

1973-74 Report

Pennsylvania Crime Commission

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OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA

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Pennsylvania Crime Commission

June 30, 1974



OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA

Contents

INTRODUCTION	ix
ACKNOWLEDGEMENTS	xiii
PART I: CRIME COMMISSION REPORTS.....	1
1 A Case Study of the Pennsylvania Election Code ..	7
2 A Case Study of the Second Class Township Code...	54
3 Investigations in Delaware County	74
4 Associations Between Businesses and Organized Crime Figures	93
5 Corruption in the Philadelphia Police Department— A Summary	96
6 Gambling and Corruption in Carbondale	123
7 Gambling and Corruption in Phoenixville	139
8 Corruption in the York Police Department	152
PART II: OTHER COMMISSION ACTIVITIES	181
1 Investigative	185
2 Legislative	195
CONCLUSION	205

INTRODUCTION

During 1973 and 1974, the Pennsylvania Crime Commission conducted seven major investigations, several other smaller investigations, and many preliminary inquiries. The significant work of the Crime Commission since its last published volume, apart from the investigation of police corruption and the quality of law enforcement in Philadelphia, is reported here.

The Crime Commission has a unique mandate. Its jurisdiction is state-wide; its responsibility as a fact-finding agency is to investigate all crime, with particular concentration on organized crime, political corruption, and the effectiveness of the criminal justice system. The Commission's limited resources and broad responsibilities require a careful selection of the areas which deserve particular concern and concentration. The past two years have seen the Commission devote most of its efforts to the areas of official corruption and organized crime.

The Commission has often utilized a case study approach to illustrate problem areas within its mandate. One problem area, which came under close scrutiny by the Commission, was the failure of Pennsylvania's election laws to protect against breaches of integrity by public officials. The Commission investigated the campaign financing practices of the District Attorney of Allegheny County during the campaign in 1971 in order to determine the effectiveness of the Pennsylvania election laws. In that investigation, the Commission found that substantial campaign contributions and expenditures had been fraudulently concealed. The investigation also revealed that employees of that office had been the victims of macing for a number of years. In Delaware County, macing was uncovered in the sanitation department of Upper Darby Township. Public employees were threatened with the loss of their jobs if they did not make political contributions. In Carbondale, a city of the third class, police officers were found to be pressured to engage in political campaigning for the Mayor, who has direct supervision over the police department and controls promotions.

The Commission found that many of these abuses were abetted by inadequate and outdated laws. To aid in correcting these problems, the Commission has recommended sweeping changes in the election finance laws and strengthening of the anti-macing laws. In addition, it has recommended that involvement of police officers in campaigning and electioneering be prohibited and that promotions in third class city police departments be made subject to civil service.

In a large number of instances, corruption of public officials was found to result from the operation of illegal gambling. In Phoenixville, the mayor and police chief were receiving payments from a major gambler for not

enforcing the gambling laws. That investigation also produced testimony that the gambler regularly paid several State Police sergeants for warnings of impending gambling raids. In Carbondale, the police chief was found to participate regularly in illegal gambling, and gambling laws generally were not enforced. In Philadelphia, an entrenched pattern of police officers accepting cash payments from gamblers was uncovered. These payoffs were made to many different units and officers of various ranks. Evidence produced at a trial of a major gambling figure in Western Pennsylvania showed the same pattern of payoffs to police there.

The criminal justice system has failed to curb gambling, and corruption of police resulting from illegal gambling exists throughout the Commonwealth in communities of all sizes. Consequently, the Commission has recommended that the legislature reconsider the use of the criminal laws to regulate gambling.

The Commission also found a number of instances in which businessmen were corrupting public officials by paying them for various favors. In York, tow truck operators were found to pay police officers systematically to secure business for them. In Philadelphia, a more extensive inquiry showed businesses, including insurance companies, jewelry stores, street vendors, supermarket chains, restaurants, and bars, making payments to police officers in exchange for a variety of extra services and for not enforcing laws. The patterns of these payments were found in every area of the City, involved large sums of money, and included police officers up to the rank of inspector. In some cases, there was evidence that these payments were extorted by police officers. In Phoenixville and Carbondale, police officers admitted receiving payments from local merchants, particularly at Christmas.

As a result of all these instances of businessmen making payments to public employees, the Commission recommended that the legislature make it a misdemeanor to offer or give any payment to a public employee and for any public employee to solicit or receive any payment in the course of his public duties.

Other investigations found corrupt public officials who profited personally from their positions. In Marple Township, the Superintendent of Public Works was found to have enriched himself through diversion of township funds, through the improper use of township property and equipment for private purposes and by accepting kickbacks. In Philadelphia, several instances of businessmen paying public officials including a municipal court judge, agents of the State Liquor Control Board, and an inspector of the City's Department of Licenses and Inspections, were uncovered. In Chartiers Township, Washington County, two Commissioners were found to have paid themselves substantial amounts of money for work they could not have done. The Crime Commission has recommended important reforms of the Second Class Township Code which, if

implemented, should help prevent a situation similar to that uncovered in Chartiers from recurring.

The significant amount of official corruption uncovered by the Commission during the past year raises substantial questions concerning the effectiveness of the criminal justice system in dealing with this type of problem. Certainly, no simple panacea exists. Nonetheless, the Commission has been forced to devote a disproportionate amount of its resources to investigating this area because no existing state-wide agency is empowered both to investigate and to prosecute official corruption as a routine matter. In the absence of such a prosecuting agency, many substantial allegations of official misconduct made by public-spirited citizens have been directed to the Crime Commission, and the Commission has responded by investigating and publicly reporting its findings.

The Crime Commission cannot assume the task of following up all individual allegations of misconduct by public officials throughout the Commonwealth. The Crime Commission has a broader mandate to seek out the causes of crime and to recommend institutional change. This may include corruption investigations but cannot be limited to them. The Commission has strongly recommended the concept of a permanent state-wide Office of Special Prosecutor which would be independent of political control and would have the responsibility not only to investigate but also to prosecute acts of corruption by public officials throughout the Commonwealth on both state and local levels. Until such a permanent office is created, there will be an immense gap in law enforcement in the Commonwealth which will contribute to continued erosion of public confidence in government.

Acknowledgments

The past two years have been filled with long hours of hard and devoted work on the part of the many Crime Commission employees. Space limitations prevent acknowledging each individual contribution.

The investigation of police corruption and the quality of law enforcement in Philadelphia was the most important investigation conducted while I was associated with the Commission. I have thanked all those who worked so hard on that investigation in the separately published Report of that investigation.

Daniel Shapira, the attorney-in-charge of the Western Regional Office, was responsible for developing the office from a one-man operation to the second largest office of the Commission. In the course of that orderly growth, he directed the Commission's second most important investigation, the study of Pennsylvania's Election Code. Robert Clark, agent-in-charge, also made important contributions to the growth and success of the Western Regional Office.

Curtis Pontz provided useful guidance to the Central and Northeastern Regional Offices. His contributions were particularly evident in the investigations of gambling and corruption in Carbondale and Phoenixville and the investigation in York. Wilbur Metcalf and George VanDurick, the agents-in-charge of the Central and Northeastern Regional Offices, provided guidance and management for those offices and their investigations.

Thomas J. Oravetz and John L. Rolfe, who spent the bulk of their time on the Philadelphia investigation, also spent many long hours drafting, editing, and rewriting many parts of this report. They deserve special thanks for their hard work.

A special word of thanks is owed the Commission's clerical and secretarial staff who willingly worked long hours to produce this report.

Lawrence T. Hoyle, Jr.
Executive Director

PART I

**CRIME COMMISSION
REPORTS**

Contents: Part I

1 A Case Study of the Pennsylvania Election Code.....	7
Analysis of the Pennsylvania Election Code	9
Violations in Allegheny County	12
MR. DUGGAN FAILED TO REPORT EMPLOYEE CONTRI- BUTIONS AND CAMPAIGN EXPENDITURES FROM HIS NO. 2 BANK ACCOUNT	15
THE DUGGAN FOR D.A. COMMITTEE'S ELECTION EX- PENSE ACCOUNT WAS FALSE AND FRAUDULENT.....	29
Conclusion	45
Recommendations.....	45
FOR LEGAL PROCEEDINGS	45
FOR LEGISLATIVE ACTION	47
2 A Case Study of the Second Class Township Code.....	54
Government in Second Class Townships.....	55
Governmental Operations of the Chartiers Township Board in 1972.....	59
RECORD KEEPING	59
UNLAWFUL HOLDING OF POSITIONS.....	65
PAYMENTS FOR NON-ROAD WORK	66
OVERPAYMENTS FOR ATTENDING CONVENTIONS.....	67
Auditors' Review of Records and Wage Approvals	69
Recommendations.....	71
FOR CHARTIERS TOWNSHIP.....	71
FOR CHANGES IN THE SECOND CLASS TOWNSHIP CODE....	71
3 Investigations in Delaware County	74
Macing.....	74
EVIDENCE OF MACING.....	76
THE RESPONSE TO CHARGES OF MACING	79
PROSECUTION OF MACING CHARGES	82

Corruption in the Public Works Department of Marple Township	83
CONTROLS OVER MATERIALS AND MONEY	84
IMPROPER USE OF TOWNSHIP MEN AND EQUIPMENT ...	84
OTHER PAYOFFS AND KICKBACKS	87
Voting Fraud in the City of Chester	87
Conclusion and Recommendation	90
4 Associations Between Businesses and Organized Crime Figures..	93
5 Corruption in the Philadelphia Police Department—A Summary	96
Police Corruption.....	96
LIQUOR	97
GAMBLING	99
PROSTITUTION	101
NARCOTICS.....	102
BUSINESS NOTES.....	103
CAR STOPS.....	106
UNPROTECTED PROPERTY.....	106
STOLEN CARS.....	107
PERJURY	108
THE CORRUPTION ENVIRONMENT.....	108
Control of the Police	111
Personnel—Some Current Issues	114
MINORITY GROUPS	114
PROMOTIONS	114
PENSIONS.....	115
Drugs and Law Enforcement	116
The Corruption Investigation Experience	118
Recommendations.....	121
6 Gambling and Corruption in Carbondale	123
Gambling.....	124
Lack of Enforcement of the Gambling Laws.....	127
Politics in the Carbondale Police Department.....	130
Voting Fraud	133
Conflict of Interest.....	134
Conclusion and Recommendations	136

7 Gambling and Corruption in Phoenixville	139
Official Apathy Toward Enforcement of Gambling Laws.	140
Payments by Gamblers to Government Officials.....	143
Lack of Leadership in the Police Department	148
Conclusion and Recommendations	150
8 Corruption in the York Police Department	152
Systematic Payoffs to York Police	153
IMPACT ON THE PUBLIC.....	154
THE KICKBACK SCHEME	156
DIRECT INVOLVEMENT OF CHIEF ELMER C. BORTNER.....	164
Failure of Department Leadership	168
Conclusion	177
Recommendations.....	179

1

A Case Study of the Pennsylvania Election Code*

Recent scandals in connection with Watergate have served to highlight the importance of effective, enforceable election laws to regulate all aspects of campaign financing. Pennsylvania's current election laws regulating campaign financing for all state and local elections were passed in 1937 and have seldom been enforced or re-examined since that time. Serious allegations received by the Pennsylvania Crime Commission concerning flagrant violations of Pennsylvania's election laws convinced the Commission that a full-scale inquiry into the effectiveness of Pennsylvania's election laws was required.

On February 21, 1973, the Commission adopted a resolution which authorized an investigation into one aspect of campaign fund raising — criminal macing. The resolution specifically provided that: (a) an investigation be conducted to determine the extent of macing in Allegheny County; (b) whether the current laws are sufficient to deal with the problem; and (c) whether new legislation should be created to deter more adequately and punish macing activity.

Following the adoption of the resolution, the Western Pennsylvania Office of the Commission began gathering information concerning the existence of macing in Allegheny County. At the very outset of this process, the Commission received compelling allegations that macing had systematically been practiced in District Attorney Robert W. Duggan's office for over a decade and that the practices were continuing. In addition, the sources of these allegations claimed that professional law enforcement personnel, including assistant district attorneys and county detectives, were frequent victims of the macing. The seriousness of these allegations necessitated immediate follow-up by the Commission.

During the course of the Commission's analysis of the substance of these allegations, evidence was uncovered linking macing with violations of the Pennsylvania Election Code's provisions regulating reporting of campaign contributions. Because of the overriding importance of the effectiveness of Pennsylvania's Election Code provisions regulating campaign financing, the Commission amended its macing resolution on August 13, 1973.

*This report was previously issued in January 1974.

The amended resolution authorized an in-depth investigation to determine: (a) whether the Election Code had been violated as part of a scheme or in conjunction with macing; (b) whether the existing Pennsylvania Election Code is sufficient to deal with the problem; and (c) whether new legislation is necessary to regulate more adequately and deter Election Code violations.

The macing investigation and the investigation into Election Code violations proceeded concurrently. Because of the continuing public concern over the integrity of elected public officials, particularly in the area of campaign financing, the Commission decided to complete first its investigation into the effectiveness of the Pennsylvania Election Code so that recommendations for improvements could be made as early as possible in order to restore the public's confidence in the election process.

An effective, in-depth analysis of the Election Code necessitated the accumulation of complex and voluminous data. In view of this, the Commission determined that a case study of campaign financing practices by a candidate for elective office would be necessary.

The financial practices of Mr. Duggan in connection with his campaign for re-election to the office of District Attorney of Allegheny County in 1971 was selected as an appropriate case study. This decision resulted from the fact that the Commission had already obtained in connection with its macing investigation substantial data concerning Mr. Duggan's fund raising practices. Moreover, under the Pennsylvania Election Code, a district attorney is the county-wide law enforcement official responsible for enforcing the criminal provisions of the election laws; thus, the Commission believed that using the District Attorney's campaign finance practices as a case study would be particularly meaningful.

During the course of the Commission's case study, Mr. Duggan testified at closed hearings before the Commission on three separate occasions, on October 12, 24, and 31, 1973. Mr. James G. Dunn, First Assistant District Attorney, testified twice at closed hearings before the Commission on October 5 and 11, 1973. Moreover, 24 employees of the District Attorney's Office also testified at closed hearings before the Commission, and 162 were interviewed by investigators of the Commission. All relevant documents, including bank records, campaign finance records, and personal documents, were analyzed.

This report relates the results of the Commission's case study; analyzes the Pennsylvania Election Code, and recommends remedial action in accordance with the Commission's findings.

A subsequent report on macing will be forthcoming.

ANALYSIS OF THE PENNSYLVANIA ELECTION CODE

The Pennsylvania election laws are designed to maintain the integrity of campaign financing by requiring the filing of a full, detailed account of all campaign contributions and expenditures in connection with every election. To accomplish this goal of full disclosure, article XVI of the Election Code,¹ entitled "Primary and election expenses," seeks to: (a) limit the number of people who can lawfully receive and disburse campaign contributions; (b) require the people who are permitted to receive and disburse campaign contributions to file a detailed expense report, accounting for all receipts and expenditures; and (c) permit the general public to initiate a thorough review of each expense report. The specifics of each of these procedures are discussed fully below.

Article XVI defines the term political committee to include:

... every two or more persons who shall be elected, appointed or chosen, or who shall have associated themselves or cooperated for the purpose, wholly or in part, of raising, collecting or disbursing money, or of controlling or directing the raising, collection or disbursement of money for primary or election expenses.²

Every political committee must appoint a treasurer who can function only after the committee has received authorization to receive and disburse money for primary or election expenses in writing from the candidate.³ The written authorization must be filed at the County Board of Elections if the committee is not state-wide.⁴

No one is permitted to collect, receive or disburse money in connection with an election except the candidate and lawfully formed political committees.⁵ Moreover, with respect to political committees, Article XVI provides that:

... All money collected or received by any political committee, or by any of its members for primary or election expenses, shall

¹The bulk of Pennsylvania's election laws are contained in the Election Code which was passed in 1937. Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §§2600-4051 (Supp. 1974) [hereinafter cited as Act]. The Election Code is divided into a number of articles, each dealing with separate facets of an election. Article XVI of the Election Code contains every Pennsylvania statute dealing with the regulation of campaign financing. Article XVIII of the Election Code, entitled "Penalties," sets forth the criminal penalties for violations of any of the provisions of article XVI.

²Act, 25 P.S. §3221 (1963).

³Act, 25 P.S. §§3222, 3223 (1963).

⁴Act, 25 P.S. §3223 (1963).

⁵Act, 25 P.S. §§3222, 3223, 3225, 3227 (Supp. 1974).

be paid over and made to pass through the hands of the treasurer of such committee and shall be disbursed by him; and it shall be unlawful for any political committee, or any of its members, to disburse any money for primary or election expenses, unless such money shall have passed through the hands of the treasurer.⁶

It is a misdemeanor to violate this provision of article XVI, punishable by a fine of not more than \$1,000, or imprisonment of not less than one month nor more than two years, or both.⁷

Article XVI contains strict requirements concerning who can contribute to a campaign. It is unlawful for either a corporation or an unincorporated association to make a contribution.⁸ In addition, every person making a contribution to a campaign must do so in his own name.⁹

The cornerstone of article XVI is contained in the section which requires every candidate and every treasurer of a political committee to file, within thirty (30) days of an election, a complete and accurate expense account. It provides in part that:

(a) Every candidate for nomination or election, and every treasurer of a political committee, or person acting as such treasurer, shall, within thirty days after every primary and election at which such candidate was voted for or with which such political committee was concerned, if the amount received or expended or liabilities incurred shall exceed the sum of one hundred fifty dollars, file a full, true and detailed account, subscribed and sworn to by him, setting forth each and every sum of money received, contributed or disbursed by him for primary or election expenses, the date of each receipt, contribution and disbursement, the name of the person from whom received or to whom paid, and the specific object or purpose for which the same was disbursed. Such account shall also set forth the unpaid debts and liabilities of any such candidate or committee for primary or election expenses, with the nature and amount of each, and to whom owing. In the case of the treasurer of a political committee, the account shall include any unexpended balance of contributions or other receipts appearing from the last previous account filed by him . . . In the case of candidates for election who have previously filed accounts of their primary expenses as candidates

⁶Act, 25 P.S. §3222 (1963).

⁷Act, 25 P.S. §3540 (1963).

⁸Act, 25 P.S. §3225 (1963).

⁹Act, 25 P.S. §3224 (1963).

for nomination, the accounts shall only include receipts, contributions and disbursements subsequent to the date of such prior accounts.¹⁰

In interpreting this provision of the Election Code, the courts have uniformly held that inadvertent, careless errors in an election expense account do not justify certification of the case for prosecution. Rather, criminal prosecution is warranted if the inaccurate reporting has occurred through fraud or corruption.¹¹

The failure to file an election expense account is a per se violation of the Election Code, punishable by a fine of not more than one thousand (\$1,000) dollars, or imprisonment of not less than one (1) month nor more than two (2) years, or both.¹²

It is unlawful to administer the oath of office to any candidate until all of the necessary election expense accounts have been filed.¹³ Moreover, a candidate elected to public office cannot assume the duties of his position nor receive any salary until all of the necessary expense accounts have been filed.¹⁴

In addition to the normal criminal proceedings, the Election Code authorizes the public to inquire into the accuracy of all election expense accounts. Article XVI permits any five electors to file a petition seeking an audit of any expense account. The procedure for audits of expense accounts provides in part that:

¹⁰Act, 25 P.S. §3227 (Supp. 1974) (emphasis added).

¹¹*In Re Laub*, 145 Pa. Super. 513, 21 A.2d 575 (1941); *In Re Kearney*, 136 Pa. Super. 78, 7 A.2d 159 (1939); *Stull v. Reber*, 215 Pa. 156, 64 A. 419 (1906); and "*We the People*" Expense Account, 30 Del. Co. Repts. 570 (Q.S. Del. Co. (1942). In *In Re Laub*, *supra*, the Superior Court reversed the lower court opinion and held that the case should not have been certified to either the District Attorney or the Attorney General because there was no showing of either fraud or corruption in connection with the inaccuracies in the election expense report. The Court stated:

" . . . I am of the opinion that matters involving errors in the manner and form of accounting bear upon the question of costs only, and that certification to the District Attorney for criminal prosecution and certification to the Attorney General for quo warranto proceedings should be made only where the Court, in the exercise of its judicial function, finds evidence of fraud or corruption. . . . "

145 Pa. Super. at 520, 21 A.2d at 579. It is a misdemeanor to file a false and fraudulent election expense account, punishable by a fine not exceeding one thousand (\$1,000) dollars, or imprisonment of not less than one (1) month nor more than two (2) years, or both. Act, 25 P.S. §3545 (1963).

¹²Section 3545 of the Election Code, entitled "Failure to file expense account," provides:

"Any candidate or treasurer of a political committee . . . who shall fail to file an account of primary or election expenses . . . shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars, or to undergo an imprisonment of not less than one (1) month nor more than two (2) years, or both, in the discretion of the court."

Act, 25 P.S. §3545 (1963).

¹³Act, 25 P.S. §3229 (1963).

¹⁴*Id.*

(a) Within twenty days after the last day for filing any expense account and affidavit required by this act any five electors of the State or of the political division may present a petition to the court of quarter sessions of the county in which is situated the office where such account has been filed, praying for an audit of such account. Thereupon the court shall direct the officer or board with whom such account has been filed to certify the same to the court for audit and may, in its discretion, require security to be entered for costs. The court may, in its discretion, appoint an auditor to audit such account; but the fees of such auditor shall not exceed the sum of \$10.00 per day for each day actually engaged. The court or auditor shall fix a day as early as may be convenient for the audit, at which time the person by whom such account has been filed shall be required to be present in person to vouch his account and to answer on oath or affirmation all such relevant questions concerning the same, as may be put to him by the petitioners or their counsel . . .¹⁵

Upon completion of the audit, if the court determines that any section of article XVI has been violated, it shall certify its decision to the district attorney of the county in which the alleged violator resides.¹⁶ If the case is certified to the district attorney, he may institute criminal proceedings. In addition, if the court determines that it was the candidate for political office who violated any provision of article XVI, the court must certify this fact to the Attorney General of the Commonwealth. The Attorney General may institute "quo warranto proceedings"¹⁷ in the proper court.¹⁸ A candidate who is found guilty of a willful violation of article XVI shall be disqualified from holding any office in the Commonwealth of Pennsylvania,¹⁹ and is disenfranchised for a period of four years.²⁰

VIOLATIONS IN ALLEGHENY COUNTY

In November of 1971, Robert W. Duggan was re-elected for a third term as District Attorney of Allegheny County. During the course of his cam-

¹⁵Act, 25 P.S. §3231 (Supp. 1974).

¹⁶*Id.*

¹⁷Act, 25 P.S. §3232 (1963). The quo warranto procedure is an extraordinary remedy to determine title to a public office.

¹⁸The courts have held that certification to either the district attorney or the Attorney General is proper only if the violations have occurred through fraud or corruption. See note 11 *supra*.

¹⁹Act, 25 P.S. §3551 (1963).

²⁰Act, 25 P.S. §3552 (1963).

paign for re-election, two major separate and distinct fund raising efforts were conducted. Mr. Duggan did not comply with a number of provisions of the Pennsylvania election laws in connection with each of these fund raising efforts. As a result, Mr. Duggan failed to account for \$68,033.27²¹ of his campaign finances.

The first fund raising effort, under the control of Mr. Duggan and his First Assistant District Attorney, James G. Dunn, was designed to raise funds from the employees of the District Attorney's office. In June of 1971, Mr. Dunn prepared a formula which was 3% of an employee's annual salary or a base amount; in either case, \$10.00 was added for each year an employee had served under Mr. Duggan. Mr. Dunn utilized this formula to compute the level of contributions that each employee would be contacted to give. The amounts ranged from \$200 to \$500 per employee.

Thereafter, Mr. Dunn instructed the Department Supervisors within the District Attorney's office to contact their respective employees, to inform them of the assessment, and to collect the monies as they were paid. Mr. Dunn and the Department Supervisors worked together closely on this endeavor throughout the summer and fall of 1971. As a result, almost every employee of the District Attorney's Office was contacted. The extensive efforts of Mr. Dunn and the Department Supervisors took place without formation of a political committee, without a treasurer, and without written authorization of the candidate, all in contravention of a number of provisions of the election laws.²²

Mr. Dunn deposited these employee contributions throughout the summer and fall of 1971 into one of Mr. Duggan's bank accounts at Pittsburgh National Bank, entitled the "Robert W. Duggan, No. 2" account. A total of \$36,272.30 of employee contributions was deposited. Mr. Duggan used his No. 2 account almost exclusively as a campaign account throughout this period. Notwithstanding this fact, Mr. Duggan failed to file any election expense account whatsoever, to report the use of this bank account.

Rather, Mr. Duggan improperly reported \$24,000.00 of the \$36,272.30 of employee contributions as having been received by his other major fund raising effort, the "Duggan for D.A. Committee." He failed to account in any way for \$12,272.30 of his employees' contributions.

Moreover, Mr. Duggan utilized his No. 2 account to pay for \$31,990.97 of campaign expenses; his pattern of writing checks on this account commenced in the summer of 1971 and continued on a regular basis up through November, 1971. He again failed to file the required election expense

²¹The bank deposit slips establish that these two fund raising efforts produced a total of \$138,533.42. Since of this amount, only \$101,501.12 was reported, there was complete failure to report \$37,032.30 of contributions. In addition, there was no report of \$31,000.97 of campaign expenditures.

²²Act, 25 P.S. §§3221, 3222, 3223, 3540, 3541, 3550 (1963).

account to report \$31,000.97 of these campaign expenditures. The total amount of unreported campaign finance activities in connection with Mr. Duggan's No. 2 account was \$43,273.27 (\$12,272.30 + \$31,000.97).

The second major fund raising effort was conducted through the Duggan for D.A. Committee. Richard Mellon Scaife was the Treasurer of this Committee until his resignation in September of 1971. He was replaced by William J. Engel, Esquire, an associate of Mr. Duggan's law firm. Thereafter, Mr. Duggan totally controlled the Duggan for D.A. Committee, made all of the Committee's deposits into its bank account at Mellon Bank N.A., and prepared the Committee's election expense account which was filed at the Allegheny County Board of Elections on December 2, 1971. The Committee's election expense account listed total contributions received at \$101,501.12,²³ total expenses at \$96,491.13, and outstanding debts at \$9,200.80.

The Committee's election expense account, admittedly prepared by Mr. Duggan, concealed the sources of substantial cash contributions and evidence of macing. Mr. Duggan: (a) listed on the Committee's election expense account large dollar amounts of contributions from employees which had not been deposited into the Committee's bank account, but rather into the Robert W. Duggan, No. 2 bank account; (b) thereby failed to list an equal dollar amount of contributions which the Committee had, in fact, received; (c) concealed the source of substantial cash deposits into the Committee's account; and (d) rounded off many of the employee contributions reported to even dollar amounts in order to conceal the results of Mr. Dunn's formula.

