Health Program," a fashionable diet and exercise regimen offered at the spa. The bill was sent to Cody at the union's office in Elmont.

From Mana Kai the happy couple journeyed on October 11 to La Costa, the notorious Teamster resort and spa in Carlsbad, California, just north of San Diego. La Costa was built in 1965 with millions of dollars from the Teamster Central States Pension Fund, and it is where the union's International Executive Board met last October to endorse Ronald Reagan for president. Cody's visit coincided, roughly, with those meetings. He and Marilyn stayed on until October 20, running up a bill of more than \$1500. This included several rounds of golf, many bar bills, several visits to the spa, including a massage for \$17.25 and two facials, also \$17.25 each.

Bidding farewell to La Costa, Cody and Taggart returned to New York, but only for about a week. Then it was down to the ritzy Boca Raton Hotel and Club in Florida, where they spent five days at a cost of more than \$800 charged to the union's American Express card. Among the itemized charges was \$50 for "photo." Either they had their picture taken in the hotel nightclub, or Marilyn began a new hobby. On November 2, they apparently returned to New York.

But they were out of circulation for only two weeks, and then it was back to Hawaii, this time for the annual conference, in Honolulu, of the International Foundation of Employee Benefit Plans, Inc., where Cody and the trustees, who came along, learn how to manage the members' funds. John and Marilyn stayed at the Kahala Hilton, spending \$1500 in the course of four days. This included one dinner at the hotel restaurant for \$800, presumably a

banquet for the trustees which Cody hosted.

These jaunts are not atypical for Cody. The Honolulu conference, for instance, is an annual event. The union paid a \$2300 bill at the Boca Raton hotel for Cody in March 1979. And last April, Local 282 officials ran up a \$3000 hotel bill at the Sea View resort in Florida for a meeting of the contractors' associations and the building trades unions.

It isn't all work, of course. Cody likes to relax at the gambling tables, particularly in Las Vegas where he has lost about \$150,000 in the last few years.

Nor does he deny himself any comforts in the workaday world. The union maintains a luxurious suite at the Halloran House in midtown Manhattan, and Cody has had a free luxury apartment at North Shore Towers given to him by the builder. He is also a member of the Club at the World Trade Center, whose \$200 annual dues are paid for him by the union. This is no doubt a point of pride for the many Local 282 members who helped to build that edifice.

Cody's Racial Vigilantes

For decades black and Latin workers have tried, with little success, to break into New York's construction workforce. Building trades leaders, whether honest or corrupt, have wanted to retain all available jobs for their members and their members' families, a desire intensified in recent years by recession in the industry. Groups of black and Latin unemployed have opposed this discrimination with increasing militance, leading to confrontations between union workers and minority demonstrators at a number of building sites.

Usually these demonstrations, by groups like Harlem Fightback and United Tremont Trades, have been reasonably peaceful. But it's also true that members of other groups, with ostensibly similar aims, have been charged with acts of violence, arson, and extortion.

John Cody is no more enlightened than

most building trades unionists on this issue, but unlike them he has found a way to profit from a potentially tragic situation. After members of a group called Black Economic Survival injured an ironworker at a Park Avenue building site last May, Cody demanded that every contractor in the city pay an armed Teamster \$130 a day to guard their building sites. About 1000 "guards," or nearly one-third of Local 282's construction workers, would have been required to fulfill this demand. As one Local 282 dissident said, "This would give Cody his own private army." It would have meant 1000 more opportunities for the likes of Harry Gross.

When the General Contractors Association didn't accede to this demand, Cody called a three-day strike to prove that he was serious. Local 282 and the GCA then went to arbitration before Herbert K. Lippman. The proceedings produced some startlingly frank and bigoted testimony from Cody and other 282 officials.

Teamster foremen, under questioning by attorneys for the GCA, described their fear and loathing of the black demonstrators who entered the jobsites. One 282 officer named Lypen described an incident in the fall of 1978 as follows: "I came out of the compressor house and see a bunch of these aborigines standing around... they were standing around picking their nails and they were a little boisterous."

Another related how he felt when he saw some blacks hired after a demonstration: "So of course when you're having coffee you sit down and say, 'Yeah, we have to put two more of these black bastards, and they do whatever they want to do...' Asked whether he could recognize individuals from the minority groups, the same steward replied, "I tell you, you don't go looking at faces. There is an old cliché about that... They all look the same." Others repeated the same slur.

Then Cody himself took the stand and explained the troubles caused by the "marauding" minorities. Ever if they weren't just troublemakers, and actually wanted to work, he said, they weren't capable of it. "It's a shame but in many cases where

we put colored guys to work their I.Q. is a little bit to be wanting in some cases. You know, they send us people who are completely uneducated and then if you give them a list of things to do they can't even read the list. We went through this with some building supply outfits, handling sheet rock, brick, bagged cement, that kind of stuff. They just don't know. Half of them don't know how to count... And the only way we have been able to increase the minority portion of people working in the trades is by picking one out of 10, sometimes one out of 20, who works out. The rest of them can't stand the gaff... They get a little hard work... like a pick and shovel or trying to lay brick or carry mortar. They just give up."

appropriate solution to racial tensions on the building sites, Lippman's January 19 decision gave Cody one Teamster on each site, with a walkie-talkie. At least they won't be armed.

The GCA has challenged Lippman's decision in federal court, and there will be a hearing on June 8. In the meantime, the Building Contractors Association, which represents high-rise builders, has agreed to provide Cody with additional working Teamster foremen at each construction site where the job is worth \$5 million or more.

The tone of the arbitration testimony by Cody and his men makes it obvious that if "observers" are hired to patrol jobsites, their impact may be to exclude blacks and Puerto Ricans, apartheid-style. But another effect of the arbitration award, if federal judge Vincent Broderick upholds it, will be to strengthen Cody's grip on the union, which faces an election at the end of the year. It will give him the

equivalent of 1000 political patronage jobs.

NEW SOLIDARITY INTERNATIONAL PRESS SERVICE		
Remit to: 304 W. 58th Street, NY, NY 10019 5th floor		Service: (212) 663-8600
SHIP TO: International Brotherhood of Teamsters Local 282 1975 Linden Blvd Elmont, NY 11003 ATTN John Cody, President	DATE: 2/23/79 INVOICE NO: 191170	
QTY	ITEM	AMOUNT
1	Full-year subscription, Executive Intelligence Review	\$500.00
INVOICE		AMOUNT DUE
PAYABLE UPON RECEIPT		(Please return copy of invoice with payment) \$500.00

Facing a 1978 union election challenge, Cody employed political goons from the U.S. Labor Party (USLP). The fascistic cult issued smear leaflets against the dissident slate, and was "rewarded" with the above \$500 subscription to a USLP publication.

How It Hurts the Workers

Every issue of the monthly Local 282 newspaper contains accounts of shop stewards and business agents defending workers' rights. There are published letters from widows and retirees thanking the union for its kind consideration, lists of pensioners, and even a column by John Cody himself, lauding his own brilliant management of the pension and welfare funds.

There are certainly honest shop stewards, and even officers, in Local 282, but they are unable to function effectively in an atmosphere of cynicism, corruption, and violence. They can't protect the workers when top union officials are engaged in collusion with employers and mobsters. They can't enforce the contract, or resolve legitimate worker grievances fairly when the leadership fears its own members. And they are helpless to stop Cody from ripping off millions from the pension and welfare funds, and putting it into the pockets of Anthony Angelos or Allen Dorfman.

Every dollar taken by a Harry Gross is a dollar stolen from the workers. Every pension fund loan to the mob steals a retiree's future when it goes sour. Every "ghost" employee steals wages from real workers, and makes their work more difficult. If a working foreman is chauffeuring the union president, rather than protecting the health and safety of the workers, then who does safeguard them?

Despite the history of the Teamsters and other corrupt, bigoted union leaders, the labor movement has made enormous contributions to progress and democracy in the United States. But the vision which motivated the leaders of the CIO, and which still inspires many young trade unionists today, is entirely absent from the business known as Local 282. Ted Katsaros, who wants to return his union to that honorable tradition, recalls a conversation he once had with Robert Sasso, Cody's right-hand man. "You know," said Sasso, "in 50 years there probably won't be a labor movement." Under leadership like his, it could disappear much sooner. ■

[From the Chicago Tribune, Apr. 16, 1981]

TEAMSTERS LOANED ANGELOS BANK \$2 MILLION

(By Chuck Neubauer)

The pension fund of a New York Teamsters local with ties to organized crime figures stands to lose much of the \$2 million it loaned to the holding company of the now-defunct Des Plaines Bank. The Tribune learned Wednesday.

The pension fund of Teamsters Local 282 loaned the Des Plaines Bancorporation \$2 million in March, 1979, at the urging of the holding company's chairman, Chicago millionaire Anthony Angelos. The loan was secured by stock in the Des Plaines Bank owned by the holding company and by Angelos' personal guarantee.

The company still owed about \$1.6 million in principal to the local when the bank was closed on March 14 by federal and state regulators. Bank experts doubt that the company can pay back much of the outstanding balance because the bank stock is worthless.

In addition, court records indicate that the Teamsters may have difficulty collecting the money from Angelos, who is under federal investigation for his activities at the bank. Court suits show that Angelos who had agreed to pay off the Teamster loan if Bancorporation failed to do so, has not always settled his other obligations on time.

In one suit, a suburban businessman, Joseph D. Testa, charged that Angelos defaulted on an agreement to guarantee the payments of a small corporation that was purchasing a mobile home park on contract from Testa. Testa said Angelos and the corporation owe him \$333,055, according to documents filed earlier this year.

Angelos was recently named in another civil suit that charged him with playing a key role in an allegedly fraudulent transfer of \$2.46 million from a bank in Nairobi, Kenya, to the Des Plaines Bank.

Efforts to reach Angelos for comment were unsuccessful.

The Bancorporation used the \$2 million loan to inject an additional \$500,000 in capital into the bank and to pay back a \$1 million loan from a Chicago bank and a \$275,000 loan from Angelos himself. Angelos traveled from New York to negotiate the loan, which was for four years, with a large payment due in March, 1983.

The union's president and pension fund administrator John Cody, has been described as a close associate of the late Carlo Gambino, who was at one time the mob's boss of all bosses.

Local 282 represents 3,000 truckers who bring supplies to construction sites in New York City on Long Island.

[From the Chicago Tribune, July 12, 1981]

BANK LOAN SCHEME TOLD

(By Chuck Neubauer)

Anthony Angelos, former president of the now defunct Des Plaines Bank, has been accused in federal District Court of receiving personal "fees" from a bank customer who obtained \$700,000 in loans from the bank.

The accusation was made in a statement filed with the court by attorneys representing Louis Patras, a Countryside restaurateur who was arrested for shooting up Angelos' bank last September when the bank tried to recover the loans. Angelos was the controversial unsuccessful 1973 nominee of former Gov. Dan Walker to head the Illinois Department of Insurance. The nomination was withdrawn after a public controversy over campaign contributions.

Patras' statement said Angelos accepted "fees" for arranging the loans. In 1978, Patras said, he gave Angelos \$20,000 from a loan Angelos had arranged for Patras at another bank. At the time, Angelos was arranging a \$500,000 loan to Patras from The Des Plaines Bank.

Repeated attempts by The Tribune to reach Angelos last week for comment on Patras' allegation were unsuccessful.

A Federal grand jury is now investigating Angelos and has subpoenaed the bank's records of more than a million dollars of questionable loans it made while Angelos was president. The subpoenas included the Patras loan records. A Tribune investigation of Angelos has revealed a tangled series of financial misdealings at the bank, which was closed last March. Among the Tribune findings are:

State bank examiners said they feared that 36 per cent of the bank's outstanding loans—more than \$10 million out of \$28.9—will not be repaid or will be only partly repaid.

There are close ties between Angelos' bank and The South Side Bank of Chicago, also closed last March. The Tribune has learned that Angelos and the president of South Side Thomas Lewis, had extended personal loans to each other from their respective banks.

The Des Plaines Bank lent more than \$500,000 to Angelos, his brother, and a company with which Angelos' brother is associated.

A federal grand jury in New York City is investigating a \$2 million loan from a Teamster Union pension fund to Des Plaines Bancorporation, the holding company for The Des Plaines Bank. Federal investigators reportedly are trying to determine whether mob-linked businessman Allen Dorfman arranged the Teamster loan.

Angelos is a controversial wheeler-dealer who made headlines in early 1973 when he had to withdraw his name as Walker's nominee to head the insurance department.

At the time, he was accused of "buying" Walker's nomination by giving the Walker campaign \$50,000, apparently in violation of a state law that prohibited such contribution. Walker maintained the money was a loan, not a contribution, but Angelos withdrew his name from nomination when news stories at the time also linked him to ownership of several skid-row businesses.

In 1977, Angelos became a stockholder in The Des Plaines Bank, and almost immediately became president. Shortly after he became president, the bank began a quick decline because of a series of bad loans, according to sources close to the bank.

"In a nutshell," one source said, "Tony (Angelos) was no banker. Angelos' performance was unsatisfactory from day one. The amazing thing about Des Plaines is how it deteriorated so fast."

While Angelos personally never owned more than 20 per cent of the bank, he effectively controlled the bank, sources said.

The sources pointed to Angelos' relationship with Patras in questioning Angelos' banking competency.

In a court statement the attorney for Patras said that in 1978 "Mr. Angelos helped the defendant obtain a Small Business Administration guaranteed loan in the amount of \$500,000.

The loan, made by Angelos' bank, is 90 per cent guaranteed by the SBA, which means United States taxpayers are left with the liability of most of the loan if, as is likely in this case, it is defaulted.

At the time that Angelos was arranging the loan, the Patras statement said, Patras signed a \$20,000 promissory note at the North Point State Bank in Arlington Heights. Patras said in the statement that Angelos "arranged" the loan and "that proceeds of the loan were given to Mr. Angelos." Patras' allegation was made in a suit filed against him by a federal agency seeking repayment of the \$20,000 loan.

Patras said Angelos was to repay the \$20,000 loan, though neither the North Point bank nor the Federal Deposit Insurance Corp. was aware of this agreement. The loan was never repaid either by Patras or Angelos.

"In addition," the Patras court statement said, "Mr. Angelos 'helped' (Patras) obtain numerous other loans at The Des Plaines Bank and other banks. For this 'help,' Mr. Angelos took a portion of the loan as his 'fee.'"

Federal laws make it a crime for a bank employee such as Angelos to accept fees or commissions from a customer and for a customer to make false statements to a bank in obtaining loans.

The North Point bank had its own history of problems, and state and federal investigators closed its doors in 1978. Several of its officials and borrowers have since been indicted as a result of its closing.

Investigators now looking into Angelos' banking activities question why he accepted Patras as a good loan risk in the first place.

"The problem with lending to restaurants is that so many of them go broke," one source said. "It is a cash business, so it is hard to insure repayment."

As if to underline that point, after Patras received the \$500,000 loan he almost monthly bounced checks to the state in payment of sales taxes, court records show. In 1979, one restaurant supplier filed a \$130,000 nonpayment suit against Patras, and in 1980 the state revoked the liquor license of his restaurant the William Tell Restaurant and Lounge in Countryside, because of nonpayment of \$82,055 in sales taxes.

Three months after the liquor license was revoked, The Des Plaines Bank attempted to begin recovering \$700,000 in loans Patras owed the bank.

Apparently enraged by the bank's attempt to seize \$51,000 worth of his restaurant's fixtures and stock, Patras walked last Sept. 28 into the bank with an M-1 semiautomatic carbine and a pistol, firing two shots into the ceiling. A bank

employe wrestled Patras to the floor while Angelos beat him over the head with the rifle butt, according to Des Plaines police reports.

Patras and his company, William Tell II, Inc. have since filed for reorganization under federal bankruptcy laws, listing \$1.6 million in liabilities. Nearly half that is accounted for by the unpaid loans from Angelos' bank, which appear now likely never to be repaid.

Patras said the loans were secured by stock in the restaurant corporation, which is now worth zero.

Patras was not the only questionable borrower from Angelos' bank. About \$10.4 million in loans from the bank are considered by state bank examiners as being potentially unrecoverable or only partly recoverable.

Examiners criticized Angelos' bank for using too much of its assets to make loans, for lending to uncreditworthy borrowers, for not getting adequate loan security, and for concentrating loans in the restaurant industry.

Several of the bank's directors now claim that Angelos was approving loans without consulting the bank's board.

In August, 1980, the bank's board agreed under pressure from the government to appoint a replacement to Angelos as the bank president. When federal banking authorities later found Angelos still working at the bank, they took the rare move of getting an order barring him from having any power in the bank.

By that time, however, the bank's financial standing was so weakened that authorities closed it in March, the same day in which they closed the South Side Bank of Chicago. While officials last March denied any connection between the closings, The Tribune has since learned of close dealings between Angelos and South Side's president, Thomas Lewis.

At the time of the two banks closures, Angelos had an outstanding personal loan for \$90,000 at South Side. Lewis, in turn, had an outstanding personal loan for \$220,000 at The Des Plaines Bank. Both loans had been criticized by bank examiners.

This convenient "insider" arrangement between the two men spilled over to close associates of both who were also seeking loans.

Angelos' brother, Angeli, and at least two of Anthony Angelos business partners, had loans from South Side bank. In turn, investors in a partnership set up by Lewis borrowed money from The Des Plaines Bank.

Bank examiners specifically criticized the two small banks for these loans as being far outside their normal lending areas.

In the case of his own family, Angelos' bank held outstanding loans to Angelos himself and to his brother for a total of \$516,203 as of Dec. 31, 1979. Various loans to Angeli Angelos and a company he is involved in accounted for \$368,000 of that total, and Angelos had outstanding loans to the bank for \$18,000 and \$130,000.

Angelos took out the \$130,000 loan from his own bank in 1979, shortly after the State Bank of Lombard won a \$79,700 judgment against him for nonpayment of a loan.

State law does not specifically bar bank officers from granting loans to themselves, but bank examiners expect the bank officers and stockholders not to get preferential treatment.

The biggest default payment that Angelos now may face is for the \$2 million loan his bank's holding corporation obtained in March, 1979, from a Teamster Union pension fund.

Angelos and the holding company, Des Plaines Bancorporation, reportedly sought the \$2 million loan from the union to cover debts they had incurred from loans from other Chicago banks and to increase capital. Several local banks reportedly had already turned down Angelos for loans because of the bank's precarious financial position at the time.

A Brooklyn federal grand jury is now looking into allegations that Angelos was introduced to the New York Teamsters by Dorfman, a Chicago insurance man who is often described as the link between organized crime and the Teamsters.

According to the Village Voice, a New York newspaper, federal agents have obtained tapes of numerous phone conversations between Dorfman and Angelos, and between Dorfman and John Cody, head of the New York Teamsters local.

Dorfman was indicted in May along with Teamster President Roy Williams for allegedly conspiring to bribe Sen. Howard Cannon (D., Nev.). In 1972, Dorfman was convicted of taking a \$55,000 bribe in return for a loan from the Teamsters Central States Pension Fund.

The New York Teamsters local is now taking legal action to force Angelos to repay the outstanding \$1.6 million still owed from the \$2 million loan. Since the

stock from The Des Plaines Bank is worthless, the union is now demanding that Angelos who guaranteed the loan personally, repay it.

Angelos has gone to court to get a temporary restraining order to keep the union from selling off his interests in real estate he owns in Chicago.

In another legal action, Angelos was charged with journeying to Kenya and playing a key role in the allegedly fraudulent transfer of \$2.46 million from a bank in Nairobi, Kenya, to the account of a suburban businessman at Des Plaines bank. The civil suit was filed by the bank that claims to be defrauded, the Standard Chartered Bank of London. A federal grand jury is also looking into the transfer.

Angelos is not the only employe from the bank in Des Plaines who is involved in lawsuits. The bank has filed claims amounting to \$470,000 with its bonding company for loans made by two other employes "under questionable circumstances," loans that now appear unrecoverable.

One of the employes, James McAnally, is accused by the bank of committing "numerous dishonest and/or fraudulent acts" in connection with more than \$250,000 in loans.

McAnally formerly worked with the defunct North Point bank and has since been convicted for three counts of bank fraud committed at North Point, which he is appealing. The Des Plaines Bank has charged another of its officers, Jeffrey Kreiner, with making fraudulent or dishonest loans totaling \$220,000.

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June 4, 1981

BURTON H. HALL
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June Patron
Assistant Administrator
Pension and Welfare Benefits Programs
Labor Management Services Administration
United States Department of Labor
200 Constitution Avenue, N.W.
Room - S-4522
Washington, D.C. 20210

Re: FOIA Request
Marshall v. Teamsters Local 282
78 Civ. 543 (S.D.N.Y.)

Dear Ms. Patron:

On behalf of my client, Ted Katsaros, a member of Teamsters Local 282, I hereby request copies of the entire investigative and litigation file concerning the above referenced case brought by the U.S. Department of Labor in 1978, and any related investigation made by the Department of Labor into the Pension and Welfare Fund of Teamsters Local 282, which is located in Elmont, New York.

Mr. Katsaros stands ready to pay any copying costs which may be required.

Thank you for your prompt attention to this matter.

Very truly yours,

(s) Arthur Z. Schwartz

AZS/ml

c.c. Robert Eccles, Esq.

TPP:KFMc:bs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

HAROLD GROSS, also known as
Harry Gross,

Defendant.

INDICTMENT

18 U.S.C. §1962(c)
29 U.S.C. §186
18 U.S.C. §1951
18 U.S.C. §2

81 CR 316

THE GRAND JURY CHARGES:

COUNT ONE

1. At all times material to this Indictment, and specifically during the years 1976 through and including 1978;

a. Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter "Local 282"), located at 1975 Linden Boulevard, Elmont, New York, was a labor organization engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Sections 142 and 152, and was an "enterprise" as that term is defined in Title 18, United States Code, Section 1961(4).

b. De Simone Excavation and Foundation Corp., located at 336 East 112th Street, New York, New York, had employees represented by Local 282 and was an employer engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Sections 142 and 152. De Simone Excavation and Foundation Corp. was a participant in a joint venture, known as De Matteis, Coppolla and DeSimone, which acted as a general contractor for the Port Authority Bus Terminal Project located at 41st Street and Eighth Avenue in New York County.

c. Oak Point Excavation and Foundation Corp., located at 1141 Oak Point Avenue, Bronx, New York, was an employer engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Sections 142 and 152 whose employees were represented by or would be admitted to membership in Local 282, and was subject to the provisions of the "High-Rise Contract 1975-1978" entered into between Local 282 and DeMatteis, Coppolla and DeSimone.

d. Vincent Palazzolo was President of, and a major stockholder in, De Simone Excavation and Foundation Corp., and he also exercised control over Oak Point Excavation and Foundation Corp., fifty percent of whose stock was owned by his son, Joseph Palazzolo.

e. The defendant HAROLD GROSS was the Working Teamster Foreman and a representative of the employees at the Port Authority Bus Terminal Project in New York County until March 21, 1977, at which time he was employed as a business agent for Local 282.

f. Charles Daglia succeeded the defendant HAROLD GROSS as Working Teamster Foreman at the Port Authority Bus Terminal Project on or about March 21, 1977.

g. Schiavone Construction Co., located at 1600 Paterson Plank Road, Secaucus, New Jersey, which had employees represented by Local 282, was an employer engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Sections 142 and 152. Schiavone Construction Co. was a participant in a joint venture known as Schiavone, Impreglio and Crimmins, which acted as the general contractor for the Metropolitan Transit Authority subway tunnel project at East 63rd Street in New York County.

h. From on or about November 30, 1977 through June 28, 1978, Joseph Murray, a member of Local 282 on the payroll of Schiavone, Impreglio and Crimmins as a Working Teamster Foreman at the Metropolitan Transit Authority subway tunnel project, acted as the chauffeur for the defendant HAROLD GROSS.

i. Vacar Construction Corp., located at 181 Hillside Avenue, Williston Park, New York and 2217 Richmond Terrace, Staten Island, New York, was an employer engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Sections 142 and 152 whose employees were represented by or would be admitted to membership in Local 282.

j. Charles Vachris was the President of Vacar Construction Corp.

2. At all times relevant to this indictment, and specifically from on or about May, 1976 through June, 1978, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS, being a person employed by and associated with an enterprise, as defined in Title 18, United States Code, Section 1961(4), to wit, Local 282, which enterprise was engaged in and the activities of which affected interstate commerce, did wilfully, knowingly and unlawfully conduct and participate, directly and indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

3. This pattern of racketeering activity, as defined by Title 18, United States Code, Sections 1961(1)(B) and 1961(5), included the following:

(a) 1973 Lincoln Continental from DeSimone Excavation and Foundation Corp.

It was part of the pattern of racketeering activity that on or about May 25, 1976, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS, a representative of the employees of DeSimone Excavation and Foundation Corp., did knowingly, wilfully and unlawfully request, demand, receive, accept, agree to receive and accept, and cause to be received and accepted from Vincent Palazzolo and DeSimone Excavation and Foundation Corp., a thing of value, that is, a 1973 Lincoln Continental having an approximate value of \$4,000.00, in violation of Title 29, United States Code, Sections 186(a)(1) and 186(b)(1) and Title 18, United States Code, Section 2.

(b) 1977 Lincoln Continental from Oak Point Excavation and Foundation Corp.

It was a further part of the pattern of racketeering activity that on or about and between February 28, 1977 and April 27, 1977, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS, a representative of employees and an employee and business agent of Local 282, did knowingly, wilfully and unlawfully request, demand, receive, accept, agree to receive and accept, and cause to be received and accepted from Vincent Palazzolo and Oak Point Excavation and Foundation Corp., a thing of value, that is, a 1977 Lincoln Continental having an approximate value of \$15,000.00, in violation of Title 29, United States Code, Sections 186(a)(1), 186(a)(2) and 186(b)(1) and Title 18, United States Code, Section 2.

(c) Working Teamster Foreman Job For Joseph Murray at Schiavone Construction Co.

It was a further part of the pattern of racketeering activity that from on or about and between November 30, 1977 and June 28, 1978, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS, an employee and business agent of Local 282, did knowingly, wilfully and unlawfully request, demand, receive, accept, agree to receive and accept, and cause to be received and accepted from Schiavone Construction Co. and Schiavone, Impreglio and Crimmins a thing of value, that is, employment as a Working Teamster Foreman for Joseph Murray for which

Murray neither had to perform any services or appear on the job site, in violation of Title 29, United States Code, Section 186(a)(2) and 186(b)(1) and Title 18, United States Code, Section 2.

(d) \$2500 Payment by Vacar Construction Corp.

It was a further part of the pattern of racketeering activity that from on or about and between April 7, 1978 and April 26, 1978, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS, an employee and business agent of Local 282, did knowingly, wilfully and unlawfully request, demand, receive, accept, agree to receive and accept, and cause to be received and accepted two thousand five hundred dollars (\$2,500.00) from Charles Vachris and Vacar Construction Corp., in violation of Title 29, United States Code, Sections 186(a)(2) and 186(b)(1) and Title 18, United States Code, Section 2.

4. While engaging in the aforesaid pattern of racketeering activity, the defendant HAROLD GROSS used his position as business agent of Local 282 as a source of influence over Local 282 and to conduct and participate directly and indirectly in the affairs of Local 282 through a pattern of racketeering activity, in violation of Title 18, United States Code, Section 1962, thereby making his position as business agent, and any and all other positions, with Local 282 subject to forfeiture pursuant to Title 18, United States Code, Section 1963.

(Title 18, United States Code, Section 1962(c)).

COUNT TWO

1. Paragraph 1 of Count One of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. From on or about and between April 7, 1978 and

April 26, 1978, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS, an employee and business agent of Local 282, did knowingly, wilfully and unlawfully request, demand, receive, accept, agree to receive and accept, and cause to be received and accepted two thousand five hundred dollars (\$2,500.00) from Charles Vachris and Vacar Construction Corp.

(Title 29, United States Code, Section 186(a)(2) and 186(b)(1); Title 18, United States Code, Section 2).

COUNT THREE

1. Paragraph 1 of Count One of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. From on or and between April 7, 1978 and April 26, 1978, within the Eastern District of New York and elsewhere, the defendant HAROLD GROSS did knowingly, wilfully and unlawfully obstruct, delay and affect commerce, as that term is defined by Section 1951(b)(3) of Title 18, United States Code, and the movement of articles and commodities in commerce, by extortion, in that he did unlawfully obtain two thousand five hundred dollars (\$2,500.00) from Charles Vachris and Vacar Construction Corp., with their consent induced by wrongful use of threatened force, violence and fear of economic loss.

(Title 18, United States Code, Section 1951;
Title 18, United States Code, Section 2).

A TRUE BILL

Jennie M. Ryberg
FOREMAN

EDWARD R. KORMAN
United States Attorney
Eastern District of New York

APPENDIX 4

(Submitted for the record by Robert J. DelTufo.)

INVESTIGATION OF ORGANIZED CRIME INFILTRATION OF DENTAL CARE PLAN ORGANIZATIONS

INTRODUCTION

The Commission's investigation of organized crime infiltration of the health care industry began in the Summer of 1979 with the cooperation of the Attorney General's office. The Division of State Police had been probing this subject but, as with similar probes in other states, had found it difficult under existing law to develop an adequate foundation of evidence to assure the probability of successful prosecutions. Additionally the State Police had ascertained that even the few cases it could bring to trial would be limited by current statutory strictures to relatively minor frauds subject to minimal penalties. The Commission was informed in May, 1979, of the desire by the State Police to refer all files on its investigation of several dental care operations to the SCI. This agency conducted an evaluation, which was completed by July 26, 1979. On that date, based on preliminary findings of its staff evaluation, the Commission authorized by resolution a full scale investigation. The formal scope of this SCI inquiry was stated in this resolution to be:

Whether the laws of the State of New Jersey regulating health care plans are being effectively implemented and enforced; whether the laws and regulations pertaining to health care plans are adequate, and whether and to what extent criminal elements have infiltrated the health care industry.

In accord with this statement of purpose, the SCI's investigation focused on certain questionable closed-panel dental care programs sponsored by professional and business entrepreneurs under contracts utilizing union health and welfare funds ostensibly for the benefit of union members. These operations had been identified by the State Police and confirmed by the SCI evaluation to be particularly vulnerable to subversion by organized crime elements in collusion with compliant labor union officials and unscrupulous health care providers.

(To clarify this conclusion, a brief explanation of the various programs utilized in the health care industry is necessary. Closed panel plans are those which an entity negotiates to provide dental services to a subscribing group's members at a specified clinic of dentists. Open panel plans, which were not at issue here, are those in which a subscribing group's members may go to a dentist of their own choosing and whose bills are submitted to an insurance carrier for payment in whole or part according to the

dental service contract's terms. There also exist a number of modified open plans that give subscribers a choice between being served by their own dentists according to reduced-fee schedules or going to closed panels of dentists at no charge.)

The Commission's investigation did not involve recognized dental service or medical service corporations which generally operate in conjunction with the insurance industry and which have been under statutory regulation for some time. Rather, the inquiry was aimed at schemes that involved a complicated network of overlapping corporate entities set up to sell, finance and operate dental care programs for labor union members by means of alliances with elements of organized crime. A law designed to regulate the activities of prepaid dental plan "organizations" had been enacted early in 1980 to take effect in June, 1980. However, at the time of the Commission's public hearings this statute had not been implemented to any significant degree, according to State Insurance Department officials. During the course of Commission's inquiry, it became evident that the provisions of this law had to be strengthened in many respects.

The Commission's investigation encompassed numerous dental care plans but ultimately centered on two major operations that most graphically illustrated how questionable profits were being generated by means of intertwining corporate fiscal manipulations, overpriced care programs and facilities and unrecorded and unexplained diversions of cash.

One of these enterprises operated in South Jersey. The Commission's investigators found that, in one year alone, a so-called consulting company generated a cash flow approaching a million dollars from which was diverted more than \$150,000 for purposes that could not be specifically identified in any corporate or individual business accounts or by those who handled or otherwise had access to the money. The SCI probe revealed that this fund was shared with individuals identified as associates or members of organized crime.

Another larger enterprise, utilizing more than 12 dental clinics in North Jersey, was found to have significant organized crime connections to Buffalo, N.Y., and Cleveland, Ohio. The inflated invoices, inadequately secured "loans," forged checks, kickbacks in the form of rebates, and other dubious financial transactions that marked this second exemplar were so complex that SCI accountants had to construct large, step-by-step charts to clarify them. Such fiscal machinations had been contrived to hide misconduct in similar operations in other jurisdictions, according to law enforcement experts on such operations.

During the SCI's 18-month inquiry more than 200 subpoenas were issued to various corporations, banks and other financial institutions and individual businessmen, dentists, labor union

leaders and mob figures requiring the submission of voluminous corporate and personal records for analysis by the Commission's investigative accountants. At least 100 individuals were questioned at executive sessions of the SCI. Subsequently more than 30 witnesses were subpoenaed to testify at public hearings during which the primary objective was to provide a testimonial record of the wrongdoing uncovered in the investigation.

The Commission was confronted with numerous attempts to derail its inquiry and the scheduled public expose of its findings. Nonetheless it ultimately succeeded in compiling a full public hearing record upon which to base recommendations for eliminating underworld piracy of labor union trust funds in the dental services area of the health care industry.

Such recommendations are discussed at length at the conclusion of this report's abridgement of testimony recorded at public hearing sessions held at the State House on December 9, 10, 11 and 12, 1980.



**Report
and
Recommendations
of the**

**STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION**

**on
ORGANIZED CRIME INFILTRATION
of
DENTAL CARE PLAN ORGANIZATIONS**



**State of New Jersey
COMMISSION OF INVESTIGATION**

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TO: The Governor and the Members of the Legislature
of the State of New Jersey:

The New Jersey State Commission of Investigation herewith submits its Report and Recommendations on its investigation of Organized Crime Infiltration of Dental Care Plan Organizations in this state. This transmittal is made under Section 10 of L. 1979, Chapter 254 (N.J.S.A. 52:9M-10), of the Act creating the Commission.

Respectfully Submitted,

Arthur S. Lane, Chairman
John J. Francis, Jr. Commissioner
Lewis B. Kaden, Commissioner*
Henry S. Patterson, II, Commissioner

*Commissioner Kaden resigned from the Commission in February, 1981, and was succeeded by Commissioner Robert J. DelTufo.

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Such recommendations are discussed at length at the conclusion of this report's abridgement of testimony recorded at public hearing sessions held at the State House on December 9, 10, 11 and 12, 1980. These detailed recommendations (on P. 361) are summarized below.

RECOMMENDATIONS IN BRIEF

The Commission's recommendations are outlined in two proposals. The first is related to legislation aimed at organized crime infiltration of legitimate business that is pending in the Legislature; the second consist of a series of amendments to strengthen an existing but inadequate statute to regulate dental plan organizations.

Proposal #1 notes that a pending Committee Substitute for Assembly Bill No. 1079 would create a New Jersey state law modeled after the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act. The legislative findings that preface this proposed statute -- that organized crime annually drains millions of dollars from this state's economy by use of force, fraud and corruption and that organized crime type activity has infiltrated legitimate businesses -- were updated by the Commission's investigation and public hearings. The Commission believes the enactment of this legislation would provide the strongest statutory weapon yet available for combatting organized crime. Therefore, the Commission urgently recommends:

That a comprehensive New Jersey state RICO statute be approved by the Legislature and signed by the Governor as soon as possible.

Proposal #2 includes more than a dozen recommended amendments to strengthen N.J.S.A. 17:48D-1 et seq, a law requiring the State Insurance Commissioner to regulate dental plan organizations.

This law became effective in June, 1980, but has not been materially implemented. The changes proposed by the Commission would require more adequate disclosure and closer inspection of financial transactions of dental plan organizations than is presently required by the statute. The proposed changes would also address alliances by such organizations with consultants, finders and other entities and individuals not covered by the law but which the Commission's probe revealed as frequent participants in rip-off schemes. These amendments would:

-- Regulate "consultants" and "finders" who are connected in any way with dental plan organizations, including full disclosure of fees and other compensation pledged or paid. The amounts of such compensation would be subject to regulation by the insurance commissioner. (See Pp. 363,367)

* * *

-- Require the commissioner to act within 90 days upon receipt of an application by a dental plan organization for a certificate of authority to operate. Applications submitted prior to the implementation of this revision would have to be acted upon within 90 days of the effective date of this revision. (P.363)

* * *

-- Require the submission of financial statements prepared and attested to by independent certified public accountant showing a dental plan organization's assets, liabilities and sources of financial support. Terms and conditions of liabilities also would be required. Requests to applicants for additional data would require compliance within 30 days. (P.364)

* * *

-- Require that actual dental plan provider contracts must be submitted to assure that they conform with the "form" of such contracts previously supplied to the commissioner. (P.365)

-5-

* * *

-- Require annual reports that contain detailed financial statements prepared by a certified public accountant. In addition, failure to file an annual report or failure to comply with the commissioner's request for more data would no longer be treated as exceptions from conditions leading to a suspension or revocation of certificates of authority. (P.365)

* * *

-- Add involvement in a crime of moral turpitude and identification as a member or associate of organized crime to the law's present conditions for suspension, revocation or refusal of a certificate of authority. Language similar to the "career offender" and "career offender cartel" provisions of the Casino Gambling Control Law and the Cigarette Licensing Law would be added to the dental plan organization control statute. (P.366)

* * *

-- Increase the range of civil penalties for violating the control law from up to \$1,000 to from \$500 to \$10,000. (P.366)

* * *

-- Add a criminal penalty provision making willful misstatement or willful omission of material fact required to be supplied to the commissioner a crime of the fourth degree. (P.367)

* * *

-- Add a provision to assure that borrowing or loaning of funds by a dental plan organization are limited in amounts and terms to that done by normally prudent businesses, as determined by the commissioner. (P.368)

- 6 -

THE TESTIMONY -- FIRST DAY

TUESDAY, DECEMBER 9, 1980

The Opening Statement

The Commission's public hearings into organized crime infiltration of pre-paid dental plans in New Jersey began with a statement by Chairman Lane emphasizing that forthcoming testimony would focus on certain "closed-panel" type programs that had become "most prone to control and subversion by organized criminal elements in New Jersey and in a number of other states." He stated:

"We will be primarily concerned here with certain operations that are structured as closed panel type plans and which are administered by incorporated organizations or individuals that wheel and deal by means of alliances with phoney consultants or "servicing" corporations with underworld ties to obtain lucrative contracts through labor union officials who control the disbursements of union local health and welfare funds.

The Commission believes its public hearings will provide a comprehensive record upon which to base more sophisticated proscriptions of criminally influenced practices than have yet been devised.

These practices include multiple and inflated billing for equipment purchases and other business costs, inappropriate loans hiding questionable rebates and even kickbacks, inflated "service" contracts negotiated between providers and mob-influenced labor union bosses, and the creation of intricate corporate entities that seem to exist solely as conduits for cash and bank transactions that flout all requirements of normal business accounting standards.

These hearings are aimed only at those elements in the prepaid dental plan care industry that are generating questionable profits at the expense of thousands of innocent workers through a maze of interlocking corporate flim-flams, unessential consulting liaisons, overpriced care programs and facilities and largely unrecorded and unexplained diversions of cash.

The Commission realizes that a vast majority of dental practitioners in New Jersey are professionally competent and individually honest and that major insurance carriers who are guaranteeing the operation of most dental service plans are performing a necessary business function of critical importance to the health of our citizens. Similarly, we must emphasize that the questionable conduct of some labor union officials which forthcoming testimony will highlight is, of course, not intended to reflect adversely on the mass of labor union local leaders who are functioning in a forthright and appropriate manner in advancing the health and welfare of the working people of our state. The Commission is certain that these properly motivated dental, business and labor professionals will welcome this constructive public hearing effort to purge the dental care plan industry of unsavory practices that tend to denigrate the entire industry. We regard these public forums as a most effective way to confirm and pinpoint the misconduct that does exist and to promote statutory and regulatory reforms to eradicate such evils.

Crime Expert Testifies

The Commission's first witness, Marty Steinberg, Esq., of Washington, D.C., testified as a recognized law enforcement authority on the subject of underworld piracy of labor union health and welfare trust funds. He recalled that the U.S. Senate Subcommittee on Investigations, of which he was chief counsel at the time of his appearance, had conducted extensive hearings into more than 20 organized crime swindles of labor union trust funds in five states. He also engaged in similar investigations prior to his Senate Subcommittee appointment during two years as the United States Attorney for Western New York and before that as a federal prosecutor for seven years with the Department of Justice Organized Crime Strike Force in Miami. He also has lectured on labor racketeering and labor union trust fund abuses at the Federal Bureau of Investigation Academy.

Steinberg, under questioning by SCI Deputy Director David L. Rhoads, put into the hearing record specific examples of the methods by which organized crime loots welfare funds:

- Q. If you will, with the benefit of your past experience, the Commission would be interested in knowing what in general terms would be the ways or methods of depletion of

union trust funds in the course of these scams or operations that you have investigated?

- A. The most common ways to deplete union or union trust funds, one is multiple billings, and that is an individual, whether he be a trustee or an officer, submitting different expense vouchers to a number of different unions or trust funds.

The second most common scheme falls on fraudulent loans either from the union fund itself or from a trust fund.

A third scheme is inflated service contracts. That is a service contract that's not actually worth its face value and is basically given because of a kickback to a trustee or a union official.

Fraudulent insurance schemes similar to the ones that I have just described are usually motivated by the kickback to the initiator. Kickbacks to labor racketeers for any number of different services, and the fifth most common and, again, what I think is becoming more and more common, is the occurrence of delinquency collections on contribution. That is, an employer, for one reason or another, will get behind on his contributions to a trust fund. It is then up to someone to collect those monies. There are very few rules and regulations regarding the collection of those monies and it's questionable as to where those monies go.

- Q. All right. Mr. Steinberg, in the course of your past experience, and in investigating these type of fraudulent operations, have you had an occasion to investigate areas wherein health care or welfare trustee boards were being billed, if you will, by health care providers, more particularly dental-care providers, if you had an occasion to investigate that area?

- A. Yes, we have investigated that area, and, in general, there are some general things that you can look for.

One is usually there's no competitive bidding. Two, usually there's a high cost;

that is, they try and sell whole-life premiums as opposed to term premiums or some similar provision. Three, generally there are exorbitant commissions that have no relationship at all to services provided by the insurance company or the service provider. Four, generally there are paper companies or shell companies in which this money is constantly circulated to lose its identity. Five, there's generally a lack of any method to guarantee the benefit of any funds to the beneficiaries. Six, there is generally a bankruptcy or some other financial dissolution within a short period of time, and in all cases there's a kickback to the initiator.

If I may, I'd like to go over a particular event. That would give you some example of how these work.

Q. Yes, please.

A. I think that it's important to keep in mind how far back in time an organized crime family will begin plans for a venture that may pay off ten years down the road.

For instance, in the early seventies an organized crime family began to plan for a health and welfare scheme. In fact, a trust fund was set up solely for that purpose by an organized crime family. The trust fund was organized along the lines of a trust fund to provide for dental, medical and optical care for union members. A substantial amount of money was put into this trust fund at the direction of organized crime figures by the trustees and other people who had control over the trust funds.

Originally, the plan was set up in such a way that the trust fund would pay a premium to a company. That company would hire dentists, doctors, opticians and so forth. Those persons who provided the actual services would be required to hire a consultant. Those consultants operated under various quises and various names.

In this particular case, the consulting firms were dummy corporations. They had no offices; they had no phones; they had no

facilities; they provided no services. Their only purpose in life was to obtain that portion of the premium paid by the trust fund as a kickback and siphon that kickback off to those persons involved, both the labor racketeers and the organized crime figures who invented this scheme.

As an interesting sidelight to that, that company, that was a consulting company, made substantial loans to yet another company. All these loans were questionable. The loans were made to a company which was controlled by yet another organized crime figure who was recently convicted of this very event.

So that not only did they siphon out the money through the kickbacks to the consultants, but they also used the false and fraudulent loans in this same scheme.

I think another interesting facet of this same situation, and this will go to show how many schemes were run from one trust fund, too. Despite the schemes I have already mentioned, that didn't seem to be enough money for the inventors of this particular scheme. So what they devised was a situation where they would set up the facilities for the doctors, dentist and opticians to operate out of, and the trust fund would pay a substantial amount of rent, probably more than they would pay in any legitimate establishment, plus they would pay for the use of various technical equipment and so forth.

The originators of the scheme, through hidden interests and through people who fronted for them actually, had a 50 percent interest the day before the trustees voted to authorize this particular trust fund disbursement.

Q. Mr. Steinberg, at one point you had mentioned that the trust fund would initially hire a company. The company would then turn around and hire the providers, at which point in time the providers you mention would be required to hire a consultant.

The Commission would be curious how that would be communicated to the providing company and by whom generally?

- A. Generally the individuals involved in organized crime would tell the service provider, who, in most cases, is not what I would consider to be a legitimate service provider, although they may, in fact, provide some services.

In some of the cases that they were involved in, the service that they provided were questionable; that is, the persons they had providing services to union members in a lot of cases were not licensed and did not have the qualifications to provide adequate services. But even in those cases where they did, the situation would be put to them in such a way by a person representing an organized crime family that if you want this contract, which is a very lucrative contract, and, of course, all the costs are passed on to the trust fund, the 15 percent consulting fee is taken into account by the service provider in obtaining his estimates to give to the trust fund so that he can get his premium.

So, in effect, it's not costing him anything, but he is told in advance that in order for you to perform this service and to obtain this lucrative contract, you must hire X, Y, Z company as your consultant and pay them a certain amount of money every month and that service provider knows that unless he does that he will not receive that lucrative contract.

- Q. All right. Mr. Steinberg, is it fair to say, at least in the investigative experience that you have had, that the consultant or consulting company more often than not serves as a conduit, conduit for the persons who are directing them to be hired?

- A. I believe so. I believe that's a fair statement, and even in the straight insurance scheme where there is no service provider you have a situation where the trust fund hires a consultant to advise it on which insurance company it should pick, and unfortunately in a lot of states the

payment to that insurance consultant is tied to the premium. So you have the ridiculous situation of the insurance consultant, of having the insurance consultant benefit from actually recommending the highest premium because his fee is tied directly to the premium.

So even in the straight insurance situation, apart from the service provider situation, you have that same situation where you have either a conflict of interest situation, which the insurance situation is, or the conduit situation, which appears to be in the service provider situation.

- Q. With regard to those operations that you have investigated that are directly proportionate to the premiums paid, what would be the average percentage that a consultant might charge with regard to those premiums in return for whatever services, if any, he provides?
- A. Well, since the amount of money he makes is tied directly to the premium, it really is whatever the market bears. The highest premium he can recommend will mean that he will get the highest amount of commission for his consulting fees which makes absolutely no sense because if he's a consultant to an insurance fund, his interests should be in advising that labor union insurance fund how they can receive the most services for the least amount of money.
- Q. You did mention one other area that I would like to highlight at this time. You had mentioned one of the machinations that you found in investigating these type programs is what you characterized, I believe, as a series of shell corporations. Would you just explain the purpose of those please?
- A. Well, basically, the series of shell corporations, of course, the first shell corporation in this set up -- well, actually, there were a number of shell corporations in effect. If you want to look at it in its most cynical light, the trust fund that was originally set up, which was an idea of organized crime figures in the first place, could be considered a shell corporation

because its purpose, or one of its main purposes, was to pass money on eventually through a series of conduits back to labor racketeers and organized crime figures.

The second company set up were the service providers themselves, which partially acted as shell companies because a portion of them, a certain portion of those companies, were set up for the sole purpose of passing money onto yet another company.

The third company was a consultant company. That was solely a shell company. That is, it had no actual functions or no actual purpose. Its only purpose was to receive the money, kickback, whatever you want to call it, to pass it along.

Now, it passed it along in a number of ways. One of the ways was for that company to make loans to yet another shell company. That company dealt with another of the other companies who were foreign in nature, and in this manner the money which originally came out of employers' pockets supposedly used for the benefit of the working man and woman was virtually or almost impossible to trace.

Litigation Interrupts Hearing

Mr. Steinberg's testimony had to be interrupted by Chairman Lane because of continuing litigation by counsel to witnesses who were scheduled to testify at the hearings. Mr. Lane announced that these attorneys had appeared before the New Jersey State Supreme Court during the morning and that, at the direction of the Supreme Court, he was recessing the hearings until 11 A.M. the following day.

THE TESTIMONY -- SECOND DAY

WEDNESDAY, DECEMBER 10, 1980

Court Upholds SCI

Chairman Lane reopened the hearings with an announcement that the State Supreme Court "unanimously denied all motions affecting these proceedings" after the temporary stay of the hearings that the court had ordered on Tuesday morning. He had no further comment on the Supreme Court's action on behalf of the SCI except to point out that "the record of the testimony at these forums will speak for itself."

State Police Expert

Detective Sergeant 1/C William P. Sullivan of the State Police Intelligence Bureau, the next witness, described efforts by his agency to probe into the operations in both South Jersey and North Jersey of certain pre-paid, closed panel type dental plans with connections to organized crime. He also explained why his superiors, after contact with the Attorney General's Division of Criminal Justice, decided to request that the SCI carry on these particular dental plan investigations. Counsel Rhoads questioned Sergeant Sullivan:

- Q. How long have you been employed by the New Jersey State Police?
- A. I've been a member of the New Jersey State Police for approximately sixteen years.
- Q. And are you assigned to any particular unit within that agency?
- A. Yes, I'm currently assigned to the New Jersey State Police Intelligence Bureau and have been for over three years.
- Q. Would you briefly describe the duties and functions of that agency within the New Jersey State Police?
- A. Well, essentially our responsibilities are to monitor and investigate the activities of organized crime operating in the state of New Jersey.
- Q. Now, during the course of your duties as an intelligence officer within that unit, did you have an occasion to begin a background investigation on a prepaid dental plan and its consultant in the southern part of the state of New Jersey?

- A. Yes, I did. In, I guess, about early part of April, 1978, I was assigned to look into the activities of a closed-panel type pre-paid dental plan operating in the southern part of the state.
- Q. If you will, would you tell the Commissioners what were some of the findings of that inquiry?
- A. Well, some of the more outstanding things that we found as a result of looking into it was that the consultant working for the dental plan in question here was receiving what appeared to us as exorbitant fees for consulting services, services which, when compared to the other expenses by, incurred by the dental plan, were disproportionate. And the other thing was that a number of the unions that were involved with the dental plan had a history of involvement with elements of organized crime, particularly those based out of Philadelphia, and the consultant or consultants that had been involved with the dental plan were also involved with these same organized-crime figures.
- Q. Now, Sergeant, so that we're clear on the area within which we're discussing, the consultant, as I understand it, would be employed by the provider of the dental plan to the unions. Is that so?
- A. That's correct.
- Q. Now, in the course of your inquiry, did you come across further developments?
- A. Yes, we did. As we continued the investigation, our suspicions were confirmed time and time again, and as I began to interview people and gather information, we found a similar plan operating in the northern part of the state. The only difference here was that the financial transactions were much more complex in terms of what we saw operating in South Jersey.
- Q. Did there come a time during the course of your investigation that you had consulted with superiors, if you will, with regard to the course of the investigation undertaken by the State Police.

- A. Yes, I did. As the investigation continued, my superiors were constantly advised of our findings and they, in turn, were in constant contact with the Division of Criminal Justice discussing the ongoing probe.
- Q. As a result of these meeting or meetings that you had with your superiors, ultimately was there a decision reached as to whether the State Police would continue or refer?
- A. Yes, after we discussed the matter we felt that the matter was best referred to the State Commission of Investigation.
- Q. And along the way toward reaching that decision, did you make any conclusions as to why the S.C.I. would be a more appropriate agency?
- A. Yes, we did.

The -- when we looked at the entire picture, what we saw occurring, with the closed-panel type prepaid dental plan, we felt that the penalties for the crimes being committed in connection with these plans, if any, such as fraud, embezzlements, did not really relate or correspond to the type of activity we were uncovering.

The other thing we found was that the financial dealings involving the dental plan along with the consultant were extremely complex and, we felt, needed an in-depth analysis of the entire financial picture, and one of the things that concerned the entire area of this type of closed-panel dental plan. There was no real legislation to regulate it at that time, and that the fact that the S.C.I. being an investigative body for the legislature, we felt that they would be the appropriate body to refer the matter to.

THE SOUTH JERSEY EXEMPLAR

After recording testimony by law enforcement experts on the background of the SCI inquiry into organized crime incursion of labor union dental plans, the Commission began questioning witnesses about a particularly revealing exemplar of such criminal incursions in southern New Jersey.

This public hearing episode illustrated the ease with which labor union health and welfare funds can be looted by the collusion of organized crime figures, phoney consultants, callous dental plan administrators and corrupt labor union officials. Key figures in this segment, as forthcoming testimony would illustrate, were two labor union officials, Albert Daidone of Bartenders Labor Union Local 33 and Carlos Simone of Paperworkers Union Local 286, both known associates of mobsters; Larry Smith, whose Rittenhouse consulting company not only contrived the dental plan contracts but served as a conduit for the flow of illicit profits to the underworld, and Raymond (Long John) Martorano, a known intimate of the murdered Philadelphia crime boss Angelo Bruno and other notorious gangsters.

Essential to the success of such schemes as these individuals concocted was easy access to a vulnerable labor union health and welfare fund. Such a fund had to be administered by trustees who either shared in the looting as associates of the predators or who for whatever reason were negligent in adequately supervising disbursements from the fund.

Local 33 Welfare Fund Trustee

To demonstrate the ease with which a mismanaged labor union welfare fund can be pirated for the benefit of organized crime, the Commission called as its first South Jersey witness Michael J. Stafford of Collingswood, the "management trustee" of the health and welfare fund of Camden Local 33 of the Bartenders, Waiters and Waitresses Union. This local had abandoned its former Local 170 identification to escape the bad image created by its recent leader, Ralph Natale, a convicted felon and mob associate. Mr. Stafford qualified as a management trustee of Local 33's trust fund because he was vice president and 25 per cent owner of a restaurant, Chubby's Hearth, Inc., of West Collingswood, and one of seven employers who contributed to the fund. Mr. Stafford's testimony indicated he had little knowledge of the actual operations of the Local 33 fund.

SCI Counsel Robert E. Geisler questioned Stafford:

Q. And could you describe what the duties of a trustee are?

A. The responsibility of the trustees of a fund is primary and foremost to the fund. It's the responsibilities of making the collections, making sure that the collections are remitted to the fund and, in turn, to the various carriers of the medical insurance, and that the participants receive the benefits when needed.

THE CHAIRMAN: Let me ask, are you a trustee in connection with your employment?

THE WITNESS: I am a trustee because I represent the remitting or contributing employers to that fund.

THE CHAIRMAN: All right. Is there just one of you from an employer point of view or more than one trustee of this particular fund?

THE WITNESS: There are four trustees to the fund, sir. There are two management trustees and two union trustees.

BY MR. GEISLER:

Q. And over what funds do you act as a trustee?

A. I act as a trustee over the health and welfare fund and, also, over the severance fund.

Q. When did you become a trustee, approximately?

A. I would say, approximately 1967, '68. I don't know.

Q. Could you list the trustees, the other trustees, in 1978 and 1979?

A. 1979. There's Mr. Richard Kenny and myself were the management trustees, and the union trustees in 1978, and I believe part of 1979 as well, was a Mr. Ralph Natale and Mr. Charles DeRose.

Q. Could you describe how the health and welfare fund or benefits come into existence?

A. Well, it's a negotiated fringe benefit for the employees.

Q. How often do the trustees meet?

A. Semi-annually unless there are special meetings, and that occurs where there are delinquent contributors or increases in insurance premiums, Blue Cross premiums.

Q. How many employers do you represent as a trustee?

A. Basically, seven now, I believe.

Q. Do you know how many union members are represented by the union trustees, approximately?

A. Well, the membership has dwindled. I would say, approximately, 900.

Q. Is there an actual monetary fund, you mentioned, called the health and welfare fund? Is there a dollar amount involved in this fund?

A. Well, there's a dollar amount that's contributed to the fund for each employee depending upon his status, be he single, married, parent and child, Medicare. There's various categories as to the amount that's contributed for the participant based upon his personal status.

Q. Can you tell us the dollar, the approximate dollar amount that was in the fund in 1978 and 1979?

A. For the ten months ended January 31st, 1979, there was \$64,855.26.

Q. And do you have the figures for 1978?

A. I have the figures for January 31st, 1977. I don't have them for '78.

THE CHAIRMAN: What are those figures?

THE WITNESS: Okay. Okay. There was a decrease in the fund. In fact, there was a deficit of \$95,178.17.

THE CHAIRMAN: Well, how much money per year is handled by you as trustees, the four of you? Can you give us a round figure?

THE WITNESS: If I can refer to my notes, I may be able to.

THE CHAIRMAN: We don't care about the precise figure. We want a rough, round figure. Can't you give us that? Is it a million dollars? A million and a half? Two million? What is it?

THE WITNESS: No, sir, it's not that amount.

THE CHAIRMAN: Not that much?

THE WITNESS: No, sir.

THE CHAIRMAN: Well, what is it?

THE WITNESS: I can give you the figures. I just have them all confused here, sir.

THE CHAIRMAN: All right. We'll get it later. Go ahead, sir.

Further questioning revealed that Stafford didn't know that the fund he was a trustee for had sponsored a dental care plan for Local 33 members:

Q. Do the members of 33 have a dental-care plan as part of their health and welfare benefits?

A. Not that I know of, sir.

Q. Who administers the health and welfare fund?

A. Rittenhouse Consulting.

Q. And who are the principals involved in Rittenhouse Consulting?

A. I believe it to be Larry Smith. I don't know whether Libby Kolman is a principal or not, but she works with Rittenhouse Consulting; and I don't know whether Gerald Brown is a principal in the company, Rittenhouse Consulting, or not, but he works with the company.

Q. Does Rittenhouse Consultants ever give financial reports on their administration of the funds?

A. Yes, sir.

THE CHAIRMAN: Just a minute, please. I may have misunderstood you, but I understood you to say that you do not know that this union has a dental plan. Is that correct?

THE WITNESS: That's correct, sir.

THE CHAIRMAN: You don't know that they have a dental plan?

THE WITNESS: That's correct.

* * *

- Q. And, to your knowledge, no dental plan was used by the fund?
- A. The fund that I sit as trustee, we don't administer or handle, to our knowledge, any funds for dental plan.
- Q. Would it surprise you to know that six houses or employers have dental plans that deal with Local 33?
- A. It wouldn't surprise me. I just don't know about it. I never concerned myself about it. I know it's not a negotiated benefit with my firm or, as far as I know, any of the firms that we represent.
- Q. As a trustee, could you gain the knowledge that six employers provide dental plans for employees who are members of Local 33?
- A. I would assume, if they were members of the fund that we administer or are trustees of, I would assume that we would gain knowledge of that, yes, sir.
- Q. Have you ever heard of the North American Dental Plan?
- A. I've heard of that name, yes, sir.
- Q. And where did you hear of it?
- A. I couldn't recall. I just heard it.

Although Ralph Natale had long been known as an associate of organized crime figures, Stafford never questioned Natale's activities as one of the health and welfare fund's labor union trustees prior to his conviction and imprisonment. In fact, he readily acquiesced in Natale's promotion of Rittenhouse Enterprises as the trust fund's new administrator. Mr. Geisler resumed questioning Stafford:

- Q. Do you know a Ralph Natale?
- A. Yes, sir.
- Q. What was his involvement with the union? What position --
- A. He was the business agent.
- Q. And when Mr. Natale was the business agent, who controlled Local 33?

- A. Mr. Natale was the major person in Local 33.
- Q. He was not the president of the union. Is that correct?
- A. No, sir, I don't believe so.
- Q. Did he have a position as a trustee in the fund?
- A. Yes, sir, he did.
- Q. For what years was he a trustee of the fund?
- A. I think he was a trustee for two or three years.
- Q. Where is Mr. Natale presently.
- A. I understand him to be incarcerated.
- Q. And do you know where and why?
- A. I believe, in Florida on drug charges of some sort.
- Q. Are those Federal charges, to your knowledge?
- A. Yes, sir, I understand them to be Federal.
- Q. Do you know how Rittenhouse became administrator of the fund?
- A. Yes. I know how they became administrator of the health and welfare funds. They were introduced to the board of trustees in 1977 by Mr. Natale.
- Q. And what, if anything, did Mr. Natale say about Rittenhouse?

THE CHAIRMAN: I take it you were present at that meeting?

THE WITNESS: Yes, sir.

- A. Just that they had been handling this severance fund at that point in time and that their performance was outstanding, and there was definite need for a change in the, in the administration and handling of the health and welfare fund, which was severely in the red.

Q Were any other administrators given the opportunity to present their credentials and bid for the administrator's position with the fund?

A. No, sir, not at that time, no.

Q. Was any effort made to see if Rittenhouse would charge a competitive price for their administration of the fund?

A. The price appeared and seemed to be very competitive at the time for the work performed, or to be performed at that time.

Q. Was a comparison made with other funds?

A. No, sir.

Q. Was Rittenhouse then employed by the fund?

A. Yes.

* * *

Q. Do you know why Local 33 changed its name from 170?

A. I was told that the reason for the change of numbers in the local was to erase or remove a bad image that the local had received through previous officials.

Q. And who were those previous officials?

A. Well, in the previous administration, I believe, Mr. Natale, and prior to that the administration was Mr. Chaloka.

Q. Since Rittenhouse had been introduced to the union through the auspices of Mr. Natale, was any check done after Mr. Natale got into his legal problems to see what, if any, connection Rittenhouse may have with Natale that was not aboveboard?

A. No, sir, no check was done.

Q. Through your knowledge of Local 33 as a trustee, have you received information that Local 33 will shortly be taken over by Local 54 in Atlantic City?

A. I've heard talk to that effect, yes. I know that Local 33's membership has been diminishing because there has been a sort of immigration of their members to the Atlantic City area with the new jobs that are opening up there.

Q. Prior officials of Local 33, were they a Mr. McGreal and a Mr. Baldino?

A. Mr. Baldino was an organizer with a previous administration at that time with Local 170. If Mr. McGreal were employed or a member of Local 170 at that time, I don't know that, or I would not know that.

Q. Have those two individuals been convicted of crimes?

A. Which two?

Q. McGreal and Baldino.

A. Yes, sir.

Q. And do you know what crimes they have been convicted of?

A. I believe, extortion or something of that nature.

However, Stafford did question the payment at Natale's request of a \$10,000 bonus to the Rittenhouse company by Local 33.

Q. Isn't it a fact that Rittenhouse Consultants received a bonus for merely doing what they had contracted to do with Local 33?

A. Rittenhouse Consultants did receive a bonus, yes, sir.

Q. And what year did they receive that bonus in? What year was that?

A. I believe that was 1979.

THE CHAIRMAN: You mean over and above that which they had contracted for?

THE WITNESS: Yes, sir.

Q. Do you know how much--

THE WITNESS: I'm not certain. I believe it to be 1979. It was 1979 or 1978, one or the other.

CONTINUED

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- Q. Under their contract, how much did Rittenhouse receive for the services it provided?
- A. I assume, for administering the health and welfare plans, fund, \$60,000.
- Q. And could you tell us how much the bonus in 1979 was?
- A. I believe the bonus, the projected bonus was \$10,000.
- Q. Did you vote in favor of that bonus?
- A. I questioned it. In as much as it was my feelings that the firm merely did what we contracted them to do, I was against paying the bonus and the bonus was eventually paid in a two-part sum.
- I did recognize the fact that we had come from \$95,000 in the red, we had improved the benefits to the members, the billing was on time, and we were now at this point approximately \$65,000 in the black, and I thought that they did do an excellent job. However, I also felt that that's what they were contracted to do.
- Q. And could you tell us, who was the one who proposed this ten-thousand-dollar bonus?
- A. Don't hold me to the figures. I'm not certain of the exact figure, but I believe it was \$10,000 at that time. And the individuals that proposed this bonus was Mr. Natale.

Local 33's Vice President

Albert Daidone of Pennsauken, vice president of Bartenders Local 33, was called as a witness because he personified the type of labor union leadership whose associations pave the way for looting of union welfare funds by organized crime. Daidone, an associate of known mobsters, also was close to Larry Smith, the Rittenhouse consultant who accumulated an unexplained horde of cash in 1978 as a result, in part, of union local dental care plans his company had "administered."

The 38-year-old Daidone said he worked "seven days a week" for his union local -- but he also owned a restaurant in Philadelphia and beauty shop in Clementon. He was asked to explain how he became the local's vice president and what that job entailed:

- Q. And as a bartender, were you a member of Local 33?

- A. Yes.
- Q. And when did you first join the union?
- A. I believe, around 1965, something like that.
- Q. How did it come about that you were employed by the union?
- A. I ran for an election and won.
- Q. Did you approach the union or did a member of the union approach you and ask you to run?
- A. Two years ago.
- Q. Yes. Were you approached by the union and asked to take a position with the union?
- A. I was approached by Eddie McBride, who at that time was vice-president. Due to the absence of the president, he was going to run for the presidency. He asked me if I would run on his ticket with him.
- Q. Did you clear this with a Mr. Natale?
- A. When you say did I clear it, Mr. Natale was also running on the ticket. I was asked to run by Mr. McBride. It was his ticket.
- Q. Did you speak to Mr. Natale about your running for a position with the union?
- A. Yes.
- Q. What did you say to him? What, if anything, did he say to you?
- A. He was glad that I was going to accept and run on the ticket with them.
- * * *
- Q. Could you tell us what your duties as the vice-president of the union are?
- A. My current duties are now to do whatever Mr. McBride feels that I should do; that's such as if someone's in trouble, to go in and find out why they were fired, get their job back, that type of stuff.

Q. Could you elaborate on that, what other, what duties you carry out for the union?

A. Anything that has to be done. There are only three officers. We do everything.

THE CHAIRMAN: Well, describe a typical day that you have as a union official.

THE WITNESS: I go into the office and see whatever I have to do, whether it be if someone was fired, to see how much work there is to give out.

THE CHAIRMAN: Well, that's not very illuminating. Can't you tell us what you find you have to do and do do?

THE WITNESS: That every day.

THE CHAIRMAN: Well, tell us what you do on a typical day, please.

THE WITNESS: Typical day is whatever has to be done, I will do.

THE CHAIRMAN: What has to be done? That the point.

THE WITNESS: I just told you.

THE CHAIRMAN: What do you find has to be done on a typical day?

THE WITNESS: If someone is fired from a job, I'll find out why they were fired, go in and see if I can get them their job back. If there's reasons for the firing, anything, if there's a discrepancy somewhere, someone feels they're being harassed, if there's a problem with shop stewards, anything.

BY MR. GEISLER:

Q. How many hours a week do you spend on union business?

A. It's impossible to say. Roughly, maybe 50 hours, 60 hours. I don't know. I work seven days a week. If someone has a problem and they call me at home on a Saturday and I can solve the problem, I'll get up and solve the problem. If it's a Sunday, I'll solve the problem. If it's a shop steward election at 12 o'clock at night, I solve the problem.

Q. What is your salary as vice-president of the union?

A. It's approximately -- I clear approximately \$200 a week.

* * *

Q. Do you have any other current sources of income?

A. I own a restaurant in Philadelphia by the name of Intermission. I own a beauty shop in Clementon. It's part of a corporation I own. That's the only thing that is owned by that corporation, the beauty shop in Clementon.

Daidone and Dental Plan Promoters

Daidone next explained what he knew about his union's dental program and Larry Smith, the consultant with whom he dealt:

Q. Are you familiar with the North American Dental Plan?

A. Yes, I am.

Q. As part of your job as vice-president of Local 33, do you have anything to do with the operation, the daily operation, of the plan?

A. In as far as if one would call me and say that they're having trouble with going to the dentist, that their name wouldn't be on the computer or stuff like that, I would call our offices, such as Larry Smith's office, which is Rittenhouse Corporation, and they would take care of the problem from there.

Q. Who is Larry Smith?

A. From what -- I believe Larry Smith is the administrator for Rittenhouse Corporation. I don't know specifically what his title is.

Q. And Rittenhouse Corporation is the administrator of the dental plan; is that correct?

A. I'm not sure. I believe so.

- Q. During -- well, how long have you known Larry Smith?
- A. Roughly, ten years, I guess, something like that.
- Q. And when did he become -- when did Rittenhouse become the consultants for the operation of the dental plan?
- A. I really don't know.
- Q. Did you know Mr. Smith before he became involved in the administration of the dental plan?
- A. I believe so. I don't know when the dental plan exactly started because at that time I was tending bar. But I've known him for quite awhile.
- Q. And how did you meet him?
- A. I met him through Ralph Natale, probably.
- Q. Who runs the daily business of Rittenhouse Consultants?
- A. I would imagine Larry does. He has Gerry Brown and Paul -- I don't even know Paul's last name. Any time I have a problem with any of them, I usually call for Paul or Gerry Brown or Larry and the problem I've always had have been solved.
- Q. Are you at all familiar with the operation of Rittenhouse Consultants and how it operates in conjunction with the health and welfare fund?
- A. My only dealings with Larry Smith's office is that if someone says they can't get Blue Cross, Blue Shield, or they're in a hospital and they don't have cards or stuff like that, I would call in and they'll call the people directly and make sure that they have their Blue Cross or go in the hospital without any complications at all.
- Q. You do see Mr. Smith on a daily basis; is that correct?
- A. Not necessarily. Sometimes I'll see him every day; sometimes I'm liable not to see him for a week, two weeks; sometimes I'll see him three times in one day.

- Q. Besides seeing him for union purposes, you also socialize with Mr. Smith; is that correct?
- A. Occasionally, yes.
- * * *
- Q. Do you know when the North American Dental Plan was first used by the union?
- A. No, I don't.
- Q. Do you know what sort of contract Rittenhouse Consultants has with the union?
- A. No, I do not.
- Q. Does Larry Smith receive any income from the union other than through Rittenhouse?
- A. Is he on our payroll?
- Q. Yes.
- A. As far as I know, no. I don't know how that is administered or how it's taken care of. One of the trustees would be able to answer that question.
- Q. Do you know how that North American Dental Plan was selected?
- A. No, I do not.
- Q. Did the union members participate in selecting the dental plan?
- A. Yes, they did.
- Q. How did they participate in that selection?
- A. When you say did they select North American specifically versus another group?
- Q. Yes.
- A. I don't know whether that was afforded them or however that came about.
- Q. In fact, no other dental plans were presented to the union membership?
- A. I don't know.

- Q. Do you know if Larry Smith has any other sources of income?
- A. I don't know.
- Q. Did you ever ask Mr. Smith what other sources of income he has or what other business he's involved with?
- A. No, I don't think so. I believe he was involved in trucks. I told you that the last time.
- Q. Do you know of any organized-crime influence on the union or on the dental plan operated by the union?
- A. No, I do not.

Daidone and Ralph Natale

Daidone was questioned about Ralph Natale, his former union local colleague who arranged Local 33's dental plan contact with Larry Smith and Rittenhouse:

- Q. How long did you know Ralph Natale before you were employed by the union?
- A. Since about 1965. Since I got out of the service.
- Q. And how did you meet him?
- A. He used to tend bar at the Rickshaw.
- Q. How many members of the union are there presently?
- A. Approximately 1200.
- Q. And Local 33 was formerly known as Local 170; is that correct?
- A. Yes.
- Q. And why was it changed to Local 33? Why was the name changed?
- A. Mr. McBride, I believe, felt that he wanted to change the image of the union and he wanted to call it Local 33. The executive board voted upon it and the number was changed.

- Q. The poor image was caused by Mr. Natale's involvement with law enforcement; is that correct?
- A. Probably.
- Q. Do you know why Mr. -- under what charges Mr. Natale was convicted?
- A. I believe, arson and narcotics.
- Q. And those were Federal convictions; is that correct?
- A. I believe so. I'm not sure about the law.
- Q. Prior to Mr. Natale's incarceration, you were a social friend of his; is that correct?
- A. Yes.
- Q. And how often did you see him?
- A. Maybe every day.
- Q. And when you saw him, was it at his home?
- A. At his home, at my home, all over. We were together quite often.
- Q. When is the last time that you have seen Mr. Natale?
- A. The last time I saw Mr. Natale is when he was up here on one of his trials, I believe.
- Q. When is the last time that you communicated with Mr. Natale over the telephone?
- A. He called the restaurant. When it was, I have no idea. I can't remember.
- Q. You still retain your friendship with Mr. Natale; is that correct?
- A. Yes, even though I haven't spoken to him for quite awhile, yes, he's still my friend.
- Q. Have you heard that Mr. Natale is involved in organized crime?
- A. I only know what I read in the paper about Mr. Natale.
- Q. What do you read in the paper about Mr. Natale?

- A. They say that he's associated with organized crime and he's been in some sort of trouble.

Daidone and Angelo Bruno's Friend

Daidone was asked about his friendship with Raymond (Long John) Martorano, a close associate of Angelo Bruno before the Philadelphia mob boss was murdered in March, 1980:

- Q. Do you know Raymond Martorano?
- A. Yes.
- Q. How long have you known him?
- A. Approximately ten years, I guess, something like that. I don't know.
- Q. And were you introduced to him through Mr. Natale?
- A. It's possible.
- Q. How often do you see him presently?
- A. I see him quite often. Three, four times a week, sometimes every day. Sometimes I don't see him for a week.
- Q. Do you know whether Natale and Martorano know each other?
- A. I believe so, yes. I've been --
- Q. Are they good friends?
- A. I don't know how good is good friends. I know they know each other.
- Q. When you see Mr. Martorano on a daily basis, how does that come about? Do you visit him?
- A. Yes.
- Q. And what do you do when you see him?
- A. We take a ride, talk, have lunch, maybe have dinner.
- Q. Do you act as the chauffeur for Mr. Martorano?
- A. I have driven for Mr. Martorano.
- Q. Have you ever acted as his bodyguard?

- A. No.
- Q. Have you heard that Mr. Martorano is involved in organized crime?
- A. Only what I read in the paper. They say he's with organized crime.
- Q. Did you ever ask Mr. Martorano about what you have read in the paper?
- A. No.
- Q. Did you ever ask Mr. Natale about what you read in the paper about him?
- A. No.
- Q. What business is Mr. Martorano in?
- A. He's in the vending.
- Q. And where is that business located?
- A. In Philadelphia.

EXAMINATION BY THE CHAIRMAN:

- Q. Do I understand that you spend some part of almost every day of the week with, in the company of Raymond "Long John" Martorano?
- A. Yes.
- Q. And what does this association amount to? What do you do with him part of every day?
- A. We have lunch. We talk, we laugh, we talk about the newspapers.
- Q. Do you ride around in a car and look for locations for his vending machines with him?
- A. I have been with him when he's been looking at vending stops.
- Q. Did you ever speak to Mr. Martorano about union business?
- A. No.
- Q. Did you ever speak to Mr. Testa?
- A. No.
- Q. Did you ever speak to Mr. Vidino about union business?

A. It's possible. It's possible I spoke to them about it, but in regards to, I'm doing this or I'm doing that, that's all.

Q. Do any of those individuals derive any income from Local 33?

A. No.

Daidone's Other Organized Crime Associations

Daidone contended he only knew about the organized crime background of his friends from what he read in the newspapers. However, what he learned about his associates didn't seem to matter to him, according to his testimony:

Q. Do you know a Frank Vadino?

A. Yes, I do.

Q. And how long have you known him?

A. Since about 1965. Since I got out of the service, roughly.

Q. And he presently works at your restaurant; is that correct?

A. He helps me.

Q. He receives no income from you; is that correct?

A. No, he does not.

Q. What does he do for a living?

A. I don't know specifically. I believe he had something to do with trucks, the trucking business.

Q. What business was that?

A. What was his business? I don't know. I think it was -- I don't know, to be honest with you.

Q. Does he act as a bodyguard for Mr. Martorano?

A. Not that I know of.

Q. Have you heard that Mr. Vadino is involved in organized crime?

A. I didn't know that he was or is. I only know what I read in the paper about Mr. Vadino. He's my friend.

Q. What have you read in the paper about Mr. Vadino?

A. They said he was in organized crime.

Q. Did you ever ask Mr. Vadino about what you have read in the papers?

A. No.

Q. Was he involved with Mr. Natale in Florida?

A. Yes, he was.

Q. And was he convicted of those charges?

A. Yes, he was.

Q. Did you know Angelo Bruno?

A. I met Angelo Bruno.

Q. And who introduced you to Angelo Bruno?

A. I don't know. Maybe Mr. Natale. I met him a long time ago.

Q. And how many occasions prior to his murder did you see Angelo Bruno?

A. I don't know.

Q. Did you attend Angelo Bruno's funeral?

A. Yes, I did.

Q. I show you a picture taken at Mr. Bruno's funeral and ask you to identify the individuals in that picture.

A. That's Frank Vadino, Raymond Martorano, myself, and Anthony Amato.

Q. Did you attend the funeral as a friend of Mr. Bruno or as a bodyguard for Mr. Martorano?

A. As a friend of Mr. Bruno and a friend of Mr. Martorano.

Q. After Mr. Bruno's murder did you visit Mr. Martorano on a daily basis and stay with him during the day?

- A. Yes, I did.
- Q. And was the purpose of your staying with him to act as his bodyguard?
- A. No, it was not.
- Q. And why did you stay with him?
- A. Because I felt, as did Frank Vadino, probably, that he was upset and we didn't feel that he could drive.
- Q. And have you heard that Mr. Bruno was involved in organized crime?
- A. Only from what I've read in the paper.
- Q. And what did you read in the paper about Mr. Bruno?
- A. That he was involved in organized crime.
- Q. Do you know an individual by the name of Mike Marrone?
- A. Yes.
- Q. And is he a friend of yours?
- A. I would say so.
- Q. And how long have you known him?
- A. Approximately, I guess, since I got out of the service. I don't know exactly when I met him.
- Q. Is he presently in prison?
- A. Yes.
- Q. And what is he in prison for; do you know?
- A. I don't know. I believe it was something to do with arson.
- Q. When is the last time that you saw him?
- A. The last time I saw him is when I visited Mr. Natale in prison and he was visiting with his wife or someone.
- Q. Do you know Philip Testa?
- A. Yes, I do.