The amount of money concealed by Mr. Duggan's report was substantial. Contributions from employees of the District Attorney's office totaling approximately \$14,100 were listed on the Committee's election expense account but were never received by the Committee, and the sources of the same amount, which are shown by the deposit slips on the Committee's bank account to have been received, were thereby concealed. The source of a \$9,900.00 cash deposit into the Committee's bank account was falsely stated to have been contributed by 29 employees, whereas, in fact, the money did not come from such employees but from an undisclosed source. As a result of this pattern of concealment, a total of \$24,000.00 (\$14,100 + \$9,900) was deposited into the Committee's bank account from sources which were never disclosed on the Committee's election expense account.

²³The deposit slips on the Committee's account established that the Committee actually received \$102,261.12.

Mr. Duggan Failed To Report Employee Contributions And Campaign Expenditures From His No. 2 Bank Account

The District Attorney's office had approximately 177 employees in 1971. These employees were all appointed by the District Attorney, were not covered by civil service, and all served at Mr. Duggan's pleasure. These employees consisted primarily of assistant district attorney's, detectives, teletype operators, administrators, and clerks. The general day-to-day operation of the office was directed by the District Attorney and, in his absence, by his First Assistant District Attorney, James G. Dunn.²⁴ In addition to Mr. Dunn, the office had a number of Department Supervisors, each having certain administrative responsibilities.

On February 10, 1964, a bank account was opened at Pittsburgh National Bank, entitled "Robert W. Duggan, No. 2." The Robert W. Duggan, No. 2 account was opened as a depository for monthly employee payments into a fund generally described to employees as the "Flower Fund." This bank account has been used continuously from 1964 to the present for the same stated purpose. Although a number of people allegedly had access to this account in its early years, by 1971, Mr. Duggan was in charge of the account, was writing all checks on the account, and had sole authority over the expenditures which were made from the account.²⁵ This bank account was used extensively as a depository for employee campaign contributions during the summer and fall of 1971, leading up to Mr. Duggan's re-election in November, 1971.²⁶

In the Spring of 1971, Mr. Duggan determined that his employee contributions would be handled in a manner independent of the efforts of the Duggan for D.A. Committee, whose Treasurer at that time was Richard Mellon Scaife. Following a meeting in June of 1971, at which Mr. Scaife and Mr. Duggan reviewed fund raising strategy, Mr. Duggan requested and received from Mr. Scaife records from the 1967 campaign which reflected employee contributions.²⁷

In furtherance of Mr. Duggan's decision to handle the campaign

²⁴Testimony of James G. Dunn before the Pennsylvania Crime Commission, October 5 and 11, 1973, N.T. 11 [hereinafter cited as Dunn].

²⁵Testimony of Robert W. Duggan before the Pennsylvania Crime Commission, October 12, 24, and 31, 1973, N.T. 161-167, 232, 235 [hereinafter cited as Duggan].

²⁶Dunn, N.T. 174-188.

²⁷Mr. Scaife's personal secretary, Ruth J. Mohny, specifically recalls that after this meeting, she learned from Mr. Scaife that Mr. Duggan would be in charge of campaign contributions from his own employees. Moreover, the 1967 records concerning employee contributions were no longer in her file. Interview with Ruth J. Mohny, August 20, 1973. Mr. Duggan testified that he could not recall this event, but if somebody said that it occurred, it must have occurred. Duggan, N.T. 40, 96.

contributions from the employees in his office independently of the Duggan for D.A. Committee, responsibility for the receipt and deposit of these funds was given to Mr. Dunn.²⁸ Mr. Duggan testified that due to the press of personal campaign commitments, he was personally unable to solicit campaign funds.²⁹

Mr. John M. Kane, former Office Manager of the District Attorney's office, testified³⁰ that in the early summer of 1971, he met with Mr. Duggan to discuss employee contributions for the upcoming campaign. Mr. Kane recommended that contributions be requested and that the figures \$100 for clerks and \$200 or \$250 for assistant district attorneys be suggested to employees as an equitable figure. Mr. Duggan replied that James Dunn, his First Assistant District Attorney, was handling the campaign contributions from employees. Mr. Duggan instructed Mr. Kane to give the employees a "pep talk" to encourage political activity and support and to tell them to start thinking about campaign contributions. Mr. Kane met with the employees in June of 1971.

Mr. Dunn set about the task of organizing fund raising efforts in the summer of 1971. He testified that he received early contributions from a number of employees in the office³¹ and that he received numerous inquiries from other employees concerning what a fair contribution would be for them to make.³² He advised many of the employees concerning a "fair" contribution for them to make based upon earlier contributions received from employees with similar salaries and similar tenure in the District Attorney's office.

A few would ask or a number—a few or number or what, would ask what do you think would be fair and I would say well, X gave three or \$400 and he is making, he or she is making about the same as you, you have been here about the same time, so it would be somewhere in that neighborhood, you know, you should give about the same.³³

Mr. Dunn also testified that he may have met with a number of various Department Supervisors within the office in order to provide them with suggested fair amounts that their respective employees within their own departments should contribute.³⁴

²⁸Dunn, N.T. 107.

²⁹Duggan, N.T. 38.

³⁰Testimony of John M. Kane before the Pennsylvania Crime Commission, April 19 and June 18, 1973, N.T. 30.

³¹Dunn, N.T. 100.

³²Dunn, N.T. 109-110.

³³Dunn, N.T. 100.

³⁴Dunn, N.T. 134-135.

The Commission's investigation into the fund raising activities in the District Attorney's office established that these fund raising activities were far more organized and sophisticated than Mr. Dunn admitted. Sometime in the middle of June, 1971, Mr. Dunn prepared a comprehensive list of practically every employee within the District Attorney's office and computed an amount which each employee would be contacted to contribute.³⁵ These amounts were computed, utilizing a formula which was 3% of an employee's annual salary or a base amount; in either case, \$10 was added for each year an employee had served under Mr. Duggan.³⁶

Mr. Dunn then summoned to his office most of the Department Supervisors within the District Attorney's office, including: Edward G. Crone, Chief of the County Detectives; Raymond S. Wolosik, Chief of Teletype Division; William Koval, Acting Office Manager; and James Spirko, Supervisor of the Indictment Section.³⁷ He provided each of them with a list of the employees within their departments and the amounts they would be requested to contribute, and instructed them to meet with and discuss these matters with their employees.

Mr. Crone testified concerning this meeting that:

... Mr. Dunn called me down to his office and stated that Mr. Duggan's campaign was coming up. And that is a political office, and that he would be interested in contributions from the members of the staff. That is all the employees of the District Attorney's office. And he said that he had compiled a list of what he thought would be a fair, voluntary contribution for each employee. Because of the nature of it, a political campaign, Mr. Duggan's re-election, it was vital to the employment of the people in the office because if Mr. Duggan didn't win the election, why you wouldn't have your job. . . —he had a sheet there, and I

³⁵Testimony of Edward G. Crone before the Pennsylvania Crime Commission, May 9, 1973, N.T. 69 [hereinafter cited as Crone]; Testimony of Raymond S. Wolosik before the Pennsylvania Crime Commission, June 8 and 13, 1973, N.T. 8 [hereinafter cited as Wolosik]; Testimony of William Koval before the Pennsylvania Crime Commission, June 28, 1973, N.T. 109 [hereinafter cited as Koval]; Testimony of Virginia Butler before the Pennsylvania Crime Commission, June 29, 1973, N.T. 85 [hereinafter cited as Butler]. See also Interview with James Spirko, September 24, 1973.

³⁶Crone N.T. 70; Butler N.T. 90; testimony of Joseph O'Neill before the Pennsylvania Crime Commission, May 21, 1973, N.T. 95 [hereinafter cited as O'Neill]; testimony of William Cordero before the Pennsylvania Crime Commission, April 30, 1973, N.T. 60 [hereinafter cited as Cordero]; testimony of John Pope before the Pennsylvania Crime Commission, July 17, 1973, N.T. 28 [hereinafter cited as Pope]; testimony of Nicholas Schifino before the Pennsylvania Crime Commission, May 18, 1973, N.T. 25 [hereinafter cited as Schifino]; testimony of George Kinsler before the Pennsylvania Crime Commission, May 4, 1973, N.T. 37 [hereinafter cited as Kinsler]; testimony of Stanley Ference before the Pennsylvania Crime Commission, July 27, 1973, N.T. 69 [hereinafter cited as Ference].

³⁷Crone, N.T. 64; Wolosik, N.T. 7-8; Koval, N.T. 109. Interview with James Spirko, September 24, 1973.

copied it, with each detective on there including myself. And he read off the names, and then there was an amount . . .³⁸

Mr. Wolosik testified concerning his meeting with Mr. Dunn that:

When I went down to talk to him, we talked about the campaign coming up, and, let me see how we did that, how I can put this.

On previous elections, that the majority of the people hadn't given anything towards the campaign, and Jimmy [Dunn] said we could ask the men for a fair share of some kind of a contribution towards the campaign.

* * * * *

I don't know if he referred to any years of service. He had the amounts by their names and that's what I was going by. I mean, whether he — he hadn't mentioned anything about any kind of a formula, and as I looked at the — at what wages they were getting and what amounts were by their names would give me an idea that — because I knew what each man was making, and that's where it came out with the graduated, graduated contribution, according to what they were making.³⁹

Each of the Department Supervisors carried out Mr. Dunn's instructions in their own unique fashion. About a week after Mr. Crone's meeting with Mr. Dunn, Mr. Crone informed the County Detectives, during an early morning roll call, that he would like to meet with each of them individually.⁴⁰ Mr. Crone testified concerning these meetings that:

... The only thing—I couldn't give you like my conversation with each man. I had to tell them that the election was coming up and that a voluntary contribution was expected from them. And, "This was the figure that Mr. Dunn had given to me to suggest to you." And that was the basis of my conversation with them.⁴¹

Mr. Wolosik's modus operandi of informing his employees differed slightly from Mr. Crone's. Mr. Wolosik testified that he met with each of them individually, as follows:

Q: Now, can you recall basically what it was that you said to each of the employees concerning these payments into the campaign?

³⁸Crone, N.T. 64-65.

³⁹Wolosik, N.T. 4, 7.

⁴⁰Crone, N.T. 75-77.

⁴¹Crone, N.T. 77.

A: Just that, well, of course, I don't want to go through a—I probably talked different to other people, you know. Just basically, I imagine, that the employees were expected to make some contribution to the campaign.

Q: And in terms of this expected contribution, you indicated that the amounts that you had gotten alongside their names—

A: Yes.

Q: —was the amount that they were expected to contribute?

A: (Witness indicated affirmatively.)⁴²

In addition, Mr. Koval⁴³ and Mr. Spirko⁴⁴ met with their respective employees to inform them of what their fair share would be for the campaign.

The result of this massive fund raising organization was that almost every employee of the District Attorney's office was contacted by his supervisor regarding contributions.

Many of the employees greeted the news with consternation. Mr. Crone testified that, as a matter of courtesy, he first met with his assistant, Mr. Joseph O'Neill, to inform him of his fair share, prior to meeting with his general staff. Mr. Crone testified concerning Mr. O'Neill's reaction that:

Well, he was startled, you know, and he said that I must be out of my mind, you know, like I had done something—I mean, I didn't do anything. And then I told him, I said, "Joe, [O'Neill] I am going to announce it at roll call. And I want to see the men who are here." And I think maybe it was the day before, see. It may have been the day before, you know. It was right in that area. But I spoke to Joe, you know, before I spoke to anybody else out of respect. And Joe was upset, and he said that I was—they must be out of their mind. That is the words he said, not "me" out of my mind, but "they" must be.

* * * * *

That is the words that was said to me, yes. I could have been apologetic to him, yes, when I think of it now. That is possible. "Joe," I said, "I am only doing what I am instructed to do." And I think he asked me who had talked to me, and I told him Mr. Dunn. Now, I said, "If you have any problems," I said, "Joe,

⁴²Wolosik, N.T. 26.

⁴³Koval, N.T. 116.

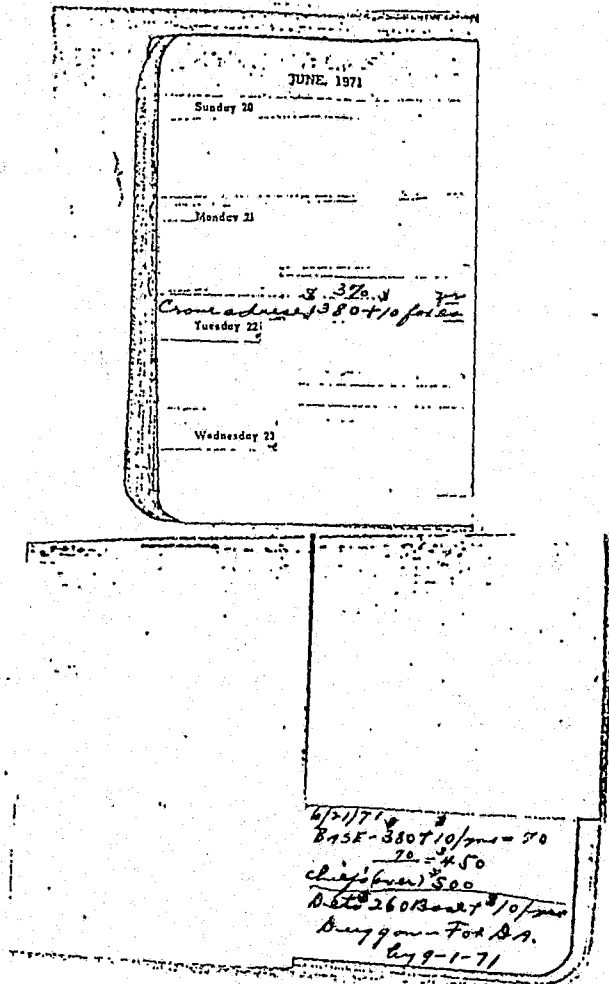
⁴⁴Interview with James Spirko, September 24, 1973.

you go down and see Mr. Dunn," and I think that was the extent of it.⁴⁵

After receiving the news, Mr. O'Neill made the following entry in his diary, which he used to record important events:⁴⁶

O'NEILL'S DIARY -- JUNE 21, 1971

(FRONT AND BACK)



⁴⁵Crone, N.T. 82, 83. Mr. O'Neill testified that he had no recollection concerning his reaction when Crone informed him of the amount of his expected campaign contribution. O'Neill, N.T. 80, 87.

⁴⁶O'Neill, N.T. 92-96.

The reaction in the Teletype Division was apparently no different. One of the teletype operators testified that after he was informed of his contribution figure, he remarked:

... "Is this what I owe?" ... I was shocked at the amount because, after all, my pay was not that great; and I was more or less astounded by the figure.⁴⁷

This teletype operator further testified that the size of the contribution was "the straw that broke the camel's back,"⁴⁸ and shortly thereafter, he resigned:

I resigned, yes. I wrote a letter. In fact, I typed, I believe, a letter of resignation and presented it to Mr. James Dunn, then formerly—then and I think now still First Assistant District Attorney, on which occasion, in trying to be a gentleman about the whole thing, I was going to give them two weeks' notice so that they may be able to fill my vacancy. But Mr. Dunn terminated me two minutes thereafter.⁴⁹

Mr. Dunn retained the responsibility for fund raising from the assistant district attorneys, and testified that he met with many of them on separate occasions during which the subject of contributions was discussed.⁵⁰ Testimony indicates that Mr. Dunn met with practically every Assistant District Attorney on the same day to discuss this subject.⁵¹ An assistant district attorney, John Pope, testified concerning fund raising from the assistant district attorneys that:

... There was a good deal of agitation, aggravation about it because we had been speculating, really, about how big a bite they were going to take and just about everyone I talked to was rather upset that it was as high as it was.⁵²

Mr. Duggan testified that none of his employees were covered by civil

⁴⁷Testimony of Mr. A before the Pennsylvania Crime Commission, June 19, 1973, N.T. 19 [this witness requested that his identity be withheld so that his future in government work would not be prejudiced due to the fact that he had voluntarily testified before the Commission].

⁴⁸*Id.* at 23.

⁴⁹*Id.* at 23-24.

⁵⁰Dunn, N.T. 110.

⁵¹Butler, N.T. 83-85; Ference, N.T. 67; Pope, N.T. 29. Interview with Richard McHugh, July 13, 1973; Interview with Robert Medonis, September 28, 1973.

⁵²Pope, N.T. 29.

service and, therefore, substantial incentive existed for them to contribute whatever they could to keep him in office:

None of my employees are [covered by civil service]. I might add that is probably why everybody was so interested in seeing that we won the election because their jobs were obviously at stake.

* * * * *

More than that, my opponent had gone on record saying he was going to fire everybody in the office. There was no question in my mind, if I lost the campaign, they were out of a job.

* * * * *

I think self-preservation is a very impelling reason. Employees have learned to like to eat and feed their children the same as any other family.⁵³

In this atmosphere, the fund raising efforts produced the desired results. Contributions from the employees poured into Mr. Dunn's hands during the summer months of 1971, culminated in the receipt of more than \$15,000 in the first week in September. Thereafter, contributions continued sporadically up to the November election, and totalled \$36,272.30.

The various Department Supervisors in the District Attorney's office collected the money and turned it over to Mr. Dunn.⁵⁴ Mr. Dunn testified that he started receiving this money in June of 1971, and that he deposited it into the Robert W. Duggan, No. 2 account at Pittsburgh National Bank.⁵⁵ The first deposit made by Mr. Dunn into this account was on June 24, 1971. Mr. Dunn testified that he had had little to do with the Robert W. Duggan, No. 2 bank account in previous years and had to obtain deposit slips.⁵⁶

Mr. Duggan testified that he must have given deposit slips on this account to Mr. Dunn.⁵⁷ The practice of handling employee contributions independently of the Duggan for D.A. Committee and depositing them into the Robert W. Duggan, No. 2 bank account continued on a regular basis up through the election and, according to Mr. Dunn, happened simply as a matter of convenience:

⁵³Duggan, N.T. 105.

⁵⁴The concerted efforts of Mr. Dunn and the Department Supervisors to solicit and collect campaign contributions took place without the formation of a political committee, without a treasurer, and without written authorization from the candidate. As a result, these activities violated a number of the provisions of the Election Code, Act, 25 P.S. §§3221, 3222, 3223, 3540, 3541, 3550 (1963).

⁵⁵Dunn, N.T. 174-188.

⁵⁶*Id.* at 37-41.

⁵⁷Duggan, N.T. 100.

... it started out because of the cash [contributions] and it was just a bad policy of continuing.⁵⁸

Mr. Dunn testified that he made a \$1,000 contribution to Mr. Duggan's campaign by check on August 2, 1973, and that he sent the check to Mr. Scaife, the Treasurer of the Duggan for D.A. Committee at that time.⁵⁹ Mr. Dunn's check was deposited into that Committee's bank account at Mellon Bank N.A. Nonetheless, Mr. Dunn continued to handle the employee contributions separately and to deposit them into the Robert W. Duggan, No. 2 bank account.

Mr. Dunn testified that each of the deposit slips on the Robert W. Duggan, No. 2 bank account during the period June 24 through November 1, 1971, was in his handwriting.⁶⁰ He testified that he handled only employee contributions.⁶¹ The total amount of the employee contributions deposited into the Robert W. Duggan, No. 2 bank account, based upon the deposit slips, was \$36,272.30.

Mr. Duggan testified that he was fully aware of Mr. Dunn's practice of depositing employee contributions into the Robert W. Duggan, No. 2 bank account.⁶² Mr. Duggan further stated that the employees' campaign contributions deposited into the Robert W. Duggan, No. 2 bank account were commingled with "Flower Fund" monies and monies from other sources and that there was no effort to correlate the sources of the funds with the expenditures from the account.⁶³ Finally, Mr. Duggan acknowledged that the Robert W. Duggan, No. 2 bank account was used as a campaign account and that almost every expenditure from the account during this period was in connection with his campaign.⁶⁴ At no time were funds from the Robert W. Duggan, No. 2 bank account transferred to the Duggan for D.A. Committee bank account at Mellon Bank N.A.

Mr. Duggan wrote the first check on the Robert W. Duggan, No. 2 bank account to pay campaign expenditures on May 25, 1971. The second check written by Mr. Duggan on the Robert W. Duggan, No. 2 bank account was on June 24, 1971, to pay for the rent of his campaign headquarters. This was the same date that Mr. Dunn made his first deposit of employee contributions into this account.

Mr. Duggan's practice of paying for campaign expenses from the Robert W. Duggan, No. 2 bank account continued on a regular basis up through the

⁵⁸Dunn, N.T. 234.

⁵⁹*Id.* at 232-233.

⁶⁰*Id.* at 174-188.

⁶¹Dunn testified that he may have received contributions from a handful of attorneys who were not employed by the District Attorney, Dunn, N.T. 100-101.

⁶²Duggan, N.T. 100-101.

⁶³*Id.* at 114.

⁶⁴*Id.* at 114.

end of November 1971. The total amount of identifiable campaign expenses paid for from the Robert W. Duggan, No. 2 bank account, by checks signed by Mr. Duggan, is \$31,990.97, as the following chart indicates.

UNREPORTED EXPENDITURES

<u>PAYEE</u>	<u>AMOUNT</u>	<u>DATE OF CHECK.</u>
Holiday House	\$ 144.00	05/25/71
Beynon & Co.	247.50	06/24/71
Samuel E. Harris	266.45	07/21/71
American Match Co.	500.85	07/22/71
Jack Book Displays	121.90	07/27/71
Carlton House	10.02	07/29/71
William Penn	89.10	07/29/71
William Penn	55.23	08/18/71
Berger Printing Co.	339.20	08/18/71
Swinston Co.	225.25	08/18/71
Swinston Co.	8.95	08/18/71
Beynon & Co.	247.50	08/19/71
WYDD	780.00	08/24/71
Sky Ads, Inc.	595.00	08/30/71
McSorley's	339.75	08/31/71
Beynon & Co.	1,115.00	09/07/71
Bachrach	785.11	09/07/71
Tribune-Review	101.20	09/07/71
G & M Enterprises	1,827.43	09/07/71
Swinston Co.	3,118.70	09/07/71
A. E. Jones' Sons	3,333.70	09/13/71
Samuel E. Harris	283.77	09/13/71
Friend-Duggan Rally Acct.	775.00	09/15/71
American Match Co.	477.00	09/21/71
Bell Telephone	330.96	09/22/71
Robert L. Caesar	750.00	09/23/71
Sky Ads, Inc.	357.00	10/11/71
County of Allegheny	608.84	10/12/71
Pittsburgh Outdoor Advertising	177.02	10/14/71
Postal Instant Press	40.40	10/15/71
A. E. Jones' Sons	609.50	10/15/71
Swinston Co.	339.11	10/15/71
G & M Enterprises	329.02	10/15/71
G & M Enterprises	800.24	10/15/71
Sidney-Rapport Assoc.	315.09	10/15/71

<u>PAYEE</u>	<u>AMOUNT</u>	<u>DATE OF CHECK</u>
U.S. Postmaster	200.00	10/15/71
Marlene Moore	25.00	10/21/71
Pilgrim Press	318.00	10/22/71
County of Allegheny	315.58	10/22/71
Colonial Press	1,000.00	10/22/71
U.S. Postmaster	1,850.44	10/22/71
Kelson's	100.00	10/23/71
Sidney-Rapport Assoc.	300.89	10/23/71
Jewish Chronicle	1,118.60	10/26/71
Constitutional Party of Alle. Co.	250.00	10/27/71
Hardman Assoc., Inc.	559.46	10/27/71
Carlton House	15.17	10/29/71
KDKA	697.50	10/30/71
WJAS	280.00	11/01/71
WTAE	460.70	11/01/71
WWSW	329.28	11/01/71
WKJF	200.00	11/01/71
KQV	438.67	11/01/71
Daily News Publishing Co.	87.60	11/01/71
Cash	619.13	11/15/71
Hertz Corp.	97.82	11/15/71
John Gallagher	18.71	11/16/71
Berger Printing Co.	1,155.40	11/17/71
Pilgrim Press	159.00	11/17/71
Pittsburgczanin	225.00	11/17/71
East Liberty Gazette	45.00	11/17/71
Totum Lumber Co.	125.25	11/17/71
Frediani Printing Co.	146.11	11/17/71
Squirrel Hill News	75.00	11/17/71
Pittsburgh Press	182.87	11/17/71
Rose Gallo	150.00	11/19/71
TOTAL	\$31,990.97⁶⁵	

Mr. Duggan failed to file an election expense account to report \$31,000.97 of the \$31,990.97 of campaign expenditures which he disbursed from his No. 2 bank account. In addition, Mr. Duggan did not file an

⁶⁵Of this \$31,990.97, \$990 represented rental payments which were reported on the Duggan for D.A. Committee's Election Expense Account.

election expense account for \$12,272.30⁶⁶ of employee campaign contributions deposited into this bank account. As a result, Mr. Duggan failed to account for a total of \$43,273.27 of his campaign finances.

The failure of Mr. Duggan to report these employee contributions and campaign expenditures contravened express requirements of the Election Code. Section 3545 of the Election Code, entitled "Failure to file expense account," provides:

Any candidate or treasurer of a political committee . . . who shall fail to file an account of primary or election expenses . . . shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars, or to undergo an imprisonment of not less than one (1) month nor more than two (2) years, or both, in the discretion of the court.⁶⁷

Mr. Duggan testified that he did not file the required election expense account because he did not have the necessary records.⁶⁸ Upon examination, he admitted that since he had the cancelled checks from the Robert W. Duggan, No. 2 bank account in his possession, he therefore had all of the necessary records of campaign expenditures.⁶⁹

With the records of campaign expenditures in his possession, Mr. Duggan could have filed an election expense account.⁷⁰ He could have reported the specific expenditures and indicated that he had lost the specific records of the contributors, but that these contributions came from his employees.⁷¹ Such an election expense account would have revealed the use of his Robert W. Duggan, No. 2 bank account at Pittsburgh National Bank in connection with the campaign and may have produced an inquiry into his campaign financing procedures. Instead, Mr. Duggan filed no election expense account whatsoever.

⁶⁶The Commission's interviews of 149 of the 177 employees who worked for Mr. Duggan in 1971 established that no election expense account was filed to report contributions from a minimum of 37 employees, totalling \$9,176. Two of the employees who were not reported were Department Supervisors—Spirko and Wolosik. In addition, Mr. O'Neill's contribution was not reported. The Commission obtained 14 cancelled checks from these unreported employees, all of which had been deposited into the Robert W. Duggan, No. 2 bank account.

⁶⁷Act, 25 P.S. §3545 (1963).

⁶⁸Duggan, N.T. 187.

⁶⁹*Id.* at 176-179.

⁷⁰Mr. Duggan admitted that he probably should have filed an election expense account to report these expenditures. Duggan, N.T. 185-186.

⁷¹It is also difficult to understand why Mr. Duggan could not have just asked each of his employees to inform either him, or their Department Supervisors, of how much they had contributed.

. . . The receipts were there but I didn't have the list of the names of individuals who made the contributions to list on this account.

You see, if I had had the complete list of all the names of everybody that contributed, I could have, I suppose, what would have been done if they had been complete records, we could have gone through this and listed all this as expenditures.

And if I had a list of all of the contributors, they could have gone in here and it would have balanced.

But since the records were incomplete, then I couldn't balance it out so I thought it was easier to balance out the one account rather than try to list all of the expenditures and just put a big question mark with the names of individuals who made contributions.⁷²

Mr. Duggan's explanation for his failure to file an election expense account because of his lack of records is inconsistent with the facts. Mr. Duggan had authorized Mr. Dunn as early as June 1971 to deposit employee contributions into the No. 2 account.⁷³ He knew that Mr. Dunn had deposited almost every employee contribution he received into the No. 2 account⁷⁴ because he had in his possession the deposit slips on the No. 2 account which established that \$36,272.32 of employee contributions had been deposited. He was thus aware that every record he had of the names of individual employees who had contributed, almost without exception, represented monies which had been deposited into the No. 2 bank account.⁷⁵ Rather than using these records of employee contributions to file the proper account, he used them to prepare and balance the election expense account which was filed by the Duggan for D.A. Committee.

The Duggan for D.A. Committee's election expense account contains the names of 61 employees of the District Attorney's Office and lists \$24,000 as having been contributed by these employees.⁷⁶ The contributions from these 61 employees, almost without exception, were not received by the Committee; rather, they were received by Mr. Dunn and deposited by him into the Robert W. Duggan, No. 2 bank account. The Commission obtained 25 cancelled checks from these 61 employees, 21 of

⁷²Duggan, N.T. 179.

⁷³Dunn, N.T. 146-148; Duggan, N.T. 100-101.

⁷⁴Duggan, N.T. 100-101.

⁷⁵In fact, Mr. Duggan admitted that he had listed contributors on the Duggan for D.A. Committee's election expense account, knowing that their money had actually been deposited into the Robert W. Duggan, No. 2 bank account. Duggan, N.T. 33.

⁷⁶In addition to these 61 employees, the Committee's election expense account lists a \$1,000 contribution from Mr. Dunn, and a \$1,000 contribution from another employee, Mr. Louis Abramson. The Committee actually received these two contributions.

which were deposited into the No. 2 account.⁷⁷ There were no transfers of monies from the Robert W. Duggan, No. 2 bank account to the Committee's bank account.

In addition, the Duggan for D.A. Committee's records of contributions received, which were meticulously maintained by Mr. Scaife up until his resignation on September 16, 1971, established that the Committee received contributions from only two of Mr. Duggan's employees during the period June 17, 1971 to September 16, 1971.⁷⁸ During this same period, Mr. Dunn deposited \$31,461.30 of employee contributions into the Robert W. Duggan, No. 2 bank account. From September 16, 1971 to November 1, 1971, Mr. Dunn deposited an additional \$4,811 of employee contributions into the Robert W. Duggan, No. 2 bank account, thus making it virtually impossible for the Duggan for D.A. Committee to have received any significant amount of employee contributions.⁷⁹

The Election Code expressly forbids any successful candidate to enter upon the duties of his office or to receive any salary unless all of the necessary election expense accounts have been filed.⁸⁰ Mr. Duggan assumed the duties of his office following his reelection in November of 1971

⁷⁷Mr. Fagan gave four checks, three of which were deposited into the No. 2 account, and one into the Duggan for D.A. Committee's bank account. M. Shuster gave five checks, four of which were deposited into the No. 2 account and one into the Duggan for D.A. Committee's bank account. William J. Engel gave two checks, one of which was deposited into the Duggan for D.A. Committee's bank account and one into the Dinner for Duggan Committee's bank account.

⁷⁸The two employees included on Mr. Scaife's records were Mr. Dunn and Mr. Abramson. Mr. Scaife's records also included \$9,900 alleged by Mr. Duggan to have come from 29 of his employees. Documentary evidence established that this \$9,900 did not come from those employees. See *infra*.

⁷⁹The Commission interviewed 149 of the 177 employees working for Mr. Duggan in 1971 and obtained signed statements and sworn testimony from most of them. The results of these interviews established that 98 employees had contributed a total of \$31,683 to the campaign. Because Mr. Dunn deposited \$36,272.30 of employee contributions into the Robert W. Duggan, No. 2 bank account, the Duggan for D.A. Committee could not have received employee contributions.

⁸⁰Section 3229 of the Election Code, entitled "Oath of office; taking office; receiving salary," provides that:

It shall be unlawful to administer the oath of office to any candidate elected to any public office, until the accounts and affidavits required by this act to be filed in respect of the primary expenses . . . and election expenses incurred by or in regard to such candidate have been filed by the candidate and by the treasurer of every political committee authorized, under the provisions of section 1603 of this act, to receive and disburse money and incur liability for his primary or election expenses, or which, to his knowledge, has received or disbursed money or incurred liability for his primary or election expenses, whether authorized as aforesaid or not, and no such person shall enter upon the duties of his office until the said accounts and affidavits shall have been filed; nor shall he receive any salary or other compensation appurtenant to the office for any period prior to the filing of such accounts and affidavits.

Act, 25 P.S. §3229 (1963) (emphasis added).

without having complied with the Election Code's requirements. His complete failure to file an election expense account to report \$43,273.27 of his campaign finances, which were funnelled into and out of his No. 2 account, requires that a full investigation be conducted to determine if Mr. Duggan can legally continue holding office.

The Duggan For D.A. Committee's Election Expense Account Was False And Fraudulent

The second major fund raising effort was conducted through the "Duggan for D.A. Committee."⁸¹ On December 2, 1971, the Duggan for D.A. Committee election expense account, after having been prepared by Mr. Duggan and signed by the Treasurer, William J. Engel, was filed with the Allegheny County Board of Elections. The Duggan for D.A. Committee election expense account listed contributions received in the amount of \$101,501.12, expenditures in the amount of \$96,491.13, and outstanding debts in the amount of \$9,200.80. This election expense account was false in the following material respects: (1) it reported \$24,000 as employee contributions which the Committee never received and thereby failed to report an equal amount which the Committee received; (2) it falsely reported the amounts of contributions from numerous sources; and (3) it falsely reported the dates that contributions were received.

In the spring of 1971, the Duggan for D.A. Committee was organized to solicit funds and to take political action in support of Mr. Duggan's reelection. The Treasurer of this Committee was Richard Mellon Scaife, who had served as Treasurer of this same Committee during Mr. Duggan's two previous campaigns. Mr. Scaife directed the campaign to solicit contributions for Mr. Duggan by mailing requests to potential supporters, including those individuals who had contributed to Mr. Duggan's prior campaigns.

Mr. Scaife's personal secretary, Ruth J. Mohney, was assigned the responsibility of mailing the letters, receiving contributions, and maintaining accurate records in a ledger book of the names of all contributors, the amounts contributed, and the dates received. In addition, Miss Mohney mailed written acknowledgments to each contributor.

Mr. Scaife opened a bank account at Mellon Bank N.A. on June 17, 1971, entitled "Duggan for D.A. Committee," into which all contributions received were deposited. The authorized signators on this account were R. M. Scaife and either Ruth J. Mohney or Herbert V. Frayer, an associate of Mr. Scaife.

⁸¹Three other committees were formed for the purpose of raising campaign contributions: the "Dinner for Duggan Committee"; the "Italian-American Committee for Duggan"; and the "Attorneys for Duggan Committee." None of these committees played a major role in campaign fund raising.

During the summer months of 1971, the Duggan for D.A. Committee received, recorded, and deposited campaign contributions into its account at Mellon Bank N.A. On September 16, 1971, Mr. Scaife resigned as Treasurer for personal reasons. At the time of his resignation, Ruth J. Mohny photocopied all of the Duggan for D.A. Committee records and turned over the originals directly to Mr. Duggan.⁸²

On September 16, 1971, a reconciliation of the Duggan for D.A. Committee bank account at Mellon Bank N.A. reflected that during Mr. Scaife's tenure as Treasurer, \$50,205 had been received, and \$42,000 had been disbursed. The Commission has analyzed the records maintained by Mr. Scaife and his secretary, and has concluded that they accurately reflect all transactions conducted by Mr. Scaife as Treasurer.⁸³

Following Mr. Scaife's resignation, Mr. Duggan assumed control of the Duggan for D.A. Committee bank account at Mellon Bank N.A. Mr. Duggan examined the deposit slips on that account for the period September 16 through December 31, 1971, and testified that he believed that they were all in his handwriting.⁸⁴ In addition, Mr. Duggan kept records during this period of at least some of the contributions received and deposited into the Mellon Bank N.A. account:

Yes, I would have had a list also of people who had sent contributions to me. Some people that gave contributions to me.

* * * * *

I would say if the mail came in to me, I opened it and kept a record and I guess deposited the funds, yes.⁸⁵

During the period following Mr. Scaife's resignation, \$52,056.12 were deposited into the Mellon Bank N.A. account. The bulk of these monies was deposited in cash, including a \$25,000 cash deposit on October 5, 1971.

On either September 16 or September 17, 1971, Mr. Duggan appointed William J. Engel, Esquire, to the position of Treasurer of the Duggan for D.A. Committee. Mr. Engel was, at that time, an assistant district attorney, and an associate of Mr. Duggan's law firm. Mr. Engel was a figurehead Treasurer, and he testified concerning his responsibilities that:

It was my understanding I would have no duties whatsoever other than my name would be used as treasurer, and that I would

⁸²Robert W. Duggan testified that he received Mr. Scaife's records from Miss Mohny. Duggan, N.T. 25.

⁸³Mr. Duggan testified that he believed Mr. Scaife's records were accurate. Duggan, N.T. 41. Mr. Scaife's records listed contributions of \$9,900 represented by Mr. Duggan to have come from Mr. Duggan's employees. Mr. Scaife was not aware of the falsity of this representation. See *infra*.

⁸⁴Duggan, N.T. 58-71.

⁸⁵*Id.* at 24, 26.

file whatever report was necessary to be filed after the election...⁸⁶

Mr. Engel testified that he played no role in either the record keeping, the financial affairs,⁸⁷ or the preparation⁸⁸ of the Committee's election expense report, but rather Mr. Duggan handled all of the financial affairs of the Duggan for D.A. Committee. Mr. Engel acknowledged that he signed⁸⁹ the election expense report but emphasized that the report had been prepared by Mr. Duggan.

Mr. Duggan corroborated Mr. Engel's testimony⁹⁰ and stated that he, in fact, had prepared the Duggan for D.A. Committee election expense report:

... Mr. Engel was really treasurer in name only. I don't think he kept many records.

I think the contributions that came in were sent in to me or given to other people and I pulled the records together and made up this list for Mr. Engel.⁹¹

The Committee's Account Reported \$24,000 as Employee Contributions Which the Committee Never Received and Thereby Failed to Report an Equal Amount Which the Committee Received

The deposit slips on the Committee's account at Mellon Bank N.A. established that a total of \$102,261.12 of campaign contributions was received by the Committee,⁹² and an almost equal amount was reported on the Committee's election expense account.⁹³ The Committee's election expense account, however, lists as part of this \$102,261.12, contributions from 61 employees of the District Attorney's Office totalling \$24,000. Because the Committee never received any of this \$24,000, and because none of this money was deposited into the Committee's bank account, there was an equal amount of money deposited into the Committee's

⁸⁶Testimony of William J. Engel before the Pennsylvania Crime Commission, September 20, 1973, N.T. 30.

⁸⁷*Id.* at 35.

⁸⁸*Id.* at 64.

⁸⁹*Id.* at 64.

⁹⁰Duggan, N.T. 25, 45.

⁹¹*Id.* at 25.

⁹²Mr. Duggan testified that only campaign contributions were deposited into the Committee's bank account. Duggan, N.T. 50.

⁹³The Committee's election expense account reports total contributions received at \$101,501.12, failing, therefore, to report \$760.

account. The sources of this money were not reported on the Committee's election expense account. As a result, the sources of almost 25% of the total contributions deposited into the Committee's bank account have never been disclosed.

Mr. Duggan admitted that contributions were deposited into the Committee's bank account but never reported on its election expense account:

Yes, but I am saying, I know some who are on here [election expense account] whose names were given to me but whose money was deposited in the number two [Robert W. Duggan, No. 2 bank] account. So I am certain that there may have been some deposited in this account [Committee's account at Mellon Bank N.A.] who were not listed as having contributed at all.⁹⁴

The Committee's Account Falsely Reported the Amounts of Contributions From Numerous Sources

The Duggan for D.A. Committee election expense account reported contributions from 61 employees of the District Attorney's office, in the total amount of \$24,000. The Commission's interviews of these employees, including an examination of their records and cancelled checks, established that the amounts of many of their contributions were falsely reported, as the following chart establishes.

FALSE REPORTING OF EMPLOYEE CONTRIBUTIONS

Name of Employee	Reported on Duggan for D.A. Committee Election Expense Account	Actual Contribution
Bryan, R.	\$ 300.00	\$ 290.00
Butler, V.	275.00	283.00
Campbell, A.	800.00	730.00
Campbell, R.	500.00	300.00
Clark, D.	350.00	250.00
Ferraro, J.	600.00	400.00
Fisher, D.	800.00	400.00
Glunt, D.	300.00	286.00
Hammer, J.	300.00	200.00
Hartman, J.	250.00	200.00

⁹⁴Duggan, N.T. 33.

Name of Employee	Reported on Duggan for D.A. Committee Election Expense Account	Actual Contribution
Johnston, J.	200.00	100.00
Krider, W.	300.00	350.00
Los, C.	450.00	425.00
Malasky, R.	200.00	180.00
McCallister, H.	300.00	290.00
Mihm,	350.00	310.00
Paslow, A.	300.00	290.00
Ragano, G.	300.00	200.00
Russell, E.	125.00	50.00
Shuster, M.	255.00	305.00
Sideheimer, M.	300.00	307.00
Sortino, C.	300.00	216.00
Zimmer, J.	750.00	450.00
TOTAL	\$8,605.00	\$6,812.00

Thus, 23 of the 61 employees were falsely reported, including four who gave more than the amount for which they were listed, and 19 who gave less than the amount for which they were listed.

The Committee's Account Falsely Reported the Dates that Contributions were Received

There is practically no correlation between the dates contributions were actually received and the dates listed on the Duggan for D.A. Committee election expense account. Mr. Duggan admitted in his testimony that:

If the question is whether there are certain inaccuracies in the account, I know; for instance, the dates set forth as to the actual receipt of the monies, I don't believe are accurate because I had some discussion, I remember that the dates were not kept when a lot of the contributions were made, so I know that is not accurate.

* * * * *

That is what I am saying to you, I don't think the dates really mean anything because the last few days of the campaign, I am certain I wasn't worrying about making deposits or anybody else was, so God knows what was held over until after the campaign or what came in after the campaign.⁹⁵

⁹⁵Id. at 28, 73.

Mr. Dunn acknowledged that he had not kept the dates of receipt of employee contributions:

... the date I don't think I kept at all. Usually what I would do is either, I always kept a yellow pad right next to me on my desk and I would either write them on a slip, tear off a piece from a yellow pad, the names and what they gave and throw it in my drawer or on one of those small white pads you use for telephones.⁹⁶

Indeed, Mr. Dunn attempted to re-construct the dates of receipt of the employee contributions listed on the Duggan for D.A. Committee election expense account by referring to deposit slips, not on the Committee's own bank account, but rather, from the Robert W. Duggan, No. 2 bank account at Pittsburgh National Bank:

... after he [Duggan] was upset about not having the dates, I think I went back and asked and looked at the deposit slips [Robert W. Duggan, No. 2 account] and then ... where it showed September whatever it was 7th, for a lot of contributions I said well they all gave that date.⁹⁷

Mr. Duggan testified at length that it was haphazard and inaccurate record keeping which produced many of the inaccuracies in the Committee's election expense account.⁹⁸ Substantial evidence uncovered by the Commission's investigation establishes that the violations may have resulted from a scheme to conceal the identity of sources of substantial cash contributions and to cover up material evidence of macing in the District Attorney's Office.

Mr. Duggan Concealed the Sources of Cash Contributions

In August 1971, Mr. Duggan sent to Mr. Scaife a brown envelope containing \$9,900 in cash, accompanied by a personal note which read:

Dick:

Enclosed are some of my staff members' contributions. Will forward their names to you early next week. Ruth does not have to acknowledge these as I have spoken to each of them individually.

Please call if you have a minute.

Bob

⁹⁶Dunn, N.T. 152.

⁹⁷*Id.* at 197-198.

⁹⁸Duggan, N.T. 184-187.

This cash transfer took Mr. Scaife and his secretary, Miss Ruth J. Mohney, by surprise.⁹⁹ Although on infrequent occasions Mr. Duggan had sent to Mr. Scaife checks in small amounts representing campaign contributions which he had received from various sources, a transfer of this magnitude in cash had never before taken place.¹⁰⁰ Indeed, there had been no prior cash transfers from Mr. Duggan to Mr. Scaife.

The request in this note, that "Ruth was not to acknowledge these [contributions]," was unusual because of her uniform practice of sending written acknowledgments to all contributors. Mr. Scaife instructed Miss Mohney to contact Mr. Duggan immediately in order to secure a list of the specific contributors and amounts constituting the \$9,900.¹⁰¹

Shortly thereafter, Mr. Duggan sent to Mr. Scaife an itemized list of the employees and amounts allegedly constituting the \$9,900, with a note which instructed Miss Mohney "to send receipts to the donors in care of the District Attorney's Office."

Upon receipt of the list, Miss Mohney deposited the \$9,900 into the Duggan for D.A. Committee account at Mellon Bank N.A. and accurately recorded the names on the list in her ledger book on September 2, 1971.¹⁰²

The Commission's investigation has established that this list provided by Mr. Duggan to Mr. Scaife was false, and that the names and amounts on this list could not have been the source of the \$9,900 in cash.

The Commission interviewed 28 of the 29 individuals¹⁰³ named on the list. The results of those interviews showed that one employee did not make a campaign contribution; 18 employees contributed by check,¹⁰⁴ and although 9 employees made a cash contribution, 5 of them contributed a different amount than the amount contained on Mr. Duggan's list. Thus, at best, it would have been possible for only 4 of the 28 employees to have made the contributions for which they were listed.¹⁰⁵

Mr. Duggan also testified that he believed Mr. Scaife's records were accurate and that he copied them in his preparation of the Duggan for D.A. Committee election expense report.¹⁰⁶ The facts prove that Mr. Duggan

⁹⁹Interviews with Richard Mellon Scaife and Ruth J. Mohney, August 20, 1973.

¹⁰⁰*Id.*

¹⁰¹*Id.*

¹⁰²*Id.*

¹⁰³One employee was deceased at the time of the Commission's investigation.

¹⁰⁴Mr. Duggan admitted that he had no reason to cash campaign contributions received in the form of checks prior to sending the money to Scaife. Duggan, N.T. 53-54. Therefore, none of these 18 employees contributed any part of the \$9,900 in cash transferred to Mr. Scaife. The Commission obtained 14 cancelled checks from these 18 employees, 13 of which had been deposited into the No. 2 bank account.

¹⁰⁵None of these 4 employees recalled the specific dates of their contributions.

¹⁰⁶The only occasion on which Mr. Duggan did not use Mr. Scaife's records may have occurred if a contributor listed on Mr. Scaife's records gave a second time. Duggan, N.T. 43.

altered the Scaife records with respect to the \$9,900 when he prepared the election expense report, as the following chart reflects.

DISCREPANCIES IN THE \$9,900 LIST

Names of Contributors	Amounts				
	Duggan List	Scaife Records	Actual Contributions	Duggan for D.A. Comm. Election Expense Report	
1. Virgil N. Caputo, Esq.	\$ 450	\$ 450	\$ 400	-0-	Cash
2. Martha Halterlein	300	300	300	\$ 300	Check
3. Genevieve Ragano	300	300	200	300	Check
4. Millicent Sideheimer	300	300	307	300	Check
5. Dorothy Acoury	300	300	200	-0-	Check
6. Neil Buckley	300	300	180	-0-	Check
7. William Krider	300	300	350	300	Cash
8. Edward A. Fagan, Esq.	450	450	450	450	Check
9. Dricilla Clark	350	350	250	350	Cash
10. James Zimmer, Esq.	450	450	450	750	Check
11. James Wymard, Esq.	450	450	1,000	1,000	Check
12. Cornelius J. Clogan	300	300	??†	-0-	??†
13. Lain Lee	300	300	300	300	Cash
14. Joseph Ferraro, Esq.	450	450	400	600	Check
15. Carol Los, Esq.	450	450	425	450	Check
16. Annabell Johnson	300	300	200	-0-	Check
17. Alice Samremy	300	300	300	300	Cash
18. Harold Hunt	300	300	300	300	Cash
19. Robert Cindrich, Esq.	400	400	300	700	Check
20. A. B. Campbell, Esq.	450	450	730	800	Check
21. Wilfred Malcolmson	300	300	150	-0-	Cash
22. Martha Brooke	300	300	200	-0-	Check
23. Howard Thompson	300	300	-0-	-0-	-0-
24. Kent Culley, Esq.	250	250	250	250	Check
25. Anne Mason	300	300	100	-0-	Check
26. William Cordero	350	350	330	330	Cash
27. Carmel Sortino	300	300	216	300	Check
28. Donald Glunt	300	300	286	300	Check
29. Norman Green, Esq.	300	300	300	300	Cash
TOTALS	\$9,900	\$9,900	\$8,874†	\$8,680	‡

†Deceased, unable to verify; could possibly alter Actual Contributions total.

‡Note: Mr. Duggan listed all as cash contributions.

As the above chart indicates, the Duggan for D.A. Committee election expense report contains a number of material misstatements of Mr. Scaife's records in connection with this \$9,900. The names of 9 contributors which were contained on the Duggan list, and contained on Scaife's records, were deleted from the Duggan for D.A. Committee election expense account. The amounts alongside the names of 6 contributors on Duggan's list were misstated.

Mr. Duggan had originally prepared the list of employees from whom contributions totalling \$9,900 allegedly had been received; these amounts had been entered meticulously in Scaife's records which were returned to Mr. Duggan on September 16, 1971. The records were in Mr. Duggan's possession, yet he falsely reported the information in the preparation of the Duggan for D.A. Committee election expense account. Mr. Duggan was asked why the names of nine employees contained on his list had been deleted from the Committee's election expense account. Mr. Duggan could offer no explanation for these alterations:¹⁰⁷

Q: ... Now, underneath Mr. Campbell there is a Wilfred Malcolmson listed for \$300 and his name is excluded from this list on Exhibit 1 [Duggan for D.A. Committee's election expense account].

A: Again, I don't know why his name is not on the list.

Q: And I think the same is true for Martha Brook who is listed on 119A [Duggan's list to Scaife of \$9,900 contributors] but not listed on Exhibit 1.

A: Again, the same answer would apply.

Q: And the same is true for the next name on the list which is Howard Thompson?

A: Again, I don't know why it is not on there.

Q: Skipping over, the next name is Ann Mason who is listed as having contributed \$300 and yet she also is not listed on Exhibit 1.

A: Again, I don't know why the name is not there.¹⁰⁸

Miss Mohney prepared acknowledgment letters for each of the names contained on Mr. Duggan's \$9,900 list and sent them to Mr. Duggan's personal secretary, Maria Schuetz, with the following note attached:

September 7, 1971

Dear Maria—

Please distribute these envelopes for us.

Thank you.

Enclosures

Ruth Mohney

¹⁰⁷Duggan, N.T. 206-213.

¹⁰⁸Id. at 211-212.

Maria Schuetz testified that she had no recollection of either receiving or delivering these acknowledgment letters.¹⁰⁹ Not one of the 29 individuals contained on Duggan's list recalled receiving the acknowledgment notes prepared by Ruth Mohny and delivered to Maria Schuetz.

Mr. Duggan testified that he had no recollection concerning the \$9,900 transaction or the acknowledgment letters which followed.¹¹⁰

The Commission is aware of the testimony of Anthony M. "Tony" Grosso at the recent trial of Samuel G. Ferraro,¹¹¹ former Chief of the Allegheny County Detective Bureau's Racket Squad.¹¹² Grosso testified that he made regular monthly payments to Ferraro in the amount of \$4,950. Grosso further testified that these payments were made between the first and the 10th of each month and that if he missed a monthly payment, he would pay double the next month, or \$9,900. Grosso also testified that these payments were always in cash, were in denominations of \$50's and \$100's,¹¹³ and that he continued payments up to July 1971. Grosso's brother, Sam, also testified that payments of \$4,950 per month continued until mid-July 1971.

Mr. Duggan denied receiving contributions in the amount of \$5,000 or more from any single source and specifically denied receiving this \$9,900 from a single source.¹¹⁴ In light of the fact that Mr. Duggan's list of the sources of the \$9,900 is substantially false, the Commission is continuing its investigation.

Mr. Duggan handled a substantial amount of cash during the course of his campaign. During the period that Mr. Scaife was Treasurer, the Committee received \$50,205 worth of contributions. Only two cash contributions, totalling \$580, had been received by the Committee prior to the time Mr. Duggan sent to Mr. Scaife the \$9,900. Documentary evidence established that Mr. Duggan attempted to conceal the identity of the source of this \$9,900 cash contribution by falsely stating that it had come from his employees.

The pattern of Mr. Duggan's deposits into the Committee's bank account at Mellon Bank N.A. suggests that he tried to conceal the source of some of those deposits. Following Mr. Scaife's resignation on September 16, 1971,

¹⁰⁹Testimony of Maria Schuetz before the Pennsylvania Crime Commission, September 28, 1973, N.T. 210.

¹¹⁰Duggan, N.T. 188.

¹¹¹Mr. Ferraro was indicted for income tax evasion and conspiracy to obstruct enforcement of State gambling laws. 18 U.S.C. §1511 (Supp. 1974). Mr. Ferraro was found guilty on November 2, 1973 on all counts and was sentenced to six years imprisonment, a \$30,000 fine, and five years probation.

¹¹²The Allegheny County Detective Bureau is a division in the District Attorney's office.

¹¹³Mr. Scaife recalls that the package of \$9,900 in cash sent to him by Mr. Duggan consisted of all \$100 bills. Miss Mohny believes that the bills were in \$50 and \$100 denominations, but is not certain whether there were any \$20 bills included.

¹¹⁴Duggan, N.T. 198.

an additional \$52,056.12 was deposited into the Committee's account by Mr. Duggan, 60% of which was in cash. The following deposits were made by Mr. Duggan:

CHART OF DUGGAN'S DEPOSITS

Date of Deposit	Type of Deposit		Total Deposit
	Cash	Check	
09/29/71	\$	\$ 875.00	\$ 875.00
09/29/71	1,200.00		1,200.00
10/05/71	25,000.00		25,000.00
10/15/71		9,400.00†	9,400.00
10/29/71		500.00	500.00
10/29/71		4,320.00‡	4,320.00
11/02/71		100.00	100.00
11/16/71	300.00	1,096.00	1,396.00
11/30/71	5,090.00	175.12	5,265.12
12/17/71		4,000.00	4,000.00
Sub-Total	\$31,590.00	\$20,466.12	\$52,056.12
TOTAL		<u>\$52,056.12</u>	

†Includes one check for \$8,000 from the Dinner for Duggan Committee.