- Q. How long have you known Philip Testa?
- A. I don't know, to be honest with you. I don't know when I met him. I've known him for awhile, yes.
- Q. Did you meet him through Mr. Martorano and Mr. Natale?
- A. Probably, yes.
- Q. And how long ago was that?
- A. I don't know.
- Q. Have you ever been to his home?
- A. Yes.
- Q. On how many occasions?
- A. A couple.
- Q. Have you heard that Mr. Testa is involved in organized crime?
- A. Yes.
- Q. And how did you hear about that?
- A. From the newspapers.
- Q. Did you ever ask Mr. Testa about what you had read in the newspapers?
- A. No, I did not.
- Q. When is the last time that you saw Mr. Testa?
- A. Maybe a couple of weeks ago or something like that.
- Q. And where did you see him?
- A. At a restaurant in Philadelphia.
- Q. What restaurant was that?
- A. Virgilio's.
- Q. Does Mr. Testa know Mr. Martorano?
- A. Yes.

Daidone Explains His Friends

Concluding his testimony, Daidone contended his friendships and associations had no bearing on his "trust duty" as an officer of his labor union local. The questioning proceeded:

- Q. Mr. Daidone, you have stated that you have been associated with Mr. Martorano, Mr. Testa, Mr. Vadino, Mr. Natale, all who have been identified to you through the newspapers as being involved with organized crime. You have also stated that you have never questioned these individuals about their association with organized crime. Do you think that it is in the best interests, because of your trust position with the union, to continue to associate with these individuals?

MR. SAL DAIDONE (witness' counsel): I would like to know what trust position you're talking about, number one; number two, I would like to know what you're talking about when you use the word "friendship" since you understand that Mr. Daidone happens not only to be a bartender, but also happens to be a tavern owner, all those things before you ask a loaded question to which you cannot expect any honest answer without consulting me and sitting with your staff to find out just what you're talking about.

THE CHAIRMAN: Let me ask a question. Do you think an association with these men that counsel has just enumerated reflects in any way on your position with the union?

(The witness confers with counsel.)

THE WITNESS: Okay. I own a restaurant. I associate with a lot of people. I have friends that are priests, I have friends that are politicians. I can't say that I have one specific group that I'm closer to than another.

- Q. Have any of the friends who are priests or politicians been identified as members of organized crime in the newspapers?
- A. I don't know.
- Q. Your position with the union is that of vice-president; is that correct?
- A. Yes.

- Q. And as vice-president of the union, do you consider that you have a trust duty to the members of your union?

A. Yes.

- Q. And do you think that your association with members, who have been identified by the newspapers as members of organized crime, without your questioning that fact, is in the best interests of the union?

(The witness confers with counsel.)

- A. Because I associate with a group of people, that doesn't necessarily mean that my knowing them or my socializing with them will have any bearing on what I do for my union. I only do for my union what I feel is beneficial for my union, and I'll get up out of a bed at one o'clock in the morning to help someone that has been fired. Are you suggesting that I should call someone to help me get up out of bed and go solve a problem? I take care of my people.
- Q. Are your people also Mr. Martorano, Mr. Testa, Mr. Vadino and Mr. Natale?
- A. They're friends. If you were my friend and you called me in the middle of the night, I'd get up for you.

Paperworkers' Leader Refuses to Answer Questions

Carlos Simone, international representative of the Paperworkers Union, Local 286, refused to answer questions about his dealings with Larry Smith and Rittenhouse in connection with the dental health care plan Rittenhouse administered for his union local members:

- Q. Mr. Simone, where do you currently reside?
- A. 105 South Mansfield Boulevard, Cherry Hill, New Jersey.
- Q. And what is your date of birth?
- A. 8/31/34.
- Q. Mr. Simone, what is your current occupation?
- A. I respectfully decline to answer that question on the advice of counsel.

- Q. Is that --
- A. I'm invoking my Fifth Amendment right.
- Q. Is that on the grounds that it may tend to incriminate you?
- A. Whatever the Fifth Amendment entitles me to, Counsellor.
- Q. Mr. Simone, are you an official with the Paperworkers union?
- A. I respectfully decline to answer.
- Q. Mr. Simone, are you a trustee of the health and welfare fund of the Paperworkers union?
- A. I respectfully decline to answer.
- Q. Mr. Simone, does your union have approximately 5000 members?
- A. I respectfully decline to answer.
- Q. Mr. Simone, are you a personal friend of Lawrence Smith?
- A. I respectfully decline to answer.
- Q. On what basis, sir?
- A. The Fifth Amendment, guaranteed to me by the United States Constitution, Counsellor.
- Q. Mr. Simone, are you familiar with the North American Dental Plan?
- A. I respectfully decline to answer.
- Q. Mr. Simone, did you aid Lawrence Smith in becoming the administrator of the North American Dental Plan for the Paperworkers union?

THE CHAIRMAN: Just a minute. I take it, Mr. Counsellor, that your client is going to continue to give that same answer, in effect, refuse to testify. Is that correct, sir?

WITNESS COUNSEL: That is correct, sir.

COMMISSIONER FRANCIS: And that refusal is based on the Fifth Amendment?

WITNESS COUNSEL: That is correct, Commissioner.

THE CHAIRMAN: Well, there's no need to continue.

Dental Plan's Mob Connection

Although he denied any knowledge of Local 33's dental plan contract with Rittenhouse Enterprises or Larry Smith, Raymond Martorano conceded he knew Al Daidone, the local's vice president, and that he and other mobsters from the Angelo Bruno gang were associates of Daidone. (In 1977, Martorano testified at an SCI public hearing that he and Angelo Bruno were associated with John's Wholesale vending company. He left his employment at John's Wholesale in April or May, 1980, soon after Bruno's murder). Counsel Rhoads questioned Martorano about his organized crime background and associates:

- Q. Mr. Martorano, are you known by any nicknames or aliases?
- A. Yeah, they call me Long John, sir.
- Q. What's your present business occupation?
- A. Salesman.
- Q. And what is it that you sell?
- A. Vending machines.
- Q. What do they vend?
- A. Cigarettes, pinballs, juke boxes, pool tables, et cetera, et cetera.
- Q. Are you self-employed?
- A. Well, I am and I work for my son and I work for a couple of other companies.
- Q. All right. What are the companies that you work for?
- A. Toomey Vending, Jay Scott, Jay Vending, Jimmy Del Cain.
- Q. Was there a time when you worked as a salesman for vending machines with a company called John's Vending?
- A. Yeah, I worked for a salesman for John's Vending, yes, sir.

Q. And who is the proprietor of John's Vending when you worked there?

A. It was my wife and my brother and his wife.

Q. What's your brother's name?

A. John Martorano.

Q. Well, for what period of time did you work for your brother's firm?

A. Oh, many years. I don't remember how many years.

Q. Well, when did you cease working for him?

A. I think it was this year.

Q. And what was the reason that caused you to leave your brother's firm and go on to a different one?

A. I just wanted to work for myself and other companies.

Q. Well, can you fix a time with respect to when you left John's Vending?

A. It could have been around April or May, something like that, sir.

Q. April or May of what year?

A. This year.

Martorano was particularly reluctant to discuss dental care plans, disclaiming any knowledge of Local 33's arrangements with Larry Smith and the Rittenhouse consulting company. He also insisted that neither he nor his organized crime superior Bruno ever shared any of the proceeds from dental plan operations. His testimony continued:

Q. Now, Mr. Martorano, with regard to the aforescribed scope of this public hearing, that is to say, the inquiry into the health-care plans, more particularly, dental-care plans, did any of the companies by which you were employed and you are presently employed now have a dental plan?

A. Not to my knowledge, no, they don't, sir.

Q. Have you ever heard of a company called Rittenhouse Consulting Enterprises?

A. To my recollection, no, sir.

Q. Well, if I were to tell you that that company had a president by the name of Lawrence Smith, would that help your recollection any?

A. It wouldn't, sir. To my recollection, I don't know the company, sir.

Q. Do you know Lawrence Smith?

A. I've heard of the name. I don't know him.

Q. From what source have you heard of the name?

A. I might have read in the newspapers or some charity affair I might have met him. I never met him, but I might have heard the name that way. But I know the gentleman. Don't know what he looks like.

Q. May have been as a result of reading newspapers?

A. Could be. I don't know, sir.

Q. Well, in that context, when you read the name Lawrence Smith, did it allow you to learn what business Mr. Smith was in?

A. I have no interest, sir, in Mr. Smith or any other Mr. Smiths.

Q. I'm not asking you that you have interest in him. I'm asking whether you know --

A. No.

Q. -- what business he was in.

A. I wouldn't be concerned.

Q. You would not be concerned with it?

A. No, sir.

Q. Have you ever heard of a company by the name of North American Dental Plans?

A. No, I never heard of up until I read in the paper yesterday. I think you asked me that question before. Never heard of the company before, sir.

- Q. You say you read in the paper yesterday. In what context did you read that company name?
- A. It was in the newspapers yesterday about it.
- Q. What was the story about?
- A. Oh, I don't remember, sir. Something about the dental something. I don't know.
- Q. This is yesterday's paper?
- A. Or this morning's paper, something like that.
- Q. But you can't recall anything other than just the name?
- A. No, sir, I'm not interested.
- Q. Well, along the lines of North American Dental Plan, did you hear or read associated with that company the name Joseph Cusumano?
- A. Now, you said that before, sir. I don't think I know the gentleman, sir. To my best recollection, I don't know him.
- Q. Well, between the time I said it to you before and as you sit here today, have you searched your memory as to whether you do know a Mr. Cusumano?
- A. No, to my recollection, I don't sir.
- * * *
- Q. Well, Mr. Martorano, there was a time, or perhaps more than one time, where Lawrence Smith, president of Rittenhouse Consulting Enterprises, in fact, shared proceeds with you, didn't he?
- A. What was that?
- Q. You didn't hear the question?
- A. I don't even know what you're talking about, sir. No, sir, I don't even know Lawrence Smith.
- Q. Well, is the answer no, then?
- A. No, sir, definitely not, sir. It's a damn lie.

- Q. Well, Mr. Martorano, perhaps with regard to you recalling the name Lawrence Smith, I'll approach it a different way. You know Angelo Bruno, do you not?
- A. Yes, sir.
- Q. And again, if you will, how would you characterize your relationship or acquaintance with Mr. Bruno?
- A. He was a very dear friend of mine, sir.
- Q. And for what period of time?
- A. Oh, my God. Fifteen, twenty years, sir.
- Q. Was he ever at any time during that fifteen or twenty years a business acquaintance of yours? Did you have a business relationship in any way --
- A. Yes, sir.
- Q. -- with Mr. Bruno?
- A. Yes, sir.
- Q. What was that, sir?
- A. We worked together, sir, as salesmen.
- Q. Where?
- A. At John's Wholesale Company, sir, John's Vending.
- Q. What was Mr. Bruno during the course of time he worked there?
- A. Salesman, sir.
- Q. Would you characterize Mr. Bruno's job as the same as yours? By that I mean he sold vending machines.
- A. Yeah, the same as mine, a salesman, sir. We worked together.
- Q. During the course of these, well, years, I suppose, that you knew Mr. Bruno, Mr. Bruno ever tell you that he was involved in organized crime?
- A. No, sir.

- Q. Have you ever heard of the term "La Cosa Nostra"?
- A. I heard the term, yes, sir.
- Q. From what source of sources have you heard of the term "La Cosa Nostra"?
- A. In the newspapers, sir.
- Q. Is it fair to say that you had, we'll say, read the term "La Cosa Nostra" many, many times over the course of years in the newspapers?
- A. Yes, sir.
- Q. And along those lines, you also read it in context with your friend Angelo Bruno, did you not?
- A. Yes, sir.
- Q. And would you tell the Commission, at least in summary, what the articles would say about Mr. Bruno in relation to the La Cosa Nostra?
- A. I don't recall, sir.
- Q. Well, with regard, again, now to Mr. Bruno -- and if this helps you recall the name Lawrence Smith, please tell me -- have you ever heard or do you have any knowledge of Lawrence Smith at any time ever having shared proceeds from his dental plan operations with Angelo Bruno?
- A. No, sir.
- Q. How about that same question with respect to Ralph Natale?
- A. My recollection, no, sir.
- Q. To your recollection, anyway?
- A. No, sir.
- (There is a brief pause.)
- Q. I just have one last question. Mr. Martorano, have you ever facilitated or in any way helped anyone contract with the union in order to furnish them a dental plan?

- A. No, sir.
- Q. Never at any time? You never recommended anyone to any of your union friends?
- A. No, sir.

It was apparent from Martorano's testimony that either he never discussed Local 33's dental plan with those who were familiar with it or he didn't wish to admit that the subject ever came up. For example, he associated frequently with Al Daidone, the local's vice president, visited often at Daidone's Philadelphia restaurant, the Intermission, and knew the same mob people Daidone knew -- but could not recall ever discussing the local's dental plan. He was asked about Daidone:

- Q. How is it that you know Mr. Daidone?
- A. I know him for years, sir.
- Q. Well, how did you meet him?
- A. Working as a bartender, I think, sir.
- Q. Well, do you know what Mr. Daidone's business is?
- A. He's with the union, sir.
- Q. Do you know what union?
- A. The Bartenders and Hotel Workers Union, sir.
- Q. To your knowledge, is that presently known as Local No. 33, formerly Local No. 170?
- A. I think that's it, sir.
- Q. Well, how would you describe your relationship with Mr. Daidone?
- A. He's a friend of mine, sir.
- Q. Would you say you're good friends, hardly know one another? How would you --
- A. I would say, good friends, sir.
- Q. And over the course of these years that you have known Mr. Daidone, you are in relative frequent contact with him; are you not, perhaps on a daily basis or every other day?
- A. Yes, sir.

- Q. And during these numerous occasions that you are with Mr. Daidone, do you have an occasion to discuss union business with him?
- A. Sometimes, but I don't know if it's any importance. I don't remember, sir. Sometimes I did, sometimes. I don't remember on what occasions, though.
- Q. Well, in relationship perhaps to the time when you had read about, from the newspapers, in any event, about N.A.D.P., North American Dental Plan, or any other dental plans, did you ever discuss with Mr. Daidone, knowing that he was in a union, whether he had a dental plan or not?
- A. No, sir, my recollection, I never did, sir.
- Q. Let me put it a different way. Do you know whether, in fact, Mr. Daidone's union, at least, the welfare board of that union, does have a dental plan?
- A. No, I wouldn't know, sir.
- Q. You say you wouldn't know?
- A. No.
- Q. Why would you not know?
- A. I have no interest to know. I wouldn't have no interest to be interested in knowing.
- Q. Well, how about as a result of the articles that appeared in the paper, did that ever arouse your interest to discuss with Mr. Daidone words to the effect to say like do you have one of these dental plans?
- A. No, sir, I don't discuss it. I might have, but I don't remember, sir. I have no interest.
- Q. You have no interest in it?
- A. No, sir.
- Q. Now, Mr. Daidone, over this course of the years that you have known him, has businesses other than being connected with a union, isn't that so?
- A. He owns a restaurant, sir.

- Q. What's the name of that?
- A. Intermissions.
- Q. Where's that located?
- A. In Philadelphia, sir.
- Q. Have you frequented that place?
- A. I go there and eat, have lunch and dinner, sir.
- Q. Do you know a Franky Vadino, do you not?
- A. Yes, sir.
- Q. How is it you know Mr. Vadino?
- A. I know him for years, sir.
- Q. Well, how is it that you got to know him?
- A. He's from downtown, sir. You know, it's a guy that I see downtown quite often for years.
- Q. When you say, "He's from downtown," what I'm suggesting is, how is it that you met Mr. Vadino or, at least, heard the name Vadino?
- A. I know him for years, sir.
- BY MR. RHOADS:
- Q. Mr. Martorano, I'm going to show you what's been marked Commission Exhibit 21 for identification. It's a photograph depicting amongst others four individuals. Reading from left to right, could you identify those individuals for us?
- A. Yes, sir. That's Tony, Al, me and Franky.
- Q. Well, can you give us last names, do you think?
- A. Oh, well, that's Tony, I think Tony Amato. That's Al Daidone. That's me, and that's Frank Vadino.
- Q. Now, the gentlemen you identified for purposes of the record as the one appearing on the far right side, and that is the Mr. Vadino that you said had worked at Intermissions, is that so.

- A. He didn't work there. I never said he worked at Intermissions.
- Q. Well, on the occasions that you have been to Intermissions, have you ever seen that gentleman, Mr. Vadino, there?
- A. Yes, he's there.
- Q. What would he be doing? Would he be sitting having dinner, having a drink, or sweeping the floors?
- A. No, eating, having lunch or dinner, or talking to somebody at the bar.
- Q. Well, over the course of the time that you know and have known Mr. Al Daidone, did Mr. Daidone in any way ever impart to you that Mr. Vadino helped him run the bar?
- A. He might have said that. I don't know if he helped him or not, sir. I don't know.
- Q. Well, not that he might have said it. Do you have any specific recollection whether Mr. Daidone, in fact, ever told you that Franky Vadino helped him in the bar.
- A. To my recollection, I don't remember him saying that.
- Q. How long -- and if you have answered this, excuse me, but I would like to hear it again. How long have you known Mr. Vadino?
- A. Oh, many years, sir.
- Q. Many years. And how would you describe your relationship with Mr. Vadino?
- A. Oh, friendly. I'm friendly with a lot of people, sir. I'm a friendly fellow.
- Q. Well, again, would you say that you're good friends, passing acquaintances? How would you characterize it?
- A. Friendly, friendly, friendly.
- Q. Well, Mr. Martorano, over the course of time that you have known Mr. Vadino, have you ever known him to be involved in narcotic trafficking?
- A. No, sir.

- Q. Never had any knowledge of Mr. Vadino being arrested or convicted for narcotic trafficking?
- A. Yeah, he was arrested, sir.
- Q. Well, then, you do know of the fact that he was involved in narcotic trafficking, don't you?
- A. The newspaper --
- Q. Do you now know, at least, of his arrest for narcotic trafficking, do you not?
- A. I read that in the newspapers, sir.
- Q. Did you ever talk to Mr. Daidone about it?
- A. I might have. I don't remember talking about it. I could have.

Martorano's testimony became suddenly confusing when he was questioned about Ralph Natale, the former Local 33 official who had initiated the dental plan arrangements with Larry Smith and Smith's Rittenhouse consulting company:

- Q. The fact is Mr. Vadino was also arrested with someone else, wasn't he?
- A. According to the newspapers, he was, yes, sir.
- Q. Who was the someone else he was arrested with?
- A. It was this Ralph Vitale.
- Q. It was Ralph Natale?
- A. Vitale. I think it's Vitale. I don't know if I'm pronouncing it.
- Q. Ralph Vitale?
- A. Yes.
- Q. Is it V-i-t-a-l-e?
- A. Could be. I don't know the correct spelling.

MR. RHOADS: Could I have a moment, please.

(There is a brief pause.)

Q. Well, Mr. Martorano, you know a Ralph Natale, don't you, N-a-t-a-l-e?

A. Yeah.

Q. Well, was he the individual that you're trying to recall that was arrested --

A. Yes, sir.

Q. -- with Franky Vadino?

A. Yes, sir.

Q. It's Ralph Natale, isn't it.

A. I don't know how you pronounce the second name, but I know it's Ralph.

Q. This Ralph Natale or Vitale that you know, how long have you known him?

A. Oh, many years.

Q. Many years?

A. Yes, sir.

WITNESS' COUNSEL: I apologize for his inability to pronounce it correctly.

COMMISSIONER FRANCIS: Could it be another reason, Counsellor? Would it be that he knows the gentleman very well and doesn't want to admit it?

WITNESS' COUNSEL: No. He admitted that. If he can't spell it correctly, I'm sorry about that.

COMMISSIONER FRANCIS: Is that your testimony? Is it Mr. Natale?

THE WITNESS: It could be.

COMMISSIONER FRANCIS: Is his first name Ralph?

THE WITNESS: Yes.

COMMISSIONER FRANCIS: Is he the gentleman that was arrested with Frank Vadino?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: Thank you.

Q. Just for purposes of the record, at this point, Mr. Martorano, you testified before this Commission on November 7th, 1980, sitting in executive session, and at Page 21 of the transcript, line 23, I asked, "That conviction was in association with Mr. Natale, was it not?" And for purposes of context, that's in relationship to Mr. Vadino. And your response was, "Yes, sir."

A. Well, --

Q. So, at Counsel's request, I do read that back to you, and the fact is it is the Ralph Natale we are discussing.

Now, Mr. Martorano, in what business, at least prior to Mr. Natale's conviction, was Mr. Natale in, to your knowledge?

A. He was in the union business.

Q. And what was he in the union business?

A. He was a union -- it's a union business, a union man.

Q. Was he an official of the union?

A. Oh, yes. Yes, sir, he was.

Q. Do you know what title, if any, he had?

A. Oh, I don't know what title. But he was a boss there; was a union official, sir.

Q. Well, do you know the name of the union that he was associated with?

A. With the Bartenders and Hotel Workers.

Q. If I were to tell you it was Local No. 170, would that refresh your recollection?

A. Could be. It could be, sir.

Q. And that union that Mr. Natale was associated with is, in fact, the same one that Mr. Albert Daidone is presently associated with --

A. Yes, sir.

Q. Do you know that?

A. Yes, sir.

- Q. By the way, of your own knowledge, do you have any knowledge of why the union changed from Local 170 to Local 33?
- A. No, I wouldn't know, sir. I have no knowledge.
- Q. No, over the course of the years -- well, again, if I may go back, how would you describe your relationship with Ralph Natale?
- A. He was a friend of mine, sir.
- Q. Well, again, could you characterize that for us? Is he a good friend, best friends, what?
- A. He's a friend, sir. I know him for years. He's a bartender. I know him when he worked as a bartender, fifteen, twenty years. He's a friend.
- Q. Well, during the time that you were aware of Mr. Natale being a union official, were you aware whether Mr. Natale's union had the benefit of a dental plan?
- A. No, I wouldn't know that, sir.
- Q. Well, did you ever hear of N.A.D.P., more particularly, North American Dental Plan, in association with Mr. Natale's union?
- A. I never heard it until you told me, sir, the name.
- Q. Well, Mr. Martorano, you were aware, were you not, that, amongst other sources, Mr. Natale was deriving income from Lawrence Smith via Mr. Smith's dental ventures, were you not?
- A. No, I don't know that, sir. No, sir.
- Q. You never discussed anything like that with Ralph Natale?
- A. No, sir. It's none of my business.
- Q. Well, again, I don't ask whether you characterize it as your business or not, only whether you did or did not.
- A. No, I didn't, sir.

SCI's Rittenhouse Audit

The key question in the Commission's probe of the South Jersey dental plan scheme was: What happened to the more than \$150,000 in unexplained cash that Larry Smith churned through his Rittenhouse consulting company in 1978? The mystery was exposed by the SCI's accounting staff after many months of scrutinizing the personal and corporate books and records of those involved in the scheme -- particularly the Rittenhouse records.

To lay the foundation for the later appearances of Smith and his bookkeeper as public hearing witnesses, the Commission questioned Frank J. Zanino, its senior investigative accountant, who held that same position during his previous employment with the U.S. Internal Revenue Service. Before he began his 30 years in the investigative accounting profession, Zanino obtained a degree in business administration at St. John's University, where he majored in accounting.

Zanino accompanied his testimony with various charts to clarify his commentary and to provide a standing reference for later discussions of the complicated money flow that the Rittenhouse dental plan operations generated. Zanino's testimony:

- Q. Mr. Zanino, in the course of your duties as an investigative accountant assigned to the State Commission of Investigation, did you have an occasion whereby you were assigned the task of investigating, at least in part, the health-care investigation that the S.C.I. is currently conducting these hearings on?
- A. Yes, sir.
- Q. And more particularly, during the course of your investigative work, were you assigned to doing investigative accounting analyses of corporations, to wit, N.A.D.P., North American Dental Plan, Rittenhouse Consulting Enterprises, Inc.?
- A. As to the first named corporation, very little. As to the second named corporation, Rittenhouse Consulting Enterprises, Incorporated, I did a detailed analysis of their receipts and expenditures for the calendar year 1978.
- Q. And upon what, if anything, were those analyses based?
- A. They were based on books, records, bank statements, cancelled checks and other financial data supplied by Rittenhouse Corporation in answer to subpoenas served by this Commission.

Q. All right. Now, Mr. Zanino, directing your attention to the chart,* which has been previously marked Commission Exhibit C-4, as a result of the data that you obtained pursuant to the subpoenas, did you have an occasion to direct the compilation of this chart?

A. Yes, sir, I did.

Q. Just in general terms, what does this chart depict?

A. This chart depicts the total amount of moneys received by Rittenhouse Consulting Enterprises, Incorporated, from all sources, both income, loans and any other source that may have generated money into the business.

THE CHAIRMAN: For what period of time?

THE WITNESS: During the course of the calendar year 1978, sir.

BY MR. RHOADS:

Q. Now, in more particularity, I'll direct your attention to what I will call the first block, left-hand upper portion of this diagram, and it reads "Consulting," then off to the left, "N.A.D.P., TRP, Inc. Directing your attention to "N.A.D.P.," what does that stand for?

A. N.A.D.P. stands for North American Dental Plan.

Q. TRP, Inc.?

A. TRP, Inc., is a corporate name for a trucking and warehousing firm out of state.

Q. Did Mr. Smith have anything at all to do with that, Lawrence Smith?

A. His firm, Rittenhouse Consulting, acted in the capacity of consultant to the firm TRP, Incorporated, and for such services received monthly income.

*See Chart, P. 58

1978 RITTENHOUSE RECEIPTS

INCOME

CONSULTING	
N.A.D.P.	\$207,096
TRP, INC.	76,713
ADMINISTRATING	
Local 830	67,031
Local 286	72,451
Local 170	82,335
Local 1034	3,500
MISCELLANEOUS	
S.A.I.	5,000

OTHER RECEIPTS

Fidelity B.&T., Co.	104,000
Exchanges	13,487

TOTAL
\$514,126

TOTAL
17,487

TOTAL GROSS
RECEIPTS
\$631,613

DISPOSITION
OF RECEIPTS

RITTENHOUSE
CHECKING
\$608,813

RITTENHOUSE
SAVINGS
22,800

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- Q. Now, Mr. Zanino, reading off to the right, N.A.D.P., there's a figure \$207,096. What does that represent?
- A. That represents the total sum of consulting income that Rittenhouse received from the dental plan during the course of 1978.
- Q. Well, then, am I correct, then, in stating that this is income derived as a result of Rittenhouse's venture as a consultant to North American Dental Plans?
- A. That's correct, sir.
- Q. And, again, TRP, Inc., \$76,713. What does that represent?
- A. That represents Rittenhouse income acting as consultant for TRP, Incorporated, for the entire year '78.
- Q. Now, reading down, the next block, which would be the middle block of the upper portion of the diagram, it reads, "Administering," and it lists various locals; 830, 286, 170, 1034. Before we go into any figures, what does this diagram mean when it says "Administering" with the locals listed underneath it?
- A. The books and records of Rittenhouse Consulting Enterprises, Incorporated, broke their receipts down into basically these two categories. The second category termed "Administering," we were led to understand, meant performing clerical work and other ministerial duties for the respective locals, particularly in reference to their health and welfare plan, their pension plan, their severance plan, and in one or two of them also supplied some form of data processing service.
- Q. All right. Mr. Zanino, then, am I correct in stating that the work Rittenhouse Consulting Enterprises, Inc., is performing for these various locals is independent of the work it performed at N.A.D.P. wherein they got paid \$207,000?
- A. That is correct, sir.
- Q. In reading down, you have a miscellaneous figure with S.A.I. Would you explain what those initials stand for?

- A. S.A.I. is the abbreviation for a corporation called Specialized Assurance, Incorporated. This corporation is related to Rittenhouse Consulting Enterprises, Incorporated, and on an annual basis draws a check payable to Rittenhouse Consulting Enterprises for clerical work done on behalf of S.A.I. by employees who are normally on the Rittenhouse payroll.
- Q. All right. What we will continue to characterize, then, as S.A.I., again is independent of N.A.D.P., is it not?
- A. That is right, sir.
- Q. Now, looking further down, it reads, "Other Receipts, Fidelity," I assume, Bank and Trust, and "Exchanges." Sticking with Fidelity, reading across, \$104,000. What exactly is that income to Rittenhouse?
- A. In the latter part of 1978, I believe in November of 1978, Rittenhouse obtained a working capital loan from the Fidelity Bank and Trust Company in a total amount of \$150,000. At that particular point they still owed the bank 46,000, so they received a credit of \$104,000 in the corporate checking account.
- Q. Now, sir, you have a total, and the total receipts, total gross receipts, I should say, are \$631,613. Is that so?
- A. That is correct, sir.
- Q. Now, does that constitute, this figure that I have just alluded to, does that constitute the gross receipts for Rittenhouse for the year 1978?
- A. That is correct, sir.
- Q. Now, reading across, you have "Disposition of Receipts." Receipts, of course, I take to mean disposition of the gross income. Is that so?
- A. That is the disposition of gross income and other monies from other sources as represented by the lower box with a total of \$117,487.

- Q. Reading across, it says, "Rittenhouse Checking, \$608,813". Now, what exactly does that signify?
- A. That indicates that during the course of the twelve months in 1978 a total of \$608,813 was deposited in the checking account for the corporation, Rittenhouse Consulting Enterprises.
- Q. And directly below that on the chart, "Rittenhouse Savings." Again, would you explain what that is?
- A. The Rittenhouse Consulting Enterprises, Incorporated, maintained a savings account as well as a corporate business account. The \$22,800 represents the total amount of deposits put in the account during the calendar year 1978.

Zanino testified that only Larry Smith, the president of Rittenhouse, and his secretary, Libby Kolman, were authorized to write checks or withdraw savings from Rittenhouse's accounts. He then went on to explain the disposition of the \$631,000 in Rittenhouse receipts for 1978:

- Q. Now, with regard again now to the overall chart, excuse me, we're left with Rittenhouse checking, wherein this amount is deposited, and the savings account. As a result of arriving at those figures during the course of your investigation, did you then go on to determine the further disposition of those amounts?
- A. Yes, sir.
- Q. Again, along those lines, did you have an occasion to comprise a chart much like this one?
- A. Yes, sir, we composed a very similar type chart disclosing the disposition of the funds \$631,613.
- Q. For the record, this has been marked CS-5* for identification. Again, for the record, it is "1978 Rittenhouse Application of Funds Received." So, again, we are confining ourselves to the calendar year 1978.

*See Chart, P. 62

1978 RITTENHOUSE
APPLICATION OF FUNDS RECEIVED

Total Receipts \$631,613	CORPORATE OPERATIONS	\$181,077	
	FEDERAL AND STATE TAXES	29,000	
	Salary (Net)	\$162,314	TOTAL TO LARRY SMITH:
	Cashed Checks Charged to Operations	13,200	
	Loans & Exchanges	246,022	
			421,536

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Now, Mr. Zanino, I will direct your attention to the left-hand portion of the chart, which I will characterize as the beginning of the chart, and it reads, "Total Receipts \$631,613." What amount does that signify?

A. That is the same amount as we had on the first chart, and it indicates the total amount of monies received during the calendar year 1978 by Rittenhouse Consulting Enterprises, Incorporated.

Q. Okay. Just for continuity, then, that signifies the checking account amount and the savings account amount?

A. Yes, sir.

Q. Now, you have spun off from this amount various labels with amounts on them, and I'll start from the top. We have "Corporate Operations," and just sticking with that term for a moment, will you explain to us what that means?

A. "Corporate Operations" indicates expenditures on behalf of the corporation for operating expenses, such as rent, light, heat, power, telephone, office salaries, office supplies, miscellaneous expenses, travel and entertainment expenses, anything that was spent relative to the operation of the corporation in a given period, namely 1978.

Q. Mr. Zanino, how much, in fact, was spent by Rittenhouse during that calendar year?

A. During the calendar year 1978 Rittenhouse spent for corporate operations, other than executive salary and Federal and state taxes, \$181,077.

Q. Now, dropping down to the next line, we have Federal and state taxes. Now, that seems explanatory to me. That's his tax return. Is that right?

A. That is the corporate return paid to the Federal Government and, also, the State of New Jersey on the corporate business tax return.

Q. And that amount is?

A. \$29,000.

Q. Going down, I read, "Salary (net)," and what does this refer to?

A. That refers to Mr. Smith's total salary of \$192,000 less the various payroll deductions for Federal state withholding tax, disability insurance, and social security payments, so that the net of the 192 drops to \$162,314 in cash, in cash being the total amount of the checks.

Q. Sir, I just wanted to ask you one question with respect to the salary. Is this salary to depict the salary that went to Mr. Smith as an individual or is this the payroll for Rittenhouse?

A. That is merely the salary for Mr. Smith, the executive officer of Rittenhouse Consulting Enterprises, Incorporated, in 1978.

Q. Fine. Now, dropping down, it reads, "Cashed checks charged to operations." What do those terms mean?

A. During the course of the analysis of the cash disbursement records of the corporation, there were several checks drawn payable to cash, and Mr. Smith was the recipient of the cash of \$13,200.

Q. And again going down, the last term you have is "Loans and Exchanges," a figure reading across is \$246,022. What does "Loans and Exchanges" mean?

A. Loans and exchanges is an account maintained in the normal course of business by an accountant or a bookkeeper for any specific business, and it reflects monies that were borrowed from the specific entity by any, any third-party; that is, other than the corporation itself.

In the instant case, the analysis of the loans and exchanges account indicated that, during the course of 1978, Mr. Smith personally borrowed from the corporation \$246,022.

Q. Okay. Now, reading across from these three, last three bracketed items that we just discussed, there appears to be a grand total, 421,536. What exactly does that mean?

A. That total, \$421,536, indicates the total amount of monies that Mr. Smith got from Rittenhouse Consulting Enterprises, Incorporated, during the course of 1978.

Q. All right. Well, then, am I correct in stating it this way: That in 1978, thus far we find that Larry Smith has available to him, and did have available to him, this amount of money during the course of that calendar year?

A. That is right, sir.

THE CHAIRMAN: That salary figure of 162,314, was that salary solely to Mr. Smith?

THE WITNESS: That is right, Commissioner.

THE CHAIRMAN: And the 421,536, when you say it was available to Mr. Smith, do you mean that he actually received it?

THE WITNESS: The \$421,536 represents monies that went directly to Mr. Smith personally and in some instances to third parties such as vendors of various personal items where Mr. Smith was the beneficiary of the services or the items.

THE CHAIRMAN: Then he received in hand, or took from the company, in one form or another, 421,536 in that year?

THE WITNESS: Yes, sir.

MR. RHOADS: May I have the next chart,* please.

Q. Now, for continuity sake, we're left with a figure of 421,536 enuring in some fashion to the benefit of Larry Smith. Is that somehow depicted here?

A. Yes, sir. It's the first bracketed section of the particular chart in front of you, which reads, "1978 Larry Smith, Funds Available."

*See Chart, P. 66

1978 LARRY SMITH
FUNDS AVAILABLE

RITTENHOUSE

Salary \$162,314

Loans & Exchanges 246,022

Corporate Expenses 13,200

\$421,536

SPECIALIZED

Salary 23,827

Loans & Exchanges 85,101

108,928

PERSONAL FUNDS

Fidelity Bank 43,333

Friendly Bank 52,000

Savings Certificates 187,988

283,321

\$836,239

MISCELLANEOUS

Sale of House 11,265

Unidentified 11,189

22,454

- Q. Now, I won't belabor this. Dropping down, we have "Specialized," and it reads, "Salary, Loans & Exchanges," What's the significance of Specialized, if any?
- A. As I testified before, Specialized actually stands for the corporation known as Specialized Assurance, Incorporated. Again, Mr. Smith is the sole stockholder of that particular corporation. He received a salary from that corporation in the amount of \$25,000 during the course of the calendar year 1978. The figure depicted of \$23,827 is the net salary he received after the payroll deductions mentioned relative to Rittenhouse; primarily Federal and state withholding tax, social security tax, disability.
- Q. Fine. As we said for the Rittenhouse money, the same could be said for the Specialized money, that is the \$108,928 in some fashion enures to the benefit of Mr. Smith in '78; isn't that so?
- A. That is correct, sir.
- Q. Dropping down, we have "Personal Funds, Fidelity Bank, Friendly Bank, Savings Certificates." Just explain those briefly, please?
- A. In addition to the corporate bank accounts, Mr. Smith maintained personal checking accounts and personal savings accounts in the two named banks, and, also, was the owner of bank savings certificates drawn against the Philadelphia Bank and Trust Company.
- Q. What's the bottom figure coming out of these personal funds?
- A. The total amount of monies coming out of his personal funds was \$283,321.
- Q. Now, the last area that we have marked on this chart reads, "Miscellaneous, Sale of House," which again to me is self-explanatory \$11,265. That's proceeds he derived, I assume, from the sale of property he owned. Is that so?

- A. I cannot say that he owned the property, Mr. Rhoads. All I know is that on a specific date there was a deposit in Mr. Smith's personal bank account in the amount of \$11,265. The source of that money was a check which indicated that it was the proceeds from the sale of a house.
- Q. All right. Now, Mr. Zanino, then, for 1978 what was the grand total amount of funds available to Mr. Smith?
- A. Mr. Smith had available to himself for personal use during the course of 1978 a total of \$836,239.
- Q. Now, with regard to this figure of the funds that were available to Mr. Smith, did this cause you, then, to go further on to determine the disposition, if any, of those funds in '78?
- A. Yes, sir, it did.
- Q. And, again, did that cause you to have a chart made up much like this one?
- A. Yes, sir, as a result of our analysis we prepared a chart showing the disposition of funds.
- MR. RHOADS: May I have CS-7.
- Q. Mr. Zanino, for the record, we are now referring to what's been marked Commission Exhibit 7,* and would you just tell us how you would label this chart? What does it depict, in general terms?
- A. That chart depicts the disposition or use that Mr. Smith made of the \$836,239 that we had ascertained were available to him from all sources during the course of '78.
- Q. Starting at the top, on the depositories reads, "Realty Transaction: \$57,612." Was that for the purchase of some property or what-have-you that Mr. Smith made in that year?
- A. That is right, sir.

*See Chart, P. 69

1978 LARRY SMITH
FUNDS AVAILABLE AND UTILIZED

	- Realty Transaction	\$ 57,612	
	Acquisition of Saving Certificates	322,843	
	Acquisition of Bank Checks	16,429	
\$836,239	PAYMENTS TO THIRD PARTIES	Vendors \$141,000	
		Related Corps. 89,708	
		Related Individuals 3,750	250,553
		Untraced Vendors 16,095	
	PERSONAL TAXES	Federal 30,564	
		State of N J 4,384	34,948
	UNEXPLAINED CASH ON HAND		153,854

Q. Dropping down, "Acquisition of Savings Certificates, \$322,843." Would you just explain what kind of savings certificates are we talking about here?

A. These are primarily short-term certificates of deposit, which Mr. Smith had acquired from the Fidelity Bank and Trust Company. During the course of 1978 he purchased \$322,843 worth of certificates. Part of the funds used to acquire these certificates resulted from the maturity of some short -- other funds, and, in essence, he could conceivably have said to have rolled them over.

On the first chart we showed that he had available to himself from savings certificates approximately \$190,000. That, plus the difference to 322,000 represents savings certificates that Mr. Smith acquired jointly in his name and his wife's name during '78.

Q. Now, you have -- well, strike that for a moment. You used the term "rolling over." What does that mean?

A. When the savings certificate matured, he had an option of taking the proceeds, which would actually be his cost price, plus the accrued interest, in the form of a check or he could go out and buy a new certificate for the total amount of principals and accrued interest.

Q. Thank you.

Now, you have "Acquisition of Bank Checks." I assume there's a difference between a bank check and a savings certificate?

A. Yes, sir.

Q. What is it?

A. A bank check merely represents a check drawn on the bank which has been acquired primarily for cash by an individual and made out to a vendor or a payee of the individual's choice.

Q. And what amount was that for '78?

- A. During the course of '78, we were able to ascertain that Mr. Smith personally or was responsible for the purchase of \$16,429 worth of bank checks from the Fidelity Bank and Trust Company.
- Q. Now, reading down, "Payments to Third Parties," we have four different areas. I'll start with the top. It reads, "Vendors, \$141,000." Just briefly, what vendors are we talking about?
- A. During the course of 1978, Mr. Smith had some improvements done to his home. What we represent as vendors are primarily contractors that worked on renovations to the home, and decorating companies, furniture companies which helped refurbish it.
- Q. The next area is "Related Corporations, \$89,708." Are they corporations owned by Mr. Smith or what-have-you? What are they?
- A. Again, these corporations are corporations wherein the records disclosed that Mr. Smith is the sole stockholder. Our analysis of the disbursements made by Rittenhouse Consulting and Specialized Assurance indicated that certain monies that were charged or that were Mr. Smith's responsibility went back into the corporations, primarily Rittenhouse Consulting Enterprises, Specialized Assurance, Eastern States Casualty Agency, Incorporated, and Drew Insurance Company.
- Q. Reading down, "Related Individuals, \$3750." That's sister, brother, mother, whatever. Is that what that means?
- A. Primarily, his brother received the \$3750 from Rittenhouse and Mr. Smith assumed responsibility for it.
- Q. All right. Now, you have vendors again, and you have it characterized as "Untraced Vendors." What does that mean?
- A. Untraced vendors with the amount of \$16,095 represents payees of checks which we were unsuccessful in actually obtaining, again because of the quality of film or the records just weren't available. But the \$16,095 was spent.

- Q. Dropping down, "Personal Taxes."
- A. During that year 1978 Mr. Smith paid \$30,564 in personal taxes and that was primarily for taxes due to the Federal Government and the State of New Jersey for the calendar year 1977.
- Q. For '77?
- A. For 1977, yes, sir.
- Q. And likewise for the State of New Jersey?
- A. Yes, sir.
- Q. Paid in '78 for '77?
- A. Paid in '78 for '77. They were amounts due.
- Q. Now, from this area that we have just alluded to on up, and that would be the personal taxes through realty transactions, these are based upon documents furnished to the State Commission of Investigation by Larry Smith and Rittenhouse. Is that so?
- A. By Larry Smith, by Rittenhouse, and, also, by the banks which -- in which he maintained the accounts, but primarily from the Rittenhouse and Mr. Smith's personal records.

The \$150,000 Question

The Commission's accountants had traced all of the \$836,239 in currency generated by and available to Smith during 1978 -- except for \$153,854. This unexplained sum was Investigative Accountant Zanino's next topic:

- Q. All right. Now, quite obviously, that does not account for the entire \$836,239 that Mr. Smith had available in 1978, and how much does that, in fact, leave unexplained?
- A. As indicated by the bottom line, that does not account for \$153,854.
- Q. Now, with regard to this bottom figure, the unexplained cash of Mr. Smith for '78, did you, in fact, in some way detail that in more full fashion?

A. Just -- yes, sir. Just like any of the other charts that we had prepared, we prepared a chart indicating the total amount of cash that was generated by Mr. Smith during the course of 1978 and attempted to account for it in expenditures, deposits in bank accounts, et cetera.

MR. RHOADS: All right. May I have the next exhibit?

Q. For the record, this is Commission Exhibit 8,* and it reads, "1978, Larry Smith, Currency Generated and Utilized."

Now, Mr. Zanino, is this a more fully detailed, I suppose, graphic explanation of the utilization by Mr. Smith of this currency we have been talking about?

A. Yes, sir, it is.

Q. All right. Now, looking to the upper left-hand portion of the chart, it reads, "Source," and splitting off from that, "Corporate Accounts," below that "Personal Accounts."

Now, the corporate accounts, what's the figure for that?

A. \$170,365.

Q. Personal accounts?

A. \$158,409.

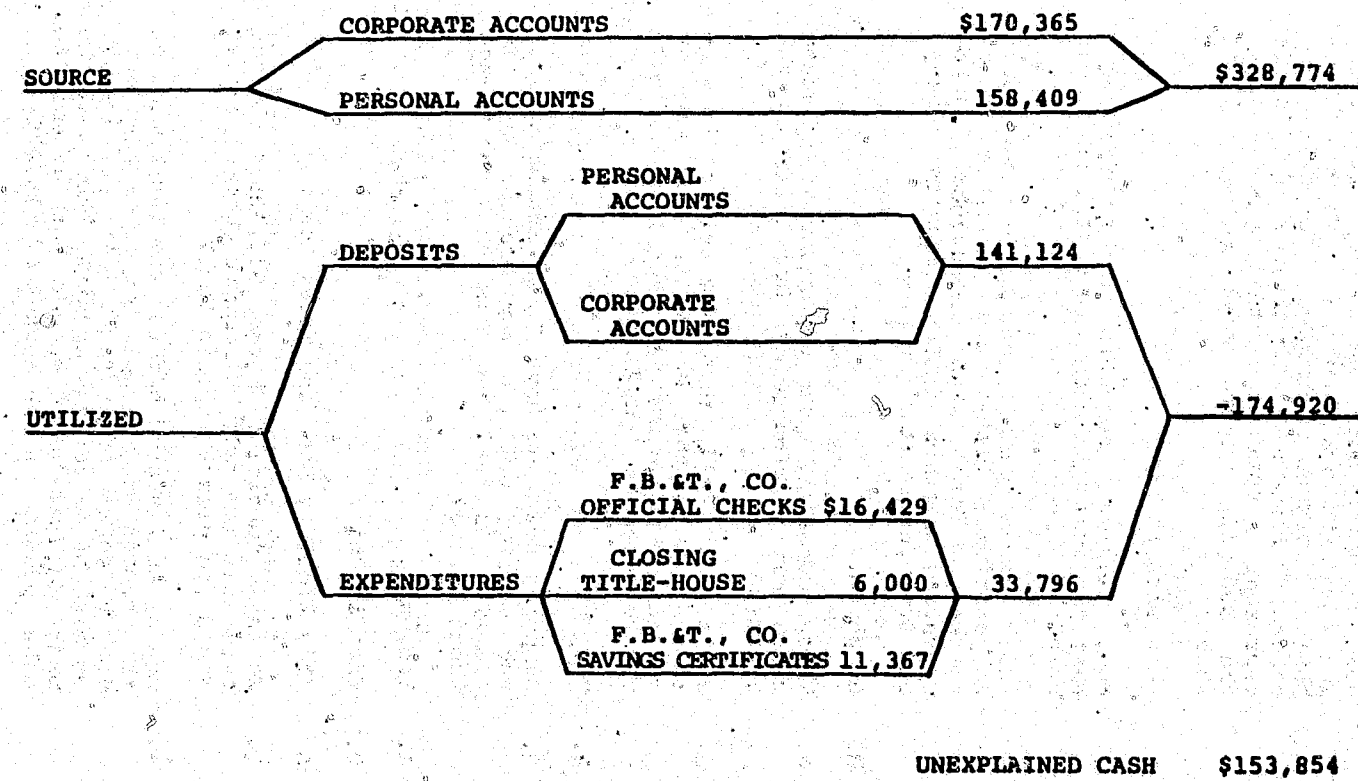
Q. Now, I read the total of 328,774. Would you explain to the Commission, what's the significance of that figure?

A. The figure \$328,774 represents the total amount of currency that Mr. Smith had available or had generated between January 1 and December 31, 1978, from all sources, both corporate and personal accounts.

*See Chart, P. 74

1978 LARRY SMITH

CURRENCY GENERATED AND UTILIZED



- Q. Now, dropping down, it reads, "Utilized," and again it branches off. We have "Deposits, Personal Accounts, Corporate Accounts," Now, does this figure of \$141,124 represent a portion of this upper amount, the 300-plus figure that we're talking about?
- A. Yes, sir, it does.
- Q. Now, personal accounts is self-evident. What corporate accounts are we talking about here?
- A. Again, we're talking about the four basic corporations; Rittenhouse Consulting Enterprises, Specialized Assurance, Incorporated, Eastern States Casualty Agency, and Drew Insurance. These --
- Q. Go ahead.
- A. These accounts were depositories of cash which was attributed to Mr. Smith as the source.
- Q. All right. Well, then, I'm correct in saying, in part, that Mr. Smith took some of his money and he put it back into his corporate accounts. Is that so?
- A. Yes, sir.
- Q. Dropping down, we have "Cash Expenditures," and reading off the top branch, this is F.B.&T. Is that the same bank we talked about before?
- A. Yes, sir.
- Q. What is that?
- A. It's Fidelity Bank and Trust Company.
- Q. It says, "Official Checks, \$16,429," I'm not sure what the term "Official Checks" means. Would you please explain that?
- A. Again, as I stated before, the inspection of the records of the bank indicated that during the course of 1978 Mr. Smith personally, or else by direction, acquired checks of the bank, official bank checks made payable to other people, in the amount of \$16,429.

- Q. We have "Closing Title-House, \$6000," again, the same bank, "Saving Certificates, \$11,367." And what total is that for 1978?
- A. The total of the three figures is \$33,796.
- Q. And the aggregate amount of the utilized cash?
- A. \$174,920.
- Q. And this, I assume, is basic subtraction, is that so, leaving you with what amount unexplained?
- A. Again, the unexplained cash as the result of the investigation indicates, \$153,854.
- Q. All right. Now, just lastly, Mr. Zanino, this amount is what you're left with as a result of analyzing all the books, records, what-have-you, furnished us by Larry Smith, Rittenhouse, whatever agencies that we got as a result of our subpoenas. Is that so?
- A. Yes, sir.
- Q. As a result of tracing all the expenditures from the income for Mr. Smith for 1978 -- and I am characterizing it as income, what I mean is total cash funds available in '78 -- again, you are left with the figure \$153,854. Is that correct?
- A. Yes, sir.
- THE CHAIRMAN: When you say are left with 152-plus thousand dollars, you couldn't account for it?
- THE WITNESS: No, sir, we could --
- THE CHAIRMAN: You couldn't account where it was, what it was used for, or anything else. Is that correct?
- THE WITNESS: Yes, sir, that's correct.
- THE CHAIRMAN: Despite your efforts using all the documents at your command, you could not account for that much money?
- THE WITNESS: That's right, Chairman.
- THE CHAIRMAN: Where it went to?

THE WITNESS: Yes, sir.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Zanino, just to take it a little differently from what Judge Lane says, if Mr. Smith were to testify here in this public hearing and say that he can explain the \$153,000 because he spent a certain amount in cash and the purchase of his home, or in jewelry, or in buying bricks or lumber for his home, you, in your analysis, have already taken that into account, have you not?

A. Yes, sir, we have.

Larry Smith's Aide

Mrs. Libby B. Kolman, bookkeeper and office supervisor of Rittenhouse Consulting Enterprises, Ltd., and subsequently its vice president and secretary, testified under a grant of immunity by the Commission. She reluctantly conceded she had discussed her forthcoming testimony with Larry Smith, president of Rittenhouse and a key target of the Commission's search for an explanation of what happened to more than \$150,000 in unexplained profits by Smith from his company's various enterprises, including "administration" of labor union dental plans. Mrs. Kolman and Smith were the only Rittenhouse officials authorized to sign company checks and savings account withdrawals. The SCI's investigation had confirmed that she received a large pay increase from Smith -- at about the time the Commission's inquiry began to focus on the prospects that these unexplained funds ultimately were shared with members and associates of organized crime. Mrs. Kolman's testimony follows:

Q. Mrs. Kolman, there came a time during your employ, I believe it was between 1978 and 1979, that your salary essentially doubled; isn't that so?

(The witness confers with counsel.)

A. Excuse me. I'm not sure exactly whether it doubled or not.

Q. Well, is it fair to say that it was approximately double?

A. It's fair to say it increased.

Q. Increased significantly, let's say, anywhere 50 to a hundred percent in that calendar year; is that so?

(The witness confers with counsel.)

THE CHAIRMAN: Mr. Attorney, I think if the witness has some difficulty with the question she has a right to converse with you. But we don't want you, in effect, testifying, you know.

MR. MANNO: Mr. Chairman, I don't know what ever gave you the idea that I was, in effect, testifying. I'm simply consulting with my client.

THE CHAIRMAN: All right. Well, be sure you don't. Go ahead sir.

Q. I don't want to belabor the point. Between 50 and a hundred percent that your salary increased in that time frame?

A. I honestly, honestly don't remember if it's between 50 and a hundred percent. It did significantly increase, but I can't factually state it increased between 50 and a hundred percent.

Q. All right. Living with that answer, was there any correspondingly significant increase in your duties within Rittenhouse?

A. No, not really, no.

Q. Did there come a time when you, as an employee of Rittenhouse, became aware that the State Commission of Investigation was, in fact, investigating Rittenhouse Consulting Enterprises?

A. There came a -- I'm sorry. Could you ask --

Q. Sure. I'm asking you simply this: Did there ever come a time during the course of your employment with Rittenhouse Consulting Enterprises that you, as an individual, became aware that the New Jersey State Commission of Investigation was, in fact, interested in reviewing documents belonging to the corporation Rittenhouse Consulting Enterprises?

A. Yes.

Q. And when was that?

A. I honestly can't tell you when it was. I don't remember what month or what year I became aware of the investigation.

Q Well, I'll put it a different way. Did it correspond in any way at all in time frame with the time that you got the significant salary increase?

(The witness confers with counsel.)

A. Excuse me, sir. I didn't make any correlation as to the times of the increase in my salary and the awareness of the investigation of Rittenhouse Consulting.

Q. No, I'm not suggesting that you're making it. I'm asking you. I'm asking you to make it. Is there such a correlation or isn't there?

A. If you're asking me at this moment in time is there a correlation, I don't believe so, no.

THE CHAIRMAN: Well, tell us when you last received a raise, please, to the best of your recollection?

THE WITNESS: To the best of my recollection, I believe it was the 1st of January, 1980.

Mrs. Kolman next stated that she and Smith, by whom she had been employed at Rittenhouse for about eight years, were the only company officers authorized to sign withdrawals from Rittenhouse checking and savings accounts. However, she contended her knowledge of Rittenhouse's business transactions was minimal:

Q. Now, if you will, could you briefly explain to the Commission, what is the function of Rittenhouse Consulting Enterprises?

A. They are a consulting firm that does clerical duties for certain clients, which include computerized clerical information.

Q. All right. Well we're interested, at least, on expounding on the consulting aspect of Rittenhouse. What is it that one would consult with Rittenhouse over, if, in fact, anyone does?

(The witness confers with counsel.)

A. I am not party to the consulting aspect of the business and I don't know exactly what consulting is done.

Q. Well, as vice-president of the corporation -- and, really, I have characterized it as a corporation. Is it a corporation?

A. Yes, it is.

Q. As vice-president of the corporation, then, you're not privy to the aspect of the consulting pursuits of this corporation; is that so?

(The witness confers with counsel.)

THE CHAIRMAN: He's asking whether you know what the consulting amounts to. Do you?

(The witness confers with counsel.)

A. I know that Mr. Smith does consulting with the clients that we have at Rittenhouse. He helps negotiate certain matters with the clients that we do have. I do not participate in that consulting. I take care of the books and records of the contracts that are given to Rittenhouse.

Q. All right. With respect to the aspect of Mr. Smith doing consulting, without pursuing what it is that he does, would you please give us an idea of who the clients are?

A. One client would be North American Dental Plans.

Q. And do you know whether that company has a president?

A. I'm not sure of the corporate officers of that company.

Q. Well, if I were to tell you the president was Joseph Cusumano, does that refresh your recollection at all?

A. I know Mr. Cusumano. I am not sure if he is the president of that company, but I do know Mr. Cusumano as being identified with North American Dental Plans.

Q. And in your capacity as an employee and officer of Rittenhouse, have you yourself ever been involved in any business relationships with Mr. Cusumano and North American Dental Plan?

A. No, I have not.

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Q. Now, you had mentioned, also, that Rittenhouse does administrative work. You characterize it as, I believe, clerical work in some fashion. For whom do they do that?

At this point another of Mrs. Kolman's frequent consultations with her counsel, Donald F. Manno, took place. Chairman Lane interrupted their discussion:

THE CHAIRMAN: Mr. Attorney, that's a very simple fact question. Why would you have to confer (or) initiate a conference with your client on that?

MR. MANNO: Well, Mr. Chairman, the reason why I feel it appropriate to consult with my client is really not a matter that I choose to answer before this Commission today. What goes on between my client and myself is privileged material, and I can't really tell you that.

THE CHAIRMAN: Well, I'm telling you that you're here for the purpose of conferring with her on any legal difficulty or any misunderstanding. But you're not here to supply her with facts. We're asking her for facts. We're not interested in you. If we wanted you, we would have put you on the stand.

MR. MANNO: Mr. Commissioner, you don't know what I said to my client and I resent the fact --

THE CHAIRMAN: I don't want you initiating. If she wants to confer with you, let her initiate the inquiry. I don't want you to be initiating it and telling her what to say. I've said that three times and I mean it.

MR. MANNO: Well, Mr. Chairman, I have said before, and I will say it again, I am not telling this witness what to say. But within my duties and my responsibilities as an officer of the court and an attorney-at-law, I must advise my client appropriately.

COMMISSIONER KADEN: I think we should stop being so cute, Mr. Manno. This witness appears here with immunity, and let me just say as one member of this Commission, having listened to her for twenty minutes, that I consider her responses so far to be very

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close to the border of evasion and I think you, as her counsel, ought to keep that in mind as she continues.

Second, after three warnings from the Chairman you persist in conferring with her over every question that relates to a factual response from her. It seems to me that this record will show, and every one of the members of this Commission who has watched you is well aware that you have coached this witness on every single question asked of her. That is not appropriate to your position here today, and I think your cute responses to the Chairman are also inappropriate. I think you ought to think carefully about them as the hearing proceeds.

MR. MANNO: I don't deem it appropriate to respond to that.

COMMISSIONER KADEN: Let me say, Mr. Manno, that you appear here as a member of the bar with responsibilities to this Commission, and the powers that this Commission has against your witness apply also to you. Now, if necessary, we won't hesitate to call you before this Commission and let you testify. But so long as your client is testifying, we expect her to testify, not you. We expect them to be her recollections and not yours.

MR. MANNO: I understand that.

The Commission questioned Mrs. Kolman at this juncture about whether she had discussed her prospective public hearing testimony with Smith:

COMMISSIONER FRANCIS: Let me ask you this before Mr. Rhoads asks another question: Miss Kolman, have you, between your last appearance in private session and today, conferred with Mr. Smith about your testimony before the S.C.I.?

THE WITNESS: I have discussed with Mr. Smith that I am going to appear today. I have in that respect conferred with Mr. Smith.

COMMISSIONER FRANCIS: Did you talk to him about the nature of your testimony?

THE WITNESS: Excuse me, please.

(Witness conferring with counsel.)

COMMISSIONER FRANCIS: Having conferred with counsel, can you give us your answer, please?

THE WITNESS: Yes, I did speak with Mr. Smith in reference to these hearings and to the subject matters that I was asked to testify on and we did discuss them. I was -- we, we just -- he told me to, you know, answer to the best of my ability and the best of my recollection and truthfully.

COMMISSIONER FRANCIS: My question was only whether you conferred and you told me you have conferred with Mr. Smith?

THE WITNESS: Yes, we did.

COMMISSIONER FRANCIS: About the substance of your testimony here today?

THE WITNESS: I'm not sure I quite understand the substance of your testimony today.

COMMISSIONER FRANCIS: About what you were going to say?

THE WITNESS: About what I'm going -- I don't know what I'm going to say until I say it. I'm sorry. Maybe I misunderstood you.

COMMISSIONER FRANCIS: Did you confer with Mr. Smith about what, in general, your testimony would be before the Commission today?

THE WITNESS: No, I didn't discuss what my testimony would be, what I would say on this, as a witness right now. We did discuss the subjects that I thought would be pertinent to this investigation.

COMMISSIONER FRANCIS: And what subject was that?

THE WITNESS: Excuse me.

(The witness confers with counsel.)

THE WITNESS: The subject that we discussed is, I questioned why I was here, as to the bookkeeping aspects of the company.

COMMISSIONER FRANCIS: Did you discuss with Mr. Smith that you would be asked about cashing checks for him and giving him cash, or anything along that line?

THE WITNESS: As those were questions asked of me in previous testimony, they were subjects that I was aware of.

COMMISSIONER FRANCIS: And, therefore, you discussed that with Mr. Smith?

THE WITNESS: The procedures of my book-keeping, yes.

Commission counsel pressed the witness for more details of her knowledge of Rittenhouse's consulting business:

BY MR. RHOADS:

Q. Mrs. Kolman, I ask again, what clients, if any, did Rittenhouse have with respect to the clerical supervision aspect of Rittenhouse?

A. One client would be Local 33, Health and Welfare Plan.

Q. Well, would it refresh your recollection if I were to tell you that you testified before the Commission on May 1st, 1980, and you were asked the question with regard to clients, this is I 94, referring to lines 13 through 14, you listed -- or strike that. The question was, "Were some of the groups Local 54." Does that refresh your recollection as to clients of Rittenhouse, at least, in that time frame, 1978?

A. The names that you have mentioned have been or are clients of Rittenhouse, yes.

Q. All right. Well, is it that, then, that Rittenhouse at least served as an administrator to various unions within their health and welfare funds?

A. I personally do not consider the corporation an administrator. We perform a clerical and ministerial functions, but we have no powers over the phones with --

THE CHAIRMAN: You did perform those functions for those locals who have just been enumerated?

THE WITNESS: We have clerical and administrative functions, correct.

Mrs. Kolman was questioned about various withdrawals she authorized from Rittenhouse's accounts:

BY MR. RHOADS:

Q. With respect to your functions within Rittenhouse, did you have occasions over the period of time to cash various checks wherein or whereby the proceeds were turned over to Mr. Smith?

A. On occasion, yes.

Q. I am going to show you documents that have been previously marked. This is Commission Exhibit 3A. If you look at that, it purports to be a copy of a check received from Fidelity Bank and Trust Company of New Jersey, the amount of \$5000 --

A. No check.

Q. Strike that. It's a savings withdrawal in the amount of \$5000, dated March 15, 1978. There's a signature purporting to be that of Libby Kolman. Is that your signature?

A. Yes, it is my signature.

Q. And did you, in fact, withdraw \$5000 from that account?

A. Yes, I probably did.

Q. And did you probably give it to Larry Smith?

A. Possibly.

Q. Do you know what he possibly did with it?

A. There are many things that we've done with the cash that such as this withdrawal. I might have taken this cash and deposited into other corporate identities.

Q. Well, just for the record, do you have any clear recollection as you sit here today as to what you did with the proceeds of that withdrawal slip?

A. No, I do not.

Q. I'll show you what's been marked Commission Exhibit 3B. This purports to be a copy of a savings withdrawal on the Fidelity Bank and Trust Company, dated May 8, 1978, in the amount of \$4500. There's a signature purporting to be that of Libby Kolman. Is that your signature?

A. Yes, I believe so.

Q. And did you withdraw that amount of money?

A. Yes, I believe so.

Q. And did you give the proceeds of that cash to Mr. Smith?

A. I can't definitely testify to that. I can only reiterate that it possibly could have -- it probably could have gone into, into other corporate identities.

Q. Well, let me put it in a different fashion. Did you ever have any occasions whereby you would make withdrawals in, say, amounts such as \$4500 where you personally would just keep the cash?

A. Excuse me.

Q. Sure.

(The witness confers with counsel.)

A. In answer to your question, no, I never personally kept the cash.

Q. I'll show you Commission Exhibit 3C, which lists savings withdrawals in the amounts of \$11,000, and that's dated May, I read it to be 26, 1978; there's one dated August 21, 1978, in the amount of \$7500; November 14, 1978, in the amount of \$32,500; December 1st, 1978, in the amount of \$25,000, all of which purport to have the signature of Libby Kolman. Would you just look at those four slips and tell me, is that your signature?

A. Yes, it is.

Q. Now, starting with what would be the largest withdrawal, \$32,500, did you give the proceeds of that withdrawal to Mr. Smith?

- A. I can't honestly say I -- I don't recall giving that amount of money to Mr. Smith. I do know that we did deposit large sums of money into the -- one of our corporate identities. Something like \$55,000 was deposited.
- Q. Well, if you will, look at each one of those withdrawals and tell me, do you have any recollection of giving any of those withdrawal proceeds to Mr. Smith?
- A. With all the transactions that I handle, I can't possibly recall any one instance of any one transaction of actually giving that to Mr. Smith.
- Q. All right. Well, Mrs. Kolman, let me ask it to you in this fashion then: In the calendar year of 1978, do you recall just the incident of giving an amount of cash to Lawrence Smith that you had withdrawn on his behalf from a savings account?
- A. Yes, that's possible. Yes, I can.
- Q. Well, not if it's possible. Now, I want an answer. Did you or did you not? We're not looking for possibilities any more.
- A. Okay. Yes, there were checks drawn out of the companies for various sums of money, of which some were given to Mr. Smith in cash, that he possibly could have deposited to other accounts or whatever.
- Q. Now, can you give the Commission today an approximate amount of cash proceeds that you made available to Lawrence Smith as a result of cash withdrawals from the account during the calendar year of '78?
- A. Unfortunately, I cannot because I do not have my -- I don't have complete sets of books, which I did go over for this hearing. I do not have all of my books and records to refresh my memory, so I really can't give you actual figures.

COMMISSIONER FRANCIS: Mrs. Kolman, let me ask the questions to you this way: Is it fair to say that at no time did you divert any of those savings withdrawals or cash withdrawals from the checking account to your own purposes?

THE WITNESS: My own personal purposes?

COMMISSIONER FRANCIS: Correct.

THE WITNESS: That is correct in saying.

COMMISSIONER FRANCIS: Is it fair to say each time you made a cash withdrawal from savings or a cash withdrawal from the checking account, that cash either went to Mr. Smith personally or went to one of his corporations?

THE WITNESS: Or his personal accounts, yes.

COMMISSIONER FRANCIS: Or his personal checking account?

THE WITNESS: Or, or it could have been, we could have taken the money out of the corporate account and gotten a certified money order or something.

COMMISSIONER FRANCIS: In either Mr. Smith's name or the name of one of his corporations?

THE WITNESS: Yes.

Mrs. Kolman ultimately conceded it was "totally possible" that her withdrawals from Rittenhouse accounts could have amounted to \$158,000 or more for her employer Smith:

BY MR. RHOADS:

- Q. I just have one last question. Perhaps it would facilitate your recollection if I gave you an amount of \$158,000. Does that in any way refresh your recollection as to an aggregate amount of cash that you made available to Mr. Smith in 1978?

THE CHAIRMAN: Is that the amount of checks you have already shown this witness?

MR. RHOADS: No, it isn't. Your Honor, I'm just throwing that out because we found through other testimony that Mr. Smith did have that amount available to him and more.

- A. Yes, that amount could have been available to Mr. Smith.

Q. By virtue of your cashing, not cashing, but withdrawing monies from the account and making it available to Mr. Smith; is that so?

A. It is totally possible.

The Rittenhouse Consultant

Larry Smith of Moorestown, president of Rittenhouse Consulting Enterprises, Ltd., and the next witness, described the activities of his company in connection with labor union health and welfare funds. His testimony as the final witness on the second day of the Commission's public hearings laid the groundwork for further detailed interrogation of Smith the following morning. Commission counsel questioned Smith about Rittenhouse's consulting business:

Q. Now, Mr. Smith, if you can briefly describe for the Commission, what is the function of Rittenhouse Consulting Enterprises, Inc., as of today?

A. Rittenhouse is a consulting firm which performs ministerial, administrative-type services, marketing, negotiating, some data processing and computer work, generally in those fields, and they would be expanded off of that.

Q. Well, with regard to the consulting aspect, what is it that a client would use Rittenhouse to consult over?

A. A client may want some specific programs installed or researched as to efficient methods of some data processing work via their computer, or computerization of their operation. They may want some marketing research done, which we would get into. They may want some analysis done in different fields, whether it be the insurance field or health-care-type field, and those would be some of the example areas that we would get involved in.

Q. All right. Well, staying for a moment with the area of health care, do you have any clients now that you, in fact, do consult with over the area of health care, for instance?

A. Yes, we do.

Q. Would you name them for us?

A. Rittenhouse would do some work for the Bartenders Local 33 in the Camden area, as an example.

* * *

Q. Mr. Smith, I believe I had asked you, if you would, to tell us the clients that you now have for Rittenhouse in the capacity of Rittenhouse functioning as a consulting agency. You did mention Local 33. There are others, I trust?

A. Mr. Rhoads, I understand your question to say do some work in the health-care field, and I gave Local 33 as an example.

Q. Are there others in the health-care field?

A. Yes, there would be additional ones. Local -- Union Local 286, United Paperworkers.

We work for North American Dental Corporation. North American Dental Corporation would be another.

Q. Any other unions?

A. The Teamsters Local 830.

Q. Where is that local located, if you know?

A. Philadelphia.

Q. Any others?

A. Local 1034, Clerks, Philadelphia; Local 54, Atlantic City, Bartenders.

Mr. Rhoads, these are all unions that we would have come in direct contact with, either directly or through the services we perform with a North American Dental contract.

Q. All right. Well, I wanted to get to that, Mr. Smith.

With regard to the unions, such as Local 33 for an example, is it that Local 33 directly employs Rittenhouse or are you indirectly in some fashion employed by Local 33?

A. The local union does not directly employ Rittenhouse. The Local 33 has a health and welfare fund that directly employs Rittenhouse.

- Q. Now, we used an example Local 33, and you had said, if this is a fair characterization of the testimony -- if it isn't tell me -- you said you were employed indirectly by the union in that you're employed by their health and welfare board. Is that so?
- A. That would be correct, Mr. Rhoads.
- Q. Does that apply to the other locals that you enumerated for us?
- A. Not directly in the health-care field, but we may -- Rittenhouse performs a direct service to other funds related to those union local numbers. I was trying to keep it characterized to your question of health-care industry, or health-care field.
- Q. Now, with regard to the health-care field, other than Local 33's health and welfare board, are there any other unions that you consult with?
- A. We do work for the United Paperworkers, Local 286 of Philadelphia.
- Q. Now, with regard to Locals 33 and 286, do you, in fact, whether it be a contract or at least being employed by them, were you employed by them in the time period of calendar year 1978?
- A. I believe we would have been, yes.
- Q. Does there, in fact, exist any contract between Rittenhouse and Local 33, the welfare board?
- A. Yes, there is.
- Q. And similarly, is there one with the board of Local 286?
- A. Yes, there is.
- Q. Were you a party to both of those contracts?
- A. Yes, I was.
- Q. Now, with respect to your functions, duties that you performed, the consulting work that you perform for those two boards of those locals, would you expound on that for the Commission, please? What exactly is it that they consult you on?

- A. In particular reference, I would start with Local 33, if you like. When we were retained, they were having tremendous administrative difficulty. They retained us to try to put it in a computer form. Also, they had difficulty at the time with coverage from Blue Cross of New Jersey, Blue Shield, major medical. They were having difficulty of getting their claims processed due to some previous lack of administrative corporations. They retained my firm, myself, to negotiate directly with Blue Cross to get the benefits reinstated on their behalf. We were successful in doing that. Also, we were successful on their behalf of getting the rates that the fund was paying Blue Cross reduced. We negotiated specifically, I believe, with Don Stewart, who is the head of New Jersey Blue Cross for the group field. We also were given accolades and written commendation for the services that we did perform in that field for them by not only the board, but Blue Cross.
- We feel we did a pretty viable service, and I think the board did so spread that upon their own record commending us on the job that was done by our firm. And that would be the forte or type of operations and some types of consulting that we did or do for that fund.
- Q. Well, with regard to the health and welfare boards, what type individuals comprise those boards? By that I mean, are they solely comprised by union representatives or are there other type individuals on them, if you know?
- A. The boards are generally administered by employer trustees and the equal counterpart of labor trustees. Generally at their meetings they have counsel present and an accounting firm.
- Q. Well, with regard to Local 33, again, and I'm confining now my questions to that local --
- A. Yes, sir.
- Q. -- at least for the time being, I'll inform you when I switch, there came a time, then, when you entered into a formal contract, did there not?

A. A formal contract regarding their welfare fund?

Q. Yes, in other words, hiring you as Rittenhouse.

A. Yes.

Q. When was that?

A. To the best of my recollection, and I'm vague on time period, it might have been 19 -- latter part of '74, '75, somewhere in that area. And, again, Mr. Rhoads, I'm not positive.

Local 33's Dental Care Contracts

How dental care services were provided for Local 33 members was described by Smith:

A. Local 33 Health and Welfare Fund has no dental coverage. What Local 33 has are independently negotiated contracts with the dental benefit included with, I believe, three specific companies or restaurants in the Cherry Hill area, and that is handled in direct negotiations by the local union with the employer to negotiate the benefit on behalf of the individual.

Now American Dental Corporation then provides the service to provide the benefit that the local union negotiated. So that is what I was trying to explain when telling you they do not participate through a welfare fund. The employer would pay North American on a direct basis.

Q. So that it is the employer of these members of Local 33 that happen to have the services of, I'll refer to it as N.A.D.P., that's North American Dental Plan. Is that so?

A. There would be an agreement to that type, yes.

Q. And that would be the ultimate benefit of the employees, the members of Local 33 employed by that particular establishment; isn't that correct?

A. No question about it. If the employee requested the local union to negotiate the benefit, it would then be negotiated in their behalf.

Q. All right. You had mentioned three establishments, I believe you said the Cherry Hill area. Would you name those for us, if you can?

A. Again, many houses, restaurants; I believe it was the Hyatt House in Cherry Hill, the Holiday Inn, and, again to the best of my recollection, the Coach House would be a third. There may be a fourth. I can't recall.

Q. Now, you say that N.A.D.P. has the contracts with the employers with respect to this dental plan. How is it that you know that?

A. Because we're retained by North American Dental as their consultant, and I would be knowledgeable to that fact.

Q. When was it that you were contracted by N.A.D.P. as a consulting agency?

A. Again, to the best of my recollection, we first started negotiations with North American, 1975 sometime.

Q. You say you started negotiations with N.A.D.P. Is that to suggest that there later became a contract with N.A.D.P.?

A. That's correct.

Q. Do you know when that contract was?

A. It was several revisions to it and negotiations went on for about a year. I don't know if it was officially signed in '76 and was effective in -- an ongoing relationship in '75. I don't have it in front of me to refresh my recollection.

Q. Mr. Smith, excuse me if I have asked you this, I don't believe I did. Do you know a gentleman by the name of Joseph Cusumano?

A. Yes, I do.

Q. What is Cusumano's relationship, if any, with N.A.D.P.?

A. Mr. Cusumano's is president of North American Dental.

- Q. I show you what's been previously marked for identification Commission Exhibit 1 and purports to be an agreement between the parties, Health Corporation of American, North American Dental Plan and Rittenhouse Consulting Enterprises, Inc. If you would, would you look at that document and just first tell me if you can recognize it.
- A. It appears to be a document, it's by North American Dental and Rittenhouse Consulting Enterprises.
- Q. All right. Do you identify this, then, at least, to be the copy of the agreement that we had alluded to earlier between you and North American Dental Care?
- A. Mr. Rhoads, in the effort to save time, would this be the specific document subpoenaed from my office that we turned over to you?
- Q. Yes, it is.
- A. All right. Then I would identify the document.

Natale Contacted Smith

Smith confirmed that Ralph Natale, an associate of organized crime figures, was his dental care contact with Local 33, formerly Local 170:

- Q. And at the point in time, the time frame during which you negotiated and ultimately went to contract with that local, with whom did you deal on the welfare board at that time?
- A. Initial contact was from the, one of the co-chairman of the board, and the union representative at the time was Mr. Ralph Natale, who approached me with his accountant. I believe it was Troiano, Nick Troiano and Ragone, C.P.A. firm in Cherry Hill, and I believe I was approached at the same time by both men if we would consider taking this account.
- Q. With regard to this time frame, then, in 1974, how long had Rittenhouse Consulting Enterprises been in existence?

- A. If my memory serves me, they came in existence the end of 1972, beginning of '73.
- Q. And directing your attention now to the employment capacity of Rittenhouse with health and welfare boards, was Local 33 the first one with whom you contracted?
- A. As to a health and welfare fund, it would have been.
- Q. Now, who reached out for whom? By that I mean, did Natale come to you or did you go to him and offer your services? How did that work?
- A. I was originally contacted by their accountant from the fund. It was my first contact and I was contacted by them.
- Q. Now, the second part of my question, or the second question was, did you ever come to learn how it was, what led the accountant to you?
- A. The accountant informed me at the time that the person or people that were handling their ministerial administrative operations were discharged. They were left up in the air for someone immediately to come in and take over, you know, the operation of the administrative portion of the fund's work. That is what the reason was given to me at that time.
- Q. Now, Mr. Smith, I'm not asking motive. What I'm simply asking you is, if you know, how was it that the accountant was aware that Rittenhouse Consulting Enterprises, Inc., was a possible cure-all? How did they even know you were in that business?
- A. Well, the accounting firm would be aware because, I indicated, we handled their severance fund, which this accounting firm also was a member of that board. So he would be totally knowledgeable of our service and capabilities in performing the type of work they needed. Now, as to who he spoke to, I assume he spoke to the board, you know, of trustees, before he contacted me.

- Q. Now, you mentioned that Mr. Natale was a co-chairman as well as a union rep. Do you know if at that time in 1974 Mr. Natale enjoyed any position within the union other than union rep for the welfare board?
- A. Again, I don't know the sequence of events, but there was common knowledge that Mr. Natale was co-chairman of the welfare board and he was co-chairman of the severance board and, also, a representative of the local union, to answer your question.
- Q. Do you know whether he was an officer in Local 33?
- A. I believe him to be an officer.
- Q. Do you know what it was?
- A. Again, I believe it was treasurer of the local union or financial secretary/treasurer of the local union.
- Q. Now, we are now referring, of course, to this as Local 33. To your knowledge, had it ever been known by any other numerical designation?
- A. This local was formerly known as Local 170. It was changed approximately a year and a half ago.
- Q. Do you have any personal knowledge as to why it was changed?
- A. No, sir, I wouldn't.
- Q. With regard to Mr. Natale, was he literally a party to the contract between Rittenhouse Consulting Enterprises and the health and welfare board of Local 33?
- A. He would have been a party because, not only being co-chairman, but when my firm was retained, there was a trustee meeting in which I attended with all the trustees present and they elected to retain me.
- Q. Well, did you ever attend a meeting of the welfare board, prior to the actual awarding of the contract, during which time there was a vote on the contract to be awarded to your company?