‡Includes one check for \$2,800 from the Dinner for Duggan Committee.

Mr. Duggan testified that the \$25,000 cash deposit on October 5, 1971 represented an accumulation of small contributions which he kept in his safe.¹¹⁵ He testified that he did not receive \$5,000 or more from a single source,¹¹⁶ and the largest contribution he listed on the Committee's election expense account was \$1,500.¹¹⁷ Mr. Duggan also testified that, "a week would be long" for him to accumulate money in his safe prior to depositing it.¹¹⁸ When asked to explain the circumstances surrounding the

¹¹⁵*Id.*, at 61.

¹¹⁶*Id.*, at 51.

¹¹⁷During the period that Mr. Scaife was Treasurer, several contributions in larger amounts were received and properly recorded.

¹¹⁸Duggan, N.T. 57.

receipt of this \$25,000 in cash, Mr. Duggan's response was as follows:

Q: Do you remember the specific circumstances surrounding your realization that you had \$25,000 in your safe and you ought to have it deposited?

A: No.¹¹⁹

Mr. Duggan's testimony concerning the accumulation of this \$25,000 is unbelievable. He had made a previous cash deposit of \$1,200 on September 29, 1971, giving him only six days to accumulate this \$25,000 in cash. In those six days, he claimed that he was able to accumulate almost 25% of the total contributions received by the Committee. It had taken Mr. Scaife, an experienced fund raiser, four months to solicit a total of approximately \$50,000; it took Mr. Duggan six days, even though he admittedly had no time to solicit contributions,¹²⁰ to accumulate \$25,000. Moreover, all of these contributions were in cash, and when totalled, equalled the even sum of \$25,000. These contributions were received during the period of time that Mr. Duggan was in control of the Duggan for D.A. Committee and admittedly keeping records of contributions.¹²¹ Notwithstanding this fact, the Duggan for D.A. Committee election expense account lists between the dates September 29, 1971 and October 5, 1971, only \$2,435 as having come from nine contributors.¹²²

Mr. Duggan deposited \$52,056.12 into the Committee's bank account after Mr. Scaife's resignation, and listed on the Committee's election expense account 133 names as the sources of this figure. For every source listed who did not contribute any part of this \$52,056.12, there exists a source, or sources, who were not reported.

Approximately \$10,000 of this \$52,056.12 came from the Dinner for Duggan Committee. To account for a substantial percentage of the remaining \$42,056.12, \$31,590 of which was cash, Mr. Duggan listed on the Duggan for D.A. Committee's election expense account, contributions from 41 of his employees, totalling \$14,100.¹²³

¹¹⁹*Id.* at 62.

¹²⁰*Id.* at 38.

¹²¹*Id.* at 25.

¹²²Four of these nine contributions were falsely over-reported in the total amount of \$650.

¹²³Mr. Scaife's records listed contributions of \$9,900, falsely reported by Mr. Duggan, to have come from 29 of his employees. When Mr. Duggan prepared the Committee's election expense account, he altered Mr. Scaife's records; he eliminated the names of 9 of the 29 employees; he altered the amounts that many of the remaining 20 employees had been listed as contributing; and he ultimately listed these 20 employees on the Committee's election expense account as having contributed \$8,680. He thus understated the \$9,900 by \$1,220. Mr. Duggan then added the names of an additional 41 of his employees and listed their total contributions to be \$15,320. The amount allegedly contributed by these 41 employees should have been listed as \$14,100, because of the understatement of \$1,220, in connection with the \$9,900.

The contributions from these 41 employees, almost without exception, were never received by the Duggan for D.A. Committee, nor deposited into the Committee's bank account. Rather, they were collected within the District Attorney's office and deposited by Mr. Dunn, as part of the \$36,272.30 of employee contributions, into the Robert W. Duggan, No. 2 bank account. The Commission obtained 13 cancelled checks from these 41 employees, 11 of which were not deposited into the Committee's bank account. Because a very substantial percentage of this \$14,100 did not constitute any part of the \$52,056.12 deposited by Mr. Duggan, there exists an equal amount which he deposited into the Committee's bank account, the source, or sources, of which has never been disclosed.

The Committee's Report Covered-Up Material Evidence of Macing in the District Attorney's Office

Criminal macing is defined by Section 2374 of the election laws as follows:

It shall be unlawful for any political committee or any member, employe, or agent thereof, or for any public officer or employe, or any other person whatsoever, directly or indirectly, to demand from any public officer, subordinate or employe holding any office or position of honor, trust or profit under this Commonwealth, or otherwise engaged or employed in the service of the Commonwealth, or employed by, or in any way engaged in the service of, any political subdivision. . . . any assessment or percentage of any money or profit, or their equivalent in any thing of value, with the understanding, express or implied, that the same may be used or shall be used for political purposes: Provided, however, That nothing in this act contained shall be construed to prohibit voluntary contributions to any political committee or organization for legitimate political and campaign purposes to the extent such contributions are not prohibited by law.¹²⁴

It is a misdemeanor to violate this provision of the election laws, punishable by a fine not exceeding \$1,000, or imprisonment of one year, or both.¹²⁵

Facts such as (a) the use of formulas, (b) assessments, and (c) suggested deadlines for contributions, constitute important probative evidence of macing. The Duggan for D.A. Committee election expense account appears to have been falsified to cover up the evidence of these facts.

¹²⁴Act of April 6, 1939, P.L. 16, §1, 25 P.S. §2374 (1963) (emphasis added).

¹²⁵Act of April 6, 1939, P.L. 16, §2, 25 P.S. §2375 (1963).

The Commission's investigation into the fund raising activities within the District Attorney's Office established the following:

- (1) Mr. Duggan assigned to Mr. Dunn the job of fund raising from the employees of the District Attorney's office;
- (2) Mr. Dunn prepared a mathematical formula to compute the amounts that practically every employee of the District Attorney's office would be assessed;
- (3) Mr. Dunn and at least four other Department Supervisors contacted the employees within their respective departments and communicated the "expected" amounts;
- (4) A deadline of September 1, 1971, was communicated to many of the employees;¹²⁶ and
- (5) Every employee, almost without exception, expected to lose his job if Mr. Duggan was not re-elected.

As a result of these extensive fund raising efforts, employee contributions poured into Mr. Dunn's hands during the campaign. Many of the employees made contributions in rather unusual and peculiar denominations because these were the precise figures "suggested" to them.

The Duggan for D.A. Committee election expense account does not report a single employee contribution in an unusual or peculiar amount, as the following chart indicates.¹²⁷

¹²⁶O'Neill's personal diary indicated a deadline of September 1, 1971. See *supra*. Crone, N.T. 71; Koval, N.T. 116; Butler, N.T. 92; Pope, N.T. 28, 32; and Statement of Albert F. Paslow dated August 7, 1973.

¹²⁷The only possible exception to this practice is the reporting of the contributions received from Maurice D. Shuster. Mr. Shuster contributed a total of \$305 by five separate checks: \$100 by check dated September 7, 1971; \$50 dated September 22, 1971, \$50 dated October 4, 1971; \$50 dated October 19, 1971; and \$55 dated November 1, 1971. The Duggan for D.A. Committee's election expense account lists a \$200 contribution from Maurice D. Shuster as having been received on July 13, 1971. There is an additional contribution of \$55 listed as having been received from an M. D. Shuster on October 29, 1971.

DISCREPANCIES IN AMOUNTS RECORDED

Name of Employee	Actual Contribution	Duggan for D.A. Com. Election Expense Account
1. Jennings, W.	\$ 345.00	\$ -0-
2. Joller	330.00	-0-
3. Ringel, F.	330.00	-0-
4. Sherwood, F.	330.00	-0-
5. Sideheimer, M.	307.00	300.00
6. Shuster, M.	305.00	200.00†
7. Bryan, R.	290.00	300.00
8. McCallister, H.	290.00	300.00
9. Paslow, A.	290.00	300.00
10. Glunt, D.	286.00	300.00
11. Butler, V.	283.00	275.00
12. Bliss, W.	270.00	-0-
13. Frederick, J.	270.00	-0-
14. Saccani, D.	270.00	-0-
15. Downey, C.	235.00	-0-
16. Holubiak, V.	216.00	-0-
17. Sortino, C.	216.00	300.00
18. Bronowicz, L.	195.00	-0-
19. Buckley, N.	180.00	-0-
20. Malasky, R.	180.00	200.00
21. Schomaker, R.	130.00	-0-
22. Pope, J.	430.00	430.00
23. Cordero, W.	330.00	330.00
24. Klatman, F.	310.00	310.00
25. Schifino, N.	250.00	250.00
TOTAL	\$6,868.00	\$3,795.00

†There is an additional contribution of \$55 listed as having been received from an M. D. Shuster on October 29, 1971.

Shortly after his re-election, Mr. Duggan fired seven of his employees. On November 6, 1971, the *Pittsburgh Press* newspaper carried an article concerning these dismissals and contained allegations from some of these discharged employees that they had been maced for campaign contributions, based upon a complex mathematical formula. Mr. Duggan may have been aware at the time he prepared the Committee's election expense account that there might be an investigation into his campaign practices. He may have realized that if the Committee's election expense account reported contributions in odd denominations from scores of his employees,

suspicion might be aroused. Every employee contribution in an odd denomination was either rounded off on the Duggan for D.A. Committee election expense account or not reported at all, except the four employees who had been discharged—Messrs. Pope, Cordero, Klatman, and Schifino.¹²⁸

The "suggested" deadline of September 1, 1971, produced employee contributions in the amount of \$15,292 during the first week in September, 1971. This \$15,292 was deposited by Mr. Dunn into the Robert W. Duggan, No. 2 bank account on September 7, 1971.

Mr. Dunn testified that he did not maintain the dates on which employee contributions were received and that he examined the deposit slips on the Robert W. Duggan, No. 2 bank account in order to re-construct the dates.¹²⁹ If such a review had actually taken place, it would have revealed these large numbers of contributions received in the first week of September. The Duggan for D.A. Committee election expense account does not reflect a single employee contribution as having been received in the first week of September except those employee contributions which were recorded falsely on Mr. Duggan's \$9,900 list.

The failure to list on the Duggan for D.A. Committee election expense account the precise figures actually contributed by many of the employees, and the large amount of employee contributions received in the first week of September 1971, strongly suggests a deliberate effort to cover up material evidence of macing.

Section 3227 of the Election Code¹³⁰ requires that every candidate and every treasurer of a political committee file a full, true, and detailed election expense account setting forth each and every sum of money received, the date of each receipt, the name of the person from whom received, and the purpose of each expenditure. It is a misdemeanor to violate this provision of the Election Code, punishable by a fine not exceeding \$1,000, or imprisonment of not less than one month nor more than two years, or both.¹³¹

In interpreting these provisions of the Election Code, the Pennsylvania courts have uniformly held that inadvertent errors on an election expense account do not warrant criminal prosecution; rather, there must be proof that the errors resulted from fraud or corruption.¹³²

The facts uncovered by the Commission establish that the Duggan for D.A. Committee election expense account, prepared by Mr. Duggan, was deliberately falsified. The election expense account failed to report the

¹²⁸The other three discharged employees did not contribute to the campaign.

¹²⁹Dunn, N.T. 196-198.

¹³⁰Act, 25 P.S. §3227 (Supp. 1974).

¹³¹Act, 25 P.S. §3545 (1963).

¹³²See note 11 *supra*.

sources of almost 25% of the total contributions received by the Committee; the dates of receipt of contributions were totally inoperative; and many of the amounts listed as having been contributed by specific individuals were false.

The concealment of the source of almost \$24,000 deposited into the Duggan for D.A. Committee's bank account by falsely reporting that this money came from employees of the District Attorney's office and rounding off employee contributions to even dollar amounts, all suggest that the Committee's election expense account was falsified because of a fraudulent and corrupt motive.

Conclusion

Inadvertent errors and small mistakes frequently occur in the post-election haste to prepare timely election expense accounts. The Commission is not concerned with errors of this nature.

The types of errors uncovered by the Commission's investigation were neither inadvertent nor small. The facts indicate that the errors resulted from a scheme to conceal the sources of cash contributions and the conduct which took place in the District Attorney's office. The complex financial transactions which took place appear to have been deliberately designed to obfuscate and cover-up this conduct.

The magnitude of the falsification is substantial. The sources of approximately \$24,000 in contributions were deliberately concealed; the source of \$9,900 in cash, deposited on September 2, 1971, was concealed from the Treasurer of the Duggan for D.A. Committee, and then further falsified on the Committee's election expense account; and, the source of almost \$14,100 deposited by Mr. Duggan was falsely attributed to his employees. In addition, employee contributions of \$12,272.30 were never reported, nor were \$31,000.97 of campaign expenditures reported. Thus, a total of \$68,033.27¹³³ was never reported.

RECOMMENDATIONS

For Legal Proceedings

The Pennsylvania Crime Commission's investigation into the adequacy of the Pennsylvania Election Code has now been completed. The nine-month investigation uncovered major deficiencies in the Election Code as

¹³³The total of \$68,033.27 is computed as follows: \$24,000 + \$12,272.30 + \$31,000.97 + \$760. The \$760 represents the difference between the total amount deposited into the Duggan for D.A. Committee bank account (\$102,261.12), and the total amount reported on the Committee's election expense account (\$101,501.12).

well as evidence that the District Attorney of Allegheny County, Robert W. Duggan, failed to comply with a number of provisions of the Code in connection with his campaign for re-election in 1971. The Commission believes that the evidence uncovered is so serious that it must be referred to the Attorney General in order to determine if further action is warranted.¹³⁴

The cornerstone of the Election Code is embodied in Section 3227 which requires that a candidate, after each election, file an expense account which must list all contributions received, the names of all contributors, the amounts contributed, the dates of each contribution and all campaign expenditures.¹³⁵ Section 3545 of the Code makes it a misdemeanor punishable by a fine not exceeding one thousand (\$1,000) dollars, or imprisonment of not less than one (1) month nor more than two (2) years, or both, to violate any part of Section 3227's reporting requirements.¹³⁶

The Commission's investigation established that two major separate fund raising efforts were conducted to raise money for Mr. Duggan's campaign. One of these efforts, conducted through the Duggan for D.A. Committee, raised \$102,261.12 in campaign contributions.

The Committee's election expense account, which was prepared by Mr. Duggan, violated almost every provision of Section 3227. The account failed to report the identity of the sources of almost \$24,000 in contributions; the account falsely reported the amount of contributions from more than twenty-two separate contributors; and the account falsely reported the dates that many contributions were received. Compelling evidence uncovered by the Commission indicates that the Committee's election expense account was falsified by Mr. Duggan as part of a plan to conceal the identity of the sources of a substantial percentage of the money received by Mr. Duggan and deposited into the Committee's bank account.

The other major fund raising effort was conducted covertly within Mr. Duggan's office to raise money from his employees. This effort was conducted without formation of a political committee, without a treasurer, and without written authorization from Mr. Duggan, all in contravention of a number of specific provisions of the Election Code.

This fund raising drive raised \$36,272.30 in employee contributions which were systematically deposited into Mr. Duggan's No. 2 bank account at Pittsburgh National Bank. Mr. Duggan spent \$31,990.97 from this account to pay for campaign expenditures.

Notwithstanding this massive fund raising effort, Mr. Duggan filed no election expense account whatsoever as required by Section 3227 to report

¹³⁴Under the Second Class County Code, a citizen may request the court to appoint a competent attorney to prepare an indictment and prosecute the district attorney if the district attorney is charged with any crime or misdemeanor. Act of July 28, 1953, P.L. 723, § 1406, 16 P.S. § 4406 (1956).

¹³⁵Act, 25 P.S. § 3227 (Supp. 1974).

¹³⁶Act, 25 P.S. § 3545 (1963).

these activities. Rather, it appears that he attempted to conceal the extent of these activities by reporting a small part of them on the Duggan for D.A. Committee's election expense account. As a result, there was a total failure to report \$43,273.27 of his campaign finances in connection with this fund raising effort. Section 3229 of the Code expressly forbids a candidate from assuming the duties of his office and from receiving any salary unless he has filed all of the necessary election expense accounts.

Mr. Duggan's violations of the Election Code cast a serious shadow on the District Attorney's office in Allegheny County which must be resolved quickly. The Commission will turn over all of its findings to the Attorney General of the Commonwealth of Pennsylvania with the recommendation that he review the evidence for appropriate action.

For Legislative Action

The tragedy of Watergate has served to highlight the overriding necessity for strong, enforceable election laws to regulate all aspects of campaign financing. Although significant changes in the Federal election laws seem imminent, there is a pressing need for each state to review its own election laws in order to restore the public's confidence in the integrity of the election process, particularly in the area of campaign financing practices.

Pennsylvania's Election Code regulating campaign financing was passed in 1937, and since that time has neither been enforced nor re-examined on any consistent basis. Indeed, there has not been a single reported criminal prosecution instituted since 1937 against either a candidate or a political committee for failure to account accurately for campaign financing activities. As a direct result, Pennsylvania's election laws have become obsolete and currently have little, if any, deterrent effect on illegal campaign practices.

The cornerstone of the Pennsylvania Election Code is contained in its provisions which require every candidate and every political committee to file a full detailed report, thirty (30) days after each election, to account for all monies received and expended. This report must include a specific itemization of the names of all contributors, the amounts contributed, the dates of receipt of contributions, and the specific purpose for which all monies were disbursed.¹³⁷ The concept of full disclosure of all campaign financing is essential; the public has the right to know who has contributed to each candidate's campaign and how that money has been spent.

... Our democratic form of government suffers irremediable harm when our political parties or committees violate the spirit as

¹³⁷Act, 25 P.S. § 3227 (Supp. 1974).

well as the letter of the law and no more serious violation occurs than in the area of unaccounted political expenditures.¹³⁸

The Commission's case study into campaign financing practices has uncovered a number of instances in which Mr. Duggan failed to comply with the provisions of the Election Code in connection with his campaign for re-election in 1971. Mr. Duggan: (a) prepared a false election expense account for the Duggan for D.A. Committee; (b) failed to file any election expense account whatsoever to account for the extensive campaign financing activities conducted within his Office; and (c) permitted massive fund raising to take place without the formation of a political committee, without appointment of a treasurer, and without his written authorization.

One of the Commission's principle responsibilities in connection with this investigation has been to analyze the conduct uncovered in terms of why it occurred, why it was not discovered until now, and whether or not the Election Code must be reformed in order to prevent the type of conduct uncovered from occurring in the future.¹³⁹

The Commission has concluded that there is a serious inherent defect in the Election Code which must be immediately cured if the Code is ever to regulate effectively campaign financing. The defect lies not in the Election Code's full disclosure concept. Rather, the problem exists because of the Election Code's failure to create specifically an effective mechanism for enforcement of the full disclosure provisions.

Under the Election Code, the initial burden for enforcement of the full disclosure provisions is placed on the public. Section 3231 permits any five members of the public to institute a formal audit of any election expense account by filing a petition in the proper court. Conceptually, there is considerable merit for involving the public in the process of seeking review of campaign financing practices. The failure lies not in conferring such power on the public, but rather in the fact that there is no specific delegation of similar responsibility in the Election Code for performing this same function on either a qualified law enforcement official or governmental agency.

The record of the current system has been an abysmal failure. Since the creation of the Election Code in 1937 to January 1973, there have been only

¹³⁸*Lurie v. Republican Alliance*, 412 Pa. 61, 67 (1963) (dissenting opinion).

¹³⁹There is currently a bill, entitled "House Bill 746," which has been introduced in the Pennsylvania House of Representatives, which would, if adopted, totally revamp and reform Pennsylvania's campaign financing laws. The Commission believes that House Bill 746 should be given immediate consideration because it is an important step toward reform of the entire Election Code. House Bill 746 has been carefully modeled after the Federal Election Campaigns Act which became effective in 1972. The Commission believes that many of its recommendations closely parallel the recommendations in House Bill 746 and should be read in conjunction with the Bill to provide effective reform of Pennsylvania's election laws.

five reported cases in which the public sought to audit an election expense account. During this same period, there has not been a single reported prosecution of any public official or political committee for violations of the Election Code's campaign financing reporting requirements. Regardless of how well intentioned any law is, it can not work if it is not effectively enforced.

Longlasting reform of the Election Code is dependent upon the creation of a viable and effective system of enforcement of its provisions. To accomplish this objective, the public's continued involvement in initiating investigations into campaign financing activities is both desirable and necessary. This remedy, standing alone, has proven to be inadequate. It must be buttressed by specific delegation of responsibility for enforcement of the Code's provisions to an appropriate governmental body.¹⁴⁰

There are several feasible alternatives for accomplishing the desired results of the creation of an effective governmental enforcement unit. One method would be to augment the resources and authority of the existing County boards of election. Under the current system, the County boards of election have neither the authority nor the manpower to police any of the Election Code's campaign financing provisions. However, their power and resources could be easily expanded by establishing an enforcement branch within each board so that they could become an effective vehicle for insuring compliance with the Election Code.

Under the proposed system, the County boards of election would not only be responsive to investigating the merits of citizens' complaints, but would be required to conduct on their own initiative independent audits of election expense accounts on at least a random basis. It would be necessary for the boards of election to conduct a sufficient number of audits to have a deterrent effect upon potential violators.¹⁴¹ In addition to augmenting the boards of election for countywide campaigns, the office of the Secretary of

¹⁴⁰House Bill 746 contains provisions which would provide an important step toward this goal. The public's right to initiate investigations into violations of the campaign financing provisions is retained. Under the proposed Bill, any person may make a written complaint concerning a violation to the "Supervisory Officer." (Supervisory Officer is defined by the proposed Bill as the County boards of election and the Secretary of the Commonwealth.) If the Supervisory Officer determines that there is substantial reason to believe that a violation has occurred, he shall expeditiously make an investigation. In addition, the Supervisory Officer is authorized on his own initiative to make from time to time audits and field investigations into the accuracy of reports filed and whether there has been a failure to file all of the necessary reports.

¹⁴¹Although House Bill 746 authorizes the Supervisory Officers to make from time to time audits and field investigations, the Commission believes this provision must be strengthened to mandate that a significant number of audits be conducted.

the Commonwealth would have to be expanded and given similar power in order to police statewide elections.¹⁴²

A second alternative would be to create an independent investigative commission or agency whose exclusive function would be the policing of all provisions of the Election Code. Such a commission or agency would have to be granted sufficient powers and resources, including broad subpoena powers, in order to achieve effectively its mandate. In addition, this unit would have to be independent of the political spectrum and governed on a non-partisan basis.

The concept of creating this type of governmental commission is not novel. The State of Washington recently enacted a sweeping series of statutes¹⁴³ regulating campaign finance activities which include the creation of a commission entitled the "Public Disclosure Commission." The sole responsibility of this Commission is to police and enforce Washington's campaign laws. This Commission is comprised of five members, appointed by the Governor, with the consent of the Senate. All appointees must be persons of the highest integrity, and not more than three members of this Commission can come from the same political party. This Commission has broad powers, including the power to administer oaths, subpoena witnesses, compel attendance at hearings, and gather all relevant documentary evidence. In addition, this Commission has the power to make public the fact that an alleged or apparent violation has occurred. Evidence of violations must be turned over by this Commission to the appropriate law enforcement body.

In addition, the Washington statute contains a novel series of civil remedies for the enforcement of its campaign financing provisions. Included in these remedies are the power to render void any election which has been influenced by violations of the campaign financing laws. Moreover, the civil remedies include stiff fines. Finally, there is a provision in the Washington statute which permits under certain circumstances a citizen to institute a civil action alleging violations of the campaign financing provisions; and, if such allegations are proven, the citizen is entitled to receive fifty (50%) percent of any judgment awarded. Moreover, if, in the course of the citizen's suit, violations are uncovered which have been intentionally committed, the amount of the judgment may be trebled as punitive damages.

Election expense accounts are frequently extremely complex and voluminous documents listing hundreds of thousands of dollars and thousands of names of contributors and recipients of expenditures. In light of

¹⁴²House Bill 746 does not confer upon the Supervisory Officers specific powers to enable them to conduct adequate audits and investigations. It is essential that the Supervisory Officers be given powers such as subpoena power and the power to hold hearings in order that they can effectively accomplish enforcement of the Election Code's provisions.

¹⁴³Wash. Legis. Serv. 1973-3.

the fact that all governmental agencies and business concerns are responsible for their financial conduct and are audited on a frequent basis, it is difficult to understand why campaign financing practices are not subject to the same scrutiny.

In addition to the creation of a viable mechanism to achieve vigorous enforcement of the Election Code, there is a recognizable need to plug a series of loopholes which currently exist in the present Election Code. One of the most glaring loopholes in the Election Code is its failure to limit the size of cash contributions. There is no legitimate need for massive cash contributions; they serve only to raise the specter of dishonesty and illegality. Of equal importance is the difficulty of tracing the source of any cash contribution. It is thus recommended that the Election Code be amended to include a specific provision forbidding cash contributions from a single source in excess of \$25.¹⁴⁴

Similarly, the present Election Code does not regulate the size of cash purchases of tickets to political fund raising affairs. Because ticket purchases to political affairs often involve substantial sums of money, a serious loophole would exist if there were not a strict limitation on the use of cash in connection with these purchases. It is thus recommended that a provision be added to the Election Code which would prohibit a cash purchase of tickets in excess of \$25.

Along the same lines, the present Election Code contains no provisions regulating the size of cash expenditures. Any campaign expenditure can be made as easily by check as by cash, and is much more easily traceable. It is therefore recommended that the Election Code be amended to include a specific prohibition against cash expenditures in excess of \$25.

One of the additional problems in the current Election Code is the absence of provisions which facilitate the auditing and verification of the accuracy of election expense accounts which have been filed. For instance, there are no provisions in the Code which require that all funds received by either a candidate or a political committee be deposited in a bank prior to being expended, nor are there any provisions which require the filing of all material bank records. Such requirements would increase the accountability of both the candidate and all political committees and would deter violations of the campaign financing regulations.

It is thus recommended that candidates and political committees be required to handle all of their financial activities through a bank and then file, as part of their election expense accounts, a complete set of all of their

¹⁴⁴House Bill 746 contains an important limitation on the amount that can be spent by a candidate, his immediate family, and a political committee, on an election. In addition, there is a similar limitation on the amount that can be contributed by an individual. The Commission believes that in addition to these important provisions, a strict provision should be added limiting cash transactions.

bank records.¹⁴⁵ Such a requirement would neither be novel nor particularly burdensome. The New Jersey election laws currently require that campaign contributions be deposited in a bank or trust company within 10 days of receipt and that the name and address of the source of the contributions if over \$100 be indicated on a statement accompanying the deposit.¹⁴⁶ After every election, the bank or trust company must file complete records of such accounts with the State.¹⁴⁷

The 1973 State of Washington statute¹⁴⁸ regulating campaign financing also includes a provision which requires that all contributions received by a candidate or a political committee be deposited in a bank (campaign depository), that all deposits be accompanied by a statement containing the name of each person contributing the funds so deposited, and that each such statement must be filed with the Public Disclosure Commission.