- A. Again, to the best of my recall, I was present at a meeting, sir.
- Q. And do you recall how Mr. Natale voted? By that I mean, did he vote against hiring your firm or did he vote for hiring your firm?
- A. Again, to the best of my recall, and you're going back some years, I believe there was a discussion of the board without me being present. I was then asked to discuss what services we were going to do and what undertakings we would go forward with to perform by negotiations with Blue Cross, and I was asked to explain some of our in-depth service that we would perform.
- At that point, a little later on they had a private discussion, then I was told that the board had unanimously approved our firm and we had the contract.
- Q. So I assume the answer is yes, Mr. Natale being a member of the board, it was unanimously voted?
- A. Yes, along with the other trustees.
- Q. Do you know of your own personal knowledge, prior to the actual vote by the board contracting, you whether Mr. Natale ever sponsored you, talked in your behalf, recommended you?
- A. I was never present if that type of thing was discussed. I would have assumed he was pleased with our services of the severance fund. I'd see no reason why he wouldn't recommend us. But I was not present for the statement that you just made.
- * * *
- Q. Did you know Ralph Natale prior to the time that you had contracted with Local 33's welfare board and, if so, how long?
- A. I had known Ralph Natale prior to the welfare contract. As indicated, we've done other work, either via the local union for other funds. There was a prior relationship, some type. I did know him for approximately four or five years prior to, or three years prior to that. Again, I'm vague on it. I don't recall.

Q. Well, had that prior relationship been one on a business level or social?

A. It was one of a casual acquaintance, nothing out of the ordinary.

Q. Well, do you recall how you came to know Mr. Natale?

A. Mr. Rhoads, not specifically. Through the years I go to many functions, labor functions, entertainment functions, benefit functions, all types, where many labor leaders are there, and, again, it could have been, and I'm trying to be as close to it as possible, where a relationship developed through those type of meetings. That would be as close at this point as I can answer you.

Q. Now, there came a time when Mr. Natale was no longer an officer within that union; isn't that so?

A. That's correct.

Q. Do you know what reason, if any, was the cause of his not remaining as an officer of that union?

A. It's public knowledge why, Mr. Rhoads, that I'm sure everyone is aware of, in this area, at any rate.

Mr. Natale was on trial and convicted of a felony. And I believe you cannot retain office, union office, if you have been convicted of a felony charge.

Q. During the course of your relationship with Mr. Natale did you ever have occasion to discuss with Mr. Natale in more specific areas his conviction?

WITNESS' COUNSEL: I object as to what discussions Mr. Smith might have had with Mr. Natale about what he was convicted on has any pertinency to a health-care investigation, I fail to see, and plus the normal objections about hearsay.

MR. RHOADS: May I respond to that?

THE CHAIRMAN: I'm not sure I heard your question, so --

MR. RHOADS: Mr. Chairman, what I am eliciting from this witness is his background knowledge of Mr. Natale, a man that he has already testified was a union official in a union which awarded a contract to this witness's company, and our scope, of course, involves the incursion of criminal elements, organized crime, into the health-care industry, and I suggest that this is a pertinent area and I suggest that this witness's knowledge of Mr. Natale's background becomes pertinent as does his relationship with Mr. Natale, I suggest, becomes highly pertinent.

WITNESS' COUNSEL: Mr. Lane, Commissioner Lane, the questions were relative to signing of a contract in 1973 or '4. The questions are now whether in 1979 or '80, at a much later date, he had discussions with Natale as to what he was convicted for.

BY MR. RHOADS:

Q. With regard to Mr. Natale, do you know when it was that Mr. Natale was no longer an officer within that local?

A. Again, Mr. Rhoads, I believe it might have been about a year and a half ago, two years ago, possibly. Again, it's just recall.

Q. Do you know who his successor was, if any?

A. I believe his successor would have been Edward McBride.

Q. Do you know a gentleman by the name of Albert Daidone?

A. Yes, I would. He's a representative of Local 33.

Smith's \$10,000 "Bonus"

Commission counsel next asked Smith what role Ralph Natale played in the award of a \$10,000 bonus to Smith's company by Local 33's health and welfare fund:

Q. During the course of your contract with Local 33's welfare board, did there come a time, to your knowledge, that Mr. Natale moved for you to get a bonus as a result of the work you had been doing?

- A. Mr. Rhoads, I don't know if Mr. Natale ever moved to get me a bonus in the way you're framing the question. I was awarded a bonus by the board, and, as I indicated earlier, I was given several accolades by the entire board for the job that was done for them and the amount of reduction that I was able to negotiate for this fund with Blue Cross, which I again don't recall the exact figures but was in excess of \$75,000. They found a very favorable job was done and the entire board awarded me or the firm that bonus, so not in the framework that you're posing the question.
- Q. Well, what was the amount of the bonus?
- A. Again, Mr. Rhoads, we deal with several firms. To the best of my recollection, I think it was \$10,000, in that area of money.
- Q. Prior to the award of this bonus, did you have any discussions with Ralph Natale along the lines of your being awarded the bonus?
- A. If I did, I don't have any exact recall to any discussion. I didn't know if the board was going to give me an award of anything, and I didn't know the amount. And that decision was made at the board with all board members present. They made that decision, and I was told what they wanted to do for me.
- Q. Who told you?
- A. So any of that discussion would have to have been between the board members and not me.
- Q. That probably is so. What I am asking you simply is: Did you, either prior to the award of the bonus or subsequent to the award of the bonus, ever have a discussion with Ralph Natale involving the bonus you received?
- A. Not to my specific recollection other than Mr. Natale at the time reflecting his approval of the fine job that he and the board members felt at that point in time.
- Q. If you know, did Mr. Natale vote for awarding you the bonus?

- A. I would assume he was one of the board members. Not assume, he was a board member and they all voted and it was a unanimous decision. I don't know who proposed the award, but he was one of the board members and they voted in a collective vote.
- Q. And how was that award treated by you? And by that I simply mean, was the award considered income by Rittenhouse for that year, or was it taken by you personally? How was it treated?
- A. Mr. Rhoads, that would be income to the firm. All monies received would go, from any contract, directly to the company that it belonged to.

Smith and Paperworkers Local 286

Smith confirmed that his company also had a "data processing, ministerial" contract with Paperworkers Local 286, and that Carlos Simone, the local's international representative, helped to swing the contract to Rittenhouse. Simone, a previous witness, had refused to answer any questions relative to his local's relationships with Smith or Rittenhouse. Smith's testimony on Local 286 and Simone:

- Q. Now, with regard to Local 286, that's United Paperworkers. Did you, in fact, enter into any contract with United Paperworkers?
- A. In what area are you speaking of?
- Q. Health care. The welfare, health welfare plan board.
- A. We did, in fact, enter into an agreement to do some data processing and ministerial service for that firm.
- Q. That would be for the health care fund?
- A. Health and welfare fund.
- Q. Now, prior to your being awarded that contract with the health and welfare board, had you done any other work for Local 286?
- A. Yes, sir.
- Q. For how long a period of time had you been associated with Local 286?

- A. Yes, sir.
- Q. For how long a period of time had you been associated with Local 286?
- A. Approximately three years, prior to that.
- Q. Roughly, 1973. Who would have been the officers or members of the health and welfare board, if you know, of that local?
- A. I think I ought to clarify that for you, Mr. Rhoads.
- We have a specific set amount of duties with the Local 286 health and welfare board. We do not attend their fund meetings. We strictly do the data processing, ministerial work for that fund, so we don't come in contact as a general with their board. Our firm did come in contact with the two co-chairmen of their welfare board to establish this particular contract when our facilities were inspected by their board members.
- Q. With regard to the union representative to the health and welfare board, or representatives, who were they in 1976?
- A. Carlos Simone.
- Q. Anyone else?
- A. Are you speaking of from the labor side?
- Q. Yes, I am.
- A. To the best of my knowledge, it was Carlos Simone.
- Q. Prior to 1976, did you know Carlos Simone?
- A. Yes.
- Q. Did you know him personally, social acquaintances?
- A. I knew Carlos Simone on a business-relationship basis, some social.
- Q. For how long a period of time prior to 1976 had you known him?

- A. Possibly four or five years. Again, Mr. Rhoads, it may go back, Carlos Simone's case, and I don't recall, much further back. We knew each other casually from the industries that we were involved in at the time.
- Q. Do you have any personal knowledge as to whether Carlos Simone recommended you to the board prior to their hiring you?
- A. I would hope so. I believe I requested him to do it, to put a bid in, amongst other bidding contractors.
- Q. Did he indicate to you one way or another as to whether he would do it or not?
- A. He indicated who I should make the proposal to and how to address, or to whom to address it to the full board and through their attorney.

Smith was questioned about allegations that Dr. William T. DeFeo of Camden, who had become a competitor for labor union dental care business, was forced out of a contract with Bartenders Local 54 by Natale:

- Q. Mr. Smith, I want to go back to my questioning with Mr. Natale, and along those lines, was there an occasion during which time you had a meeting, the participants of which, at least, in part, were Mr. Natale, yourself and a gentleman by the name of Dr. DeFeo?
- A. Would you clarify specifically what meeting or what -- you know, what you're referring to?
- Q. Yes. I'll start it this way: Do you know a Dr. DeFeo?
- A. Yes, I do.
- Q. How do you know Dr. DeFeo?
- A. Originally, introduced to him by officers and officials of North American Dental.
- Q. And did you ever know Dr. DeFeo to be a provider of dental plans?
- A. Yes. My initial meeting with him was in that professional position of him providing service for North American.

Q. Did there ever come a time, to your knowledge, when Dr. DeFeo left North American Dental Plan, the employ of Joseph Cisumano?

A. Yes, that time did come about.

Q. And do you know approximately what that was?

A. Again, the best of my recollection, three -- approximately three years ago or in that area, sir.

Q. Did you ever know Dr. DeFeo to be in the business of providing dental plans such as that which North American Dental Plans provide?

A. I became aware of it after he left the employ of North American.

Q. Did you ever come to know whether Dr. DeFeo at any time was trying to solicit the business of Local 54 in Atlantic City? And by that, obviously, I mean with regard to providing their dental care plan.

A. I would like to elaborate a little bit, Mr. Rhoads, on the prior statement when I said that Dr. DeFeo left the employ of North American.

Their relationship between Dr. DeFeo and North American changed about that point in time that I mentioned. But there was an ongoing relationship of some nature of providing services with North American during that period of time.

Now, I just wanted to clear that point up that he did not directly leave employment in that vein. It was a different form of the relationship that had developed.

Q. Now, within the context that we have just been discussing Dr. DeFeo, and that is to say, if you will agree with me, as a competitor with North American Dental Plan, did you have a meeting with Dr. DeFeo, Ralph Natale and yourself, prior to September 20th, 1977, wherein there was a discussion involving Dr. DeFeo's trying or attempting to contract health and welfare boards in order to provide dental care services to them?

A. It's very difficult for me to specifically target a date and answer your question that way. I would also appreciate it if you could identify the area or the place of such a meeting. Maybe that would help me refresh my recollection.

Q. Well, have you ever been to a Holiday Inn in the Cherry Hill area?

A. I've been in most of the Cherry Hill locations in my professional capacity, so it would be there or anywhere else.

Q. How about the Rickshaw?

A. Same answer would apply. There would have been a meeting that I do recall at the Rickshaw with Dr. DeFeo and Mr. Natale.

Q. Now, other than the Rickshaw, did you meet with Mr. Natale and Dr. DeFeo at a Holiday Inn in the Cherry Hill area wherein a discussion took place involving Dr. DeFeo's attempt to contract with Local 54 during which time Ralph Natale said, words to the effect, "Dr. DeFeo, stay out of it. That union belongs to my brother, Larry Smith"?

A. Mr. Rhoads, I don't know the sequence of the meetings. You mentioned the Rickshaw, you mentioned the Holiday Inn. Now you're making a statement that was supposedly made. I don't recall that specific statement ever being made in my presence. I have testified to that earlier.

I also have no exact recall of a meeting specifically at the Holiday. I do recall a meeting at the Rickshaw, though.

Q. Well, what about -- I don't believe you answered the gist of the conversation. What about the gist of the conversation? Do you remember a conversation wherein Ralph Natale directed Dr. DeFeo to back off from his attempts to negotiate with Local 54 to provide health-care plan because it belonged to his brother, Larry Smith? And "his brother," I certainly don't mean his blood-related brother. Do you remember that?

A. Mr. Rhoads, with all due respect, we have hit "brother" four times. Let me again say to you, as in previous testimony, number one, "brother" is a very commonly used word in the labor movement.

Number two, I have explained in prior testimony that I have absolutely no recall of that type of statement being made in my presence. If a statement like that was made, I would not be privileged to it and I do not recall any such statement like that one.

- Q. Mr. Smith, if you know, did there come a time when Dr. DeFeo did, in fact, withdraw his attempt to contract Local 54?
- A. Mr. Rhoads, Dr. DeFeo at one point in time had solicited and made many contract bids with several different locals, of which some he was awarded, some he was not. 54 he was not. So to answer that, I don't believe he was -- I know he was not awarded that contract. I also can say that North American, with permission of the union, immediately negotiated a moratorium of rate for three years and the fund's benefit from six-year no-inflation no-increase contract. So that's my recollection of that.
- Q. Mr. Smith, I'm going to show you what's been marked Commission Exhibit 9 for identification. Would you look at it and tell me if you can identify that?
- A. I believe I have seen a copy of this at some point, yes.
- Q. For the record, I will identify this. It purports to be a copy of a letter and it has a caption in the, above the letterhead, a William T. DeFeo, D.D.S. It gives his address. It's dated September 20, 1977. The addressee is one Nadine F. Poules, P-o-u-l-o-s, Hotel and Restaurant Employees and Bartenders International Union Welfare Fund, Naperville, Illinois, re Local 54, Atlantic City, and it reads: "Unfortunately, due to present circumstances, we are withdrawing our dental proposal at this time."
- "We would like to thank you for your consideration." This is signed purportedly by a William T. DeFeo.
- Mr. Smith, do you know if those "due to present circumstances" were the fact that Mr. Ralph Natale told Mr. DeFeo get out of that union?
- A. Mr. Rhoads, no, I do not know if Mr. Natale or anyone else said, made that statement.

THE TESTIMONY -- THIRD DAY

THURSDAY, DECEMBER 11, 1980

Who Got the \$150,000?

The public hearings resumed with a transitional statement by Commissioner Patterson connecting the previous day's work with forthcoming testimony. He noted that the Commission was now entering "the climactic phase of its depiction of an organized crime-influenced health care scam in South Jersey." So far, he said, nine witnesses had provided details on this enterprise in which financial transactions amounting to almost one million dollars took place. Commissioner Patterson said:

The corporate and personal manipulations of books and records in these transactions required months of dissection by the Commission's investigative accountants. This scrutiny eventually led to the discovery that more than \$150,000 of this cash generation could not be accounted for.

Despite the accounting difficulties encountered, however, this unexplained horde of money was traced by the S.C.I. to one individual, namely, Larry Smith, the Rittenhouse consultant who served both the business entrepreneurs who concocted the dental care operation and certain labor leaders who misdirected their union locals' health and welfare funds in the process.

Today we will show further that this consultant's obvious conflict of interest was promoted by an alliance with known underworld figures for the purpose of diverting funds to their own illegal use at the expense, in this single exemplar, of at least 50,000 union members whose welfare the health plan was supposed to serve.

Additionally, this morning's public hearing segment will demonstrate how known members of organized crime aided and abetted this monopoly. A key witness will be an informant who himself participated in discussions by crime family mobsters about the bagmen and the recipients of the loot this monopoly produced. His testimony will be confirmed by law enforcement authorities who have been cooperating with the S.C.I. in its probe of these depredations. The key question we hope to answer today is: What was the final disposition of the \$150,000?

Dr. DeFeo, Again

Before resuming its questioning of Larry Smith, the Commission summoned Dr. DeFeo, the Camden dentist who had "withdrawn" a proposal to provide dental care for Bartenders Local 54 at Ralph Natale's insistence. Smith on Wednesday could not recall that Natale had told Dr. DeFeo he had to back out because Local 54's health care plan belonged to "my brother, Larry Smith." Dr. DeFeo was even more evasive than Smith had been, to the point that he had to be confronted with answers to questions put to him at an SCI executive session prior to the public hearing. The testimony that prompted the reiteration of Dr. DeFeo's executive session responses went as follows:

Q. Prior to your losing the contract for Local 54, you had a meeting with Ralph Natale, did you not?

A. Yes.

Q. And Mr. Lawrence Smith?

A. No.

Q. Tell us about the meeting with Ralph Natale with regard to your losing Local 54.

A. Well, we had started to service the group and we were in service about, I would have to guess, two or three weeks, and I was called by Mr. Natale, wanted to see me. I met with him and he informed me that he had made a mistake, that he should have checked; that he had a previous commitment and he would -- I wanted -- asked me if I would relinquish the contract because he had made a mistake. I agreed to do so and I wrote the international and told them at this time I could not service it any more because I didn't want to embarrass him or myself. I thought that that was the best thing to do.

Q. Well, Doctor, wasn't it, in addition to that, that Mr. Natale suggested that it was going to go to his friend, Lawrence Smith?

A. He did not say that to me.

Q. He never said that to you?

A. He never said that to me.

MR. RHOADS: May I have a moment, please.

(There is a brief pause.)

Q. Dr. DeFeo, do you recall testifying before the State Commission of Investigation on January 31st, 1980?

A. Yes.

Q. And that was in a session that was held in what we characterize as an executive session and it is, in fact, a private hearing?

A. Yes.

Q. I will refer you to the transcript of that hearing, more particularly, Page 24, I'm going to read in part, lines 5 through 24 and it reads:

"Question" -- and contextually, this has to do with a meeting that you had with Ralph Natale. "Question: There may have been two meetings?

"Answer: There may have. I think one meeting was accidental, really, and this meeting was not. When he told me -- no, I don't think -- no, I remember now. I think it was the Holiday Inn on Route 70, across from the race track. I believe that was when he called me and told me that he had made a mistake and that he would like me, as a gentleman, to relinquish the contract.

"Question: Why did he say he would like you to relinquish the contract?

"Answer: Because he had made a mistake. As I found out later, it was already committed through Larry Smith to North American.

"Question: Did he mention that it was going to his friend, Larry Smith?

"Answer: I think he did and I think that he assumed that I knew that.

"Question: But you had been negotiating for a period of time. Had he ever made --" you interrupt with an answer, "No," then the question continues, "-- known to you --" going to the next page, "Answer: No -- not until that time.

"Question: So after you had made the agreement you're called to a meeting and you're asked to --

"Answer: Relinquish the contract.

CONTINUED

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"Question: Did you ever do anything to relinquish?" "Answer: Yes.

"Question: Why did you relinquish the contract?

"Answer: Well, he asked me to relinquish it. That was all I needed. I just felt that I really didn't want part of that organization.

"Question: Did you have any fears?

"Answer: Well, I don't know that I had a fear. I just didn't want to do business with those kind of people.

"Question: When you say 'those kind of people,' what does that mean?

"Answer: Well, I meant just my opinion that I don't think that I wanted to do business with individuals that may --

"Question: Hurt someone?

"Answer: Perhaps."

Dr. DeFeo continued to testify contrary to his executive session comments. Counsel asked the dentist if anyone had talked with him about his remarks at the private session on January 31, 1980, that caused him to give different responses at the public hearings:

Q. I will rephrase that. What I'm saying to you is, subsequent to your appearance before this Commission in January of 1980, have you met with Lawrence Smith?

A. No.

Q. Subsequent to your appearance here in January of 1980, have you met or had a conversation with Ralph Natale?

A. No.

Q. Has anyone suggested to you or told you that that conversation that you testified to before this Commission in January of 1980 did not happen the way you had told us it did, but that Ralph Natale never said to you "That union is going to go to my friend, Lawrence Smith"?

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A. Did somebody say that to me?

Q. Yes.

A. No.

Commissioner Francis sought to improve Dr. DeFeo's recollections of what Natale told him:

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Did Mr. Natale tell you why he wanted to meet with you?

A. Not at the time, no.

Q. When you met with him, he asked you if you would withdraw your contract?

A. Yes.

Q. And you agreed to do so?

A. Yes.

Q. Now, when he asked you to withdraw, a natural question occurring to anyone would be why do you want me to withdraw? Did you ask him something like that?

A. He said he had made a mistake, that he should have checked back with his locals, and I just assumed that he made a mistake.

Q. Okay.

A. And I didn't -- as I said, I didn't want to embarrass him or embarrass myself.

Q. Well, when he told you that he had made a mistake, did you say to him, "Where is it going?"

A. No, I did not.

Q. Did you ask him what mistake had he made?

A. No, I did not.

Q. Weren't you naturally curious as to who was going to get the work if you were not?

A. I didn't react that way at the time, that I can recall.

- Q. Well, you must have given some response to Mr. Natale when he said he had made a mistake and he wanted to give the work somewhere else, did you not?
- A. No, I did not make --
- Q. You didn't say anything?
- A. -- any comments at all. The only thing I think, I presume because he said that, that they were not going to have a dental plan.
- Q. This was a contract that you hoped to be profitable? You weren't running a charity, were you, Dr. DeFeo?
- A. No, of course not.
- Q. Here's a man who just told you you were not going to get the work any more. Are you telling us you make no response whatsoever?
- A. No, I did not.
- Q. What was your response? Did you ask him why you were not getting the work?
- A. His reason was he made a mistake. Again I presume that at the time that they were ready for a dental contract, and I just let it go at that.
- Q. So. Mr. Natale says you're through, you're not going to get the work, he made a mistake, you don't say a word, you get up and leave the room. Is that your testimony?
- A. Yes.
- (The witness confers with counsel.)
- No, he didn't say it that way, of course.
- Q. Isn't, in fact, what happened during that meeting at the Holiday Inn is just what you told us in private session?
- A. Yes.
- Q. That is, that Mr. Natale told you that he had made a mistake, that you weren't going to get the work, that he had promised it to his friend Larry Smith? Isn't that what happened?

- A. No, I don't believe that that was said at that meeting. If you check back on that, I think I was specifically signalling out that meeting because that was when he asked me to relinquish the contract. There was nothing said at that meeting to me about Larry Smith. I didn't even know the man.
- Q. So subsequently you meet Mr. Smith with Mr. Natale?
- A. Yes.
- Q. And Mr. Smith said he's the one who is going to be doing the work?
- A. Well, he said that he was consultant for North American and that he would go through his company.
- Q. And was it at that time that you realized that it was Smith who was going to get the work that you had hoped you would get?
- A. I guess, perhaps.
- Q. And is it fair to say that it was Mr. Natale who had made that change from you to Mr. Smith?
- A. It would have to be an assumption.

One last segment from Dr. DeFeo's executive session testimony on January 31, 1980, was read into the public hearing record before the witness was dismissed:

"Question: What happened?"

"Answer: That was, I think, when I met with Larry and Ralph that night, and again it was not a meeting. I wasn't called there for a meeting. I happened to meet them accidentally there, or I was invited or something. I forget what it was. But we sat at the table and Larry Smith came over. I didn't even know he was there. That's when he told me that I shouldn't negotiate with them because that belongs to them and everything in New Jersey belongs to Larry Smith, and through North American."

Did the Mob Share \$153,000?

The Commission recalled Larry Smith to determine if he could remember what happened to \$153,854 in unexplained profits that was generated through his Rittenhouse consulting company in 1978. The

Commission's investigative accountants had traced all of more than \$800,000 in cash transactions by Rittenhouse in connection with dental plans and other activities -- except for that one horde of cash for which no records existed. Smith's testimony:

Q. As a result of the documents furnished us by you for your transactions for the year 1978, they are reflected in this graphic illustration and we show funds available and utilized, Larry Smith, 1978. I direct your attention to the left-hand portion of this graph, \$836,239. Now, we have broken that out for the disposition of those funds, or, at least, part of those funds and we have found a realty transaction; we have found acquisition of savings certificates, acquisition of bank checks; payments to third parties, to include vendors, related corporations, related individuals; untraced vendors, personal taxes, both Federal and state, and we come to this portion of the graph, and that reads, "Unexplained cash on hand, \$153,854" for the year 1978.

Now, Mr. Smith, the Commission would be interested to know, what did you do with \$153,854 for the year 1978?

A. Mr. Rhoads, I think that's a good question and I'm going to ask you one in return. Are you asking me to certify that your figures that are not certified -- of if I'm incorrect, you let me know. Was this prepared on a certified audit by a C.P.A. firm or a C.P.A. accountant? Would you please answer before you ask me to certify the figure?

Q. I will indulge you on this one occasion. This graph was prepared by an accountant employed by the State Commission of Investigation based upon documents furnished us by you, inclusive of disposition of funds by you for the calendar year 1978, and you had stated under oath that you knew of no other documents that you had withheld or somehow negligently failed to furnish the S.C.I.

Now, I ask you again, what did you do with \$153,854?

A. Mr. Rhoads, I appreciate what you just said. You didn't answer my question.

Q. Perhaps you deserve a more direct question, Mr. Smith.

A. All right.

Q. Didn't you give part of that cash or perhaps all of that cash to Ralph Natale?

A. Absolutely not.

Q. Didn't you give part of that cash or all of that cash to Raymond "Long John" Martorano?

A. Absolutely not, and I don't even know the individual, and I believe I stated under testimony, previous testimony, I have no business relationship, personal, business, direct, indirect, or any other way. And that doesn't exclude that I couldn't have been in a public place, a restaurant or anywhere else in this country and the man could have been present. I do not know this man, have never dealt with this man in any fashion, and absolutely resent the inference.

* * *

Q. Mr. Smith, did you, during the year 1978, or year subsequent thereto, give money derived through your business ventures, one of which is Rittenhouse Consulting Enterprises, Inc., to a man by the name of Angelo Bruno?

A. Absolutely not. I also testified I did not know the man and, I'm testifying again, had no business, direct, indirect, or any other way.

Q. You do know a gentleman by the name of Charles Allen, don't you?

A. I know of him and I've met him.

Q. And you have actually met him, haven't you?

A. Yes, sir.

Q. You met him at Ralph Natale's house, didn't you?

A. Leading up to strange circumstances with a lunatic, yes, sir.

Q. The answer is yes? The answer is, yes, you met him at Ralph Natale's house; is that correct?

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A. Outside Ralph Natale's home.

Q. Strange circumstance being that Charles Allen, via Frank Sheeran, in effect, tipped you off that there was going to be a robbery of your house; is that correct?

A. I believe, as I testified to you, that Mr. Allen, who did not know me and indicated that he did not know me, went to a union leader and informed him that my house was to be robbed.

MR. RHOADS: Mr. Chairman, at this juncture, as a result of the testimony, I would ask that this witness be excused subject to recall. I would like to furnish the Commission another witness at this point.

Hooded Organized Crime Informant

Under tight security, Charles Allen, an effective organized crime informant, testified next -- directly linking Larry Smith, the dental plan consultant, and Ralph Natale, the convicted labor leader who was Smith's dental plan sponsor, to the organized crime family of the since-murdered Angelo Bruno of Philadelphia. Allen, who has been in the Federal Witness Protection Program for several years, testified under heavy guard by U.S. Marshalls, FBI agents and the New Jersey State Police. Because of his value to the law enforcement war against organized crime, he also was protected by a bullet-proof glass shield and he wore a black hood. The fact that he used his original name to identify himself for the record was not perilous to him since he already had a new identify as a federally protected witness.

Allen, who gave his aliases as "Charlie Buck" and "Charlie Palermo," said at the outset that he became an informant "because I was fed up with life of crime and I wanted to change my life." He said he began cooperating with law enforcement officials after he was arrested for violating narcotics laws, and that, since his turnabout was unknown to the mobsters with whom he associated, he "went undercover," he said, "and I wore a body recorder, a tape recorder, for quite a long time." As a result, Federal officials possess tapes confirming many of the organized crime conversations Allen was able to audit at meetings with various mobsters. SCI Counsel Charles Blumenstein questioned this informant:

Q. And was it pursuant to your wearing that body mike that you had occasion to record several individuals whom you normally dealt with?

A. Yes, I did.

Q. Was one of the people you recorded a man named Ralph Natale?

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A. Yes, it was.

Q. Who is Ralph Natale?

A. He, he runs the whole East Coast for the Bartenders and Waitress Union.

Q. When you say "he runs the whole East Coast," do you mean he's an international vice-president of that union?

A. Yes, he is.

Q. Did Ralph Natale also have any other normal activities that he engaged in?

A. Yes. He was a member of the Mafia and he dealt in drugs and gambling, stuff like that.

Q. When you say, "He was a member of the Mafia," could you elaborate on that a little bit for us?

A. He was with the Angelo Bruno family in Philadelphia.

Q. And who is Angelo Bruno?

A. He was the boss of Philadelphia for the Mafia.

Q. Did you ever have occasion to meet Mr. Bruno?

A. Many times, yes.

Q. How long have you know him?

A. Many years.

Q. Could you tell us why you would have occasion to meet with Mr. Bruno?

A. We would go to certain meetings and talk over certain things.

Q. What are these certain things that you're talking about?

A. Well, different deals, loan sharking, beating up people, shooting people, things like that.

Q. And what did Ralph Natale do for Angelo Bruno?

A. Anything Angelo wanted to. Loan shark, just anything he want.

Q. Did Ralph Natale also engage in different gambling operations on behalf of Angelo Bruno?

A. Yes.

* * *

Q. And prior to your entry into the protective custody in the witness protection program, could you tell us what your relationship with Ralph Natale was?

A. I was his bodyguard and I worked for him doing different things like burning, burning businesses down, beating up people, hijacking, things like that.

Q. Did you also engage in different drug operations with Mr. Natale?

A. Yes, we did.

Q. How often would you meet Mr. Natale in pursuit of these various activities?

A. Every day.

Q. Is it fair to say, then, that you were a very close associate of Mr. Natale's?

A. Yes.

Informant Allen also tied Natale to Bruno's longtime friend, Raymond (Long John) Martorano, who had testified at a previous session of the Commission's public hearing:

Q. Do you know a man named Raymond Martorano?

A. Yes, I do.

Q. How long have you known him?

A. Many years.

Q. Could you tell us, first of all, does Mr. Martorano go by any nicknames?

A. Long John.

Q. And could you give us a brief description of who Long John Martorano is?

A. Long John is a lieutenant in the Angelo Bruno family and he deals in drugs and cigarettes and things like that.

Q. Did he also meet with Angelo Bruno on a regular basis?

A. Oh, yes.

Q. Were you present at these meetings between Long John and Angelo Bruno?

A. Many times, yes.

Q. Do you know if there was any relationship between Ralph Natale and Long John Martorano?

A. Yes, there was.

Q. Why would Ralph -- well, why would Ralph Natale meet with Long John?

A. For loanshark money, and they were in the drug business together, also.

Q. Did Long John ever go to Ralph Natale for anything in particular?

A. Yes.

Q. Why would -- could you tell us why -- well, how about if we do it this way: Could you explain what Long John's responsibilities were and what Ralph Natale's responsibilities were, if they were different?

A. Responsibilities in what, now?

Q. Well, in the organized crime family of Angelo Bruno.

A. Well, they were on gambling and drugs and they were responsible to Angelo Bruno only.

Q. But did they have different areas of interest?

A. Just money, I guess.

Q. Would Ralph Natale ever go directly to Angelo Bruno for anything?

A. Yes, he would.

- Q. Why would he go directly to Angelo Bruno?
- A. For loanshark money or different deals that came up, you know.
- Q. Would he ever have to go to Angelo Bruno to ask permission to perform certain deeds before he would perform those deeds?
- A. Yes, almost always, yes.
- Q. Why would he have to ask permission?
- A. Because Angelo was the boss. You didn't do nothing without cutting Angelo in.
- Q. Did Ralph Natale ever go to Angelo Bruno to ask permission for a hit?
- A. Yes.
- Q. Could you tell us what it means to go to ask for a hit?
- A. When he was going to kill Joey McGreal, he went to Angelo Bruno and asked if it was okay to kill him.
- Q. Without going into the details of that particular murder, could you tell us why he would have to go to Angelo Bruno for permission to murder someone?
- A. Well, just in case, just say, I wanted to kill you, but you was with the family and I would have to go ask them, make sure that you, excuse me, that you did not owe them any money or you didn't have any drugs out on the street for them. See, they don't want to lose any money.
- Q. So it's strictly a question of finances? If I [owed] a great deal of money to Angelo Bruno or any of his subordinates, Angelo would probably say don't hit?
- A. Right.
- Q. But if I didn't owe that kind of money, then it would be okay?
- A. Right.
- Q. Do you know a man named Franny McDonald?
- A. Yes, I do.

- Q. How long have you known him?
- A. Just about all my life.
- Q. Do you know what his regular occupation is?
- A. He was also a bodyguard for Ralph Natale.
- Q. Well, first of all, what was his regular occupation?
- A. He's a bartender once in awhile.
- Q. Was he also a member of Ralph Natale's union?
- A. Yes, he was.
- Q. And that's Local 170. Correct?
- A. Yes.
- Q. With reference to his bodyguard duties for Ralph Natale, do you know what Franny McDonald did for Ralph Natale?
- A. He delivered drugs for him and burned places down, also, strong-arm.
- Q. Is it fair to say that you and Franny McDonald were on equal footing with regard to Ralph Natale?
- A. I would say, yes.
- Q. And did you have occasion to work together?
- A. Yes, all the time.
- Q. Do you know a man named Mike Marrone?
- A. Yes, I do.
- Q. And how long have you known him?
- A. Oh, since 1950.
- Q. Do you know, do you now Mr. Marrone's present occupation?
- A. He was running a trucking outfit called Beer Transit for Schmidt's Brewery.
- Q. Okay. That was his prior occupation. What's Mr. Marrone doing now?
- A. I believe he's in prison.

- Q. Okay. Do you know why he's in prison presently?
- A. For arson, I believe.
- Q. Did Mike Marrone ever do any work for Angelo Bruno?
- A. Sure, yes.
- Q. What type of work would he do for Angelo Bruno?
- A. Loan sharking, strong-arm, the same as I would do.
- Q. Well, is Mike Marrone an equal of yours and Franny McDonald's or is he more the equal of Ralph Natale and Long John Martorano?
- A. He would be up with Ralph Natale and Long John.

Informant Links Smith to Mob

The informant testified next that Larry Smith and his Rittenhouse consulting company could not have obtained dental plan business through Natale's labor union connections without the backing of Crime Boss Bruno. In fact, Natale wanted to give the business to a cousin but Bruno forced him to deal with Smith, the witness stated. Allen first told about his own connections with Smith:

- Q. Do you know a man named Larry Smith?
- A. Yes, I do.
- Q. How long have you known him?
- A. Since about 1972.
- Q. Did you ever meet Mr. Smith?
- A. Yes, I did, sure.
- Q. Do you recall who introduced you to Mr. Smith?
- A. I believe it was Frank Sheeran or a man named Alfred O'Neill.
- Q. Did Ralph Natale also introduce you to Mr. Smith at some time?
- A. Later on, yes, sir.

- Q. When was that introduction?
- A. I guess about 1975, around there.
- Q. Is there any special significance to an introduction by Ralph Natale of anyone?
- A. Yes. If Ralph was with somebody and he was a nobody, he wouldn't introduce you to him. But if he was somebody, he would introduce you to him.
- Q. So it's fair to say, then, that Larry Smith was somebody?
- A. Yes.
- Q. What do you mean when you say Larry Smith is or was somebody?
- A. He was with the people somehow or another.
- Q. What do you mean by "with the people"?
- A. You know, with the family, the Mafia.
- Q. Was Larry Smith on the same footing as you and Franny McDonald?
- A. I would say he was a little higher because he made him a lot of money.
- Q. Well, would Larry Smith ever engage in beatings or burnings or anything like that?
- A. Not that I know of, no.
- Q. He was strictly a money-maker?
- A. Yes.
- Q. For the family?
- A. Yes.
- Q. Do you know what Larry Smith did for a living?
- A. He was a business, a business -- he would run different businesses and get them to do things. He was a consultant for business.
- Q. When you say -- well, what kind of consultant work would he do, to your knowledge?

- A. He used to go to unions and get them to take certain dental plans.
- Q. And do you know how long Mr. Smith has been in this line of business?
- A. Ever since I know him.
- Q. Now, this consulting business, do you know whether it had anything to do with dental plans, for instance?
- A. Yes.
- Q. And did it have anything to do with any other kind of plans?
- A. He used to get dental plans and --
- Q. Would they also include pension plans?
- A. Pension, pension fund plans, yes.
- Q. And severance plans?
- A. Severance, yes.
- Q. Now, without going into too great a detail, do you know what he did for the unions as a consultant on these plans?
- A. He would go to different unions and be introduced to different unions by people, and he would get them to take his dental plan, and he would work out a deal that they would get so much money back.
- Q. Okay. We'll get into that later. Right now I want to ask you, referring to Ralph Natale's union in particular, Local 170 in the Cherry Hill area or Camden area, did Larry Smith set up a dental plan for that union in particular?
- A. Yes, he did.
- Q. Do you know how Larry Smith went about getting that contract?
- A. Ralph Natale had it all set up for, for his cousin to run the dental plan, but he was called to Philadelphia by Angelo Bruno.
- Q. Who was called?

- A. Ralph Natale was called to Philadelphia by Angelo Bruno and Angelo told him, "No, Ralph, your cousin's not going to have the dental plan, Larry Smith is going to have it."
- Q. Who, who is Ralph Natale's cousin?
- A. Nicky Altimari.
- Q. When you say that Ralph Natale had it set up so that Nicky Altimari was going to get the contract, what do you mean by that?
- A. Nick was going to run it for him.
- Q. Are you saying Ralph Natale is the one who made the decision as to who was going to get the contract and who wasn't going to get it?
- A. Yes.
- Q. You're telling me originally he intended to give it to Nick Altimari, but Angelo Bruno interceded?
- A. Yes.
- Q. Correct? And what happened after Angelo Bruno called Ralph Natale in?
- A. He told Ralph that Nicky wasn't going to have the dental plan, that Larry Smith was going to handle it.
- Q. And did Larry Smith ever get that contract?
- A. Yes. Yes, he did.
- Q. Do you know why it is that Angelo Bruno interceded and made sure that Larry Smith got that contract?
- A. I believe that Larry's wife is some kind of relation to Angelo Bruno.
- Q. But you don't have any idea what that relationship is?
- A. No, I don't.
- Q. If that were incorrect, do you know any other reasons why Angelo Bruno would want to have that contract directed toward Larry Smith?

- A. No.
- Q. But it's fair to say, then, but for Angelo Bruno's influence, Larry Smith probably would not have gotten that contract?
- A. No, he wouldn't.
- Q. And it's only because Angelo Bruno told Ralph Natale so that Ralph Natale then gave that to Larry Smith?
- A. Yes.
- Q. How did you find out about all this?
- A. I was there at the meeting.
- Q. What do you mean by these meetings?
- A. Well, every once in awhile we was, we was called down to Philadelphia to sit in on a meeting with Angelo Bruno, and that was discussed one time.
- Q. How often would these meetings take place?
- A. At least twice a month, maybe sometimes once a week.
- Q. And would these meetings always be held in the same place?
- A. No.
- Q. Could you just give us a brief list of different places where they might be held?
- A. They would (be) held at Frank's Cabana, a place called the Oldtimers Club, Little Cuz's, a place called Johnny Cupcakes, or even over in Cherry Hill in the Holiday Inn or else the Colosseum, and the Cent'Anni Restaurant.
- Q. Is the Colosseum a restaurant?
- A. It's a big place with a restaurant, yes, and a bar and a swimming pool, things like that.
- Q. Do you know who the owner of that restaurant is?
- A. Ralph Natale run it.
- Q. Is he the owner or just the guy who runs it?

- A. Well, no. See there's different owners. Everybody put their money in together and they all have it together.
- Q. But are all these different owners on, let's say, the title to the property?
- A. I don't know. I never seen the title.
- Q. All right. Going back to these meetings, whether they be weekly or bi-monthly, who would be some of the people attending these meetings?
- A. Angelo Bruno, Chicki Narducci, Phil Testa, Frank Sindone, Long John Martorano, sometimes Mike Marrone, Ralph Natale, myself, Franny McDonald, people like that.
- Q. Would Larry Smith also attend.
- A. Sometime.
- Q. How often would he attend?
- A. Not very often, but he was there a few times.
- Q. Why would Larry Smith attend?
- A. Only if he was called down or something, or if he was going to present, present a new plan or something, then he'd going down.
- Q. Were you ever present at a meeting wherein Larry Smith was also present?
- A. Yes.
- Q. Do you recall any of the discussions at the meeting when you and Larry Smith were both present?
- A. Not really, no.
- Q. Is it fair to say, though, that they probably did talk about dental plans, in general?
- A. I would say, yes, that or severance plans or something like that.
- Q. At least, that wouldn't conflict with your memory of these meetings?
- A. No.

Q. Did you ever have occasion to talk to Nick Altimari about the way Larry Smith got the contract?

A. Yes.

Q. The dental contract with Local 170?

A. Yes.

Q. What did Nick Altimari tell you?

A. He was very mad and when he found out how much money Ralph was getting out of it, he said that Larry Smith was screwing him; he should be getting, stealing more money than that.

Q. When you say "Ralph," you mean Ralph Natale?

A. Ralph Natale.

Q. So Nick Altimari was of the opinion that Larry Smith wasn't kicking enough money back to Ralph Natale?

A. That's correct.

Labor Leader Natale steered other union business to Smith -- for a price, according to the witness. Allen testified that he was present when certain kickbacks were paid by Smith:

Q. Besides this contract for Local 170 that Ralph Natale gave to Larry Smith, do you know of any other business that Ralph Natale sent the way of Larry Smith?

A. Not that I can -- they was in on different businesses, but I couldn't say, you know, you know, which, what they were.

Q. All right. I understand you don't have the ability perhaps to enumerate the different businesses, but do you know from these general conversations, from these meetings, that it was more than Local 170 that Ralph Natale and Larry Smith were working together on?

A. Oh, yeah, he would bring him around to different union people and, you know, introduce him and tell them this is our man and he's going to take care of us, you know.

Q. Were you present at any of these introductions?

A. I was there, yes.

Q. And these introductions would be to various union officials, I assume?

A. Yes.

Q. Okay. What would Ralph Natale get in return for making these introductions?

A. He would get a kickback under the table.

Q. And how do you know that Ralph Natale got this kickback under the table?

A. I was there a few times.

Q. When you say you were there, did you witness the actual cash or checks or anything else pass between Larry Smith and Ralph Natale?

A. They don't deal in checks, always cash.

Q. It's always cash?

A. Yes.

Q. Did you witness the cash transfer from Larry Smith to Ralph Natale?

A. Yes.

Q. Could you tell us some of the different occasions wherein you witnessed this transfer from Larry Smith to Ralph Natale?

A. Well, just once in a while Larry would come and hand Ralph an envelope, and Ralph would always be happy to get an envelope and he'd say, "That's my man," and then when we would leave Ralph would, you know, take the money out and count it.

Q. And you saw Ralph take the money out of the envelope?

A. Yes.

Q. And you also saw Larry Smith give that envelope to Ralph Natale?

A. Yes.

Q. How often did you witness this?

A. No more than once or twice.

- Q. Do you recall one occasion in particular where you witnessed that? I'm -- just for a clarification, can you give us the details of one of the instances where you witnessed Larry Smith give an envelope to Ralph Natale?
- A. Well, they almost always met in Cherry Hill, in the Holiday Inn there, and they would have lunch there, and Larry would give Ralph the envelope.
- Q. Do you know what Ralph Natale would do with this money that he received from Larry Smith?
- A. Not really. He would just, either, you know, put it in his loan sharking or -- it was his money. He could do anything he wanted with it.

However, whatever kickbacks Natale got he had to share with Bruno, according to Allen. In fact, the witness testified he sometimes delivered the cash to Bruno:

- Q. Well, you stated earlier that nobody did anything without cutting Angelo Bruno in on it?
- A. Okay.
- Q. Did Ralph have to give any of this Larry Smith money to Angelo Bruno?
- A. Oh, certainly, yeah.
- Q. How do you know that Ralph Natale would give it to Angelo?
- A. Sometimes I took it down to him.
- Q. When you took it down to him, do you mean you took the cash or you just took an envelope?
- A. I took, well, I took the envelope with the cash in it, yes.
- Q. And you knew for a fact that there was cash in there?
- A. Yes.
- Q. If Angelo Bruno weren't available -- suppose you went down to meet Angelo and he weren't around. If Angelo Bruno was not around, what would you do with the money?

- A. I would give it to Frank Sindone.
- Q. Did you ever have occasion to give it to Long John Martorano?
- A. No.
- Q. Who is Frank Sindone?
- A. Frank was a lieutenant in the Mafia, also, for Angelo Bruno.
- Q. And he fits the same category of the people we described earlier, Ralph Natale and Long John Martorano?
- A. Yes.

Smith Paid Bruno Directly?

Allen also testified that Smith gave Bruno "envelopes," that he once saw such an exchange:

- Q. Do you know if Larry Smith ever gave money directly to Angelo Bruno?
- A. Not that I can say money. He gave him envelopes, but I couldn't say what was in it.
- Q. Okay. You never saw Larry Smith put money in an envelope and then give that envelope to Angelo Bruno. Correct?
- A. No.
- Q. All right. But you did see Larry Smith give an envelope to Angelo Bruno?
- A. Yes.
- Q. Could you tell us, well, how many times did you see that?
- A. Just once.
- Q. Could you give us the details of that one time you witnessed the envelope passing from Larry Smith to Angelo Bruno?
- A. Yes. We was there having different meetings and Larry Smith sat down and handed the envelope to Angelo. Angelo smiled and thanked him and we talked awhile. That was it.

- Q. Where was this? Where did this transfer take place, this transfer of money?
- A. In a bar, in a restaurant on 11th Street.
- Q. Do you know if perhaps it was in the year 1978 or not?
- A. That, that would be, yes, that would be very close, yes.
- Q. Do you know who the owner of this bar was?
- A. Well, I don't know who the owner is, but it was run by a guy named Johnny Cupcakes.
- Q. Do you know who else was present at this meeting?
- A. Myself, Angelo, Ralph, Long John, probably Frank Sindone, and the usual crowd is always there.
- Q. Are you aware of any other meetings between Larry Smith and Angelo Bruno?
- A. He was invited to Angelo's Christmas party.
- Q. Where was that held?
- A. That was held in a place called Little Cuz's, also on 11th Street.
- Q. It's different than this other place we talked about?
- A. Yes.
- Q. This Christmas party, when was that held? Obviously, around December. What year?
- A. Oh, about two years ago. Well, he has one every year.
- Q. And did you personally see Larry Smith meet or talk to Angelo Bruno at this party?
- A. I honestly couldn't say. Ange stayed in the back room, now, you know. He would have his own private room there and just talk to certain people.
- Q. Were you ever in that room at the same time Larry Smith was in that room?

- A. No. You know, you go in by yourself, say hello, wish him well, and then you leave.
- Q. Are you aware of any other meetings that Larry Smith might have had with Angelo Bruno?
- A. Well, there was a few, but, you know, I couldn't say exactly where they were or when they were.
- Q. Well, can you tell us, at least, where if not when?
- A. Well, if Ange was at the Cherry Pit and Larry was there, they would sit down and talk and everything, you know.
- Q. Do you know of any other locations where these meetings might have been held?
- A. Yeah, I just told you awhile ago.
- Q. All right. Were there any meetings in the Cent'Anni Restaurant?
- A. The Cent'Anni, yeah, sure.
- Q. Where is that located?
- A. It's in Philadelphia.
- Q. Were these formal meetings between Larry Smith, Angelo Bruno, or were they just chance meetings?
- A. Could be chance, but most of the time you're called and told to be there.
- Q. Were you present during any discussion between Larry Smith and Angelo Bruno?
- A. A few times, yes.
- Q. Do you recall what was discussed?
- A. Not really, no.
- Q. Just as a final question, is it fair to say that, without Angelo Bruno's influence, Larry Smith would not be successful in the consultant business?
- A. Well, I couldn't honestly say that, but I would say that he wouldn't have all the business he had without Angelo.

Q. If Larry Smith were to stop kicking back or stop paying money to Ralph Natale or Angelo Bruno, would he have the contract with these various unions, in your opinion?

A. Oh, no.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Allen, can you tell us, if you know, how much money passed from Mr. Smith to Mr. Natale?

A. No, there's no telling, actually.

Q. Can you tell us on any one occasion how much money passed from Smith to Natale?

A. No, I'm sorry, no.

Q. Can you tell us how much money Natale passed from the money he received from Smith to Angelo Bruno?

A. Well, once I brought down something like 7,000, another time something like 10,000.

Q. Can you tell us how often Mr. Smith paid Mr. Natale?

A. No, but I was told it was every three months, by Franny McDonald. That's on tape.

Q. Do you have any idea how much money was in each one of those payments at three-month intervals?

A. No, I have no idea.

Smith's Testimony on Natale

After being linked to various mob figures by informant Allen, Larry Smith returned to the hearing room for the third time to testify about his dental care plan connections. He conceded he knew Mike Marrone, whom Allen characterized as Bruno's loanshark and "strong man" confederate. Smith said he employed Marrone for several years in his trucking business in 1972 or 1973 but claimed he knew nothing about his underworld activities. Smith was questioned more extensively about his relationship with former Bartenders Union leader Ralph Natale. The federal informant had said that Natale was required by Bruno to utilize Smith's services. However, when pressed for details about his association with Natale, Smith testified as follows:

Q. Well, Mr. Smith, isn't it true that Ralph Natale contacted Joseph Cusumano, president of N.A.D.P., and said if you want a contract with any unions in New Jersey you're going to have use Lawrence Smith, a consultant? Isn't that what happened?

A. If Ralph Natale ever did anything like that, I am not aware of it. Now, I doubt if it was ever done.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Smith, did Mr. Natale ever introduce you to any union locals and say this is a man who might put together a dental plan for us?

A. I don't believe in that vein, no, sir. He might have recommended me as having expertise in the fields I --

Q. Did he or did he not, then, recommend you to certain locals as a man that had some knowledge in the administration of dental plans?

A. Here again, Mr. Commissioner, I don't --

Q. Can't you answer that yes or no, Mr. Smith?

A. I'm answering it, sir.

Q. Did he or did he not introduce you?

A. For your specific purpose? Not to the best of my recollection, no.

Q. Did he introduce you for any purpose?

A. That could have very well happened at any type of function.

Q. You can't answer that one yes or no?

A. Excuse me, Mr. Francis.

(Witness conferring with counsel.)

COUNSEL: Excuse me. I don't think the witness is sure of the question, Mr. Commissioner. Are you asking whether Ralph Natale ever introduced him to any union officials for any purpose in the course of their relationships?

Q. The question seems clear enough and your attorney understood it. Let's try it again, Mr. Smith.

Did Mr. Natale ever introduce you to any union officials for any purpose?

A. I would think he did, yes.

Q. Did Mr. Natale appear to have some influence with those union locals to which he introduced you?

A. Other than being associated in the same labor field, I wouldn't see any special influence.

Q. Were you at that time seeking to become a consultant in the administration of dental plans?

A. I was not aggressively seeking at that point dental plans.

Q. Were you seeking it?

A. To some extent.

Q. Were you seeking it from the locals to which Mr. Natale introduced you?

A. No, sir; no, sir.

Q. Did Mr. Natale introduce you to those unions and say that you had some experience in the administration or consulting work for the administration of dental plans?

A. To the best of my recollection, Mr. Natale wasn't going around touting my expertise in the dental field.

Q. That's not my question, Mr. Smith. Answer my question, please.

A. I'm trying, Mr. Francis. Be more specific.

Q. Well, answer it.

A. I thought I did.

Q. Well, not when you're saying he's going around touting. Did Mr. Natale in those introductions to labor unions say to those labor unions that you had some experience in the administration of dental-care plans?

A. In that format, no, sir.

Q. In any words similar to that, Mr. Smith?

A. I don't believe he did, sir. That's five times.

Q. He just said, "Here's a guy named Smith"?

A. No. He would introduce me as a person who was doing the health and welfare work and consulting work for the fund that he represented, and possibly would say he does a fine job. But beyond that, to get specific, I've answered your question.

Q. Did Mr. Natale help you get consulting work for labor unions in the administration of dental plans?

A. For the sixth time, not directly that I'm aware of, no, sir.

Q. So you think those introductions he made and the recommendation he made of you were of no help?

A. I didn't say they weren't any help and I didn't acknowledge that he did that. I said he did not walk up to labor leaders and say this is my expert in the dental field and why don't you try to use him, and that's what you're trying to infer and it's the sixth or seventh time I've answered your question.

* * *

Q. Let's get to the bottom line, Mr. Smith. Did you ever do anything for Mr. Natale in exchange for those introductions?

A. Well, how could I do that, Mr. Francis, by saying it didn't take place?

Q. So you're now denying that he even introduced you to any labor unions?

A. No, for the targeted specific way you're asking the question.

COMMISSIONER FRANCIS: He's fiddling.

THE WITNESS: I heard that, sir, and I'm not.

- Q. Mr. Smith, let's go back. Mr. Natale introduced you to labor unions, did he not? Yes or no?
- A. At a -- at -- excuse me.
(The witness confers with counsel.)
- Q. At the time Mr. Smith introduced you to labor union officials you were seeking business in the dental-health-care plan field, were you not?
- A. During that period of time, that would be correct.
- Q. And to the extent that Mr. Natale introduced you to those labor union officials while you were seeking business from those locals, that was helpful to you, was it not?
- A. It could have been helpful in the framework that I was presently doing work in the labor movement and labor field, yes.
- Q. And Mr. Natale told people that you were doing work in this field, did he not?
- A. From time to time, I would assume he did.
- Q. And that recommendation or those remarks by Mr. Natale were helpful to you, were they not?
- A. There's no specific instance that I could say it was, but I assume if all my clients say complimentary things about our firm and myself, it would help.
- Q. Did you get business from those labor union locals or continue to do business with those labor union locals to which Mr. Natale introduced you?
- A. For the best of my recollection, I do not do any consulting in the dental field for most of the labor leaders that were introduced to me by Mr. Natale.
- Q. Did you ever give Mr. Natale anything in exchange for the favor he did for you?
- A. Mr. Francis, the way you're phrasing the question, I never regarded it as a favor because I never requested it. So the way you're framing it, no, I did not give him anything for that.

- Q. Did you ever give him any money for any other reason?
- A. No, and I've testified to that approximately twelve times.
- Q. Did you ever give Mr. Natale any cash in an envelope?
- A. Absolutely not.

Organized Crime Expert

The final witness in the Commission's examination of the dental care program perpetrated for the financial benefit of Bruno crime family members in South Jersey was Gino L. Lazzari, organized crime supervisor for the Pennsylvania Crime Commission. Lazzari, a retired FBI agent, had been for more than 16 years a specialist in organized crime investigations, particularly in connection with what he described as "the Angelo Bruno family of La Cosa Nostra as it covered southeastern Pennsylvania and South Jersey." The testimony by this law enforcement officer confirmed that of the federal informer Allen in linking Larry Smith's associates with the Bruno crime family, beginning with Raymond (Long John) Martorano. SCI Counsel Gerard P. Lynch questioned Lazzari:

- Q. Now, have you ever heard of the name of Raymond "Long John" Martorano?
- A. Yes, sir, I have.
- Q. Could you tell us how you heard of that name and whether or not it is in any way connected with organized crime?
- A. Raymond Martorano allegedly purchased the Penn-Jersey Vending Company from Angelo Bruno back in about 1963 or '64 and one of the purchases of the company with Martorano was a current old-time member of La Cosa Nostra Harry Riccobene, and from about 1964 until recently when John's Vending became John's Wholesale Distributors, Angelo Bruno was carried on the payroll as a cigarette salesman getting two or three cents a pack from various vending-machine stops.

No one that worked in the program in the Philadelphia Police Department, the F.B.I., New Jersey State Police would ever believe that Angelo Bruno would work for Raymond Martorano. It was the other way around.

Raymond Martorano has a conviction for narcotics of which he served time, and he was a close associate of Ralph Natale, who is the current -- was the former recording secretary of Local 170 of the Hotel, Bartenders and Waitresses Union, Cherry Hill, New Jersey.

Q. Did Mr. Martorano have any relationship with Mr. Bruno, to your knowledge?

A. Yes, he was very close to Angelo Bruno. He would more or less be, like, say, a messenger, bodyguard, chauffeur, handled many business connections, entrees for Mr. Bruno.

Q. Was he seen frequently with Mr. Bruno?

A. Constantly up until his death he was a frequent companion of Mr. Bruno, meeting at Bruno's lawyer's office. In fact, on the night Bruno was assassinated or killed, Martorano was in the restaurant at the time Bruno had dinner.

Q. Now --

A. Supposed to have taken him home and someone else took over that chore.

Q. Now, would you classify Mr. Martorano as a member of Mr. Bruno's crime family? And if so, could you designate what position in the family he would hold?

A. Based on the strict requirements of membership that the F.B.I. employed, Martorano was not positively identified as a member, but he was identified through association and other informant information as being a very, very close associate and top worker for Angelo Bruno, one of his principal money-makers.

Q. All right. Now when you say, "one of his principal money-makers," could you elaborate on what you mean by "principal money-makers"?

A. By arranging for investments in various businesses and industries, particularly in the vending business. John's Vending mushroomed from a small, normal everyday vending company to one of the largest; made various take-overs and purchases of vending-machine businesses in the state of New Jersey, such

as Toomey Vending Company and several others, where they had the, about the largest vending company in the Southeastern Pennsylvania/South Jersey area.

Q. Now, you mentioned before that Mr. Martorano was involved in narcotics. Is he still, to your knowledge, involved in narcotics?

A. From the informant information we had, he was.

Ralph Natale, who was Smith's dental plan connection with Bartenders Local 170, later Local 33, and also with the Bruno mob, was discussed by Lazzari:

Q. Now, you also mentioned the name of Frank Natale? Could you tell us, you said he was an associate of Martorano. Could you tell us what Mr. Natale's position is in the organized crime family?

A. Mr. Natale, very similar to Mr. Martorano in the fact that, based on the strict requirements that they use for membership, he was not actually identified as a member of the organization itself, but was a very close associate of Bruno's in that he was Bruno's contact within the labor union field in South Jersey, particularly with the hotel/bartenders unions.

Q. Do you know who Mr. Natale or Mr. Martorano would have to answer to within the Bruno crime family?

A. They would have to answer to Angelo Bruno.

Q. Directly to Mr. Bruno?

A. Directly.

Al Daidone, who was Larry Smith's most direct dental care contact with Local 33's Health and Welfare Fund, was known to Lazzari:

Q. Could you tell us whether or not you have heard of the name Al Daidone?

A. Al Daidone, the name, I just recently heard of that this year, is -- at the time that Bruno was assassinated or killed, Al Daidone was allegedly designated as Raymond Martorano's bodyguard that would drive him back and forth and be in his presence very frequently, sort of in brief, sort of a rising star among the officials in Local 170 of the bartenders union.

Q. Is he a close associate with Raymond Martorano?

A. I would assume if he was his bodyguard, yes.

Lazzari continued with his recollections of Smith's gangland associates:

Q. Now, have you ever heard of the name of Frank Vadino?

A. Yes. Frank Vadino first came into my recollection back in about 1973. One of the former organizers of Local 170 of the bartenders union was a fellow named Joseph McGreal from South Philadelphia. He and the two officers of Local 170, Andrew Chaloka and Richard "Bucky" Baldino, were convicted in Federal Court in Camden for extortion, trying to extort money from about ten big restaurants in the Camden area in return for labor peace.

Well, when they went to jail, McGreal allegedly gave control of the union to Natale and McGreal, when he came out of jail, made known that he wanted his position back and he wanted to take over a few other business deals that Natale had moved into, particularly hauling of beer for the Schmidt's Brewery. Natale -- McGreal -- pardon me. Joe, Joseph D'Agata, Joseph McGreal, Frank Vadino were one-third partners in the operation of a beer-hauling company called Beer Transportation Corporation in Southwest Philadelphia and they had the contract of hauling beer for Schmidt's.

After McGreal got out of jail he made motions that he wanted his business back. Natale was trying to take it over with another outfit that Mike Marrone had an interest in called KMA Leasing, and on the night of Christmas Day, Christmas night, 1973, McGreal was killed in gangland fashion in South Jersey here and the best informant's information we had was that Ralph Natale and Francis McDonald did the actual killing.

Mike Marrone has a reputation of being a very vicious hit man. He's had, had the conviction recently in 1978, I believe, for being the ring leader of a arson-for-profit ring in the Philadelphia/South Jersey area.

He had four previous convictions, one for narcotics here in the state of New Jersey, three by common pleas court for violent crimes in Philadelphia, all four charges, all four convictions resulting in prison sentences, and the prison sentence and the arson-for-hire ring, based on his prior record, the U.S. Attorney in the Eastern District of Pennsylvania had him sentenced as a special offender in November of this year and he got a 50-year prison sentence. Excuse me.

A couple of his associates in this arson-for-hire ring, Ron Turchi got forty years; a guy named Junior Casello got about twelve.

Q. Do you know for a fact whether or not Ralph Natale has been convicted of any crimes recently?

A. Yes. Ralph Natale was also the leader of an arson-for-hire ring in South Jersey. He was convicted for his part in the setting up and operating the fire destruction of the Mr. Living Room's furniture store in Marlton, New Jersey. The fire occurred on March 1st, 1977. He was convicted in Federal Court in, pardon me, January, '79, and got twelve years. Shortly after he was released on bail he got involved with Charles Allen and some other individuals, Frank Vadino is one, in a large-scale narcotics operation in Fort Lauderdale, Florida. In about February 8th of 1979 Natale, Vadino and three or four other people were arrested aboard a boat in Fort Lauderdale called the Danny Boy III and charged with trying to import millions of dollars worth of drugs and cocaine into the United States. In September of this year Natale received a fifteen-year prison sentence in the Southern District of Florida to run consecutive with the twelve years he got on that Mr. Living Room arson. He is currently in prison.

Q. Now, you mentioned the name of Charles Allen at that time. Do you know Charles Allen?

A. Yes, I knew Charles Allen by reputation and from the days when I worked, the last few days, few months I worked in the F.B.I.

Q. Could you tell us what you know about Charles Allen?

- A. Charles Allen always had a reputation similar to Mike Marrone's as being a union organizer, the type of man that the Mafia or union people would use to more or less stifle any opposition, sort of a say, a goon, a muscle man, a guy that would do anything to make a buck or to please somebody.
- Q. Who is Charles Allen closely associated with in the Bruno crime family?
- A. Charles Allen was closely associated with Ralph Natale mainly. That was one of his closest friends, and he reported directly to Bruno on many occasions. Also, Natale -- pardon me. Charles Allen was very close to Frank Sheeran and through Frank Sheeran had a good rapport with the upstate Pennsylvania organized crime boss, Russell Buffalino.

Testimony by the Pennsylvania Crime Commission's organized crime expert, Lazzari, concluded the Commission's public hearing depiction of mob infiltration of certain South Jersey labor union health and welfare funds under the guise of promoting dental care benefits for rank and file union members. While the transfer of more than \$150,000 in excess cash to mob coffers in 1978 could not be specified dollar-by-dollar, the hearing record confirmed that since-murdered Angelo Bruno and his gang had shared the loot.

The Commission next turned to a more complicated corporate flim-flam in North Jersey.

THE NORTH JERSEY EPISODE

Opening the public hearing inquiry into yet another illustration of organized crime intrusion into labor union dental care programs, Commissioner Francis made a brief transitional statement linking the previous days' work with forthcoming testimony. He noted that the North Jersey episode would differ from the exemplar portrayed in South Jersey "because of a more wide-ranging maze of personal and business transactions" designed to mask the diversion of money to underworld figures and their accomplices. Commissioner Francis observed:

We have just completed the recording of testimony confirming the enrichment of organized crime associates by dental-care plan abuses in South Jersey. In that segment of these public forums, it was shown that in at least one dental-care scheme monies were diverted to underworld figures and their associates as a result of an alliance between unscrupulous consulting and administrative entities and the disreputable leaders of major labor union locals.

Because of the complexities of the dental-care plan machinations now to be exposed, the Commission has prepared more than a dozen charts to explain them. Various witnesses, including some drawn from the underworld, will be confronted with these charted transactions and will be required, under oath, to explain not only the book-keeping deceptions involved but also the devious route of diverted cash to organized crime. Just as in the South Jersey episode, forthcoming testimony is expected to illustrate once again how the welfare of thousands of labor union members was sacrificed on behalf of greedy business entrepreneurs and the mob.

How the Plan Was Organized

Initial witnesses described the origins of the plot to invade the health and welfare funds of susceptible labor union locals in the northern part of the state for the combined benefit of unscrupulous business entrepreneurs and their mob associates. First to testify was George A. Franconero of North Caldwell who was under suspension as a lawyer. Franconero filed legal papers and performed other chores in the mid-1970s that helped to establish the alliance of dental service providers and administrators with corrupt union leaders and organized crime figures. (Franconero was murdered in March, 1981).

Franconero recalled his first contacts with Stanley Resnick of Convent Station and Dr. Jesse D. Hyman of Long Island in connection with a dental care program for Teamsters Local 945 in West Paterson. Dr. Hyman later in the hearing would be identified as an organized crime courier who had operated mob-influenced labor union dental plans in New York State. According to Franconero, he was counsel to Resnick's and Dr. Hyman's corporation, New Jersey Dental Administrators (this corporation was referred to during the hearings as the NJDA, but SCI counsel emphasized that there was no connection between this group and the New Jersey Dental Association, a respected professional organization which has the same initials). Franconero's representation of the NJDA corporation eventually resulted in his leading Resnick and Dr. Hyman to Drs. Joel S. Sokol of Irvington and Anthony Ferrara of Newark, whose operation of closed panel dental care clinics was to become the prime target of subsequent public hearing testimony. Franconero described how these connections came about:

- Q. When is the first time that you actually were, if you will, contracted by Mr. Resnick and Dr. Hyman to do legal work for them?
- A. I think, in '75 or '76, in that area of time.

- Q. And this would have been prior to their getting the dental plan for Local 945?
- A. No, it was subsequent.
- Q. Subsequent. Did you at all have anything to do, whether it be direct or indirect, with Dr. Hyman and Mr. Resnick getting the contract with Local 945?
- A. No, sir.
- Q. And how was it that they contracted you to be their attorney to represent N.J.D.A.?
- A. I met them there and they asked me to represent them.
- Q. Now, did there come a time after you undertook representing N.J.D.A. where you introduced the principals of N.J.D.A., Mr. Resnick and Dr. Hyman, to a Dr. Joel Sokol and a Dr. Anthony Ferrara?
- A. Yes, I did.
- Q. What was the purpose, if any, for doing that?
- A. Initially I introduced Dr. Ferrara to Dr. Hyman so that Dr. Ferrara could possibly do some oral surgery work on behalf of Dr. Hyman.
- Q. Did you know whether, in fact, he undertook that or not?
- A. No, he didn't. I do know he did not.
- Q. Having first done that, did there come a time when you introduced Dr. Sokol and Ferrara once again to Dr. Hyman and Mr. Resnick?
- A. Yes.
- Q. And what purpose, if any, was that for?
- A. They were thinking about working together in the state of New Jersey to do prepaid plans.
- Q. And when you say "They were thinking of working together," who do you mean?
- A. Well, Dr. Sokol, Dr. Ferrara and Dr. Hyman were going to work together and operate a prepaid dental facility or facilities, and

- Mr. Resnick was going to be the administrator. That's what the conversation concerned.
- Q. All right. Now, in the context of that conversation, can you fix a time period for us?
- A. I think it was in early '76.
- Q. And, to your knowledge, would that have been the initiating effort of Dr. Sokol and Dr. Ferrara to form some sort of company in order to furnish dental plans?
- A. I don't recall specifically what their thoughts were, but I know that that's the reason that they came together.
- Q. Well, did there come a time when they did, in fact --
- A. Yes.
- Q. -- join forces?
- A. Yes.
- Q. And when was that?
- A. In '76.
- Q. And did there come a time, to your knowledge, that Dr. Sokol and Dr. Ferrara at least started sending out proposals for dental plans?
- A. Yes.
- Q. When was that?
- A. In '76.
- Q. Did they get any unions, contract with them?
- A. They contracted with the union, yes.
- Q. Do you know what they are? The first one?
- A. They contracted with 478, Teamsters Local.

The Commission questioned Franconero about the circumstances that brought Dr. Hyman from upstate New York into New Jersey in connection with North Jersey labor union dental programs:

COMMISSIONER FRANCIS: While we have a minute, Mr. Franconero, Dr. Jesse Hyman is a dentist in Buffalo, is he not?

THE WITNESS: Yes.

COMMISSIONER FRANCIS: Can you tell us why a Buffalo dentist had any interest in forming closed-panel dental clinics in New Jersey?

THE WITNESS: I don't know.

COMMISSIONER FRANCIS: Did he ever discuss his reasons, his motives, with you?

THE WITNESS: When I first met Dr. Hyman, he had already established himself in this state and really didn't get into that, that I know of.

COMMISSIONER FRANCIS: What do you mean he had already established himself in the state?

THE WITNESS: Well, he was already servicing 945, or had reached an agreement to service them, in any event.

COMMISSIONER FRANCIS: Did Dr. Hyman appear to have particular contacts in New Jersey?

THE WITNESS: I assume he did, but I don't know of any specifically other than he knew the people who had to negotiate the contract with 945.

COMMISSIONER FRANCIS: He knew some people within the labor movement?

THE WITNESS: Oh, yes.

COMMISSIONER FRANCIS: A lot of people?

THE WITNESS: He knew people. I don't recall a lot. He knew a few people, I assume.

COMMISSIONER FRANCIS: Did he know some of the key people in union locals?

THE WITNESS: I really don't know what you mean by "key people," Mr. Francis.

COMMISSIONER FRANCIS: The president of the local, the business agent?

THE WITNESS: Of 945?

COMMISSIONER FRANCIS: Well, particularly or any other local.

THE WITNESS: I'm not sure. I think he was negotiating with Local 1262 at some point or other. I'm sure he knew the officials from 1262. I think he knew Mr. Kinsora. I think he knew some people from the union.

COMMISSIONER FRANCIS: How about 945 did he know people from -- 945?

THE WITNESS: I'm sure he knew Mr. Palmieri, Mr. Capisano and, I assume, some people from the welfare board. He negotiated the agreement. I assume he knew them.

COMMISSIONER FRANCIS: Do you know how Dr. Hyman came know those labor officials?

THE WITNESS: Of my own personal knowledge, I don't.

Testimony about the Sokol-Ferrara dental care contract with Local 478 also involved George F. Serio of Mountainside, the local's health and welfare fund administrator, who was scheduled to testify later. About this time, "Joel S. Sokol, D.D.S., P.A.," a professional corporation, as well as Metro Dental and other corporate entities had been created as components of the Sokol dental plan promotion. Serio eventually became president of Group Administrative Services, one of the corporations set up by the same sponsors of the dental plan he contracted with as administrator for his local's health and welfare fund. Franconero's testimony on this arrangement follows:

- Q. Now, to your knowledge, Mr. Franconero, in order for the welfare board, which I will now refer to it as Local 478, did George Serio play any function at all leading up to, and the final award of, the contract to Joel S. Sokol D.D.S., P.A.?
- A. I did not participate in any of that, so I really don't know of my own knowledge.
- Q. And his position at the time of this contract, and, again, that's December of 1976, was what? I'm referring to Mr. Serio?
- A. He was the administrator. George Serio.
- Q. Yes?

- A. He was administrator. I assume he had a part to play in it, he was the administrator. But I didn't participate in the negotiations myself.
- Q. Did you have any dealings with Mr. George Serio on behalf of Sokol, D.D.S., in order for them to get the contract?
- A. No.
- Q. Mr. Franconero, are you familiar with an entity by the name of Group Administrative Services, Inc.?
- A. Yes.
- Q. And how is it that you're familiar with that entity?
- A. I think I formed it.
- Q. For whom did you form it?
- A. I was requested at some point or another by Dr. Sokol to form it.
- Q. To form Group Administrative Services, Inc.?
- A. I really don't recall who asked me to, but I know I did. I assume it's --
- Q. But as you're sitting here, it was Dr. Joel Sokol?
- A. It could have been. It could have been Mr. Resnick as well. Somebody.
- Q. There did come a time, in fact, when you did form such a corporation, was there not?
- A. Yes.
- Q. And you got paid for whatever it is, did you not?
- A. I didn't specifically get paid by Group Administrative Services. I just did this in general.
- Q. Who did you specifically get paid for those endeavors that you did on their behalf?
- A. I got paid by Metro Dental. Metro Dental was the administrative agency for Dr. Sokol. I think I got paid once or twice by Dr. Sokol as well.

- Q. Metro Dental, since you have brought it up, was a corporation formed by Mr. Resnick and, early on, Dr. Hyman, was it not?
- A. That's correct.
- Q. And that was principally formed to serve as the administrative arm of Joel S. Sokol, D.D.S., P.A.?
- A. That's correct.
- Q. Well, in regard again, I'm referring to your work with Group Administrative Services, Inc., which hereinafter I will refer to as G.A.S., the services that you performed for G.A.S., were you paid then by either Metro Dental Services or Dr. Sokol individually?
- A. There was nothing specific. I was never paid specifically for work done on Group Administrative Services. I formed the corporation. It initially was formed by me and at the time I was working for Metro Dental Services and I was paid for general attorney's fees by Metro Dental Services.
- * * *
- Q. Mr. Franconero, I'm going to show you what's been previously marked Commission Exhibit 3. It purports to be a bank resolution for Group Administrative Services, Inc. Would you look at that and tell me, can you identify that?
- A. Yes.
- Q. Did you represent Dr. Sokol at the time that was prepared?
- A. At the time, 1977? Yes.
- Q. Now, if you will, would you look at the signature appearing as secretary and it purports to be Joel S. Sokol. Do you recognize that signature?
- A. It looks like Dr. Sokol's signature.
- Q. And this is for the entity Group Administrative Services, Inc., is it not?
- A. Yes.

Q. Now, if you will, will you look at the signature appearing alongside the title "President"? Whose signature is that, if you know?

A. George F. Serio.

Q. Off to the left is printed, and again that's "George F. Serio," is it not?

A. That's correct.

Q. When did Mr. Serio become president of that company?

A. I don't recall specifically when.

Q. But he was, in fact, the president of the company at some point, wasn't he?

A. As the record indicates, yes.

Q. Well, as the attorney for G.A.S., did you have any dealings with the purported president, at least, Mr. Serio, about the corporation?

I don't remember specifically having a conversation with Mr. Serio about that. I knew there were conversations concerning it, but I don't recall specific ones involving him.

Q. Now, did you have any business dealings at all on behalf of G.A.S. with Mr. Serio?

A. I don't think G.A.S. ever entered -- ever as an entity.

Q. Incorporated, wasn't it?

A. To the extent of it. I think it was.

Q. Now, at least, to operate as here?

A. Doing business as a

Q. If they did, it

Q. Now, you have a letter, marked "George F. Serio," signature above it, it's addressed State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Board of Optometry. Would you look at that letter and tell me,

wasn't that an attempt to do business?

A. All right. If you construe that to be an attempt, it is an attempt.

Q. In the course of the time that you were representing Dr. Sokol and, or I should say Dr. Sokol, P.A., I suppose, Metro, Group Administrative Services, Inc., did you ever apprise Dr. Sokol that there may be a possible conflict of interest what with their dental plan contracting with Local 478 and the corporation having George Serio, an officer of 478, as a president of that company?

A. I don't know whether there would be a conflict or not. I never apprised them of that, no.

Q. As an attorney at the time, did it occur to you that there, at least, might be the possibility, if not probability, of a conflict having a corporation containing as president George Serio, administrator to the welfare fund, and vice-president or secretary, Dr. Sokol, a provider to that welfare fund?

A. We never got to that bridge. We never got to a point where we had to make the determination. It never occurred to me at that point.

Q. You didn't feel at the point of incorporation that would be an appropriate time?

A. No. Mr. Serio could have informed the welfare fund of his position in Group Administrative Services and got their approval and there wouldn't be a conflict.

Q. He could have?

A. But they didn't get to a point of functioning.

Q. Do you know if he did?

A. I know of no relation between Mr. Serio and the welfare fund. You're asking a question of my advising Dr. Sokol. The answer is I never advised Dr. Sokol of a conflict.

Q. Likewise with G.A.S., you never advised the president of G.S.A., Mr. Serio, to so inform the welfare fund of his dual role?

- A. I never informed him of that, not that I remember.

The John Riggi Link

John Riggi of Linden has been described by law enforcement officers as the individual in charge of Simone (Sam the Plumber) DeCavalcante's New Jersey organized crime family due to the semi-retirement of DeCavalcante in Florida. One member of Riggi's mob, according to these same officers, was Comillo (William) Molinaro of West Orange, who became employed as a janitorial supervisor by one of the Sokol dental care corporations, in which role he served as Riggi's connection with the operation. When Franconero was questioned about Riggi and Molinaro, he confirmed their connections with the operation but denied any personal knowledge of their organized crime background:

- Q. Do you know a gentleman by the name of John Riggi?

A. Yes, I do.

- Q. No. How is it that you know John Riggi?

A. I know Mr. Riggi in connection with a -- meetings that took place in regard to a dental program.

- Q. What dental program was that?

A. Dr. Sokol's

- Q. Well, were you representing Dr. Sokol's dental program in some capacity at that time?

A. I was representing the plan.

- Q. And were you trying to solicit Mr. Riggi in some fashion on behalf of Dr. Sokol?

A. I wasn't. I was in attendance at a meeting.

- Q. Well, along the lines of John Riggi, is he, to your knowledge, a union official?

A. Yes.

- Q. What is he?

A. I don't know the specific title. I thought it was a business agent. I'm not sure.

- Q. Well, in any event, you attended meetings during which time Dr. Sokol attempted to get the business of Mr. Riggi's union; is that so?