Under the current Election Code, the County boards of election are required to maintain election expense accounts filed with them for a period of only two years.¹⁴⁹ Because the applicable statute of limitations for prosecution of a public official is, in many cases, longer than two years, it is recommended that records be maintained for five years.¹⁵⁰

Although the Election Code requires that every candidate and every political committee report the names of all contributors and the amounts contributed, the Code is ambiguous concerning whether it is necessary to report funds raised from the sale of tickets to campaign affairs as well as the identity of individual ticket purchasers. There is no question that ticket sales are important vehicles for the solicitation of significantly large amounts of campaign funds. Because the proceeds from ticket sales often involve large sums of money, there must be strict reporting requirements. Although it may be unduly burdensome to require reporting of the identity of each and every ticket purchaser, there must be provisions which prohibit large ticket purchasers from remaining anonymous and thereby allowing substantial contributions to go unreported. Consequently, in addition to the provision recommended above prohibiting cash purchases of tickets in excess of \$25, the Commission recommends that the Code be amended to

¹⁴⁵House Bill 746 requires that each political committee file as part of its statement of organization the names of all of its banks, safety deposit boxes, and other depositories. The Bill does not require a candidate to file a similar statement, nor does it require either the candidate or a political committee to file bank records as a part of their election expense accounts.

¹⁴⁶N.J. Stat. Ann. tit. 19, §44A-12 (Supp. 1974).

¹⁴⁷N.J. Stat. Ann. tit. 19, §44A-17 (Supp. 1974).

¹⁴⁸Wash. Legis. Serv. 1973-3.

¹⁴⁹Act, 25 P.S. §3230 (1963).

¹⁵⁰Act of December 6, 1972, P.L. , No. 334, §1, 18 C.P.S.A. §108 (1973). A public officer can be prosecuted for criminal conduct at any time while in office or within two years thereafter, but in no case more than three years beyond the otherwise applicable statute of limitations.

require specific reporting of all receipts and expenditures in relation to ticket sales and the identity of all purchasers of tickets in an amount in excess of \$200.¹⁵¹

The Election Code does not contain any provisions controlling the dispensation of leftover campaign finances in the event that a candidate becomes disabled, dies, or chooses not to seek re-election, or in the event that a political committee goes out of existence. It seems clear that there should be an orderly transfer of such leftover monies. The State of Washington statute regulating campaign financing contains a provision that requires that each political committee file a statement listing how surplus funds will be distributed in the event of dissolution. Such a provision should be enacted in Pennsylvania, with an additional requirement that each candidate also file a similar statement.¹⁵²

Finally, it is now clear to everyone that the entire election process can be compromised if blatant violations of the campaign financing laws are not vigorously punished. Under the current Election Code, the penalties for violations of the campaign financing provisions are minimal. Violations are punishable by a maximum fine of \$1,000, or imprisonment of not less than one month nor more than two years, or both. Such penalties are inordinately lenient and lack the necessary force to achieve substantial deterrence. The Commission believes that because of the importance of compliance with the Election Code, violations should be considered to be of the utmost seriousness. It is thus recommended that the penalty provisions of the Election Code be made more severe by classifying them as misdemeanors of the first degree, punishable by a maximum of five years imprisonment and/or a maximum fine of \$10,000.

The late Justice Cohen stated in *Friends of McErlean Appeal* that:

This case and *Lurie v. Republican Alliance*, 412 Pa. 61, 192 A.2d 367 (1963), point up the necessity for legislative amendment to the Election Code so that the procedures, both in the filing and in the auditing of expense accounts, may be made more certain and understandable and the sanctions for failure to comply with the Code be made more explicit.¹⁵³

The Commission hopes that its recommendations will provide an important first step into much needed overall reform of the entire Pennsylvania Election Code.

¹⁵¹House Bill 746 contains a provision which requires both the candidate and all political committees to report any ticket purchaser of an amount in excess of \$200.

¹⁵²House Bill 746 requires that political committees indicate in their organizational statement the disposition of residual funds in the event of dissolution.

¹⁵³*Friends of McErlean Appeal*, 431 Pa. 334, 341 (1968) (concurring opinion).

A Case Study of the Second Class Township Code*

The Pennsylvania Crime Commission has received allegations of corruption in various second class township governmental bodies. In the spring of 1973, a citizen of Chartiers Township charged that two of the Township Supervisors, James Thompson and Bertram Zanaglio, Sr., were charging the Township for road work which they did not perform. The citizen argued that in light of the fact that both Supervisors held full-time jobs in 1972 it was unlikely that they could have performed the amount of road work for which they were paid. Because of such allegations of corruption in second class townships the Commission decided to conduct an interim investigation of government in Chartiers Township (Township).

Commission investigators analyzed pertinent Township records for the 1972 fiscal year and found, among other things, that two of the Township Supervisors, James Thompson and Bertram Zanaglio, Sr., had been paid for working a surprisingly high number of days on the Township roads in 1972, in light of the fact that both held full-time jobs with private employers during a substantial portion of the year. Thompson was paid for 140 days of road work and Zanaglio was paid for 191 days of road work. The investigators also found a number of errors and irregularities in the Township's financial records.

As a result of the questions raised by this interim investigation of the Chartiers Township records, and a concern about the recurring allegations of corruption in second class townships, the Commission concluded that an in-depth study of government in Pennsylvania's second class townships was warranted, and that Chartiers would serve as an appropriate case study. This conclusion was fortified by the Commission's estimate that a limited amount of resources would be necessary to complete this investigation.

On April 26, 1973, the Commission passed a resolution authorizing an investigation to determine whether official corruption exists in Chartiers Township, Washington County; whether Township officials are unlawfully abusing the powers of their offices; and, to the extent that such corruption was found, whether the existing laws governing second class townships in

*This report was previously issued in August 1973.

Pennsylvania are sufficient to deal with the problem.

The Second Class Township Code (Act)¹ establishes an inadequate system of governmental checks and balances. The Act permits the same person (or persons—if the supervisors are a cohesive or dominated group), operating from the position of a supervisor, to: (i) determine what road work is to be done in the township; (ii) designate himself as one of the persons who will perform the road work; (iii) maintain the records reflecting what work was performed and who performed it on a given day; and (iv) maintain the financial records and issue the paychecks to the persons—including himself—who have performed the road work.

The problem is enhanced by the fact that the only independent check of the township board's business and financial records is performed but once a year by auditors who need not have auditing experience or training, who are paid an inadequate salary, and who are required to perform their audit and issue a report within an inadequate period of time. Moreover, the Act itself is ambiguous on the subject of what authority, if any, an auditor actually has to challenge payments of township funds to the supervisors.

Partially as a result of the Act's inept system of checks and balances, the following illegal acts took place in Chartiers Township in 1972:

- (i) The Board of Supervisors failed to keep proper records of work performed on the roads and payments made for such work, particularly payments made to themselves, in violation of the Act;
- (ii) Supervisor Thompson, the Board's Secretary-Treasurer, illegally held the position of Public Safety Director;
- (iii) Supervisors Thompson and Zanaglio (the Board's Chairman), were illegally paid substantial sums for tax map and tax plate work out of a fund budgeted for road work;
- (iv) Supervisors Thompson and Zanaglio were paid more for attending conventions than the Act permits;
- (v) Daily road records were falsely prepared;
- (vi) The Board simultaneously employed a road superintendent and permitted supervisors to work on the road in violation of the Act; and
- (vii) The auditors illegally received payments from Township funds for inspecting Township roads.

GOVERNMENT IN SECOND CLASS TOWNSHIPS

In Pennsylvania first class townships are those townships having a population of at least 300 inhabitants to the square mile. All townships not

¹Act of May 1, 1933, P.L. 103, §101, as amended, 53 P.S. §§65101-67201 (Supp. 1974) [hereinafter cited as Act].

townships of a first class are second class townships.² Chartiers Township falls into the latter class and is thus governed by the Second Class Township Code.

Second class townships with populations under 10,000, such as Chartiers (pop. 7,131 in 1970), are governed by a board of supervisors composed of three members elected for six-year overlapping terms. One supervisor is elected every two years.³ Other township elected officers are: one assessor elected for a four-year term; three auditors elected for six-year overlapping terms; and one tax collector elected for a four-year term.⁴

Primary governmental power and responsibility in second class townships rests in the hands of the board of supervisors. Historically, the main function of the board was the upkeep and maintenance of roads. In recent years it has gained authority to exercise power similar to other local governments, *i.e.*, police, fire, water, sewers, garbage removal, planning and zoning regulations, airports, and so forth. It has the power to tax⁵ and to borrow.⁶ In short, the general supervision of the affairs of the township rests with the board.⁷

The primary service provided by the board, however, is still the maintenance of roads. The board employs a superintendent for the entire township, or a roadmaster for each district, and fixes the wages of the superintendent or roadmasters and laborers for work on the road. Board supervisors are eligible for employment as superintendents and roadmasters, or as laborers if they are physically able to do the work. If supervisors are employed in such capacities their wages are fixed by the auditors, and the board cannot hire an independent superintendent or roadmaster.⁸

The board holds a reorganization meeting the first Monday in January of each year to elect a chairman, a secretary, a vice chairman, a secretary-treasurer, and an assistant secretary. The secretary keeps a record of the board's proceedings and writes the annual tax duplicate of the township.⁹ The treasurer accounts for and pays over all monies collected or received for the township.¹⁰ The secretary and treasurer — responsible for keeping minutes of the board's meetings and maintaining the township's payroll—may be the same person, may be one of the board supervisors, and

²Act, 53 P.S. §65201 (1957).

³Act, 53 P.S. §65402 (Supp. 1974).

⁴*Id.*

⁵Act, 53 P.S. §65905 (Supp. 1974).

⁶Act of July 12, 1972, P.L. No. 185, §§101-1308, 53 P.S. 6780-1 to -605 (Supp. 1974).

⁷Act, 53 P.S. §65510 (Supp. 1974).

⁸Act, 53 P.S. §65514 (1957).

⁹Act, 53 P.S. §65540 (Supp. 1974).

¹⁰Act, 53 P.S. §65532 (1957).

may be on the payroll as a road superintendent, roadmaster, or laborer.¹¹

The only external check of the administrative and financial records is performed by the auditors on an annual basis. The Act, §545, provides in part:

The auditors of townships shall meet annually, at the place of meeting of the supervisors, on the day following the day which is fixed by this act for organization of the township supervisors; and shall organize by the election of a chairman and secretary, and shall audit, settle, and adjust the accounts of the supervisors, superintendents, roadmasters, treasurer, and tax collector of the township, and fix the compensations for the current year authorized in section 515 hereof. . . .

* * * * *

Any elected or appointed officer, whose act, error or omission has contributed to the financial loss of any township, shall be surcharged by the auditors with the amount of such loss, and the surcharge of any such officer shall take into consideration as its basis, the results of such act, error or omission and the results had the procedure been strictly according to law. . . .¹²

This section further provides that the auditors of a township having a population of 10,000 or less shall receive \$20 for each day of work (5 hours or more) but shall not receive more than \$400 for any calendar year.

The auditors of such a township must complete their audit by March first, expending not more than twenty days of work, following the completion of the audit, settlement and adjustment, the auditors must file a report with various local and state agencies, and by March tenth must publish a concise financial statement. The report must contain:

... the names and addresses of the chairman, members and secretary-treasurer of the board of supervisors of the township, a statement of the receipts of the township from all sources, and of all accounts and revenue which may be due and uncollected at the close of the fiscal year, a statement of the disbursements of the township during the fiscal year for the construction, reconstruction, maintenance and repair of the roads, for the purchase and repair of road equipment and machinery, the number of miles of road opened, built and permanently improved, and the total number of miles of road in the township, a statement of the balance in the township treasury at the beginning of the fiscal

¹¹Act, 53 P.S. §65511 (Supp. 1974), 53 P.S. §65514 (1957).

¹²Act, 53 P.S. §65545 (Supp. 1974).

year, a statement of the resources and liabilities of the township at the end of the fiscal year, a detailed statement of the indebtedness of the township at the close of the fiscal year, the provisions made for the payment thereof, together with the purposes for which it was incurred, a statement of the cost of ownership and operation of each and every public service industry, owned, maintained or operated by the township, and such more specific information, as may be required as hereinafter provided.¹³

The financial statement must be published once in at least one newspaper of general circulation published in the township and must set forth:

... the balance in the treasury at the beginning of the fiscal year, all revenues received during the fiscal year by major classifications, all expenditures made during the fiscal year by major functions, and the current resources and liabilities of the township at the end of the fiscal year, the gross liability and net debt of the township, the amount of the assessed valuation of the township, the assets of the township with the character and value thereof, the date of the last maturity of the respective forms of funded debt, and the assets in the sinking fund. Such publications shall be deemed compliance with the provisions of the Municipal Borrowing Law, which requires the corporate authorities of townships to publish an annual statement of indebtedness.¹⁴

The Act does not include any minimum educational or work experience requirements for supervisors or auditors.

The above provisions suggest that the legislature believed that (i) an annual audit of the board's financial records, (ii) a provision for surcharging a public official for causing a financial loss to the township, and (iii) an annual public disclosure of the township's financial affairs, combined, would adequately protect against or disclose improper practices and expenditures. The Commission's investigation of the operations of the Chartiers Township Board in 1972 and the review of these operations by the Chartiers Township Auditors, revealed, however, that the existing system of checks and balances contains a number of deficiencies. The remainder of this report describes in detail the practices followed by the Chartiers Township Board and Auditors in 1972, analyzes deficiencies in the Second Class Township Code, and recommends, first, actions aimed at immediately relieving the governmental problems in Chartiers Township, and, second, legislation to correct the present deficiencies in the Second Class Code.

¹³Act, 53 P.S. §65547 (Supp. 1974).

¹⁴*Id.*

GOVERNMENTAL OPERATIONS OF THE CHARTIERS TOWNSHIP BOARD IN 1972

Record Keeping

A fundamental problem in Chartiers in 1972 was an inadequate system of record keeping. The Second Class Township Code provides in part:

... Records shall be kept, and reports made and filed, giving the names of all persons employed, including supervisors, superintendent or roadmasters, dates on which work was done, and the number of hours worked with compensation paid to each person and the capacity in which he is employed.¹⁵

The record keeping responsibility rests with the township supervisors or the particular supervisors who serve as superintendents or roadmasters.

The testimony of James Thompson and Bertram Zanaglio disclosed that the record keeping of the Chartiers Board in 1972 was extremely haphazard at best, fraudulent at worst, and, in either case, violative of the statute.¹⁶ A summary of that testimony follows.

The Board held a reorganization meeting in January of 1972 at which time Mr. Zanaglio was elected Chairman, Mr. Bird was elected Vice-Chairman, and Mr. Thompson was elected Secretary-Treasurer. The Board recommended that Thompson be paid \$200 per month for his services as the Secretary-Treasurer. The Board also recommended that Supervisors be paid \$25 per day for road work. The Auditors subsequently approved these payments. No payment was recommended or approved for the Chairman or Vice-Chairman.

To maintain and repair roads in 1972, the Board employed a full-time road crew of five persons, supplemented by a part-time road crew. Bird worked full-time on the road; Thompson and Zanaglio worked part-time. A non-Board member, Henry Alexy, was hired as the road superintendent.¹⁷ The Supervisors set the salary for all road workers except themselves.

As the Secretary-Treasurer, Mr. Thompson maintained the Board's financial records. Among other things, he received invoices, paid bills

¹⁵Act, 53 P.S. §65516 (c) (Supp. 1974).

¹⁶The third Supervisor, William Bird, had little knowledge of the record keeping that occurred in 1972.

¹⁷Testimony of James Thompson before the Pennsylvania Crime Commission, May 23 and 24, 1973, N.T. 28 [hereinafter cited as Thompson].

It was a clear violation of Section 514 of the Act, 53 P.S. §65514 (1957), for the Board to employ a non-Board member as a Superintendent while Supervisors worked on the road.

authorized by the Board, and made out the payroll for the police and the road crew. Mr. Thompson prepared the payroll for the road crew on a bi-weekly basis, based upon daily road records which someone from the road crew completed at the end of each day. No time clock was maintained for road workers.

The above method of record keeping together with other practices highlighted below produced numerous irregularities. To begin, Mr. Thompson openly acknowledged that the daily road records would not necessarily reflect work done by him because he followed a practice of keeping his time on a scratch pad and recording it on the daily road record only when he accumulated a total of eight hours.¹⁸

Thompson further testified that when the Auditors approved the Supervisor's pay of \$25 per day for 1972, there was no stipulation by the Auditors that eight hours of work was required for the \$25.¹⁹ Neither did the Board adopt an eight-hour policy. As a result, persons would sometimes be paid the \$25 when they worked as little as six hours in a day.²⁰

The salaries of the road workers set by the Board were: Superintendent—\$30 per day; Assistant Superintendent—\$29 per day; Operators—\$25 per day; and Laborers—\$18 or \$19 per day.²¹ The normal hours for the road crew were 7:00 a.m. to 2:00 p.m. Night work was engaged in only in cases of emergency.²² Thompson conceded that there was some correlation between the number of hours worked and the pay, but maintained that a strict requirement of working eight hours for the set per-day wage was never followed.

Neither was there a clear policy designating the person responsible for completing the daily road sheets. They were sometimes completed by Superintendent Henry Alexy, and sometimes by Zaganlio. Regardless, Bird usually wrote his own name on the daily road sheets rather than the person preparing them because Bird didn't always want to be paid.²³ Likewise, Thompson wrote his own name on the sheets because he usually worked in the office. Thompson would rely on the other workers to verify that Bird had indeed worked the days for which he signed the daily road sheet. Thompson inquired two or three times but ordinarily required no other verification.²⁴

¹⁸Thompson, N.T. 53-58, 66.

¹⁹*Id.* at 25-26, 28.

²⁰However, the Supervisors decided to pay Ed Furmanek a per-hour wage because he criticized the way the road work was done. Thompson, N.T. 110. Furmanek resigned as a road worker in May 1972.

²¹Thompson, N.T. 28.

²²*Id.* at 29-30.

²³*Id.* at 104.

²⁴*Id.* at 104-105.

A vivid illustration of the haphazard record keeping appears in a note written by Zaganlio to Thompson and attached to the April 30—May 13 bi-weekly payroll sheet. The note reads:

Jim:

Turn me in for 12 days 5 for Sats. 5 for conferences 3 Carlisle 2 this week 5 days worked last sat. and this sat.

Bert

Thompson explained that, in part, this note meant that Zaganlio was entitled to be paid for five Saturdays worked previous to the April 3 pay period and two Saturdays in this pay period; the conferences were workshops, three days in Carlisle, two days in Harrisburg for which the Board approved a payment of \$25 per day.²⁵ He stated that Zaganlio left him notes on a couple of occasions summarizing prior work. He did not know why Zaganlio left such notes instead of simply reporting his work on the daily road records.²⁶

Zaganlio's testimony supported Thompson's description of the Board's method of keeping records for road workers. With respect to his own time records, Zaganlio stated that he normally signed his own name on the daily road sheets because he often worked later hours than the other road workers. However, he did not always personally fill them out, sometimes he would tell Thompson or Alexy, the road Superintendent, to complete them.²⁷ Zaganlio kept his time on a tablet form in a desk drawer on a bi-weekly basis.²⁸ Prior to August, Zaganlio would sometimes accumulate his time and fill out the daily road sheets toward the end of the bi-weekly pay period. After August, on the days that Zaganlio personally signed his name on the daily road records, he usually signed it on the same day that he actually worked.²⁹ Zaganlio ordinarily did not try to specify the type of work that he had done on the daily road sheet. He didn't think such specificity was necessary because he ordinarily ran the grader on the road.³⁰

This rather nonchalant attitude toward record-keeping reflected in Thompson's and Zaganlio's testimony, produced a highly irregular set of financial records in 1972. After reviewing these records in detail, the Commission has concluded that Thompson and Zaganlio were paid

²⁵*Id.* at 112-114.

²⁶*Id.* 115-116.

²⁷Testimony of Bertram Zaganlio before the Pennsylvania Crime Commission, May 25 and June 4, 1973, N.T. 40 [hereinafter cited as Zaganlio].

²⁸*Id.* at 41.

²⁹*Id.* at 41, 44.

³⁰*Id.* at 45-46.

substantially more for "road work" than they were entitled. However, the confused state of the Board's records, together with numerous unverifiable explanations of particular payments offered by Thompson and Zanaglio, make it impossible to precisely identify the amount of the overpayment. Nevertheless, it may be useful to review some of the specific problems raised by the Board's record-keeping and the Supervisors' testimony.

Problems Raised In Relation To Thompson

Starting with Thompson, the records and testimony reveal the following facts. From January 1 through August 4, 1972, he was employed as a full-time welder for the Pittsburgh Coal Company in Library, Pennsylvania. His hours during that time at Pittsburgh Coal were from 7:30 a.m. through 3:00 p.m. He did not work at Pittsburgh Coal from August 4, 1972 through January 8, 1973 because he had a damaged cartilage in his left knee which required an operation. He was admitted to the Washington Hospital on August 30, 1972 for the operation and discharged on September 7, 1972.

Thompson testified that he was on crutches for about five days after his release from the hospital. Thereafter, he walked on a cane for three or four days, and went once a day for therapy in whirlpool baths.³¹ Based on his doctor's advice that he should not engage in activities requiring him to bend his knee, Thompson did not return to Pittsburgh Coal as a welder until January 8, 1973.³² Despite the injury however, Thompson stated that he returned to work for the Township on September 7, the first day of his discharge, making street signs. Thompson was paid for 12 days of road work in the pay period ending September 16, 1972. Four of those twelve days, as reflected on the daily road record, were days that he was in the hospital. Thompson testified that three of these days were not days that he actually worked in this pay period, but, instead, represented days that he worked in a previous pay period—June or July—for which he had not been paid. He was anticipating going into the hospital—although he had no idea of when that event would actually occur due to the unpredictability of his trick knee—and wanted to save some money in this manner.³³ Thompson contended that although some particular dates on the daily road sheets were inaccurate, his overall claim to pay was not overstated because of his accumulated unpaid days and the fact that he worked 15 to 16 hours a day the second week after coming out of the hospital.³⁴ The following colloquy reflects Thompson's attitude toward keeping time sheets:

³¹Thompson, N.T. 8-9.

³²*Id.* at 15.

³³*Id.* 18A-31A.

³⁴*Id.* at 32A.

Q: Why was it that you did not on the days that you claimed that you worked 15 and 16 hours, just so indicate?

A: Just didn't do it, that was all.

Q: Just didn't see that it was necessary?

A: No.

Q: Even though at the time you were doing this you knew when you put your name on some of those dates that you made that document false?

A: I knew I was in the hospital that date.³⁵

The Commission tried to evaluate Thompson's claim that 3 work days claimed during his hospitalization (August 30—September 7) were days accumulated from an earlier period—June or July, according to his recollection—by comparing daily road records with the bi-weekly payrolls for preceding periods. The following table reflects the comparison.

	<u>Days Paid For</u>	<u>Days For Which There Are Daily Road Records</u>
March	5	0
April	4	0
May	10	11
June	5	6
July	6	12
August	<u>17</u>	<u>17</u>
	47	46

One can interpret this data in various ways. First, that it supports Thompson's explanation of accumulated days; second, that he had been paid for more days than the time sheets reflected that he had worked; and third, that the correlation between the number of daily road records and the days paid is so erratic that any accumulation of days as of his hospitalization is purely accidental.

Moreover, it is difficult to understand why Thompson did not pay himself in September for the days he allegedly accumulated in June or July without having to falsify the September road records.

Finally, Thompson's testimony that he worked 15 to 16 hours for the Township during his second week out of the hospital—even though he was on a cane during this period and undergoing two to three hours of therapy per day—existing with 4½ hours of sleep,³⁶ is difficult to believe, if not incredible.

³⁵*Id.* at 33A.

³⁶*Id.* at 34A.

Problems Raised In Relation To Zanaglio

Turning to Zanaglio, the records and testimony present questions as to the propriety of a number of payments for road work. Zanaglio was employed full-time as a steelworker for the Universal Cyclops Company in 1972. The job required him to work in shifts: 8:00 a.m. to 4:00 p.m., 4:00 p.m. to 12:00 a.m., and 12:00 a.m. to 8:00 a.m. Zanaglio explained how he coordinated his responsibilities to the steel mill and to the Township. When on the 12:00 a.m. to 8:00 a.m. shift, he testified he would usually go to the Township building at 8:30 a.m. and work until 6:00 or 6:30 p.m., then go home, sleep, and go to work at midnight.³⁷ He testified he usually ate one meal a day. When on the 4:00 p.m. to 12:00 a.m. shift, he testified he usually went home after work, slept until 5:30 or 6:00 a.m., had breakfast and went to the Township building. He testified that when on the 8:00 a.m. to 5:00 p.m. shift he would normally go home after work, eat dinner, and then answer complaints about roads, sewers, planning, zoning, etc. Zanaglio felt entitled to be paid for any time he spent answering complaints. He testified he usually worked three or four hours on complaints and then went to the Township building for paper work.³⁸

When asked to describe his responsibilities as a Supervisor, Zanaglio responded:

Responsible to the taxpayers, maintain its roads, supervision of the police, supervision of the road crew for getting the work done, mainly I would say service to the people.³⁹

When performing these duties, he operated on the assumption that eight hours of work related to any of his duties merited pay of \$25 per day—regardless of whether it was work on or off the road.⁴⁰

As previously noted, Zanaglio kept a record of his time in tablet form in a desk drawer on a bi-weekly basis. He usually didn't specify the type of work he had done, because he didn't believe it was necessary. Predictably, this method of keeping records together with his dual employment resulted in numerous discrepancies in the Township's books.

For example, Zanaglio admitted that despite indications on the daily road records, he did not work at the Township on April 19, 20, 21, or May 12, because he was at out-of-town conferences. And, he stated that he did not work on the road on May 3, 4, or 5, because on each of those days, he was working the day shift at the mill from 7:00 a.m. to 3:00 p.m.⁴¹ How-

³⁷Zanaglio, N.T. 16.

³⁸*Id.* at 18-23.

³⁹*Id.* at 29-30.

⁴⁰*Id.* at 30.

⁴¹*Id.* at 112-114.

ever, he defended these time sheets on the ground that he was not paid for the conferences he attended on February 17, 18, April 20, 21, and May 12, until the pay period ending May 13. Therefore, he surmised Thompson must have marked the time sheets for that pay period ending May 13, indicating that Zanaglio worked on the road, to reflect the payment due for attending those conferences.⁴²

As another example, one record represents that Zanaglio worked September 2 and 4. But, Zanaglio explained:

So this here September 2 and 4 is incorrect, it should have been September 9. I would say I marked the wrong date. It still would come out 12, wouldn't it?

I must have missed a day. I worked 12 days and I only got paid 11.⁴³

Another record indicates that there was a special Supervisors meeting on September 8, 1972 at 10:00 a.m. Yet, another record, a daily time record, indicates that Zanaglio worked on the road eight hours. Zanaglio explained, "[t]his here meeting, it took only a couple of minutes."⁴⁴ According to Zanaglio, he went out with the road crew at 7:00 a.m., returned for a meeting, and then went back out on the road. It only took one-half hour to come to the meeting and get back on the road. Zanaglio did not work an extra half hour that day, but decided to make it up another day.⁴⁵

Overall, the record reveals that in each two-week pay period from September through December 23 of 1972, while working full-time on various shifts at the mill, Zanaglio was working a minimum of ten days for the Township. If substantiated, such a record would be commendable. However, given the irregular record-keeping and testimony related above, it merely raises suspicion.