- A. I was present at a meeting in which a proposal was made by Dr. Sokol -- I don't know who else -- to do the dental plan for Mr. Riggi's local.

- Q. And do you know whether, in fact, he ever got Mr. Riggi's local?

A. I don't think he ever did, to my knowledge. Not under contract.

- Q. Was the proposal a formal one, by that I mean a written proposal, or did he just mention it to him in the course of a meeting?

A. No, I don't remember a written proposal, but there may have been one at some point or another. I don't recall at that meeting a formal proposal.

- Q. Was Dr. Ferrara present at that meeting, if you know?

A. He may have been, but I just don't recall. I think he was.

- Q. To your knowledge, was John Riggi instrumental in any fashion with Joel S. Sokol, D.D.S., P.A., being awarded any future contracts with any unions?

A. Not to my knowledge.

- Q. Did he ever serve as an intermediary, to your knowledge, for Joel S. Sokol, D.D.S., P.A., and introduce Dr. Sokol to other union leaders and officials or business agents?

A. He may have, but I don't really know of my own knowledge whether that ever took place, Mr. Rhoads.

MR. RHOADS: May I have Commission Exhibit 6, please.

- Q. Now, Mr. Franconero, there came a time when you served as an attorney for Mr. Molinaro, was there not?

A. I did.

- Q. And I'm referring at this point, really, to both Comillo and his son Michael. Is that right?

A. Yes.

- Q. I'll show you Commission Exhibit 6, ask you first if you can identify it, and, if so, what do you identify it to be?
- A. That's an incorporation certificate for a company called G & M Services Company.
- Q. You were the attorney who incorporated that corporation, were you not?
- A. Yes.
- Q. Who are the principals in that corporation?
- A. Mr. Molinaro, Michael.
- Q. And what was the corporate purpose of that corporation?
- A. It was to do building services. That's what it says here.
- Q. Is it fair to say, janitorial functions?
- A. Yes.
- Q. Do you know whether there came a time when either Metro or Sokol, P.A., availed themselves of G & M, used them as janitorial service?
- A. Yes, I think, yes. The answer to your question is yes.
- Q. More particularly, was Comillo Molinaro ever hired by Sokol, D.D.S., P.A., or Metro to do work from them?
- A. I think the corporation was paid for services.
- Q. Well, did Mr. Molinaro himself ever come in and do janitorial services for Sokol, P.A., or Metro?
- A. He did.
- Q. Did you ever observe him doing it?
- A. Yes.
- Q. On behalf of Joel S. Sokol, P.A., and Metro, who was the one or ones that actually hired G. & M to perform their janitorial services?
- A. Mr. Resnick.

- Q. Are you familiar with the circumstances during which time Mr. Resnick hired G & M?
- A. No.
- Q. How do you know that he did?
- A. I know that Mr. Molinaro would deal with Mr. Resnick.
- Q. Meaning what? Would you expand on that, please?
- A. Well, if Mr. Resnick was really the administrator, the person in charge of getting the work done at the facilities, and he would be the one that Mr. Molinaro would deal with.
- Q. Well, you're now concluding. What I am asking is, do you actually know whether Mr. Resnick picked up the phone, called and said, "Mr. Molinaro, you're going to be our janitor now"?
- A. No.
- Q. Something to that effect?
- A. Not that I know of. I know I'm sure he spoke to him, but I wasn't aware of the specific conversation that took place, Mr. Rhoads.
- Q. All right. How many years have you known Mr. Riggi?
- A. I must have met Mr. Riggi maybe three or four times in my life.
- Q. Over what span of time?
- A. I said maybe five times total. Over two years.
- Q. During those two years you know Mr. Molinaro, did you not?
- A. Yes.
- Q. To your knowledge, did Mr. Molinaro know John Riggi?
- A. Yes.
- Q. To your knowledge, did he ever perform any work for Mr. Riggi?

- A. To my knowledge, I don't know.
- Q. Did you ever hear or do you know John Riggi to be the head of the Sam DeCavalcante organized crime family in New Jersey?
- A. Do I know it?
- Q. Yes, do you know that?
- A. No, I don't know it.
- Q. Have you ever heard it?
- A. What I read in the newspapers.
- Q. And during the occasions that you met Mr. Riggi did you ever ask him about it?
- A. Never.
- Q. Is there any reason why you did not?
- A. I don't necessarily believe what I read in the newspapers, Mr. Rhoads.

The Commission's interrogation of Franconero turned again to Dr. Hyman. Franconero recalled that Resnick and Dr. Hyman ultimately split up, leaving Resnick in control of Metro Dental Services, the administrative corporation for the Sokol dental clinics. Franconero recalled that Dr. Hyman "didn't want to function in New Jersey any more or didn't have the time." Franconero also recalled Dr. Hyman attending meetings at which John Riggi was present. His testimony continued:

- Q. Well, during the meeting or meetings that you had wherein you said you attended, Mr. Riggi attended, Mr. Sokol was in attendance, Dr. Hyman was there, wasn't he?
- A. I think on one or two occasions Dr. Hyman was present.
- Q. And did you form any opinion as to whether Dr. Hyman had known John Riggi prior to your knowing him?
- A. I knew he knew Mr. Riggi, yes.
- Q. He knew him for quite awhile, didn't he?
- A. I don't know for how long.
- Q. Well, how is it that you know that Dr. Hyman knew Mr. Riggi?

- A. Because they spoke on a first-name basis when they were at the table.
- Q. Did they ever discuss any of the dental business?
- A. Just a proposal to do the work for Mr. Riggi's union.
- Q. Well, to your knowledge, did Dr. Hyman ever pay John Riggi in return for John Riggi introducing him to labor leaders or what-have-you?
- A. Not to my knowledge.
- Q. How about Dr. Sokol?
- A. Never that I know of.
- Q. Mr. Resnick?
- A. No.

Dr. Sokol's Partner

The next witness, Dr. Anthony J. Ferrara, the partner in Dr. Sokol's professional corporation, told how the Sokol clinics expanded to include contracts with a number of labor unions in his testimony before the Commission:

- Q. All right. Now, Doctor, having once secured the contract with Local 478, did you then go on to contract with any other locals?
- A. Yes.
- Q. And if so, what were they?
- A. Local 1262.
- Q. And if you know, were they the Retail Clerks?
- A. Correct.
- Q. And as your father did in Local 478, more or less give you an introduction or, at least, initiate the negotiations between Sokol, P.A., and 478, did anyone do a similar service for you at 1262?
- A. I don't know who made the first introduction at 1262.

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Q. Were you involved in any of the negotiations between Sokol, P.A., and 1262?

A. Not actually the negotiations. I may have been involved in the initial meetings, in other words, who were the principals, you know, what does Dr. Ferrara do, so I may have been with Mr. Kinsora at some point to introduce myself.

Q. Who is Mr. Kinsora?

A. President of that local.

* * *

Q. Well, just for general background, what was your role within the corporate entity of Sokol, P.A.?

A. I had more of a clinical role. I was doing surgery and sort of just monitoring the actual day-to-day dental practice, the actual performance of dentistry.

Q. All right. Then, as I understand it, then, you did get involved, at least to a minor degree, in any of the negotiations; is that correct?

A. I would go as introductions; this is our oral surgeon, this is who runs our oral surgery, just merely to meet the people, be familiar.

Q. Now, other than 1262, did you go on to contract with any other locals?

A. Right, 906 in Mahwah. That's Ford, U.A.W. workers.

Dr. Ferrara also testified about his recollections of John Riggi:

Q. In your early-on years of Sokol, P.A., did there ever come a time, to your knowledge, where the professional association attempted to contract with John Riggi's union?

A. Yes.

Q. Were you involved in any of those negotiations?

A. Well, I think I may have just again gone along to a meeting where I was introduced as an oral surgeon.

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Q. All right. In any event, your recollection is that Sokol, P.A., had already had clients, if you will?

A. Yes.

Q. And then you attempted to bring or John Riggi's union?

A. Correct.

Q. Did you know Mr. Riggi prior to your reaching out and trying to contract with him?

A. No, the first I met him was when we tried to, you know. I think we -- I don't know where we specifically met the first time, but I think this was after we were functioning as a dental organization for a while.

Dr. Ferrara explained how the original Resnick-Hyman relationship changed to Resnick-Sokol:

Q. Now, you eventually took on an entity by the name of Metro Dental Services, Inc., --

A. Right.

Q. -- to serve as administrator to Sokol, P.A., did you not?

A. Correct.

Q. Metro Dental Services, Inc., early on the principals were a Mr. Stanley Resnick and a Dr. Jesse Hyman, were they not?

A. Correct.

Q. Who, if anyone, introduced you -- "you," I mean both individually and Sokol, P.A. -- to Messrs. Resnick and Hyman?

A. I think the first time I met Stanley and Dr. Hyman was before we even started our initial facility. They were doing some other kind of a dental program, but they were looking for an employee of oral surgeons just to come in and do oral surgery for them. I was not interested in that. I had one brief meeting with them where they were interviewing me for the possibility of doing oral surgery for them on that basis, but I told them I wasn't interested.

I think we were functioning for awhile, a few months with 478 and we wanted to do some expansion at that point because all the membership was really only coming to the one site and we were on a modified plan at that point. We had a site where the membership could come to without additional cost to the member and then -- or they could go out to their own dentists and they were paying claims. But at that point we thought we were going to need more sites if we were going to do this kind of operation. So --

Q. Well, let me just interrupt for a moment. I want to get back to the marrying up, if you will, of Sokol, P.A., and Metro.

A. That's what I'm trying to bring together. They, Mr. Resnick and Jesse Hyman, were introduced to us and they -- Jesse apparently has a facility in Buffalo that's a large dental facility, and at that time there were really relatively few around. So Joel thought it would be good to bring someone on board who knew a little bit more on the larger-scale facilities than we did.

Q. So that would have been Dr. Hyman?

A. Dr. Hyman. And, so, also Mr. Resnick had the expertise in putting these larger facilities together, in the building, the maintenance, the upkeep and the equipment, all of which we -- I don't feel Joel and I really had very much expertise based on a lot of problems we had trying to build our first facility. We were dentists, didn't know too much about dealing with builders.

Q. Given that, you formed a relationship with Metro?

A. Right.

Q. They were to serve as your administrative arm?

A. Right, they were going to do administration and provide facilities for us. But --

Q. There came a time when Dr. Hyman, if you know, Dr. Hyman left the corporate entity Metro Dental, did he not?

A. Correct. Well, he wasn't really doing anything with the corporate entity, so I think it was a mutual agreement that he leave.

Q. During the course of time your corporation was negotiating with John Riggi was Dr. Hyman present?

A. I don't know. He may have been. I don't know. I don't think so.

Q. Well, to your knowledge did Dr. Hyman know John Riggi?

A. I believe he did.

Q. Do you know how it is he knew John Riggi?

A. No. We had a very short-term relationship with Dr. Hyman. I mean he left the organization relatively early. I think it was later, much later from that date, that we actually tried to put a plan into Mr. Riggi's group.

THE TESTIMONY -- FOURTH AND FINAL DAY

FRIDAY, DECEMBER 12, 1980

Opening Comments

The agenda for the Commission's final hearing session included testimony by 16 witnesses and the introduction -- with accompanying explanations -- of 10 charts on corporate and individual cash and check transactions. Because of the heavy schedule, Chairman Lane's opening commentary was brief:

The Commission's public hearing on various organized crime influenced dental care plans now enters its final stages. We will resume where we left off yesterday, when we began taking testimony on the abuses in this field in the northern part of New Jersey.

As with the previous public hearing depiction of dental plan practices in South Jersey, today's testimony is expected to further demonstrate the extent to which labor union health and welfare trust funds are being abused by disreputable dental service promoters and irresponsible labor leaders, closely - and secretly - allied with known mobsters. To an even greater degree than in South Jersey, today's testimony and exhibits will reveal the multiplicity - and the duplicity - of corporate and personal bookkeeping designed solely to hide the generation and diversion of cash for wrongful purposes. Because of the complexity of these financial machinations, numerous charts and diagrams based on many months of scrutiny by the commission's accounting staff have been prepared for display to clarify these transactions as they are discussed with witnesses.

The Cash Flow Charts

Julius M. Cayson, Jr., the Commission's chief accountant since 1972, began the session with a step-by-step explanation of charts illustrating how various corporations involved in the promotion, servicing, administration and operation of the numerous Sokol P.A. dental clinics handled their financial transactions for the years 1977, 1978 and 1979. Cayson began with an analysis of the receipts for the entity known as Joel S. Sokol, D.D.S., P.A., displayed on a chart which confirmed that total receipts had increased more than seven fold over the three-year period, from almost \$502,000 to more than \$3.6 million.

However, the Commission first established its chief accountant's professional credentials and ascertained the methodology for compiling the various financial assessments:

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Cayson, are you also a certified public accountant?

A. Yes, sir, I am.

Q. Prior to becoming the chief accountant at the S.C.I., where were you employed?

A. The Internal Revenue Service.

Q. For how long?

A. Eleven-and-a-half years.

Q. What were you doing there?

A. I was a criminal investigator of that division, special agent.

Q. What were the source materials for these Exhibits.

A. Books, records and other external evidence gathered by the staff during the course of their investigation.

Q. Were these mostly the books and records of those entities named; that is, Burke Enterprises, Metro Dental, Western Realty and Joel S. Sokol, D.D.S., P.A.?

A. Yes, Commissioner, they were primarily, but we found we had to make considerable third-party inquiries to verify certain representations in the books and records.

Q. And you did make those inquiries and got those verifications?

A. Yes, sir, we did.

Q. Do those exhibits accurately represent the findings that you and those working under your supervision made of the receipts and disbursements for Joel Sokol, D.D.S., P.A., Western Realty, Metro Dental and Burke Enterprises?

A. Absolutely.

EXAMINATION BY MR. RHOADS:

- Q. Now, Mr. Cayson, I direct your attention to this graph,* and is this one of the graphs that we have foredescribed?
- A. Yes, it is.
- Q. Now, with regard to the figures, preliminarily, as an example, 402,400, is that an accurately depicted figure or is that rounded off in some fashion?
- A. We rounded the figure off for simplicity's sake to the nearest hundredth.
- Q. Mr. Cayson, directing your attention, again, to the illustration, if you read the top, it reflects Joel S. Sokol, D.D.S., P.A. receipts. What is Joel S. Sokol, D.D.S., P.A.?
- A. Joel S. Sokol, D.D.S., P.A. is the dental provider for various unions located principally in the northern part of the state.
- Q. Now, directing your attention below the name of the entity, it reads "receipt." What does that mean?
- A. That denotes cash receipts.
- Q. Fine. Now, in that regard, we have Local 478, Joint and Welfare. What is Joint and Welfare?
- A. That evidently is the arm that dispenses funds from their Health and Welfare Fund.
- Q. So this, then, would indicate on this graphic illustration the receipts or income, if you will, derived from Local 478?
- A. That's correct.
- Q. Below that we see UAW 906. What is UAW 906?
- A. That is the United Auto Workers Local 906 based in Mahwah, New Jersey.

*See P.168

JOEL S. SOKOL, D.D.S., P.A.

RECEIPTS

LOCAL 478 JOINT & WELFARE	1977	402,400	JOEL S. SOKOL D.D.S., P.A.
	1978	412,600	
	1979	508,200	
U.A.W. 906	1977	3,100	
	1978	190,500	
	1979	734,100	
LOCAL 1262	1977		
	1978	267,900	
	1979	1,377,100	
VARIOUS OTHER CONTRACTS & CLAIMS	1977	3,100	
	1978	96,400	
	1979	354,700	
OTHER INCOME	1977	780	
	1978	86,700	
	1979	59,800	
LOAN	1977	20,200	
	1978	124,500	
	1979	476,200	
LOANS/EXCHANGES FROM RELATED CO.'S & INDIVIDUALS	1977	72,400	
	1978	142,000	
	1979	147,500	
			1977 501,980
			1978 1,320,600
			1979 3,657,600

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Q. And is this, again, illustrating income derived, or receipts derived, from Local UAW 906?

A. Yes, it is.

Q. Dropping below we have Local 1262. What is Local 1262?

A. Retail Clerks.

Q. 1977, did we have a figure for that year?

A. We did not have a figure because their contract was not operative until the latter part of 1978.

Q. Dropping down, Various Other Contracts and Claims. What would be included within that?

A. This would include all the other unions, private patients and monies from whatever source, which would come -- which would go into what we call the income account or revenue account.

In other words, they service 20, 30, 40 unions, but 478, 906 and 1262 constitute 90 percent of the income of the Joel Sokol, D.D.S., P.A.

Q. Now, you have Other Income below that, and what would be included in this box?

A. The Other Income is principally income from private patients.

Q. Dropping down, we have Loans. Now, these are presumably loans taken by the P.A.; is that so?

A. That is correct. Yes.

Q. Now, these loans are on here presumably because that constitutes receipts to the P.A.; is that so?

A. Receipts, but not income, yes.

Q. Dropping down to the bottom, Loans/Exchanges from related companies and individuals. Now, what do we mean by Loans/Exchanges?

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A. A loan is, of course, a loan. An individual or principal would lend money to the P.A., and, of course, that was treated just like any other loan by a banking institution.

However, due to the fact it was an individual, we would so specify.

An exchange might be an item that comes in and it is really run through the account for convenience sake and a check is immediately disbursed upon receipt of those particular funds. It is -- I mean, it's a washed transaction so to speak.

Q. All right. Now, off to the right of this graph it reads Joel S. Sokol, D.D.S., P.A. and it lists the three years again. Do those constitute aggregate figures for the three years?

A. That's right. Not only aggregate, all the years. For 1977, it's 501,980; for 1978, 1,320,600; and 1979, 3,657,600.

MR. RHOADS: May I have 27B, please.

Q. For the record, this is graphic illustration identified as Commission Exhibit 27B.* I direct your attention to the top of this graph, Mr. Cayson. It reads Joel S. Sokol, D.D.S., P.A., Disbursements. What is a disbursement?

A. A disbursement is an expenditure of cash or its equivalent.

Q. Dropping down to the left-hand portion, the middle, it reads Joel S. Sokol, D.D.S., P.A. It lists three years. Again we have 1977. What figure does this constitute?

A. That constitutes the total cash disbursement for that year.

* * *

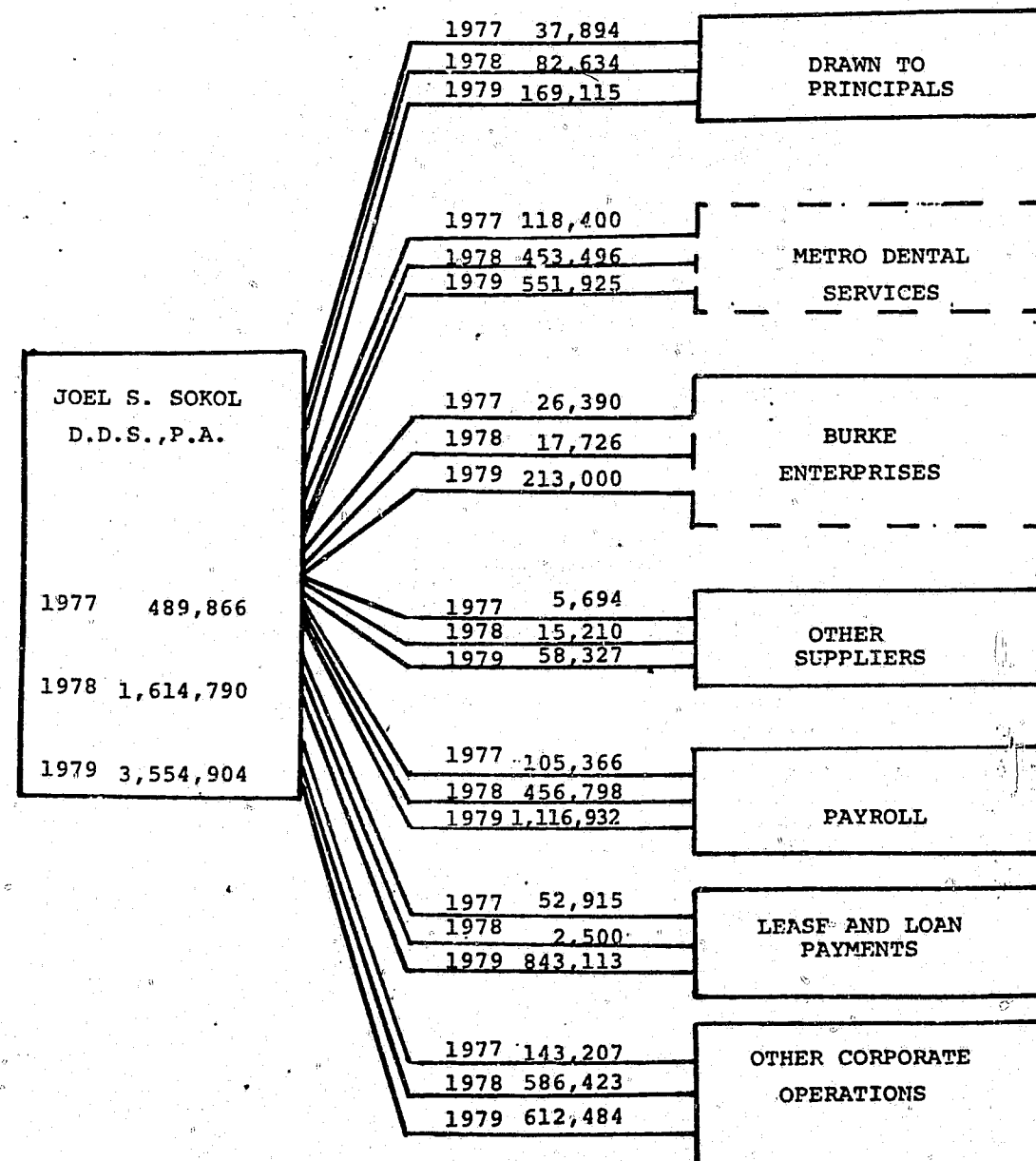
*See Chart, P. 171

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JOEL S. SOKOL, D.D.S., P.A.

APPLICATION OF WORKING CAPITAL

(Disbursements)



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* * *

Q. For the record, '78 is 1,614,790; 1979 is \$3,554,904.

Now, off to the right you have various boxes, and am I to assume, then, this depicts where the money went?

A. Exactly.

Q. Okay. Now, reading up here, Drawn to Principals, what does that mean?

A. We determined that a principal is any officer or party with an interest, an equity interest, in the particular corporation, and we broke out these particular figures to reflect the amount of money paid to the principals.

Q. Well, in the professional association, who are some of the principals?

A. Of course Dr. Joel S. Sokol; Dr. Anthony Ferrara, and for the purposes of determining who's a principal, we also included Mr. Stanley Resnick.

Q. Thank you. And in that regard, then, for the three years, what are the reflected figures?

A. 37,894 in '77; 82,634 in '78; and \$169,115 in '79.

Q. Dropping down to the next disbursement box, it reads Metro Dental Services. What is Metro Dental Services?

A. Metro Dental Services as we understand it, is the administrative and construction arm for the Joel S. Sokol D.D.S., P.A. That is, it was originally envisioned that this entity would acquire sites, acquire equipment, and in furtherance of this particular purpose, expenditures were made from the Joel S. Sokol, D.D.S., P.A. for the purposes of construction and acquiring equipment.

Q. Now, again, with the three years in mind, '77, '78 and '79, would you read those figures, please.

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A. In '77, 118,400; '78, \$453,496; and in 1979, \$551,925.

Q. Dropping down, we read Burke Enterprises depicting monies going to Burke Enterprises. What's Burke Enterprises?

A. Burke Enterprises was the sole provider of dental chairs and supplies to Joel S. Sokol, D.D.S., P.A.

Q. And for the same three years would you read those figures, please.

A. Mr. Rhoads, may I amend my testimony?

Rather than say "sole provider," I would say they provided maybe 99 percent of the then dental supplies. They provided all the chairs, but 99 percent of dental supplies. There were one or two other major suppliers.

Going down the figures, 1977, 26,390; '78, 17,726; and 1979, \$213,000 even.

Q. Dropping down to the next disbursement box, it reads Other Suppliers. Is that what you meant when you were indicating there are others than Burke?

Would you read those figures, please.

A. 5,694; 15,210; and 58,327.

Q. Again, dropping down, we read Payroll. Am I correct in assuming that would be the employees, the salaries they derive?

A. These are the staff dentists, dental assistants, hygienists and support personnel.

Q. When you say "staff dentists," then is it fair to say there are dentists other than Dr. Sokol and Dr. Ferrara?

A. Absolutely.

Q. Would you read those figures, please.

A. For 1977, that was 105,366; '78, 456,798; and 1979, \$1,116,932.

Q. Dropping down, next we read Lease and Loan Payments. Just briefly tell us what that is, that Lease and Loan Payments?

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A. Surely. The Joel S. Sokol, D.D.S., P.A. -- I'll address my remarks in 1977 and 1978. In 1977 and 1978 they were leasing cars and various other equipment. In 1979 you see a dramatic increase in the lease and loan -- lease payment, however, particularly here, because in September of 1979, they took on the payment formerly assumed by Metro for the purpose of paying equipment and also for space.

So 1977, it's 52,915; 1978, 2,500; and in 1979, a very, very dramatic jump of \$843,113.

Q. Thank you. And lastly we read Other Corporate Operations. What does that term mean?

A. That term is an all encompassing term meaning to include all other expenditures not reflected above in the boxes that we have just testified to; that is, this is light, heat, power, paper supplies, things of that sort.

MR. RHOADS: May I have the next chart, please.

Q. For the record, this is Commission Exhibit 28A.*

Mr. Cayson, I direct your attention to the top of the chart. It reads Metro Dental Services. During the course of your duties involving this investigation, did you have occasion to direct subpoenas toward that entity?

A. Yes.

Q. And as a result of the information garnered therefrom, did you have occasion to direct this illustration?

A. Yes.

Q. Directing your attention to the top left upper portion, Joel S. Sokol, D.D.S., P.A. and it has three years there. Are they receipts derived from Joel S. Sokol, D.D.S., P.A.

*See Chart, P. 175

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METRO DENTAL SERVICES
RECEIPTS

JOEL S. SOKOL D.D.S., P.A.	1977	148,550	METRO DENTAL SERVICES
	1978	441,300	
	1979	551,700	
OTHER INCOME	1977	-	
	1978	4,050	
	1979	75,100	
BURKE ENTERPRISES	1977	31,000	
	1978	60,000	
	1979	59,200	
LOANS/EXCHANGES FROM RELATED CO'S & INDIVIDUALS	1977	17,100	
	1978	70,600	
	1979	-	
OTHER LOANS AND LEASES	1977	219,000	
	1978	105,700	
	1979	-	
LOAN PROCEEDS TO THIRD PARTIES	1977	298,700	
	1978	533,900	
	1979	118,300	
HYMAN AND RESNICK OR H & R INC.	1977	8,950	
	1977	723,300	
	1978	1,215,550	
	1979	804,300	

- A. That's correct.
- Q. Would you read those figures, please.
- A. 148,550; 441,300; 551,700.
- Q. Dropping down, it reads Other Income, 1977. There's a blank. Is there a reason for that?
- A. There was no other income.
- Q. 1978?
- A. \$4,050.
- Q. 1979?
- A. \$75,100.
- Q. Continuing on, Burke Enterprise, listing the same three years. Would you give us those figures, please.
- A. 31,000; 60,000; and 59,200.
- Q. Loans/Exchanges From Related Companies and Individuals. Would you give us the figures depicted there?
- A. In regard to the Burke Enterprises, I think it should be brought out that Metro Dental does not provide any service for Burke Enterprises and these particular payments received from Burke Enterprises will be the subject of elaboration by witnesses subsequent to myself, but I didn't want to leave that particular section without bringing that out.
- Q. The suggestion being a quid pro quo, if you will; no return of service for this income?
- A. I think that's fair to state that.
- Q. Again, directing your attention, now, to Loans/Exchanges From Related Companies and Individuals, what figures are depicted there?
- A. 17,100; 70,600.
- Q. Other loans and leases?
- A. 219,000 and 105,700.

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Q. Loan Proceeds to Third Parties?

A. 298,700; 533,900; and 1979, 118,300.

Q. What does Loan Proceeds to Third Parties mean?

A. I was going to say, I think that needs a little elaboration.

Metro Dental, of course, acquired the dental chairs and all the major equipment acquisition as far as Joel S. Sokol, D.D.S., P.A., and in granting those -- in acquiring those particular pieces of equipment, there were loans taken out. Those loans were taken out under the name of Metro Dental; therefore, the liability therefore had to be reflected on their books and that's what this one represents.

Q. Dropping down, the last box, Hyman & Resnick or H&R Inc. What is H&R Inc.?

A. Hyman & Resnick, as far as we can ascertain, was a real estate entity operating in New Jersey in the year 1977, and after, as far as we can determine, after 1977, they were defunct.

Q. We have heard testimony involving a Dr. Jesse Hyman. Is that Dr. Hyman?

A. Yes, it is.

Q. You had occasion to aggregate these figures, did you not?

A. Yes, we did.

Q. They are reflected under Metro Dental Services for 1977?

A. 723,300.

Q. 1978?

A. 1,215,550.

Q. And '79?

A. 804,300.

MR. RHOADS: Any questions on this graph?

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THE CHAIRMAN: I'm not sure that the Loan Proceeds to Third Parties is fully understood. Would you just go through that slowly?

THE WITNESS: If they were to acquire, say, some equipment for a hundred thousand dollars and that particular equipment was to be financed by the National State Bank, the procedure would be that the loan would be taken out in the name of Metro Dental, but the hundred thousand dollar check from the National State Bank to cover this expense will go to Burke Enterprises now to properly reflect the liability on somebody's books. The liability would have to be picked up on the books of Metro Dental Service, Inc.

MR. RHOADS: May I have the next graph, please.

Q. For the record, this would be Commission Exhibit 28B.* This reads Metro Dental Services Disbursements.

A. That is correct.

Q. Now, with respect to disbursements, we have Drawn to Principals. Would you read the figures for those three years.

A. 45,300; 48,400; and 31,500, and that is '77, eight, and nine.

Q. For those three years, if you know, who were the principals of Metro?

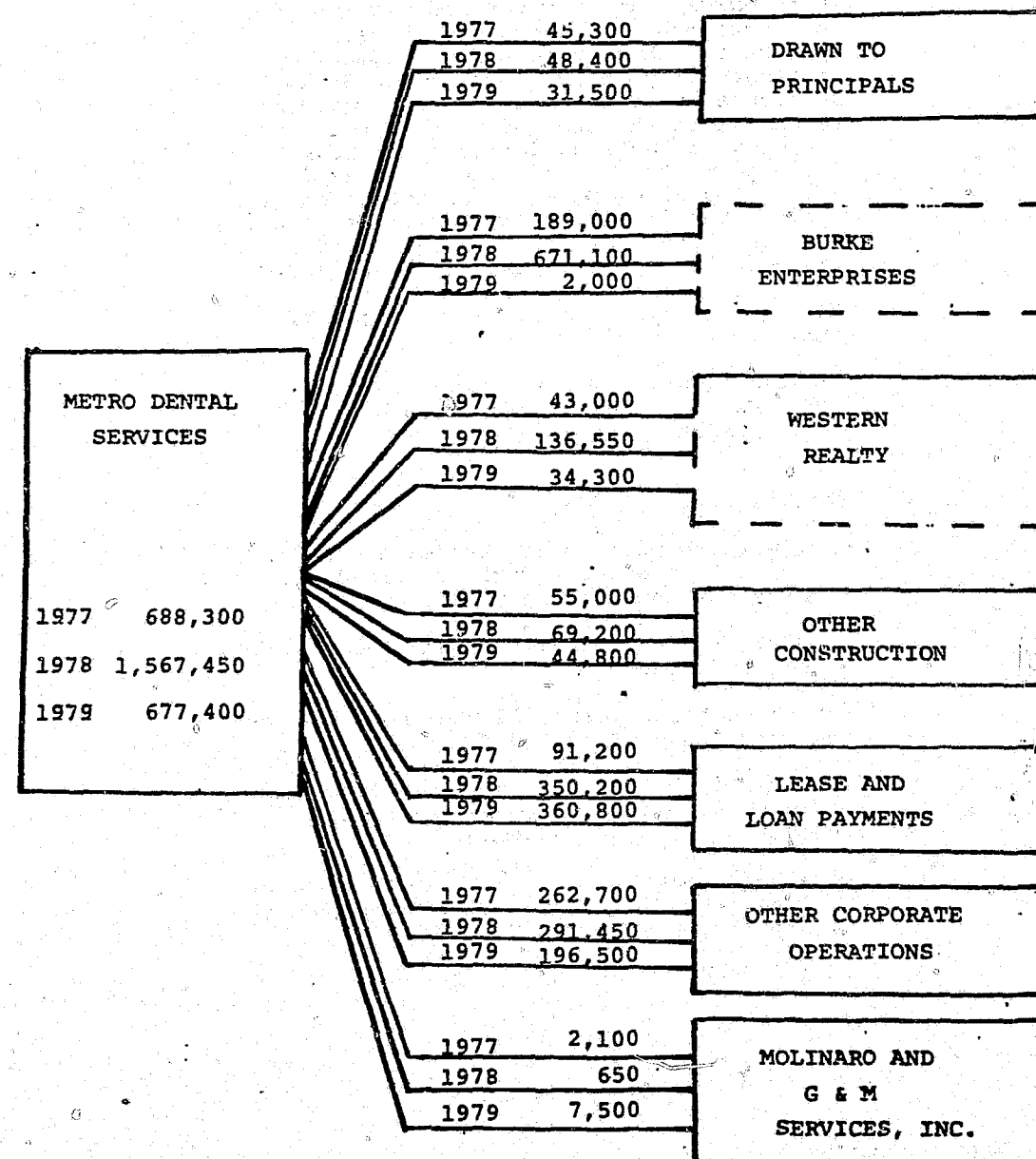
A. The principals, as far as we can ascertain, of Metro Dental Services were Stanley Resnick and Dr. Jesse Hyman.

Q. Did there come a time during your investigation that you found Dr. Jesse Hyman was no longer a principal of Metro?

A. That's true.

*See Chart, P. 179.

METRO DENTAL SERVICES
DISBURSEMENTS



- Q. Dropping down to Burke Enterprises, would you please read the disbursements for those years.
- A. 189,000; 671,100; and \$2,000.
- Q. The next would be Western Realty, and before you read those, would you please tell us, what is Western Realty?
- A. Western Realty was an entity which performed what I would call leasehold improvement service on the various facilities that were rented.
- Q. Do you know who the purported principals of Western Realty are or is?
- A. As far as the staff is concerned, Western Realty is a defacto partnership consisting of Seymour Cohen and Stanley Resnick.
- Q. Dropping below, we have Other Construction. Just briefly, what is that?
- A. Well, this would be payments for construction other than by Western Realty.
- Q. And those figures?
- A. 55,000; 69,200; and 44,800.
- Q. Lease and Loan Payments?
- A. Now, Lease and Loan Payments, again, those were payments that were made for equipment which was leased, purchased, and/or for loans that were taken out in the name of Metro Dental.
- Q. And what were those disbursements?
- A. 91,200; 350,200; and 360,800.
- Q. Other Corporate Operations, would you read those figures, please.
- A. 262,700; 291,450; and one ninety-six five.
- Q. Molinaro and G&M Services, Inc.?
- A. G&M Services, Inc. is a corporation which we have ascertained was under the direction of Camillo Molinaro.
- MR. RHOADS: May I have the next graph, please.

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Q. For the record, this is Commission Exhibit 29A.* It reads Western Realty company receipts. Is that the Western Realty you had alluded to in the previous graph?

A. This is correct. It is.

Q. It [lists] Metro Dental Services. Could you tell us the amount of the receipts for the three years to Western?

A. 43,000; 133,050; and 17,155.

Q. Joel S. Sokol, D.D.S., P.A.

A. 20,000.

Q. And for the years '78 and '79, is there a reason why they are not reflected?

A. There were no payments, no receipts by Sokol to Western Realty.

Q. Seymour Cohen.

A. 10,324; 7,500.

Q. That's for the years '78 and '79?

A. That's correct.

Q. Stanley Resnick.

A. 18,500 and 4,350.

Q. For '79 it's blank. Why is that?

A. There were no receipts for Mr. Resnick.

Q. Redeposit of Western Checks to Third Parties. Just explain what that phrase means.

A. Yes. We found, or in reviewing the checks, that there were certain checks made out to individuals allegedly performing services. We found those particular checks were endorsed secondarily and also by principals of Western Realty and redeposited into the account.

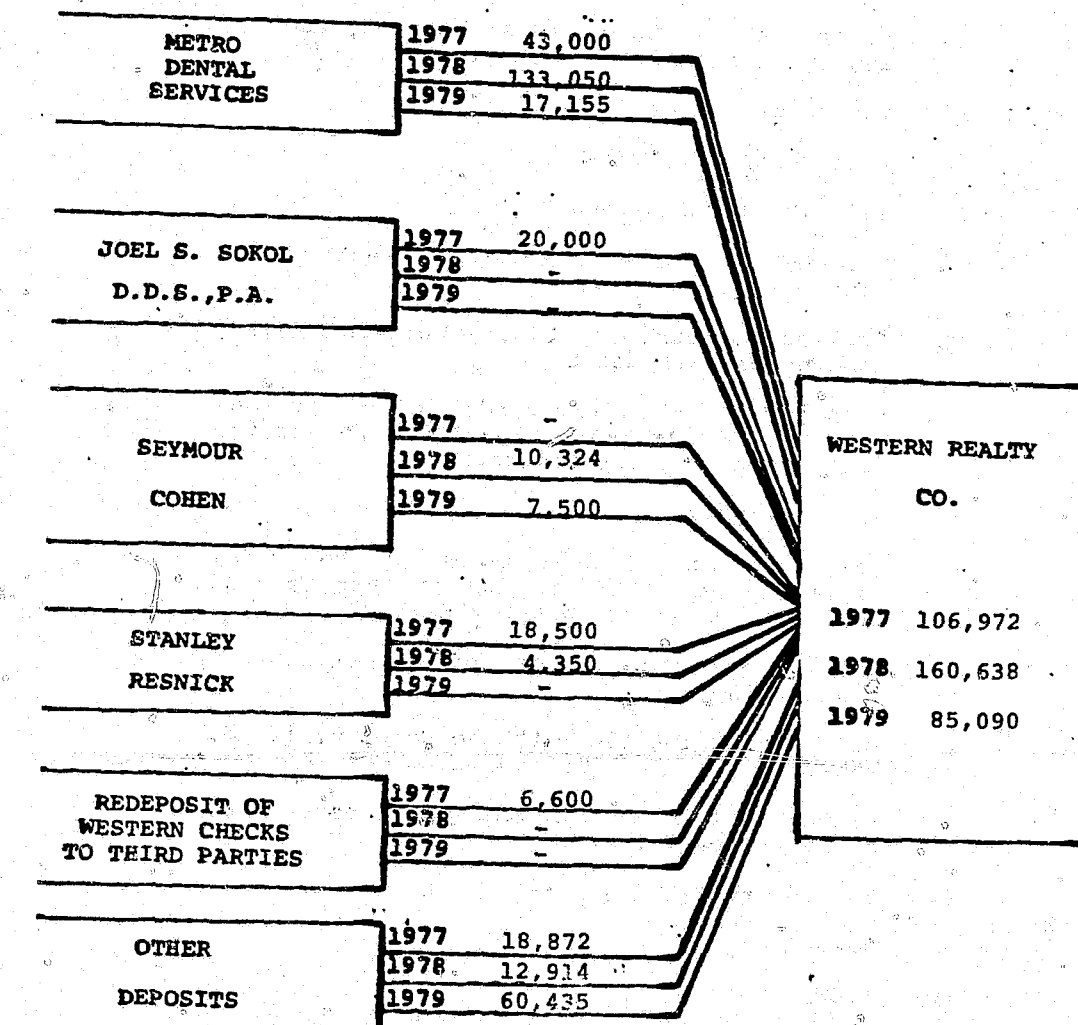
Q. Dropping down, other deposits. What does that mean?

*See Chart, P. 182

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WESTERN REALTY CO.

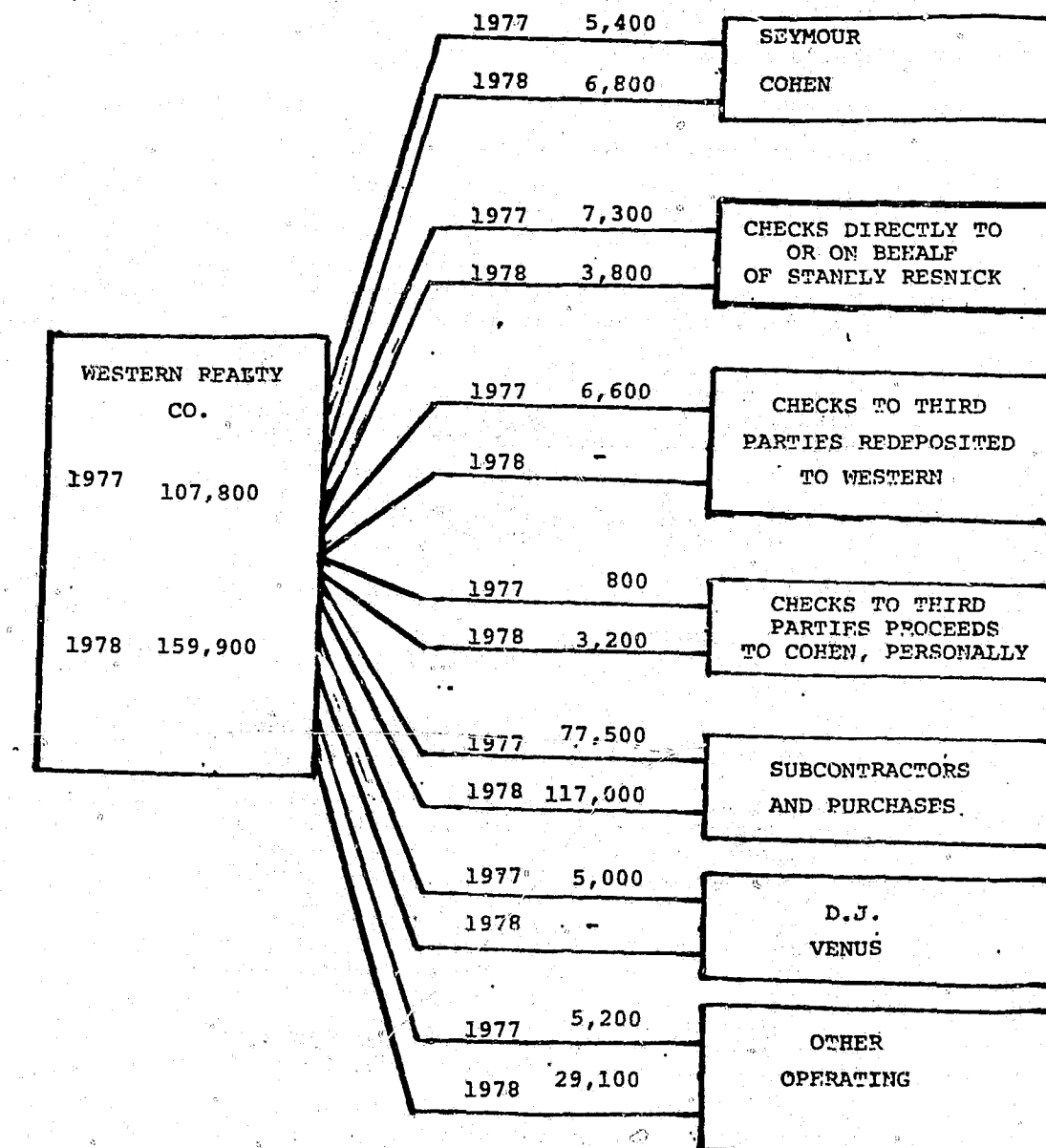
RECEIPTS



- A. That means Western Realty not only performed services for Joel Sokol, D.D.S., P.A., but they did perform services for other entities and that box is intended to reflect that fact.
- Q. Moving to the right, does that indicate the aggregate amount for those three years?
- A. That's true, yes.
- Q. Read those off, please.
- A. 106,972; 160,638; and 85,090.
- MR. RHOADS: May I have the next graph, please.
- Q. Commission Exhibit 29B,* Western Realty Company Disbursements.
- Dropping to the left-hand middle portion, 1977, \$107,800; 1978, \$159,900. For continuity, are they the figures?
- A. That's right.
- Q. Now, for the disbursements we have Mr. Seymour Cohen. Do you know whether he held any position within Western Realty?
- A. Mr. Cohen performed most of the electrical contracting work.
- Q. Did he have a title with the company, if you know?
- A. As far as the general public was concerned, he is the owner.
- Q. For the year 1977, is --
- A. 5,400.
- Q. '78?
- A. 6,800.
- Q. The next disbursement box, Checks Directly to or on Behalf of Stanley Resnick. What would that mean, "or on behalf of Stanley Resnick"?

*See Chart, P. 184

WESTERN REALTY CO.
DISBURSEMENTS



- A. They paid an obligation which was primarily an obligation of his with a check of Western Realty.
- Q. So he would have a liability and Western would pay it for him?
- A. That's right.
- Q. For the year 1977
- A. Seventy-three hundred dollars.
- Q. For '78?
- A. 3,800.
- Q. Checks to Third Parties Redeposited to Western. What does that mean?
- A. That's the item we mentioned before. They draw a check to a third party, have that third party endorse the check and redeposit that particular check in their particular account.
- Q. In other words, it goes back to where, to the individual or to Western?
- A. Back to Western.
- Q. And those amounts?
- A. Was \$600.
- Q. Checks to Third Parties Proceeds to Cohen, Personally. And for those two years?
- A. Yes. It was \$800 and \$3,200, and that meant that, that box means to depict that although the checks are made out to third parties, they eventually found their way principally into Mr. Cohen's savings account.
- Q. Subcontractors and Purchases. What were the amounts that went out there? What were they?
- A. These were the normal operating expenses of the construction company; 77,500 and 117,000.
- Q. D.J. Venus. Is that an individual?
- A. D.J. Venus is an individual from the state of Mississippi.

- Q. Okay. In 1977, what's the amount that went to Mr. D.J. Venus?
- A. The amount that went to Mr. Venus is 5,000 and is charged on the books to cabinets for whatever facilities.
- Q. 1977, '78, for Other Operating, what is the Other Operating?
- A. That means everything not depicted above is reflected there.
- Q. This amount that went to Mr. Venus for 1977, the 5,000, if you know, did the books and records of Western Realty show that it was ever paid by Mr. Venus?
- A. It was not, as far as we can ascertain, no.
- Q. Thank you.
- A. Hm-hum. Furthermore, it was charged to expenses, so, therefore, it wasn't a loan.
- Q. This is Commission Exhibit 30A.* It reads Burke Enterprises Receipts. That's the Burke Enterprises you had previously alluded to; is that right?
- A. That's right, yes.
- Q. Joel S. Sokol, D.D.S., P.A. Would you read those figures for the three years?
- A. 26,400; 15,000; and 208,000.
- Q. Metro Dental Service.
- A. 225,200 only in 1978.
- Q. Lease/Finance Companies on Metro/Sokol Behalf. What does that phrase mean?
- A. Okay. That was the example I gave to Chairman Lane.

In other words, the theoretical hundred-thousand-dollar check from the National State Bank taken out of Metro's name would

*See Chart, P. 187

BURKE ENTERPRISES

RECEIPTS

JOEL S. SOKOL D.D.S., P.A.	1977	\$ 26,400	BURKE ENTERPRISES
	1978	15,000	
	1979	208,000	
METRO DENTAL SERVICES	1977	-	
	1978	225,200	
	1979	-	
LEASE/FINANCE CO.'S ON METRO/SOKOL BEHALF	1977	189,000	
	1978	445,900	
	1979	274,500	
STANLEY RESNICK ON METRO'S BEHALF	1977	20,000	
	1978	-	
	1979	-	
ALL OTHER CUSTOMERS	1977	1,800	
	1978	17,500	
	1979	1,350	
JOHN BURKE	1977	40,100	
	1978	4,700	
	1979	18,250	
LOANS & EXCHANGES AND OTHER MISCELLANEOUS	1977	5,000	
	1978	2,900	
	1979	-	
			1977 \$ 282,300
			1978 711,200
			1979 502,100

be deposited into Burke's account, and the box there is intended to depict the fact that in 1977, \$189,000 even; and '78, 445,900; and in 1979, 274,500 of deposits of that type were deposited in Burke's account.

- Q. I see. And what are the amounts, again, for those years?
- A. 189,000 even; 445,900; and 274,500.
- Q. Now, the next receipt box depicted, Stanley Resnick on Metro's behalf. What do you mean "On Metro's Behalf"?
- A. Mr. Resnick made a deposit of 20,000 to Mr. Burke's account -- rather he gave Mr. Burke a check for \$20,000, which was deposited, and that \$20,000 was for -- to be used in the enterprise.
- Q. What are the amounts from All Other Customers?
- A. That's all other customers that Mr. Burke had other than Joel S. Sokol, D.D.S., P.A. and Metro.
- Q. John Burke, is that the individual --
- A. Yes.
- Q. -- for whom this entity is named?
- A. That's right, and Burke operates a sole propriety and we ascertained he had a capital contribution in the amounts of 40,100, 4,700 and \$18,250 for the particular years involved that represents capital income.
- Q. Loans & Exchanges and Other Miscellaneous. What's the miscellaneous?
- A. He would have a miscellaneous receipt for which we really couldn't identify, and we stuck it there for lack of some other place to be fitted with him.
- Q. Looking off to the right, Burke Enterprises. Does this constitute the aggregate receipts?
- A. Yes, it does.
- Q. For '77?

- A. 282,300.
- Q. '78?
- A. 711,200.
- Q. And '79?
- A. 502,100.
- Q. All right. Commission Exhibit 30B,* and, again, under Burke Enterprises, this constitutes the aggregate amount of receipts, do they not?
- THE WITNESS: Mr. Rhoads, the box is the aggregate of the disbursements.
- Q. In other words, the disbursement may have exceeded the receipts?
- A. Could be.
- Q. Or less?
- A. Sure.
- Q. Now, with that regard you have John Burke --
- A. Personally.
- Q. -- personally.
- A. This is the personal drawing account, 41,600, 55,600 and 50,000 in '77, eight and nine.
- Q. John Burke Gambling.
- A. 6,400; 7,400; and 39,900.
- Q. From what source did you come by way of this information?
- A. From his books and records and also from his tax returns.
- Q. Morris Kay.
- A. Morris Kay is allegedly a salesman for Mr. Burke and payments were made to him allegedly as a commission for all sales to Joel S. Sokol, D.D.S., P.A.

*See Chart, P. 190

BURKE ENTERPRISES

DISBURSEMENTS

BURKE ENTERPRISES 1977 \$282,750 1978 704,800 1979 509,900	1977	\$ 41,600	JOHN BURKE: PERSONAL
	1978	55,600	
	1979	50,000	
	1977	6,400	JOHN BURKE: GAMBLING
	1978	7,400	
	1979	39,900	
	1977	9,700	MORRIS KAY
	1978	6,000	
	1979	12,000	
	1977	31,000	METRO DENTAL SERVICES
	1978	60,000	
	1979	59,200	
	1977	-	MONEY STORE ON BEHALF OF METRO
	1978	240,000	
	1979	-	
	1977	950	JOEL S. SOKOL D.D.S., P.A.
	1978	-	
	1979	25,000	
	1977	155,500	VENDORS
1978	295,100		
1979	306,100		
1977	37,600	LOANS & EXCHANGES AND OTHER EXPENDITURES	
1978	40,700		
1979	17,700		

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Q. And the figures for that year?

A. 9,700; 6,000 and 12,000.

Q. Metro Dental Services?

A. These are rebates, returns, if you will, kickbacks, from John Burke Enterprises to Metro Dental Services in the amount of 31,000, 60,000 and 59,200.

Q. Money Store on Behalf of Metro.

A. All right. This was quite an involved transaction.

What happened is that they secured a loan on a body of equipment and that loan was received from the Tricontinental Leasing Company in Paramus, New Jersey, and at the same time they owed the Modern Acceptance Corporation quite a sum of money.

Therefore, what they did, they refinanced the equipment, and instead of sending the money directly to the Modern Acceptance Corporation, they made out the check to Mr. Burke to, I would say, legitimize the transaction, and Mr. Burke then disbursed the funds, or endorsed, I should say, endorsed a Modern Acceptance check over to the Modern Acceptance Corporation, a/k/a/ The Money Store.

Q. Excuse me. I have Joel S. Sokol, D.D.S., P.A.?

A. \$950 and 25,000.

Q. Indicating the year '77 and '79?

A. That's right. Yeah. Those are the rebates, returns, whatever.

Q. Vendors?

A. Vendors are, these are Mr. Burke's vendors. These are his suppliers.

Q. And the amounts there?

A. 155,500; 295,100; \$306,100.

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Group Administrative Services

Dr. Joel S. Sokol was the next witness. A dentist since 1967, he incorporated in 1976 a professional entity known as Joel S. Sokol, D.D.S., P.A., with Dr. Anthony J. Ferrara to provide closed panel-type dental care for labor unions and other groups. Under an agreement effective on January 1, 1977, Metro Dental Services, Inc., a company then owned by Stanley Resnick and Dr. Jesse Hyman, a Buffalo dentist, was employed to provide administrative and financing services for Sokol, P.A. Sokol's first union contract for dental care was with Teamsters Local 478's Joint Welfare Fund, of which George F. Serio, son of the local's president, was the administrator. In early 1977 a company called Group Administrative Services (GAS) was incorporated, with George Serio as president.

Although Dr. Sokol's signature and initials were attached to various Group Administrative Services' corporate papers, Dr. Sokol claimed that he knew little or nothing about these transactions. However, the Commission's investigation indicated that the creation of this company provided a mechanism for obtaining a car for Serio and may have had a part in Sokol, P.A., obtaining a Ford Motor Company contract to provide health care services for the United Auto Workers Local 906 at the now-vacated Ford plant in Mahwah. Dr. Sokol's public hearing testimony relative to Group Administrative Services, Inc., follows:

Q. Now, with regard to George Serio, there came a point in time when you entered into a corporation with him, did you not?

A. We contemplated.

Q. What was the name, if any, of the corporation that you contemplated entering with him?

A. Group Administrative Services.

Q. And, to your knowledge, was Group Administrative Services, did it, in fact, become a reality? By that, I mean, is it a viable corporation in the State of New Jersey?

A. It was incorporated.

Q. You were, in fact, an officer in that company, were you not?

A. In the embryonic stages of the development of the corporation, I apparently signed documents that have been shown to me by you and that stated I was an officer. After the initial discussions with Mr. Serio, we decided that it was a possible conflict, and I determined that, and he determined that, I

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could not function and should not function in that corporation and, in fact, I did not.

Q. Well, Doctor, wasn't it a little more than the embryonic stages? Wasn't it, in fact, after the corporation was incorporated in the State of New Jersey that you were still at least purported to be an officer in that company?

A. Yes. There are several documents filed, I believe, with the I.R.S. I have my name on them, yes.

* * *

Q. Dr. Sokol, with regard to the corporation, Group Administrative Services, Inc., which had, at least, paper reflection, both yours and George Serio, as officers in that company, did you, either individually or through your association, provide any funds for the running or operation of Group Administrative Services, Inc. during the course of its life?

A. No.

Q. When was it, what point of time was it, that it occurred to you that Group Administrative Services, Inc. having you as an officer and George F. Serio as an officer would constitute a conflict of interest?

A. In the beginning when it was being formed and entered my discussions with George.

Q. Now, "in the beginning" would be approximately January of 1977; is that so?

A. I don't know the date.

Q. Well, does that refresh your recollection at all?

A. No, it doesn't.

MR. RHOADS: Just one moment, please.

Can I have Commission Exhibit 2A, please. That would be 2A and B.

Q. Now, Doctor, I show you what's been previously identified as a certificate of incorporation, and, for the record, this is Commission Exhibit 2A, certificate of incorporation of Group Administrative Services,

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Inc., and if you will, would you look at that and that has your name on that document.

Does that refresh your recollection as to when that corporation was incorporated?

A. The date of the document's the 23rd of February, 1977.

Q. Now, approximately one [year] later, Commission Exhibit 2B was filed, and this purports to be an annual report by domestic or foreign companies and it reads on the face of it, "Group Administrative Services, Inc., Joel S. Sokol, 2444 Morris Avenue, Union, New Jersey."

You are the Joel Sokol referred to in there, are you not?

A. Yes.

Q. One year later if you will look at what I represent to you is the opposite portion of what you have just seen, and it listed at the bottom, "President, George Serio," does it not?

A. Yes, it does.

* * *

Q. Do you know whether George Serio had a car furnished as a result of being president of Group Administrative Services, Inc.?

A. I don't know.

Q. You don't know?

A. No.

* * *

Q. There was a point in time when you did start the negotiations with the United Auto Workers, Local 906; isn't that so?

A. Correct.

Q. There came a time where you were at least advised that they, in fact, could not contract with your association, but that it would have to be Ford; is that right?

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A. That's correct.

Q. In that regard, I show you what's been previously marked Commission Exhibit 26, purports to be a letter addressed to one Mr. William Patterson, UAW, Ford Department, East Jefferson Avenue, Detroit, Michigan. It's a four-page document, and on the last page there's a signature purporting to be that of Joel Sokol; is that your signature?

A. Yes.

Q. I direct your attention to the third paragraph and it reads, "Administration of our centers is provided by Metro Dental Service, Inc. and Group Administrative Services, Inc. with four employees at this time." And this letter is dated October 18, 1977.

Now, that's some ten months after you had contracted with Local 478. What is it that Group Administrative Services, Inc. -- what is it that they were doing for Joel S. Sokol, D.D.S., P.A.?

A. Group Administrative Services didn't do anything for Joel S. Sokol, D.D.S., P.A.

Q. Why on earth in that letter did you indicate to Mr. Patterson that your plan was being administered by Metro and Group Administrative Services, Inc.?

A. As I testified in private hearing, although I signed this letter, I did not write it. It's obviously an error. Group Administrative Services when I was associated with it, and, again, in its embryonic stages, was to perform, in the future, other benefit programs, contemplated optical specifically.

Q. Well, Doctor, you authored that letter, didn't you?

A. Yes.

Q. And, again, in that third paragraph you allude to four employees of -- between Metro and Group Administrative Services, Inc. Were the two that you allude to in Metro Dr. Hyman and Mr. Resnick?

A. As I said, I did not write this letter.

Q. I'm not suggesting you wrote it. It happens to be. I mean, --

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A. Yes.

Q. -- the letter speaks for itself.

A. Yes, it does.

Q. And I see at the midway portion of the left-hand side there's JSS slash MV. MV was your secretary, wasn't she?

A. She was a secretary, yes.

Q. And JSS, that's you, isn't it?

A. Yes.

Q. And is that appearing there because you dictated the letter to your secretary?

A. No.

Q. Do you have any idea why your secretary put your initials there if you didn't dictate it?

A. No.

Q. Do you have any idea why you signed it if you didn't write it?

A. I signed many documents that were put in front of me by people writing letters on my behalf.

* * *

Q. This is Commission Exhibit previously marked CN-32. Annexed to the front is a letter. It's addressed to a Mr. Lindburg purported signed by Joel S. Sokol. Page 2 of the document is a dental services agreement, "Agreement made this 20th day of December 1978, by and between Joel S. Sokol, I'm reading in part, "and Ford Motor Company."

Is that, in fact, the agreement we have been alluding to?

A. Yes, I believe it is.

Q. Thank you. Now there did come a time, in fact, when you began to provide dental services for members of Local 906, did there not?

A. Yes.

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- Q. Was that via a facility in Mahwah?
- A. Yes.
- Q. Do you know a William Patterson?
- A. Yes.
- Q. And who is the William Patterson that you know?
- A. I knew two. One is the international, I believe his title is International Business Representative, UAW, and the other Patterson as a member of Local 906, I believe, if I remember.
- Q. With respect to your facility in Mahwah, did you have an occasion to hire the latter William Patterson, the one who is a member of Local 906, to provide, among other things, to provide janitorial services?
- A. Yes.
- Q. For how long, approximately how long, did you know Mr. Patterson?
- THE CHAIRMAN: Working in that capacity?
- MR. RHOADS: Yes, sir.
- Q. If I were to sell you approximately a year, does that refresh your recollection?
- A. A year, maybe a little longer.
- Q. I want to amend a name that I had attempted to spell. Patrick Fanning. It should read Fanning. F-a-n-n-i-n-g.
- Do you know that gentleman?
- A. Yes.
- Q. How is it that you know Mr. Fanning?
- A. He worked in the office of Local 906.
- Q. Do you know whether he was an officer within Local 906?
- A. I don't know if he was an officer.
- Q. Do you know whether he was a trustee?
- A. I don't know if he was a trustee.

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- Q. Do you know whether part of the monies paid to William Patterson were shared in some proportionate fashion with Patrick Fanning?
- A. No.
- Q. Did you hire William Patterson, whether it be a post or prior agreement, in order for you to obtain the contract with Ford Motor Company to service members of Local 906?
- A. No.
- Q. Do you know whether it was done by anyone other than you?
- A. I don't believe so, no.

Dr. Sokol Questioned About Organized Crime

The witness was asked to explain how he and his partner, Dr. Ferrara, eventually became owners of Metro Dental Services, the corporation that performed administrative functions for Sokol, P.A. This questioning was followed by testimony concerning connections between Sokol P.A. and two organized crime figures, John Riggi and Comillo (William) Molinaro. As previously noted, Riggi was the semi-retired Sam (the Plumber) DeCavalcante's crime family lieutenant and Molinaro was one of Riggi's underlings. Dr. Sokol first described the transformation of Metro:

- Q. Now, at the time you were awarded the contract with 906, you had continued, if I'm wrong, you correct me, to employ the services of Metro Dental Services, Inc.?
- A. Correct.
- Q. And at that time was Metro, to your knowledge, still comprised of Dr. Hyman and doctor -- Mr. Resnick?
- A. I believe at that time Dr. Hyman wasn't associated. As I say, I don't know the exact dates, but I don't think he was there at that time.
- Q. In any event, you are at least aware that there did come a point in time when Dr. Hyman left Metro Services, Inc.; is that so?
- A. Yes.
- Q. And if you know, do you know why he left?
- A. He left by mutual consent of all parties concerned, as far as I know.

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- Q. How is it that you know Bill Molinaro?
- A. Bill Molinaro was introduced to me by Dr. Hyman and he was in Irvington. He was doing janitorial service. He was doing some laboratory work.
- Q. He was introduced to you by Dr. Jesse Hyman?
- A. Yes.
- Q. Well, under what circumstances was he introduced? In other words, I'm saying did Dr. Hyman hire him?
- A. I don't know if he hired him.
- Q. Do you know who did hire him?
- A. No.
- Q. Do you know who paid him?
- A. No. I assume it was Metro.
- Q. But, in any event, you know of your own personal knowledge that he had done or did some janitorial services for your facilities?
- A. Yes.

* * *

- Q. Well, did there ever come a time when, either through Mr. Molinaro himself or some other source, that you learned that he had a criminal record?
- A. There came a time, yes.
- Q. And when did you learn that?
- A. I would say about four weeks ago.

John Riggi was the next subject discussed with Dr. Sokol by SCI counsel:

- Q. You know a Mr. John Riggi, do you not?
- A. Yes, I do.
- Q. How do you know Mr. Riggi?

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- A. We solicited business from him several years ago and met with him and offered him to order him -- offered him a dental plan.
- Q. Can you approximate that with respect to your being awarded Local 478? Was it prior thereto or subsequent thereto?
- A. I would say probably have been between a year and year-and-a-half after the contract with 478 started.
- Q. So, at that point in time, Sokol, P.A. was an ongoing operation, was it not?
- A. Yes.
- Q. Do you know what local Mr. Riggi is affiliated with?
- A. I don't remember the number of the local offhand, no.
- Q. If I were to tell you it was Local 394, does that refresh your recollection?
- A. It may.
- Q. It's a laborers local, isn't it?
- A. Yes.

* * *

- Q. Now, with respect to Mr. Riggi, while you did not contract with his union, did Mr. Riggi, in any way, introduce you to any other union officials?
- A. Well, I have been in his company at various functions and there may have come a time when he did, in fact, introduce me to people.
- Q. Well, some of the people that he introduced you to, were they, in fact, labor officials?
- A. Yes, I believe so.
- Q. And those officials, however many that Mr. Riggi introduced you to, did you, in fact negotiate with them, and by "you," of course I mean on behalf of your professional association?
- A. There are no groups we have presently that he had introduced us to.

Q. No, I'm asking you whether you went to contract, to formal contract.

A. Yes.

Q. I'm simply asking, as a result of being introduced to a labor official by Mr. Riggi, however many there may have been, did you enter into any negotiations?

For instance, did you say, "I have a dental plan. I'd like you to take it," that kind of thing?

A. I said that to many people over the last four-and-a-half to five years. I have sat down with literally hundreds of labor people and employers about our dental plan.

Q. A few of whom out of those hundreds, however, would be introduced to you by John Riggi; isn't that so?

A. It may have been.

Q. As a result of those introductions what, if anything, did you give John Riggi?

A. Nothing.

Q. Well, did there ever come a time when John Riggi said, in your presence, whether it be to you or another individual, "I want you to hire Bill Molinaro"?

A. No.

Q. Do you know, of your own knowledge, whether Mr. Molinaro knows Mr. Riggi?

A. I think he does.

Q. Well, what is it that makes you think he does?

A. Just my perception.

Q. Well, from what source do you perceive that? Have you seen him in his company, for instance?

A. I said I don't know.

Q. Has Bill Molinaro during the course of time that you have known him ever said to you, "I know John Riggi, been with John Riggi, were social friends"?

A. He may have.

Dr. Sokol on Curly Montana, Cleveland Crime Figure

The Sokol operation had connections with John (Curly) Montana, Jr., a known organized crime figure in Cleveland, whose wife worked for Dr. Hyman in Buffalo. Dr. Sokol testified:

Q. With regard to Dr. Jesse Hyman, to your knowledge, does he run what I'll characterize as a similar operation as you do? By that, I mean, health-care plans?

A. He has a facility in Buffalo, New York, which is similar to our operation, yes.

Q. And had he, again, if you know, been operating prior to Sokol, P.A.'s initiation?

A. Yes, prior.

Q. Did Dr. Hyman, with regard to your contracting with Metro, furnish any services which would include how you set up and administer the initial beginnings of your association, your professional organization?

A. Yes. Yes, he did.

Q. Along those lines, did Mr. Hyman, Dr. Hyman, recommend to you, meaning your association, the services of one Rena Montana?

A. Yes, he did.

Q. Who is Rena Montana?

A. She was functioning, I believe, as one of his administrators in Buffalo, and she helped, helped us set up in the inception of our office in Morris Avenue in Union.

Q. Is she the wife of Curly Montana?

A. I believe she is.

Q. How do you know Curly Montana?

A. I believe I met him when I was in Buffalo, or I know that is her husband.

Q. Have you ever had conversations with Mr. Montana?

A. I don't think so, no.

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- Q. How about with Rena?
- A. Yes.
- Q. Well, before I get into that, how long was it Rena Montana performed these services for you?
- A. I believe she was at our office for approximately two or three days.
- Q. So is it fair to say she sort of came down and sort of whipped the office in shape and then left?
- A. I'll accept that terminology.
- Q. What did you pay her for those services?
- A. Nothing.
- Q. What did you pay Curly Montana for those services?
- A. Nothing.
- Q. During the course of your discussions with Rena Montana, did you ever discuss crime affiliations of her husband Curly?
- A. No.
- Q. Did you ever talk about organized crime and her husband being affiliated with a crime family?
- A. No.
- Q. More particularly the Liberatore crime family?
- A. No.

Generating Cash Flow

At the outset of the hearings, the Commission asked an expert on the problem of criminal infiltration of labor union health care plans to explain how hidden profits were created in order to finance payoffs and kickbacks. The expert, Martin Steinberg, chief counsel to the Senate Subcommittee on Investigations, explained that illegal generation of cash required a multiplicity of companies through which a maze of financial transactions, including inflated purchasing and servicing contracts, questionable loans and so-called rebates, could be processed. With this initial testimony in mind, the Commission asked Dr. Sokol to clarify some of the transactions of his dental care operation. The acquisition of such equipment as dental chairs was the first topic:

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- Q. Now, Doctor, with regard to Metro Dental Services, was one of their functions to obtain dental equipment for you, and, more particularly, dental chairs?
- A. Yes.
- Q. Did Metro actually own dental chairs that they would then lease to you, or did they have to lease them and then sublease them to you?
- A. The latter.
- Q. And given the latter, do you know from whom Metro leased the chairs?
- A. I know some of the companies, yes.
- Q. Well, would you name a couple?
- A. Parliament Funding & Leasing, Tricontinental, and I believe there's a Macrolease.
- Q. With regard to the first that you mentioned, Parliament Funding & Leasing, --
- A. Yes.
- Q. -- I show you what's been marked previously Commission Exhibit 18B. Would you look at that document and tell me if you can identify it.
- A. Yes. It appears to be the lease between Parliament Funding & Leasing Corporation and Metro Dental Services, Inc. for the equipment at Morris Avenue in Union, New Jersey.
- Q. Who are the parties to that agreement?
- A. The guarantee of the lease, again, I can't identify the first signature. Of the next three, seems to be Stanley Resnick, Joel Sokol and Anthony Ferrara were the signatories to the document.
- Q. So you were at least a party, one of the parties to that contract, were you not?
- A. Yes.
- Q. Now, the purpose of that agreement was in order for your professional association to acquire some equipment, was it not?
- A. Yes, it was.

- Q. And some of that equipment would include, or did include, dental chairs?
- A. Yes.
- Q. And for what facility was that property earmarked, if you could tell us now?
- A. That was for -- the document is referring, I believe, to the equipment at 2444 Morris Avenue.
- Q. Doctor I'm going to show you what's been previously marked Commission Exhibit 12B and Commission Exhibit 12C, which, for the record, is a two-page document.
- Now, I'll first show you Commission Exhibit 12B, and would you look at that please and tell me, does that reflect the equipment for which you were negotiating the lease we previously alluded to, the lease agreement?
- A. Yes, they appear to be.
- Q. All right. Now, will you agree with me that the amount reflected at the bottom, it says "sales total," would you -- let me get your interpretation. Would you read that.
- A. Sales total one hundred thirty-three thousand seven seven nine and sixty-three cents.
- Q. Now, I'll show you what's been previously marked Commission Exhibit 12C, which is a two-page document I referred to, and it's actually Pages 1 with 2 on the back and 3 on the second page. Would you look at those items and tell me, don't they also reflect the items that are reflected in the original agreement?
- A. Yes, they appear to be the same.
- Q. Would you read the sales total from that document to us, please?
- A. Two hundred -- \$200,073.50.
- Q. Well, how do you account for the difference of \$66,000 on those two documents?
- A. Well, the leasehold improvement costs are not on there and the advance deposits.

- Q. Dr. Sokol, you know a Richard Einhorn, don't you?
- A. Yes, I do.
- Q. How do you know Mr. Einhorn?
- A. I know him -- I believe I was introduced to him by Mr. Burke.
- Q. And is he a principal in John Burke Enterprises?
- A. Yes, I believe so.
- Q. And was John Burke Enterprises a supplier to Sokol, P.A. of dental supplies, that type of thing.
- A. Yes.
- Q. Now, with respect to Mr. Einhorn and Mr. Burke, didn't there come a time when you had a meeting with those two individuals amongst others wherein you discussed the leasing of the equipment alluded to in CN-12C and CN-12B?
- A. Yes.
- Q. And the nature of that discussion at least, in part, had to do with the escalation or the inflation of the cost of the various items reflected in these two documents, didn't it?
- (Discussion held between the witness and counsel.)
- A. Can you repeat that, please?
- Q. You had a meeting amongst yourself, Richard Einhorn, John Burke, perhaps others, one purpose of which was to discuss the inflation, the escalation in price, of the various items listed on the two documents you previously identified and they are 12B and 12C, the purpose of which was to use the escalated document as collateral for a loan so that you could get more money, in fact \$200,000?
- A. No, I disagree with that scenario.
- Q. Do you disagree with the exact way I put it to you or do you disagree with the substance of that scenario?

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- A. I'd say I have to disagree with both. If you would like my terms, I would be glad to give it to you.
- Q. Well, did any conversation, any meeting like that, ever take place?
- A. Like what?
- Q. Like we have just disagreed on, wherein Mr. Einhorn says the bank won't give you \$200,000 on \$133,000 worth of equipment, so we're going to have to jack up the price of that equipment and then give it to the bank and then the bank will give you the money that you want. That conversation.
- A. No. I don't believe that was the conversation, no.
- Q. Well, what was the conversation?
- A. I believe we met with Mr. Einhorn and we outlined the funds required to construct the facility.
- Q. You said you met with Mr. Einhorn?
- A. Right. And we spoke about the funds required to construct the facility and equipment the facility and get it ready for operation and those are the funds that we, in fact, received.

A check to Dr. Sokol in the amount of \$5,000 by another dental supply company was discussed:

- Q. Doctor, I'm going to show you what's been previously marked CN-14 for identification, and it's a copy of a check purporting to be from Professional Dental Equipment Manufacturing Company, dated January 11, 1977, paid to the order of Joel Sokol, D.D.S., P.A., \$5,000, and on the back it's endorsed purportedly to be Joel S. Sokol, D.D.S., P.A., and underneath that Joel S. Sokol.

Now, if you will, will you first look at back and are those your signatures?

- A. Yes, they are.
- Q. And will you look at the front of that check, and do you recognize that check?

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- A. Not offhand, no, but it is made out to Joel S. Sokol, Joel Sokol, D.D.S., P.A. as you have indicated.
- Q. Who is Professional Manufacturing or whatever?
- A. I believe this Professional Dental Equipment Manufacturing is either a subsidiary or related company to Newark Dental Supply Company.
- Q. So they furnish dental equipment to dentists, to your knowledge?
- A. Yeah. I don't know if it's the equipment or cabinetry or -- it's one or the other.
- Q. Do you have an idea why they would send you a check in the amount of \$5,000?
- A. The only thing I could speculate, it would be either an overpayment or rebate. Something along those lines.
- Q. What did you do with the five thousand, do you recall?
- A. I don't recall.
- Q. Why would -- why would Professional Dental Equipment be giving you the five thousand back? Wasn't it Metro that was doing this for Sokol, P.A.? Weren't they getting you the equipment?
- A. Yes. We were also on the lease individually, and the equipment was for the professional association.
- Q. Well, as an individual dentist, did you pay any monies to Professional Dental Equipment in 1977 that you recall, or '76?
- A. At the inception of the dental plan and dental facility on the Morris Avenue, I may have personally advanced some money as deposit.
- Q. Doctor, wasn't this a rebate sent back to you via John Burke?
- A. I can't say that.
- Q. You can't say that?
- A. No.

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Q. Why can't you, because you don't want to or it isn't true?

A. I don't know that that's true, what you're saying.

COMMISSIONER FRANCIS: He did say it was a rebate a couple of answers ago.

THE WITNESS: I said possibly.

Dr. Sokol also could not specify the purpose of a \$9,000 check to himself that was written against the payroll account of Sokol, P.A.:

Q. I want to show you what's been previously marked Commission Exhibit 17H. It's a check, Joel Sokol, D.D.S., P.A. Payroll Account, paid the order of Joel S. Sokol, dated October 23rd, 1978, in the amount of \$9,000. And on the bottom right-hand portion it's signed purportedly Joel S. Sokol and on the back it's endorsed Joel S. Sokol purportedly, and ask you to identify that.

A. Yes, that's my handwriting.

Q. And, in fact, you endorsed it, did you not?

A. Yes, I did.

Q. Did you cash it?

A. Possibly.

Q. Well, do you know whether or not you had \$9,000 in cash on the day reflected on that check?

A. I may have. May have had more; may have had less.

Q. Well, during that period of time, and I'm referring, again, to October 23rd, 1978, did you have some cause to generate an account of cash in that, what I characterize as a large amount, \$9,000?

A. I have been working since I'm 13 years old, and I have saved a lot of money, and I have always had a lot of money, around a thousand, nine, ten, eleven, twelve, fifteen, up to \$16,000.

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COMMISSIONER FRANCIS: Could I have that answer read back, please?

(The last answer is read by the reporter.)

COMMISSIONER FRANCIS: Thank you. Did you keep it in a tin box, Dr. Sokol?

THE WITNESS: No, I didn't keep it in a tin box.

"No Charge" Patients

The Commission's expert, Steinberg, had pointed out that cash was not the only form of payoffs or kickbacks, that expensive gifts and other "benefits" accrued to organized crime associates and others involved in health care schemes. The Commission asked Dr. Sokol about benefits in the form of services for which no fees were charged:

BY MR. RHOADS:

Q. Dr. Sokol you know a Dr. Kenneth Weiner, do you not?

A. Yes, I do.

Q. How do you know Dr. Weiner?

A. Dr. Weiner was affiliated with the Mahwah facility?

Q. And in what capacity was he affiliated with the facility?

A. I believe he's an optometrist.

Q. Do you believe it or do you know it?

A. He may be an optician. I don't know which. I believe an optometrist.

Q. What are the terms of this association between the Mahwah facility and Dr. Weiner?

A. Dr. Weiner rented space and, I believe, equipment from Metro and serviced the membership of Local 906.

Q. And, of your own knowledge, did, in fact, Dr. Weiner perform optical services on behalf of members of 906?

A. Yes, he did.

Q. And how was it that Dr. Weiner was paid?

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A. I believe he was paid through the indemnity coverages that the membership had.

* * *

Q. During the course of the time that Dr. Weiner was associated with the Mahwah facility, you had sent certain patients to Dr. Weiner, did you not?

A. I referred patients, yes.

Q. Some of those patients that you referred, you communicated to Dr. Weiner that those patients were not to pay any bills, didn't you?