Unlawful Holding Of Positions

With an exception not here relevant, the Act provides:

... no supervisor shall at the same time hold any other elective or appointive township office or position other than township roadmaster or secretary-treasurer.⁴⁶

Thompson testified that he was appointed Public Safety Director by the

⁴²*Id.* at 114-115.

⁴³*Id.* at 173.

⁴⁴*Id.* at 175.

⁴⁵*Id.* at 176.

⁴⁶Act, 53 P.S. §65410 (Supp. 1974).

Board. He testified that he received no pay for this, and denied any abuse of power. However, since the job of Public Safety Director is clearly an "appointed township office," it seems apparent that it was illegal for Thompson to hold this office.

Payments For Non-Road Work

In 1972, the Chartiers Auditors approved the payment of \$25 per day to Supervisors for road work. Somehow, however, Thompson and Zanolio interpreted this \$25 per day approval for road work as an approval of \$25 per day for work involving: (i) tax maps and tax plates;⁴⁷ (ii) citizen's complaints about general governmental matters of the Township;⁴⁸ and (iii) cleaning up the Township building.⁴⁹

Thompson testified that, except for a few emergency situations, he did not work on the road. Most of his work consisted of making road signs and tax plates. Indeed, he spent approximately fifty percent of his time working on tax maps from September through December of 1972 and improperly charged that time to the road account. However, he never asked the Solicitor or Auditors whether it was proper to charge his time in that manner.⁵⁰

The following colloquy reveals his reasoning for charging the road account:

Q: Why then, Mr. Thompson, did you decide to pay yourself for the tax map work you did from the road fund?

A: Because I did not consider it was part of the secretarial work.

Q: You certainly did not consider it road work, did you?

A: All of this we grouped under road work.

Q: But you did not, as you stated, consider it to be road work in any way, shape or form?

A: No.

Q: You utilized⁵¹ the road funds because that was really the only way you [could] pay yourself?

A: The only thing budgeted, yes.⁵²

Zanolio testified that he paid himself for eight hours of work out of the

⁴⁷Thompson, N.T. 134; Zanolio, N.T. 52-53.

⁴⁸Zanolio, N.T. 21, 24.

⁴⁹*Id.* at 140.

⁵⁰Thompson, N.T. 134-135.

⁵¹"utilized" was erroneously transcribed as "equalized."

⁵²Thompson, N.T. 133-134.

road fund no matter what type of work he did for the Township.⁵³ His work varied from answering complaints (on such diverse matters as roads, sewers, planning, zoning, etc.),⁵⁴ to janitorial work,⁵⁵ to operating the grader on the road.⁵⁶ He testified further that during the fall of 1972, Thompson and he spent considerable time—two or three days a week—for a period of three months working on tax maps and charged the Township Road Account at a rate of \$25 a day for such work.⁵⁷

It seems reasonable to conclude, based upon this Act, that the legislature specifically provided for compensation and reimbursement of supervisors in those areas where it so desired. It did not specifically provide for the compensation of supervisors for performing such functions as making tax maps and plates, answering governmental complaints, and cleaning up buildings.⁵⁸ It was therefore illegal for Thompson and Zanolio to pay themselves for such work.

Overpayments For Attending Conventions

Section 516 of the Act governs payments to supervisors for attending conventions:

The township supervisors, or the supervisors employed as superintendents or roadmasters, shall—

* * * * *

(h) Attend road meetings and conventions authorized by the provisions of this act when directed to do so by the board of supervisors. Any supervisor, elected or appointed officer or qualified township employe may, if directed by the board of supervisors, attend any conference, institute or school conducted within the Commonwealth of Pennsylvania in order to discuss and resolve the various questions arising in the discharge of the duties and functions of the respective officers and employes, and to provide uniform, efficient and economical methods of administering their township duties. *The expenses for*

⁵³Zanolio, N.T. 29, 138-140.

⁵⁴*Id.* at 21, 29.

⁵⁵*Id.* at 140.

⁵⁶*Id.* at 30.

⁵⁷*Id.* at 52-53.

⁵⁸Moreover, with respect to tax work, the Act specifically establishes the completion of the tax duplicate of the township as a duty of the secretary, Act, 53 P.S. §65540 (Supp. 1974), and authorizes compensation. And even if the tax map and plate work done by Thompson and Zanolio is distinguishable from the tax duplicate work which the Act requires of the secretary, Thompson and Zanolio had no legal basis for paying themselves, as Supervisors, \$25 a day for such work.

attending the conferences, institutes and schools may be paid by the township and shall be limited to the registration fee, mileage at the rate of twelve cents (12¢) per circular mile, and thirty-five dollars (\$35) per day.⁵⁹

Thompson and Zanaglio attended several conventions in 1972 for which they were reimbursed for expenses and, in addition, were paid their usual \$25 per day salary out of the road department account.

Both attended a two-day conference in May on revenue sharing for which they were paid \$25 per day and reimbursed for out-of-pocket expenses.⁶⁰

Zanaglio attended a road maintenance workshop in Carlisle from April 20 through April 21,⁶¹ and a one-day conference in Harrisburg on May 12, the purpose of which he could not recall at the hearing.⁶² He received \$25 per day plus expenses for each of these conventions.

Thompson was questioned about the \$25 per day payment to Zanaglio for the above conventions:

Q: Was the activity approved by the Supervisors?

A: The Board, yes.

Q: How was it determined that he should be entitled to \$25 a day?

A: The same as a day worked on the road.

Q: Going to a conference?

A: Yes, that is my interpretation.

Q: The conferences involved road work, did they?

A: Yes. One of them.⁶³

Contrary to Thompson's view, the Commission does not believe that Thompson and Zanaglio were entitled to be paid a \$25 per day wage for attending conventions concerning roads or other general township business. Section 516 of the Act, quoted above, specifically addresses conven-

⁵⁹Act, 53 P.S. §65516 (Supp. 1974) (emphasis added).

⁶⁰Thompson, N.T. 53A.

⁶¹Zanaglio, N.T. 82.

He may have been paid twice for attending this conference: once in the pay period ending April 29; once in the pay period ending May 13. The April 29 period credits him with work for April 19, 20, 21. However, Zanaglio says he actually worked April 17 and 18, and that the prior dates are wrong. Unless Zanaglio is believed, one must conclude that he was paid for Conference attendance in this period; in which case, if he were, as he claims, paid for the same conference in the May 13 period, he would have received double payment. See Zanaglio, N.T. 124-127.

⁶²Zanaglio, N.T. 84-85.

⁶³Thompson, N.T. 113-114.

tions and authorizes only the reimbursement of expenses.⁶⁴ The \$25 per day for the Supervisors authorized by the Auditors pertained solely to work on the roads.

AUDITORS' REVIEW OF RECORDS AND WAGE APPROVALS

The three Auditors of Chartiers Township, John Koziel, Chairman, August DeMarco, Secretary, and James Scarton, testified at closed hearings. Each of the Auditors indicated that they had occupied their respective positions for a number of terms. Mr. Koziel and Mr. Scarton both testified that they had sixth grade educations; Mr. DeMarco was a high school graduate and also attended Duff's College, where he majored in business. Mr. DeMarco was the only Auditor who had any formal training in accounting.

The Auditors stated that the audit for 1972 commenced in the first week of January 1973, and was completed at the end of February. The Auditors were each paid \$400 for their services. They also received \$150 for inspecting the roads.⁶⁵

The Auditors gave substantially similar testimony concerning the specific type of work they had performed during the course of the audit. They each indicated that their audit involved reviewing the records of the Board's receipts and expenditures to determine that there was documentary evidence of receipt and disbursement, and to determine that the total figures added up correctly. The following testimony is characteristic:

Q: Would it be fair to say, Mr. Koziel, that your primary responsibility as an auditor was to make sure that the books and records balanced and were properly accounted for as opposed to actually questioning the propriety of expenditures or whether or not people worked when they said they worked? Would that be fair as a general summary?

⁶⁴Had Thompson or Zanaglio served as a "superintendent" or "roadmaster" in 1972 a more difficult problem of statutory interpretation would be presented. Section 515 of the Act, as amended, 53 P.S. §65515 (Supp. 1974) authorizes the auditors to set the supervisors' salary "when acting as superintendents, roadmasters, or laborers." On this basis, one could conclude that any convention involving roads requires a supervisor to act in his capacity as "superintendent" or "roadmaster" and thus justifies compensation. Since neither Thompson nor Zanaglio was employed in such a capacity in 1972, each must have attended the conventions in his capacity as a "supervisor." The only compensation authorized for a supervisor is for attending board meetings or serving as secretary or treasurer.

⁶⁵The Crime Commission has been unable to locate any authority in the Second Class Township Code which permits the auditors to either inspect the roads or to be paid for that work.

A: Well, what I looked at, we followed them through, followed every figure in the book, every account and checked our balances with the bank's statement and if it proved good, we didn't have no discrepancies of any kind, well, I was satisfied at that point.

Q: That was your primary responsibility?

A: That's right.⁶⁶

The Auditors seemed to realize that they had the power to surcharge the Supervisors for improper expenditures, but a great deal of ambiguity⁶⁷ existed on how this could be done and whether they had the authority to question the propriety of any expenditures:

Q: You do not feel you have the authority to question either the propriety of certain expenditures or whether or not the supervisors actually did what they claimed they did, is that right?

A: We do not have that authority.

Q: That whole subject which I am currently asking you, has that been a subject that you have discussed with the other auditors?

A: We all know we don't have that authority.⁶⁸

None of the Auditors examined the daily road records nor did any of them make any effort to determine whether Mr. Thompson or Mr. Zanolio had actually performed the road work for which they had been paid. The Auditors indicated that they were totally unaware of the fact that Mr. Thompson and Mr. Zanolio had been paid for tax map and tax plate work.

Each of the Auditors recalled having authorized \$25 per day for Supervisors' roadwork.⁶⁹ However, none of them recalled any discussion about what constituted "road work," nor any express stipulation as to a minimum number of hours required to be worked in a day to earn \$25.

⁶⁶Testimony of John Koziel before the Pennsylvania Crime Commission, July 30, 1973, N.T. 24 [hereinafter cited as Koziel].

⁶⁷Mr. Koziel and Mr. DeMarco both testified that approximately 10 years ago, they had been informed by the solicitor that the Auditors could not question expenditures. Koziel, N.T. 15; Testimony of August DeMarco before the Pennsylvania Crime Commission, July 6, 1973, N.T. 14.

⁶⁸Testimony of James Scarton before the Pennsylvania Crime Commission, July 30, 1973, N.T. 22-23.

⁶⁹Mr. Koziel testified that he was under the impression that Mr. Thompson and Mr. Zanolio were to be non-working Supervisors and was very disturbed when he learned that they had received substantial sums for road work. Yet, Mr. Koziel made no official inquiries on this subject, because, as he indicated, he did not know the procedure. Koziel, N.T. 25-26.

RECOMMENDATIONS

For Chartiers Township

To correct the abuses outlined in this report, the Commission recommends that the following action be taken immediately:

- (1) Mr. Thompson and Mr. Zanolio should resign from their positions as Supervisors and a Certified Public Accountant should be retained by the Auditors to audit the Township records for 1972 and to determine whether or not Thompson and/or Zanolio should be surcharged for any expenditures of Township funds in 1972.
- (2) Mr. Thompson should resign from his position as Public Safety Director.
- (3) A Certified Public Accountant should be retained to establish efficient record keeping procedures for the Board and to audit the Board's records on a regular basis.
- (4) The responsibility of completing and verifying daily road records should be assigned to the road superintendent or the supervisor working on the roads.
- (5) It should be specified, except where a superintendent or roadmaster is involved, that "road work" means physical work, directly related to maintaining or repairing roads. Making road signs is included, but making tax maps or plates is not.
- (6) It should be specified that Supervisors are not to be compensated for answering citizens' complaints (except for actual work on the road), or for performing janitorial services.
- (7) It should be stipulated that any per diem wage authorized for road work requires the employee to work 8 hours in order to receive the full wage; where an employee works less than 8 hours, his per diem wage should be proportionately reduced.
- (8) A time clock should be installed in the Township office building and its use required by all road workers.
- (9) The Board Solicitor's opinion should be obtained as to whether or not tax map or tax plate work are part of the Secretary's duties as referred to in the Act.⁷⁰

For Changes In The Second Class Township Code

The types of problems uncovered in Chartiers may well exist in scores of Second Class Townships throughout the State. Many flow from established, informal methods and attitudes toward governmental functions which allow persons to assume positions of high responsibility regardless

⁷⁰Act, 53 P.S. §65540 (Supp. 1974).

of whether they have the requisite education, background or experience to properly discharge their responsibility. However, the existing structure of the Second Class Township form of government appears to foster incompetency and corruption because of the lack of clear-cut checks and balances built into the structure. No proper form of government should permit a group of two or three individuals to be in the position of not only making all governmental decisions, but also determining how much they can pay themselves, creating the paperwork justifying such payments, and actually writing checks to themselves.

This is just the situation which has been uncovered in Chartiers and has been made possible by the fact that a supervisor can at the same time also occupy the position of secretary, treasurer, and road worker. Whatever justification previously existed for creating crucial structural differences between first and second class townships appears to have significantly disappeared in light of both the increases in the amount⁷¹ of money and power at the disposal of Second Class Township Supervisors. The Commission recommends that the Second Class Township form of government be amended to adopt the following sections that currently exist in the First Class Township Code:

- (1) Section 511 of the Act⁷² should be amended to require the board to select a non-board member, qualified in secretarial skills as the secretary, and a non-board member, trust company, or banking institution, as treasurer. This will assure the township of an independent and qualified record keeper. This would also bring second class townships in accord with first class townships which already select a secretary and treasurer independent from the board of supervisors.⁷³
- (2) Section 411 of the Act⁷⁴ should be amended to eliminate the election of auditors in second class townships and to provide that the board shall appoint an independent Certified Public Accountant to audit its accounts at the end of each fiscal year.

Such provision, in optional form, is presently included in the First Class Township Code:⁷⁵

Any township may, instead of electing three auditors as above provided or one controller as hereinafter provided, provide, by ordinance, for the audit of its accounts by an independent auditor

⁷¹Receipts and expenditures of Chartiers Township in 1972, at the disposal of the Supervisors, exceeded \$300,000.

⁷²53 P.S. §65511 (Supp. 1974).

⁷³See Act of June 24, 1931, P.L. 1206, §§510, 511, 901, *as amended*, 53 P.S. §§55510, 55511, 55901 (Supp. 1973).

⁷⁴53 P.S. §65411 (Supp. 1974).

⁷⁵Act of June 24, 1931, P.L. 1206, §1, *as amended*, 53 P.S. 55520 (Supp. 1974).

who shall be a certified public accountant, registered in Pennsylvania, a firm of certified public accountants so registered, or a competent public accountant, or a competent firm of public accountants. Where such an ordinance has been so adopted, an independent auditor shall be appointed, annually, by resolution before the close of the fiscal year, to make an independent examination of all the accounts and accounting records of the township for the fiscal year then closing. Said appointment shall be made at least thirty days prior to the close of the fiscal year. Such independent auditor shall have and possess all the powers and perform all the duties provided in this act for elected auditors. The compensation of any such type of appointed auditor shall be fixed by the board of commissioners. When an independent auditor is appointed as herein provided, the office of elected auditor is hereby abolished.

- (3) Regardless of whether the mandatory appointment of an accountant is provided or the present position of auditor is retained, Sections 545 and 547 of the Act⁷⁶ should be amended to: clarify the precise authority and responsibility of the auditor to review township records and conduct investigations concerning the lawfulness of particular expenditures; increase the maximum compensation payable to the auditors; increase the time in which the audit can be conducted; and permit an audit on at least a quarterly basis.

The Pennsylvania Crime Commission believes that if the above recommended changes are adopted, an important step will have been achieved in eliminating future corruption in second class townships.

⁷⁶53 P.S. §§65545, 65547 (Supp. 1974).

3

Investigations in Delaware County

Since 1971, the Crime Commission has periodically investigated various allegations of corruption, macing, election code violations, and other misconduct by public officials in Delaware County.¹ In its early stages, the Commission's investigation primarily centered on allegations of gross misconduct in the administration of the bail system and the existence and political protection of illegal gambling. The *1971-72 Report* of the Commission detailed the results of the investigation as of mid-1972, which were largely in the area of the bail bonding system. In April 1973, the Commission issued a follow-up report on bail bonding abuses showing that most of the problems in this area had been corrected. Since that time, the focus of the Commission's investigation has shifted to such misconduct by public officials as macing, election law violations, use of public employees and equipment for private purposes, and kickbacks on public contracts. These matters are reported on here.

MACING

Macing is a system of raising money for political purposes through pressuring public employees to make contributions to a political party under the threat, sometimes direct but often veiled, of losing their jobs. The public employees who are subject to it are typically not protected by civil service or union status and often receive low pay: in Delaware County, which employs over 2,400 people, the average public salary is less than \$7,500.

The practice of macing is specifically prohibited by statute in the Commonwealth of Pennsylvania. The Anti-Macing Act provides, in pertinent part, as follows:

It shall be unlawful for any political committee or any member, employe or agent thereof, or for any public officer or employe, or any other person whatsoever, directly or indirectly, to demand from any public officer, subordinate or employe . . . employed by . . . any political subdivision [of the Commonwealth], . . . any

¹Delaware County is a populous suburban county located adjacent to the City of Philadelphia.

assessment or percentage of any money or profit, . . . with the understanding, express or implied, that the same may be used or shall be used for political purposes: Provided, however, That nothing in this act contained shall be construed to prohibit voluntary contributions to any political committee or organization for legitimate political and campaign purposes to the extent such contributions are not prohibited by law.²

A person violating this law shall, upon conviction, be sentenced to imprisonment for up to one year or to pay a fine not exceeding \$1,000 or both.³

Although the Crime Commission received indirect allegations early in its Delaware County investigation that macing was taking place, it did not at first concentrate on those allegations. This was in part because the allegations then presented were not based on first-hand knowledge and in part because an active macing investigation appeared at the time to be taking place under the direction of Richard A. Sprague, Esquire, a "special prosecutor" appointed by the Delaware County District Attorney, Stephen J. McEwen, Jr. Mr. Sprague was then, and still is, the First Assistant District Attorney of Philadelphia, and is a nationally-renowned prosecutor. The Commission was aware that he had received several statements from public employees in Delaware County which clearly evidenced the existence of a general scheme of macing Delaware County employees. In addition, Mr. Sprague seized, on October 26, 1971, Republican Party financial records which he reportedly announced would prove macing.

Despite possessing extensive records of what appears to be systematic forced political contributions by county employees, Mr. Sprague has instituted no criminal charges and has not yet even reported on the results of his investigation despite the passage of nearly three years.

In May 1973, the Commission was contacted by several persons who indicated that they had information about macing in Delaware County. Testimony was subsequently received from six persons concerning the Sanitation Department of Upper Darby Township.⁴ Five of the witnesses were current or former employees of that Department, and one was the father of an employee. While the testimony directly related only to one area of the county, it revealed facts which demonstrate how the macing system works. That system appears to be endemic throughout Delaware County and exists in many other areas of the Commonwealth as well.

²Act of April 6, 1939, P.L. 16, §1, 25 P.S. §2374 (1963).

³*Id.*, §2, 25 P.S. §2375 (1963).

⁴Upper Darby is located in the eastern end of Delaware County. With a population well in excess of 90,000, it is the largest township in the Commonwealth.

Evidence of Macing

The most typical method of macing, as shown by the Crime Commission testimony, is the collecting of cash payments by supervisors every payday. For most workers, these regular payments amount to \$5 or \$10. Five of the Commission witnesses were able to describe this procedure from their own observations. In their cases, it involved Henry Muff, the Superintendent of the Sanitation Department, announcing to the employees in his department that "the blue room is open." The so-called "blue room" was Mr. Muff's office. The workers would then enter Mr. Muff's office and hand him their contributions.

Where individual workers fell behind in their payments, either through reluctance or inability to pay, strong overt pressure was exerted to make a large lump-sum payment. This pressure consisted of direct threats of firing, which could be expressed euphemistically. For example, one Crime Commission witness testified that he made an involuntary lump-sum cash contribution of \$185 to the Republican Party through Mr. Muff.⁵ According to the witness, the contribution was paid in order to retain his job. He explained that a ward commissioner, John Veit, told him that if he didn't contribute "... we are going to have to find fault with your work."⁶ He testified further:

Q: Did Mr. Veit [the ward commissioner], during the course of that conversation, mention anything about Union dues?

A: Yes.

Q: What was the reference to Union dues?

A: He told me this was just like paying Union dues, and, you know, it's something that you have to pay. If you don't pay, we will have to find fault with your work.

Q: And, if they find fault with your work, the implication was what?

A: I think the implication would be, they'd find something, you know, where they could fire you—that's the way I understood it.⁷

This witness also testified that on several occasions his supervisor, Henry Muff, also commented about "finding fault with your work" if contributions were not forthcoming.⁸

The father of this witness corroborated the testimony that his son gave the money because he was forced to give it. "We were afraid if he didn't

⁵Several of the witnesses referred to in this report are not identified at this time in order to protect them from possible retaliation. They are, however, prepared to testify publicly in criminal proceedings if called upon.

⁶Testimony of Mr. A before the Pennsylvania Crime Commission, June 6, 1973, N.T. 15.

⁷*Id.* at 13.

⁸*Id.* at 15-16.

give it, he was going to lose his job."⁹ The father stated that he complained to Mr. Veit, the ward commissioner, about the assessment, and he described the response:

A: ... [He] told me, we gave your son this good job; if you don't feel he should pay it, or if he doesn't pay it, then we are going to find fault with his work and we'll let him go.

Q: Let him go; does this mean fire him?

A: That means fire him...¹⁰

The threats to employees who fall behind in payments can be more direct, as the following testimony of another witness shows:

Q: Would you describe exactly what statements have been made to you, and by whom?

A: Well, Mr. Muff [the superintendent] made the statements. He told me—he said, 'We don't owe you anything, you owe us.' He said that, 'Unless you get it up soon, Mr. Kearns [your ward commissioner] will be in touch with you.'¹¹

This witness stated that Mr. Muff told him on four or five occasions that he had "better get it up." One morning, according to the witness, Henry Muff told him:

A: ... 'You won't be out here much longer unless you get it up.'

* * * * *

Q: Did you take that statement as being a threat?

A: Yes.

Q: ... A threat of what?

A: Of losing my job.¹²

This employee also testified that Edgar Muff, a relative of Henry Muff who also is employed by the Upper Darby Township Sanitation Department, had approached him on several occasions and told him, "You are next. You are going to be just like Mike if you don't get something up fast."¹³ (Mike was an individual who had recently lost his position with the Sanitation Department.) After being told by the witness that he still

⁹Testimony of Mr. B. before the Pennsylvania Crime Commission, June 6, 1973, N.T. 53.

¹⁰*Id.* at 44.

¹¹Testimony of Mr. D before the Pennsylvania Crime Commission, June 13, 1973, N.T. 9.

¹²*Id.* at 12-13.

¹³*Id.* at 20.

hadn't made any payments, Mr. Edgar Muff told him that, " 'Well, you are asking for it.' "14

The regular \$5 and \$10 payments on payday are often ostensibly devoted toward the purchase of tickets to fund-raising dinners, at a cost of \$75 per ticket. Testimony indicates that employees are often quickly made aware that they will be required to make contributions or buy such tickets as a condition of employment. One witness testified that when he applied for a job with the Upper Darby Township Sanitation Department through Mrs. Schneider, his committeewoman, she told him on several occasions that "... there was a kickback, as she referred to it, which would have to be paid for working."¹⁵ In addition, Mrs. Eleanor O'Connor, his ward commissioner, made the same type of statement to him:

Q: Did she [Mrs. O'Connor, the ward commissioner] at any point during the course of your applying for this job make any mention of having to make payments, once getting the job?

A: A couple of times when I talked to her [the ward commissioner] on the phone and when I was there personally myself, she [the ward commissioner] told me directly there is a kickback on the job, when she gave me the application.

* * * * *

Q: Did she [the ward commissioner] make it appear to you, and if so, how you would be compelled to make this payment whether you chose to or not?

A: Well, ... [t]here was a big emphasis on the fact, that is, they let you know, if I get you this job, you will have to pay a kickback.¹⁶

The witness then explained that during the course of his employment with the Upper Darby Township Sanitation Department, he was told by the Superintendent, Henry Muff, that he would be required to purchase two \$75 tickets for a political dinner. The employee did purchase one ticket because he was afraid of "repercussions" if he failed to do so.

In one instance, a witness apparently was not approached by Mr. Muff until approximately six months after he began to work for the Sanitation Department. Mr. Muff then told him he would have to make payments:

Q: What, exactly, did he say to you as best you can recall?

A: Something about, did my commissioner tell me, when I first started, about it. And I said, 'No.' He said, 'Well, you are supposed to pay so much a year to contribute to the township.'

¹⁴*Id.*

¹⁵Testimony of Mr. C before the Pennsylvania Crime Commission, June 6, 1973, N.T. 66.

¹⁶*Id.* at 68.

Q: Did he specifically say you would have to pay a certain amount to contribute to the township, or did he say something else? ...

A: No. He said, 'contribute to the township.' He was very careful about that.¹⁷

The witness stated that he subsequently began to make cash payments to Mr. Muff, and the following was said:

Q: After making payments to Mr. Muff, did he ever make any comments to you?

A: Yes. One time, I think when I made the first payment in 1973, he said, 'It's about time.'

Q: Did he say something else?

A: He said that, 'It's been about a year, hasn't it, since you paid?' Then, like, sort of jokingly, he said, 'How do you spell your name, I forget.'¹⁸

It is worth noting that two of the witnesses who appeared before the Commission testified that they had been told by Mr. Muff not to talk with or give any answers to persons who then were investigating macing in Delaware County and who might appear at their homes to ask questions. Despite these warnings, all of the witnesses who gave testimony to the Commission came forward voluntarily.

The Response to Charges of Macing

The normal response of political party officials to allegations of macing is that these contributions are purely voluntary. Henry Muff, in his testimony before the Commission, adopted this posture. Mr. Muff testified that he has been employed with the Upper Darby Township Sanitation Department since 1952 and became superintendent in 1968. He explained that his department has 58 employees at full complement.

Mr. Muff admitted that on any given occasion, but most often on pay-days, he would take contributions of as many as fifteen to eighteen of the Sanitation Department employees to the township Republican Campaign headquarters and bring back receipts, but he testified he only did so as a favor to his men and only at their request. He denied he had ever solicited or requested any employee of the Sanitation Department to make any contribution or payment to the Republican Party, or that he had ever made any of the statements or remarks he has been charged with making by employees of the Sanitation Department:

¹⁷Testimony of Mr. E before the Pennsylvania Crime Commission, June 13, 1973, N.T. 41-42.