A. No. I don't believe so, no.

Q. You don't believe you did. How about if I show you what's been marked Commission Exhibit 20. I'll direct your attention to one of the attachments. It's dated November 15, 1978. It reads, "Statement, Dr. Kenneth Weiner," I'm reading in part, "Optometrist, 155 South Livingston Avenue, Livingston, New Jersey, Mr. Pat Martirano, 821 Cranford Avenue, Westfield, New Jersey, for professional services on June 6, 1978." And it reads, "Examine five first grade serviced ophthalmology plastic lenses," et cetera, total five sixty-six. That's \$566, and below that it reads, "As of yet, payment has not been received from the individuals. You told me would take care of your bill. Therefore I'm billing you directly for these services as per our arrangement."

Would you look at that and tell me, you referred Pat Martirano to Dr. Weiner, didn't you?

A. Yes, I did.

Q. And you communicated to Dr. Weiner that, "Don't have Pat Martirano pay that bill. I'll pay it"?

A. No, and that's not, that's not what this says either.

Q. I'm not asking you what that says.

A. No, that's not what I told Dr. Weiner.

Q. Do you have any idea why Dr. Weiner would send bills to you for patients that you had absolutely no obligation to pay?

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A. I can speculate if you would like me to.

Q. You can speculate.

A. It appears the patients didn't pay the bill and he believed that since I sent them in, I was responsible if they wouldn't pay. That's what it seems to indicate from those documents you showed me.

Q. Who's Pat Martirano?

A. He's a gentleman I met when I was in private practice in the Ironbound Section of Newark.

Q. Have you ever known him to go by the nickname Specs?

A. You have made me aware of that, yes, prior.

Q. Patty "Specs" Martirano?

A. You have told me.

Q. I show you what's been previously marked Commission Exhibit 22, and would you look at the right-hand portion of that. The gentleman depicted there, is that Patty "Specs" Martirano, to your knowledge?

A. That's Mr. Martirano, yes.

Q. How long have you known Mr. Martirano?

A. I believe since 1972.

Q. Did you ever become aware of Mr. Martirano being connected with organized crime?

A. No. Only when you told me that prior to this public hearing.

Q. Was Mr. Martirano instrumental in any way, to your knowledge, of your professional association being awarded contracts with unions?

A. No.

Q. Did you ever seek the services of Mr. Martirano on behalf of your association in order to get contracts with unions?

A. I don't understand what the word "services" indicate.

Q. Did he help you?

- A. No, no.
- Q. I'm going to show you what's previously been marked CN-21 and ask you to look at the gentleman depicted twice in that picture and tell me do you recognize him?
- A. Yes, I do.
- Q. Who do you recognize him to be?
- A. Nick Cifelli, I believe his last name is.
- Q. How is it that you know Nick Cifelli?
- A. As I said when I practiced in the Ironbound Section of Newark in 1972, I was in many restaurants, cocktail lounges, in order to make myself visible for future patients and that's how I met him.
- Q. Did you ever come to know whether he had a criminal record or not?
- A. Only in the private hearings of this Commission.
- Q. You recommended that gentleman to Dr. Weiner, didn't you?
- A. No.
- Q. Would you look at this document which is encompassed within CN-20 and there is a Mr. Nicholas Cifello, 342 New York Avenue, Newark. Would you be able to -- you read it. Tell me, is that the Nicholas Cifelli that you know?
- A. The name on the document is Nicholas Cifello?
- Q. That's correct.
- A. I don't know if it's the same individual, no.
- Q. Do you know where Nick Cifelli lives?
- A. I know he lives in the Ironbound Section of Newark.
- Q. Was it your testimony that you never referred Nicholas Cifelli to Dr. Weiner?
- A. I don't think I ever referred him, no.

* * *

MR. RHOADS: May I have this document marked next in order, please.

(A document entitled "N/C-Staff of Irvington," is received and marked CN-52.)

- Q. Doctor, I want you to look at, please, Commission Exhibit CN-52, it's a two-page document. Would you look it over and tell me, can you identify it?

(Discussion held between the witness and counsel.)

THE WITNESS: It appears to be a list of patients being serviced at the Irvington office.

- Q. They were patients of Sokol, P.A. were they not?
- A. I believe so, yes.
- Q. There's a letter N slash C dash staff, that N slash C dash staff, that stands for no charge, doesn't it?
- A. Yes, it appears to.
- Q. Now, there's a Lena Martirano and there's a date off to the left, two dates, really. I guess November 15th and then a dash June 7, '78. Is that Patty Specs' wife?
- A. I don't know.
- Q. You don't know?
- A. No.
- Q. There's a Joan Riggi. Is that any relation to John Riggi?
- A. I have no idea.
- Q. Now, we have quite a few Serios here. We have a Marian Serio. Is that related to George Serio?
- A. I don't know.
- Q. Is she related to Harry Serio?
- A. I don't know.

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- Q. I'm, of course, referring to the officer of Local 478.
- A. I don't know, I don't know Marian Serio.
- Q. Now, here's a George Serio. Is that the George Serio of Local 478?
- A. I don't know. It would appear to be.
- Q. And there's a George Jr., Serio. Is that the child of George Serio from Local 478?
- A. It may be. I don't know.
- Q. And there's a Harry Serio. Is that the trustee of Local 478?
- A. I assume. I don't know. I don't know who made -- who constructed this document. That's not my handwriting either.
- Q. Well, in any event, these patients were serviced at the Irvington facility, at least reflected on this document, but serviced by Sokol, P.A. and it's reflected on a no-charge list; isn't that so?
- A. Excuse me. Can you repeat that so --
- Q. These patients were serviced by Sokol, P.A., your professional association, and these names appear on a no-charge list, don't they?
- A. That's what the document appears. I don't know. As I said, I was not the author of the document.

EXAMINATION BY COMMISSIONER FRANCIS:

- Q. Dr. Sokol, did, in any of your meetings with Dr. Hyman, did Dr. Hyman ever suggest to you, in any fashion, that the way to skim cash out of your dental operation was to create inflated invoices and then to borrow money on the full value of those inflated invoices for dental equipment?
- A. No.
- Q. Did Mr. Molinaro ever suggest to you the way to skim cash out of this operation was to inflate invoices?
- A. No.

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- Q. And borrow money on that basis?
- A. No.
- Q. How about John Riggi; did he suggest that to you?
- A. No.

The Inflated \$200,000 Contract

Richard J. Einhorn of Short Hills, who was in the equipment financing business, testified under immunity from prosecution about the details of the inflated Parliament Funding and Leasing Corporation contract for \$200,000 by which Metro Dental received dental equipment that was actually valued at \$133,000. At that time he was vice president of Parliament, which was defunct at the time of the public hearings. Under questioning by Executive Director Siavage, the witness recalled how the deal with Metro was brokered. Einhorn's testimony:

- Q. Are you familiar with an entity known as Metro Dental Services, Inc.?
- A. Yes, I am.
- Q. Are you further familiar with an entity known as Joel Sokol, D.D.S., P.A.?
- A. I believe I am, yes.
- Q. What do you know those entities to be?
- A. They are dental offices servicing the dental business.
- Q. During your former employment with Parliament Funding & Leasing, did you have occasion to do business with either one or both of those entities?
- A. I did business with Metro Dental.
- Q. Are you further familiar with some of the principals of Metro Dental Services, Inc.?
- A. Yes, I am.
- Q. When did you become introduced to the principals whom you know?
- A. I met Dr. Sokol through Mr. Burke of Professional Dental.
- Q. Who was Mr. Burke?

- A. Mr. Burke was a salesman for Professional Equipment.
- Q. How long had you known Mr. Burke before he introduced you to Dr. Sokol?
- A. Four or five years.
- Q. How did you have occasion to meet Mr. Burke?
- A. Through my business. I look for equipment financing and he was a salesman. He would have introduced me to doctors who were interested in financing their equipment.
- Q. Did you meet from time to time to discuss possible deals with Mr. Burke?
- A. Yes, I did.
- Q. And when was the first time that you had a conversation that you can recall that related to the funding of certain equipment for Metro Dental Services, Inc.?
- A. It would have been in the middle of 1976 sometime.
- Q. And do you recall where that conversation took place?
- A. Well, the first conversation was probably over the phone. The first meeting was somewhere, I believe, on Route 10 in the Ten/Two Lounge in [Whippany] with Dr. Sokol and Mr. Burke.
- Q. Before we get to that meeting, what was the conversation over the phone with Mr. Burke pertaining to this meeting?
- A. That he had a large dental facility that he was selling equipment to and he wanted to know whether I would be interested in financing the equipment that was going into it and that it was a union contract standing behind the facility.
- Q. Did the fact of a union contract standing behind the facility, to use you're words, have any significance with regard to this deal for you?
- A. Well, it meant that it was a very attractive financing package because the possibility of them paying off the lease contract was very good.

- Q. Now, you said you had your first meeting with Dr. Sokol and Mr. Burke in Whippany at the Ten/Two Lounge; is that correct?
- A. Yes.
- Q. Did you have conversation with the two individuals at that time?
- A. Yes. We discussed the facilities, the union contract, the amount that had to be financed and the fact that I would see if I could acquire the funds for them.
- Q. And specifically what kinds of things were they talking about financing?
- A. Basically dental equipment, some construction, supplies, some working capital.
- Q. Now, you say "some working capital." In your business, do you take security interests, in effect, chattel mortgages, on the equipment which you were going to provide to you're clients?
- A. Yes, we do.
- Q. And how do you secure the working capital?
- A. In this case, what we did was increase some of the prices of the equipment so that it was a hundred percent collateralized.
- Q. Was it, in fact, a hundred percent collateralized?
- A. It was not a hundred percent collateralized.
- Q. Did the deal appear to someone in the next step or chain to be completely collateralized?
- A. Yes, it did.
- Q. And how did that come about?
- A. By increasing the prices of the equipment so that it added up to the total amount that was going to be financed that was needed.
- Q. Did you discuss this specific fact with Dr. Sokol and Mr. Burke at this first meeting in Whippany?
- A. I believe it was discussed.

- Q. Now, what happened next after the meeting in Whippany with specific regard to this deal?
- A. I was in touch with Mr. Resnick, who was another partner in the transaction, and acquired finance statements of all the principals and acquired them a line of credit.
- Q. Who was it that advised you to contact Mr. Resnick?
- A. I believe it was Dr. Sokol or Mr. Burke. I'm not really sure.
- Q. Do you recall why they said to contact Mr. Resnick as opposed to either one of them?
- A. Well, he was the accountant and he would have been able to pull together all the financial statements.
- Q. He was the accountant --
- A. Accountant for Metro as well as a principal. At least that was my impression.
- Q. Did Dr. Sokol so describe him?
- A. I believe so.
- Q. Did you, in fact, contact Mr. Resnick at this time?
- A. I believe I did.
- Q. Did he know who you were when you contacted him?
- A. Yes.
- Q. Did he know what the transaction pertained to?
- A. He knew that we were financing -- going to try to finance a couple hundred thousand dollars worth -- trying to finance the facility.
- Q. Did you mention the details of the transaction to Mr. Resnick?
- A. I honestly can't remember going into specific details with him. I do remember talking about the number, though.

- Q. And what was the number you discussed with Mr. Resnick?
- A. Approximately \$200,000.
- Q. Did you discuss specifically with him what kind of documentation you would need to put the transaction through?
- A. I told him I would need personal financial statements, tax returns, and basic description of Metro Dental, copies of the union contract, and I would proceed to see if I could acquire the funds.
- Q. Okay. Did there come a time when you obtained invoices for the equipment itself?
- A. Yes.
- Q. Do you recall how you obtained those invoices?
- A. From Professional Dental.
- Q. And that would be who?
- A. Mr. Burke.
- Q. Okay. Just for a moment, before we leave this conversation with Mr. Resnick. You stated that the amount of \$200,000 was discussed; is that correct?
- A. Yes.
- Q. Is there any question in your mind that the value of equipment being discussed was less than \$200,000?
- A. I knew that.
- Q. Mr. Einhorn, I'm going to show you an exhibit that's been marked CN-12B in this public hearing, which purports to be a copy of an invoice of an entity known as Professional Equipment Manufacturing Corp. Does that appear to be the invoice that was presented to you by Professional?
- A. Yes, it does.
- Q. And what is the total amount of that invoice?
- A. It's a \$133,779.63.

- Q. Now, how was it that you were going to grant \$200,000 in financing based on this invoice?
- A. We would increase the value of the equipment, and I also believe that the final invoice had a few other included that brought the number of actual dollars up a little higher than this.
- Q. I take it by your response, then, that that is not the final invoice?
- A. No.
- Q. I show you now what's been marked Exhibit CN-12C in this public hearing, which again purports to be a copy of an invoice of Professional Equipment Manufacturing Corp. No. 1964, for Metro Dental Services, Inc. for financing on behalf of Parliament Funding & Leasing Corp.
- That's a three-page document. Please examine all three pages.
- Do you recognize that document?
- A. Yes.
- Q. What is the total amount of that invoice?
- A. \$200,073.50.
- Q. Which exceeds by approximately \$67,000 the first invoice?
- A. Yes, sir.
- Q. You believe it's substantially the same except for those few changes where the additional equipment was added to increase the amount of equipment financed.
- A. Legitimately financed.
- Q. Let's try it this way: Are there any items that are on the first invoice that are also on the second invoice that you can now locate?
- A. Most of them are.
- Q. Do most of the prices appear to be the same, less or more?
- A. They seem to be more.

- Q. Do you recall any discussion with Dr. Sokol or Mr. Resnick or Mr. Burke on a percentage inflation?
- A. No.
- Q. Okay. I'm going to show you a third document, which has been marked CN-18B, again a document of Parliament Funding & Leasing Corp. Do you recognize that document?
- A. Yes, sir.
- Q. What is that?
- A. That's our lease contract with Metro Dental.
- Q. And does that pertain to the same transaction?
- A. Yes, sir.
- Q. And were you presented with a corporate resolution in order to execute this contract?
- A. Yes, sir. Yes, sir.
- Q. Can you make out any of the signatories on that document, for instance, who signs as the secretary?
- A. It looks like Jesse Hyman signed as President and it looks like Resnick.
- Q. Okay. Who is Mr. Hyman?
- A. Mr. Hyman is one of the principals of Metro Dental.
- Q. What did you assume was going to be done with the excess money that Metro received as a result of the inflation?
- A. That is would be put into the facility.
- Q. And just how would it be put into the facility?
- A. To -- for working capitals possibly to pay the first couple months rents. Any construction, supplies, things like that, that might be over and above the amount that was required.

However, the projected working capital also included "finder's fees" for those who obtained the Metro deal:

- Q. Now, did anyone with respect to this transaction either request or receive a commission payment?
- A. Mr. Burke and Metro Dental and Mr. Resnick.
- Q. Mr. Burke, Metro Dental and Mr. Resnick. And were those funds paid independent of the inflation between the two invoices?
- A. Yes, they were.
- Q. Well, let's take Metro Dental, first. Do you recall how Metro Dental received a commission with regard to this transaction?
- A. In the discussions I had with Mr. Resnick we decided to pay Metro a finder's fee for the transaction.
- Q. And when you say "we," to whom are you referring?
- A. Myself, my company.
- Q. That would be Parliament Funding & Leasing Co.?
- A. Yes.
- Q. And Mr. Resnick requested this commission be paid to Metro?
- A. Yes.
- Q. You didn't, unsolicited, reach out and offer him commission, did you?
- A. Not to the best of my knowledge. I didn't.
- Q. A second commission was paid to Mr. Burke, the representative of Professional?
- A. Yes, sir.
- Q. And do you recall any conversation leading up to that payment of a commission?
- A. It was normal in the industry to pay commission to equipment salesmen or vendors for giving us -- it's a finder's fee for giving us the transaction.

- Q. How much of a commission did Mr. Burke receive?
- A. A thousand dollars.
- Q. You don't recall any further discussion about that?
- A. No, only that he assumed that he was getting more.
- Q. Did -- what was the form of the payment to Mr. Resnick?
- A. In check form.
- Q. Do you recall how much of a commission he got?
- A. I believe he received two five-hundred-dollar checks.
- Q. With regard to the inflation of the invoices compared with the payment of the commissions, do you have an opinion on whether the commissions were, in effect, pumped back into the business for working capital?
- A. I couldn't tell you.
- Q. Well, if they were to be pumped back in for working capital, could you have not simply inflated the invoice another four or \$5,000?
- A. That could have been done, yes.
- Q. Did Mr. Resnick or Mr. Burke or anyone on behalf of Metro suggest that those checks were going to be used for their personal benefit?
- A. No, there was no suggestion.
- MR. SIAVAGE: One moment.
- Q. Mr. Einhorn, I'm going to show you another portion of Exhibit 18B, which you have in front of you, which is six checks drawn upon Parliament Funding & Leasing Corp. They are numbered in a series, 272, 602, 781, 5117, 5184, and 6067.
- The first check is dated 5/23/77 in the amount of a thousand dollars to Metro Dental Service, Inc. Is that the first commission that we were talking about?

- A. Yes, sir.
- Q. And the next check is dated 8/17/77 in the amount of \$500 payable to Mr. Resnick. Is that Mr. Resnick's first five-hundred-dollar commission?
- A. Yes, it is.
- Q. And the third check is dated October 28th, 1977, in the amount of \$500 payable to Stanley Resnick. Is that the second five-hundred-dollar commission Mr. Resnick received?
- A. Yes, it is.
- Q. There was a period of about two-and-a-half months between those two five-hundred-dollar checks that Mr. Resnick received. Do you recall why that much time elapsed between the payments?
- A. Well, it was a matter of cash flow and we didn't, at that point, want to pay Mr. Resnick the additional funds and would prefer to hold it off as long as possible and hopefully he wouldn't ask for it.
- Q. Did you consider the \$2,000 which you gave to Metro Dental Services to be part of the commission you agreed upon with Mr. Resnick?
- A. Yes.
- Q. Did you agree upon a total commission of \$3,000 with Mr. Resnick?
- A. Yes, I did.
- Q. And was that from the outset?
- A. That was from the outset.
- Q. And you don't know why the first two checks for a thousand dollars each went to Metro and the third and fourth went to him personally, do you?
- A. No, I don't know why.
- Q. Okay. Just to finish identifying those checks, Mr. Einhorn, I believe the third check in the series is a check for a thousand dollars dated January 17th, 1977, payable to John Burke. Is that Mr. Burke's commission?

- A. Yes, it is.
- Einhorn next explained how \$133,000 worth of paper was discounted for more than \$200,000 by a New York bank:
- Q. Okay. Now, subsequent to this transaction, did you, in effect, discount this paper?
- A. Yes.
- Q. And describe the transaction for the discounting to the Commission, if you would?
- A. We would send the paper work with -- over to our bank who was discounting it, and they would send us a check for -- they would put funds in our account for the proceeds of the discounted transaction, which came up in excess of \$200,000. Two hundred thousand for the equipment plus our profit on the transaction.
- Q. And what was your profit at the time?
- A. I believe the profit was about ten to \$12,000.
- Q. And who discounted the note?
- A. Chase Manhattan.
- Q. In New York?
- A. New York.
- Q. With respect to the transaction for the discount of the note, was Chase Manhattan presented the invoice of the equipment?
- A. Yes, they were.
- Q. Which invoice were they presented?
- A. The second invoice for \$200,000.
- Q. Did Chase Manhattan ask you any questions about whether that invoice was reflective of the value of the equipment?
- A. No, they didn't.
- Q. Did you discuss with Mr. Resnick or Dr. Sokol or Mr. Burke the fact that the note would be discounted?

A. Yes.

Q. Describe that discussion for us?

A. They knew that we would bring -- that we weren't funding it ourselves and we would be selling the paper to the bank. We would only act as an intermediary.

Q. Is that part of the reason why the financial statements are required and other documentation?

A. Yes. We don't do any credit work. We are strictly a brokerage transaction.

EXAMINATION BY THE CHAIRMAN:

Q. Can I ask if Chase Manhattan was informed that the original invoice was 133,000 plus dollars?

A. They were not.

EXAMINATION BY MR. SIAVAGE:

Q. You testified that it was common practice to pay the salesman, Mr. Burke, a commission. Was it common practice to pay the principals of corporations a commission?

A. On -- less of of a common practice. On occasion it would happen. It was not unusual.

Q. Would you ever offer a commission to a principal?

A. Yes, we would. Sometimes, yes.

Q. Did you offer the commission to the principals in this case?

A. I -- I don't remember exactly, you know, how it was developed. Only that it ended up with us paying them commission in order to acquire the transaction.

EXAMINATION BY THE CHAIRMAN:

Q. Had Chase Manhattan known that the original invoice figure was a 133,000 plus, what would your profit on that transaction have been in contrast to the ten or \$12,000 you received on a two-hundred-thousand-dollar figure?

A. Right. It would have been proportionately less.

Q. Less?

A. Two-thirds.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. In response to a question by Mr. Siavage, you said in reference to the commission paid to Mr. Resnick, and I don't mean to quote verbatim testimony, but as best as I remember it, that you pay the commission in order to acquire the transaction.

Are you saying to us that unless you had paid Resnick this commission, the deal would not have gone through?

A. I can't tell you what the future would have brought, but I wasn't willing to -- since it was a triple A credit with the guarantee of the union in terms of payments and the quality of the guarantors, the dentists standing behind the transaction, apparently the deal probably could have been taken anywhere and financed, and I wasn't willing to walk away from the transaction for a few thousand dollars. There was profit to be made.

Q. But Resnick personally sought a commission?

A. I'm not sure I understand. He personally knew about the commission.

Local 906's Building Loan

Although the Sokol, P.A., dental care contract for UAW Local 906 in Mahwah was signed with Ford Motor Company, the local itself made certain unusual arrangements with those affiliated with the operation. These arrangements included an agreement by Metro Dental to assume liability for a \$225,000 loan obtained by Local 906 from a bank in closeby Suffern, N.Y. The loan was obtained to finance the reconstruction of Local 906's headquarters. To undertake this project, Local 906 hired Western Realty Company of Morristown, a company created by Stanley Resnick of Metro Dental to handle the Sokol operation's construction work.

Joseph Reilly, who was president of Local 906 at the time of Sokol's Mahwah contract, testified about this building loan:

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Q. There came a time on behalf of Sokol, P.A. that you in some fashion negotiated or enabled them to obtain a loan, did you not?

A. No, I didn't enable them. I got a loan myself to reconstruct the building, and then I hired Mr. Resnick's company to build -- do the construction for us. I got the loan, the union got the loan.

THE CHAIRMAN: This was what, your union headquarters.

THE WITNESS: Yes, sir.

THE CHAIRMAN: And you had been occupying it as a headquarters, this particular building; is that correct.

THE WITNESS: That's correct.

THE CHAIRMAN: Now you're contemplating renovating or adding to it and putting in offices for dental work; is that right.

THE WITNESS: Well, it didn't really come about that way to start. It came about was we had a major fracture in the building as it stood, and we were contemplating ways that we could get it together and get it fixed and it was, I don't know exactly who told me at the time, but it was, you could see right through the side of the building. There was such a hole in the side of building, right from the top to the bottom and all the main supports had fractured, and I was told that the top of building actually moved six inches. So it meant we had a rather big construction job to repair it.

So at the same time we thought we would like to, which I always thought we better, build the benefit center to the membership at the same time because the members didn't use the hall as much as I thought they should, and I wanted to do something to the hall so they would use it a little bit more. So we came up with a benefit program and we tied the two together and resteel the original building and we added an additional floor at that time to accomodate that.

BY MR. RHOADS:

Q. Just consistent with the Chairman's question, you mentioned a Mr. Resnick and a company Western Realty. If I'm wrong correct me. You said it was Stanley Resnick's company, Western Realty?

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A. I always assumed it was. I think I was asked that question the last time I testified, and in my opinion it was. I don't know the names of all the officers of the company, but certainly he was the --

Q. I appreciate that. But, in any event, your perception with the dealings with Mr. Resnick was that it was his company, Western Realty?

A. Yes.

Q. Did you ever hear a man by the name of Seymour Cohen?

A. Yes, sir.

Q. How do you know Mr. Cohen?

A. Mr. Cohen was the gentleman that supervised all the construction work at the local union.

Q. Now, in that regard, you say that you got the loan. Of course when I say "you," your local, 906, you didn't personally get the loan. The loan amount was \$225,000, was it not?

A. Yes, it was.

Q. And that was from the Empire National Bank?

A. Yes, it was.

Q. And it was used to refurbish or build additions or whatever on the local's building, wasn't it?

A. It was used to almost rebuild the building. We had to go into the concrete. We had to break ground. We had to go into the ground, new foundation, resteel the building.

Q. I appreciate that. What I'm asking you, it's the local's building, isn't it?

A. Yes, it is.

Q. It's not Dr. Sokol's building, is it?

A. It's always been the local's. It's still in its name.

Q. It's not Sokol's. He doesn't own any part of it, does he?

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- A. No.
- Q. As I understand it, didn't Dr. Sokol and Metro Dental Services agree to take over the obligation of that loan --
- A. Yes, they did.
- Q. -- for your local? Why would they do that?
- A. In return for the use of the property.
- Q. So they agreed to be liable for \$225,000 to the -- plus interest, to the Empire National Bank?
- A. That's correct.
- Q. Was that part of the agreement in order for Joel S. Sokol, D.D.S., P.A., to get the contract with Local 906?
- A. No, that was in order for Joel Sokol to use our building to offer the service, but it wasn't part of the contract. Part of the contract was between the Ford Motor Company and Dr. Sokol, which has absolutely nothing to do with the union or the building or its finances.
- Q. Well, prior to them getting the contract with 906 to service the members of 906, didn't you negotiate and discuss where the facility was going to be, where they would actually drill the teeth of these members?
- A. Well, certainly we wanted our local union used as one of the places and that was going to help us to repay due to the construction work on the building.

Sokol's Local 906 Janitors

Another Local 906 arrangement with the Sokol group was the utilization of two union officials as janitors in the building that housed the health care activities. One was a member of the union executive board when Local 906 agreed to undertake a dental care plan for its members.

Reilly testified about the janitorial work:

- Q. In the course of your term as president of Local 906, did you have occasion to negotiate with gentleman by the name of Joel S. Sokol, a dentist, for the purposes of packaging and arriving at a dental-care plan for members of your union?

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- A. Yes.
- Q. And along those lines, did there come a time when you and Dr. Sokol became aware that you, as president of Local 906, would not be able to authorize the contract, but that he would have to deal with Ford Motor Company?
- A. I knew that from the start. I always knew that.
- Q. Did you communicate that to Dr. Sokol?
- A. I don't exactly know, but I always knew the final contract had to come between the Ford Motor Company and Dr. Sokol, if we got that far.
- Q. Did there come a time when Ford Motor Company okayed or otherwise subscribed to contracting with Dr. Sokol?
- A. Yes, there was.
- Q. With respect to arriving at a final contract between Ford Motor Company and Dr. Sokol, in order to benefit your members of the local, did you have any input into that decision?
- A. Well, certainly recommended it, yes.
- Q. I'll refer to the Mahwah facility here and after. With respect to the Mahwah facility, did you or Dr. Sokol employ any janitorial services there, to your knowledge?
- A. Yeah, we employed our own janitor.
- Q. Who was that?
- A. Mr. William Patterson.
- Q. And he's a member of your local, is he not?
- A. At that time, yes.
- Q. And, to your knowledge, was there a Patrick Fanning so employed as a janitor?
- A. Patrick Fanning and Bill Patterson jointly did the janitorial work for the local union.
- Q. Do you know of your own direct knowledge? By that, I mean, did you actually see them doing it?
- A. Oh, sure, many times.

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- Q. You saw Patrick Fanning cleaning up?
- A. Yes, both, sure.
- Q. What office or position did Patrick Fanning have within the local at that time?
- A. I believe he was the recording secretary of the local union.
- Q. Was he ever a trustee?
- A. Perhaps prior to that he was an executive board member. He might have been, prior to that, a trustee. I don't think he was a trustee, no. He was recording secretary.
- Q. Okay. Well, as such, did, to your knowledge, did he have any input with respect to the hiring of Sokol, P.A.
- A. No, none whatever, other than the fact is when we agreed initially, the executive board agreed to go into the program, he was on that board. It would be recorded as a vote in favor.
- Q. Who, if anyone, recommended Sokol, P.A. to you?
- A. He -- I tried to refresh my memory exactly on that last time. I believe it was through one of my officers in the local, Pete James.
- Q. Peter James. If you know, did anyone recommend Dr. Sokol to Peter James?
- A. I think it was, it was he just knew three, four different names at the time. We met with a number of people, and I met with Sokol, and I met with others and it seemed to us at the time that he offered the best program.

How Sokol's Local 906 Janitors Were Paid

William Patterson of Lincoln Park, one of the Local 906 members the Sokol group employed at the Mahwah health care facility, testified about the janitorial service -- and the peculiar method that was set up for paying janitors:

- Q. Now, you are, or at least were, in 1977, '78, a member of Local 906?
- A. I was.

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- Q. Are you now?
- A. No.
- Q. During the course of your tenure as a member of local 906, did you ever have occasion to be employed in some fashion whereby you were performing administrative duties at the Mahwah union headquarters?
- A. I did.
- Q. And did you have a title along those lines?
- A. Building administrator.
- Q. How long were you the building administrator?
- A. Seven years.
- Q. And in the course of your being the building administrator, did part of your duties provide for the furnishing of janitorial care of that building?
- A. That's right.
- Q. Did there come a time while you were so providing those services that Joel S. Sokol, the professional association, came into that building as a tenant?
- A. That's right, yes.
- Q. And that, of course, would be a dentist, do you recall that?
- A. Yes.
- Q. And then, again, along with your janitorial services, were you then contracted or somehow hired to also perform janitorial services --
- A. I was.
- Q. -- for Joel Sokol?
- A. Yes.
- Q. Who actually hired you to do it?
- A. Resnick. I don't know his first name.
- Q. If I were to tell you Stanley, --

A. Stanley Resnick.

Q. --- does that refresh you?

A. Yes.

Q. Was there, at the time of the hiring, some sort of payment agreement?

A. There was.

Q. What was it, do you recall?

A. \$400 a month.

Q. And that is in addition to the monies that the union was paying you to clean their portion of the building, was it not?

A. That's right.

Q. Who actually sent you the checks from Sokol, do you recall?

A. I don't know.

Q. You really were paid for those services by Eugene Roehrer, were you not?

A. Eugene Roehrer made out the checks, yes.

Q. He was the former, am I correct, secretary/treasurer?

A. Right.

Q. He, as I understand, would make out checks from the union fund, pay you, and then the Sokol checks would come in and then you would endorse them and give them to Eugene Roehrer?

A. That wasn't the way it was supposed --

Q. I know that, but that's the way it was done?

A. Yes.

Q. Do you know what Eugene Roehrer did with it?

A. No, I have no idea.

Q. Now, at the time Stanley Resnick hired you to do the janitorial services at their portion of the facility, if you know, had they already contracted with the union to do the, you know, the health-care plans, the dental services?

A. Yes. I believe they had, yeah.

Q. What -- well, what I'm asking you in short, I'll be more direct, is, to your knowledge, was it part of the deal that in order for Sokol, P.A. to furnish services, dental services to the union members, they had to have hired you as a janitor?

A. They had to?

Q. Yes.

A. They didn't have to.

Q. In other words, had they not hired you, at least according to you, they would have still gotten the contract; is that right?

A. Yeah.

Q. Now, along the lines of your performing these services, you also had helpers didn't you?

A. Yes.

Q. And one of them was a Patrick Fanning?

A. That's right.

Q. And he was also an officer at 906, wasn't he?

A. Yes, he was.

Q. What was he, do you recall?

A. He was a trustee at the time.

Q. And as a trustee, if you know, would he have had any input with respect to whether anyone really would get a contract with the union?

A. No.

Q. He wouldn't have to vote on it or do anything, to your knowledge?

A. No.

Q. But, in any event, he did help you with the janitorial service, and did you pay him for it?

A. That's right.

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Q. Did you pay him out of the money you received from the union that the union received from Sokol?

A. Yes.

Q. How much would you pay Patrick Fanning?

A. Three-fifty. Just a minute. Half of \$350.

Q. Half of three-fifty?

A. Yeah.

Q. Per month?

A. \$175.

Q. Per month?

A. That's right.

EXAMINATION BY THE CHAIRMAN:

Q. I suppose these two men that you had help you, they were working regular hours for the Ford Company, were they not?

A. That's right.

Q. This is extracurricular?

A. That's right.

Questioned About Conflict of Interest

George F. Serio of Mountainside, administrator of Teamster Local 478's welfare funds, was questioned about various subjects that indicated potential conflicts of interest relative to the Sokol, P.A., dental care contract with his union:

Q. Mr. Serio, would you tell the Commission your present occupation?

A. I'm employed by the Local 478 pension and welfare funds as salaried administrator.

Q. And for how long have you been so employed?

A. Approximately ten years.

Q. And what is that local again? What is it?

A. International Brotherhood of Teamsters, yes, sir.

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Q. During the course of your duties as the administrator to this fund, did you have an occasion whereby you entered into negotiations or, at least, became knowledgeable of negotiations between the fund and one Joel S. Sokol?

A. I personally?

Q. Whether you entered into them or became aware of them, one or the other?

A. Became aware of them.

Q. Now, the negotiations, did that involve the furnishing of a dental plan by Joel S. Sokol to the members of your union?

A. A proposal was submitted to the board of trustees for review by Dr. Sokol.

Q. Did there ever come a time when you finally wound up with a final contract, to your knowledge?

A. Yes, sir.

Q. That was December of '76, was it not?

A. Yes, sir.

Q. Your father is Harry Serio; is that so?

A. Yes, sir.

Q. And what position, if any, does he have with the union?

A. He is a union business representative.

Q. And was he a business representative in December of 1976?

A. Yes, sir.

Q. And as a business representative, to your knowledge, would he have any input upon whether or not Dr. Sokol's firm was going to be contracted by the union?

A. Well, as a trustee, he has a voice.

Q. Further than that, does he have a vote?

A. Yes, he does.

- Q. Do you know whether, in fact, your father voted to accept Joel S. Sokol, P.A., as the dental-care provider?
- A. No, I do not.
- Q. Do you yourself use Dr. Sokol or one of his dentists as --
- A. Yes, I do.
- Q. Do you pay for it?
- A. No, I do not.
- Q. Is that as a result of the contract entered into between the union and Sokol, P.A., if you know?
- A. Yes, because I am a covered member, and my family is, also.
- Q. How about your father?
- A. Yes, he is also.
- Q. He is covered?
- A. Yes.
- Q. How would Dr. Sokol get paid for the services that he provides a patient such as yourself?
- A. Well, any member is paid through -- by the fund as a eligible member.
- Q. So that, given the situation that if Dr. Sokol worked, rendered services to you, he would be paid through the fund. Is that so?
- A. That is correct.
- Q. You have a sister by the name of Dawn Serio?
- A. Yes, I do.
- Q. To your knowledge, was she employed by Dr. Sokol?
- A. Yes, she was.
- Q. And do you know whether, in fact, that was part of the agreement whereby Dr. Sokol ultimately wound up with a contract with Local 478?

- A. No, sir.
- Q. You do not know whether it was or it wasn't?
- A. I know it wasn't.
- Q. How do you know it wasn't?
- A. It was never brought up in any trustees meeting.
- Q. Well, you said you weren't privy to any of the negotiations, didn't you?
- A. Not the negotiations itself, no. But neither was my father.
- Q. Now, there came a time when you contemplated and ultimately did incorporate a company by the name of the Group Administrative Services, Inc., did you not?
- A. Yes, I did.
- Q. And what was the corporate purpose of that entity?
- A. To administer employee benefit plans.
- Q. Such as dental plans?
- A. Such as anything that had to do with the health-care field, which I had some knowledge of.
- Q. Is it fair to say that would incorporate dental plans?
- A. It would incorporate dental, eye care, drug; anything that had to do with employee benefit plans.
- Q. Were you aware at some point in time where Dr. Sokol wrote to Ford Motor Company, in order to secure a contract with Ford Motor Company to provide their dental-care services, and within that letter he told their representative that Group Administrative Services, Inc., was going to be the administrator to their dental plan?
- A. Yes, I did, about two weeks ago.
- Q. Two weeks ago you were told that?
- A. Right, by you sir.

- Q. Since that time have you had occasion to discuss with Dr. Sokol and ask him something along the lines why on earth did you put that in there?
- A. Well, according to, to the -- the specific language?
- Q. Whatever language you used.
- A. Well, according to the language, it said that I would administer the plan. I questioned Dr. Sokol on it. He doesn't recall saying that.
- Q. But at the time other than two weeks ago when I so informed you, had you had any other knowledge that he had done that?
- A. No, I did not, sir.
- Q. Now, while we're on the subject of Dr. Sokol, he, in fact, was one of the officers of Group Administrative Services, Inc., wasn't he?
- A. He was.
- Q. And you were the president?
- A. I was the president.
- Q. And this was at a time when he had negotiated, and in fact successfully negotiated, with your local in order to provide the dental-care plan, wasn't it?
- A. This was prior to, sir.
- Q. This was prior to?
- A. The establishment of Group Administrative Services was after the contract was entered into and Dr. Sokol was not supposed to be in the incorporation of that company. It was not done with my knowledge.
- Q. But he was put in there, wasn't he?
- A. Yes, he was.
- Q. And he was an officer wasn't he?
- A. Yes, he was.

* * *

- Q. Well, did it ever occur to you at any point in time that there might be a conflict of interest because you had joined in an administrative servicing company with the intent of servicing dental-care providers, amongst other things, with someone who had, in fact, contracted with your union?
- A. Not at that point, no. At sometime thereafter, shortly after that, when the papers did come back from Mr. Franconero that he had Dr. Sokol on it, this was after March, I so informed him to take Dr. Sokol's name off, that there would -- there possibly would be a conflict of interest if I proceeded with operations of Group Administrative Services, if I ever contracted with any other group. I informed my attorney to remove Dr. Sokol's name from the incorporation.
- Q. Mr. Serio, did at any point in time, did you go to the board of trustees of Local 478 and apprise them of the fact that you had started this corporation that was going to administer clients of the local?
- A. No, sir.

DeCavalcante's Lieutenant

John Riggi of Linden, business agent of Laborers' Local 394 for about 25 years, has been identified in law enforcement records as the acting boss of Simone (Sam the Plumber) DeCavalcante's crime family in New Jersey. He gained increasing prominence as DeCavalcante became less active, reputedly because of ill health, and began living primarily in Florida. Riggi's jurisdiction centers largely in the Elizabeth-Trenton region but extended into Essex County in the north and down into Monmouth and Ocean counties in the southern part of the state. The SCI's investigation revealed many contacts between the Sokol operation and Riggi and his associates. Riggi confirmed a number of these as a witness, testifying under a grant of immunity as follows:

- Q. Now, during the course of your tenure as business manager and trustee, did you have an occasion to meet a Dr. Joel Sokol?
- A. Yes, I did.
- Q. And was it under the circumstances whereby Mr. Sokol was attempting to have your union contract him in order for him to provide a dental-care plan?

A. Excuse me, sir.

(The witness confers with counsel.)

A. Mr. Rhoads, I believe I had testified to that at a private hearing one time before.

Q. Yes, I believe you did. Would you care to answer it now?

A. Well, I already answered that once before, Mr. Rhoads.

COMMISSIONER FRANCIS: Answer it again, Mr. Riggi.

Q. Answer it again. This is a public hearing, not a private hearing.

A. I would like to refer back to my transcript, please.

THE CHAIRMAN: Why do you do that? Don't you know the answer?

THE WITNESS: Well, I would still like to refer back to my transcript, sir. I already testified to this effect.

THE CHAIRMAN: But do you know the answer now?

THE WITNESS: Well, let me see. The answer is yes.

THE CHAIRMAN: You don't have to refer to the transcript to give us the answer, do you?

(The witness confers with counsel.)

THE WITNESS: Well, I would like to refresh my recollection, Commissioner.

THE CHAIRMAN: We don't want you refreshing your recollection on every question asked, because we would be here for a week if we do that. All we want is the answer, the truthful answer.

(Witness conferring with counsel.)

THE CHAIRMAN: Do you need your recollection refreshed?

THE WITNESS: I do want to give you a truthful answer and it's no --

THE CHAIRMAN: It's in your head, not on the paper particularly.

THE WITNESS: Well, Counsellor, Commissioner -- yes.

BY MR. RHOADS:

Q. When was that, if you can recall, and you can approximate for us, that Mr. Sokol, Dr. Sokol, approached you in order to solicit you to take his dental plan?

A. I would -- I don't recall, Counsellor, but he did solicit me.

Q. As you sit here now, do you have any present recollection at all as to the time when Mr. Sokol, Dr. Sokol, solicited your union? A year ago? Two years ago?

A. Well, the best of my recollection, I would say about two years ago.

Q. At the time Dr. Sokol approached you with the idea of selling his dental-care plan to your local, was he in the company of any other people, that you recall?

A. I, again, I answered that, and I don't recall if he had Mr. Resnick or just himself there.

Q. All right. Do you know a Stanley Resnick?

A. Yes, I do.

Q. And is that the Mr. Resnick you refer to?

A. Yes, sir.

Q. You know a Dr. Jesse Hyman, do you not?

A. Yes, I do.

Q. How is it that you know Dr. Hyman?

A. For the same reason; that he was looking to sell a dental plan to our union.

Q. I'm not quite sure I follow that. Had Dr. Hyman solicited your union to sell a dental plan to it?

A. Both.

Q. Both Hyman and Sokol you mean?

A. Yes, sir.

Q. But, in any event, they both came to you --

A. They both came.

Q. -- at the same time; is that right?

A. In around the same time. I answered that once before.

Q. Regardless of when you answered it before, I'm asking you today.

A. Excuse me, please.

(Witness conferring with counsel.)

THE CHAIRMAN: Mr. Riggi, you will be asked questions, and a lot of them that you were asked before, and everybody else is here, and the purpose of it is, is that we want a complete record in this public hearing, you see. So just please answer the questions the best of your ability to do so and we know that some of them you answered before. We know that. There's no intent here to trap you on prior questions. All we want is your recollection and the truth of the matter, that's all. So let's proceed on that basis.

BY MR. RHOADS:

Q. Did Dr. Hyman ever indicate to you that he knew Dr. Sokol?

A. Yes, he did.

Q. And when he indicated that he knew Dr. Sokol, under what circumstances did he say that he knew him?

(The witness confers with counsel.)

THE CHAIRMAN: Did you understand these two were working together on a --

THE WITNESS: I had assumed that they were, as I, as I so stated in the testimony, that, that they had something to do with Metro, which I didn't know too much about. That's where Mr. Resnick comes in.

BY MR. RHOADS:

Q. That would be Metro Dental Services?

A. Something to that effect.

Q. But you know somehow he's connected

A. Somehow, somewhere.

Q. Somehow they were connected with Sokol and Hyman; is that right?

A. Something to that effect. What it was, I don't really know.

Q. Well, they had asked you for your union business, in effect? "They," I mean Sokol and Hyman. Did they get it?

A. No.

Q. Having not gotten it, did they ever ask you for your aid or help in them obtaining contracts with other unions?

A. Yes.

Q. And did you, in fact, render some aid or help to Sokol to get other unions?

A. Yes.

Q. And what are they, Mr. Riggi, the unions that you helped him?

A. Well, I don't recall who they were at the time. I still don't recall. I know I met him, I met -- I introduced them to a Mr. Carrol from Local 472, and the rest I really don't recall who they were. At that time I didn't recall and still today I don't recall.

Q. But there were certainly more than one?

A. Yes, yes.

Q. These individuals, for instance, Mr. Carrol, what is he in the union?

A. He's a business manager of Laborers Local 472.

Q. 72. So he would enjoy the same type position you do?

A. I don't know what you mean by "enjoy."

Q. Is the title the same?

- A. But he would have the same title I have, yes.
- Q. To your knowledge, did Dr. Sokol go on to contract with any of the unions you introduced him to via their business manager?
- A. Not to my knowledge, no.
- Q. Did Dr. Sokol pay you for that service?
- A. No, sir.
- Q. How about Mr. Resnick?
- A. No, sir.
- Q. How about Dr. Hyman?
- A. No, sir.
- Q. Staying with Dr. Hyman for a moment, you knew him prior to his coming to you with a dental plan for your local, did you not?
- A. I don't quite follow you.
- Q. Well, you had mentioned at one point in time Dr. Hyman came with the idea of selling a dental-care plan to your union, isn't that right?
- A. Yes.
- Q. Well, you knew him prior to that, didn't you?
- A. No, no.
- Q. Is that the first time you ever met Dr. Hyman?
- A. Yes.
- Q. Did you know that he was from Buffalo area?
- A. Not at the time.
- Q. You came to learn that subsequent to that?
- A. Later, yes.

Riggi was questioned about his knowledge of Curly Montana, the organized crime figure in Cleveland, and about his crime family associates in New Jersey:

- Q. Do you know a man by the name of Curly Montana?
- A. Yes.
- Q. How is it you know Mr. Montana?
- A. He happened to be in the presence of Dr. Hyman.
- Q. What were the circumstances?
- A. In reference to the dental plan.
- Q. Curly Montana was with Dr. Hyman?
- A. Yes.
- Q. When he came to you to sell your union a health-care plan?
- A. Yes.
- Q. Did you know Curly Montana prior to that?
- A. No, sir.
- Q. Have you ever heard Curly Montana to be affiliated with organized crime?
- A. No, sir.
- Q. I show you what's been previously marked Commission Exhibit 24 and I ask you: Can you identify the man in that picture?
- A. Yes.
- Q. That's the Curly Montana you're referring to?
- A. That looks like him, yes.
- Q. Now, in relationship to meeting with Dr. Hyman and Curly Montana, was there a Carl Rizzo with him?
- A. I believe so. I really don't recall, but I believe so.
- Q. I show you Commission Exhibit 29 and ask you: Is that Carl Rizzo, the gentleman that you believe may have been with him?
- A. Yes.
- Q. And now having seen the photograph, do you recall whether in fact he was with him?

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- A. Yes.
- Q. Did you ever know Carl Rizzo to be an associate in organized crime in New York state?
- A. No, not to my knowledge.
- (Witness conferring with counsel.)
- Q. Now, you know a man by the name of Comillo Molinaro, also known as Bill Molinaro, don't you?
- A. Yes.
- Q. In fact, also known as Bill Martin. Have you ever heard him go by that name?
- A. Yes.
- Q. How is it that you know Mr. Molinaro?
- A. Oh, I just happened to know Bill Molinaro. I don't know what you mean how do I happen to know him.
- Q. Well, how did you meet him for the first time?
- A. Oh, I don't recall, because I've known Bill quite a few years. I don't recall.
- MR. RHOADS: For the record, may I have that photograph that we have had blown up?
- Q. Is this the Comillo Molinaro that you know?
- A. That's the Bill Molinaro, Bill Martin, that I know.
- Q. Did you ever know that man to have worked at the Roman Forum?
- A. Yes, sir.
- Q. And either your daughter or son had a wedding reception at that restaurant, did they not?
- A. I testified to that, yes, sir.
- Q. I believe you did. Which is it, your son or daughter?
- A. My son, yes.

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- Q. Your son. When was the wedding reception?
- A. About five, six years ago.
- Q. And was Bill Molinaro working at the Roman Forum then?
- A. At that time, yes.
- Q. He was the manager of it, wasn't he?
- A. Yes.
- Q. At that time when your daughter had the reception --
- A. My son.
- Q. Had the reception at the Roman Forum, did you know Stanley Resnick?
- A. Yes, sure.
- Q. So that you knew Dr. Hyman and Stanley Resnick long before Joel Sokol came to you with his health care proposal, didn't you?
- A. Could be, could be.
- Q. Well, again, now, I'm going to go back, and since you met Stanley Resnick through Dr. Hyman, when did you first know Dr. Hyman?
- A. I really don't recall the time. That's what I'm telling you. I don't recall. It could have been three, four years ago, five years ago, but when they came with their program. Prior to that I didn't know him.
- Q. In any event, you now know, you now in your mind as you sit here are clear that you knew Dr. Hyman before you knew Stanley Resnick because you said he introduced him. Is that correct?
- A. Yes.
- Q. This fellow Bill Molinaro that you know, did you ever recommend to Dr. Hyman that he bring Bill Molinaro into their dental operation?
- A. No, sir.
- Q. But you did tell Stanley Resnick to hire him, didn't you?

- A. I don't recall ever telling anyone to hire him.
- Q. Did you know that Bill Molinaro had a criminal record?
- A. No, sir.
- Q. How long have you known him?
- A. Oh, about eight years, nine years, ten years.
- Q. And you have seen him pretty frequently, don't you?
- A. Yes.
- Q. About once a week?
- A. No, no, no.
- Q. Well, how would you characterize it?
- A. About twice a month maybe.
- Q. Twice a month?
- A. Yes.
- Q. Is it social meetings?
- A. That's right.
- Q. Or is it business meetings?
- A. Just a social meeting. A cup of coffee in the morning.
- Q. Well, Mr. Riggi, didn't, in return for your services to Dr. Sokol, you tell him to hire Bill Molinaro --
- A. No.
- Q. -- and put him on the payroll?
- A. Not that I recall, Counsel.
- Q. During this course of years you have known Bill Molinaro, other than his working in the Roman Forum, what does he do for a living?
- A. I have no idea.
- Q. Never even asked him?

- A. No, sir.
- Q. You have known this gentleman eight years, as you testified. You testified one of his sources of income folded up on him, and you never ever said to him, "What are you doing now?"
- A. No.
- Q. Do you know a gentleman by the name of Pat Martirano?
- A. You'd have to show me a picture of Pat Martirano.
- Q. Well, do you know someone who goes by the alias of Patty "Specks" Martirano?
- A. Oh, yeah, sure.
- Q. How is it that you know Specks Martirano?
- A. How is it that I know him?
- Q. Yes. How do you know him?
- A. In -- I don't understand the question. I just know him.
- Q. Well, how did you meet him?
- A. Oh, I don't recall how I met him.
- Q. How many years have you known him?
- A. I'd say, in the area of ten years. Five to ten years.
- Q. Do you know what he does for a living?
- A. No, not really.
- Q. Did you ever ask him?
- A. No.
- Q. Is he a member of organized crime?
- A. Not to my knowledge.
- Q. You would know if he were, though, wouldn't you?
- A. No, sir.

Q. I'm going to show you, so that there's no mistake over whom we're talking about, I am showing you a picture that was previously marked Commission Exhibit 22 and I ask you, direct your attention to the gentleman on the right there, and tell me: Do you know him?

A. Yes.

Q. And who is that?

A. That's Patty Specks.

Q. Do you know a gentleman by the name of Nicholas Cifelli, Nicky Cifelli?

A. No.

Q. I show you Commission Exhibit 21. Do you recognize the man depicted in that picture, twice depicted in that picture?

A. This looks like a fellow we call Turk.

Q. Turk?

A. Yes.

Q. Do you know Turk's name? Would it be Nick Cifelli?

A. Not to my knowledge.

Q. In any event, this is the fellow you call Turk?

A. Yes.

Q. For the record, this was previously identified as Nicholas Alfred Cifelli. How do you know Turk?

A. I think he's a member of the union, Turk, if that's the man named.

Q. At least, the man identified in this picture?

A. Yes.

Q. Is he a member of your local?

A. Yes.

Q. With regard to Mr. Martirano and Turk, did you have an occasion to tell Dr. Sokol that you want Dr. Sokol to treat those two men for nothing?

A. No, sir.

Q. Did you ever tell an optometrist employed by Sokol's association, a Dr. Weiner, to take care of those two men for nothing?

A. No, sir.

Q. Mr. Riggi, you do derive income, proceeds, from Dr. Sokol's health-care plan, don't you?

A. I answered that question before, sir.

Q. I don't believe you did.

A. Yes, I did.

COMMISSIONER FRANCIS: Not today. Would you answer the question, please?

THE WITNESS: No. I thought I answered that before when he asked me the same thing.

Q. Is your answer no to the question?

A. No, sir.

Q. Or, no, that you will not answer?

A. No, sir, I do not.

COMMISSIONER FRANCIS: Mr. Riggi, is a Joan Riggi related to you?

THE WITNESS: No, sir.

BY MR. RHOADS:

Q. Do you know a Joan Riggi?

A. No, sir.

MR. RHOADS: One moment, please

Q. Do you know a Lena Martirano?

A. Unless that would be Pat's wife. I don't know.

Q. Well, what's Pat's wife's name?

A. I don't know. I'm just going by the last names.

Q. You know George Franconero, don't you?

- A. Yes, sir.
- Q. Has he ever been an attorney for you?
- A. No, sir.
- Q. Did you know Mr. Franconero was an attorney at one point in time for Joel Sokol, P.A., the professional association?
- A. I think so, yes.
- Q. Well, did George Franconero play any role in negotiations, or, at least, the attempt by Joel Sokol to contract with your union?
- A. Not that I recall.
- Q. Do you know Armand Laglienti, L-a-g-l-i-e-h-t-i?
- A. No. It don't ring a bell, Counsellor.
- Q. How about a Louie Shortino, S-h-o-r-t-i-n-o?
- A. Yes, sir.
- Q. How do you know Mr. Shortino?
- A. He's a business representative like myself, a local up in North Jersey.
- Q. Do you know what local that is?
- A. 409, Laborers Local 409.
- Q. Now, in connection with Dr. Sokol and Dr. Hyman and Mr. Resnick, you know Dr. Ferrara, don't you, Anthony Ferrara?
- A. Yes, sir.
- Q. And you knew his father, did you not?
- A. I know his father.
- Q. Well, did his son, Dr. Ferrara, ever approach you and say, "I'm with Joel Sokol, and how about hiring us," anything like that?
- A. No. You mean the father?
- Q. No, I mean the son, the doctor.
- A. No, outside of their presentation of the welfare, the health plan.

- Q. Do you use Dr. Hyman as a dentist?
- A. No. I used Dr. Ferrara very recently.
- Q. Dr. Anthony Ferrara?
- A. Yes, then they send me to the clinic. I had a loose cavity in my tooth.
- Q. Well, do you pay Dr. Ferrara?
- A. Pardon, sir?
- Q. Do you pay him when he does work on you?
- A. I send him the forms of the welfare and pension forms.
- Q. From your union?
- A. From my union, yes.

Riggi was asked about a New York lottery distributorship (H.E.C. Corporation) that Dr. Hyman was interested in -- a topic that would come up later in the hearing:

- Q. Thinking back a moment, do you recall Dr. Hyman being involved in a lottery distributorship at any time?

(The witness confers with counsel.)

COUNSEL: Mr. Commissioners, I'm going to object to the materiality of this question as it relates to the scope of this particular investigation into health-care plans, and ask, first of all, that an offer be made as to the relevancy of this particular question as to how a lottery plan, or however it was posed by Mr. Rhoads, relates to any health-care plan or dental plan.

MR. RHOADS: I don't suggest a lottery plan. I suggest Dr. Hyman does, and Counsel hasn't had the benefit of the full hearing. Dr. Hyman's name has been brought up many, many times during this hearing.

THE CHAIRMAN: I agree. The objection is overruled.

(The witness confers with counsel.)

THE WITNESS: Can you repeat the question, please.

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MR. RHOADS: Would you read that back, please?

(The reporter reads back the pending question.)

- A. I think I testified in the private hearing that I accidentally met them one time at the Sheraton Motel.
- Q. And is that still your testimony in a public hearing?
- A. Yes, sir; yes, sir.
- Q. And during that accidental meeting, is that how you came to know that Dr. Hyman was involved, or, at least, about to become involved in a lottery distributorship in New York?
- A. Yes, to the best of my recollection, yes.
- Q. Do you know whether, in fact, he did become involved in it?
- A. I couldn't say. I don't recall.
- Q. Did you ever furnish any money in order for Dr. Hyman and partners, if any, to get this operation started?
- A. No, sir.
- Q. Did they ever give you any money?
- A. No, sir.

Riggi testified briefly about his relationship with Sam DeCavalcante:

- Q. Now, Mr. Riggi, you know Simone Rizzo DeCavalcante, don't you?
- A. Yes, sir.
- Q. How do you know Mr. DeCavalcante?
- A. I know him all my life. Or he knows me all my life, my adult life.
- Q. Do you know him through your profession?
- A. Through my parents.
- Q. Through your parents?

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- A. Yes, my father and his father.
- Q. You more or less grew up with him; is that so?
- A. No, not really, because he's much older than I am.
- Q. Well, were you ever professionally associated with him?
- A. No.
- Q. Did Simone DeCavalcante ever, or was Simone DeCavalcante ever a member of your union?
- A. No, sir.
- Q. He was instrumental, though, in you becoming business manager in that union, wasn't he?
- A. Not to my knowledge.
- COUNSEL TO RIGGI: I will object to the materiality of that question as to health-care plans.
- MR. RHOADS: Well, it's going to be tied in through an expert witness we intend to have here, Mr. Chairman.
- Q. He was instrumental in you obtaining the job of business manager of Local [394], wasn't he?
- A. Not to my knowledge.
- Q. And in fact, you are his successor to the DeCavalcante crime family in New Jersey, aren't you?
- A. No, sir.

Hyman Led Sokol to Local 1262

Samuel Kinsora of Wayne, president since 1969 of Retail Employees Local 1262, United Food and Commercial Workers International, testified that Dr. Hyman introduced Dr. Sokol and the Sokol dental care plan to his union:

- Q. Now, during the course of your tenure with Local 1262, have you come to know and entity by the name of Joel S. Sokol, D.D.S., P.A.?
- A. Yes.

- Q. Do you know what the corporate function of that entity is?
- A. Well, our relation is that they provide dental services to our members.
- Q. When, in fact, did you, through your local, contract with Sokol, P.A.?
- A. I believe it was 1978, November.
- Q. When I say you through your local --
- A. It isn't the local, it's the welfare.
- Q. So it is the welfare fund, as I suggest. Are you a member of that board?
- A. There are three health and welfare funds in our office. There's a legal fund and two pension funds. The three health and welfare funds provide the health and welfare benefits, which include the dental service. I am a trustee on each of the funds with other trustees.
- Q. Now, as a trustee of the fund, am I correct in assuming, then, that you would vote on whether or not Sokol, P.A., would get the contract or not?
- A. Yes.
- Q. Now, prior to the actual awarding of the contract to Sokol, P.A., who, if anyone, on behalf of Sokol, P.A., approached the officials of the welfare fund in order to sell them on hiring Sokol, P.A.?
- A. We invited different -- when we changed funds, we had two previous dental plans, and we were changing, looking to change the plan, and we sent out people looking for people in the area to give what we call participating dentists or site centers of this type. One -- we had several of them in for presentations to the trustees.

Sokol came in through -- a Dr. Hyman brought Sokol in, and he introduced Sokol. Hyman had been -- we had been introduced to many years before. He handled centers and sites for dental benefits in New York City, and we had called him once asking if he knew any, or would he be interested in getting into one in New Jersey.

At that time he was, I believe, running a site in Buffalo, New York, for the public employees of the City of Buffalo and the police department, I believe. He brought Sokol into the meeting, the same evening we had a number of other people come in for presentations. That's how we met Sokol.

- Q. So it was via your knowledge of Hyman and Hyman more or less introduced Sokol to you?
- A. Right.
- Q. Is he presently furnishing a dental-care plan to the members of your local?
- A. Yes.
- Q. Where is the facility located that he services the members?
- A. We have thirteen sites plus a number of them in New York.
- Q. And these are all manned by Sokol, P.A., employees; is that so?
- A. No, no, they're not all manned by Sokol employees. A number of sites are Sokol sites, others in areas where there's not as dense a population, in New Jersey, he has contracted with other dentists to provide the services. And in New York we have a number of sites. I believe he only has one in Middleburg. The rest are dentists that he has contracted with to provide the services where he did not have sites.
- (The witness confers with counsel.)
- A. Well, in New York, also, it's Dr. Ferrara who handles it, but it really is Sokol that we look to.
- Q. Dr. Ferrara, to your knowledge, is a principal in Sokol, P.A., is he not?
- A. Yes.
- Q. Did you know Stanley Resnick?
- A. Yes.
- Q. Did you ever have any dealings with him with respect to the dental-care plan?
- A. Yes. He was with Sokol and took part in all the discussions with Sokol.

Q. If you know, what is Resnick's role within this dental plan that Sokol furnishes?

A. I don't know if I know. I can tell you what I believe.

He was with, I believe, Metro Dental or something. He had leases and the equipment at different sites. Subsequently, Sokol, I believe, bought out Metro and I think it's either a wholly-owned subsidiary of Sokol now or some such thing, and Resnick now is on Sokol's payroll, as I understand it. I can't tell you exactly what the direct relationship is. That's all I know.

Who Shared Equipment Loans

The Commission's chief accountant, Julius Cayson, was recalled to explain additional charts that showed the disposition to various individuals and corporations involved in the Sokol operation of equipment loan proceeds in 1977 and 1978:

EXAMINATION BY MR. RHOADS:

Q. Mr. Cayson, during the course of your efforts in the investigation of the health-care industry, did you have an occasion to have this graphic illustration drawn?

A. Yes, we did.

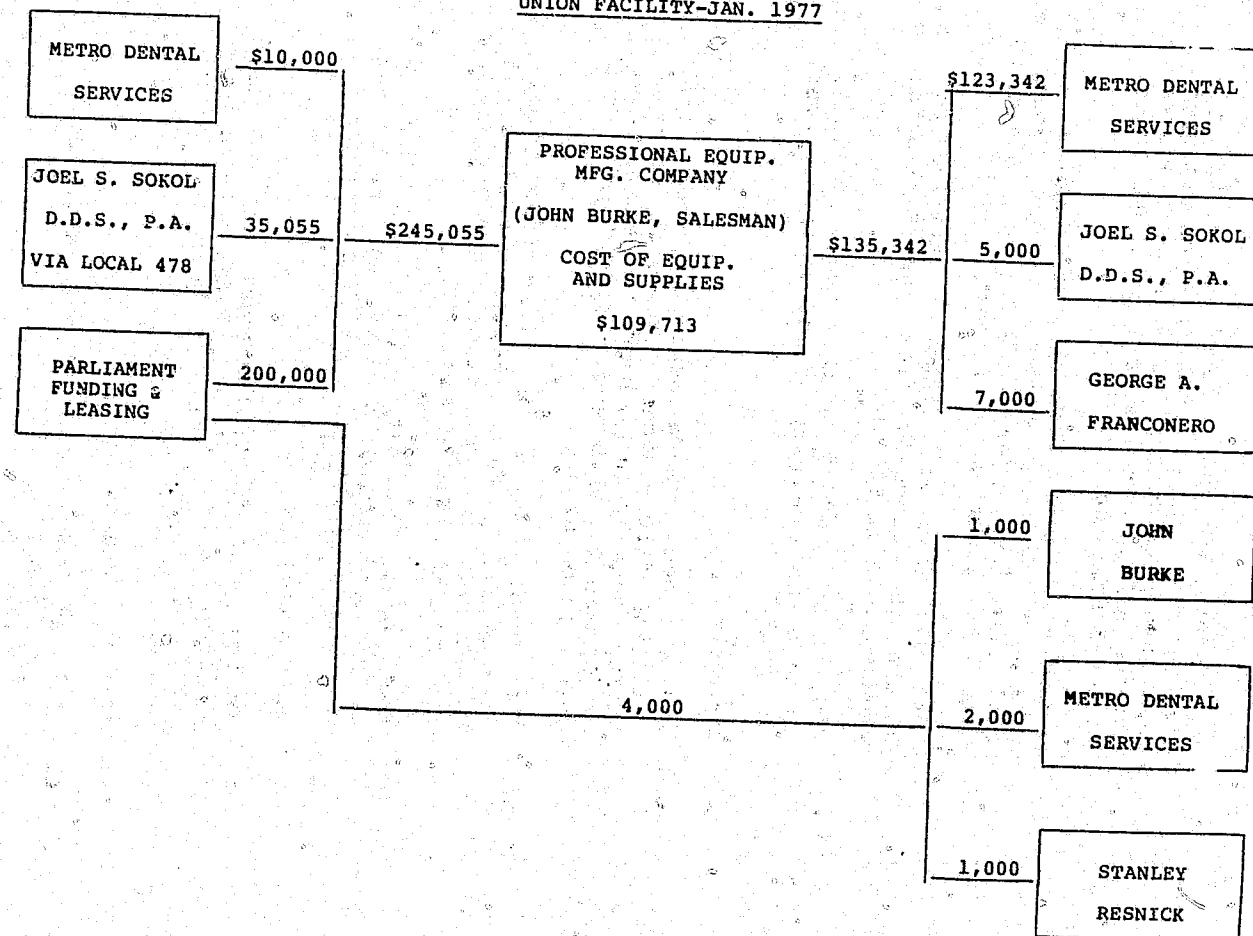
Q. And it reads, "Acquisition of Dental Equipment, Union Facility, January, 1977."* I will direct your attention over to the left-hand upper portion and there's a box, "Metro Dental" with "\$10,000" coming off a line drawn from that box. What's the significance of that?

A. That was a deposit made by Metro Dental Services.

Q. Dropping down, we have Joel S. Sokol, D.D.S., P.A., via Local 478, \$35,055. What's the significance of that?

*See Chart, P. 264

AQUISITION OF DENTAL EQUIPMENT
UNION FACILITY-JAN. 1977



- A. We ascertained that there was a thirty-five-thousand dollar deposit, which was used as a down payment for the equipment, and we ascertained that the source of those funds emanated from Local 478.
- Q. Dropping further, "Parliament Funding & Leasing," and there's two lines going out from that, the upper one \$200,000. Again, what's the significance of that amount?
- A. That was what Mr. Einhorn testified to. That's the proceeds from the Parliament Funding loan of \$200,000.
- Q. Now, this figure where they meet, \$245,055, is that the aggregate amount of these three numbers?
- A. Yes, sir.
- Q. And it goes into a depository box, I'll call it, "Professional Equipment Manufacturing Company, (John Burke, Salesman) Cost of Equipment and Supplies \$109,713." What does that mean?
- A. That means that, of the total funds deposited, \$245,055, that \$109,713 was allocated to the cost of the equipment and supplies, leaving a residue of \$135,342.
- Q. Well, then, this figure \$245,055 was put in to Professional to purchase equipment that actually cost 109,713. Is that correct?
- A. That's correct.
- Q. Coming out of Professional we see the difference, 135,342, and that figure now you have split up, 123,342 going to Metro Dental. Is that so?
- A. That's correct.
- Q. In what fashion did it go to Metro Dental, if you know?
- A. In the form of a check.
- Q. Again, this graph, was that drawn as a result of documents, books, records, et cetera, furnished as a result of subpoenas issued under your direction?

- A. That's correct. We had documentation for this transaction.
- Q. Dropping down, there's \$5000 and that goes to Joel S. Sokol, D.D.S., P.A. Is that so?
- A. The check was made out to Joel Sokol, D.D.S., P.A., but the check was negotiated by Joel Sokol personally.
- Q. And that check has previously been identified by Mr. Sokol, has it not?
- A. That's right.
- Q. Dropping down again, \$7000, George A. Franconero. In what fashion did George A. Franconero receive the \$7000?
- A. He got the \$7000 in the form of a check.
- Q. Is that the George Franconero that testified yesterday in this public hearing, that was attorney at one point to Metro and Sokol, P.A.?
- A. That's correct.
- Q. Now, coming back to the left-hand portion of the chart, Parliament Funding & Leasing, the second line going out --
- A. Mr. Rhoads, I would just like to add one other comment in regard to the seven-thousand-dollar check.
- It appears to the accounting staff that the seven-thousand-dollar check was deposited in the books and records of Metro Dental. It was credited to a loan and exchange account, Stanley Resnick. A check for \$7000 was then drawn against the combination of 123,342 and 7000 and immediately or shortly thereafter, when the check cleared, the check was taken out of Metro Dental, specifically, out of an account maintained in the Manufacturers and Trading Corporation in New York City.
- Q. The second line, \$4000, and that appears to be disbursed, 1000 to John Burke, 2,000 Metro Dental Services, and 1000 Stanley Resnick. Now, in what fashion was this 1000 dispensed to John Burke?
- A. That was in the form of a check.
- Q. And the 2000 to Metro?

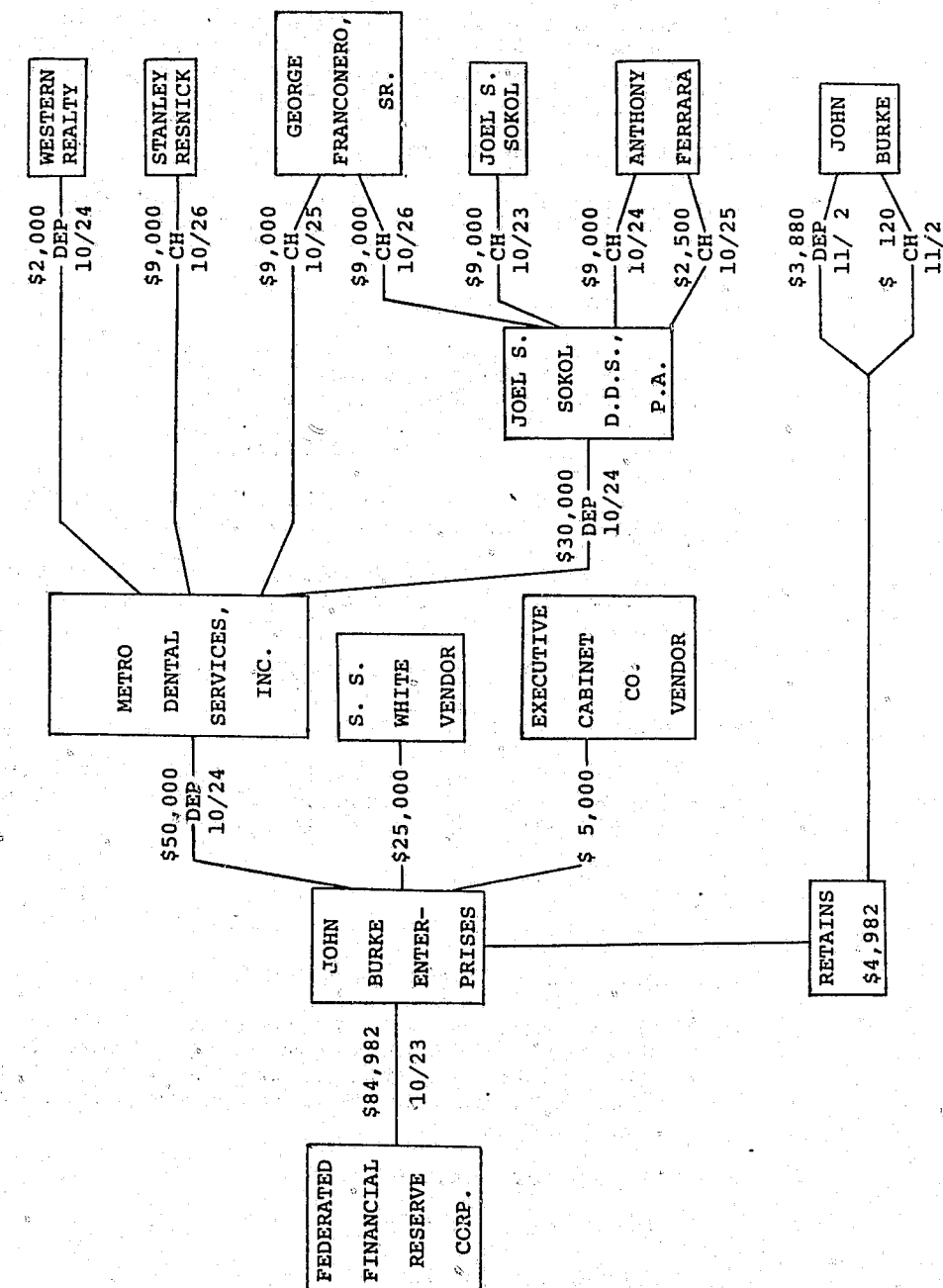
- A. Same thing.
- Q. And the 1000 to Stanley Resnick?
- A. The same.

* * *

BY MR. RHOADS:

- Q. This is Commission Exhibit 17. It reads, "Disposition of Equipment, Loan and Proceeds, October, 1978,"* Now, Mr. Cayson, would you look at this graph and tell me, was this graph drawn under your direction?
- A. Yes, it was.
- Q. And, again, was it drawn as a result of the books, records, documents received as a result of subpoenas issued under your direction?
- A. Yes, it was.
- Q. Now, I direct your attention over to the left, and it reads, "Source of Metro loan." What loan is it that we're talking about?
- A. On or about October, 1978, they applied for a loan with the Federated Financial Reserve Corporation in the amount of \$84,982 and said loan was granted on the basis of an invoice for equipment in an amount of eighty-four thousand eight -- nine hundred eighty-two dollars.
- Q. And that is reflected on the left-hand portion of the chart, is it not?
- A. That's correct, yes.
- Q. 10/23, the figure 84,982?
- A. Yes.
- Q. And this goes to John Burke Enterprises; is that so?
- A. That is true. That's correct.

*See Chart, P. 268

DISPOSITION OF EQUIPMENT LOAN PROCEEDS
OCT. 1978

- Q. Now, follow the chart this way: Going down, "Retains, \$4982." That is to say that John Burke Enterprises retained this portion of this amount; is that correct?
- A. That's correct, yes.
- Q. Reading from left to right, first we see "\$50,000 DEP." Does that stand for deposited?
- A. That's correct.
- Q. October 24 into Metro Dental Services, Inc. In what fashion was that given to Metro Dental Services, Inc., if you know?
- A. That was in the form of a check.
- Q. Going down we see "\$25,000 S.S. White Vendor." Who is S.S. White Vendor?
- A. S.S. White is the supplier of dental chairs and equipment. It's a very, very large corporation.
- Q. \$25,000 went to that corporation?
- A. That's correct, sir.
- Q. Dropping down, we see "\$5000, Executive Cabinet Company, Vendor." Is that a vendor that dealt with Burke Enterprises?
- A. Yes, sir.
- Q. In what fashion was this 5000?
- A. That was in check form, also.
- Q. Taking this back to Metro Dental Services, Inc., of the \$50,000 that had gone into it, the disbursement go out, two-thousand-dollar deposit October 24, Western Realty. Is that correct?
- A. That's correct.
- Q. How do we know that?
- A. We saw the check.
- Q. "\$9,000, CH." Does that stand for check?

- A. No, sir. On this particular chart the "CH" connotes cash. In other words, a nine-thousand-dollar check was drawn to the order of Stanley Resnick in the amount of \$9,000 and that check was cashed.
- Q. So this is a check that was cashed and it was for Stanley Resnick. Is that correct?
- A. Stanley Resnick is the payee, yes, sir.
- Q. And likewise, we see \$9,000. Would this "CH" then stand for the same thing you aforescribed?
- A. Yes, sir.
- Q. That's to George Franconero, Sr.?
- A. That's correct.
- Q. Have you come to know who George Franconero, Sr., is?
- A. We believe that George Franconero, Sr., is the father of George Franconero, Jr.
- Q. Now, coming back to the right portion, the right mid-portion, we see from Metro Dental Services, Inc., a thirty-thousand-dollar deposit October 24, to Joel S. Sokol, D.D.S., P.A.; is that so?
- A. That's correct.
- Q. And reading from there, the disbursements of that \$30,000 is \$9,000, CH, 10/26, October 26, again to George Franconero, Sr.?
- A. That's correct.
- Q. Now, how was that done. Was that the same way?
- A. Same way.
- Q. Check cashed?
- A. Check cashed.
- Q. We see \$9,000 again check cashed October 23rd, Joel S. Sokol. \$9,000 check cashed October 24, Anthony Ferrara, and that's Dr. Anthony Ferrara?
- A. That's correct, yes.

Q. Below that, \$2500 check cashed October 25th, again, Anthony Ferrara.

Now, taking you back a pace, and where John Burke Enterprises retained the \$4982, does this constitute the disbursements of that money?

A. That's correct, yes.

Q. And that was disbursed \$3,880 deposited November 2nd, John Burke?

A. Correct.

Q. And below that \$120 --

A. Was cashed.

Q. -- November 2nd, John Burke. And that was cashed?

A. That's correct.

Q. Now, does this constitute, this entire graph, does that reveal the disposition of the proceeds of this loan from Federated Financial Reserve Corp.?

A. Yes, it does.

The Payouts from Burke Enterprises

John A. Burke of Cranford, a dental equipment salesman, formed Burke Enterprises at about the time he was negotiating a contract to provide equipment to Sokol, P.A. Subsequently, Burke Enterprises became the source of a series of checks to principals in the Sokol operation that Burke himself found difficult to explain. Burke gave the background of his initial contacts with Sokol, P.A.:

Q. During the course of the time that you have formed Burke Enterprises, did you have a client by the name of Joel S. Sokol, D.D.S., P.A.?

A. Yes, I do.

Q. When did Joel S. Sokol, D.D.S., P.A., become a client of Burke Enterprises?

A. In April or May of 1977.

Q. Now, prior to Burke Enterprises, what was your profession?

A. I was a salesman for Newark Dental Supply and Professional Equipment Manufacturing Corporation.

Q. And how long were you a salesman for Professional Equipment Manufacturing Corporation?

A. Well, essentially, the two companies are the same. They have the same ownership, so if you group it together, I would say, approximately five years.

Q. Was it during the course of the time that you were employed by Professional that you came to know Dr. Sokol?

A. During that period of time, yes.

Q. Did you know Morris Kay?

A. Yes, I do.

Q. Was there a point in time where Morris Kay in some fashion was instrumental in you being awarded a contract, if you will, with Sokol, P.A.?

A. Yes, there was.

Q. What is it that Morris Kay did?

A. Morris Kay approached me and said that he had a doctor friend of his who was interested in buying dental equipment, and would I be interested in selling it to him, and I said, yes, I would, and I offered him a commission.

Q. It was when you were with Professional?

A. Yes.

Q. So when Morris Kay brought this business of Sokol to you, you were an employee of Professional; is that right?

A. There came a time where from a technical standpoint, in fact, December, 1976, where, instead of being a direct employee of Professional, I was a sales rep for Professional.