¹⁸*Id.* at 74-75.

Q: ... [C]an you give us some idea how you came to be involved in the collection of contributions?

A: They asked me if I was going to be anywhere near the Republican Campaign Committee and, if so, would I be kind enough to take this money down and make a contribution and bring a receipt back to them.

Q: Where was the Republican Campaign Committee located?

A: McClatchy Building, 312 69th and Darby Streets.

Q: That is in Upper Darby?

A: Yes, sir.

Q: Can you give us some idea how much you would generally collect from these men to take to Republican headquarters for them?

A: Total or individual?

Q: No, on individual instances?

A: Five or ten dollars a man.

Q: Was it generally cash or check?

A: Cash.

Q: Where did they generally approach you in order to make this request of you?

A: Around the township yard.

* * * * *

Q: Did it happen [the approach by employees] more often on pay-days?

A: Yes, I would say, yes.¹⁹

Mr. Muff admitted that although on any one occasion he never delivered money for more than 15 or 18 individuals, in the aggregate he took contributions from many more than that number of employees.

When asked why he thought the employees would ask him to take money to Republican headquarters, Mr. Henry Muff explained that he "figured they do not want to go down to 69th and Market Streets in all the traffic the same as they ask me to take down their telephone bills or take their taxes down to the Municipal Building and pay their taxes and bring the receipt back to them."²⁰ He stated he has never been asked to take donations to the office of any other political party, but would do so if asked.

Notwithstanding the testimony of three witnesses to the contrary, Mr. Henry Muff denied he recorded the amounts of money turned over to him for delivery to the Republican Party. He also could not recall ever having received contributions of over \$20, even though two witnesses testified that they had given him lump-sum contributions of \$100 and \$185 respec-

¹⁹Testimony of Henry Muff before the Pennsylvania Crime Commission, July 16, 1973, N.T. 14-15, 22.

²⁰*Id.* at 24-25.

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1 OF 3

tively. It is most pertinent to note that Henry Muff, when asked how the Sanitation Department employees came to learn that this service of having him deliver their contributions was available to them if they desired it, replied, "I have no way of answering that, sir."²¹

The contention that the systematic collection of political contributions in Upper Darby is "voluntary" is directly contradicted by the numerous threats and warnings received by Commission witnesses. One witness testified that even though he signed a document saying he voluntarily gave the money, the payment was made unwillingly:

Q: Once employed by the sanitation department, did you, in fact, make any sort of payments?

A: Yes, I did.

Q: Would you indicate when you made these payments and for what purpose the payments were made?

A: Well, I paid a hundred dollars to the township.

* * * * *

Q: Was it made in one lump sum?

A: Yes.

Q: Was it by cash or check?

A: Cash.

Q: To whom did you make the payment?

A: To Henry Muff.

Q: Where did you make the payment?

A: In the township yard there.

* * * * *

Q: At the time you made the payment, did Mr. Muff make any comment to you?

A: At the time I gave it to him, he just wrote it down that I gave him a hundred dollars. Then a few days later, he gave me a slip of paper that I was to sign, and it said that I voluntarily gave this money to the Republican Party of Upper Darby.²²

When asked whether in fact he considered that he was making the payment voluntarily, the witness responded:

A: No.

Q: Why is that?

A: Well, because voluntarily, I wouldn't have given it on my own. I

²¹*Id.* at 49.

²²Testimony of Mr. F before the Pennsylvania Crime Commission, June 13, 1973, N.T. 81-82.

wouldn't have just given my money to the Party. But I thought I could lose my job if I didn't.²³

Prosecution of Macing Charges

Public employees must be permitted to perform their duties and responsibilities free from political pressures. The practice of macing imposes severe financial burdens on persons generally least able to suffer the cost of political "contributions." The collection of enormous amounts of money by political organizations through a system of macing provides an opportunity for misuse of funds in partisan political ventures without the restraint of public accounting for the expenditure of funds. This danger is not to be taken lightly, as the recent experience in Washington with "Watergate" illustrates.

The law prohibiting macing is clear, but in spite of it, the practice goes on. There are two possible approaches to stopping it: one is to give public employees greater job security, either through civil service status or unionization. A trend in this direction exists. The other approach, one which can be more quickly implemented, is simply to enforce the existing law by prosecuting individuals wherever evidence is found. Strict application of the criminal sanctions on macing is bound to have a deterrent effect.

The Delaware County Special Prosecutor, Richard Sprague, has commenced no criminal proceedings despite having in his possession for nearly three years what reportedly is clear evidence of macing throughout the county. The Commission has not been privy to the details of the investigation conducted by Mr. Sprague and thus is not familiar with the extent to which he has sought and received testimony supporting the documentary evidence he received. However, considering the tremendous number of employees in Delaware County who are subjected to macing, it would be surprising to learn that none would testify if any investigative effort were made. The results of the Crime Commission's limited investigation support that conclusion.

The Commission publicly reported the facts contained here in November 1973. At that time, copies of the transcripts of Commission testimony and other relevant material were forwarded to Mr. Sprague with the recommendation that an investigating grand jury be impaneled to probe the full extent of macing throughout the county and thereafter to prosecute the persons criminally involved.

As the Commission stated then, the crime of political macing, like other organized criminal conspiracies, operates in a manner which makes it difficult to convict participants in the upper echelons without first bringing lower ranking individuals to justice. In order to move up the ladder, it is

²³*Id.* at 94.

often necessary to induce lower level persons to cooperate by obtaining sufficient evidence against them to convict them. Mr. Sprague's own highly publicized experience in the Yablonski murder case demonstrates the validity of that approach. Even if those prosecuted do not decide to cooperate, society will have gained because some of the offenders will have been punished.

For reasons the Commission cannot comprehend, Mr. Sprague has declined to use this approach in Delaware County and has still taken no prosecutive action on macing, despite the documentary evidence he seized and the testimony given him by the Commission. One explanation he has offered publicly, at least with regard to the evidence referred to him by the Commission, is that the two-year criminal statute of limitations has expired. This is simply incorrect. The statute of limitations is extended up to six years for crimes committed by public employees or officials.²⁴ Thus, even if criminal acts of macing occurred as long ago as 1970, the Commonwealth would have until 1976 to begin prosecutions. Mr. Sprague has yet to issue publicly a report on the results of his investigation, despite the fact that his active investigation has long since ceased, and he has had a lengthy manuscript report in his possession for more than a year.

Macing remains as serious a problem as it ever was, and its bite continues to be felt by county employees. Again, the Crime Commission recommends the impanelment of a special investigating grand jury to investigate systematic violations of the anti-macing law.

CORRUPTION IN THE PUBLIC WORKS DEPARTMENT OF MARPLE TOWNSHIP

The Commission initiated an investigation in August 1973, in Marple Township, as a result of complaints received from several residents alleging misconduct and possible criminal acts by Marple Township officials and employees. A preliminary investigation partially substantiated these initial allegations, and on January 21, 1974, a Commission resolution was approved authorizing an investigation into the nature and extent of official corruption in Marple Township, including but not limited to inquiry into allegations of payoffs to township officials and improper use of township equipment by township officials. Since February 1974, ten witnesses have testified under oath pursuant to subpoena at private hearings of the Pennsylvania Crime Commission. In addition, numerous persons have been interviewed, and many documents have been examined.

²⁴Under the new Crimes Code, it is five years. See the Act of December 6, 1972, P. L. No. 334, § 1, (effective June 6, 1973) 18 C.P.S.A. § 108 (1973).

The evidence developed in this investigation centers on a number of apparent irregularities in the activities of the Public Works Department of Marple Township. The head of that department, who currently is William V. Pirocchi, is appointed by the seven township commissioners. The types of irregularities found include lack of controls on, and possible misappropriation of, Public Works Department building materials and funds, assigning township employees improperly to do work for the benefit of private individuals, and receipt of kickbacks from contractors doing business with the township.

Controls Over Materials and Money

The Commission has traced the sale and use of pipe in one case in which it appears pipe was purchased by Marple Township but used by private individuals for private purposes without the township being reimbursed. A homeowner entered into an agreement with the township in which the township would install storm sewer pipe to alleviate flooding and ground erosion if the homeowner would assume part of the cost. The work was done in two installments. After the first, the homeowner received a bill from the township, which he paid to the township. After the second, he received a bill dated January 29, 1973, for \$543.06 from Frank Carini, owner of C & F Construction Company. The bill was delivered personally by Mr. Pirocchi. This bill was also paid, this time by a check to Mr. Carini. Records of the Juniata Culvert Company show that on January 29, 1973, the township purchased pipe of the exact diameter and length used in this job and that the pipe was delivered to the township on March 7, 1973, the approximate date the pipe was installed for the homeowner. The cost of the pipe to the township was \$543.06. Mr. Carini stated that he sold his own pipe to the homeowner, but his explanation of how and where he got the pipe he sold could not be verified by Commission investigators.

The apparent irregularity in the handling of materials was paralleled by the handling of cash received by the Public Works Department for scrap. The records of a Philadelphia scrap metal dealer show that in the 50 week period from May 21, 1973, to May 8, 1974, the township made 43 sales of scrap metal, for which it was paid a total of \$2,144.85. All of these transactions were in cash, with the money put in envelopes and given to the township employee delivering the scrap metal. Mr. Pirocchi stated that he kept this money in a desk drawer and did not maintain a record of it. He was unable to account fully for the location or use of all of the money.

Improper Use of Township Men and Equipment

The Commission has found evidence that in a number of instances Marple Township employees and equipment were used at Mr. Pirocchi's

direction for purely private purposes. In one case, a Marple Township businessman testified that in January 1972, he was advised by township officials that he was required to install two storm sewer basins before he could occupy a newly constructed building for his business.²⁵ Around the same time, the witness was approached by Mr. Pirocchi, who told him, "I can do the job if you want me to."²⁶ The witness agreed to pay Mr. Pirocchi \$800 at the completion of the job, and work began sometime in the spring of 1972. He was told by Mr. Pirocchi, at the time the construction commenced, that Marple Township employees, using their own vacation time and their free time on weekends, would work on the job. During the period of construction, the witness recognized that some of the equipment used on the job belonged to Marple Township and that much of the work actually occurred during the week, Monday through Friday.²⁷

When the job was completed, Mr. Pirocchi requested payment in cash; according to the witness' testimony:

Q: He asked specifically for cash?

A: I believe cash.

Q: And what was your response to that?

A: I didn't have any cash.

Q: And what was his response to your comment?

A: 'Pay me something' I guess, you know.

Q: And how did you eventually pay him?

A: In checks.

Q: And how were the checks made out?

A: To cash.²⁸

This witness testified that he paid Mr. Pirocchi \$800 in three installments. He gave Mr. Pirocchi checks for \$300 on July 21, 1972, and August 15, 1972, and a check for \$200 on September 28, 1972, which were made out to cash at Mr. Pirocchi's request.²⁹ Commission investigators traced the checks and found that one was endorsed and cashed by a female friend of Mr. Pirocchi, while the others were cashed by his nephew.

An even more significant example of such use of township employees, equipment, and services for private gain, involving a much larger sum of money, has also been established by the Commission. Russell W. Morello, the successful bidder on a \$350,000 sanitary sewer contract in Marple Township, met Mr. Pirocchi following the awarding of the contract. Mr.

²⁵Testimony of Mr. G before the Pennsylvania Crime Commission, February 5, 1974, N.T. 10-11.

²⁶*Id.* at 17.

²⁷*Id.* at 22-29.

²⁸*Id.* at 30.

²⁹*Id.* at 30-31, 37-38.

Morello arranged to pay \$10,000 to Mr. Pirocchi in return for a "no cost" parking lot on Marple Township property for the company work trailer and construction equipment³⁰ and in return for Mr. Pirocchi repairing and filling in earth over sewer lines that sank or subsided as a result of rainy weather.³¹ According to the contractor, "... he [Pirocchi] agreed to any time that our sewer lines sunk down that he went there and filled them in instead of calling us up at all hours of the night to go back over [to] our equipment and fill the sewer lines in."³² In addition, a township street-sweeper appeared when the contractor got resident complaints about dirty streets and when the road was being readied by the contractor for paving.³³

These were substantial benefits. Normally, a contractor is obligated to fill in subsided ground, clean up the area, and find his own site for his trailer and equipment. In this case, the contractor was permitted to park on township property adjacent to a school yard which was lighted at night, which cut down security costs by making a watchman unnecessary.

Investigation confirmed the receipt of these services. The superintendent on the project testified that, "a lot of times during the weekends or we have a bad rain, we might have got a sink hole here or a pothole there. He [Pirocchi] sent his crew out to patch it instead of bothering us."³⁴ The project superintendent also testified that Marple Township, utilizing a township street cleaner, "broomed" the streets in which the sewer work was being done:

Q: Is that a standard procedure on jobs in other townships or locations where you worked?

A: Well, it usually is—you have to—a lot of times whenever I went on jobs, I used to pay for a broom to come in and broom the streets.

Q: Who would you pay?

A: Well, many times I got an independent to do it, but on this job it was done.

Q: By the township?

A: And there too, I didn't squawk.³⁵

The contractor, Mr. Morello, testified that he made the \$10,000 payment to Mr. Pirocchi by cashing five \$2,000 checks. He provided cancelled checks and business records which corroborated his testimony.

³⁰Testimony of Russell W. Morello before the Pennsylvania Crime Commission, May 3, 1974, N.T. 11, 17-18, 22.

³¹*Id.* at 11, 20-22.

³²*Id.* at 11.

³³*Id.* at 12-13, 21-22, 27.

³⁴Testimony of Mr. H before the Pennsylvania Crime Commission, May 9, 1974, N.T. 10-11.

³⁵*Id.* at 30.

Other Payoffs and Kickbacks

Another Marple Township businessman and developer, Philip Cohen, testified that between 1968 and 1971, he made cash payments to Mr. Pirocchi during the course of his constructing seven buildings in Marple Township following solicitation by Mr. Pirocchi.³⁶ Mr. Cohen testified that the payments were made to avoid harassment by Mr. Pirocchi over dirt in township streets caused by the witness' construction work. He said, "... Let's say towards the end of the job he [Pirocchi] came around if we were making any dirt in the street or anything, he did a little harassment. And usually he said if I would give him something, he would just go away."³⁷ The witness testified he made approximately seven cash payments of \$50 to \$75 each.

In addition, Mr. Cohen testified that his company did repair work on Marple Township trucks which were the responsibility of Mr. Pirocchi. On three or four occasions after Marple Township paid the repair bill, Mr. Pirocchi came in and asked for "a couple of dollars" out of the bill.³⁸ Billings of this company to Marple Township for truck repairs averaged in the \$200-\$250 range, and the kickback payments to Mr. Pirocchi, according to Mr. Cohen, were "\$15-\$20."³⁹

These facts indicate a need to review the effectiveness of statutory and administrative controls placed on the activities of township officials such as Mr. Pirocchi. The Commission is undertaking such a review and will issue a future report on its findings and conclusions in that area. In the meantime, the evidence acquired by the Commission will be referred to a prosecutor to consider whether to commence criminal prosecutions.

VOTING FRAUD IN THE CITY OF CHESTER

Following the May 21, 1974, primary elections, the Commission received a number of citizen complaints alleging voting fraud in the City of Chester, Delaware County. An extensive preliminary inquiry was conducted in order to determine whether a full-scale Commission investigation was warranted.

The City of Chester is composed of 11 wards containing 49 precincts. In the primary election, a total of 11,908 votes were cast. Sixty-three voting machines were utilized by the City of Chester in this election.

³⁶Testimony of Philip Cohen before the Pennsylvania Crime Commission, March 22, 1974, N.T. 19-26, 48.

³⁷*Id.* at 19-20.

³⁸*Id.* at 27.

³⁹*Id.* at 29-31.

The investigation focused on seven precincts where alleged systematic voting frauds had occurred. These precincts were as follows: Precinct 7 in the First Ward and Precinct 8 in the Eleventh Ward, which are predominately white middle-class precincts with a large turnout of voters; the Second, Third, and Fourth Precincts of the Eighth Ward which are predominately low-income black areas; and the First Precinct of the Third Ward and the Second Precinct of the Sixth Ward. The preliminary inquiry consisted of an examination of the voting machines, voters' certificates and numerous voter interviews. The official computation of votes in every precinct within the City of Chester was compared with the actual results indicated on the voting machines. Only one major discrepancy was uncovered, which was in the Seventh Precinct of the First Ward where a 50 vote discrepancy in the Republican contest for nomination to the Seventh Congressional District seat was discovered. The candidates in this contest were Lawrence G. Williams, Arnold A. Barnabe and Stephen J. McEwen, Jr. Fifty votes were transferred from Williams to McEwen on the official tabulation, as indicated by the table below:

	<u>Machine Totals</u>	<u>Official Computations</u>
McEwen	125	178
Williams	78	28
Barnabe	10	10

The official total for Mr. McEwen includes three absentee ballots. The results of the voting machines are reported to the Bureau of Elections by the Judge of Elections, who in this case was Arthur L. Cardwell.

In addition to this discrepancy in the Seventh Precinct of the First Ward, there were possible discrepancies of one vote each between voting machine totals and the official tabulations of votes of eight precincts. In another precinct, there was a three vote discrepancy.

The custodian of the voting machines, Stephen McFee, stated that he was responsible for the official computation of votes at the Bureau of Elections, but he said that he relied on the figures provided to him by the precinct Judges of Elections and did not check the figures against the machines' totals. There appears to be no good reason for the failure actually to check the machines before officially certifying the election, since they are collected and stored in a central location. This would provide an additional check and would help prevent both fraud and errors.

The number of voters' certificates, which are required to be signed by the voters at the poll prior to voting, was compared with the public counter totals on the voting machines. Of the 11,908 votes cast in Chester, only five votes were not substantiated by voter certificates. A comparison of the

signatures on the voters' certificates and registration certificates was made for approximately half of the votes registered in the precincts where the preliminary inquiry was concentrated. A total of 705 signatures were examined by Commission agents. Without the aid of a handwriting expert, Commission agents concluded that a total of 161 showed sufficient differences to warrant further inquiry. Seventy-eight of these 161 individuals were interviewed and were questioned about whether they voted, whether they were instructed how to vote, whether they were threatened in any way or offered any reward for voting for particular candidates, and whether they observed any unusual or improper practices at the polling places. In most interviews, a handwriting sample was obtained. All persons who were interviewed stated that they had voted. A comparison of the handwriting samples obtained in interviews with the vote certificate signatures indicated to Commission agents that in each case the individual interviewed was in fact the one who signed the certificate.

Commission agents also examined the voters' certificates in the seven precincts in order to ascertain whether or not one individual may have signed more than one voter certificate. This was accomplished by placing the voter certificates in the order in which the votes were cast and having Commission agents examine one signature against another to detect similarities in signatures. The agents found nothing to warrant further examination.

The Commission received numerous investigative leads from various citizen sources. All of these investigative leads were pursued with only isolated irregularities uncovered. All those irregularities are included in this report.

In the First Precinct of the Third Ward, three individuals, who had been former residents of the precinct, actually voted in that precinct when in fact they had moved their residences to other precincts more than two months prior to the election. All three of these voters were former residents of a Chester hotel which was condemned in January 1974, by the Chester Redevelopment Authority. One of these three voters was interviewed, and he stated that he had resided at his new address since February 1, 1974, but had not changed his voting address. He further stated that he was advised by his committeeman in his new precinct to vote at his former precinct. A "Notice of Transfer of Registration" for this individual was on file at the Voters' Registration Office. It was dated June 13, 1974, and indicated that the voter changed his address in April 1974. This notice is inconsistent with the information provided by the voter during an interview.

There were four other suspicious voters in the First Precinct of the Third Ward. However, agents of the Commission were unable to locate these four voters. None of these four occupied the address indicated on the voters' certificates; two of the residences were deserted.

In the Third Precinct of the Sixth Ward, the Minority Inspector indicated

in an interview that she observed actions by the Judge of Elections which she believed to be improper; however, she would not provide any details to Commission agents other than to indicate that her reluctance to talk was based on her belief that other persons present would not "stand up" with her. The Minority Inspector's name was provided by Congressman Williams' office with the allegation that she had observed the Judge of Elections behind the curtain of the voting machine assisting the voters. A voter in this precinct also said that he observed the Judge of Elections inside the voting booth with a voter.

In the Second Precinct of the Seventh Ward, the Minority Inspector, Mrs. Ethel Payne, said that she observed the Judge of Elections enter the voting booth with a voter on three occasions and that a Committeeman did likewise. Mrs. Payne said that these instances were all witnessed by Elsie Clark, a poll watcher. Mrs. Clark was interviewed and also said that these two individuals entered the poll booth with voters on several occasions. However, Mrs. Clark further stated that she thought the Judge of Elections and the Committeeman were merely helping voters who "got stuck in the booth because they were voting across party lines."

The Third Precinct of the Eighth Ward is an area which might warrant further examination if a full scale investigation by a prosecutor is commenced. The voters' certificates for this precinct were "misplaced" for several days; and, consequently, the Commission work was stymied in that area.

The results of the preliminary inquiry in the city of Chester indicate the existence of several possible violations of the election laws, some of which may constitute election fraud. It did not appear, however, that these possible violations are sufficiently systematic or widespread to justify a full Commission investigation, and the Commission has determined that the evidence disclosed should be referred to a prosecuting official.

CONCLUSION AND RECOMMENDATION

Corruption and misconduct in office by public officials and employees is one of the most serious problems facing society today. The history of Delaware County over the past three years again forcefully demonstrates that Pennsylvania has no effective institutional method of taking action against public officials involved in wrongdoing.

Since at least 1971, there have been numerous public allegations of widespread official corruption and macing in Delaware County. Crime Commission investigations have previously substantiated some of these allegations in the area of macing and now have uncovered new evidence of corruption in the public works department in one township in Delaware County.

The response of the District Attorney in Delaware County, who has the responsibility to prosecute violations of the criminal law, was to appoint a "special prosecutor." He selected Richard A. Sprague, Esquire, a man who has a high reputation for his prosecuting ability, but who has continued to occupy the full-time position of First Assistant District Attorney of Philadelphia, while also taking time out to prosecute all of the persons involved in the famous Yablonski murder cases. Despite Mr. Sprague's ability and despite the significant amount of evidence made available to him, he has taken no action to prosecute officials for macing. After appointing Mr. Sprague, District Attorney McEwen disclaimed further responsibility for such matters.

The criminal justice system in Pennsylvania is decentralized and localized. Primary responsibility to prosecute all criminal cases, regardless of the charge, rests with the elected district attorney of each county. In the normal run of criminal cases, local district attorneys appear to function smoothly. However, in many cases involving allegations of corruption by local officials, such as there are presently in Delaware County, there is inaction by the prosecuting officials. In such cases, there may be at least an appearance of impropriety on the part of the District Attorney because he is in the same political party as the persons involved. This contributes greatly to undermining the public's confidence in and respect for the criminal justice system.

Although the Attorney General, a state official appointed by the Governor, has the power to supersede a local district attorney, in practice this power has been very sparingly exercised. The State Department of Justice contains no active prosecuting unit other than the recently established Office of Special Prosecutor, which is presently assigned to corruption cases in the City of Philadelphia.

The Crime Commission has previously urged, as its major recommendation in the *Report on Police Corruption and the Quality of Law Enforcement in Philadelphia*, that a permanent, state-wide Office of Special Prosecutor be legislatively created, with the person appointed Special Prosecutor free from political control. That *Report* was limited in its focus to the problem of corruption by law enforcement officials. However, the concept of a state Office of Special Prosecutor applies equally to cases of corruption by other public officials and employees. The political independence given to the Special Prosecutor, by giving him terms which overlap those of the Governor, also makes it appropriate for that office to handle cases involving all types of public officials. The Commission again strongly recommends that the legislature adopt this recommendation.

While this legislative change is pending, however, the failure of the Delaware County District Attorney and his designee to take action must be remedied. Merely turning existing evidence over to Mr. Sprague is no solution in light of his past behavior in Delaware County. This is the type of

situation which warrants exercise by the Attorney General of his powers of supersession. In order to restore public confidence in the integrity of government, an independent and competent prosecutor should be promptly established by the Attorney General to take charge of the situation in Delaware County. However, the Attorney General has advised the Commission that in view of budget problems, he cannot adequately staff and support the type of operation needed in Delaware County.

In light of the foregoing, the Commission recommends an alternate course of action. The District Attorney should request the Board of Judges of Delaware County to select a person to serve as prosecutor for these special matters, as it would do, under existing statutes, in the event the District Attorney dies or resigns from office prior to expiration of his term. The District Attorney should then designate the person selected as a special prosecutor for Delaware County, and the new special prosecutor should request the impanelling of an investigating grand jury and prosecute the appropriate cases.

4

Associations Between Businesses And Organized Crime Figures

The Pennsylvania Crime Commission in 1970 issued an extensive report on organized crime in Pennsylvania which contained a lengthy analysis of the extent of organized crime involvement in business and commerce in the state and described serious dangers to society which that involvement posed. This Report was largely responsible for passage of legislation dealing with these problems. See *e.g.*, the Pennsylvania Corrupt Organizations Act of 1970.¹ In the 1970 Report, the Commission documented the connection of certain organized crime figures with specific businesses and also stated that it had information concerning a total of 375 businesses having some connection with organized crime. The raw data supporting this statement was developed in connection with the investigation reported on in the 1970 Report; the raw data was not collected with a view towards public release.

From time to time since 1970, several public officials have called upon the Commission to issue separately the actual list of the 375 businesses. These officials have suggested that public identification of legitimate businesses which are associated with organized crime figures would enable the public to boycott the businesses and thereby strike a blow against organized crime. This same suggestion has been made in other states, but to the Commission's knowledge, no governmental body has ever released such a list because of constitutional and practical limitations on the utilization of governmental power and resources. Such lists have been issued by private organizations, such as the Chicago Crime Commission, with no discernible effect on organized crime.

The Commission believes that preparing and issuing a list of businesses associated with organized crime figures would be inappropriate. The Commission is not an accusatory or prosecuting body; it is a fact-finding body which issues reports and makes legislative and administrative recommendations in order to cast light on problems in the area of crime and the criminal justice system. These were the purposes underlying the 1970 *Report on Organized Crime* in which the Commission made a number of recommendations for legislative action which were subsequently adopted.

¹Act of December 8, 1970, P.L. No. 276, 18 C.P.S.A. §911 (1973).

Although the Commission's factual findings necessarily must make reference to the activities of individual persons, those references are always in the context of a more generalized discussion or illustration of a problem area.

The issuance of a list of businesses associated with organized crime, where it is not in the context of a report on the general problem of organized crime or an analysis of its impact in a particular area, would be a mere focus on individuals. Such a focus would be improper and could jeopardize the Commission's constitutional validity. The Supreme Court has held that when a governmental body takes action designed to brand individuals as criminals,² disreputable persons³ or subversives,⁴ certain due process rights, such as prior notice and an opportunity for a hearing, must be observed. Where investigative powers have been used merely to expose alleged criminals publicly without observing such procedures, the courts have issued injunctions against further investigation.⁵ On the other hand, the courts have allowed greater latitude to investigative agencies which find facts for legislative purposes where there is only a collateral reference to the actions of individuals.⁶ It is the Commission's responsibility to stay within these constitutional boundaries.