Q. Well, what, if anything, caused you to leave your position with Professional and go out, I guess, what you would characterize as on your own, with Burke Enterprises?

- A. I had a dispute with the management of Professional Equipment.
- Q. When you formed Burke Enterprises, did you, in fact, have any clients then?
- A. No.
- Q. When you formed Burke Enterprises, did you already have Sokol as a client, his professional association?
- A. That would be difficult for me to answer. I don't know whether or not I had them as such.
- Q. Well, would it be fair to say it was almost contemporaneously with the formation of you as Burke Enterprises and your taking on Sokol, P.A., as a client?
- A. Excuse me. I had done business with Joel Sokol prior to my forming Burke Enterprises. I formed Burke Enterprises because the compensation system between myself and Professional Equipment had changed, and when that compensation system changed, it allowed me more latitude in whom I sold and what I sold. I didn't have to exclusively represent Professional Equipment, so at that particular point, which was in, I believe, January of 1977, I officially formed Burke Enterprises.
- Q. Well, is it accurate in stating that Burke Enterprises was formed for the purpose of handling the Sokol, P.A., account?
- A. No, it's not.
- Q. Well, other than handling the Sokol, P.A., account, did you handle any other accounts through Burke Enterprises?
- A. Yes, I did.

The Inflated \$200,000 Loan

Commission counsel referred Burke to a previously marked chart* showing that the Sokol operation was the primary source

*See Chart P. 187

of income for Burke Enterprises. In fact, the chart showed that of the \$282,300 his business received in 1977, only \$1,800 came from customers other than the Sokol group; of the \$711,200 received in 1978, only \$17,500 came from other customers, and of the \$502,100 received in 1979, only \$1,350 came from elsewhere.

However, the Commission was more interested in the payouts by Burke Enterprises to various components of the Sokol group. Counsel laid the groundwork for this subject matter by recalling details of a \$200,000 loan obtained for Sokol, P.A., on the basis of inflated equipment invoices:

BY MR. RHOADS:

- Q. Mr. Burke, directing your attention to the time frame December, 1976, January of 1977, did you have an occasion to have a meeting amongst yourself, Richard Einhorn, Joel Sokol, Stanley Resnick, wherein, at least in part, was discussed Sokol, P.A., needing \$200,000 and then putting up as collateral a list of equipment in order for them to obtain a loan of \$200,000? Do you recall anything like that?
- A. No, sir.
- Q. Do you know Richard Einhorn?
- A. Yes, sir.
- Q. How do you know him?
- A. Richard Einhorn was a salesman for a leasing company, Parliament Leasing Company.
- Q. What was the business of Parliament Leasing?
- A. They would lease dental equipment to dentists.
- Q. And this was -- well, the time frame I'm referring to now, December of '76, that's when you were with Professional, isn't it?
- A. Yes, it was.
- Q. That's when you were in this salesman relationship with Professional?
- A. Right.
- Q. What was the association between Professional and Parliament, if any?

- A. The prospective buyer would make arrangements for the leasing company to purchase the equipment, and then the vendor, being Professional Equipment, would sell the equipment to the leasing company. The leasing company would then lease the equipment to the doctor.
- Q. Well, in any event, Richard Einhorn was associated with Parliament, was it Leasing & Funding?
- A. I believe that's the name of it, yes.
- Q. Do you know what his position was with that company?
- A. A salesman, as far as I know.
- Q. Excuse me if you already testified to this. Was there a Richard Balfour with Professional when you were there?
- A. Richard Balfour is the president of Professional Equipment.
- Q. While you had this association with Professional; is that so?
- A. That's right.
- Q. Mr. Burke, I'm going to show you documents which have been previously identified. One is Commission Exhibit 12B and one is Commission Exhibit 12C, and, if you will, would you first look at Commission Exhibit 12B and tell me if you have ever seen that before.
- A. It would appear to be the contract submitted to Metro Dental for dental equipment to be supplied to them from Professional Equipment.
- Q. Would you look at the date? I direct your attention to the upper left-hand portion.
- A. That's December 29th, 1976.
- Q. Were you working for Professional at that time?
- A. Yes, I was.
- Q. Is that how you're able to identify that?
- A. Yes, I am.

- Q. Did you have any role in compiling this?
- A. Perhaps. If not myself, Mr. Balfour or someone else in the office.
- Q. If you will, turning it over, there's a bottom line figure there, it reads, "Sales total." Would you read that please?
- A. \$133,779.63.
- Q. What does that constitute?
- A. I would assume that it constitutes the list price of the equipment to be sold to Metro Dental.
- Q. So it would be the total of all these various items; is that right?
- A. Yes, sir.

SCI counsel then reviewed with Burke a contract by Professional Equipment made out to Parliament Funding and Leasing, dated January 7, 1977, showing the equipment to be financed had been valued at about \$66,000 higher than in the December 29, 1976, proposal of Professional to Metro Dental. Burke was asked about this:

- Q. Now, with respect to those two documents that are before you, I'm not suggesting that you actually made out either one of those, but, to your knowledge, do you know who did?
- A. From my absolute knowledge, I do not.

COMMISSIONER FRANCIS: Who do you believe made them out?

THE WITNESS: I believe that they were made out by Parliament Funding & Leasing Corporation.

BY MR. RHOADS:

- Q. Do you know who from there?
- A. One dated 1/77/77. I believe it was made out by Parliament Funding & Leasing.
- Q. When you say "made out by Parliament," do you know of any individual such as Richard Einhorn?

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A. The only individual I would have dealt with there, or the company would have dealt with, Newark Dental Supply or Professional Equipment, that I'm aware of, would be Richard Einhorn.

Q. Did you have any discussion with Mr. Einhorn with respect to that document?

A. No, I did not.

Q. Did you have any discussion with Mr. Sokol with regard to escalating values of equipment in order to get a higher loan from a lending institution?

(The witness confers with counsel.)

A. No.

Q. How about with Mr. Resnick?

A. No.

The Commission now sought to determine what happened to the \$66,000 difference between the amount of the loan and the actual price of the equipment. Burke was questioned about a series of checks written to individuals and companies involved in the Sokol scheme:

Q. I'm going to show you what's been previously marked Commission Exhibit 8, Commission Exhibit 13, and Commission Exhibit 14. I'll show you these in order, and these are copies. The first reads, "Professional Dental Equipment Manufacturing Company." and I am reading in part, "Pay to the order of George Franconero, Attorney, \$7000," January 11, 1977.

Did you make that check out?

A. I did not sign that check.

Q. I didn't ask you if you signed it. Did you make out the upper portion? Did you write in "George Franconero, Attorney, \$7000"?

A. Yes, I did.

Q. Why did you do that?

A. I don't recall other than George Franconero was representing Dr. Sokol at that particular time and that's the way that I was asked to make it out. There were three checks involved.

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Q. George Franconero was representing Dr. Sokol at the time?

A. As far as I know. That's why it's made out to his attorney.

Q. That being the case, why did you pay \$7000 to George Franconero?

A. This was not a payment to George Franconero as such, or my understanding of it. There were monies due to be returned from the monies that were received from Parliament. There was a difference in the list price and the monies that we received from Parliament, and that monies were to be returned to either Metro Dental or Joel S. Sokol, D.D.S., P.A.

Q. You received more money from Parliament than the list price of the articles that Sokol, P.A., was purchasing; is that it?

A. That's true.

Q. So the excess you gave to -- well, to Franconero for one. Is that right?

A. Yes.

Q. Yes. I'll show you Commission Exhibit 13. It is a check drawn on Professional Dental Equipment Manufacturing Company, pay to the order of Metro Dental Services, Inc. It reads, 123,400 -- strike that. -- \$123,342.31. Did you make that check out?

A. It is not signed by me, but I made it out.

Q. Who is it signed by?

A. Richard Balfour.

Q. The first one you alluded to, the one to Franconero, who is that signed by?

A. Richard Balfour.

Q. Do you recognize that signature?

A. Certainly do.

Q. Did you have them sign it before you filled them in?

A. They were signed before I filled them in.

- Q. Did he know you were going to fill them in in that fashion?
- A. He knew that the total amount of moneys that were going to be returned to Metro Dental Services were.
- Q. Did he know that you filled them in in that fashion?
- A. I'm sure he did, yes.
- Q. You didn't tell him, though, did you?
- A. Yes, I did.
- Q. Well, then, he did know?
- A. Well, I said, I'm sure he did.
- Q. I show you Commission Exhibit 14 drawn on Professional Dental Equipment, pay to the order of Joel Sokol, D.D.S., P.A., \$5000, dated January 11, 1977, again a signature purporting to be that of Richard Balfour. Did he sign that?
- A. This he did.
- Q. And you filled it in, didn't you?
- A. Yes, I did.
- Q. After he signed it?
- A. Yes, I did.
- Q. Now, these three checks, Mr. Burke, weren't they the proceeds of the loan derived as a result of the escalated invoices, and you were kicking back the proceeds of that loan to these individuals?

(The witness confers with counsel.)

WITNESS' COUNSEL: Mr. Chairman, I object to the form of that question. That goes to the heart of what I was talking about in that it connotes criminal misconduct, and there has been no testimony by my client certainly at this point in time on the previous questions which go to that particular type of conduct by him. We're talking about the use, the word "kickback" and "escalation." There's no testimony that my client escalated anything, certainly not by him.

THE CHAIRMAN: Well, we haven't said so. He's just being asked a question. I think it's a perfectly proper question and he ought to answer it.

COMMISSIONER FRANCIS: Mr. Burke, let me ask the question to you in slightly different form then. Were these three checks that you were just shown the proceeds of a loan which was generated based on those invoices?

THE WITNESS: In part.

COMMISSIONER FRANCIS: In part. And those invoices were larger in dollar amount than the list price for that equipment, were they not?

THE WITNESS: I had nothing to do with --

COMMISSIONER FRANCIS: I'm not suggesting that for a moment. Please, if you will answer the question. It's a factual question. Is the dollar invoice price in Exhibit 12C greater in amount than the list price for that same equipment?

THE WITNESS: Yes, it is.

COMMISSIONER FRANCIS: By how much, approximately? Some 70,000?

THE WITNESS: I said, somewhere in that neighborhood, something a little bit less.

COMMISSIONER FRANCIS: And the three checks represent a portion of that \$70,000, do they not?

THE WITNESS: Yes, they do.

COMMISSIONER FRANCIS: Were you paying a rebate to the persons who had purchased that equipment or had participated in purchasing that equipment?

THE WITNESS: I would consider that a discount.

COMMISSIONER FRANCIS: Would you consider it a rebate?

THE WITNESS: I don't know the difference in the definition.

THE CHAIRMAN: Was Mr. Franconero entitled to a discount?

THE WITNESS: No, sir.

THE CHAIRMAN: Well, what would you term that check to him?

THE WITNESS: The checks were returned -- he was representing them as their attorney. The checks were returned to the group, so to speak, okay, Metro Dental and to Joel S. Sokol, D.D.S., P.A., and the checks were made out, the total amount of the three checks were, was the amount that was going to be returned to the purchaser.

COMMISSIONER FRANCIS: In other words, by making out the check to Franconero, you were paying an obligation of Sokol; isn't that so?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: So there are three checks totaling \$135,000 that you're paying to Sokol and to Metro; isn't that so?

THE WITNESS: I think I heard the question, but I'm sorry, could you repeat it? I didn't hear the first part.

COMMISSIONER FRANCIS: Sure. The three checks that you have previously been shown, CN-8, CN-13 and CN-14, represent about \$135,000, which you are paying to Sokol and to Metro?

THE WITNESS: Right.

COMMISSIONER FRANCIS: Isn't that so?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: And the money that is the source of these checks is the proceeds of a loan which was based on the invoice 12C; isn't that so?

THE WITNESS: Some of it, sir. There were, if you would like me to continue, there were down payments that were advanced to Professional Equipment against that job, also, so that the total proceeds did not come from the check from Parliament.

COMMISSIONER FRANCIS: And isn't that invoice 12C inflated from the list price for that same equipment?

THE WITNESS: Yes, it is, sir.

COMMISSIONER FRANCIS: And aren't those payments that you're making to Sokol and Metro kickbacks for the purchase of that equipment at an inflated price?

THE WITNESS: No, sir.

COMMISSIONER FRANCIS: What would you call it?

THE WITNESS: I can't answer that, sir.

COMMISSIONER FRANCIS: Why not?

THE WITNESS: I don't know what went on in other people's minds or other people's negotiations.

COMMISSIONER FRANCIS: Well, isn't --

THE WITNESS: You're asking me to characterize something that I'm just -- I just don't know.

COMMISSIONER FRANCIS: Isn't a kickback a fair way to characterize that transaction?

THE WITNESS: I don't think so, sir.

COMMISSIONER FRANCIS: Is it a rebate?

THE WITNESS: We can -- you know, the semantics, I'm at a loss for semantics, sir. You know, rebate, discount, you can call it a discount. Again, I have to state that I had nothing to do with preparing 12C. I did make out the checks, they were not signed by me, for the returning of monies to Metro Dental and Joel S. Sokol, but I cannot, you know, I cannot anticipate or guess what's in someone else's mind. I don't know that.

COMMISSIONER FRANCIS: Well, in your own mind, was it a kickback?

THE WITNESS: Absolutely not.

COMMISSIONER FRANCIS: To the mind of the public, wouldn't it be a kickback?

THE WITNESS: I can't answer for them, sir.

THE CHAIRMAN: How about the bank that made this loan? You are fully aware of the fact

that there was misrepresentation made to the bank to secure \$200,000 loan, were you not?

THE WITNESS: No, I was not.

THE CHAIRMAN: Well, do you think that -- what do you think that 200,000 invoice was used for?

THE WITNESS: I thought that \$200,000 was provided by Parliament Funding & Leasing. I thought that \$200,000 was provided by Parliament Funding & Leasing.

THE CHAIRMAN: On the basis of a misrepresentation?

THE WITNESS: Again, you're asking me to answer questions. I don't know what's in someone else's mind.

THE CHAIRMAN: You don't know the answer to that. Well, I do, so let's go on.

BY MR. RHOADS:

Q. What I am saying is this: that if you are saying -- if you're not, correct me -- if you are saying Parliament lent more money than they should have based on that equipment, that the loan exceeded the value of that equipment, then why would you not call up Parliament and say, "You have lent out too much money"? Why not give the excess back to Parliament? Why did you give it back to these individuals?

A. I was not involved in any negotiations involving the amount of monies to be given from Parliament to Metro or Sokol, so I would not even consider that at that point.

In a similar vein, the Commission pressed the witness to describe how the proceeds of an equipment loan of almost \$85,000 from Federated Financial Reserve Corp. were disbursed in October of 1978:

Q. I direct your attention to Commission Exhibit CN-17. I will represent to you that this has been previously identified and testified by our chief accountant with respect to the data that's illustrated thereon, and it reads, "Disposition of Equipment Loan Proceeds, October, 1978." I direct your attention to 1978. Federated Financial Reserve Corporation. Are you familiar with that institution?

A. I'm familiar with the name.

Q. How is it that you're familiar with the name?

A. They purchased equipment from me.

Q. Directing your attention to October 23rd, 1978, did you have an occasion to receive proceeds in some fashion from this institution in the amount of \$84,982?

A. Assuming that you again say that your accountants went over this and this is what came from my books, and assuming that to be correct, under that assumption, then, yes, I did.

Q. Well, it's too many assumptions. I will show you Commission Exhibit 17A and ask you to identify that.

A. That's a deposit slip for Burke Enterprises for the amount of \$84,982, deposited by me in the National State Bank on 10/23/78.

Q. That, in fact, is your document furnished the S.C.I., isn't it?

A. Yes, it is.

Q. Having seen that document --

A. I obviously made it out.

Q. Now, with regard to this amount of money, \$84,982 for Federated, did you have an occasion to dispense it such that you have issued a deposit of \$50,000 to Metro Dental Services, Inc., on October 24th? By that I mean a check.

Do you remember that?

A. No.

Q. This is Commission Exhibit 17B. Would you look at that and tell me if now you remember?

A. It is a check that I made out to Metro Dental Services for \$50,000 on 10/12/78.

Q. Was that \$50,000 derived from this \$84,982?

(The witness confers with counsel.)

A. Mr. Rhoads, you're asking me to answer questions, I don't know whether they're in context, and I don't mean to not answer your questions, but you're throwing numbers at me that I don't know what -- the last time I saw numbers up there it was January, 1977, you're showing me October of 1978 now. What transpired between that time? In other words, were there deposits given to me by Metro Dental against the job? Were there monies given to me against the job that was later financed? I can't answer it by going through your chart without having access to my records, sir.

Q. Well, is your answer that you don't know?

A. Well, if you rephrase the question --

Q. If you don't know, say you don't know.

A. If you will rephrase the question, I don't have the documents in front of me.

Q. I can't make it any more simple. I am simply asking you this: Did that check you hold in your hands, was the source of that check this \$84,982? Yes, no, or I don't know?

A. At this point I cannot be certain.

Q. Well, can you be certain about why you issued a fifty-thousand-dollar check to Metro Dental Services? I mean, shouldn't they be paying you? You didn't buy anything from them, did you?

A. There could have been deposits given to me between this period of time against these jobs. Again, I don't -- you know, you have a nine or ten month gap up there that I'd have to see the transactions.

Q. There could have been. You're speculating, but you don't know, do you?

A. If I can't answer this, how could I answer that.

Witness Won't Talk

Seymour Cohen of Morristown, the president of Western Realty, Morristown, refused to answer questions when he was called as a witness. Cohen's utilization of his Constitutional privilege led to a discussion between his counsel, Stephen Weinstein of Morristown, and the Commission:

Q. Mr. Cohen, what is your profession?

A. I respectfully decline and refuse to answer that question on the basis that my answer may tend to incriminate me under the Fifth Amendment of the U.S. Constitution for the following reasons.

Q. Do you feel there's something about your profession that may tend to incriminate?

A. It may, will or shall constitute an element of a crime against the State of New Jersey, another state or the United States, and/or it may, will, or shall be a circumstance which, with other circumstances, would be a basis for reasonable inference of the commission of a crime against the State of New Jersey, another state or the United States, and/or it may be or could be a clue to the discovery of a matter which may, will or shall constitute an element of a crime or circumstance which, with other circumstances, would be a basis for a reasonable inference of the commission of a crime against the State of New Jersey, another state, or the United States.

Q. Are you finished?

A. Yes.

MR. RHOADS: All right. I'm going to ask, through your attorney, if you intend to continue giving that response to any prospective questions that I might ask.

MR. WEINSTEIN: Mr. Rhoads, just for the record, that document that he just read from was marked C-185 on July 23rd, 1980, when he had appeared before the Commission in private. If you would like to have questions asked and to determine whether or not he will respond to them, certainly he will be more than happy to do that. You must bear in mind that there's a significant question as to whether or not the testimony that was obtained by the Commission in private session on a prior occasion is valid testimony and that this gentleman being asked today --

MR. RHOADS: Well, I would like to interrupt you, if I may. I know no question at all whether it's valid testimony.

THE CHAIRMAN: Why is that here? Why do you raise such a question here? He's here to answer questions and the question now asked, put to you, was whether or not your client intends to invoke the Fifth Amendment to each and every question put to him tonight. Now, is it yes or no?

MR. WEINSTEIN: I can't answer it yes or no, Judge.

THE CHAIRMAN: I know. You haven't answered at all. We want an answer.

MR. WEINSTEIN: Judge, I can't answer the question yes or no. If you're asking me --

THE CHAIRMAN: Next question.

MR. WEINSTEIN: Excuse me. If you are asking me generally whether he will take the Fifth Amendment, the answer is probably yes. If you are asking me about what questions, I don't have the slightest idea what Mr. Rhoads is going to ask him.

THE CHAIRMAN: I understand that.

COMMISSIONER FRANCIS: You will agree with me we can't be optimistic about getting much out of him when he says Fifth Amendment to what his occupation is?

MR. WEINSTEIN: I agree..

THE CHAIRMAN: Ask the questions the hard way.

Q. Did you embezzle any funds from a company called Western Realty?

THE CHAIRMAN: You don't have to read that whole thing. If you're invoking the Fifth Amendment, just say so.

MR. WEINSTEIN: Judge, the case law seems to indicate that, if he doesn't recite that particular thing, he waives his right. The answer is, yes, he will read that whole thing he said before. If you permit him to incorporate what he said before by reference, then we will.

THE CHAIRMAN: We sure do. We don't want to go through that again. Go ahead.

BY MR. RHOADS:

Q. Do you know a professional entity by the name of Dr. Joel S. Sokol, D.D.S., P.A.?

MR. WEINSTEIN: Would you like him to read that again, sir?

THE CHAIRMAN: Will he invoke the Fifth Amendment again?

MR. WEINSTEIN: Yes, he will..

THE CHAIRMAN: He may do it with the full understanding that everything he said before is incorporated in the record.

MR. WEINSTEIN: I appreciate that, Judge.

THE CHAIRMAN: All right. I think that's enough, Mr. Rhoads.

MR. RHOADS: Yes, sir. Mr. Chairman, I would suggest that perhaps we might continue jurisdiction, at least, to determine the issue of whether this witness is in contempt of the Commission for failure to respond when he had already testified before this Commission.

THE CHAIRMAN: All right. You are so notified that the subpoena that you have appeared under in special session is continued and, if we care to have you back, we will be in touch with your attorney and schedule another meeting.

Sokol P.A.'s Key Man

Stanley Resnick of Convent Station played a major role in developing the complex mix of companies that became involved in the development of the Sokol dental care network. He had a close business relationship with Dr. Jesse Hyman, the Buffalo dentist, before he began working in the Sokol operation; he knew John Riggi and Comillo Molinaro before Sokol P.A. got off the ground. He took over Metro Dental after Hyman left that company and eventually "sold" Metro to Sokol, P.A. -- but didn't get paid for it. He was the administrator of Metro Dental at the time of the Commission's hearings. Resnick first was questioned about his relationship with Dr. Hyman:

EXAMINATION BY MR. SIAVAGE:

Q. Did there come a time in approximately 1975 when you left the realty business to become a dental care administrator?

- A. In '75?
- Q. Yes.
- A. I did not get into administration in 1975. I got into the dental delivery business, yes.
- Q. Okay. Describe for the Commission how you got into the dental care delivery business?
- A. I met a Dr. Jesse Hyman, who was looking for someone to construct dental facilities for him, and he suggested we could form a partnership and I would construct facilities and he would set up dental programs.
- Q. Where was he from?
- A. New York City.
- Q. How did you meet Dr. Hyman?
- A. I believe he was referred to me by Mr. Cohen.
- Q. Is that Mr. Seymour Cohen, the previous witness?
- A. That's correct.
- Q. Do you recall where you first met Mr. Hyman?
- A. I met Dr. Hyman in my office in South Orange.
- Q. And did he discuss with you his plans for going into the dental-care provider business in New Jersey?
- A. Not initially, but later on he did, yes.
- Q. Did he suggest to you that he could have a union under contract within the very near future?
- A. Yes, he said he could get several unions.
- Q. Did he mention any one particular union to you?
- A. Not at that time.
- Q. Did he later mention one particular union to you?

- A. He already had a dental practice in Buffalo at the time. This really was the model after which I hoped this thing would develop.
- Q. Well, --
- A. The first one was Local 945.
- Q. Is that Local 945 of the Teamsters?
- A. That is correct.
- Q. Did you incorporate in any way or join a partnership with Mr. -- with Dr. Hyman shortly after your first discussions?
- A. Yes.
- Q. What was the name of that entity?
- A. It was Hyman and Resnick.
- Q. And was that a New Jersey corporation?
- A. Yes, I believe it was.
- Q. What was the business of Hyman and Resnick, Inc.?
- A. It really was a consulting company to obtain financing for real estate syndications and/or real estate projects.
- Q. Did it have anything to do with dental care?
- A. No.
- Q. And when was Hyman and Resnick incorporated, approximately?
- A. I believe we took over an existing corporation, Fidelity Investment Company.
- Q. Was that sometime in 1975 or early 1976?
- A. I have to say yes to that. I don't recall the date.
- Q. Okay. Shortly thereafter did you incorporate another business with Dr. Hyman?
- A. Yes.
- Q. What was the name of that entity?
- A. New Jersey Dental Administrators.

- Q. And was that for the purpose of entering into the dental-care-providing business?
- A. That's correct.
- Q. Was that also sometime in 1976?
- A. Probably.
- Q. Did Mr. Hyman ever mention to you that, in connection with his potential for getting Local 945's business, that he had a contact with any particular person who was associated with Local 945?
- A. Well, he knew the officers of the local, obviously. He was contacting them.
- Q. Did he ever mention to you that his contact was Mr. Ernest Palmieri of 945?
- A. Oh, I'm sure he did.
- Q. Did you have any contact with Ernest Palmieri during the initial negotiations with 945, assuming there were any?
- A. No, I did not.
- Q. Have you ever had any business relationship with Ernest Palmieri?
- A. A business relationship with him?
- Q. Yes.
- A. No, other than New Jersey Dental Administrators.
- Q. With Mr. Palmieri?
- A. Yes.
- Q. Mr. Palmieri was involved in New Jersey Dental Administrators?
- A. No, he was the union that we worked for.
- Q. I see. Okay. Did you, in connection with your negotiations with Local 945, ever meet an individual by the name of George Franconero?
- A. Yes, I did.
- Q. And when was the first time you met Mr. Franconero?

- A. '75, '76.
- Q. Was there any time during this period when your former partner, Mr. Davino, was considering coming into the dental-care-providing business with you?
- A. Initially he was, yes.
- Q. Did he, in fact, accompany you once to the headquarters of Local 945?
- A. He may have. I'm not a hundred percent positive.
- Q. Do you recall meeting at that time an individual by the name of Comillo Molinaro?
- A. I don't recall that I met him at that particular time. I'm not sure.
- Q. Did you meet Comillo Molinaro during the early stages of your negotiations with Local 945?
- A. I really didn't get too deeply involved in negotiations with 945.
- Q. Well, whether or not you got deeply involved in negotiations, do you recall meeting Mr. Molinaro at the time the negotiations were going on?
- A. I don't believe that's the first time I met him, but I'm not a hundred percent --
- Q. You had met him before that?
- A. No, I had met him after that.
- Q. You met him after that. Did you meet him in the Roman Forum?
- A. If I met him in 945, it would have been in that building, yes.
- Q. Now, to amplify that a little bit, was a restaurant called the Roman Forum in the same building as the headquarters of Local 945 of the Teamsters?
- A. Yes.
- Q. Did New Jersey Dental Administrators ever obtain any contracts from any unions to provide dental care or administer any plans.

- A. Yes, it had a plan to administrate for Local 945.
- Q. You did obtain that business then?
- A. Yes.
- Q. How long did you have that business?
- A. About a year.
- Q. And would that -- is it safe to say that would have been during the year 1976?
- A. I think it was '75, '76.
- Q. Okay. I'm going to show you an exhibit that's been marked CN-48 for the purposes of identification, which purports to be a check drawn on an entity called New Jersey Dental Administrators, Inc., dated July 16th, 1976, in the amount of \$1000 payable to Carl Rizzo, R-i-z-z-o, and I believe the signature on that check is Dr. Hyman's; is that not correct?
- A. It appears to be.
- Q. Do you recognize Dr. Hyman's signature?
- A. He has a very difficult signature. That looks like it, yes.
- Q. Okay. Do you know Mr. Rizzo?
- A. I met Mr. Rizzo.
- Q. Where did you meet Mr. Rizzo?
- A. I met him in New York City.
- Q. And did you meet him in the company of Dr. Hyman?
- A. Yes, I did.
- Q. Was the business of Hyman and Resnick going on at the same time the business of New Jersey Dental Administrators was going on?
- A. At some period of time it was, yes.
- Q. They overlapped?
- A. Yes, they did.

- Q. Okay. I think you described the business of Hyman and Resnick, Inc., as that of mortgage financing, syndication?
- A. That's correct.
- Q. Do you know why New Jersey Dental Administrators gave the thousand-dollar check to Carl Rizzo?
- A. No, I do not.
- Q. Dr. Hyman ever discuss this amount of money with you at all?
- A. No, he did not.
- Q. Carl Rizzo ever discuss with you why you gave him the thousand dollars?
- A. No, he did not.
- Q. You said that you had 945 contract for about a year?
- A. That's correct.
- Q. What happened after the first year period? Why did you not have the contract in the second year?
- A. I really don't know exactly why, but it was terminated. Dr. Hyman handled all the contacts with the union.
- Q. Did Dr. Hyman bring in another plan?
- A. No, he did not.
- Q. Did 945, to your knowledge, obtain another dental plan subsequent to you?
- A. I don't think they obtained a plan. I'm not positive. They were negotiating with another dentist, but I don't know what happened with that.
- Q. Well, do you remember it being communicated to you that you were going to lose this business?
- A. Yes.
- Q. And who communicated that to you?
- A. Dr. Hyman.

- Q. And who did he say communicated it to him, if anyone?
- A. He didn't tell me who communicated to him. Obviously, it was one of the officers of the union.
- Q. All right. What did Dr. Hyman say to you about the fact that you were going to lose the business of 945?
- A. I was in the process of constructing a facility at the time and he came in and said, "We're losing this union and we better stop."
- Q. And was the facility being constructed in Irvington, New Jersey?
- A. That's correct.
- Q. At 1110 Springfield Avenue?
- A. That's correct.
- Q. Was there also a time in 1976 or thereabouts when you became the manager of the Roman Forum?
- A. Yes.
- Q. And is that the restaurant we mentioned before in the headquarters of Local 945?
- A. It's in the same building.
- Q. Who was your predecessor in that managerial position at the Roman Forum?
- A. Well, I know Mr. Molinaro was, yes.
- Q. Did you meet Mr. Molinaro prior to succeeding him in the Roman Forum?
- A. He wasn't there when I got there, and I'm really very unclear as to whether I've met him before.
- Q. When did you meet him?
- A. I met him after we had started the operation, dental clinic in Union.
- Q. Did Dr. Hyman assist you in obtaining the manager's position in the Roman Forum?

- A. Let me clarify something for you, may I? I was approached by Dr. Hyman on the basis of a possible purchase of the Roman Forum that would be available, and I went in there on a trial basis to run it for a few weeks or a few months to see how it would go, to see whether or not it was worthwhile, whether I could take it.
- Q. Well, you had two business ventures going with Dr. Hyman at that time; one was New Jersey Dental Administrators, Inc., the other was Hyman and Resnick. Now you were going to run a restaurant. Was he concerned about the fact that you were going to run a restaurant instead of participating in the other two corporations?
- A. I've always had one of two more things that I do at the same time and he was not concerned.
- Q. As a matter of fact, you had more than two things going at that time or later on with Dr. Hyman, did you not?
- A. I don't -- what are you referring to?
- Q. Well, we have talked about two business ventures so far. The question rephrased is, did you or did you not have more than two business ventures going with Dr. Hyman shortly after 1976?
- A. I really -- I wish you would explain it to me, if you would. I don't know how to answer you.
- Q. Let me see if I can refresh your recollection. I'm going to show you an exhibit which has been marked CN-43 for the purposes of identification indication, which is an agreement of dissolution between Stanley Resnick, residing at 11 Beasley Terrace, Morristown, and Jesse Hyman, residing at 745 Bryant Avenue, Roslyn, New York, it's been marked, as I said, CN-43, and the first five operative paragraphs speak of five different business ventures which are being dissolved. I wonder if you could look at that exhibit, first, tell me whether you recognize the exhibit as a dissolution agreement and whether that's your signature on the last page, and then identify the five business ventures that are being dissolved in February of 1978.

- A. In order of your questions, yes, I recognize it as the document. I submitted it to the S.C.I. That is my signature. And if you give me a moment, I'll look them over.
- Q. What are the five entities that are being dissolved in February, '78?
- A. New Jersey Dental Administrators, a garden apartment in Atlanta, Georgia; Metro Dental Services, Inc.; a hotel and casino project on the island of Antigua, and Resnick and Hyman.
- Q. Was the hotel and casino project on Antigua a joint venture between yourselves and individuals?
- A. The truth of the matter is, I really don't know exactly what it was except that we were trying to finance the purchase of the hotel for Dr. Hyman on the island of Antigua and we met some people from Antigua, and all we were doing was making sure I would never have a claim if it completed, if it concluded.

Resnick next testified about meeting John Riggi:

- Q. Okay. Do you know John Riggi, Mr. Resnick?
- A. Yes, I've met Mr. Riggi.
- Q. When was the first time you met Mr. Riggi?
- A. I would say sometime in the end of '75, beginning of '76.
- Q. Under what circumstances? Where did you meet Mr. Riggi?
- A. I met him with Dr. Hyman at a hotel, in the restaurant.
- Q. The Sheraton, perhaps?
- A. I believe it was.
- Q. And you say you went with Dr. Hyman. Why did you go to meet with Mr. Riggi with Dr. Hyman?
- A. He invited me to come along.
- Q. Did he tell you the purpose of the visit?

- A. No. He said he had to meet somebody in New Jersey, did I want to come.
- Q. You drove over from New York?
- A. Yes, we did.
- Q. What kind of discussion took place?
- A. I was not privy to any discussion. I ate lunch.
- Q. Were there more times on which you were present in meetings between Mr. Riggi and Dr. Hyman?
- A. Possibly two or three more.
- Q. During the same year or shortly thereafter?
- A. Yes.
- Q. Did you ever on any of those occasions hear any of the business discussions, if there were any, between Dr. Hyman and Mr. Riggi?
- A. At one point Dr. Hyman was trying to get Mr. Riggi's union as a dental plan, but that did not succeed. It did not come to fulfillment.
- Q. That was Local 394 of the Laborers and Hod Carriers?
- A. I'm not sure of the number. It's in Elizabeth.
- Q. Do you recall why you were unsuccessful in obtaining Mr. Riggi's business?
- A. No, I never heard -- we never had a specific reason given to us.
- Q. And this is on behalf, now, of New Jersey Dental Administrators, Inc., that this discussion was taking place?
- A. The first time, yes.
- Q. The first time. Was it on behalf of another entity thereafter?
- A. Subsequently we tried to get it for the Sokol, P.A.
- Q. And were you also unsuccessful in that attempt?

- A. Yes, the employees voted to take a raise instead of a dental plan.
- Q. All right. Did Mr. Riggi offer to do anything else in substitution for obtaining the dental-care business of 394 for either one of your plans?
- A. I don't recall a specific offer to do anything.
- Q. Did he offer to take you around to other unions, for instance, and introduce you to labor officials?
- A. He had introduced Dr. Hyman to other unions, yes.
- Q. He did introduce Dr. Hyman?
- A. Yes.
- Q. Did Dr. Hyman and Mr. Riggi, by the way, have a pre-existing relationship before the first meeting that you were present at?
- A. I don't have any knowledge of that.
- Q. You don't have any knowledge of that?
- A. No, I don't.
- Q. Didn't Dr. Hyman mention to you that we're going over to New Jersey to see this fellow and I know he's a nice guy, or words to that effect?
- A. He told me we're going over to meet the head of a union in New Jersey who he was going to introduce me to, period. I mean, this is five years ago. I can't quote a conversation.
- Q. Well, I'm asking a simple question. It would seem to me there would be a great deal of distinction between whether you're going to meet somebody that both of you didn't know or whether Mr. Riggi was going to introduce you to someone he knew.
- A. I believe Dr. Hyman knew Mr. Riggi before I met him.
- Q. Do you know how long he knew Mr. Riggi?
- A. No, I don't.

- Q. Do you know if they had a business relationship before your first meeting with Mr. Riggi?
- A. No, I don't.
- Q. Did the entity called Metro Dental Services -- with which you're familiar, I assume?
- A. Yes, I'm familiar with it.
- Q. -- ever hire an individual by the name of Comillo Molinaro?
- A. Yes, it did.
- Q. Have you ever been in Mr. Molinaro's and Mr. Riggi's company at the same time?
- A. I believe Mr. Molinaro was at the Sheraton Hotel once when I was there.
- Q. And was Dr. Hyman there also?
- A. Yes, he was.
- Q. And what was that occasion?
- A. I really don't have that specifically.
- Q. Was it a business meeting, do you recall that?
- A. I honestly don't believe any business was discussed when I was there with him.
- Q. Do you recall whether that meeting with the four of you took place after the three or four that you mentioned before where the three of you met? Do you recall whether Mr. Molinaro was in this group before the three meetings where just you and Dr. Hyman and Mr. Riggi sat down or was it after?
- A. I'm really not sure. You're talking about a long time ago.
- Q. What was Mr. Molinaro's purpose in being at that table?
- A. I don't know.
- Q. Was this at a time when Metro Dental Services, Inc., was employing Mr. Molinaro?
- A. No.

- Q. Was it prior to that time?
- A. Yes, just prior.
- Q. Just prior. Was Mr. Molinaro's employment with Metro Dental Services discussed at that time?
- A. At that meeting? No.
- Q. Was it discussed subsequent thereto?
- A. I discussed it with Dr. Hyman.
- Q. And how long after that meeting did you discuss it with Dr. Hyman?
- A. A month.
- Q. Did he in any way suggest that Mr. Riggi had anything to do with Mr. Molinaro becoming employed by Metro Dental Services?
- A. No, he did not.
- Q. What was Mr. Molinaro's job, by the way, at Metro Dental Services?
- A. Initially, he helped out with messenger service, cleaning, and later on, as we developed the business, he would assist in the laboratory.
- Q. And was it ever planned that Mr. Molinaro would become, in effect, the laboratory technician for the Sokol --
- A. We had a plan --
- Q. Go ahead. For the Sokol facility.
- A. We had planned to set up our own laboratory and he was to run the laboratory. That's why we kept him there.
- Q. Did Dr. Hyman ever suggest to you that he had any discussion with Mr. Riggi concerning Mr. Molinaro providing lab services to Sokol, D.D.S., P.A., say?
- A. Not that I remember.
- Q. Now, you say Mr. Molinaro was a janitor, I believe, and security?
- A. He had -- I'm sorry. He had set up a company called G & M, whom we hired, and he took care of cleaning the place well over a year.

- Q. Did he do anything else?
- A. He would run messages for us. He was --
- Q. A gofer?
- A. If you want to use that word.
- Q. How much did you pay him for the services provided to Metro Dental?
- A. I think it was \$200.
- Q. Per?
- A. A week.
- Q. Did it later become \$250 a week?
- A. I believe you're right.
- Q. Did you pay Mr. Molinaro personally for a short period of time before you paid him as G & M Services, Inc.?
- A. Yes.
- Q. Do you recall having any discussion with Mr. Molinaro concerning his corporate transformation, if you will?
- A. No.
- Q. Did he discuss with you the reasons why he wanted you to pay G & M Services, Inc., as opposed to himself as an individual?
- A. He just said, I set up G & M to do the cleaning, would I make the check out to them.
- Q. Subsequent to you and Dr. Hyman doing business as N.J.D.A., for a short period of time in 1976 and subsequent to the time when you no longer serviced Local 945 of the Teamsters union, did there come a time when you met two other individuals who were involved in the same general field of dental-care providing?
- A. Are you going to tell me their names?
- Q. Sure. Dr. Ferrara and Dr. Sokol.
- A. Yes.
- Q. Was that approximately in 1976?

CONTINUED

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- A. Yes.
- Q. And did you begin to have business negotiations with those two individuals?
- A. Yes.
- Q. And what was the substance of those business negotiations?
- A. We discussed merging the, actually, non-active New Jersey Dental Administrators with the group they were starting since we had a building in Irvington which we partially completed.
- Q. And what was the group they were starting?
- A. Well, they had Joel S. Sokol, D.D.S., P.A., and they had started, I believe, Metro Dental Services.

Resnick gave a brief history of Metro Dental Services, Inc.:

- Q. And what was their concept behind the Metro Dental Services? What was the purpose of that corporation vis-a-vis Joel Sokol, D.D.S., P.A.?
- A. I believe it was to hold the equipment.
- Q. And did you, in effect, dissolve your corporation or allow it to be defunct?
- A. That's correct.
- Q. Did you and Dr. Hyman essentially become Metro Dental Services, Inc.?
- A. Yes.
- Q. And about when was that?
- A. 1977, January.
- Q. After you and Dr. Hyman became Metro Dental Services, Inc., did the concept of the corporation vis-a-vis Joel Sokol, D.D.S., P.A., change or did it remain the same?
- A. It remained the same.
- Q. In effect, Metro Dental Services, Inc., owned the facility and equipment; is that correct?

- A. It owned the facility in Irvington, yes.
- Q. Well, that was the first facility that this combine would work out of, was it not?
- A. No, they were in Union prior to that.
- Q. They were in Union?
- A. Yes.
- Q. They had their own facility in Union?
- A. They were renting space in Union.
- Q. Did they keep the facility in Union after you combined?
- A. Yes.
- Q. Did they move or have offices in Irvington?
- A. They operated both.
- Q. Effectively, Joel Sokol, D.D.S., P.A., paid money to Metro Dental Services, Inc., for rent; is that fair to say?
- A. Yes.
- Q. Was Metro Dental Services, Inc., a corporation between you and Dr. Hyman?
- A. Yes.
- Q. And were you 50 percent partner?
- A. Yes.
- Q. And was Dr. Hyman a 50 percent partner?
- A. Yes.
- Q. Did there come a time when Dr. Hyman left the corporation?
- A. Yes.
- Q. Was that approximately in February of 1978?
- A. I don't remember the date. It's on the dissolution agreement that you have.
- Q. Pursuant to the terms of that agreement, did you continue on as Metro Dental Services, Inc.?

- A. Yes, I did.
- Q. Were you then a hundred percent shareholder?
- A. Yes.
- Q. What is the present situation with regard to Metro Dental Services, Inc.? Are you still a hundred percent stockholder?
- A. We have a contract of sale between Metro Dental Services, Inc., and Joel S. Sokol, D.D.S., P.A., which was executed. However, I have not been paid for it.
- Q. The contract is executed but --
- A. There's been no consideration.
- Q. There's been no consideration. Who owns Metro now?
- (The witness confers with counsel.)
- A. The stock right now is not issued. However, it will be given to Dr. Sokol as soon as he pays for it. It's his corporation.
- Q. Is it being held by you?
- A. It's in his office. I work -- I am now employed by the P.A.
- Q. How much do you get from Metro Dental Services, Inc., pursuant to your employment agreement?
- A. \$800 a week.
- Q. Okay. Do you get an automobile, also?
- A. Yes. I get expenses.
- Q. Are Joel Sokol -- is Joel Sokol obligated, also, on a note to you?
- A. Yes. Personal note are you talking about?
- Q. Yes.
- A. Yes.
- Q. The amount of the note is \$135,000. Does that refresh your recollection?
- A. May I see that?

- Q. Sure. It's Exhibit CN-47 for the purposes of identification, which purports to be a promissory note, dated July 1st, 1979, in the amount of 135,000.
- A. That's the balance that you're talking about for the purchase of Metro.
- Q. Okay. He is obligated on that?
- A. Yes, he is.
- Q. What was the deposit? What was the deposit? You said that's the balance. What was the entire figure?
- A. He was supposed to give me a deposit of \$15,000.
- Q. Never gave it to you?
- A. No. I said there was no consideration given.
- Q. Now, between February of 1978 and June of 1979 you were the sole proprietor, in effect, of Metro Dental Services, Inc.?
- A. Correct.
- Q. Was it a profitable venture during that period of time?
- A. Which period are you talking about.
- Q. Talking about between February, 1978, and June, 1979.
- A. You have my statements. I don't recall whether it was profitable that year or we showed a very small loss.
- Q. I'm talking about a period of time of a little bit more than a year prior to the sale of Metro Dental Services. Does that help you at all?
- A. It had created assets in the form of the equity in the equipment which was paid off.
- Q. It had created assets?
- A. Yes.
- Q. Do you consider that profitable?
- A. It shows up on the plus side, yes.

EXAMINATION BY COMMISSIONER PATTERSON:

- Q. Mr. Resnick, how was the \$150,000 for the purchase of Metro by Dr. Sokol, how was that arrived at?
- A. It was based -- excuse me -- it was based on the equity in the equipment.
- Q. So that the assets that Dr. Sokol will be buying are strictly the equity of the, the worth of the equipment?
- A. I believe it was based at that time on the amount of the equipment which had not been depreciated and had been paid for.
- Q. And has been paid for?
- A. Yes, on the leases.
- Q. Did anyone do an accounting of that equipment to come up with that figure, accounting of the records for the equipment to come up with that figure?
- A. I don't recall that we did.
- Q. Was it then just a figure that somebody guessed at?
- A. No. I estimated what the value was of what we had in there.
- Q. Did you take the various leases and figure out what was paid off on the leases and what was the value of the equipment as against the --
- A. Part of it -- I'm sorry.
- Q. Against what hadn't been paid off.
- A. It was very difficult to do at the time since I did not have any way of determining what portion of the principal had been paid down and I estimated it and I felt that the company had good will and equipment in value of that amount.
- Q. Some of the \$150,000 is good will?
- A. Yes.
- Q. So it's not just the net value of the equipment, but it is some intangible, some amount of money put in against an intangible asset?

- A. Yes, I would say that.
- Q. So to some extent it is arbitrary?
- A. Yes.

The \$50,000 Rebate

Resnick was asked to explain what happened to the proceeds of a \$50,000 check that -- as John A. Burke had testified previously -- had been sent by Burke to Metro Dental:

- Q. Okay. Mr. Resnick, I'm showing you Exhibit CN-17B in the amount of \$50,000, dated 10/23/78, which purports to be a check drawn on the National State Bank, signed by John A. Burke, payable to Metro Dental Service. I ask you whether you recognize that check from Mr. Burke.
- A. I recall it.
- Q. Do you know what it is? Do you know what it represents?
- A. It probably represents a -- it represents a rebate on some equipment.
- Q. A rebate on some equipment?
- A. Which we had purchased. We had leased.
- Q. That rebate come directly from Burke Enterprises, Mr. Burke's entity, or did it come from the manufacturer of the equipment, if you know?
- A. Since it's signed by Mr. Burke, I have to assume it came from Mr. Burke.
- Q. Do you remember the fact amount of the transaction that the 50,000 was a rebate upon?
- A. Not offhand.
- Q. Okay. What did you do with that \$50,000 that Mr. Burke gave you?
- A. Deposited in the account of Metro Dental Services.
- Q. Did you draw any checks either contemporaneous or shortly thereafter to yourself and/or other entities or individuals?

- A. I don't know how to answer your question.
- Q. Let's see if I can refresh your recollection. I'm showing you a series of four checks, Exhibit CN-17C, CN-17D, CN-17E, and CN-17F. All the checks are dated October 24th, 1978. The first -- and they're all drawn on Metro Dental Services, Inc. I should say the first exhibit is a copy of a check, the others are originals. They all appear to be signed by you with the exception of CN-17E upon which the signature is slightly mutilated.
- A. They were all signed by me.
- Q. Okay. The first check is payable to Western Realty in the amount of \$2000; the second check is payable to Stanley Resnick in the amount of \$9,000; the third check is payable to George Franconero in the amount of \$9,000; and the fourth check is in the amount of \$30,000 and it is payable to Joel Sokol, D.D.S., P.A. In effect, are those four checks the result of the fifty-thousand-dollar rebate from Mr. Burke?
- A. Yes, they are.
- Q. In effect, you were splitting that money amongst yourself, one more individual and two other entities; is that correct?
- A. I don't care for your terminology. The money that was going back to me replaced money that I had advanced. The money that went to Dr. Sokol's P.A. was for operating expenses.
- Q. Did you finish?
- A. Well, if you want me to go on, the check to Mr. Franconero was, I believe, Mr. Franconero, Sr. It's money we had borrowed from him. And the money that went to Western Realty is money that we had owed to them.
- Q. Okay.
- A. We're not splitting it.
- Q. When you say we had borrowed money from Mr. Franconero, who do you mean by that?
- A. The P.A.

- Q. The P.A.?
- A. In this case I would assume Metro had borrowed the money.
- Q. Is this a period of time when you were the sole proprietor, in effect, of Metro?
- A. That's correct.
- Q. So, in effect, if you had paid Mr. Franconero for a debt owed to him by Joel Sokol, D.D.S., P.A., would they owe you money?
- A. Yes.
- Q. You weren't paying their debts, were you?
- A. Was I paying their debts?
- Q. Yes.
- A. No, I wasn't paying their debts.
- Q. Well, why did you give that money to Mr. Franconero?
- A. That's Mr. Franconero. I had borrowed it from him.
- Q. You had borrowed it from him?
- A. I'm going to have to look at the books and see whether it was Sokol or myself, Metro.
- Q. Well, why would you pay it if it was Sokol?
- A. At this particular time I was on the paper for a great deal of money and we would use the accounts more or less interchangeably.
- Q. With regard to CN-17D, by the way, which is a nine-thousand-dollar check made out to yourself, how was that negotiated? Was it deposited or was it cashed?
- A. I'm not sure at this time. I may have cashed it.
- Q. Okay. Can you tell from the check itself?
- A. No, I don't know how to tell that. Someone told me -- this has been discussed previously at the closed session, and they indicated this had been cashed.

- Q. Do you know what you did with the \$9,000?
- A. Do I know what I did with it?
- Q. Yes.
- A. I probably kept it or used it for expenses.
- Q. Personal living expenses or --
- A. I believe I had advanced money to this company out of my own cash funds, and I just took it back.
- Q. You advanced money to Metro Dental Services?
- A. Yes, or Sokol. I don't recall where the deposit was made now.
- Q. I'm sorry.
- A. Or Sokol, P.A. I don't recall where the deposit was made.
- Q. You mean you would have considered it a debt regardless of where it was made because of the interchange of the monies between the corporations?
- A. That's correct.
- Q. In effect, then, is it fair to say that, practically speaking, that you were a partner with Joel Sokol, D.D.S. --
- A. No.
- Q. -- P.A.?
- A. I was not a partner with the P.A. I was deeply involved financially with it. However, I had advanced monies for equipment and facilities and it was my best interest to see that they survived and were profitable.
- Q. Do you remember an executive session testimony that you gave concerning a transaction involving Parliament Leasing Co., pertaining to Metro Dental Services, Inc., and, more specifically, Joel Sokol, D.D.S., P.A.?
- A. Yes.
- Q. Do you recognize the name of Mr. Einhorn?

- A. Yes, I know the name.
- Q. Did you discuss that transaction at all with Mr. Einhorn?
- A. Which transaction are you talking about?
- Q. The funding by Parliament Funding & Leasing Co. of certain equipment purchased by Joel Sokol, D.D.S., P.A.
- A. I believe this was established before I became involved with Metro, but I'm not a hundred percent certain.
- Q. That transaction was ongoing?
- A. I believe it had already been arranged. The lease had already been set up, but I'm not positive.
- Q. Do you recall receiving a commission on that transaction from Mr. Einhorn?
- A. Yes, I got several checks from Mr. Einhorn.
- Q. Why would Mr. Einhorn pay you [a] if the commission transaction was ongoing already when you got in?
- A. Because I took over Metro Dental.
- Q. And, in effect, had the power to rescind the transaction?
- A. Actually, I believe I had spoken to him on the phone about it after the transaction had been consummated.
- Q. What did you say about asking him for a commission?
- A. I don't remember the exact words. I obviously pressed him for a commission. It's customary for someone who places to get a commission.

Although Resnick disclaimed any ownership interest in Western Realty, Inc., he wrote checks at will against its accounts -- under a fictitious signature. This was yet another company that was part of the corporate maze enveloping the Sokol dental care enterprise. Resnick's testimony on this company follows:

- Q. Okay. Western Realty, by the way, what entity is that?

- A. That's a construction company.
- Q. And who owns Western Realty?
- A. Mr. Cohen.
- Q. Mr. Seymour Cohen?
- A. Yes.
- Q. Okay. You don't own Western Realty, do you?
- A. No, I do not own Western Realty.
- Q. Do you have any ownership interest in Western Realty?
- A. I have no ownership interest in Western Realty.
- Q. You testified previously -- bear me with for a moment -- that a Mr. Seymour Cohen owns Western Realty. Is that correct?
- A. Yes.
- Q. And, in effect, does Western Realty build and renovate facilities for Metro Dental Services, Inc.?
- A. It did.
- Q. And did it do so in the year 1978 and 1979?
- A. I don't think so. In '79 no.
- Q. All right. I'm showing you what's been marked Exhibit CN-44 for the purposes of identification, which purports to be a group of eight copies of invoices of Western Realty Co., submitted to Metro Dental Services, Inc., for various job locations. All of the invoices, by the way, are dated the same day, 12/31/79. I wonder if you recognize any one of those invoices.
- A. I recognize them.
- Q. Were they submitted to Metro Dental Services by Western Realty?
- A. Yes, they were.
- Q. Who submitted them?
- A. Mr. Cohen.

- Q. Were they paid by Metro Dental Services?
- A. I think we still owe him.
- Q. When did this construction go on?
- A. In early '78. I'm sorry. The middle of 1978. July, August, September, in that area.
- Q. Of '78. Any reason why he waited a year and a half to bill you for those construction jobs?
- A. Well, we made him aware of the fact that we had no written record of the obligation.
- Q. In other words, the transactions prior to then were not evidenced by any paper, if you will?
- A. No, they were verbal.
- Q. These, reading from the job locations on the invoices contained in CN-44, they include facilities, I would assume, at Piscataway, Jersey City, Fair Lawn, Toms River, Dover, Verona, Newark and Manville. Does that comport with your recollection?
- A. That's correct.
- Q. Did you visit any of these sites to look at the construction, the ongoing construction, during the late Summer of 1978?
- A. Yes.
- Q. And did you, in fact, function as a supervisor on any of those construction sites?
- A. As a supervisor?
- Q. Yes.
- A. I don't know how to answer your question. I was responsible for seeing that they were done properly.
- Q. Did you undertake to direct any of the sub-constructors, for instance, who were involved in the construction site?
- A. On some occasions.

- Q. Was Mr. Cohen there when you would direct the subcontractors' work?
- A. I would come in to see that they were being done properly, and if I had some comments, I would make them. If he were there, I would tell him.
- Q. Okay. All of these facilities were constructed or renovated during this three-month period?
- A. Yes, they were all -- all these facilities were set up to handle the contract which we had signed with Local 1262.
- Q. Okay.
- A. In July.
- Q. Now, the balance of the construction that Western Realty company did for Metro Dental Services, Inc., was there another heightened period of activity some time later or was it stretched out over a longer period of time after this?
- A. It was prior to that.
- Q. It was prior to this. When was it? 1977?
- A. '76, '77.
- Q. '76, '77. And how long a period of time was it? Was it three months again, or six months, or four months? Do you recall?
- A. Oh, it was more than that.
- Q. More than that. How much?
- A. Well, the construction in Irvington went on from late winter until July. The construction in Mahwah started around October of '78 -- '77. I have to get my years straight. Just a moment. That started the latter part of '77 and ran through April, May or so of '78.
- Q. Now, did Mr. Cohen, on behalf of his company, Western Realty Co., ever pay you personally any monies or pay any monies to your benefit or on your behalf out of Western Realty?
- A. Are you referring to the check by Jack Post?

THE CHAIRMAN: Could you help him out, Mr. Siavage?

MR. SIAVAGE: Sure.

- Q. Did Western Realty, Mr. Cohen, ever give you any money? Let's start there. Out of Western Realty, you personally.
- A. There were checks drawn from Western Realty to me, yes.
- Q. Okay. What were those checks for?
- A. They were funds which I had advanced to him after Metro had taken on the obligations.
- Q. And what was the source of those funds that you advanced to him?
- A. They were my personal funds.
- Q. And so this was a return of a loan, in essence?
- A. That's correct.
- Q. Did Mr. Cohen ever pay your daughter any money or pay your daughter's tuition?
- A. The check for my daughter's tuition came through his account.
- Q. Okay.
- A. It was money I had advanced to him.
- Q. By the way, did these monies that you advanced to Western Realty, did they ever get picked up as a payable on the books of Metro Dental Services to you?
- A. That portion which went into Metro Dental Services did, yes.
- Q. Well, I'm asking more than that. I'm asking that all of the money that you personally advanced to Western Realty Co. was later picked up as a payable on the books of Metro Dental Services, Inc., in effect, taking care of your, or the obligation of Western Realty Co. back to you.
- A. Well, I'd have to see the list of checks, but I think -- I don't know about that three-thousand-dollar check, whether or not I showed that as an investment. Is that what you're referring to?

Q. I'm referring to the very specific fact that these monies that you loaned to Western Realty Co. were later paid for by a different entity, that being Metro Dental Services, Inc., and therefore Western Realty no longer owed you any money.

A. That's correct.

Q. Okay. So that if we take these checks that Western Realty paid to you considering the answer to the last question, they really aren't the repayment of a loan, but, instead, are something else, whatever. I show you Exhibit No. CN-37, dated 8/24/77, which is a check in the amount of \$3000 to your daughter, Laurie Resnick. Is that the tuition check that we talked about?

A. That's correct.

Q. Another portion of that packet, a second check, is Check No. 107, drawn on Western Realty Co., payable to Stanley Resnick in the amount of \$1700, dated October 10, 1977, signed by Jack Post. Who is Jack Post?

A. Jack Post is a name I used to sign checks in the account of Western Realty.

Resnick Signed Checks as "Jack Post"

The witness described an unusual arrangement in which he obtained Western Realty funds under the name of Jack Post -- ostensibly because Western Realty's president didn't want anyone to think that Resnick was part of Western Realty:

Q. How did that come about that you had this name Jack Post and signed checks of Western Realty?

A. When Mr. Cohen first started the company, we had discussed in the event something happened to him or in the event he was not around, if I needed to put -- if he had to pay a bill, I could handle the account by using this name.

Q. Why didn't you use the name Stanley Resnick?

A. We did not -- he did not want to have it thought that I was part of his company.

Q. He didn't want you to be part of his company?

A. He didn't want to have people think that I was his company, and, frankly, I did not want people to think that they could come to me to get paid by Western Realty.

Q. Could you amplify that a little bit? Is that with respect to vendors you mean?

A. That's with respect to vendors, and only with respect to vendors, frankly.

Q. Okay.

COMMISSIONER FRANCIS: Is "Post" then a fictitious name?

THE WITNESS: There is a Jack Post, but it was a name that we selected.

COMMISSIONER FRANCIS: Did Jack Post sign those checks?

THE WITNESS: No, I signed those checks.

COMMISSIONER FRANCIS: Did Jack Post authorize you to sign those checks?

THE WITNESS: No. I did not use the name as Jack Post, it was --

COMMISSIONER FRANCIS: You used it as a fictitious name?

THE WITNESS: As a fictitious name.

COMMISSIONER FRANCIS: As a front for yourself because you didn't want it known that you were involved with Western Realty?

THE WITNESS: That's correct.

BY MR. SIAVAGE:

Q. When you wrote checks to yourself and signed them "Jack Post," why couldn't Mr. Cohen just write that check out?

A. He probably wasn't there.

Q. Did you have Western Realty Co. checks in your possession?

A. I would have a couple, yes.

Q. I'm sorry. I didn't hear.

A. Yes, I would have a couple.

Q. You had the checkbook in your possession?

A. At one time for awhile.

Q. And did you have some loose checks in your possession, also, at one time?

A. Yes.

Q. Okay. Do you recognize the name D.J. Venus, Mr. Resnick?

A. Yes, I do.

Q. Have you ever given any money to Mr. Venus?

A. Yes, I did.

Q. How much money did you give to Mr. Venus?

A. I lent him \$5000.

Q. And was that on or about the 22nd of June, 1977?

A. Yes.

Q. I show you what's been marked Exhibit CN-39 for the purposes of identification, which is a Western Realty check in the amount of \$5000 payable to D.J. Venus. It is signed by Jack Post. Why did you use Jack Post on that occasion?

A. Frankly, that's the check I had in my possession at the time.

Q. You mean it was already signed "Jack Post"?

A. No, it was a Western Realty check.

Q. Yes.

A. And I advanced the money to Mr. Venus and I used "Jack Post."

Q. And you simply signed it "Jack Post" because you never used your own name on Western Realty's account?

A. That's correct.

Q. What was the purpose of the loan?

A. He was going back to Mississippi and told me he had a lot of real estate that had tax liens and he could recover them for \$5000.

Q. Where did that transaction take place?

A. In New York City.

Q. Specifically where in New York City?

A. At 2 Penn Plaza.

Q. At 2 Penn Plaza. Was that the offices of Hyman and Resnick?

A. That's correct.

Q. Was Mr. Hyman present?

A. No.

Q. What did Mr. Venus say to you? Did he walk in your office and say, "I could use \$5000 for a tax lien I have down in Louisiana"?

A. No. Mr. Venus had been in my office many times in connection with a real estate transaction.

Q. And you had met him on several occasions?

A. Many occasions. Ten, fifteen or so. He would come up to the office regularly.

Q. And you loaned this -- you gave him the \$5000 as a loan in June of '77. Did he ever pay you back?

A. Yes, he did.

Q. Did you ever pay Western Realty back?

A. I put the money in to cover that afterwards, into the account right after that.

Q. Okay. What was the form of the repayment by D.J. Venus that you put into the account right after that?

A. It was several months later.

Q. Okay. I thought you said it was right after that.

A. No, I put the funds in right after that.

Q. You put it into Western Realty?

- A. That's correct.
- Q. To cover the five-thousand-dollar loan?
- A. That's correct.
- Q. Then Mr. Venus repaid you?
- A. He paid me back five or six months later.
- Q. In what form did he repay you?
- A. In cash.
- Q. How did you receive the cash from Mr. Venus?
- A. Mr. Romano gave it to me.
- Q. By the way, do you know an individual by the name of Steve Romano?
- A. Yes.
- Q. And he was the one that delivered the \$5000 back to you in cash from Mr. Venus?
- A. Yes.
- Q. How did you come to know Mr. Romano?
- A. Mr. Romano came to my office at 2 Penn Plaza. I don't know how he was sent there, but he, he came up with a real estate venture.
- Q. Where was that real estate venture?
- A. It was in New Jersey.
- Q. Where in New Jersey?
- A. Edgewater.
- Q. And do you remember the nature of the real estate venture?
- A. It was a proposed recreational center in Edgewater.
- Q. And did you give Mr. Romano any monies at any time during 1978?
- A. Yes. We consummated several deals and he got his portion of the brokerage.
- Q. Brokerage fees you gave him?

- A. It's a mortgage fee. Mortgage placement fee.
- Q. Approximately a total of about \$3500 to Mr. Romano?
- A. In a series of four checks which you have there.
- Q. Okay.
- A. One of them is, I believe, for an airline ticket for my wife and I. We went to Florida. He had purchased it.
- Q. And one was a commission, and do you recall what the other two payments were? I'm showing the witness now Exhibit CN-42 for the purpose of identification, which is a packet of four checks to Steve Romano.
- A. The one that's a hundred, I'm not sure of. I think that may have just been a loan. I really don't remember that one.
- Q. Did you have further business dealings with Mr. Romano subsequent to those four payments?
- A. Well, I haven't seen Mr. Romano in two years or better.
- Q. Okay.
- A. Your checks go through April of '78.
- Q. Are you sure that the last occasion you saw him upon was when you gave him a check?
- A. No. I say, I haven't seen him in about two years. The last occasion I had seen him?
- Q. Yes.
- A. Probably August or September of '78.

Riggi's Man at Metro Dental

Comillo Molinaro of West Orange, according to law enforcement files, was a "made" member of organized crime -- that is, he had been sworn in a secret ritual to obey orders of his Mafia bosses without question and to remain forever silent about his Mafia role. Subsequent testimony at the Commission's public hearing revealed that he once violated this oath of silence to the extent of confirming his true organized crime status. As a result, although he admitted to certain relationships with known organized

crime associates, he was an otherwise evasive witness when he testified, prior to the public hearing, at an executive session of the SCI. He was subpoenaed on December 2, 1980, to appear at the Commission's public session the following week. However, on December 6 he was admitted to St. Barnabas' Hospital, Newark, because of a coronary condition and was unable to testify in public as scheduled.

Because of Molinaro's role in the Sokol, P.A.'s Metro Dental Services, Inc., and his links to organized crime, the Commission authorized the reading of his private session testimony at the hearing. SCI Executive Director Siavage put his private testimony into the public record through Special Agent Joseph Corrigan, reading from a transcript. Molinaro's private session testimony as revealed at the public hearing began with recollections of his employment at the Sokol clinic in Irvington:

- Q. Do you recall an interview with our agents, Mr. Corrigan and Mr. Richard Hutchinson?
- A. Yes.
- Q. Where you stated that George Franconero got you the job?
- A. I didn't say he got me the job. I says, he took me there.
- Q. He took you there?
- A. Drove me there, because I wasn't driving at the time.
- Q. What was the agreement that you made with Mr. Hyman?
- A. I was going to work there, that's all, set up a lab and do the lab work.
- Q. Did you ever discuss what salary you would receive?
- A. Yeah, I was supposed to get 250 until we set up the labs and see what kind of work was being done.
- Q. Now, when you say \$250, is that 250 a month?
- A. A week.
- Q. A week. Did it ever work out that you began the dental technician?
- A. I set up the lab, part of it. But, they ran out of money and I couldn't continue trying to set it up.

- Q. Now, you say you set up the lab. Where did you set up the lab?
- A. In Irvington.
- Q. What was the purpose of this laboratory?
- A. To save money by not giving work to outside labs.
- Q. Well, what would you do there?
- A. What would I do? Make false teeth.
- Q. Did you ever purchase any equipment?
- A. No, I was out looking for -- we got some equipment. We got drills and lathes and all that stuff.
- Q. Now, that was for false teeth?
- A. That's right.
- Q. Where did you purchase this equipment?
- A. Through Burke, John Burke.
- Q. Now, how is Mr. Burke paid for this equipment?
- A. I have no idea. I have nothing to do with that. That's done through the office there.

* * *

MR. SIAVAGE: Mr. Molinaro was then asked questions concerning his meeting with Dr. Hyman, and his familiarity with Dr. Hyman.

- Q. Had you been familiar with Jesse Hyman prior to your meeting him at Metro Dental?
- A. I think so, yeah. I think so.
- Q. How did you come in contact with Mr. Hyman the first time?
- A. I don't remember how I met him, but I met him.
- Q. Do you know Mr. Hyman from the Roman Forum?
- A. That's right. Yeah, that's right where I met him, yeah.
- Q. And what did you do at the Roman Forum?

- A. I managed the restaurant.
- Q. When you met Mr. Hyman, Dr. Hyman, and you were interested in getting a job at Metro Dental, was this the first time you had spoken with Dr. Hyman since you had known him at the Roman Forum or had you called him in between?
- A. No, no, I didn't call him. That was the first time, I think, when I came home.
- Q. What was the initial arrangement? Now, you are going to get 250 a week, were you paid 250 a week? Was the money paid to you?
- A. No, it was paid out to a company we had at the time, G & M.
- Q. And what does that represent, G & M?
- A. G & M is just G & M. It is my daughter's and my son's name. It was a company, then at the 1st of January we made a new corporation.
- Q. Who incorporated or who set up that company?
- A. The company we set up ourselves with the city hall, with Essex County. Then the corporation was done by Franconero.
- Q. You say that we -- who is we that set it up?
- A. Well, we had to set it up. We was George and I, because he was an attorney.
- Q. George Franconero?
- A. Right.
- Q. Was your son involved in that business?
- A. Yeah, we got him down as secretary. I don't even know, you've got the book here. I don't know what the setup is.
- Q. As far as corporation?
- A. I put it under his name, but at the time I have a lien on me and I put it under his name so I won't have no problems.
- Q. But the money that was to be paid was for your benefit?

- A. Right. That's right. Until I straightened out the lien, then it was going to be changed over to me.
- Q. Presently, are you receiving checks in your own name or are they going to G & M?
- A. Everything that was given out went to G & M.
- Q. Did you have complete control over the account G & M, the checking account for G & M?
- A. No, my son does, too.
- Q. Your son does?
- A. Yeah, because he signs the checks, too.
- Q. The incorporating checks that you received, they were deposited in your personal account?
- A. Yeah. He endorsed it in my account.
- Q. What do you do presently?
- A. Right now I supervise the cleaning when I feel good. I haven't been feeling right. Supervising, messenger service, like running, bringing from different clinics paperwork.
- Q. Do you actually bring the --
- A. Papers, sure.
- Q. -- papers, yourself?
- A. Sure.
- Q. Is there an individual that's paid by Metro to --
- A. To clean.
- Q. And also to provide a messenger service?
- A. No.
- Q. There's no messenger?
- A. No.
- Q. So, you're the only one if documents --

- A. No, the girls do it if I'm not there. One of the girls or whatever, they'll take the stuff around.
- Q. So, you're not absolutely essential for a messenger?
- A. No.
- Q. How do you supervise the cleaning?
- A. Well, how does anybody supervise -- you go there and see if the place is clean or not. That's all.
- Q. Did you go to all the locations?
- A. No, because I have nothing to do with the others. Only in Irvington.
- Q. In Irvington?
- A. That's right.
- Q. How often do you go to supervise that?
- A. Sometimes every day. Sometimes a couple of times a week.
- Q. Have you ever made complaints to Dr. Sokol concerning the cleaning?
- A. No. Why should I do it to him? I do it to the fellow that's cleaning.
- Q. What's his name?
- A. I don't know, you got the records, you got the names. I had my father-in-law there working for awhile. Then he passed away. Then he hired this other fellow there.
- Q. Did you have any background in the cleaning business?
- A. No. All I need is common sense to clean and see that people do the cleaning right. That's all.

Mob Ties in Cleveland

Agent Corrigan next read from the transcript Molinaro's statements about his organized crime associations in Cleveland:

MR. SIAVAGE: Mr. Molinaro was then asked questions concerning his relationship with an individual by the name of Curly Montana of Cleveland, Ohio.

- Q. Do you know a Curly Montana?
- A. Yeah, I've met him once.
- Q. In Cleveland?
- A. No.
- Q. Where did you meet him?
- A. Out here. He was with Jesse.
- Q. He was with Jesse Hyman?
- A. Yeah.
- Q. What did he do for Jesse?
- A. I have no idea. I know I met him and that's it. That's as far as it went.
- Q. In New Jersey, in the Roman Forum?
- A. Yeah, I think they come to the restaurant once, yeah, right. Once or twice. I don't know, but I met him here.
- Q. Was he in the company of Mr. Hyman?
- A. Right.
- Q. Did you ever meet Mr. Montana out in Cleveland?
- A. No.
- Q. Do you know if a relation to Mr. Montana helped set up the Sokol operation?
- A. As far as I know, his wife came down once with some girls from Buffalo.
- Q. What was his wife's name?
- A. I don't know.
- Q. Rena?
- A. I don't know. I don't know her name. They came down and spent a day or, I think, or two, over in Union when they was first setting up. That's all I know.

Q. Do you know who made the arrangement?

A. No.

Q. Did you have anything to do with making the arrangements?

A. No, I don't.

MR. SIAVAGE: Mr. Molinaro was then asked his connection to another individual from Cleveland by the name of Anthony Liberatore.

Q. Do you know a Mr. Liberatore?

A. Liberatore, yeah.

Q. How do you know Mr. Liberatore?

A. From Cleveland?

Q. Yeah.

A. Yes, that's the fellow that stood for my baby.

Q. How do you know Mr. Liberatore?

A. It goes back many years. How do I know him? I don't remember how I know him, but I know him.

Q. When did you first meet him? What were the circumstances?

A. 1960. I don't remember now.

Q. Was it a business relationship with Mr. Liberatore?

A. No, no.

Q. It was a social relationship?

A. Social, I think. I met him in San Diego.

Q. In San Diego?

A. Yeah.

Q. You were introduced to Mr. Liberatore by someone?

A. Yeah, his brother lives in San Diego and is very friendly with a cousin of mine in San Diego and we were introduced in San Diego.

Q. What's the name of his brother, Mr. Liberatore's brother?

A. He's got two or three of them. I think that was Bill. Bill, I think.

Q. Bill Liberatore?

A. Yeah, San Diego.

Q. How did you come together in San Diego?

A. I was there. He was there. His brother was there, my cousin was there. We went out to eat and that's how I met him.

Q. What was the occasion?

A. I was on vacation.

Q. How did you happen to run into Mr. Liberatore?

A. Because his brother was friendly with my cousin out there.

Q. And who is your cousin?

A. Limandri.

Q. What's his first name?

A. Got insurance. John Limandri, got insurance, real estate business out in San Diego.

Q. Going back to Mr. Liberatore in Cleveland, you met him through a cousin of yours?

A. And his brother.

Q. And Mr. Liberatore's --

A. Brother.

Q. Right. And Mr. Liberatore at a certain point became the godfather of your child?

A. Right.

Q. He traveled out to New Jersey?

A. Oh, yeah, yeah.

Q. How long had Mr. Liberatore, from when you knew him, been involved with labor unions?

- A. When I met him, he was involved with a union then out there.
- Q. When you went out to San Diego, what was the reason?
- A. Just to visit, my wife and I went out there.
- Q. Just to visit the city?
- A. My cousin is out there.

Molinaro was asked what the phrase "made man" meant in mobster jargon but he claimed ignorance:

- Q. Do you know what the term "made man" means?
- A. "Made man"?
- Q. "Made man."
- A. No, I don't.
- Q. Did you ever have the occasion to hear the term "made man" used in reference to Mr. Libertore?
- A. No, no.
- Q. You've never heard anything like that?
- A. No.
- Q. You have never heard the expression "made man"?
- A. I might have.
- Q. Where would you have heard that?
- A. I don't know. A lot of places. I don't know where.
- Q. Is that used in reference to organized crime?
- A. I don't know.

Molinaro also was asked in executive session to tell what he knew about John Riggi:

MR. SIAVAGE: Questions concerning Mr. Libertore were followed by questions concerning Mr. Molinaro's relationship with one of the witnesses in the hearing, Mr. John Riggi, Mr. Chairman.

- Q. Do you know John Riggi?
- A. Yeah.
- Q. How do you know John Riggi?
- A. For years I've known him through the families, my family, my relations.
- Q. Where does Mr. Riggi live?
- A. In Linden.
- Q. Do you have any business with Mr. Riggi?
- A. None whatsoever.
- Q. How --
- A. Just sociable.
- Q. How long have you known Mr. Riggi?
- A. Ten, twelve years, somewhere around there.
- Q. How did you first meet Mr. Riggi?
- A. I think we met at Ange & Mim's when I had my daughter baptized. We had the affair at Ange & Mim's in Kenilworth.
- Q. What happened? How did you meet John Riggi?
- A. He was there.
- Q. I mean, he was at the ceremony?
- A. Yeah -- not at church, when we had --
- Q. The reception?
- A. Yeah.
- Q. Who invited him to that reception?
- A. I did.
- Q. You did?
- A. Of course.
- Q. Well, you said that's the first time you met Mr. Riggi?
- A. I met him around that time when we first got married.

- Q. I understand. Now, I would like to say, when is the first time you actually met Mr. Riggi, first contact?
- A. I don't remember when. I don't remember when. It has been a long time.
- Q. It was social in nature?
- A. Right.
- Q. Have you had a continuing social contact with Mr. Riggi?
- A. Yes.
- Q. Is Mr. Riggi called J.R.? That is his designation, J.R.?
- A. All I know is John. I don't know what they call him. All I know is John.
- Q. Do you meet with him on occasion?
- A. Yes.
- Q. How often?
- A. Once a month or something.
- Q. Once a month?
- A. Once a month. I don't know, once, maybe twice a month.
- Q. Once a week, couple of times a week?
- A. No, no.
- Q. Where do you meet with Mr. Riggi?
- A. I'll go down and pick up pastry and have coffee with him.
- Q. Where is that?
- A. In Elizabeth.
- Q. What's the name of the restaurant?
- A. It's not a restaurant. It's a coffee shop, cafe, something. I don't know.
- Q. Could it be the Cafe Italiano?
- A. That's it, yeah.

- Q. And your testimony is that you met with Mr. Riggi maybe twice, three times a month?
- A. Yeah, somewhere around there.
- Q. Was there any occasion --
- A. It is not planned, I just happen to stop in and he's there, that's all. I know what time he's there, I know what days he's there. I stop and have a cup of coffee.
- Q. What days is Mr. Riggi there?
- A. I think on Sundays and maybe during the week, you know, at night.
- Q. At night?
- A. Yeah.
- Q. Is Mr. Riggi there on a constant basis?
- A. You have no idea? I know when I go there I see him there.
- Q. You see him there, but whenever you go there you see Mr. Riggi?
- A. Yeah.
- Q. Are there occasions where you go there and Mr. Riggi is not there?
- A. Possibly, yeah.
- Q. Do you call Mr. Riggi beforehand?
- A. No.
- Q. So, you just both show up?
- A. Right.
- Q. When Mr. Riggi is there, does he come in first or do you come in first?
- A. No, I'll come in there first a lot of times.
- Q. And later on Mr. Riggi will come in?
- A. Yeah.
- Q. What do you discuss with Mr. Riggi?
- A. The children, kids, his family, his wife, my wife.

- Q. Have you had occasion to socialize with Mr. Riggi?
- A. Sure. We went to the wedding, we went to his daughter's wedding, went to his son's wedding, yeah, his weddings.
- Q. Anything other than that?
- A. No.
- Q. Does Mr. Riggi know Mr. Hyman, Dr. Hyman?
- A. Yeah.
- Q. How does he know Dr. Hyman?
- A. I don't know how he knows him.
- Q. Did Mr. Riggi ever introduce Dr. Hyman to any unions?
- A. Not that I know of.

Molinaro also testified in executive session about Dr. Jesse Hyman:

MR. SIAVAGE: Mr. Molinaro was further asked questions concerning his relationship with Dr. Hyman.

- Q. Did you call Mr. Hyman at this restaurant or at a restaurant?
- A. I don't know if it was a restaurant. I know I called him.
- Q. Did he give you a number to call him at?
- A. Yeah.
- Q. Would you call his home?
- A. Whatever the number was, or I would call him home.
- Q. Where would you get a number from? Would he give you a number to call him at?
- A. Of course I've had his number for years.
- Q. What did you call Mr. Hyman about?
- A. He come out when I baptized the baby. His wife and my wife are friendly because we used to get together socially, so that's why what he called about.

- Q. How often would you get together socially?
- A. Oh, in the last year, year and a half it hasn't been that close like before we have.
- Q. When you called Mr. Hyman three times in September, what did you call about three times for?
- A. I don't remember now.
- Q. Before I asked you whether you knew the name Romano, Steve Romano, and you stated that you don't recall calling Mr. Romano within the last year?
- A. There's a Romano that is friendly with Resnick. If it might be the same one, if it is the same one, I don't know.
- Q. Would you have called Mr. Romano?
- A. It is possible.
- Q. What does Mr. Romano do, as far as his --
- A. I don't know. I have no idea what he does.
- Q. What would you call him for?
- A. I don't know. I don't remember what I called him for.

SCI's Mob Findings Confirmed

As a result of four days of testimony, the Commission had put into the public hearing record numerous admissions of the close ties by the principals of the Sokol dental care network with organized crime members and associates. The Commission therefore believed it appropriate at this stage of the hearings to call upon widely respected law enforcement officials for formal confirmation of the SCI's investigative findings that certain labor union dental care plans had been infiltrated by the mob. Since an expose of these findings was the primary purpose of the hearings, the Commission regarded the introduction of factual proofs by law enforcement as essential to the development of a complete evidential record.

The first law enforcement officer to testify on the North Jersey dental care scam's mob connections was Detective Sergeant First Class Robert T. Buccino, an 18-year veteran member of the New Jersey State Police. Buccino is supervisor of the North Unit of the State Police Intelligence Bureau with particular responsibility for monitoring and identifying organized crime activities in North Jersey. Buccino stated that his unit's mob monitoring duties in North Jersey had encompassed such known gangs as the Gambino,

Genovese, Luchese and Columbo families and the Angelo Bruno family as "part of" Sam the Plumber DeCavalcante's underworld activities. Since Comillo Molinaro had been previously identified as an important connection between the Sokol dental care operation and the mob, Buccino was asked to discuss his background. SCI Counsel Gerard P. Lynch questioned this State Police witness:

- Q. Of those families, have you ever heard the name of Comillo Molinaro?
- A. Yes, sir.
- Q. Could you tell us what connection he has to any of those families?
- A. Yes, sir. He is a soldier in a family out of Cleveland, but in New Jersey he is under Sam DeCavalcante.
- Q. How did you come about that information.
- A. Mr. Molinaro told me.
- Q. Could you tell us how that came about?
- A. Yes, sir. I arrested Mr. Molinaro on December 10th, 1975, at the Roman Forum, which is located within Local 945 of the Teamsters in West Paterson.
- Q. Did you have Mr. Molinaro under observation at that time?
- A. We had (an) investigation on Mr. Molinaro at that time, yes, sir.
- Q. Now, after you arrested him did you have a conversation with him?
- A. Yes, sir, I did.
- Q. Could you related that conversation to us?
- A. Yes, sir. I asked Mr. Molinaro if he was associated with organized crime and, if so, what was his association. And Mr. Molinaro stated that he was made a soldier in Cleveland and when in New Jersey he was under the wing, as he referred to it, of Sam DeCavalcante.
- Q. Now, this happened in 1975 when you had this conversation with him?
- A. Yes, sir.
- Q. Did he indicate how he was made in Cleveland.

- A. Yes, sir. He said that he had a blood relative in California by the name of Joseph Limandri. He said Joseph Limandri sponsored him into a family in Cleveland.
- Q. And was he actually made a soldier in the Cleveland family?
- A. Yes, sir.
- Q. And then he was -- became associated with the DeCavalcante family. Is that correct?
- A. Yes, sir.

Molinaro and Riggi

Sergeant Buccino was asked to describe Molinaro's relationship with and activities on behalf of John Riggi, the resident manager of DeCavalcante's crime family:

- Q. Could you tell us if he had any statements as far as his criminal activity with any members of the DeCavalcante family?
- A. Yes, sir, he did.
- Q. Could you tell us what he told you regarding the Sam DeCavalcante family?
- A. Yes, sir. He said that he was involved in strong-arm when there were labor disputes for the DeCavalcante, namely Mr. John Riggi. He cited several instances when he was contacted by Mr. Riggi, once when there was a labor dispute in the Newark Airport where Mr. Molinaro took with him a strong-arm and went to the labor dispute and after making a few threats was able to solve the problem.
- He further stated in most instances of labor problems the mere fact that an organized-crime figure shows up on the site usually settles the disputes by themselves. However, one other instance, he said that he had a problem when he had to hit a man, run a man over with his car.
- Q. Did Mr. Molinaro mention anything about any further works that he had done on behalf of Mr. Riggi.
- A. As far as the -- yes, sir. He had -- Mr. Riggi had problems with the Internal Revenue Service and Mr. Molinaro was able to take care of that problem through his connection

with the Limandri family in California.

What happened was Mr. DeCavalcante had contacted Mr. Molinaro and asked Mr. Molinaro if he could use his influence to resolve a problem that Mr. Riggi was having with the Internal Revenue Service. Mr. Molinaro said he flew to California and met with his contact, who was a Mr. Harry Hall or Haller. I'm not certain of the last name. He met with Mr. Hall and Mr. Hall, in his presence, made a phone call to someone in Washington, D.C., and, as a result of that conversation, told Mr. Molinaro that he can resolve Mr. Riggi's problem. They came to an agreement of \$25,000.

Mr. Molinaro flew back to New Jersey and a week or two later he was visited by this Mr. Hall with a letter from the I.R.S. in Washington to the Philadelphia office, and in that letter it showed that the matter was resolved. Mr. Molinaro stated that he brought the letter to Mr. DeCavalcante and Mr. DeCavalcante, after he read the letter and was satisfied that the matter was resolved, destroyed the letter and made payment of the \$25,000.

Teamster Loans Via the Cleveland Mob

One of Molinaro's activities was arranging loans out of the teamster union's pension funds. The State Police witness described what this entailed, including the importance of Molinaro's "made man" status in the Cleveland mob:

Q. Did Mr. Molinaro have any duties with any of the unions in the area?

A. Unofficially, yes. Mr. Molinaro told me that he was able to secure loans from the Teamsters' pension plan.

Q. And how would he secure these loans and what would the transaction require?

A. Well, he first told us about the mechanics of how to get a loan out of the Teamsters and at that time -- we're talking about 1975 -- he stated that the only way you could get a loan was if you were recommended by a connected person. He said that that year he was able to secure four loans ranging from \$500,000 to \$2 million, one which he referred to as most recently -- excuse me. I'll back up a little bit. In order for him

to get the loan, what they would have to do would be to come up with 10 to 50 percent front money. They would have to be steered by either a member of organized crime to him or an associate of organized crime.

Once they made application to Mr. Molinaro, Mr. Molinaro would contact his source, which would be -- was a Mr. Jack Presser, he said, and he described Mr. Presser as being an underling of President Fitzsimmons of the Teamsters out of Cleveland. Once Mr. Molinaro received the okay, received the front money, then he would go ahead getting the loan.

And then he cited an instant where he just received front money of \$150,000 for such a loan. That \$150,000 was split between he, Mr. Ernie Palmieri, who was the business agent of Local 945, an individual from the Teamsters local in Boston, Massachusetts, Mr. DeCavalcante.

Sergeant Buccino's testimony concluded with references to Dr. Hyman's role as a courier for transporting pension loan funds and to Molinaro's other associates in the underworld:

Q. Did he indicate how the member of the Boston union would get his share of the fee?

A. Yes, sir, he did. He said that they utilized a Dr. Hyman, who he referred to as the dentist on the payroll of the Teamsters, to transport monies, not only to Boston, but he mentioned Buffalo. He said Buffalo was the location where all the loans either came out of or were approved from.

Q. Did Mr. Molinaro indicate any other members of organized crime, as you know it, that he had criminal dealings with?

A. Yes, sir, he did.

Q. Could you indicate who those members were?

A. Yes. He said he had criminal involvement with Joseph Paterno, who was capo of the Gambino family. He said James P. Palmieri, who is a lieutenant in the Gambino family, and a Frank "Butch" Miceli, who is a soldier in the Gambino family.

Q. Did he ever mention having any dealings with a John DiGilio?

- A. Yes, sir, also with John DiGilio, who is a soldier in the Genovese family.
- Q. Were these dealings that he had -- what was the nature of the dealings that he had with these individuals?
- A. Well, he didn't go into detail. The only ones he gave any type of specifics about was with John Riggi and Joe Paterno.
- Q. I'm going to have you look up here to CN-50A and ask you if you have ever seen the person who is depicted in that photograph.
- A. Yes, sir, I have.
- Q. Could you tell the Commission exactly who that person is?
- A. Yes. That's Comillo Molinaro.
- Q. Is that the same individual that you have described as having a conversation with back in 1975?
- A. Yes, sir.

The New York Lottery Distributorship

From time to time during the hearings, testimony was recorded that referred to the New York State Lottery and the possibility of certain individuals obtaining a franchise as a lottery distributor. The primary connection between the lottery distributorship and the Commission's dental care plan probe was a finding that certain organized crime figures in the Sokol P.A. and Metro Dental Services operation had discussed the possibility of infiltrating New York's legalized gambling program.

One witness who had been involved in discussions about the New York lottery was Frank Ali of Elizabeth, a school teacher and the owner of a mausoleum. Union County law enforcement authorities had obtained taped recordings of Ali's conversations on this subject with one Fred Batissa. These conversations included references to "J.R." -- subsequently identified as John Riggi -- and his interest in financing acquisition of the lottery distributorship, and to Dr. Hyman. A composite recording of these conversations had been placed on a number of charts, which were introduced into the hearing record and posted as exhibits during testimony by Ali. Formal identification of these charts was made by SCI Special Agent Robert Diszler, preparatory to Ali's appearance as a witness.

Ali was asked to explain certain statements made during these taped -- and charted -- recordings of conversations:

EXAMINATION BY MR. RHOADS:

- Q. Do you know a gentleman by the name of Dr. Jesse Hyman?
- A. I met him once.
- Q. And how is it that you met Mr. Hyman? When? Through whom, if anyone?
- A. I went to a -- about two years ago I went to a meeting and I was introduced to him.
- Q. And do you recall by whom?
- A. A. Mr. Esposito.
- Q. Is that Ronald Esposito?
- A. Yes, sir.
- Q. Is he an attorney --
- A. Yes.
- Q. And what were the circumstances of this meeting, if you know? What was the purpose of it?
- A. Well, I was asked to go in to be a partner in a lottery business.
- Q. Did you, in fact, become a partner in a lottery business?
- A. No.
- Q. To your knowledge, did Mr. Hyman?
- A. Not to my knowledge. I don't know.
- Q. During the course of this meeting did you have an occasion to overhear anything that Dr. Hyman may have said pertaining to this lottery business?
- A. I was sitting very far away from him and I didn't get that much of the conversation.
- Q. So that no one misunderstands, when we discuss the phrase "lottery business," you're referring to the distributorship of lawful lottery tickets, are you not?
- A. Yes.
- Q. You know a gentleman by the name of John Riggi, do you not?

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- A. Yes.
- Q. Do you know that he is the business manager of a union located in Elizabeth?
- A. Yes.
- Q. Well, how long have you known Mr. Riggi?
- A. Well, my family has been in the construction business sixty-five years, and I don't know him that well, but I've seen him. Once in awhile I speak to him.
- Q. Is it as a result of your family being in the construction business that you know Mr. Riggi?
- A. Yes, I would say so.
- Q. Now would you describe your relationship with Mr. Riggi? By that I mean, is it a social one, business one, good friends?
- A. I see him maybe once every 17, 18 months. If I run into him, say hello, that's it.
- Q. Did you ever have occasions to actually talk with him at any length?
- A. Very, very rare.
- Q. Did you ever know Mr. Riggi to be associated with organized crime?
- A. No, not to my knowledge.
- Q. Have you ever heard anything to that effect?
- A. I've read things in the paper, in The Star-Ledger, names.
- Q. Did you ever have an occasion to ask Mr. Riggi about it?
- A. No.
- Q. Did you ever in the past refer to John Riggi as J.R.?
- A. I may have. I can't recollect.
- Q. Have you ever heard anyone else refer to John Riggi as J.R.?
- A. I could have.

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- Q. As you sit here now, do you have any present --
- A. No.
- Q. -- recollection as to whether you did or not?
- A. I don't. I'm trying to think whether I did or not.
- Q. Do you know what business, if any, Dr. Jesse Hyman was in?
- A. No.
- Q. Do you know what kind of doctor he was?
- A. I didn't even know if he was a doctor. I wouldn't know whether it was a Ph.D or an M.D.
- Q. Well, when you were introduced to him, did he have the appellation "Doctor" before his name?
- A. I -- from my recollection, it could have been "Doctor."
- Q. It could have been "Dr. Hyman"?
- A. I was introduced as that -- he was introduced as "Doctor."
- Q. Now, you had occasion to discuss Dr. Hyman with one Fred Batissa, didn't you.
- A. On the telephone once.
- Q. And wasn't it in relationship or in reference, I should say, to this lottery distributorship?
- A. I, I could have spoken to him about that. He was speaking to me on the phone quite a bit.

* * *

BY MR. RHODES:

- Q. Mr. Ali, I direct your attention to the first portion of what's been marked Commission Exhibit 53 for identification, and I represent to you that we have had testimony that this is an extracted transcript of a conversation between you and

Mr. Batissa; and if you will follow this as I read it and tell me, does this refresh your recollection as to the conversation?

"Batissa: Yeah.

"Ali: Now another thing too. Now they got this other guy that -- Ronnie got from J.R. You know?

"Batissa: Yeah, yeah."

I'll stop at this portion.

Now, do you recall saying that to Mr. Batissa?

A. I really don't recollect that. He spoke to me on the phone so many times, I can't remember that. This is a telephone conversation three years ago, or close to it, and it's just very difficult to remember.

Q. Perhaps if I play it for you, that will refresh your recollection. If I may have a moment, please.

(There is a brief pause.)

(A tape recording is played.)

Q. Now, Mr. Ali, that was you saying that, wasn't it?

A. Yes, sir. I just -- I'm trying to recollect that. I just don't remember. I don't know what I meant by it.

Q. Well, let's start with this: Maybe I could help you out. You say he got it from J.R. J.R. you are referring to is John Riggi; isn't that so?

A. I may have. I don't even remember if that was whether I meant him. I have no evidence that he did get anything from him.

Q. Do you recall testifying before this Commission on May 13, 1980?

A. May 13th?

Q. May 13th, 1980.

A. I was before it several times.

Q. I will represent to you that you were before it on May 13th, 1980, and I'm referring now to the transcript, Page 150, line 3, line 2, "Question: Who are we talking about?

"Answer: Freddy. I didn't know whether he did or not. Whether J.R. was involved or not, I didn't know.

"Question: Who is J.R.?

"Answer: Well, J.R. is John Riggi."

Now, that was you and you said that. I will ask you again, when you are referring to the J.R. here, you refer to John Riggi, don't you?

A. I told you, I -- in this particular instance, I can't remember. If I said that on there, I don't even recollect that. I know I said it. It's on there.

Q. Well, will you concede that your memory was better in May of 1980 than it is now in November of 1980?

A. No, I wouldn't say that.

Q. Well, you remembered it then, did you not? You said it under oath, didn't you?

A. I hear you saying it now. It's written there.

Q. To continue on. "Ali: That says he wants to put up a half million.

"Batissa: Now, of course, this is now abbreviated. "Yeah, that's R, that's R.

"Ali: Yeah."

MR. RHOADS: Can I have the next one, please.

Q. "Ali: They refused.

"Batissa: I'll tell you why. Because 25 percent of something is better than a hundred percent of nothing.

"Ali: Well, Freitas, another thing too. Where are you ever gonna hear of a man putting up all of the money, jeopardizing his estate and everything, for fifteen percent.

"Batissa: I never heard of it.

"Ali: Laughter.

"Batissa: Well, huh, do you want the proof of the pudding? They gave it to you last night. What you just told me and what they told me -- told me theirself a couple of days ago. J.R.'s man wants to put up half a million and he wants a minimum of 50 percent.

"Ali: Yeah."

Well, you're agreeing to what Batissa said there?

A. To be honest with you, he said so many things to me and I don't remember most. It was not valid and it was all fabricated and it was conjecture. He was telling me that he felt that was J.R.'s man. I didn't know and I have no evidence to that fact that it's his man.

Q. Well, when he says that it's J.R.'s man and he wanted to put up 50 percent, and you answered, "Yeah," you're indicating that you agree with him, aren't you?

A. Well, when he talks to you on the phone, just to sort of end the conversation a lot of times, I said, "Yeah." That didn't mean I acceded to whatever he said. I wasn't under oath when he made those tapes of me.

Q. As you are now?

A. As I am now.

Q. And as you were back in May when you said J.R. was John Riggi. Now, Mr. Ali, if you thought that Mr. Batissa was fibbing to you, why didn't you simply say that? Why did you agree with him?

A. Many times I disagreed with him, but I don't see it on any, on anything.

MR. RHOADS: Can I have the next one, please.

Q. "Mr. Ali: It's Frank.

"Batissa: What is it?

"Ali: Joey just called me.

"Batissa: Yeah?

"Ali: Yeah, he told me that he spoke to Ronnie and they -- they -- he called that guy today, Hyman.

"Batissa: Yeah?

"Ali: Yeah, I think they -- it looks like they're gonna go with them.

"Batissa: Huh.

"Ali: So I told him, I said, you know, I said, 'You could exclude me, because then you'll have more negotiating power.' You know. In other words a -- if a -- you know, if -- whatever they want.

"Batissa: Yeah.

"Ali: Ah -- they could throw my end in.

"Batissa: Uh-huh.

"Ali: You know. So he says, 'Well, let's see what Ronnie says.' You know?

"Batissa: Humph.

"Ali: So -- I figure if Ronnie wanted me to be in it he would have made me call the guy. Right?

"Batissa: Yeah, well -- I would imagine.

"Ali: Yeah, yeah, so I told him, I says, 'If he needed any help --' you know, even if he wanted me to talk to these guys here for him being that Ronnie's away?

"Batissa: Uh-huh.

"Ali: You know, the guys that sent Hyman."

Now, once again, Mr. Ali, you're referring to John Riggi sending Dr. --

A. No, I wasn't.

Q. -- Jesse Hyman, aren't you?

A. No, sir, I was not. Freddy had told me he thought different people sent him. They excluded me from that lottery thing because I couldn't post some kind of certificate that was needed and they excluded me, and the conversation then was just a lot of

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that, what you see on there. It didn't make any sense to me and neither to them.

Q. By the way, Mr. Ali, when these conversations were recorded, you hadn't the faintest idea that your conversation was being recorded, did you?

A. No, sir.

MR. RHOADS: I have nothing further, Mr. Chairman.

Mob Activities Analysed

The Commission's final public hearing witness was Major Justin Dintino of the New Jersey State Police. Not only did he confirm State Police Sergeant Buccino's identification of organized crime associations with the Sokol-Metro Dental dental care scam but he also explained the significance of these associations and the various activities they generated from the standpoint of his expertise on organized crime investigations.

Major Dintino, after five years as a trooper and 10 years as a detective, was assigned in 1967 to the newly formed State Police Intelligence Bureau. In 1972 he was promoted to officer in charge of that bureau and in 1978 he became Supervisor of Special Staff, a section which encompassed the State Police intelligence, gaming and security bureaus. SCI Director Siavage asked Major Dintino to summarize the "nature of the organized crime intelligence data" that is constantly available to him:

A. First, I have four field offices throughout the state in which a number of field investigators submit weekly detailed reports concerning intelligence reference to organized crime activity.

Two. The electronic surveillance unit comes under my command, and since 1969, with the inception of the electronic surveillance statute, I have had access to all the electronic surveillances within the state maintained by the New Jersey State Police.

Three. We have a network of organized crime informants throughout the state of New Jersey that our investigators have developed and I have access to that information.

And, four, we maintain a cooperative relationship with agencies throughout the state of New Jersey, throughout the nation, and in fact, international.

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Q. Have you authored any articles in the area of organized-crime investigation and intelligence gathering?

A. Yes, I have.

Q. And can you briefly tell me in what places those articles might have been printed?

A. They were printed in the Police Chiefs magazine, the F.B.I. magazine, and several news medias.

Q. Have you also lectured in the field of organized crime intelligence-gathering and investigation?

A. Yes, I have, extensively throughout the United States.

Q. Have you testified previously as an expert in the area of organized crime investigation?

A. Yes, I have.

MR. SIAVAGE: Mr. Chairman, I would offer Major Dintino as an expert on organized crime investigation at this time?

THE CHAIRMAN: Well, he's certainly well-qualified to give expert testimony.

John Riggi's Mob Role

Major Dintino was asked at the outset to describe, based on his State Police investigative facilities, the importance of John Riggi's association with the dental care plan scheme targeted by the SCI:

Q. Major, there's been testimony in this hearing that John Riggi of Linden, New Jersey, introduced Dr. Sokol to various officials and that he meets regularly with Mr. Molinaro. Who is Mr. Riggi?

A. John Riggi is a business agent of 394, which is the International Laborers and Hod Carriers of Elizabeth, New Jersey.

Q. And does Mr. Riggi also hold a position in an organized-crime family?

A. Yes, he does. Mr. Riggi is the under boss of the Sam DeCavalcante family and at the present time DeCavalcante is semi-retired in Florida and John Riggi is the acting boss of the DeCavalcante family.

- Q. And what are the present illegal activities of the organized-crime family known as the DeCavalcante family?
- A. The primary illegal activities would be labor racketeering, loan sharking, gambling, narcotics, but keeping in mind an organized crime field, that they will become involved in any illegal activities where they can make money and where there's a low-risk factor. Their objective is making money.
- Q. In what geographic areas around the state of New Jersey does the influence of the DeCavalcante family extend into?
- A. They're headquartered in Union county and basically a Central Jersey operation; Union County, Middlesex, Ocean, Monmouth and a few other counties.
- Q. Is Mr. Riggi considered to have power in the labor-union field beyond that of the power created by virtue of his position as a business agent with Local 394?
- A. Yes, he has. He has tremendous influence with -- throughout the labor movement.

Molinaro's Actual Duties

Major Dintino discussed the significance of Comillo Molinaro's activities, particularly his employment by an ostensibly legitimate dental care business:

- Q. Now, we heard testimony, as I said before, that Mr. Comillo Molinaro, meets on the basis of two or three times a month with Mr. Riggi. Based on that and other testimony before the Commission, is that significant to you in any way, based upon your expertise?
- A. Yes, it's very significant, because to me it would indicate that Mr. Molinaro would be an important figure within organized-crime circles to be reporting directly to the acting boss.
- Q. Now, you heard Detective Buccino's testimony that Mr. Molinaro admitted to him on one occasion that he was, in fact, a made member of organized crime. What does a made member of organized crime report to his boss when he meets him two or three occasions per month?

- n A. Well, I would say that it would be several factors. Probably to bring money to the boss through the illegal activities that he's involved in; two, to report his activities to the boss; and, three, to take instructions from the boss.
- Q. Now, again based upon your experience and expertise, what would be the purpose of having an organized-crime soldier on the payroll of an ostensibly legitimate business?
- A. Well, I would say that there was probably about three reasons for that. I would say that a primary reason for that would be that it would be a corporation or enterprise where organized crime has someone fronting for him. It's really an enterprise controlled by organized crime. So in order to protect their interests, they want to place someone right within that business, corporation or entity.
- Two. I would say that this would be a means of extracting exorbitant money from within that corporation through, say, consultant fees. They would use this individual as a consultant, it would be a means of skimming money from that corporation.
- Three. I would say that where you have an organized-crime figure involved entirely in illegal activities, they may want to show some legitimate income so as not to have the I.R.S. come after them with a net worth investigation.

Molinaro and the Cleveland Mob

The relationship between Molinaro and the Cleveland mob was explained by Major Dintino:

- Q. Now, you heard Mr. Molinaro's testimony read and in that testimony he admitted to a connection with Mr. Anthony Liberatore from Cleveland, Ohio. Are you familiar with the name Anthony Liberatore, and, if so, who is Mr. Liberatore?
- A. Yes, Anthony Liberatore from Cleveland, Ohio. In 1937 he was arrested and convicted for the murder of two police officers and he served twenty years in prison. He was released somewhere around 1958 and then he became quite active in Local 860 in Cleveland, and as an organizer and later became business manager. He was elected as

business manager in that local.

Liberatore also is, and Cleveland, Ohio, is very close to the organized-crime faction, in fact, he's close to the crime chieftain in the Cleveland, Ohio, area.

Q. Now, Mr. Molinaro admits further to meeting with Mr. Liberatore from time to time. What would that signify to you?

A. It could signify a number of things. He, Molinaro, had testified that he was originally made a soldier in the Cleveland area. It could indicate that he is reporting to Libertore, that he comes under Liberatore in the Cleveland area. It could also signify, Molinaro talked about loans from the Teamsters pension fund, that maybe there was some kind of a deal made between them and there's monies being carried by either Molinaro to Libertore or that he's going out to see Libertore to collect monies.

He also could be reporting activities to him or taking instructions from him. He could be a liaison between the Cleveland mob and the DeCavalcante-Riggi mob in this area.

Q. There's been testimony concerning John "Curly" Montana and the fact that his wife by the name of Rena set up the clerical procedures in one of the dental care facilities under examination in these public hearings. Who is John "Curly" Montana?

A. John "Curly" Montana, he is another organized-crime member from the Cleveland, Ohio, area, and formerly he was involved in an investment company called M.D.M. and he had a partner who was another organized-crime member named Pete DeGravio, who has since been slain in organized-crime fashion.

I think the interest you may have in Montana in April, '78, Mr. Montana was involved in Buffalo, New York, for theft of service; using a red box on the telephone to avoid long-distance charges. At the time of his arrest Montana was staying at the Statler Hilton Hotel suite which was leased by Hyman.

Q. We're not specifically interested in that little red box, are we?

A. No.

Q. But what is significant about that arrest?

A. The significance is that he was staying in a suite leased by Hyman.

The Rizzo Strangulation

The name of Carl Rizzo, a mobster from Buffalo, had been mentioned previously during the public hearing testimony. He had been associated with Dr. Jesse Hyman and, according to prior testimony, had been compensated by N.J. Dental Administrators, a Hyman-Resnick partnership and precursor to Metro Dental, the Sokol, P.A.'s administrative corporation. Major Dintino was asked about Rizzo:

Q. We have Detective Buccino's testimony again concerning Dr. Hyman and we have Mr. Ali's testimony concerning Dr. Hyman. We also have further testimony concerning Carl Rizzo and the fact that Carl Rizzo got a check for \$500 from Metro Dental Services, Inc. Who is Carl Rizzo?

A. Carl Rizzo, he's an organized-crime member from the Buffalo, New York, area. He received 500 a week consultant fees from the Hyman plan in Buffalo area and, in fact, he was instrumental in participating, in that Local 210 participating in Dr. Hyman's dental plan.

Q. You mean he had something to do with Dr. Hyman getting Local 210?

A. Yes, and, in fact, I think he negotiated the deal.

Q. Do you know what kind of local 210 union is? Do you know whether it's a Teamsters?

A. I believe it's a Teamsters, but I'm not sure.

Also, Rizzo was very close to the organized crime boss from the Buffalo area, Salvatore J. "Sam" Pieri.

Q. Now, where is Mr. Rizzo today?

A. He is dead today. He's buried.

Q. And when did he die and how did he die?

- A. Mr. Rizzo died. In April of this year, he was found in the trunk of his car. He was trussed up by rope with his hands and feet tied behind him with one loop of the rope going around his neck in such a manner so that he died a slow death of strangulation. He was trussed up in such a manner so that eventually his strength would give out and he would strangle himself by his throat pressing against the rope.

Basically, I think the important factor here is, in that area there was a few similar homicides like that and that in mob circles that is usually done to an individual that has really incurred the wrath of the mob, that he's done something really bad that they don't like, such as holding out or informing or whatever.

- Q. Now, you mentioned that he was found in the trunk of a car. Whose car was he found in?

A. Dr. Hyman's.

Major Dintino also was asked about certain organized crime figures who received "no charge" services at certain Sokol P.A. clinics:

- Q. There was testimony in this hearing concerning a no-charge list of one of the dental facilities involved and that free services were given to an individual by the name of Pasquale "Specks" Martirano; actually, that free optical care had been given to Mr. Martirano. Who is Mr. Martirano?

A. Pasquale "Patty Specks" Martirano is an organized-crime member from the Bruno family, which is now controlled by Phil Testa. He was under Antonio Caponigro, and since his demise he's now under Frank Sodano. He works the Down Neck area and he's basically involved in gambling and loan sharking.

- Q. Would he be considered a made member of organized crime?

A. Yes.

- Q. Of the rank of?

A. Well, he is -- we consider him the rank of soldier, but he is a very influential soldier.

- Q. You heard or there was further testimony of free optical care given to one Nicholas "Turk" Cifelli, C-i-f-e-l-l-i. Who is Mr. Cifelli?

A. Mr. Cifelli is a made member of organized crime, and he, like Martirano, came under the Caponigro group and the Bruno family. And his main activity was loan sharking.

- Q. Do you recognize the name of Ray Rats Ferrara, F-e-r-r-a-r-a?

A. Yes, I do.

- Q. And who is Mr. Ferrara?

A. Mr. Ferrara, he is a labor official with broad-based contacts throughout the labor field, and he is a close associate of organized crime figures such as Gerardo Catena and Tino Fiumaro. He is a former vice-president of Local 1478 of I.L.A.

The Dixie Mob in Mississippi

Major Dintino's concluding testimony clarified the relationship of payments and associations by Sokol P.A. principals Stanley Resnick and Western Realty Company with D.J. Venus of Biloxi, Mississippi:

- Q. Do you recognize the name D.J. Venus?

A. Yes, I do.

- Q. And how do you recognize that name, remembering that there was testimony in this hearing concerning a five-thousand-dollar check to D.J. Venus?

A. D.J. Venus is considered a ring-leader of the Dixie Mafia. He's from the Gulf Coast, Biloxi, Mississippi. He is the owner of several shrimp boats. His occupation is supposed to be a fisherman. He travels extensively. He has traveled to New Jersey and places like Colombia, South America, and he is a close associate of Carlos Marcello, the organized crime chieftain of New Orleans.

Lawyer Dratch's Statement

Stephen Dratch of East Orange, as counsel to three witnesses at the Commission's public hearings, had sought repeatedly to

prevent their appearance by litigation in various state and federal courts both before and during the public hearings. His clients included Drs. Joel S. Sokol and Anthony Ferrara and Stanley Resnick. He had requested previously in the public hearing to be permitted to make a statement. As provided for in the SCI's enabling law, the Commission heard Dratch's statement at the conclusion of the taking of hearing testimony:

MR. DRATCH:

In late 1975 and throughout 1976 Dr. Sokol and Dr. Ferrara began to formulate a plan whereby high-quality professional dental services could be provided on a large-scale basis at an affordable cost. It was finally determined that the vehicle in which this objective could be obtained was through prepaid dentistry on a capitation basis. Thereafter, negotiations ensued with health and welfare funds whereby these professional services were begun on a modified open-panel basis.

At the inception of this operation, the New Jersey Dental Association was invited to their offices for an explanation as to the theory and operation of this dental-delivery system. They also invited the New Jersey Dental Association's input and possible participation. However, the New Jersey Dental Association instituted litigation contending that the operation of this organization was in violation of the New Jersey Health Insurance Laws and the Dental Service Corporation Act of 1968.

In July, 1979, then Superior Court Judge Harold A. Ackerman ruled in favor of Sokol's organization and dismissed the association's suit. Judge Ackerman's decision was upheld on appeal and the New Jersey Supreme Court denied the association's application for review. As a result of that litigation, Sokol's organization was forced to go to a closed-panel plan.

In July, 1979, this Commission resolved to conduct an investigation into prepaid dental plans and other health-care plans. We have fully complied with this investigation by appearing for private testimony on several different occasions and turning over thousands upon thousands of pages of documents both from our professional and personal lives. This investigation has been continuing for the past 18 months and every aspect of our lives has been investigated by this Commission. However, never once in these 18

months has the Commission seen fit to inquire as to the nature and quality of the professional services rendered or whether the membership of the various groups is satisfied with these services. Moreover, the Commission has not done any analysis as to the amount of cost savings to these groups or whether the prepaid delivery system is as good if not superior to the traditional indemnity-type coverage.

Our plan now covers approximate 75,000 and its growth signifies these groups' desire to find alternative delivery systems. We feel that we have made dental services available to large groups who would otherwise not been able to obtain dental care.

During the course of this investigation it was determined that this Commission relied upon false certifications of its executive director in order to obtain testimony in private session. The Commission condoned the actions of its executive director. Though Judge Schoch ruled that this Commission could ratify the previously illegal and false resolution, the fact still remains the testimony was taken in an illegal fashion and that certifications were false.

Judge Schoch also held that this Commission has no power to advise witnesses that they may not disclose their testimony which was given in private session. This decision is now final, but yet the practice of the S.C.I. in threatening criminal prosecution if a witness discloses his testimony has been going on for the previous twelve years.

We believe that this Commission and its staff is terribly annoyed over this litigation and that their move to hold this public hearing at this time is to avoid the appellate court process. The Commission's tactics have been sloppy, overbroad and grossly careless. Many innocent people have been dragged through this process and we, of course, have been slandered and defamed by these actions. We and our families have undergone extreme anguish and cruelty without any legislative purpose in mind.

In closing, we feel this Commission has lost its integrity to conduct a fair investigation, but rather its efforts have been directed in trying to vindicate their own past wrongdoings.

The Commission's Closing Statement

Chairman Lane formally closed the public hearings with a brief statement that attested to the Commission's achievement of its investigative objectives and that acknowledged the contributions to the inquiry by both various law enforcement officials and agencies and the SCI's own staff:

THE CHAIRMAN: At the outset of these public hearings the Commission stated its purpose and outlined the proofs it intended to develop.

The voluminous testimony recorded here during the past four days confirms that the providing of essential dental care services to workers in northern and southern areas of New Jersey is being subverted to satisfy the greed of organized crime.

The Commission intends to continue its probing of the demonstrated depredations and will propose statutory and regulatory reforms to eliminate such abuses. We will submit proposals to the Governor and the Legislature of New Jersey as soon as possible.

As the Commission emphasized at the outset, these hearings were intended to expose and prevent mob-influenced abuses that permeate the closed-panel type of dental health-care plans. The Commission fully realizes that all professionally competent and honest dental practitioners, labor leaders and health care administrators share our adherence of the malpractices in this field. We are sure they also share our hope that the end result of our probe and hearings will be a more honest operation of such plans that puts the welfare of workers of this state ahead of excessive and questionable underworld cash rewards.

The Commission appreciates the expressed support for its inquiry from outside this state and is gratified by the investigative cooperation of numerous agencies such as the F.B.I., the Federal Organized Crime Strike Force and the United States Marshalls as well as by law-enforcement agencies in closeby Pennsylvania and New York with which the S.C.I. maintains constant and mutually beneficial liaison.

As might be expected, considerable evidence put into these public hearing records must be reviewed by the Commission for possible

reference to the Attorney General's office and the State Police. However, this is a customary activity by the S.C.I. at the completion of all of its activities and cannot be discussed beyond this brief comment.

The Commission additionally hopes that a bright light in the area of its investigation, a recent but still dormant law to control the operation of dental health-care plan organizations, will receive necessary funding to invigorate its enforcement. However, we believe this statute should be considerably strengthened to prohibit the still easy intrusion of underworld elements. The Commission also is hopeful that an effective supplement to the Federal Racketeer Influenced and Corrupt Organizations Law will soon be effectuated in New Jersey. Additionally, we intend to consider the proposal of measures to eliminate corporate overlapping and the juggling of corporate cash and check transactions that have become a too common curtain for the diversion of moneys from health care schemes to the mob.

Before concluding, the Commission wishes to compliment the many members of its staff who worked so hard and long in bringing our inquiry to a successful conclusion. These praiseworthy employees include Dick Hutchinson, Joe Corrigan, Frank Betzler, Kurt Schmid, Frank Zanino, Chris Klagholz, Julius Cayson, Greg Stasiuk, Cy Jordan, Wendy Bostwick, Debbie McCloughan, Michelle Wyks, Diana Vanderhoff and Carol Nixon and all others who helped us conduct these forums.

This series of public hearings now stands adjourned.

RECOMMENDATIONS IN DETAIL

PREFACE

In the introduction to this report (P.1) the Commission made the following observation:

The Commission's investigation did not involve recognized dental service or medical service corporations which generally operate in conjunction with the insurance industry and which have been under statutory regulation for some time. Rather, the inquiry was aimed at schemes that involved a complicated network of overlapping corporate entities set up to sell, finance and operate dental care programs for labor union members by means of alliances with elements of organized crime. A law designed to regulate the activities of prepaid dental plan "organizations" had been enacted early in 1980 to take effect in June, 1980. However, at the time of the Commission's public hearings this statute had not been implemented to any significant degree because of a lack of funding, according to State Insurance Department officials. During the course of the Commission's inquiry, it became evident that improvements in this law would have to be included in the SCI's subsequent reform proposals.

The law cited above is N.J.S.A. 17:48D-1 et seq. A product of the 1978-79 Legislature, it was approved by Governor Byrne on February 27, 1980, and took effect on June 1, 1980. Although it represented a landmark statutory regulation of dental plan organizations that undertake "to provide directly or to arrange for or administer one or more dental plans providing dental services," it had not been implemented to any significant degree by the time the Commission completed its investigation and public hearings on the subject in December, 1980. As a result, the public hearings provided an immediately available foundation of testimony and evidence on the misconduct of certain dental care organizations upon which to base proposals to make that law more efficacious.

The Commission's investigation also confirmed the infiltration by organized crime of the rapidly growing dental care phase of the health care industry in this state. The hearings identified such incursions of certain dental care plan organizations and brought these findings to public attention. Since such hearings under SCI law are designed to generate public demand and support for more adequate laws and more effective law enforcement, the Commission emphasizes its hope that the Legislature will now be encouraged to enact what could be a most effective statutory weapon in New Jersey's continuing battle against organized crime invasion of legitimate business -- a New Jersey state

law modeled after the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act. Such a proposed law is indeed pending in the Legislature as the Assembly Judiciary Committee's substitute bill for A-1079.

This bill recites certain legislative findings that were graphically updated by the Commission's investigation and hearings, including the following:

-- Despite the impressive gains of our law enforcement agencies, organized crime and similar activities in this State are still a highly sophisticated, diversified and widespread activity that annually drains millions of dollars from this State's economy by unlawful conduct and the illegal use of force, fraud and corruption.

-- In recent years, organized crime and organized criminal type activity has spread to the operation of otherwise legitimate businesses.

-- In order to safeguard the public interest, effective criminal and civil sanctions are needed to prevent, disrupt and eliminate the infiltration of organized crime type activities ...into the legitimate trade or commerce of this state.

PROPOSAL #1

The SCI probe and hearing demonstrated not only the validity of such legislative findings but also the prevalence of organized crime's invasion of legitimate business. Therefore the Commission stresses the importance of its primary recommendation:

That a comprehensive New Jersey state RICO statute be approved by the Legislature and signed by the Governor as soon as possible.

PROPOSAL #2

In addition, the Commission has reviewed the existing law (N.J.S.A. 17:48 D-1 et seq) designed to regulate dental plan organizations in light of its investigative findings and public hearing revelations. While it has been determined that this statute, if fully implemented by the State Insurance Department, represents a substantial forward step in the control of such organizations, it obviously needs to be revised in order to more fully prohibit the practices bared by the SCI's probe. The following recommendations are designed to eliminate such practices by setting more stringent standards of professional conduct for dental plan organizations and by removing the

veil of secrecy that has cloaked the financial operations of such groups. These recommendations require full disclosure and close inspection of financial transactions of dental plan organizations and also address their alliances with "consultants," "finders" and other entities and individuals. They include the following amendments of the existing law and supplements to it:

-- Insert in 17:48D-2 (definitions) the following:

"Consultant" means a person who holds himself out as an advisor or in fact renders advice regarding the organization, financing, administration, or operation of dental service plan to individuals, employers, unions, trust funds or dental plan organizations.

"Finder" means an individual, partnership or corporation which brings together a dental plan organization with an individual, an employer, a union or a trust fund to attempt to affectuate a contractual relationship to provide dental services.

Comment

"Consultants" and "finders" have been added to the law's list of definitions because the Commission's investigation revealed that questionable activities of such enterprises in connection with dental plan organizations require that they be regulated. These regulations are included in proposed new provisions of this law that are listed on P. 367.

* * *

-- Revise Section 3-b to read:

Every dental plan organization utilizing in the aggregate the services of more than one fulltime equivalent dentist shall submit an application for a certificate of authority to the Commissioner. A dental plan organization submitting an application subsequent to the effective date of this act may not operate until the certificate of authority is issued.

The Commissioner shall act on a new application within 90 days of its submission.

Within 90 days of the effective date of this act as revised the Commissioner shall act on all pending applications for a certificate of authority of dental plan organizations, utilizing in the aggregate

the services of more than one full-time equivalent dentist, submitted prior to the effective date of this act as revised. A dental plan organization may continue to operate until the Commissioner acts upon its pending application.

* * *

-- Replace Section 3 c (9) with this provision:

Financial Statements audited by an independent certified public accountant as the result of a detailed examination of the dental plan organization's assets, liabilities and sources of funds. Such statements shall contain pertinent information necessary to fully disclose the terms and conditions of all liabilities of the plan, including the estimated cost for future services to beneficiaries and the means by which the plan intends to fund this future liability, and a full disclosure of the terms and conditions of all loans tendered to any member of the applicant's management, related parties or entities. Financial statements as required by this provision shall be attested to by a member of the applicant's management.

Comment

Section 3c (9) now reads: "Financial statements showing the dental plan organizations' assets, liabilities and sources of financial support. If the dental plan organization's financial affairs are audited by independent certified public accountants, a copy of the most recent regular certified financial statement shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this act." The Commission's recommended revision considerably strengthens this current provision in the law by:

1) Requiring the submission of certified financial statements by applicants, which the present statute does not require; 2) Considerably strengthening the requirement for data on both current and future liabilities of an applicant; 3) making specific (and setting a deadline for) an applicant's obligation to comply with the commissioner's request for additional information, and 4) mandating that all submitted financial statements be prepared and certified by an independent certified public accountant and attested to by a member of the applicant's management.

* * *

-- Add to Section 5 a (which lists the conditions that must be met to the satisfaction of the commissioner before the issuance of a certificate of authority), the following additional condition:

(10) The persons responsible for conducting the affairs of the dental plan organization have not been convicted of a crime of moral turpitude or have not been identified as a career offender or a member or associate of a career offender cartel in a manner as to create a reasonable belief that such association is inimical to the policies of this act.

Comment

This additional subsection is recommended to further assure the good character of an applicant for a certificate of authority in the same manner as recommended by the Commission for the strengthening of the conditions under which a certificate of authority may be revoked or suspended.

-- To Section 9 b, which reads:

No evidence of coverage or amendment thereto shall be issued or delivered to any person until a copy of the form of evidence of coverage or amendment thereto has been filed with the commissioner.

Add this provision:

Within 30 days of its issuance or delivery to any person the actual executed form of evidence of coverage or amendment thereto shall be filed with the commissioner.

Comment

This additional provision is recommended in order to assure that no actual contract executed by a provider organization deviates from the form of the contract as required by the law.

* * *

-- Revise Section 13 b (requiring annual reports and stipulating what they should cover) to include the following expanded subsection (1):

A certified statement of the dental plan organization's operations for the preceding year, including full disclosure of sources of funds received and disposition of funds expended and a certified balance sheet as of the last day of the year containing

details as to the terms and conditions of debts owed to plan by members or management, related parties and entities and other liabilities of the plan. Such a statement shall be certified by the independent certified public accountant who audited the plan's records and attested to by a member of the dental plan organization.

* * *

-- Add to section 16 a (which empowers the Commissioner to suspend or revoke certificates of authority under certain stipulated conditions) the following additional condition as subsection (7):

That any person who is responsible for the conduct of the affairs of the dental plan organization as defined by 17:48 D-3 (2) has been convicted of a crime of moral turpitude or has been identified as a career offender or a member of a career offender cartel or an associate of a career offender cartel in such a manner as to create a reasonable belief that such association is of such a nature as to be inimical to the policies of this act.

Comment

This additional subsection grants the commissioner authority to assure the good character of a dental plan operator or operators by including as causes for suspension or revocation of certificates of authority the conviction of a crime of moral turpitude and identification with organized crime according to the same "career offender" and "career offender cartel" language that is presently contained in New Jersey's Casino Gambling Control Law and Cigarette Licensing Law.

* * *

--From Section 18 (which provides for civil penalty of no more than \$1,000 for violations of or refusal to comply with this act) delete the following "exceptions":

"..except the failure to file an annual report and the failure to reply in writing to inquiries of the commissioner..."

* * *

-- The Commission recommends that Section 18 be further strengthened by increasing the range of civil penalties to a maximum of \$10,000 rather than \$1,000. A proposed new Section 18 would read:

Any dental plan organization which violates any pro-

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vision of this act, or neglects, fails or refuses to comply with any of the requirements of this act shall be liable for a civil penalty of between \$500.00 and \$10,000 for each violation. The penalty may be sued for and recovered by the Commissioner in a summary proceeding pursuant to the "Penalty Enforcement Law" (N.J.S.A. 2A-58-1 et. seq).

-- Add the following criminal penalty provision to Section 18:

A willful misstatement or a willful omission of material fact required to be supplied to the Commissioner by any provision of this act shall be crime of the fourth degree.

* * *

-- Add to the law the following new provisions with regard to "consultants" as defined by the act:

A consultant as defined by this act is a fiduciary of the employer, union, trust fund or dental plan organization by whom he is employer. He shall receive no other compensation directly or indirectly as a result of his position as a consultant.

Within 30 days of employment as a consultant as defined by this act, a consultant must notify the commissioner of his name, principal business address, the group to whom he is a consultant, all present sources of income, and all past and present positions held as a consultant and his employer including all fees and remuneration received and to be received by the consultant. Within 90 days of the notice the commissioner may disapprove of the contract or employment of the consultant based on criteria to be set by the Commissioner.

* * *

-- Add to the law the following new provision with respect to "finder" as defined by this act:

A dental plan organization shall report the use or employment of all finders as defined by this act within 30 days of their use or employment. Any fee paid directly or indirectly by a dental plan organization to a finder shall be reported to the commissioner within 30 days. The commissioner shall regulate the fees paid to finders.

Comment

The Commission's investigation revealed that fees and other payments to "consultants" and "finders" in connection with dental plan organizations disguised the "skimming" of cash from such operations for diversion to organized crime and other unsavory elements. Conflicts of interest also were exposed when so-called consultants received fees for advisory activities and, whether or not advisory fees were paid, also fees for bring together a plan and a union health and welfare trust fund.

* * *

-- Add to the law the following requirement with respect to loan transactions:

The borrowing or loaning of funds by a Dental Plan Organization shall be limited in amount and condition to that done in a prudent businesslike manner with relation to the financial position of the dental plan organization, as prescribed by the Commissioner.

Comment

Marty Steinberg, Esq., who was chief counsel to the Senate Permanent Subcommittee on Investigations, gave revealing testimony as an expert witness at the SCI hearing on the utilization of loans in health care schemes. With respect to the above recommend law amendment, Counsel Steinberg testified:

The second most common scheme falls on fraudulent loans either from the union itself or from a trust fund...

Those persons who provided the actual services would be required to hire a consultant. Those consultants operated under various guises and various names...

In this particular case, the consulting firms were dummy corporations. They had no offices; they had no phones; they had no facilities; they provided no services. Their only purpose in life was to obtain that portion of the premium paid by the trust fund as a kickback and siphon that kickback off to those persons involved, mboth the labor racketeers and the organized crime figures who invented this scheme...

So that not only did they siphon out the money through the kickbacks to the consultants, but they also used the false and fraudulent loans in this same scheme...

As an interesting sidelight, that company, that was a consulting company, made substantial loans to yet another company. All these loans were questionable. The loans were made to a company which was controlled by yet another organized crime figure who was recently convicted of this very event.

APPENDIX 5

STATE OF NEW YORK
COMMISSION OF INVESTIGATION

A TRUST BETRAYED:
FRAUD, BREACH OF FIDUCIARY DUTY,
AND WASTE AT THE TEAMSTERS LOCAL 237 WELFARE FUND

270 BROADWAY
NEW YORK, NEW YORK 10007

MARCH, 1981

(615)

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I. INTRODUCTION

Teamsters Local 237 represents over fourteen thousand men and women working for the City of New York. It is the Nation's largest Teamsters public-employee union.

Each year, New York City, pursuant to collective bargaining agreements with Local 237, contributes approximately \$5 million to a welfare fund established and managed by officers of Local 237. The Fund exists to provide important health and life insurance benefits to the workers represented by the Union.

In 1967, Barry Feinstein ("Feinstein") became President of the Union and Chairman of the Fund's Board of Trustees. As Chairman of the Board of Trustees, Feinstein selected William Wallach ("Wallach"), a long-time friend and relative by marriage, as the Fund's insurance broker and consultant.

Together with Calvin Winick ("Winick"), another insurance broker, Wallach defrauded the Fund of over \$3 million from 1972 through 1980. This could not have happened if the Trustees of the Fund had properly exercised their fiduciary obligations to preserve the Fund's assets.

This Report will describe how Wallach and Winick defrauded the Fund by obtaining illegal commissions from the Fund's insurer, Trans World Life Insurance Company of New York ("Trans World"), in return for placing the Fund's business with Trans World. These commissions, which were concealed from the Fund, were passed on as premium charges to the Fund.

The Report will describe the efforts Feinstein made to assure that Wallach and Winick would continue to receive exorbitant payments even after he knew of their fraud, including his efforts to influence the progress of an audit by the New York City Comptroller's Office and a later investigation by the New York State Insurance Department. The Report also will detail the failure of those entrusted with the preservation of the Fund's assets, including Feinstein, the Trustees, and the Fund's counsel, to prevent the Fund from being victimized. Finally, the Report will describe how the City of New York annually provides over \$140 million to various union welfare funds which are almost entirely unregulated.

II. SUMMARY OF REPORT

In April, 1980, the New York State Insurance Department ("Insurance Department") announced that it had recovered \$2.27 million for the benefit of thirteen union welfare funds with over 47,000 beneficiaries. These moneys were paid to the Insurance Department by Trans World, by insurance brokers, and by others associated with Trans World. The payments were made following a lengthy investigation by the Insurance Department which revealed that Trans World and the brokers had grossly overcharged the union welfare funds. The total amounts paid to the Insurance Department for the benefit of the welfare funds represented the largest recovery from an insurer in New York State history.

The principal beneficiary of the Insurance Department recovery was the Local 237 Fund, established by Teamsters Local 237 for the benefit of over 14,000 New York City employees. The Fund, like welfare funds maintained by more than 100 other City unions, provides its members with a variety of life and health insurance benefits. Of the \$2.27 million recovered by the Insurance Department, the Fund received \$1.3 million, the balance going to twelve other union welfare funds. The amounts repaid to the welfare funds were about one-half of the total amounts the Insurance Department found the welfare funds were overcharged.

From 1972 through 1978, the Local 237 Fund was insured by Trans World. The Fund had placed its insurance with Trans World at the suggestion of Wallach and Winick, the Fund's insurance brokers, advisors, and consultants.

Although the Insurance Department conducted a vigorous investigation of Trans World and the insurance brokers, the Department did not have jurisdiction to investigate the Fund. The Commission, therefore, undertook to determine who was responsible for the Fund's having paid out millions of dollars in excessive fees and commissions, and whether any criminal acts were committed.

The Commission heard testimony at public hearings from Barry Feinstein and other Trustees, and from attorneys, administrators, consultants, and other persons associated with the Fund. Wallach and Winick refused to testify in reliance upon their constitutional rights. The Commission also heard testimony from New York City Comptroller Harrison J. Goldin and persons from his office, who had been involved in an audit of the Fund.

The Commission's investigation and hearings have demonstrated that Wallach and Winick, assisted by Trans World, systematically defrauded the Fund. However, this fraud would not have been successful if Fein-

stein had not protected Wallach and Winick, and if the Trustees of the Fund had properly exercised their fiduciary and managerial duties to protect the Fund from such exploitation. The Commission's specific findings can be summarized as follows.

A. The criminal violations

The Fund's brokers and advisors, Wallach and Winick, assisted by Trans World, defrauded the Fund of almost \$3 million from 1972 through 1980. Specifically, Wallach and Winick assured the Fund that, after exploring other companies, they were placing the Fund's insurance with Trans World because Trans World would provide good insurance coverage at the lowest available cost. In fact, there was no competitive bidding, and they placed the insurance with Trans World because the carrier was willing to pay them concealed and illegal commissions, pursuant to sham "service" and "promotional" contracts. Moreover, the charges for administration, commissions, and fees, made by Trans World to the Fund, were more than twice as high as charges made by other carriers to comparable welfare funds.

Wallach and Winick assured the Fund that all of Trans World's premiums, and the commissions and fees paid by Trans World to Wallach and Winick, had been

filed with and approved by the Insurance Department. In fact, the fees and commissions had been concealed from the Insurance Department and from other regulatory agencies.

As a result of this fraud, the Fund paid grossly excessive premiums for insurance coverage which could have been obtained at a much lower cost. These premiums were inflated by the illegal commissions Trans World paid to Wallach and Winick as well as by other improper charges made by Trans World. The Commission estimates that the total loss to the Fund as a result of these practices was over \$3.5 million.

In the Commission's view, these practices constituted violations of both federal and state criminal fraud statutes.

B. Breaches of fiduciary duty

Feinstein and the Trustees have fiduciary responsibilities in managing the Fund. While it is clear that the Trustees were defrauded by Wallach and Winick, the Commission also finds that Feinstein and the Trustees did not properly exercise their fiduciary obligations.

Feinstein totally dominates the Board of Trustees of the Fund. It was at Feinstein's urging that Wallach, a close personal friend, was retained as the

Fund's insurance broker. When evidence was brought to his attention that Trans World, Wallach, and Winick were overcharging the Fund, Feinstein used his political influence in an attempt to prevent such facts from being publicly exposed. At the same time, he used his influence over the Trustees to perpetuate the arrangements which enabled Wallach and Winick to enrich themselves at the Fund's expense.

There is no doubt that Feinstein knew that Wallach and Winick were being grossly overpaid at the Fund's expense. Feinstein concealed this from the Fund and insisted on continuing Wallach and Winick as the Fund's consultants in spite of the clear evidence of their fraud. If this Commission had not held public hearings which revealed the facts, we believe that Wallach and Winick would still be acting as the Fund's paid advisors.

The other Trustees also bear responsibility for the losses suffered by the Fund. Despite their fiduciary obligations, the Trustees relied entirely on Wallach and Winick in the administration of the Fund. Year after year, the Trustees approved payments of exorbitant premiums to Trans World solely on the recommendation of Wallach and Winick. At no time did the Trustees make independent efforts to determine whether less costly insurance could be obtained elsewhere, or whether

Wallach and Winick were placing the insurance with Trans World solely to maximize their commissions and fees.

When facts were brought to their attention indicating that the Fund had been victimized, the Trustees did not question Feinstein's desire to continue using Wallach and Winick as the Fund's consultants. It was only after this Commission's public hearings that the Trustees finally took action to discontinue the Fund's contractual relationships with Wallach. Winick's company still provides administrative services to the Fund today; although the Fund claims it is looking for a replacement.

C. The lack of controls by regulatory authorities

Welfare benefits to public employees have become larger and more important in recent years. New York City alone contributes more than \$140 million annually to union welfare funds, which are largely self-administered. Union welfare funds established by local government are not subject to the jurisdiction of the United States Department of Labor under the Employee Retirement Income Security Act ("ERISA"). New York State has no program equivalent to that created by ERISA for control of these welfare funds.

In reliance upon an opinion of the Attorney General of New York State, the Insurance Department has taken the position that it has no jurisdiction over self-administered insured welfare funds such as the Local 237 Fund. Moreover, any funds which are self-insured clearly are not subject to the Insurance Department's jurisdiction and are totally unregulated.

All funds receiving money from New York City are required to file reports with the office of the City Comptroller and are subject to audit. The Comptroller, however, has no independent enforcement powers with respect to abuses uncovered by an audit. The Comptroller's office has placed the audit of welfare funds low on its priority list.

In short, a welfare fund such as that established by Local 237, has control of large sums of money which constitute a trust for the benefit of the members. These funds are frequently administered by Trustees who have no particular experience or training. As demonstrated by this Report, the Trustees of the 237 Fund, for example, have mismanaged the Fund. From 1972 through 1980, only about 65 cents of every dollar the Fund received from the City went to the Fund's members as benefits. A substantial portion of the remainder was lost due to fraud and wasteful administrative practices.

While Trustees are liable to suit by the beneficiaries of the welfare funds for any abuses in the funds' management, such suits are rare. The funds are at the mercy of their Trustees.

III. THE FRAUD PERPETRATED BY WINICK AND WALLACH

A. The Fund's insurance program from 1967-1972

Local 237 represents over 14,000 City employees, most of whom work for the New York Housing Authority and the New York City Health and Hospitals Corporation. Pursuant to collective bargaining agreements with these authorities, Local 237 has established a trust fund to receive contributions from the City which are used to provide supplemental welfare benefits to the Union's members. The trust fund is administered by seven Trustees, all of whom are officers of Local 237. In fact, all of these Trustees are hand-picked by Feinstein.

Feinstein became President of Local 237 and Chairman of the Board of Trustees of the Fund in 1967. According to Feinstein, when he became Chairman, the Fund was in "very, very dire condition"* and had not paid its premium to the insurance carrier for several months. Faced with this situation, Feinstein called Wallach, an insurance broker who was a close friend, a relative by marriage, and someone Feinstein viewed as "family." For the next 13 years, Wallach acted as the

* Quotations to testimony come from sworn testimony given at public and private hearings conducted by the Commission or in the course of an investigation by the Insurance Department, except where otherwise noted.

Fund's chief advisor and insurance broker. Wallach misused his position to enrich himself at the Fund's expense and used the proceeds to acquire and build insurance businesses, including The Lion Insurance Company of New York, the Eagle Insurance Company of New York, and the Robert Plan Corporation.

Wallach had twenty years of insurance experience, mostly in the automobile casualty field, but no group insurance experience or experience with welfare funds. As he testified before the Insurance Department:*

I never handled group insurance before Mr. Feinstein . . . came to me. What the hell did I know? I learned.

Despite this lack of experience, Wallach was chosen to be the Fund's insurance broker and consultant. In addition to receiving commissions and service fees from insurance companies with whom the Fund did business, he was paid \$9,999 a year in consulting fees by the Fund in 1969 and 1970. Feinstein testified about Wallach's role:

Mr. Wallach between the years of 1967 and 1972 had functioned as our expert in this area. He was the

* All testimony of Wallach and Winick cited in this Report was given before the Insurance Department.

fellow that was responsible for finding carriers to continue to write risk for us, was responsible for the maintenance of our benefit structure levels, to ensure that what we did during that period of time wasn't biting off more than we could chew.

The same year in which Wallach became the Fund's broker, he asked Feinstein to be a member of the Board of Directors of The Lion Insurance Company ("Lion"), which Wallach owned. Lion was in the business of providing automobile liability insurance. Feinstein served on the Board of Lion from 1967 to 1975 and was paid small Director's fees.

Wallach obtained insurance for the Fund from several companies, including Thomas Jefferson Insurance Company ("Thomas Jefferson"), where he dealt with Winick, who was an officer in the Group Department of Thomas Jefferson.

The Fund's life, accidental death and dismemberment, and hospital and surgical benefits were insured by Thomas Jefferson from June 30, 1967 to October 1, 1969, at which time Winick left Thomas Jefferson and established Winick Associates, Inc. ("WAI"), a New York corporation of which he was the sole stockholder, officer, and employee. Wallach wanted to continue using Winick's "expertise." As Winick told the Insurance Department:

I was familiar with the business. I knew everything. He thought that I was very necessary to him, because of the knowledge I had, and when I left the company because they went out of the group insurance business, he wanted to continue using me because of my knowledge and expertise.

Wallach authorized Winick to place the Fund's insurance through WAI:

Q. And some of the business that you were paid for as a general agent [were] the Teamsters 237 contracts, policy?

A. Sure, correct.

Q. Who brought it to you, or what?

A. When Winick Associates [was] first incorporated, these cases were brought to Winick Associates by Mr. Wallach as, I believe, W.V. Brokerage Corp.*

Winick found new carriers for the Fund: Eastern Life Insurance Co. ("Eastern"), Beneficial National Life Insurance ("Beneficial"), and American Medical Insurance Company ("American Medical"). As Winick testified:

* W.V. Brokerage Corp. ("WVB") is a shell corporation owned by Wallach.

The time that the group business left and I left, Mr. Wallach indicated that he would like me to find another company where the business could be placed that had been in Thomas Jefferson, and I found Eastern Life Insurance Company, and I placed that part of the coverage in Eastern Life as general agent.

Thus, upon Winick's leaving Thomas Jefferson, the Fund's business was placed with Eastern, Beneficial, and American Medical. Until January 1, 1972, Winick and Wallach received commissions and service fees as a result of placing the Fund's business with these carriers.

In the fall of 1971, Winick and Wallach entered into negotiations with Beneficial, ostensibly on behalf of the Fund, looking toward the possibility of Beneficial insuring all the benefits provided by the Fund. Beneficial offered to provide such coverage. However, as a price for placing the business with Beneficial, Winick and Wallach demanded that they be paid fees and commissions greater than Beneficial could pay in accordance with its filings with the Insurance Department.*

* Sections 204(4) and 221(7) of the Insurance Law provide that no insurance company may pay commissions or fees which are not on file with the Insurance Department. Moreover, the Department refuses to accept for filings the commissions or fees it determines to be excessive.

David Schultz, an officer of Beneficial, testified:

[Winick] called me in November, 1971 to say that he was acting as a consultant to Wallach, and what could we do to increase the allowances. I went over the figures with him in detail and he agreed that we could not legally pay more than we offered and would so advise Wallach. [Emphasis added]

On November 8, 1971, Winick proposed to Schultz that Beneficial take over the full insurance program. Winick brought with him an underwriting package with several exhibits, one of which projected that in 1972 a total of 6.72 percent in commission and service fees would be paid to Wallach. Beneficial reviewed Winick's proposal and retained a consulting actuary to examine the proposal. The actuary reported that:

- a) The compensation arrangement requested by Mr. Winick for the broker and general agent appears to be excessive.; b) It is questionable whether the compensation arrangement requested by Mr. Winick will be approved by the New York State Insurance Department.; c) The retention of approximately 24% on a group case of this size is quite uncompetitive.

In noting that a retention rate of 24 percent was "uncompetitive," the actuary referred to the fact that, as the Insurance Department later established,

ordinary "retention charges"* for a large union welfare fund were between 6 and 10 percent of the Fund's premiums. Thus, Wallach and Winick were proposing an arrangement which eventually resulted in the Fund paying retention charges which were two to three times what they should have paid.

On December 14, 1971, Schultz met with Wallach, and "explained that we were entirely satisfied with the overall underwriting . . ., but it is quite likely that we would not be able to file for a total of 6.72 percent overall general agency commission and allowances." Schultz summarized his negotiations with Winick and Wallach for the Commission as follows:

Q. And Mr. Winick was acting on behalf of Mr. William Wallach?

A. So he told me.

* * *

Q. Did Mr. Winick make certain requests of you concerning the size of the fees paid to Mr. Wallach?

A. Yes, he did . . .

* Under the arrangements between the Fund and Trans World, the Fund paid premiums every year from which Trans World paid claims. After paying claims, Trans World retained moneys, for "retention charges" which included commissions, fees, taxes, charges for risks or contingencies, and Trans World's profits.

Essentially Mr. Winick wanted us to increase the total of allowances paid to W. V. Brokerage.

Q. Could you so increase the allowances paid to W.V. Brokerage?

A. No . . .

Because they would have been in excess of the allowances we were allowed to pay under our filings with the Insurance Department.

Schultz explained to the Commission that after Beneficial was unwilling to pay the unlawful commission sought by Winick and Wallach, his company lost the business:

The second matter that came under discussion was the matter of commissions payable on the entire package of coverages.

Mr. Winick estimated for me that the overall allowable commissions and fees to W.V. Brokerage would be a total of 6.72 percent.

He had given me that figure earlier. I worked with our own filings and with schedules that I knew were used by the Insurance Department and I told him that my best estimate was that the maximum total for W.V. Brokerage would be between five and six percent.

So at that point, which was then probably the end of November or early December of 1971, I told Winick that we were agreeable to writing the package of coverages

subject to the retention of the dividend and subject to filing of commissions and allowances.

Q. As a result of all this, I take it that your company was taken out of the picture; is that correct?

A. We did not hear anything further, sir, until we learned that we were no longer the insurance company, that's correct.

B. The Fund places its insurance with Trans World

Because Beneficial did not accede to their demands, Winick and Wallach approached Trans World, which was then a small insurance firm with virtually no group insurance business.

Following discussions between Trans World, Wallach, and Winick, Trans World agreed to pay the illegal commissions sought by the brokers, in return for being selected as the Fund's insurer.

Since Trans World had no group insurance department, it was agreed that the insurance program would be administered by Serv-Co Administrators Inc. ("Serv-Co"), a corporation which was in the process of being established by Winick and two of his former associates, Arno Talesnik and Stanley Mandel.*

* Another company, Pre-Paid Prescription Plans, doing business as U. S. Administrators, ("PPP") contracted with Trans World to pay claims on Trans World's drug and dental group insurance.

These illegal payments were passed on, dollar for dollar, to the Fund as part of the premiums which the Fund was charged by Trans World. Thus, it was the Fund, and not the insurance carrier, which bore the costs of these illegal payments to Winick and Wallach.

On January 1, 1972, Trans World entered into a contract with Serv-Co, pursuant to which Serv-Co was to pay claims and to provide administrative and consulting services in connection with Trans World's group business.

It should be emphasized that the great bulk of the work necessary to administer the Fund's insurance program was done internally by the Fund, at a yearly cost exceeding \$400,000, which employed a large staff, directed by the Fund's administrator, Robert Groom, for that purpose. The staff, for example, kept records concerning the Fund's members, prepared all claims, issued bills, distributed booklets, explained benefits to members, and performed other extensive services. Serv-Co was paid large sums by Trans World -- money which was ultimately paid by the Fund -- to perform services, many of which were already being performed by the Fund's staff. Thus, the Fund's insurance premiums were inflated to the benefit of Winick, Mandel, and Talesnik, the principals of Serv-Co.

The illegal commissions which Winick and Wallach were to receive were disguised as "service fees" and "promotional fees," to be paid under sham agreements between Trans World, on the one hand, and shell corporations owned by Winick and Wallach on the other hand. These fees were apart from and in addition to the legal commissions paid to Winick and Wallach as brokers on the Fund's insurance placed at Trans World.

On January 1, 1972, Trans World also entered into a "Group Service Agreement" with WAI, pursuant to which Trans World was to pay WAI five percent of all premiums received by Trans World from the Fund. In turn, WAI agreed to pass on these payments, and more, to WVB. Between 1972 and 1978, Trans World paid WAI \$1,135,924 under this Agreement.

These payments allegedly were to compensate WAI for rendering administrative services with respect to the Fund. In fact, WAI and Winick did nothing for the money. The Group Service Agreement was simply a vehicle for paying illegal commissions to Wallach (passed to him by Winick) for bringing the Fund's business to Trans World.

In order to pay Winick illegal commissions, Trans World entered into a "Special Group Representative Agreement" with WAI. Trans World agreed to pay to WAI \$7,600 a month (later increased to \$13,000), ostensibly

for generating other group insurance business for Trans World. The payments under this Agreement were no more and no less than illegal commissions paid to Winick for bringing in the Fund's business.

C. WAI's Service Agreement with Trans World

As mentioned above, WAI received about \$1.13 million from Trans World under the Group Service Agreement, from 1972 through 1978. These "service fees" were directly charged to the Fund as part of the premiums the Fund paid Trans World.

It is clear that Winick performed no bona fide services pursuant to this Agreement. Most of the services listed in the Agreement were performed by the Fund's staff under the direction of Robert Groom. For these internal services, the Fund allocated over \$400,000 a year. To the limited extent that Groom's staff did not perform the listed services, they were performed by Serv-Co. Some of the charges for "services" listed in the WAI Agreement could not properly be charged to a welfare fund.

The Group Service Agreement was a sham. It listed eight "services" which Winick purportedly was to perform. In fact, Winick was not expected to perform these services which were largely performed by the Fund's staff. The eight listed "services," the fees

Winick received from Trans World under the Agreement, and the reasons why such payments were fraudulent are as follows:

<u>Service</u>	<u>Fees (1972-1978)*</u>	<u>Comment</u>
1. Issuance of certificates	\$113,592	Performed by Fund
2. Preparation of premium billing	\$113,592	Performed by Fund
3. Maintenance of enrollment cards	\$56,796	Performed by Fund
4. Education of agents	\$170,388	Not a proper charge
5. Assistance in distribution of booklets	\$56,796	Performed by Fund
6. Assistance in explaining new benefits	\$113,592	A broker's function, already compensated by regular commissions
7. Assistance in preparation of master policies	\$56,796	A broker's function, already compensated by regular commissions
8. Installation and resolicitation fee	\$454,372	A broker's function and an improper charge
	\$1,135,924	

* The fees Winick received under the Group Service Agreement were expressed in percentages of premium totalling 5 percent. The amounts in the table were arrived at by applying the applicable percentage to the total premiums from 1972 through 1978.

The first listed service, "Issuance of Certificates," for which Winick received \$113,592, was performed by the Fund. Groom testified before the Commission:

Q. ... For example, you issue the certificates, don't you?

A. A booklet.

Q. You issue the booklet which is a certificate of enrollment to your member.

A. Yes.

Similarly Gerald Lener, Senior Examiner for the Insurance Department, who conducted a triennial examination of Trans World, testified before the Commission:

Serv-Co, under its contract was to perform issuance of certificates under a contract where they would receive a five percent commission and was also being paid a certain amount to issue certificates.

In fact, these certificates were issued by neither one of the two.

It was issued by Mr. Groom's office.

The second listed service, "Preparation of Premium Billing," for which Winick received \$113,592, was performed by the Fund. The Fund itself collected

the premium due, made up its own bill, and paid it on time.

The third listed service, "Maintenance of Enrollment Cards," for which Winick received \$56,796, was also performed by the Fund. At most, Winick appeared at the Fund once a year to flip through the cards to be sure "they were being kept up to date." As Groom testified before the Commission:

Q. And you maintained all the enrollment cards. Is that correct?

A. ... Yes.

Q. I think you said that Mr. Winick came once a year [to the Fund] and looked through the enrollment cards to see that they were being kept up to date.

A. Yes.

* * *

Q. How much time would he [Winick] spend with the 15,000 cards, a full day [per year]?

A. No.

Q. A couple of hours?

A. A few hours, two, three hours.

The fourth listed service, "Education of Agents," for which Winick received \$170,384, was a patently improper charge. Winick testified before the Insurance Department:

Q. Will you tell us one agent that you ever spoke to in this respect?

A. William Wallach.

* * *

... William Wallach was the only agent.

* * *

In other words, the Fund paid \$170,388, to Winick, one of its brokers, to "educate" Wallach, the Fund's principal broker, advisor, and consultant, who was himself the ultimate recipient of these very same payments.

The fifth listed service, "Assistance in Distribution of Booklets," for which Winick received \$56,796, was performed by the Fund. Groom testified:

Q. Let's talk about the distribution of the booklets which is what the contracts referred to. Who distributed the booklets?

A. Our office distributed the booklets.

The sixth listed service, "Assistance in Explaining New Benefits," for which Winick received \$113,592, was not a service for which a fee, other than the basic broker's commission, could properly be charged. As Lener testified before the Commission:

CONTINUED

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A. . . . explaining the benefits . . . that is also a general agent's function. That is the way a general agent produces benefits or obtains business.

Q. Are you saying, therefore, that there would be no reason to pay Mr. Winick these fees since he was required by other contracts he had with Trans World to render the same service?

A. That is correct.

The seventh listed service, "Assistance in Preparation of Master Policies," for which Winick received \$56,796, did not have to be performed by anyone, since the policy with the Fund was adopted from prior policies. Lener testified:

Q. I take it what you are saying is that there was no need to prepare any kind of a policy because it was simply an adaptation of a prior policy that had existed with another insurer?

A. That is correct.

Q. And a policy that remained in effect without any substantial modifications for seven years?

A. That is correct.

Further, even if the policy had been prepared by WAI, there was no reason why WAI should have been paid a fee every year for a task that would have been done only once.

The eighth listed service, "Installation and Resolicitation Fee," for which Winick received \$454,372, also was not a legitimate service charge. It was a payment to Winick for "resoliciting" the Fund's policy each year. In other words, the Fund paid Winick \$454,372 over and above the normal broker's commission, for the privilege of having its business solicited by him. Lener testified:

Q. Would you take us to the last item?

A. The last item is "Installation and Resolicitation Fee," which is also the type of service which a general agent would perform in order to earn his commissions.

Q. Now, to the extent that Mr. Winick would have done any such thing, he would have received a commission as a general agent of the company; is that correct?

A. That is correct.

In summary, the Group Service Agreement between Trans World and WAI authorized payment to WAI of \$1,135,000 for eight alleged "services." Four of these services were performed by the Fund itself or by Serv-Co; one of the services was patently improper; and three of the services were duplicative of services for which Wallach and Winick received broker's commissions.

Moreover, WAI, the recipient of the \$1.13-million, could not have performed any such "services" since it was merely a shell corporation. WAI had no employees, other than Winick, and no office. Its "office" was merely an address at Serv-Co's office. The company's tax returns and books show that almost all of its revenues consisted of moneys from Trans World paid in connection with the Fund's insurance program, and that WAI had no significant expenses or payroll.

D. WAI's Special Group Representative Agreement with Trans World

The second contract executed by Trans World and WAI on January 1, 1972 was a "Special Group Representative Agreement," whereby WAI received \$7,600 a month increasing to \$13,000 a month, (\$156,000 a year) by 1976. The ostensible purpose of these payments was to reward Winick for bringing new group business to Trans World. But the payments were required to be made regardless of how much added business Winick produced and in advance of any such business being produced. Actually, Winick brought no substantial business to Trans World, except for the Fund's business, for which he was paid a legitimate commission of over \$20,000 a year.

Murray Simon, an Insurance Department Examiner who conducted an examination of Trans World, told

the Commission that the payments made to Winick under this Agreement, which totaled \$931,200 from 1972 through 1978, were disguised commissions for bringing in the Fund's business:

Q. Are you saying, in effect, that they, Trans World paid Winick excessive commissions and in order to do so concealed them under the rubric of a group representative agreement or under the cover, I should say, of a group representative agreement?

A. That is correct. . . . During the testimony there was nothing to demonstrate that they rendered any substantial services that could remotely require the payment of \$1,000,000 for the service they rendered.

* * *

Q. Was Mr. Winick able to identify any substantial business that he generated for this company, Trans World, which would even remotely justify the payment from a business, moral or legal or ethical point of view of a million dollars?

A. He claimed the company's worth of business as of 1976 had greatly increased.

It was true, but it had nothing to do with his efforts.*

* Winick told the Insurance Department that he had earned these fees by "creating an environment" which allowed Trans World's group business to grow. But he could not specify any additional group business which he brought in.

Under the Group Service Agreement and the Group Representative Agreement, discussed above, WAI received a total of \$2.06 million from 1972 through 1978. Of these amounts, approximately \$1.3 million was passed on to Wallach by Winick, pursuant to a separate agreement between WAI and WVB. Winick thereby acted as a conduit for the payment by Trans World to Wallach of illegal commissions disguised as "service fees" and "promotional fees."

E. WVB's Group Insurance Sales Agreement with Trans World

In January, 1972, WAI and WVB entered into an agreement called a "Group Insurance Sales Agreement" under which WVB was to receive 5.82 percent (later 5.35 percent) of the Fund's premium, in return for Wallach's allegedly performing four of the eight "services" which were listed in Winick's Group Service Agreement with Trans World. The following chart lists the "services," the fees Wallach received, and the reason why such payments were fraudulent:

<u>Service</u>	<u>Fees (Total)*</u>	<u>Comments</u>
(1) Review and check master contract		A broker's function, compensated by regular commissions
(2) Install group program including distribution of master policy and certificates		A broker's function, also performed by by Fund
(3) Furnish enrollment cards to the Insurance Company		Performed by Fund
(4) Assist in collection of delinquent premiums		Fund not delinquent
(5) Participate in the resolution of administrative problems with the policyholder		A broker's function
	<u>\$1,305,057</u>	

The first listed service, "Review and Check Master Contract," was duplicative of Serv-Co's contract with Trans World. In addition, this task needs to be performed only when the policy is issued and is one of the tasks a broker normally performs on behalf of his client without compensation above his commission.

* Payments under this Agreement were not broken down for each alleged "service."

The second listed service, "Install group program, including distribution of master policy and certificates" -- another service performed only when the policy is put into effect -- was performed by the Fund. As Wallach admitted to the Insurance Department:

Q. And distribution of certificates, which are the booklet certificates, did you do anything about that? What did you specifically do under that category?

A. Only in that I explained it to the trustees, I explained it to the fund, I took those portions of the booklet which were of information to the people that were to be involved in receiving the claims, to alert them to the requirements of it and also instruct the fund as to the proper payment of the premiums.

Q. But you did not physically distribute the booklets to the individual members, did you?

A. No.

The third listed service, "Furnish Enrollment cards to the Insurance Company," also was performed by the Fund. Wallach testified before the Insurance Department:

Q. And there are enrollment cards in your office?

A. No.

Q. You do not prepare them or handle them?

A. No.

Groom likewise told the Insurance Department:

Q. Now, were any enrollment cards duplicated and furnished to Trans World? Were there any other sets of enrollment cards anywhere other than what we just discussed?

A. No.

Q. In other words, Winick didn't have his own set of enrollment cards?

A. No.

Q. And Wallach didn't?

A. No.

The fourth listed service, "Assist in collection of delinquent premiums," did not have to be performed by anyone, because the Fund was not delinquent. Even if it had been delinquent, Serv-Co was contractually obligated to collect premiums. Groom testified:

Q. Did your office participate in the preparation of premium billing?

A. You mean the monthly report for producing the check that went to Trans World?

Q. That's correct.

A. Yes.

Q. That was done internally, so to speak, isn't that so?

A. It had to be. I have the figures in my office.

* * *

Q. Were you aware Mr. Winick was getting paid for delinquent premiums and being charged to your funds? How often are you delinquent?

* * *

A. I don't really consider we are ever delinquent.

The fifth listed service, "Participate in the resolution of administrative problems with the policyholder," was not a legitimate charge, since an insurance broker performs those services to keep the business and would receive no compensation above his basic commissions for doing so.

Between January, 1972 and December, 1978, WAI paid WVB \$1,305,057* pursuant to the Group Insurance Sales Agreement. In addition, WAI paid WVB a legitimate commission of \$93,512. All these payments were listed as commissions on WVB's books. The payments Wallach re-

* The \$1.3 million figure was obtained by applying the contract percentages against total premiums paid by the Fund from 1972 through 1975; and from a review of WVB's books covering 1976 through 1978. WVB's books show that Wallach received about 5.75 percent of premium, more than the 5.35 percent his contract called for, during 1976 through 1978.

ceived under the Agreement were not fees for performing the listed services. They constituted illegal commissions, disguised as fees for services under a sham agreement.

F. The Fund's self-insurance arrangements with Wallach and Serv-Co

In late 1978, Wallach recommended that the Fund become self-insured, purportedly in order to reduce its expenses. This recommendation was accepted, and the Fund terminated its contract with Trans World as of December 21, 1978.

As of January 1, 1979, the Fund entered into agreements directly with Serv-Co, Wallach, and PPP after negotiations between Wallach and Feinstein. The Agreement with Wallach provided that he was to act as a "coordinator" for the Fund's benefits and, in particular, that he would coordinate and review the performance of Serv-Co. The Agreement also required him to consult with the Trustees concerning the Fund's benefit programs and to assist the Fund in the establishment of a "claims review procedure." For these services the Fund agreed to pay Wallach pursuant to a complex formula based upon the number of beneficiaries and the premiums that had been paid previously to Trans World. Under this formula Wallach received about \$178,000 a year.

The Fund also entered into a contract with Serv-Co under which Serv-Co received about \$99,000 a year, requiring Serv-Co to perform services similar to those it had performed in the past. PPP contracted to process drug and dental claims for about \$208,000 a year.

At the time the Fund entered into these agreements with Serv-Co and Wallach, Wallach entered into a side agreement with Winick pursuant to which Wallach was to pay Winick \$50,000 a year for Winick's "assistance." The Trustees did not know about this side agreement.

Testimony given by Groom made it clear that the Fund's self-insurance program did not result in any additional work for Wallach or Winick, and that they continued to receive large fees from the Fund for doing little other than attending quarterly Trustees' meetings and occasionally consulting on Fund matters.

Although the Trustees approved the contracts between the Fund, on the one hand, and Wallach and Serv-Co, on the other hand, they testified that they had no idea how much money Wallach and Serv-Co were to receive under these agreements. The Trustees were also unaware that Wallach was going to pass on to Winick \$50,000 a year of the moneys which Wallach was to receive under his contract.

Feinstein testified that he negotiated these agreements, and that he did know how much money Wallach and Serv-Co (but not Winick) were to receive. He stated that he was led to believe that the moneys Wallach and Serv-Co were to receive were consistent with what they had been paid between 1972 and 1978, and that such fees had been approved by the Insurance Department. But, as will be seen, the fees actually had been concealed from the Insurance Department. Moreover, the fees they had received in prior years were in fact, illegal commissions paid them, not for services performed, but for placing the business with Trans World.

The Fund paid Wallach and Serv-Co under these Agreements for two years until December, 1980, when, in light of this Commission's public hearings, the Trustees voted to discontinue Wallach's payments and to make arrangements to replace Serv-Co.

Several Trustees testified before the Commission that they approved Wallach's and Winick's contracts without knowledge of material facts. Among these facts were: (a) that Wallach and Feinstein were related by marriage; (b) that Feinstein had served as a director of a company controlled by Wallach; and (c) that Wallach and Winick had been receiving, out of the Local 237 premium, hundreds of thousands of dollars annually in illegal commissions and fees. These trustees further tes-

tified that if they had been advised of these facts, they would not have approved, or might not have approved, the Fund's 1979 contracts with Wallach and Serv-Co.

G. The Fund's losses from the fraudulent scheme

During its investigation of Trans World and the brokers, the Insurance Department determined that the Fund had, from 1972-1978, overpaid a minimum of \$2.6 million for insurance. The Insurance Department arrived at the \$2.6 million figure after conducting a survey of "retention charges" in the insurance industry.

The Insurance Department learned through its survey that total retentions, including the cost of administrative services under group insurance policies similar in size to Local 237 policy, ranged between 6 and 10 percent of premiums. In contrast, Trans World's retention charges to the Fund were 23 percent of premiums.

In determining that the Fund overpaid \$2.6 million for insurance, the Insurance Department took the difference between Trans World's 23 percent retention rate and an 11 percent rate, the highest permissible rate in the Department's opinion. Twelve percent of the premiums which the Fund paid Trans World, or about \$2.6 million, was therefore calculated to be the total overcharge.

The \$2.6 million figure does not, however, take into account the interest obtainable in an action on the moneys fraudulently obtained from the Fund. If a six percent simple interest factor is applied to the moneys fraudulently taken from the Fund each year, the true loss is over \$3.5 million.*

H. The deception practiced by Trans World, Wallach, and Winick

(a) Misrepresentations to the Fund

As insurance brokers and consultants, Winick and Wallach had the obligation to obtain insurance for the Fund at the best possible price, and they led the Trustees of the Fund to believe they had done so.

Winick and Wallach defrauded the Fund by recommending insurance, not on the basis of what was in the interests of the Fund, but on the basis of what was in their personal interests and then concealing these facts from the Trustees. Specifically, they induced the Fund to place insurance with Trans World because Trans World was willing to pay them illegal commissions, and they concealed these commissions from the Fund, from the Fund's beneficiaries, and from the government.

* Six percent is the rate of interest generally recoverable under New York law. CPLR §5004. In actions at equity, however, the Court has the discretion to set a higher rate of interest.

Feinstein and the other trustees testified that the Fund placed its business with Trans World in reliance on assurances by Wallach and Winick that Trans World would provide the insurance at the lowest cost available. In this regard, they testified that Wallach and Winick led them to believe from the outset that many larger, more established insurance companies would not insure the Fund because of its poor financial condition and because it was a Teamsters fund. Feinstein testified:

During that period of time, we kept finding companies either leaving us, failing to continue to write the kind of business we had either because we were a municipal or we were a union . . . and Mr. Wallach found Trans World as a carrier that would continue to write the risk when the company previous to Trans World told us that they were no longer going to write that kind of business.

Contrary to the representations made by Wallach and Winick, there is no evidence that a major insurance company would have been unwilling to take on the Fund's business. It is clear that Beneficial was willing to provide insurance, and that Wallach and Winick broke off negotiations solely because Beneficial was unwilling to meet their demands for excessive commissions. Moreover, there is no evidence that Wallach

and Winick approached any insurance carriers besides Beneficial before the Fund's business was placed with Trans World. Even if Trans World had been the only available carrier, the Fund could have obtained insurance from Trans World at a cost which did not include the large illegal commissions paid to Wallach and Winick.

In 1976, the Fund came under the scrutiny of the Comptroller of the City of New York, which was then conducting an audit of the Fund. At that time, the Comptroller's auditors pointed out to the Fund that it was paying excessive fees and commissions for its insurance and that the insurance was too costly overall.

Normal procedure would have called for the Fund to submit to the Comptroller's Office a written response to the draft. A final draft would then be prepared incorporating the Fund's comments. In fact, the Fund's counsel had started to prepare a written response, and had contacted Winick, Mandel, and others to get their response to the auditors' concerns. The response made by Winick to counsel's inquiry graphically illustrates the means by which Winick and Wallach defrauded the Fund.

On or about November 23, 1976, Winick sent a letter to the Fund's counsel purporting to set forth information, "which we hope will be useful in your reply

to the City auditor who is currently auditing the Welfare Funds." In response to questions the auditors had raised as to the compensation received by the brokers, Winick's letter stated:

The General Agent (Winick Associates, Inc.) is paid commissions in accordance with a schedule filed with the N.Y. State Insurance Department. This schedule of commissions is competitive with what other Insurance Companies pay. In addition, where the General Agent (or Agent) performs services that are normally done by the Insurance Company, the General Agent (or Agent) are paid service fees in accordance with a schedule filed with the N.Y. State Insurance Department. The General Agent is paid the total commissions and service fees by the Insurance Company and in turn pays the Agent (W.V. Brokerage Corp.). These fees are also competitive with what other companies pay. (Emphasis added)

Winick's letter was false and misleading. Contrary to his representations, the commissions received by WAI had not been filed with the Insurance Department. Moreover, contrary to the letter, the service fees paid to WAI, and thereafter to WVB, had not been filed. Nor were these fees "competitive with what other companies pay." Indeed, the fees were impermissible.

Counsel for the Fund had also inquired of Winick as to whether competitive bids were sought for the Fund's insurance in 1972. Winick's letter answered this inquiry as follows:

You questioned also whether the policy was ever put out for bids. When we first came to Trans World in January 1972, W.V. Brokerage and myself went to various carriers to show them the various details of this risk. Beneficial National Life Insurance Company, who had been the carrier for the Drug Coverage only, was approached to take the whole risk and they refused. We also went to Nationwide Insurance, Prudential and Mutual Benefit Life and all had rejected us as they were not interested in writing municipal unions at that time. We went to Trans World and reached an agreement which was competitive with what was being charged other groups. (In fact, we were even lower.) [Emphasis added]

These statements also were false. As previously noted, Beneficial did not refuse to insure the Fund's benefits, but rather refused to pay unlawful commissions sought by Wallach and Winick. Winick's statement that Trans World's fees were "competitive with what was being charged other groups" was patently false, as demonstrated by the Insurance Department's later survey which revealed that Trans World's charges for administration were about two and one-half times the norm.

Winick responded to counsel's inquiry by presenting what purported to be invitations he had extended to four major insurance companies to bid on the Fund's business. Winick thereafter told the Fund that these insurance companies had declined to bid, and he gave the Fund letters to that effect from the insurance companies. However, Winick did not reveal that at least one of these insurance companies -- Mutual of Omaha ("Mutual") -- had indicated a serious interest in offering coverage. Mutual only declined to bid when Winick told an officer of Mutual that the price for placing the insurance would be illegal commissions payable to him of at least 9.5 percent, as well as additional fees. Another insurance company to which Winick had written did not even provide coverage for welfare funds.

Thus, Wallach and Winick misled the Fund in 1972 by telling the Fund that Trans World was the only insurer available. They misled the Fund again in 1976 by representing that they had made genuine but unproductive efforts to obtain less costly insurance, and they lied to the Fund's counsel about the fees and commission they were receiving.

(b) Concealment of fees from the Insurance Department

The New York State Insurance Law, §§204(4) and 221(7), requires that all payments made by an insurance

carrier for commissions, services, and administration on group insurance be in accordance with a schedule of fees filed by the carrier with the Department.* As a matter of practice, if the fees are too high the Department will not accept the schedule for filing. The Code of Ethical Practices ("Code")** sets forth the Department's policy that on union group insurance these payments can be made only for the reasonable value of four itemized services.*** (Code, §2(c)(1)).

Under its contracts with Trans World, Serv-Co was responsible for all filings with the Insurance Department. As stated above, Winick had been told by

* Every violation of the Insurance Law is a misdemeanor in addition to any other penalty provided by law (I.L. §5).

** The National Association of Insurance Commissioners ("NAIC") in addressing the corruption and depletion of welfare and pension fund assets at its convention on December 2-5, 1957, adopted the Code of Ethical Practices as a declaration of applicable principles on the proper conduct of insuring welfare and pension funds. The NAIC adopted the Code to serve as a complement to "... existing state insurance laws as require that insurance benefits be reasonable in relation to the premiums charged, and which prohibit unfair discrimination, rebates, misrepresentation, misleading or deceptive acts, and other unfair trade practices or unfair methods of competition, as being prejudicial to the interests of beneficiaries of insured welfare and pension funds." The New York State Insurance Department fully subscribed to the Code by circular letter dated December 19, 1957 and by adopting 11 NYCRR Part 202 (group life insurance).

*** These four itemized services are: (1) issuing certificates; (2) maintaining employee records; (3) billing premiums; (4) processing claims.

Beneficial that the commissions he and Wallach were seeking were excessive and would not be approved by the Insurance Department. After Trans World agreed to pay the commissions, Serv-Co did not disclose the fees to the Insurance Department, having been told by Beneficial that the Department would disapprove them. When questions were later raised about their fees, Winick and Wallach repeatedly assured the Trustees that the fees paid by Trans World had been duly filed with the Insurance Department. These representations were false.

Trans World's payments to WAI under the Group Service Agreement were concealed from the Insurance Department. They were not in accordance with the schedule of fees to be paid in connection with union welfare cases which Trans World had filed with the Insurance Department.* The payments by WAI to WVB also were not filed with or disclosed to the Insurance Department.**

* The schedule which WAI did have on file with the Department conformed with the Code. But the payments actually made to WAI under the Group Service Agreement did not conform with the schedule on file and did not conform with the Code. Serv-Co's officials told the Department that the wrong schedules had been filed "by mistake."

** Trans World has argued that the fees paid by WAI to WVB did not have to be filed because they were not paid by Trans World, the insurance company. In our view, this contention is absurd. If accepted, it would allow insurance companies to avoid the limitations on commissions merely by paying the excessive commissions indirectly through a third party, as happened here. Trans World also claims that it first learned about these payments to WVB in 1978.

Trans World's fees to WAI and to Serv-Co (and PPP, the administrator and payer of claims on dental and drug coverage) also were not in accordance with fee schedules filed by Trans World with the Department.* In short, the fees received by Wallach and Winick were concealed from the Insurance Department.

(c) Concealment of fees from the United States Department of Labor

The Welfare and Pension Plans Disclosure Act of 1958** required welfare plans to disclose certain insurance information to the United States Department of Labor on a "Form D-2." The Employee Retirement Income Security Act of 1974 ("ERISA"),*** effective January 1, 1975, superseded the Welfare and Pension Plans Disclosure Act, and required welfare plans to make comparable

* Trans World has argued that the Serv-Co contract did not have to be filed because Serv-Co was performing the functions of a group department for Trans World. But Serv-Co was not a division of Trans World. It was, by the terms of the Consulting and Administrative Agreement, an independent contractor (Agreement, §1, p. 1). Moreover, even if payments under consulting agreements may not have to be in accordance with filed schedules, payments under administrative agreements must be. Since this was an administrative agreement, combined with a consulting agreement, the payments to Serv-Co had to be in accordance with a filed schedule and they were not.

** 29 USC §1001, et seq., effective January 1, 1975.

*** 29 USC §301, et seq.

disclosures on a "Form 5500." A major purpose of these disclosure requirements is to make a matter of public record the total fees and commissions paid to insurance brokers and others in connection with union welfare fund insurance, in order to deter kickbacks and other illegal commissions.

Both Forms required reporting funds to disclose the names of each recipient of fees and commissions and the amounts paid to them. From 1968 through 1978, these Forms were annually submitted by the Fund to the United States Department of Labor.

The financial data concerning the fees and commissions paid by Trans World were prepared by Serv-Co, submitted for review to Trans World, and then delivered to the Fund. This information was then incorporated in the Forms, which were filed by the Fund with the Department of Labor. The data were also included in "Summary Annual Reports" which the Fund was required to, and did send annually to all of its 14,000 participants.

The fees and commissions paid to Wallach and Winick were not fully disclosed to the Department of Labor. Indeed, in all of the filings with the Department of Labor, Wallach was never listed as a recipient of commissions and fees of any kind. Trans World's "promotional" payments to WAI, under the Special Group Representative Agreement, also were not disclosed.

Rather, they were treated by Trans World as overhead costs and, on that theory, not revealed as commissions, even though, as shown above, they clearly were commissions to Winick.

Trans World's payments to Serv-Co (and to PPP) were not specifically identified either, but were included in the Forms, lumped together with other items, as a "charge for risks or contingency." A "charge for risk" is the profit margin of the insurance carrier for taking the risk; a "charge for contingency" is the amount the insurance carrier sets aside for protection against unforeseen events. By lumping the fees paid to Serv-Co and PPP with other charges, under the category "charge for risks or contingency," the total administrative charges to the Fund were concealed.

An examination of the filings with the Labor Department would not have revealed how much Trans World was paying to third parties, such as Wallach and Winick, for fees and commissions. Wallach received about \$1.3 million in commissions from Trans World from 1972 through 1978. Yet he was not identified as the recipient of any fees in the filings. WAI was identified as the recipient of "service" fees but no mention was made of its receipt of \$931,200 as a "Group Representative" of Trans World. Moreover, because Serv-Co was not identified, there was no way to tell from the filings

that Winick was being paid twice for performing the same illusory services--once through WAI and again as a shareholder in Serv-Co.

(d) Concealment of fees from the Fund's beneficiaries

Under its collective bargaining agreements, the Fund was required to send each of its participants Summary Annual Reports of the business and affairs of the Fund. These reports included certified financial statements showing the Fund's income, expenditures, and related matters. The Reports also included the financial data concerning the fees and commissions paid by Trans World.

In preparing the Summary Annual Reports, the Fund used data furnished by Trans World and prepared by Serv-Co concerning the fees and commissions Trans World had paid. This data consisted of nothing more than the information contained on the Form 5500's, which Trans World had submitted to the Fund for filing with the United States Department of Labor. Since, as mentioned above, the Form 5500's failed to properly disclose the payment of fees to Serv-Co and Wallach, the same omissions were repeated in the Summary Annual Reports.

As a result, the participants in the Fund could not determine from the Summary Annual Reports the total service fees paid by Trans World, at the Fund's

expense, to third parties associated with the Fund. Nor could they tell that large payments were being made to Wallach.

* * *

As brokers, Wallach and Winick were fiduciaries, and therefore, they had a duty to disclose to the Fund the amount of their compensation from Trans World. They also had a duty to assist the Fund in obtaining insurance at the most reasonable rate.* In blatant disregard of these obligations, Wallach and Winick sought to obtain insurance from the company which would provide them with the largest commissions--indeed illegal commissions--rather than the least costly insurance. To accomplish this, they hid the commissions they were receiving by disguising them as "service fees" and "promotional fees." Then, they concealed these payments from the Insurance Department, the Department of Labor, and the Fund.

* In Brink v. DaLesio, 82 F.R.D. 664 (D.C. Maryland, 1980), Alfred Bell provided consulting, administrative, and insurance brokerage services to Teamsters Local 311 welfare fund. The fund's administrative costs were twice the average cost for similar funds. Bell failed to inform the trustees that various of the fund's insurance carriers also paid him for certain administrative services charged to the fund. In holding Bell liable to the fund, the Court stated that a broker has: "a duty . . . under the common law to divulge the amount of compensation he is receiving from the insurer as well as a duty to assist the insured in obtaining insurance at the most reasonable rates."

In addition, they fraudulently led the Trustees to believe that they had placed the insurance on the basis of competitive bids with the least costly available carrier and that their fees had been approved by the Insurance Department. In our view this course of conduct constituted fraud, under applicable Federal and State law.*

* See Title 18 United States Code §1341 (Mail Fraud), and New York Penal Law §§155.05 and 155.35 (Grand Larceny Second Degree).

TEMPORARY COMMISSION OF INVESTIGATION
OF
THE STATE OF NEW YORK

A TRUST BETRAYED:
FRAUD, BREACH OF FIDUCIARY DUTY,
AND WASTE AT THE TEAMSTERS LOCAL 237 WELFARE FUND

Commissioners

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EARL W. BRYDGES, JR.

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MARCH, 1981

IV. THE INSURANCE DEPARTMENT'S INVESTIGATION

On September 20, 1978, the Insurance Department commenced a formal investigation of the premiums Trans World was charging the Fund and other union welfare funds. The existence of the excessive charges had been brought to the Insurance Department's attention by Robert Nuding, Chief of the Department's Policy Branch in Albany. Nuding had determined that the "retentions" Trans World was charging the Fund were averaging about 23 percent of premiums. He concluded, in a letter to the Department's counsel, that this was "a ripoff of massive proportions," and so advised the Department's General Counsel.

In 1978 and 1979, the Insurance Department conducted its investigation, which involved taking testimony from officials of Trans World, and from Wallach, Winick, Serv-Co, and others. This testimony revealed that Wallach and Winick were being paid large fees for services which were actually performed by the Fund's internal staff.

The investigation also incorporated a survey done by Nuding which established that the normal cost of insurance for large welfare funds is in the area of 6 to 10 percent of premiums.

By the fall of 1979, the Insurance Department had determined that Trans World had overcharged the

Fund by at least \$2.6 million between January 1, 1972 and December 31, 1978. The Department demanded that Trans World repay one-half of these overcharges to the Fund and admit violations of the Insurance Law. Trans World took the position that if it had to make restitution, so should Wallach and Winick, who had received a large part of the overcharges. As Sidney Glazer, Associate Counsel, of the Department, testified before the Commission:

Q. Did (Trans World) indicate that they felt if any restitution that would be made that they would want the third-party administrators to be included?

A. Yes. They also took the position that if retentions were excessive they were in large part based upon their payment of high fees of excessive fees and, therefore, the Department should include the demand we were making upon Trans World for return of monies, include the third-party administrators who had received these excessive service fees, include them as respondents in these demands, so they can contribute toward any restitution.

Negotiations followed involving the Insurance Department, Trans World, Winick, and Wallach. During the negotiations, Trans World proposed that the Settlement Agreement provide that the settlement was a "full, fair, and complete" recovery of all overcharges.

Glaser testified:

Q. I would like to call your attention to paragraph 6 of the proposed stipulation.

* * *

That contains language which Superintendent Lewis referred to, I believe, as follows.

"Having obtained a full, fair, and complete recovery of all charges of Trans World and the other Respondents deemed by it to be excessive, the Department will neither take nor initiate any further actions or proceedings ...".

Was that provision found objectionable by the Department?

A. Yes. The characterization of the recovery as full, fair, and complete was objectionable to us because, indeed, it was a fifty percent recovery, and we in no way wanted to characterize or obscure the fact that it was a fifty percent recovery, that it was not a full recovery.

The Insurance Department rejected this proposal:

Q. Did Mr. Jordan [counsel to Trans World] or any of the other participants in this settlement express apprehension or concern about the possibility of Trans World or its service providers being sued by the Fund?

A. Yes, they did.

Q. What was said in substance with respect to that?

A. The Department would not participate in any way in precluding the trustees of these funds or the beneficiaries from attempting, if they saw it to be their duty or their wish, to obtain any further monies in the matter.

By November of 1979, Trans World, Wallach, Winick, and the Insurance Department had agreed in principle to a settlement involving restitution of \$1.3 million to the Fund. However, Trans-World, Wallach, and Winick were apprehensive about making payment without assurances that they would not later be sued by the Fund for excessive charges not covered by the settlement.

V. FEINSTEIN'S RESPONSE TO THE INSURANCE DEPARTMENT'S INVESTIGATION AND THE SETTLEMENT

Feinstein learned that the Insurance Department was conducting an investigation by no later than March, 1979. At a Trustees' meeting on March 16, 1979, he told the Board that the Insurance Department was "objecting to the amounts of money which Trans World retained for payment of administrative expenses, commissions, fees and other expenses beyond the payment of claims."* However, Feinstein went on to tell the Trustees that "all fees, commissions and charges were always on record with the Insurance Department, as well as our premiums and they were aware of them." As noted previously, this statement was false. The fees, commissions, and charges made by Trans World had not been duly filed with the Insurance Department.

Sometime later in 1979, Feinstein asked Harold L. Fisher, Esq., who was counsel to Local 237 (and not the Fund), to meet with Albert Lewis, Superintendent of Insurance, to discuss the investigation. Lewis testified that during a brief meeting Fisher told him he was representing Feinstein personally, and that one of the Insurance Department's attorneys allegedly was "out to get" Feinstein. Lewis

* The quotations are taken from the minutes of a meeting of the Trustees held on March 16, 1979.

replied that no such vendetta was being conducted by his office.

In his appearance before the Commission, Feinstein testified that he sent Fisher to the Insurance Department to learn what the investigation was about, so that the Trustees would be fully informed as to any overcharges that were being made by the Fund's insurance carrier. When asked why he sent Fisher, rather than the Fund's counsel, he said he did so because Fisher had a personal relationship with Superintendent Lewis. In fact, Lewis testified that Fisher made no inquiry as to the nature of the investigation, or Trans World's overcharges. He merely expressed to Lewis a concern that the Insurance Department not conduct a personal vendetta against Feinstein who, of course, was not the subject of the investigation.

Despite Fisher's visit to Lewis, the investigation went forward and reached a point of settlement by the end of 1979.

In November, 1979, officials of Trans-World, and its counsel, met with Feinstein, Wallach, and Harold Baer, Jr. of Guggenheimer & Untermyer, counsel to the Fund, to discuss the proposed settlement with the Insurance Department. At this meeting, the Fund was asked to provide releases as a condition of the settlement. Feinstein responded that the Fund could not give

releases without first determining whether the settlement was appropriate. Subsequent events raise serious doubts as to Feinstein's actual intentions in seeking such a determination.

Shortly thereafter, the Fund, through its counsel, retained William M. Mercer, Inc. ("Mercer"), a subsidiary of Marsh & McLennan, a large insurance broker, to analyze the proposed settlement. William Mackie, a vice-president of Mercer who was in charge of the matter, testified that on December 19, 1979, he was retained to:

. . . evaluate the [1.3] as to whether or not it was an acceptable offer and should they, the union, seek more money, should we, in our evaluation, determine that maybe it should have been something else other than [1.3], we should get back to them and tell them about that.

Mackie testified that at a meeting on December 14, 1979, he was told by Andrew Fisher, Esq. -- counsel not to the Fund but to Local 237 itself -- that if he was able to justify the settlement, and the Fund later received the proceeds, the Fund might hire Mercer to tell the Fund "what kind of benefits they could buy with the \$1.3." Mackie conceded that in saying this "counsel might have been whetting my appetite to take on the account." Mackie was also told that time was of the

essence and that he had to reach a conclusion as to the settlement in less than two weeks.

In mid-December, 1979, Mackie undertook to read twenty seven volumes of testimony given to the Insurance Department and other extensive material, and to render an opinion within two weeks. Mackie testified:

We were asked to evaluate all of the circumstances and to get back within fourteen days, given in Harold Baer's communication to me, in his letter, approval to go ahead with a stated rate and come back to him with a verbal report over a period, at the latest, within fourteen days, and that they may require at some time later a written report.

On January 30, 1980, Mackie met with Feinstein and Baer and reported his conclusion that the settlement was acceptable:

At 9:30 on January 30th [I] met at 216 West 14th Street on the third floor with Barry Feinstein [and Harold Baer] . . .

[I]t had to be [the 30th because] I couldn't make the verbal presentation to Harold Baer for one reason or another, and Harold put it off until I could make the presentation to him and Barry Feinstein at the same time.

The verbal presentation was nothing more than, we think, the settlement offer was a good one and you should grab the money and run.

Satisfied with the oral report, Feinstein told Mackie to write a written report. Then, Baer conveyed Mackie's opinion to Trans World's attorneys, and Feinstein conveyed it to Wallach. Armed with the knowledge that Mackie had reported the settlement was "acceptable," and that it was therefore unlikely that they would face a lawsuit by the Fund, Trans World, Wallach, and Winick entered into the settlement with the Department, which was formally executed on March 19, 1980.

Although Feinstein and Baer had conveyed Mackie's conclusions to Trans World and Winick, the Trustees of the Fund were totally unaware that Mercer had been retained, that he had orally reported to Feinstein and Baer, and that the results of his study had been communicated to Trans World and Wallach. It was not until March 21, 1980 that the Trustees were even informed that Mercer was being retained. The minutes of the Board Meeting of March 21 read, in part:

... the Fund has hired the consultant firm of Marsh McClennon to review the entire matter to determine the appropriateness of the settlement.

This will be a very involved study and will be fully reported so a decision can be made on agreement.

Thus, the Board was led to believe on March 21 that Mackie was about to embark on a "very involved study" of the settlement whereas, in fact, Mackie had already finished the "study." As Mackie testified, his work in evaluating the settlement was "98 to 99 percent" complete by March 21.

On April 24, 1980, Mackie submitted a written report setting forth the conclusions he had reached earlier as to the settlement. His report confirmed the Insurance Department's finding that Trans World's 23 percent retention charges were excessive, and concluded that "the retention charges should have averaged between 12-14% of annually-paid premiums for the benefits provided during the indicated period."

In testimony before the Commission, Mackie said that the 12-14 percent figure was a consensus of several persons in his firm who had experience with similar funds. However, further testimony established that the consensus was reached during an informal conversation, without the benefit of any relevant data. In effect, it was no more than a "guess estimate." Moreover, Mackie was unable to cite a single example of a fund whose retention rate was as high as 12-14 percent. The Insurance Department had concluded that a retention of 6-10 percent would be normal for a fund of this size.

Mackie subsequently testified to the Commission that had he been aware of certain facts which he claimed had not been brought to his attention, he would have concluded that the proper retention rate was lower than 12-14 percent.* For example, Mackie said he was totally unaware of the services performed by Groom's staff. In other words, he did not know that the Fund was largely self-administered.

Mackie's report went on to note that the settlement of 1.3-million had "effectively reduced retention charges to an average of 17%." Nevertheless, the report concluded that the settlement was "reasonable and justified," particularly in light of Mackie's understanding that, "Trans World did not attempt to conceal or gloss over any rates or administrative expenses maintained during the contract period."** Emphasizing that the fees Trans World had been fully disclosed, Mackie's report stated:

* The Fund's counsel demonstrated to the Commission that much of the material which Mackie claimed he requested, and was not given, was in fact sent to him. Thus, it appears that Mackie rendered his opinion without reading many of the critical documents furnished him.

** Mackie also claimed that, if sued, Trans World could make certain arguments to justify even a 17 percent rate. On the other hand, his report also noted that there was outstanding interest due the Fund.

Their aggregate charges, premium rates and expenses were submitted and received by the State Insurance Department as required, and apparently not disputed until the recent investigation. As the industry watchdog and arbitrator of improprieties, we may assume that more drastic measures would have been imposed much sooner by the State Insurance Department if deemed necessary.

This critical statement in Mackie's report was false. In fact, the charges and expenses of Trans World had not been submitted to the Insurance Department, as required, and had never been approved by the Department.

In early March of 1980, Mackie and one of his associates met with Harold Baer, Jr. and one of his associates to discuss a draft of Mackie's report. Mackie and Baer have informed the Commission that during that meeting, and on at least one earlier occasion, Mackie specifically discussed with the Fund's counsel the statement in his report to the effect that Trans World's charges and expenses had been duly submitted to the Insurance Department. Nevertheless, Mackie's report was submitted to the Trustees in the form quoted above.

When the Commission asked Mackie to explain the basis for the statement in his report that the fees paid by Trans World had been disclosed, he informed the

Commission under oath that his report referred to the Form 5500's submitted by the Fund. However, the Form 5500's were not filed with the Insurance Department, but rather with the United States Department of Labor (as the Forms themselves indicate). Moreover, as noted earlier in this report, the Form 5500's filed by the Fund did not disclose the payment of fees to Serv-Co and to Wallach. Therefore, the Forms could not have revealed to the Insurance Department all the fees and commissions paid by Trans World even if, as Mackie claims to have believed, they had been filed with the Insurance Department.

Moreover, on or about April 2, 1980, before Mackie's report was completed, the Fund's counsel furnished Mackie a copy of the Settlement Agreement between Trans World and the Insurance Department. That Agreement contained an admission by Trans World that it had paid commissions and fees in connection with its group life and accident and health insurance that were not filed with the Insurance Department, in violation of §§204(4) and 221(7) of the Insurance Law. Mackie testified that he read the Settlement Agreement quickly but "probably didn't even realize what I was reading."

On June 25, 1980, Mackie's report was discussed at a meeting of the Board of Trustees. After reviewing the report, and a statement by counsel concerning

legal issues which would be involved in an action to recover the overcharges, the Trustees unanimously adopted a resolution "that the settlement be accepted" and the matter be "closed." At the time this resolution was adopted, the Insurance Department had already reached its settlement with Trans World, Wallach, and Winick three months earlier, and the Fund had accordingly been paid approximately half of the overcharges. For the Fund to "accept" the settlement, and "close" the matter was to surrender, without compensation, a valid, additional claim of at least \$1.3 million and, with interest, as much as \$2.3 million. Yet that is what the Trustees proceeded to do.

According to the minutes, the Trustees then directed the Fund's counsel to draw up "limited releases," which would release Trans World, Wallach, and Winick from liability for all matters covered by their settlement with the Insurance Department. In other words, the Trustees voted to release Trans World, Wallach, and Winick from liability for all the overcharges they had made to the Fund, even though the settlement had recovered only half of those overcharges, and Mackie's own report, as flawed as it was, had itself concluded that between \$600,000 and \$1.1 million, plus interest, was still owing to the Fund.

The minutes also state that before the

Trustees voted to release Trans World, Wallach, and Winick, Feinstein told them that all of the commissions and fees received by Wallach and Winick "had been filed with the State and not rejected." This was a vital statement. If Wallach's and Winick's fees had been properly filed, then the Trustees might reasonably have believed that the Fund had simply been overcharged. It was precisely the concealment and non-filing of the commissions and fees that proved that Wallach, Winick, and Trans World actively defrauded the Fund. In this case, had the Trustees known that the fees and commissions had not been filed, it would have been far less likely that the Trustees would seek no further recovery from Trans World, Wallach, and Winick. It might also have led to a termination of the existing contracts between the Fund, Wallach, and Serv-Co.

Feinstein, on behalf of Wallach and Winick, represented that all fees and commissions had properly been filed with the State. The statement was made to the Trustees in the presence of Mackie and Baer. Both knew or had cause to know that the representation was not true, yet neither made any effort to correct this grossly misleading statement.

In the spring of 1980, the Fund gave Mackie a second retainer. This was to analyze the administration of the Fund by Serv-Co and Wallach to whom the Fund's

programs had been entrusted after the Fund became self-insured on January 1, 1979. In the summer of 1980, Mackie reported that Serv-Co's operation was not professional, and he recommended that his firm replace Serv-Co. Mackie testified that Feinstein responded as follows:

Just keep in mind whatever we do has got to involve Billy Wallach because that man has saved the Fund countless thousands of dollars, and he may have said millions, . . . in everything he has done.

Mackie testified that Feinstein told him to take up with Wallach the possibility of Mercer's replacing Serv-Co:

A. [We] all had a meeting, myself, Mr. Feinstein, Mr. Baer, Mr. Fisher [in July, 1980] . . . During the meeting [Feinstein] called Billy Wallach . . .

His comment at the time, if I remember correctly, was Billy, I'm coming out to use your pool tomorrow . . .

And then he said . . . I've got your friend Bill Mackie here.

And then there was something said on the other side, and Feinstein laughed a little bit, and between the two of them they kind of arranged that I would meet with Billy Wallach during the following week.

Q. What was the purpose . . . in your getting together with Mr. Wallach?

A. The purpose was . . . to discuss Serv-Co . . . and how they could be replaced [by Mercer].

Q. And why would you be discussing that with Mr. Wallach?

A. My understanding is that Mr. Wallach is a consultant to the Fund, and that he was acting on the orders of Mr. Feinstein.

Mackie met three times with Wallach to discuss whether Mercer would replace Serv-Co. Wallach made it clear that he would not approve the substitution unless he, Wallach, was also going to be involved in the future administration of the Fund. Moreover, Wallach insisted that Winick would have to be involved too, even though Mackie's report had been highly critical of Serv-Co, which was to be replaced. As Mackie described his conversations with Wallach:

A. [O]ne thing that did come out in the conversations was . . . my personal feeling about the Serv-Co operation. And I told him, I think they are a shlock operation . . .

And we did talk about Winick in particular, and he was kind of pushing me, at one time he even asked me if Mercer would be interested in buying Serv-Co.

And I said, "Not in your fondest dreams," . . .

And then he asked me, he said something to the effect about having to have Winick with him because Winick was like a right-hand man to him.

* * *

Q. And did he indicate to you, did he urge you . . . to somehow include Mr. Winick in whatever arrangements were being discussed for the [F]und?

A. [Wallach said,] if Winick and I, meaning if I had any problems with Cal Winick, that Wallach and I would have some problems.

Q. What did that statement by him mean to you at the time?

A. That unless Winick and I and Wallach could see eye to eye, more than likely there would be no further business relationship with Mercer.

Mackie's discussions with Feinstein concerning changes in the Fund's administration apparently were suspended when it became known in the late summer of 1980, that this Commission was conducting its investigation. Public hearings were held in November of 1980, at which Mackie testified that Feinstein had insisted that Wallach continue as the Fund's advisor, despite Feinstein's knowledge of the results of the Insurance Department's investigation.

At the public hearings, Feinstein testified that the contracts between the Fund, on the one hand, and Wallach and Serv-Co, on the other hand, were being.

reviewed and that no decision had been made as to whether they would continue as the Fund's consultants and administrators. Feinstein stated that he wanted to examine the matter in light of whatever findings the Commission would make. Thus, in November, 1980, a full year after he knew for certain that Trans World, Wallach, and Winick had made gross overcharges to the Fund, Feinstein told the Commission that the Fund might still continue to use the services of Wallach and Serv-Co.*

Subsequently, Feinstein informed the Commission that in December, 1980, the Trustees voted to discontinue Wallach's services as of January 1, 1981 and to replace Serv-Co when a substitute was found.

* Testimony at the Commission's hearing established that the Trustees were unaware of Feinstein's discussion with Mackie concerning Wallach's continued involvement.

VI. FEINSTEIN'S EARLIER EFFORTS TO PROTECT WALLACH AND WINICK - THE COMPTROLLER'S AUDIT

The Insurance Department's investigation was not the first occasion on which Feinstein attempted to protect Wallach and Winick at the expense of the Fund. Feinstein testified repeatedly and emphatically that he first learned that Wallach and Winick were receiving excessive fees in 1980 through the Insurance Department's investigation. The facts show he learned much earlier.

In late 1976, Feinstein learned that the Fund was being audited by the New York City Comptroller's Office, and that the auditors believed the Fund was paying grossly excessive amounts to Trans World for insurance. Feinstein did not tell the Board of Trustees about this but rather attempted to refute and block the audit. This incident casts light on Feinstein's attitude toward Wallach and Winick.

In 1975 Arthur Puchalsky, an accountant with the Comptroller's Office for twenty-five years, became chief of the division authorized to conduct welfare fund audits. Puchalsky believed that welfare fund audits had been unreasonably neglected, since New York City contributed great sums into welfare funds and had no direct control over their management. Moreover, welfare funds historically had been subject to fraudulent and incompetent management.

In late fall, 1976, Puchalsky ordered one of his auditors to begin an audit of the Fund. After completing the preliminary review of the Fund's records, Puchalsky and the field auditor, Robert Rosenfeld, focussed on five areas: the cost of insurance; the purchase and improvement of the Fund's building; the placement of Fund money in non-interest bearing accounts; the allocation of expenses between the Fund and the Local 237 union; and travel and entertainment expenses of the Trustees.

By early April, 1977, Puchalsky and Rosenfeld had completed a draft audit report on the Fund. According to Puchalsky, the draft was forwarded to Martin Ives, the First Deputy Comptroller, and sent to the Fund.

The draft, which was sent to the Fund and its counsel and was later discussed by Feinstein personally with the Comptroller's office, was highly critical of the Fund's management and its purchase of insurance. With respect to the Fund's insurance program, the draft made serious allegations of overcharges and excessive commissions. Thus, it stated on page one that: "The Fund is not purchasing the best benefit package at the lowest cost," and it unfavorably compared the Fund to the United Federation of Teachers' Welfare Fund, by stating that, "only 7.5% of the UFT's expenditures were

for insurance administration and claims handling as compared to 26% for the Fund." The draft also criticized the Fund for failing to "obtain bids and for failing to go to the large insurance carriers regularly writing insurance for union welfare funds." In addition, the draft was critical of other practices of the Fund, such as excessive travel and entertainment expenses for the Trustees and payment by the Fund to the Union of large sums for ostensible services to the Fund.

Although counsel to the Fund had been preparing a written response to the Comptroller's audit, the Fund did not produce a written response. As Puchalsky testified:

Q. With whom did you have [a] conference in order to attempt to obtain written responses to the audit?

A. I believe I spoke to Mr. Baer on a number of occasions, requesting the written response.

Q. What were his reasons for not sending written responses to you?

A. If my memory serves me correct, I believe he indicated that the response would be forthcoming shortly. However, I never received it. Subsequently, I was notified by the First Deputy [Ives] that he had been contacted and they wished to have an exit conference at the Comptroller's Office.

The meeting to which Puchalsky referred was held on April 22, 1977. It was arranged by Feinstein, through Richard Wells, the Comptroller's executive assistant from 1974 through 1980, whom Feinstein knew. Wells testified about his conversations with Feinstein as to the audit:

At some point, some years ago, Mr. Feinstein mentioned to me that the Comptroller's Office was performing an audit of his Union and that people in his organization disagreed with some of the thrusts or conclusions or whatever you would call them, of the Comptroller's Office.

And he inquired how his people, or he in fact might get in touch with the right people in the Comptroller's Office to pursue the matter to discuss their differences.

Q. What did you tell him?

A. . . . I probably told him what I told the hundreds of other people who called me with similar kinds of questions relating to different functions of our office.

I said, I'll look into it and get back to it.

Q. What steps if any did you subsequently take as a result of Mr. Feinstein's conversation with you?

A. I believe that I spoke to Mr. Ives, the First Deputy Comptroller and told him about the conversation.

Wells and Ives both testified that, following this call, they met Feinstein for lunch near Feinstein's office where, Ives recalls, they discussed the audit.* A few days later, Feinstein, Baer, and Wallach met with Ives, Puchalsky, and Rosenfeld for several hours, and discussed the draft report. The auditors recall that throughout the discussion of the Fund's insurance costs, Feinstein vigorously asserted that the Fund was getting the best protection at the least cost.

After the meeting, Ives asked Puchalsky and Rosenfeld to do some additional work on the insurance issue. According to Puchalsky, Ives was "concerned with standards. How can we make an allegation without having a standard of comparison . . ."

Puchalsky received no instructions to finalize the report because Ives had decided that, as he testified, "many of the significant audit comments and recommendations were not adequately supportive and were not adequately documented," and that he "needed to obtain the additional data concerning welfare funds to be able to establish whether charges like that are high."

Ives testified that because of the lack of documentation for his auditors' opinion that the Fund's charges were too high, he ordered the audit indefinitely

* Feinstein testified that he had no recollection of this luncheon. Wells recalls it but did not recall what was discussed.

suspended, and he promulgated "Directive No. 12"* to get such documentation.

* * *

On April 26, 1979, Charles L. Smith, Regional Administrator of the United States Department of Labor's Labor-Management Services, wrote Comptroller Goldin to inform him of an audit of the Fund which had been started by Smith's office. The Department of Labor ("DOL") concluded that it lacked jurisdiction over the Fund and discontinued the audit. Before doing so, however, the DOL reached conclusions about the Fund very similar to those reached earlier by the Comptroller's auditors. As Smith wrote the Comptroller:

In the course of our audit questions were raised regarding the fund's apparently high

* Directive No. 12 requires city employee welfare funds to provide the Comptroller's Office with:

- 1) an annual report prepared by a CPA;
- 2) two management letters, one prepared by a CPA and another, by the Board of Trustees;
- 3) the annual report distributed to a fund's membership; and
- 4) a copy of Federal Form 5500 with supporting schedules or a financial statement prepared according to a format copied by the Comptroller's Office from the Form 5500.

Much of the information sought by Directive 12 was already available. City employee welfare funds were required under collective bargaining agreements to submit a yearly audit performed by a CPA to the Comptroller. The Form 5500 is a public record on file with the Department of Labor. A welfare fund's annual report is widely distributed and can be simply obtained from the welfare fund on request.

administrative expenses, excessive insurance retention charges and improper allocation of union expenses to the fund . . . It is thought that your office would have an interest in this matter and if so, our file on this discontinued audit is available for your review. [Emphasis added]

After receipt of this letter, Comptroller Goldin ordered that the audit of the Fund be resumed, nothing having been done on the audit since its suspension by Ives two years earlier.*

In connection with the audit's resumption, the auditors obtained a copy of a "Report of Investigation" prepared by the DOL. The DOL Report raised issues and made findings similar to those in the Comptroller's 1977-draft audit report. The Report stated, for example, that there were "questionable practices with regard to the insurance policy purchased by the trustees to provide benefits. Also the ratio of expense to contributions is high." It also stated that "an analysis of retentions made by the New York Insurance Department for a similar group of policies with similar premium volumes showed that retentions ranged between 6% and 8%." As previously noted, Trans World's retention charges averaged about 23 percent of premiums from 1972 through 1978.

* The Comptroller testified that it "was possible that I would have made a copy of this letter, sent a copy of this letter to Mr. Feinstein; I don't know."

In November, 1980, the Comptroller's Office finally released its audit of the Fund. The audit report found that the Fund's internal administrative expenses averaged 15.3 percent of New York City's contributions to the Fund from 1975 through 1978, as compared to an average of 9.4 percent for other welfare funds of comparable size. The high expenses were attributed in part to the Fund's practice of paying Local 237 over \$200,000 annually to reimburse the Union for the alleged services of Union representatives in explaining benefits to Fund participants. The report was highly critical of this practice. The report was also very critical of excessive expenses incurred by the Trustees for travel and conferences, the under-charging of the Union for rent, the payment of fees to consultants for unspecified services, and similar acts.*

* The Comptroller's Audit noted that the Fund, and Local 237, had retained Walter Eisenberg, a Labor Arbitrator for the City, and John Zuccotti, former Deputy Mayor, as "independent fiduciaries" to review the Fund's payments to Local 237. The Report took strong issue with the findings of these fiduciaries and concluded that their findings were not documented.

The Audit also noted the payment of various fees to other consultants, including \$144,228 paid to Program Planners (a pension and administrative consulting firm run by Jack Bigel). The Audit criticized the Fund for making such payments without appropriate written agreements detailing the types of services to be provided by such consultants.

The Comptroller's audit supports the Commission's own determination that the Fund has wastefully managed its assets. From 1972 through 1980, the Fund's participants obtained only about 65 cents in benefits out of every dollar the Fund received from New York City.

With regard to the insurance costs, the audit merely cited the results of the Insurance Department's investigation and the refund of \$1.3 million to the Fund. It noted that Wallach and Serv-Co had continued to act as consultants to the Fund after it became self-insured and recommended that the Fund solicit bids upon the termination of Wallach's and Serv-Co's contracts.

The data derived from Directive 12, the need for which purportedly had delayed the audit for over two years, was not incorporated or used in the final audit. Ives testified that by the time the audit was done, the Insurance Department had completed its investigation and, therefore, the Comptroller made no independent findings about the insurance issues and merely referred to the results of the Insurance Department's investigation.* The audit made minimal reference to the Insurance Department's findings. Thus, it ignored entirely

* The data from Directive 12 was used in a report published by the Comptroller in February, 1980 which discussed the internal administrative expenses incurred by various funds.

the question of whether the settlement by Trans World, Wallach, and Winick had been in full satisfaction of the Fund's claims. The report therefore failed to note that at least \$1.3 million, plus interest, in excess charges were still unaccounted for.

In testimony before the Commission, Feinstein repeatedly asserted that he did not know until March, 1980, when the Insurance Department announced the results of its investigation, that Trans World, Winick, and Wallach had received excessive fees. Indeed, he castigated the Insurance Department for not bringing those facts to his attention earlier.

The facts surrounding the audit by the Comptroller's office belie Feinstein's testimony. It is clear that Feinstein knew as early as 1977 of claims by the Comptroller's Office that the Fund was paying too much for insurance, and that Trans World was making excessive payments for commissions and administrative charges.

As noted above, the Fund's counsel asked Winick to respond to these claims, whereupon Winick sent them a letter that included patently false representations to the effect that he and Wallach had obtained competitive bids for the Fund's insurance and that their fees and commissions were competitive and had been approved by the Insurance Department.

The fraud practiced by Wallach and Winick does not, however, excuse Feinstein's response to the questions raised by the Comptroller's office concerning the excessive fees and commissions. Feinstein clearly should have referred this matter to the Trustees for an inquiry as to exactly what fees Wallach and Winick were receiving and whether such fees were excessive. Taking Winick's word that the "the schedule of commissions is competitive with what other Insurance Companies pay" was to accept the self-serving statement of a person who was one of the very subjects of the auditor's accusations concerning excessive fees.

Instead of seeking independent opinion to determine the validity of the auditors' allegations, Feinstein called Wells, Comptroller Goldin's executive assistant and chief political aide, to complain about the auditors. Then he met with Ives and Wells at lunch, at which the audit was discussed. Finally he, Wallach, and Baer met with the auditors and aggressively defended the Fund's insurance program.

Feinstein's efforts to prevent release of the Comptroller's audit in 1977 bore fruit at that time. The Comptroller, Harrison J. Goldin, and the First Deputy Comptroller, Martin Ives, have asserted that the decision to suspend the 1977 audit was based purely on professional considerations. They have stated that they

could not responsibly have criticized the Fund's purchase of insurance, or any of its other management practices, without possessing comparable data on other funds. Directive 12, they state, was designed to provide the Comptroller's office with the data required to compare one fund to another.

However, the data played no important part in the Comptroller's final audit report on the Fund. Moreover, there were other ways in which the Comptroller's office could have obtained additional data concerning insurance costs without having to suspend the audit for, as it turned out, more than two years.

Comptroller Goldin has testified that he did not believe Ives was affected by his private discussions with Wells and Feinstein, although the Comptroller recognized that Feinstein's contacts with Wells and Ives might have had "an appearance that can be misconstrued":

Q. It certainly was not a usual practice, . . . for your executive assistant and your First Deputy Comptroller . . . to sit down during the course of an audit for lunch with the subject of that audit who might be highly embarrassed by its conclusions, and who happened to be

a major political figure whose support is very important at election time to the City of New York?

A. In retrospect, I can see why it is you are saying that given what we now know, there could be an appearance that could be misconstrued. I see your point.

Comptroller Goldin testified that he makes every effort to insulate himself from the audit process:

My audit program is kept wholly independent from my political activity. Mr. Ives is not involved in my political activity at all and certainly the people under him and the levels of administration and management that we have in the audit level operations are fully insulated and fully detached.

Therefore, they make decisions based on their own professional judgment. Those decisions are not cleared with me. Those decisions are not reviewed by me.

The Comptroller's philosophy, that audits should not be affected by political considerations, is commendable. But such a policy would require that the audit process be removed entirely from political contacts. In this case, that did not occur in the sense that Feinstein, a supporter of the Comptroller, was able to go outside ordinary channels to meet with Ives in the

presence of the Comptroller's chief political aide.* The Commission has no way of determining whether this contributed to Ives' decision to suspend the audit. But the fact remains that, after Feinstein's intervention, the audit was suspended for a considerable period of time. During that period of time, Trans World, Wallach, and Winick continued to defraud the Fund.

* Wells also testified that, in November, 1980, several months after leaving the Comptroller's office, he learned that the Audit Report was about to be released and immediately notified Feinstein. Feinstein expressed a concern about the tone of any press statement which might accompany the Audit's release. Wells then reviewed a draft of the press release and suggested changes in its wording to the Comptroller.

VII. THE FAILURE OF FEINSTEIN AND THE BOARD OF TRUSTEES TO PROTECT THE FUND

Under Local 237's collective bargaining agreements, and as a matter of common law, the Trustees of the Fund had fiduciary obligations to preserve the Fund's assets and minimize its expenses. The record shows that Feinstein and the Trustees failed to meet these obligations.

The Fund has seven Trustees.* Each of them is an officer of Local 237 and each became a Trustee because he or she was an officer of the Union. They became officers of the Union after their nominations for Union office were approved by Feinstein.

It is clear that the Trustees merely rubber-stamped decisions made by Feinstein as to the policies and management of the Fund. Indeed, the testimony revealed that there had never been a dissenting vote cast by a Trustee on any issue during the period from 1972 through 1978.

Wallach and Winick became the Fund's brokers

* The following are the persons who have served as Trustees during the period from 1972 through the present. (PRESENT BOARD MEMBERS): Barry Feinstein, 1964-Present; Edward Cervo, 1970-Present; Melanio Cuebas, 1975-Present; Pauline Dyer, 1967-Present; Carroll Haynes, 1978-Present; Frederick Kennedy, 1971-Present; Frank Scarpinato, 1972-Present. (PAST BOARD MEMBERS): Robert Beverly, 1964-1978; Arthur Foley, 1964-1975; John Koch, 1964-1973.

solely on the basis of Wallach's relationship with Feinstein and without any independent evaluation by the Trustees. Feinstein brought in Wallach in 1967 without advising the Board as to the nature of their relationship and without disclosing that he was a Director of Wallach's Lion Insurance Company.

The Trustees, including Feinstein, testified that they relied on the advice of Wallach and Winick in placing the Fund's insurance with Trans World. They also testified that they knew Wallach and Winick were being paid by Trans World, but they did not know how much they were being paid. In substance, the Trustees claimed that their main concern was with the amount of the Fund's premiums paid to Trans World, and that so long as the premiums were "competitive" they were not particularly concerned about the size of the fees and commissions received by Wallach and Winick. As Edward Cervo, one of the Trustees, stated:

Everything we talked about at Board meetings as I remember was total package. We talked in terms of premiums.

And all the information I ever been made aware of was that whatever bids were made were made in total packages, this would be the total cost. . .

The Trustees met with Wallach and Winick on a regular basis at quarterly Board meetings and occasionally at out-of-town seminars and conferences. They testified that Wallach and Winick also entertained them from time to time.* Yet the Trustees never inquired what fees Wallach and Winick were receiving. Moreover, they never reviewed, or had counsel review, any of the contracts between Trans World, Wallach, and Winick.

Groom testified that his staff performed such functions as issuing certificates, maintaining enrollment cards, preparing bills, distributing booklets and processing claims. The staff also spent a considerable amount of time answering questions from beneficiaries of the Fund and explaining their benefits to them. For these services, the Fund allocated over \$400,000 a year. In addition, the Fund paid Local 237 about \$200,000 annually, purportedly to reimburse the Local for time spent by its business agents and employees in explaining the Fund's benefits to the members.

If the Trustees had reviewed the contracts, it would have been evident that (a) Serv-Co, Wallach, and Winick were being paid ostensibly to do many of the things which were being done by Groom's staff and

* Wallach, for example, each year gave a party for the Trustees at a cost exceeding \$1,000.

(b) Wallach and Winick were being paid ostensibly to perform services for which Serv-Co was being paid. It also would have been evident that the brokers were being paid large fees for the performance of "services" such as "education of agents" or "installment and resolicitation", which could not properly be charged to the Fund.

In early 1979, the Trustees learned that the Insurance Department was investigating Trans World. The Trustees knew that the investigation involved claims that excessive fees were being charged by the insurance company to the Fund.* The Trustees were assured by Feinstein that the investigation was "routine." At no time did they make an independent inquiry to determine the nature of the investigation, or the validity of the allegations that the Fund's charges were excessive. Instead, the Trustees took the attitude that they should await the results of the Insurance Department's investigation before taking any action. As Carroll Haynes, a Trustee, put it:

We were waiting for the investigation to be completed. After the investigation is when . . . to analyze the situation.

* Groom testified as a witness before the Insurance Department on April 17, 1979, at which time he was accompanied by the Fund's counsel, Harold Baer, Jr., Esq.

You are asking me to say that a person was guilty and before the decision came out, you had had a good relationship with that particular person.

You are saying because of an investigation you should have done this.

The Trustees acted irresponsibly in failing to inquire about the facts underlying the Insurance Department's investigation. It may not have been the responsibility of the Trustees to determine whether its brokers, Wallach and Winick, or Trans World, had complied with all the requirements of the Insurance Law. But it was their job to assure that the Fund was not being charged excessive fees. That was a responsibility which the Trustees had at all times, regardless of whether an investigation was being conducted. Rather than giving the Trustees an excuse for deferring their own inquiries, the Insurance Department's investigation made it especially important for them to inquire fully into the relationships between Trans World, Wallach, and Winick.

In March of 1980, the Trustees learned that Trans World, Wallach, and Winick had agreed to pay \$1.3 million to reimburse the Fund for excessive charges. This settlement clearly put the Trustees on notice that the Fund had been grossly overcharged. Despite the Trustees' assertions that they had previously deferred

looking into the matter until the Insurance Department's investigation was over, the Trustees continued to refrain from taking any action with respect to Wallach and Winick.

The Trustees testified that when they learned about the settlement they hired Mercer to determine whether the settlement was reasonable. They apparently regarded this as an appropriate response to the payment by Trans World, Wallach, and Winick of the \$1.3 million.

This response was not satisfactory. Mercer was hired in order to determine whether the \$1.3 million was ample restitution, or whether additional moneys were due the Fund. But whether or not additional moneys were due, the Trustees knew that Trans World, Wallach, and Winick had received large sums of money from the Fund to which they were not entitled. In these circumstances, it was incumbent upon them to replace these unfaithful fiduciaries. That Wallach and Winick had paid back, under compulsion, some of the money they had improperly received, did not make them fit persons to continue handling the Fund's assets.

Mackie reported that a proper retention charge would have been 12-14 percent of premiums. Even accepting his figure, which he later admitted was too high, Trans World, Wallach, and Winick owed the Fund between \$680,000 and \$1.1 million, plus interest, above

the \$1.3 million which they had returned. Yet the Trustees unanimously voted not to sue.

The Trustees undoubtedly relied on counsel's advice, and on Mackie's report, in deciding not to sue. But whatever advice they may have received from counsel, it is hard to understand their decision not to sue, in light of the large sums still owing the Fund and the facts uncovered by the Insurance Department. Moreover, there is no conceivable justification for the Trustees' decision to continue to employ Wallach and Winick as the Fund's consultants in view of the results of the Insurance Department's investigation. In our opinion, the Trustees' actions can only be explained by Feinstein's total domination of the Board and his personal reluctance to sue Winick or Wallach, with whom he was so closely associated, or to discontinue the Fund's relationship with them.

There is little doubt that the Trustees were misled as to the practices engaged in by Wallach, Winick, and Trans World. For example, the Trustees were told that Wallach and Winick had sought competitive bids for the insurance. In fact, no genuine effort was made to seek competitive bids. The Trustees were also told that all of the fees and commissions had been duly filed and approved by the Insurance Department. In fact, such commissions and fees had been systematically concealed.

Moreover, the Trustees were provided with data and information by Trans World which purported to set forth the commissions and fees which were paid. In fact, those reports were incomplete and misleading.

The Trustees testified that they had no knowledge of the arrangements whereby Winick paid over to Wallach \$1.3 million in service fees which Winick received from Trans World. They also testified that they did not know that Winick was the beneficiary of duplicative contracts, whereby he was paid once through WAI for allegedly performing certain services and again through Serv-Co for allegedly performing the same, or substantially overlapping, services.

The Trustees testified that if they had known of these matters and other facts discussed in this Report, such as Feinstein's familial and business relationship with Wallach, they would have terminated the relationships between the Fund and Wallach and Winick. Thus it is clear that, in approving the relevant contracts, the Trustees were defrauded.

This does not excuse what the Commission believes was their failure to properly exercise their responsibilities to preserve the Fund's assets. The Trustees relied on Wallach and Winick in the administration of the Fund. Yet, when facts were brought to their attention indicating that the Fund had been the victim

of a "ripoff" by Wallach and Winick, Feinstein was willing to continue using them as consultants, and the Trustees did not question Feinstein's judgment. Indeed, it appears that Wallach and Winick would have continued indefinitely as the Fund's advisors -- with perhaps some cosmetic changes in their functions and fees -- if the full story concerning the practices engaged in by Trans World, Wallach, and Winick had not been brought out by this Commission.

VIII. THE ROLE OF COUNSEL

In December 1972, the Fund retained Guggenheimer and Untermyer, and Harold Baer, Jr. of that firm, as counsel. Guggenheimer & Untermyer represented the Fund and not any individual Trustee or group of Trustees. As counsel, Baer attended Trustee's meetings regularly, and he and the firm performed various tasks relating to the Fund's business including litigation, the preparation of opinions as to duties of Trustees, review of contracts, and like matters.

In late 1976, Guggenheimer and Untermyer learned that the Comptroller was doing an audit of the Fund. Counsel then asked Winick and Mandel about the auditors' allegations concerning the Fund's insurance costs. As mentioned previously, Winick responded to these inquiries by making deliberate misrepresentations to counsel concerning the fees and commissions he and Wallach were receiving, as well as other matters relating to the Fund's insurance costs.

Guggenheimer & Untermyer began a written response to the Comptroller's report, but their response never was finished. Instead, a meeting was held at the Comptroller's office, which Feinstein arranged through Wells, to discuss the auditors' draft report. At that meeting, Baer was present when Feinstein vigorously defended the Fund's insurance costs.

There is no reason to doubt that Guggenheimer & Untermyer was deceived by Winick when they made inquiry about the auditors' allegations. On the other hand, counsel did not see fit to tell the Trustees about the allegations of the auditors, or to recommend to the Trustees that an independent consultant be retained to determine the validity of the auditors' claims. Instead, counsel apparently thought it sufficient to rely upon Wallach and Winick who themselves were charged by the auditors with taking excessive fees.

If counsel had recommended that an independent consultant be retained, or if counsel had reviewed the various insurance contracts between Trans World and the brokers, the fraudulent scheme perpetuated by Wallach and Winick might have been uncovered.

In April, 1979, Baer represented Robert Groom when he testified as a witness in the Insurance Department investigation. The questioning of Groom by the Insurance Department made it evident that the Department believed the fees paid earlier to Trans World and Winick were excessive, that Winick had been paid for services which actually were rendered by Groom's staff, and that Winick had been paid for services which were not proper charges under the Code of Ethical Practices. Similar questions had, of course, been raised earlier by the Comptroller's auditors. Nevertheless, apparently

counsel again did not recommend to the Trustees that an independent consultant be retained to determine the validity of such changes. Rather, counsel appears to have adopted the same "wait and see" attitude concerning the Insurance Department investigation which the Trustees expressed to the Commission.

When the Insurance Department investigation was completed, Baer met with Morton Greenspan, Chief Counsel of the Insurance Department, to discuss a number of unrelated matters. During the course of their conversation, Greenspan suggested to Baer that the Fund consider suing Trans World and the brokers. Guggenheimer & Untermyer furnished the Commission with evidence that its attorneys did research as to legal theories that might be used as the predicate for a lawsuit. Yet, Baer advised the Trustees that a suit probably would not be productive.

The Commission is perplexed by counsel's opinion in light of the evidence that Trans World, Wallach, and Winick had systematically overcharged the Fund for years and made fraudulent misrepresentations to the effect that the insurance charges and fees had been filed with, and approved by, the Insurance Department.

As noted earlier in this Report, at the meeting of the Trustees on June 25, 1980, at which the Trustees voted not to sue Trans World, Wallach, or Winick,

the Trustees reviewed Mackie's Report, which stated:

Their aggregate charges, premium rates and expenses were submitted and received by the State Insurance Department as required, and apparently not disputed until the recent investigation. As the industry watchdog and arbitrator of improprieties, we may assume that more drastic measures would have been imposed much sooner by the State Insurance Department if deemed necessary.

At the Trustees meeting, and on prior occasions, Feinstein told the Trustees that Trans World's fees and charges had all been approved by the Insurance Department.

Baer informed the Commission, by letter dated February 27, 1981, that he and one of his associates had met with Mackie and reviewed a draft of Mackie's report. As already noted, they specifically discussed the statement in the report that Trans World had not concealed its rates and administrative expenses. Indeed, as a result of their discussions, a section in the draft of Mackie's report, referring to the alleged submission of the fees to the Insurance Department, was changed.*

* The draft stated that Trans World's "service charges, premium rates and expenses were filed." The final report dropped reference to "service charges" and referred instead to "aggregate charges" apparently with reference to the disclosures made in the Form 5500's. However, as previously noted the Form 5500's were not submitted to the Insurance Department, and they clearly did not fully reveal the fees paid by Trans World.

In late March, 1980, Guggenheimer and Untermyer received a copy of the Settlement Agreement between Trans World and the Insurance Department, which reflected Trans World's admission that the fees and commissions had not been duly filed.

Yet, when Mackie's report was discussed at the Trustees' meeting on June 25, 1980, Baer did not bring to the Trustees' attention the fact that Trans World's fees had not been filed. Nor did counsel correct Feinstein when he told the Trustees that the fees had been accepted by the Insurance Department. Thus, when the Trustees decided not to sue, it was without knowledge that Trans World, Winick, and Wallach had not only overcharged them but had lied to them and had concealed their fees from the Insurance Department.

IX. THE ABSENCE OF CONTROLS OVER THE EXPENDITURE OF MONEYS BY THE FUND

In recent years, the payment of supplemental benefits to public employees has become an increasingly important part of their compensation. Currently, New York City alone contributes more than \$140 million annually to union welfare funds.

Prior to 1975, the Federal Government and the States had concurrent jurisdiction over welfare funds. Therefore, prior to 1975, the Insurance Department actively reviewed New York State's welfare funds through its Pension and Welfare Unit.

In 1975, the Employee Retirement Income Security Act ("ERISA") (29 USC §1001) became effective in 1975. ERISA preempted the states from regulating private welfare funds which thereafter fell under the jurisdiction of the United States Department of Labor and the Treasury Department. As a result, the Pension and Welfare Unit of the Insurance Department, which had consisted of about 60 persons, was disbanded.

Although ERISA preempted local regulation of welfare funds generally, it did not affect local jurisdiction over public employee welfare funds, which were

exempted from the coverage of ERISA.* In short, although it appears to be widely believed that the Federal government reviews the administration of all welfare funds under ERISA, the Federal government has no present authority to do so with respect to public employee welfare funds.**

New York State has no program equivalent to that created by ERISA for the control of public or private welfare funds. In the area where New York State has not been preempted, its statutory power to regulate such funds is found in Article III-A of the New York Insurance Law, which gives the Insurance Department power to examine into the affairs of employee welfare funds. However, the Insurance Department has taken the position, citing a 1956 opinion by the Attorney General (1956, Op. Atty. Gen. 187), that it does not have jurisdiction over unilaterally administered welfare funds

* Section 1003(b)(1) of ERISA explicitly exempts "governmental plans" from the statute's coverage. It has been held that since the Local 237 Fund was established by a government, i.e., the City of New York, its administration is not subject to the provisions of ERISA, Feinstein v. Lewis, 477 F.Supp. 1256 (S.D.N.Y. 1979).

** Even with respect to the welfare funds subject to ERISA, it has been reported that the DOL is unable to exercise close supervision since there are a very large number of funds which file reports under ERISA, and the Department of Labor has allocated only about 250 persons to enforce ERISA.

such as Local 237.*

Since public employee welfare funds are not subject to Federal regulation under ERISA, and unilaterally administered public welfare funds may not be subject to State jurisdiction under the Insurance Law, a fund such as the Local 237 Welfare Fund is totally unregulated by public authorities. Such funds are, as noted above, required to file reports with the City Comptroller's office and are subject to audit, but the Comptroller has no power to take remedial action with respect to abuses uncovered by an audit.

The Insurance Department's investigation, which resulted in the payments to the Fund by Trans World, Wallach, and Winick, arose under the Department's power to investigate insurance companies. As Superintendent of Insurance Albert Lewis testified, this restitution was achieved "in a somewhat fortuitous 'back door' manner in that an examination of the Trans World Insurance Company revealed inordinate services fees."

As Superintendent Lewis noted further, even this "indirect intervention" by the Insurance Depart-

* Section 37-A of the Insurance Law defines employee welfare fund as meaning funds "established or maintained jointly by one or more employers together with one or more labor organizations." Thus, the Attorney General's opinion seems inapplicable to a fund such as Local 237's since it was clearly "established" by contract between Local 237 and the City and is clearly "maintained" by the City's yearly contributions.

ment can be easily avoided by funds adopting self-insurance programs. In this case, the Local 237 Fund became self-insured in January, 1979, so that the Insurance Department had no power to seek recoveries of excessive fees paid thereafter by the Fund to Wallach and Serv-Co.* And, of course, the Insurance Department presently has no jurisdiction over the Fund.

In order to remedy some of the gaps which allow many welfare funds to go unregulated, the Insurance Department submitted a proposal in 1980 to the New York State Legislature for an amendment to the Insurance Law and Banking Laws which would have explicitly extended the authority of the Insurance and Banking Departments to cover unilaterally administered public welfare funds.

The proposed amendment would thus have eliminated the disparity in supervision between jointly administered and unilaterally administered funds. This amendment was not adopted.

* As previously noted, even after January 1, 1979 when the Fund became self-insured, Wallach and Serv-Co continued to receive large fees from the Fund.

X. FINDINGS

A. Criminal Violations

In the opinion of the Commission, the Fund was the victim of criminal fraud. From 1972 through 1978, Wallach and Winick together sought and obtained over \$2 million under sham contracts which they did not intend to perform and did not perform.

The Fund paid a premium to Trans World which was inflated by the illegal commissions Trans World paid to Wallach and Winick. The Fund paid the premium on the basis that the commissions and fees were necessary and proper compensation for services actually performed.

Wallach and Winick assured the Fund that the fees they received were proper, had been approved by the Insurance Department, and that the premium paid to Trans World was the lowest available. In fact, their fees were not for performing legitimate services but were illegal commissions given in return for placing the Fund business with Trans World. Moreover, the premium, far from being the lowest available, was grossly inflated because it included the illegal commissions and excessive fees paid to Winick, Wallach, and Serv-Co.

In addition, from 1979 through 1980, Wallach and Winick together received \$356,000 under a service

contract that was also procured by fraud. In entering into this contract, the Board of Trustees was not given material information that Wallach and Winick had defrauded the Fund for over six years; that Wallach was Feinstein's relative; that Feinstein had been a director of one of Wallach's insurance companies; that Wallach had agreed to pass on a substantial portion of his fees to Winick; and that Wallach was to be paid over \$177,000 a year.

The Fund was also defrauded by being deprived of the honest and loyal services of its brokers and the Fund's chance to bargain for the least costly insurance with all the relevant facts before it. As brokers and consultants to the Fund, Wallach and Winick had a fiduciary duty to seek insurance for the Fund at a fair and reasonable cost. They betrayed the trust which the Fund had in them. They obtained insurance so as to maximize their illegal commissions. They failed to disclose to the Fund the moneys they received. They fraudulently induced the Fund to purchase insurance from Trans World by asserting, and creating a false record, that no other insurance company would insure the Fund's benefits. All these facts were concealed from the Trustees by Trans World as well.

These acts constituted a scheme to defraud the

Fund in violation of Federal* and State law.**

B. Breaches of Fiduciary Duty

Mismanagement and abuses of welfare funds deprive workers of the benefits to which they are entitled. Labor officials, as administrators of these funds, and those affiliated with them, have fiduciary responsibilities in managing the funds. They are in a position of trust. When these officials fail to exercise their responsibilities working men and women suffer the loss.

Throughout this Commission's hearings, Fein-

* Title 18 of the United States Code §1314, makes it a federal offense to "devise any scheme or artifice to defraud" in which a mailing occurs. The elements of the offense of Mail Fraud are (1) the use of the mails in furtherance of (2) a scheme to defraud. U.S. v. Corey, 566 F.2d 429 (S.D.N.Y., 1977).

This statute was applied in U.S. v. George, 477 F.2d 508 (7th Cir., 1973), cert. den., 414 U.S. 827 (1974), in which the Court found that Zenith Corporation had been defrauded by a purchasing agent's placement of business with a supplier who paid kickbacks to the purchasing agent. The Court found that there was a scheme to defraud because Zenith was deprived of the purchasing agent's "honest and loyal services" in seeking suppliers for its products. The defendant's fraud consisted of his holding himself out to be a loyal employee of Zenith but actually not giving his honest and faithful services to the company by withholding from the company material knowledge concerning the moneys he was receiving from the supplier and the supplier's willingness to sell its product for less money.

** Penal Law §§155.05 and 155.35 make it a Class D felony to obtain property by "false pretenses."

stein and the Trustees repeatedly asserted that the Fund's benefits were superior to those offered by other public employee funds.

The Commission has seen no evidence that the benefits of the Fund were superior to those offered by comparable funds. In any event, those benefits could have been obtained from Trans World without paying illegal commissions to Wallach and Winick. The plain duty of the Trustees was to manage the Fund in such a manner that its assets not be dissipated by the payment of unlawful and excessive commissions and fees. This duty is owed by the Trustees to the public employees who are the beneficiaries of the Fund. In a broader sense, it is a duty which they owe to the taxpayers who provide New York City with the money it contributes to the Funds.

The Commission finds that the Trustees, and particularly Feinstein, breached this obligation. The Trustees clearly abrogated to Feinstein virtually all responsibility for decisions affecting the Fund's vital interests. They made no effort independently to determine whether the Fund's insurance program was economic or proper. Even when they learned of the Insurance Department's investigation, they declined to make inquiries, which a prudent man would make, to determine whether Trans World's charges, and Wallach's and

Winick's fees, were reasonable and proper. In the face of a settlement whereby Trans World, Wallach, and Winick were compelled to pay the Fund \$1.3 million, the Trustees declined to institute suit for excessive charges not repaid and continued the arrangements which were enriching Wallach and Winick at the Fund's expense. The Trustees would have continued to do so, we believe, if this Commission had not exposed the facts set forth in this Report, causing the Trustees belatedly to terminate the Fund's relationship with Wallach and Winick.

Feinstein's conduct is more egregious. He retained Wallach to handle the Fund's insurance, knowing that Wallach had no experience in group insurance, and he failed to disclose to the Trustees the nature of his relationship with Wallach and The Lion Insurance Company. In light of the close relationship between Wallach and Feinstein, it is highly unlikely that Feinstein did not know, at all times, the extent to which Wallach, at least, was profiting from the arrangements with Trans World. In any event, he clearly knew no later than January of 1979, the extent to which Wallach and Winick profited prior to that time.

Feinstein denied receiving any moneys from Wallach and Winick. But regardless of any payment, the fact is that Wallach and Winick could not have continued

their fraud without Feinstein's willingness to continue the Fund's relationship with them and his efforts to prevent disclosure of all the facts pertaining to them.

When questions were raised by the City Comptroller's office and the Insurance Department concerning the fees and charges which the Fund was paying for its insurance, Feinstein reacted by attempting to bury those inquiries instead of pursuing them. Even after it was a matter of public record that Trans World, Wallach, and Winick had "ripped off" the Fund, Feinstein insisted that Wallach continue as the Fund's paid advisor and consultant.

The Trustees' responsibility for the excessive fees paid to Trans World, Wallach, and Winick cannot be viewed in isolation. Rather, it must be judged in light of their overall handling of the Fund's assets and affairs.

As reported by the City Comptroller's Audit Report of November, 1980, the Trustees have allowed the Fund's assets to be wasted in a number of ways in addition to the improvident insurance arrangements described in this Report. The Audit Report, for example, asserts that the Fund unreasonably pays over \$200,000 a year for the salaries of employees of Local 237 and for Union related administrative expenses; that the Union, which leases space in the Fund's building, is under-

charged for rent; that the travel and entertainment expenses of the Trustees are excessive or improperly documented; and that the Fund pays large sums to consultants without the benefit of written contracts and without presenting documentation demonstrating what services the consultants perform.*

These findings by the Comptroller's office reinforce this Commission's view that the Trustees did not meet their fiduciary duties in dealing with the Fund's assets with respect to the Fund's insurance program, and that a substantial portion of the Fund's assets have dissipated as a result of the Trustees' neglectful practices.

C. The lack of controls by governmental regulatory authorities

Public-employee welfare funds are not subject to the requirements of ERISA. To the limited extent that such funds are insured and jointly administered, they are subject to the jurisdiction of the New York Insurance Department. However, most public-employee welfare funds are unilaterally administered and, there-

* The 1977 draft audit report also had disclosed that the Fund had placed up to \$750,000 in non-interest bearing accounts at the Amalgamated Bank; a practice which ended at the end of 1977 only in reaction to the auditors' disclosures.

fore, may not be under the jurisdiction of the Insurance Department. The Insurance Department clearly is to be complimented for the vigorous job it did in uncovering the abuses documented in this Report. But the Insurance Department is frequently powerless to prevent other such abuses.

In view of these gaps in regulatory power, a fund, such as that maintained by Local 237, is virtually without controls. Such funds are required to file reports with the City Comptroller's office and are subject to audit. But these audits are a low priority, and the Comptroller apparently has no authority to take independent enforcement action with respect to any abuses that may be discovered.

XI. RECOMMENDATIONS

1. The United States Attorney for the Southern District of New York, and the District Attorney for New York County, should institute criminal proceedings against those who criminally defrauded the Fund.

2. Barry Feinstein and the other Trustees of the Fund who were in office at the time these events occurred should resign or be removed as Trustees of the Fund.

3. The Fund should sue Trans World, Serv-Co, Wallach, Winick, and all others believed to be responsible -- including the Trustees if necessary -- to recover the losses suffered by the Fund as the result of the fraudulent practices described herein.

4. Consistent with its other priorities, the Comptroller's office should consider instituting a stepped-up audit program for welfare funds.

5. The Insurance Department should continue to seek from the Legislature broader powers to provide better controls over the administration of public-employee welfare funds. Other agencies should consider whether to seek similar authority.

6. The City of New York should review the present system of managing public-employee welfare funds and should consider whether to insist that such funds be managed jointly by persons selected by the Unions and representatives of the City, or that the benefits be provided through an entirely different system.

END