Conceivably, the Commission could as an alternative undertake to give notice to each and every person or organization it might include in the proposed list, followed by a hearing, formal findings, and appeals. This might satisfy any demands of due process but would require a massive commitment of resources far beyond the capacity of the Commission and would fundamentally alter the character of the Commission. As a practical matter, it would be impossible within the current budget of the Commission.

In any event, the Crime Commission has not maintained, updated, or expanded the raw data collected in connection with investigations conducted prior to the 1970 Report. Without thorough reexamination there is no way to know how much of this data is currently out of date and inaccurate. Business relationships do not remain static, and innocent persons totally unconnected with organized crime may now be in full control of some of these businesses. This information has not been systematically maintained because the Commission has utilized its limited resources to study other areas of the criminal justice system as set forth in the reports it has published since that date: *1971-72 Report*, *Report on Police Corruption and the Quality of Law Enforcement in Philadelphia*, and the current

²*Jenkins v. McKeithen*, 395 U.S. 411, 89 S.Ct. 1843, 23 L. Ed. 2d 404 (1969).

³*Wisconsin v. Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971).

⁴*Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 71 S. Ct. 624, 95 L. Ed. 817 (1951).

⁵*Jenkins v. McKeithen*, *supra*.

⁶*Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 (1960).

1973-74 Report. Consequently, since the underlying information is no longer current and reliable, the Crime Commission cannot issue the old list of the 375 businesses referred to in the 1970 Report.

The Commission is not minimizing the importance of the problem of organized crime and its relationship to legitimate businesses; the question is one of the proper and lawful approach to an exceedingly complex problem. The Crime Commission will continue to compile and release new information on organized crime and to study and analyze the problem of associations between organized crime figures and legitimate business as time and resources of the Commission permit. However, the Commission will not approach the problem through the mere focus on individuals as has been requested.

5

Corruption in the Philadelphia Police Department—A Summary*

The Pennsylvania Crime Commission is an investigatory fact-finding agency with the responsibility of inquiring into causes of crime and the adequacy of law enforcement. It does not have the power to arrest, indict, or prosecute individuals for criminal wrongdoing; rather the Commission prepares reports concerning problems in the criminal justice system, with particular emphasis on corruption. The Commission believes that the forces of informed public opinion and legislative action are necessary to correct the system-wide problems uncovered by this investigation; prosecution of a few individuals will have little impact on the conduct discussed in this Report.

POLICE CORRUPTION

The Commission found that police corruption in Philadelphia is ongoing, widespread, systematic, and occurring at all levels of the Police Department. Corrupt practices were uncovered during the investigation in every police district and involved police officers ranging in rank from policeman to inspector. Specific acts of corruption involving improper cash payments to the police by gamblers, racketeers, bar owners, businessmen, nightclub owners, after-hours club owners, prostitutes, and others are detailed in the Report; more than 400 individual police officers are identified by first name, last initial, and badge or payroll number as receiving improper payments in terms of cash, merchandise, sexual services, or meals.

Corruption and political influence in the Police Department are problems which have plagued the force since its inception. In the 20th century alone, there have been three previous special grand jury investigations, each of which found widespread corruption within the Department. Difficult problems of integrity, political influence, and professionalism still continue, as the following summary of the Commission's factual findings indicates.

*Only the summary is published here, as the entire Report was published separately and is available free to the public.

Liquor

The time, location, and means of selling alcoholic beverages in Pennsylvania are all subject to strict regulation under the Liquor Code. Many establishments operate in violation of the liquor laws to maximize profits, either by staying open past required closing times or having women solicit drinks from customers. Little social pressure exists in favor of the laws, but the Police Department has had to assume responsibility for enforcing those laws. In many instances, rather than enforce the Liquor Code, the police receive payments to overlook violations. More than 20 officers are identified as having received illegal cash payments from bars and approximately 50 from after-hours clubs. Additionally, more than 25 officers are identified as having been in after-hours clubs after the proper closing time. The Commission found widespread shakedowns of licensed liquor operators on the "Locust Street Strip" by members of the Philadelphia Police Department. The Commission discovered evidence that payments to the police were directly responsible for several illegal and open "bust-out" operations.

Eventually, one bust-out bar owner cooperated with the Commission's effort. He worked with the Commission for over a year and made tape recordings of conversations involving payoffs to police officers. During that time, he or his employees made direct payments to twelve police officers on a periodic basis. The tape recorded conversations which occurred during direct payoffs implicated another five officers. He testified concerning payoffs to two other identified police officers—one when he operated another bar and one when he had been arrested and was attempting to obtain expedited treatment at the Police Administration Building. He paid the police in a highly organized fashion, and his experience is a good example of the payoff system as it presently exists in Philadelphia.

To protect his bust-out operation, the bar owner paid an aggregate of \$800 per month to policemen in every unit which had vice enforcement functions in his area. He paid each of the four uniformed squads when they worked the midnight to 8 a.m. shift; three of the squads received \$35 and the fourth received \$40. The "captain's men," who did plainclothes vice work for the captain of the 6th Police District where the bar was located, were paid \$80 apiece each month. The plainclothes officers who did vice work for the inspector of the Central Police Division, the "inspector's men," also received \$80 apiece each month. Their lieutenant received \$100 per month, which was paid by the bar owner's manager. The manager also paid the inspector and his "bagman" each month—the bagman received \$50 and took \$100 to the inspector. Two members of the City-wide vice squad, the Chief Inspector's Squad, received \$50 per month.

The Commission also uncovered circumstantial evidence of payoffs to police by three other bust-out bars. An officer who was picking up money

from the cooperative bar owner commented, in tape recorded conversations, that the bar was only one of a series of stops. Also, other conversations occurred concerning payments being made by the other bars. A police witness for the Commission also confirmed that he had received payments from other operations on the Strip. Because of this evidence and because the bust-out activity continues in such a blatant manner with few arrests being made by the police, a reasonable conclusion is that the owners of those establishments are also paying for protection.

In addition to the Locust Street Strip, the Commission found that certain after-hours clubs routinely and systematically paid police in order to operate past prescribed closing times. After-hours clubs are private clubs licensed to sell drinks until 3 a. m., one hour past the normal closing time for bars.

A pattern of police activity occurred at the clubs which operated illegally after 3 a. m. Officers would enter the club at approximately 3:15 a. m., but make no effort to close it. They would then leave and subsequently return a few minutes before 4 a. m. and close the club. On occasion, an officer would remain at a club during the extra hour, and the bartender would continue to serve drinks in his presence.

This pattern of police activity occurred in all of the clubs for which the Commission has evidence of payments by the club to members of the Police Department. The cooperative bar owner tape recorded conversations with the managers and employees of several clubs in which the employees detailed payments to various police officers including the inspector of the Central Division.

The owner-operator of a Kensington club identified over 40 police officers that he had paid during the period from January, 1970, to September, 1972, including uniformed men up to the rank of lieutenant, two captains, two captain's men, two inspectors, and two inspector's men. The Kensington bar owner's identifications were corroborated by direct observation of payoffs by Commission agents, examination of a ledger the owner maintained in which he recorded police payments, and an examination of police assignment sheets. Incredibly, even after a widespread transfer of men in the 26th District and the East Division, the police did not miss a payment installment; the only result was a slight reduction in payment amounts. Thus, the uniformed squads received \$170 each month until January, 1972, and then the new squads received \$160. The captain and his men received a total of \$110 per month prior to the transfer and \$75 afterwards. The inspector and his men received a total of \$80 per month prior to the transfer and \$50 afterwards.

Illegal liquor sales outlets, "speakeasies," also operate in Philadelphia with both the knowledge and protection of the police. The Commission found two kinds of speakeasy operations: one operates on Sunday when state liquor stores are closed, and the other is similar to an after-hours club

and is in operation seven nights a week.

The Commission discovered a typical Sunday operation in Germantown. Agents made numerous purchases from the speakeasy. One former police officer testified he had received steady payments from that speakeasy. The Commission also uncovered a bar which permitted lewd shows under the protection of a policeman moonlighting as a bartender, and a tavern owner who testified under oath that prior to selling his bar he paid the police between \$300 and \$400 each month.

The Commission thus found evidence of widespread payoffs to police officers from Locust Street Strip establishments, after-hours clubs, and speakeasies in order to conduct operations in violation of the liquor laws. Even legitimate taverns were at times forced to pay to forestall being charged with having violated one or more of the numerous technical provisions of the Liquor Code. Clearly, segments of the Police Department, confronted with enforcing laws about which society cares little, selectively enforce the law for personal gain.

Gambling

The gambling laws prohibit conduct in which large numbers of people engage. The prohibition of gambling is unpopular and is certainly not of as great public concern as the enforcement of laws against such serious acts as burglary, robbery, rape, and murder.

The most prevalent forms of illegal gambling are numbers, horse bets, and sports bets. Commission agents made direct bets or observed bets at more than 200 illegal gambling locations. This does not include the numerous locations where agents saw all the indications of a gambling operation but did not observe or place a bet. An example would be a variety store where very few goods could be found on the shelves, and large numbers of people would enter the store for short periods of time during peak betting hours but rarely buy anything.

The Commission found direct evidence of ongoing illegal gambling in every police division of the City. Gambling operations were found in such places as candy stores, variety stores, restaurants, and bars. Police witnesses identified other locations which were systematically paying for police protection. The Commission documented payoffs to more than 25 police officers from gamblers. As a result of the work of the Commission's police witnesses and other investigations, there is evidence warranting more than 200 gambling raids and the arrests and indictments of more than 50 gamblers on bribery charges.

One of the Commission's more successful ventures was the infiltration of a medium size gambling network in West Philadelphia. The agents also became familiar with a nearby horse betting system on North 64th Street,

as well as other gambling operations in the area. Because of their acceptance by these groups, Commission agents also placed bets with the largest operation in West Philadelphia which conducts business from a club on North 66th Street.

Because of the regularity, size, and openness of the business, widespread illegal gambling cannot exist over a period of time without the knowledge of the Police Department. Gambling has historically been tied to police corruption, and the Commission found the same ties exist today.

Each time police raid an operation, the disruption costs the gambler hundreds, and possibly thousands of dollars; consequently, a gambler is willing to pay to prevent the disruption. Confronted by an apathetic public, by gamblers who can evade arrest through the use of rice paper and the telephone, and by courts in many cases unwilling to impose a sentence of more than a small fine or probation, the police have become justifiably cynical about their ability to control a "crime" which few wish to control. However, Department policy demands vice arrests, and many times police officers turn the situation to their own benefit.

The Commission found that police officers throughout the City accept protection money from gamblers. The Commission received sworn testimony from its principal police witnesses concerning many gambling locations giving protection payments to police. The Commission's investigation disclosed that the basic pattern of gambling payoffs involved a sum of money paid by a numbers banker to a policeman who acted as the bagman for his unit. The bagman then distributed the money to all the members of his unit who were aware of the illegal activity and who wanted the note. Uniformed squads were paid when they worked the 8:00 a.m. to 4:00 p.m. (day work) shift, every 24 days, with generally about \$5 going to a policeman, \$10 to the sergeant, and \$15 to the lieutenant. Payments to plainclothes units may range from \$15 to \$50 per man paid through a bagman once each month, usually on the 1st or 15th. Plainclothes officers normally have a number of such regular notes.

The method for handling the payoffs can be well planned and hidden. For example, in West Philadelphia, a middle level gambler pays the uniformed squads \$65 a month when they are on day work; he also delivers money for two smaller bankers, each of which pays \$50. He also pays a total of \$450 to one bagman for the captain's men and inspector's men.

The Commission uncovered other payoff patterns. Some gamblers pay by locations, with office men and writers making their own payments when necessary. Two principal Commission police witnesses gave sworn testimony concerning \$5 and \$10 notes they had received from many gamblers, usually through a bagman. One banker from South Philadelphia began working with the Commission and taped a payoff with a sergeant. The payoff occurred in a police car, and the police radio can be heard in the background. Other bankers pay their "edge off" houses a fee for police protection.

The Commission also discovered a substantial number of illegal gambling machines in the City. The machines were declared illegal in the late 1950's by the Pennsylvania Supreme Court. Distributors would not place them in the outlying counties but had no hesitation about installing them in Philadelphia. However, the Commission was unable to determine whether the existence of the machines was due to police laxity, ignorance, or payoffs.

A combined program of gambling law revision, adequate police training, and leadership on the corruption issue, as well as the deterrent of an ongoing, institutionalized investigative unit outside the Police Department specializing in integrity are necessary to fight corruption arising from gambling activities.

Prostitution

The Crime Commission investigation into prostitution and its relationship to police corruption concentrated in the Central and North Central Police Divisions. During the course of its investigation, the Commission located various centers of wide-open prostitution operations. Approximately seven police officers were identified as receiving cash payments to permit prostitution; eight others were alleged to have received or demanded sexual services from prostitutes in lieu of arrest. The Commission found that in certain selected localities within those areas, streetwalker and bar prostitute operations flourished due to police protection.

Commission agents received 62 separate solicitations in two limited geographic areas. In the North Central Division, street-walkers, primarily black, frequent a two-block stretch of North Broad Street. They become known to both the police and the general public and obtain most of their clients from being in a place where prostitutes are "known" to be.

In the Central Division, Commission agents discovered wide-open and fast-moving prostitution rings at two bars at 10th and Race Streets, both within two blocks of the Police Administration Building. In addition, agents received solicitations at other bars in the area.

The Commission interviewed several of the bar prostitutes from the 10th and Race Streets area to determine whether they paid the police in order to operate so openly. Three of the women gave sworn statements that they were required either to solicit four drinks from their clients before they adjourned from the bar to a nearby hotel or to pay the equivalent of four drinks to the bar from the money they earned. It was their understanding that the money was used by the bar to pay for police protection. The witnesses had both observed and been involved in instances which corroborated their understanding. For example, when a prostitute was about to leave the bar with a client and saw a police car outside, she told the

bartender. He went outside and the car left. Additionally, a procurer (pimp) who frequents one of the bars testified that he had observed the owner pass currency to a police officer inside the bar. As soon as the Police Department learned of the Commission's activity in the 10th and Race Streets area, the prostitution operations were closed down for a short period, according to one of the police witnesses who testified before the Commission.

A cooperative bar owner tape recorded a conversation with two officers in which they told him bar owners still pay the police for protection of their prostitutes. The same bar owner and his employees told the Commission that police protection involved not only payments of money but also free sexual services. The bar owner identified five police officers who received these services. One prostitute who worked at a Center City restaurant testified that she had sexual relations with police officers several times a week. She also told the Commission of an incident in which two police officers extorted \$300 from her, part of which was used to pay for their dinners and a hotel room where they engaged in sexual relations with her. The prostitutes from the 10th and Race Streets area also testified that they were propositioned by police officers. When they did get arrested, an officer would offer to drop the charges if the female would engage in sexual relations with him.

The laws against prostitution, like those regulating gambling and the distribution of alcoholic beverages, are concerned with victimless crimes. The Commission found corruption usually attended the regulation of the conduct by the police.

Narcotics

In terms of patterns and regularities, narcotics related police corruption shares little with the other vice areas. The Commission discovered corruption in narcotics enforcement to be more of an individual than squad-wide activity. While the financial temptation is greater because of the extensive profits involved in narcotics traffic, the long standing law enforcement view of narcotics graft as the "dirtiest" type of corruption and the very nature of the narcotics transaction itself mitigate against systematic corruption. Nevertheless, the Commission received sworn testimony concerning police officers who allegedly have accepted, and in some cases, extorted money and narcotics from drug offenders interested in avoiding arrest. Approximately eight officers have been identified as being involved in narcotics related corruption, although an additional estimated fifteen unidentified officers were said to be involved. This does not include the incidents detailed by the special investigating grand jury.

The most common type of corruption appears to be the "shakedown" where an officer receives money, drugs, or other payment in lieu of arrest-

ing a suspected drug offender. An officer who makes a practice of narcotics shakedowns may patrol known drug use areas in search of a "score." When he sees an addict or a pusher, the corrupt police officer stops him as if to make an arrest. At the suggestion of the suspect or on his own impulse, the officer may come to some sort of understanding with the individual. The street addict, pusher, and addict-prostitute make particularly easy targets for the corrupt officer.

A former police officer testifying before the Commission estimated that in 65-70% of narcotics arrests, part of the drugs seized were not turned in as evidence but were kept for farming, paying addicted informants, sales, or personal use. Farming—the planting of evidence—is used to make or strengthen the case against a suspect. This conduct is often rationalized as a means of removing the trafficker from the street.

The Commission assembled evidence about the occurrence of shakedowns and farming in the 16th, 17th, and 18th Police Districts. In some cases, female addicts were allegedly threatened with arrest, beaten, or forced into performing sexual acts with the officers who had stopped them, while males were threatened, beaten, released, and told to "keep their noses clean."

One addicted drug dealer told of four incidents during the last two years when he was detained by police officers and lost more than \$2,400. Another told of being detained during a drug raid in North Philadelphia and having all of his cash stolen. A third pusher, a woman, described various instances when officers allegedly obtained sexual services to forestall an arrest, mentioning three detectives and a lieutenant by name. The Commission has received allegations concerning fourteen other instances of Philadelphia police officers taking money, drugs, information, goods, or sex from suspects.

The Commission's findings in this area are supported by the investigating grand jury which unearthed similar examples of narcotics corruption. However, the Commission did not uncover the same widespread, systematic corrupt activity as in other areas of vice enforcement.

Business Notes

The Crime Commission found a broad spectrum of businesses, large and small, making illegal direct cash payments to the police; they included banks, insurance companies, automobile dealers, restaurants, supermarkets, jewelers, construction companies, vendors, country clubs, and moving companies. Businesses were found paying police officers in every one of the twenty-two police districts.

Most of the payments can be categorized as follows: (a) payments made in return for clearly improper acts by policemen, including providing

on-duty policemen as private guards and providing confidential criminal records and intelligence information; (b) payments for proper police services rendered during the course of duty, including extra protection, police escort service, and quick response to calls; (c) gifts or payments made to incur "goodwill" on the part of the policemen; and (d) payments by businesses in response to extortionate demands by policemen or as bribes to overlook traffic, building codes, or other violations.

Although only a limited investigation of this matter was undertaken, the Commission uncovered identifying data on more than 200 police officers receiving cash payments from businesses. The names and badge numbers of 129 police officers who have received illegal cash payments were obtained, including one inspector, one captain, seventeen lieutenants, twenty-four sergeants, one corporal, and eighty-five policemen. Hundreds more such identifications would be obtainable through careful examination and correlation of police records with testimony of Commission witnesses. An estimated 700 policemen have received cash from just the businesses named in this Report in 1972-73. In addition, approximately 167 police officers were specifically identified as having received one or more free meals. An estimated 2,000 policemen have received free meals from just one restaurant chain in the above period.

The cash payments uncovered by the Commission are specifically punishable by dismissal and up to 90 days in jail under the Philadelphia City Charter and are potentially punishable as bribery under the criminal laws. The Police Department takes a strong official position opposing such payments, yet the Department never investigates them or punishes officers who receive them. Policemen thus generally refer to business payoffs as "safe notes" or "clean notes."

Police officers high in the chain of command are well aware of and participate in clean notes. Guard service at one company was arranged with at least the knowledge of the commanders of ten police districts. One instance was found in which an inspector in command of a police division was required to share Christmas notes by taking a case of liquor to a downtown staff meeting.

The amounts of money paid to the police for extra services provided to businesses range from \$2 for an escort to the bank to \$125 paid weekly for a full-time police guard stationed on business premises. Although the amounts of individual payments to police are often small, they can amount to a substantial investment of money. One business paid nearly \$60,000 in cash and dispensed \$70,000 worth of free meals to policemen in 1972. Another business paid cash to police officers at an annual rate in excess of \$23,000.

The clean note presents a serious corruption hazard to any police department, despite the fact that often no criminal activity is being protected. Where police act as regular guards for specific businesses their services are

effectively denied to the rest of the public. The Commission found that in the case of one fast-food chain, the services of the equivalent of 22 full-time, on-duty police officers were devoted to protecting various business locations. These on-duty policemen were used in place of private guards at a substantial savings in cost to the company. However, the Philadelphia taxpayers lost the services of men who received a combined salary of about \$264,000.

In addition to taking police services away from the public, this use of police as private guards was completely inefficient as a means of reducing crime. Close examination of crimes at protected and unprotected restaurant locations shows that the regular presence of on-duty police guards prevented, on the average, less than \$13,000 in crime losses due to thefts per year, while the police protecting the stores were paid a combined public salary of about \$264,000. At the four major supermarket chains in Philadelphia, extra police services also had no measurable effect on the crime losses of individual businesses.

Failure to enforce restrictions on clean notes thus has led to policemen being given assignments which afforded inefficient and ineffective protection to the public and has resulted in a distorted allocation of police resources.

An even more serious consequence of the clean note is that decisions on where to allocate police personnel are influenced by who is willing to pay extra for them, rather than where they are most needed. In effect, police services are open for bidding with the money going to individual police officers.

The receipt of clean notes also has an impact on the integrity of the individual police officer. The wide acceptance of illegal gifts causes everyone to be compromised to some extent. Some honest officers find them personally degrading and resent the assumption that they can easily be bought. Clean notes are also one means by which officers are tested by other officers who want to see if they will go along with the system. Even an officer who will not personally take a clean note learns that he must look the other way when his colleagues take them, or risk being an outcast.

In some cases where police officers receive a modest but steady clean note, they can become dependent on the extra income, causing them to look for other sources of notes if transferred. The note becomes an expected way of life, and officers may use the wide discretion at their disposal to bring non-paying individuals into line. For example, the Commission discovered that in certain sections of the City, vendors are systematically "shaken down" by the police. One fruit vendor testified before the Commission that he had been operating a fruit truck for the past twenty years and during that period he had to make regular payments to members of the Philadelphia Police Department in order to operate. During the five years that he operated an unlicensed stand at 20th and Johnson Streets, he paid at

least \$60 a month and at times as much as \$75 a month to the police. Each of the shifts was paid \$15—\$5 for the sergeant and \$10 for the sector car. He also usually had to pay \$10 a month to an emergency patrol wagon. The vendor believed that everybody in the fruit business has had to pay the police at one time or another. The vendor finally stopped payments to the police in October, 1972, and several months later, his truck was confiscated by the police and shredded.

Police officers become so accustomed to receiving income from vendors they have actually been known to argue over the location of vendors. For example, a former police officer testified about a dispute between officers in the 22nd and 23rd Districts over the side of the street on which a vendor would illegally park. Each wanted access to the free food and cash that would be forthcoming.

Even occasional Christmas notes, free meals, or other presents given to create goodwill have an adverse effect. Although at first the effect of a gift to policemen or other public employees may be to create good feeling and marginally better service, in the long run the recipients grow to expect the presents as their just due. When they are not forthcoming, hostility is often created, and solicitation, or even harassment may take place and service deteriorates.

Car Stops

Police officers often receive cash from motorists who have been stopped for an alleged traffic or other violation. Small cash payments are made in return for failure to issue a ticket; larger amounts change hands when a driver is caught with a stolen car, numbers, drugs, or bootleg whiskey.

According to police witnesses, an expectation prevails among both policemen and motorists that the cash will be offered and accepted. Car stops are one of the first ways a rookie will be tested by his peers to see if he is "trustworthy" in terms of accepting notes. Many officers, according to Commission witnesses, do not solicit such payments but rarely refuse them if offered. Others, if they are aggressive, can make significant amounts of money through car stops.

Unprotected Property

Another common variety of police corruption, and one which offers no clear-cut remedy, is the taking of money or valuables from premises or individuals when the valuables are unprotected. This type of violation occurs when a building is open and unoccupied, presumably because a burglary has been committed. Similar to this practice is the confiscation of money or goods during a search, arrest, or detention of an incapacitated person.

The Crime Commission has received sworn testimony from a Philadelphia police officer concerning several incidents of police burglary that he personally witnessed. His accounts of these incidents indicate that such a practice is pervasive. Further evidence of irregularities which occur during arrests has been provided by a Philadelphia police officer and by individuals who have been arrested and have allegedly had money stolen from them while in the custody of the police. Although the Department promulgates regulations to prevent such occurrences, it is apparent that there is a substantial problem in the area of enforcement and detection.

Stolen Cars

The handling of stolen cars by the Philadelphia Police Department provides a further opportunity for corruption and misconduct. During the course of its investigation, the Commission found evidence of three types of police activity related to the handling of stolen cars. First, the Police Department occasionally uses for its own purposes private automobiles and automobile registrations which have been impounded. Second, there is a general lack of security in the handling of impounded cars which has resulted in an inordinate amount of stripping of impounded automobiles. Third, there are indications that as a result of the stripping of cars at the Police Automobile Pound, insurance companies may have a practice of paying a "reward" to police officers for recovering cars and holding them at the district headquarters instead of sending them to the Pound.

The Crime Commission undertook an investigation of the Pound when a regional claims manager of an insurance company informed the Commission that a system of payments existed between one of its district claims managers and officers of the Philadelphia Police Department in order to secure the retention of recovered stolen vehicles at the district station and prevent the vehicles from being taken to the Automobile Pound. It was the company's experience that once a car went to the Pound it would be completely stripped of tires, wheels, radio, battery, engine, chrome, and grill.

On the basis of these allegations the Commission began a surveillance of the Pound and also subpoenaed representatives from five major insurance companies to see if the company's experience was unique or typical. However, at private hearings, officials of the complaining insurance company denied that payments to the Philadelphia Police Department had ever occurred. Representatives of other companies testified concerning poor security at the Pound and confirmed that on many occasions when they went to the Pound, they would see men surreptitiously working on cars.

Commission investigations also disclosed situations where tires were stolen from inside a locked trunk of a car that was in the sole possession of

the Police Department; a car was totally stripped while in the Police Department's possession; and a car was stolen, recovered, but stolen again from the police before the owner could get to the station to claim the car.

Perjury

A Philadelphia police officer's conduct often leads to perjury and offering intentionally false statements in reports and in court. Perjury and intentionally false statements occur in the following contexts: officers swearing to false probable cause sections of search warrants for purposes of conducting a raid; officers falsifying the "evidence found" section of returned search warrants to hide evidence retained by the officers; officers planting vice evidence on suspects or searching them illegally and later lying under oath about the arrest situation; and officers providing false statements to protect themselves or another officer under suspicion of corruption.

Although no perjury is defensible, much police perjury is actually created and almost compelled by the Department's system of vice enforcement, which, despite officially stated policy, is in fact based upon arrest quotas.

The Commission has received sworn testimony concerning the above types of police perjury and false statements. A former Philadelphia policeman testified in detail about the course of events and conditions that brought him to a choice of perjury or testifying against a fellow officer.

Substantial evidence uncovered by the Commission indicates that a number of Philadelphia police officers committed perjury during sworn testimony before the Commission concerning their involvement in the illegal receipt of money from established businesses.

The Corruption Environment

The Commission's investigation has shown that systematic corruption exists in the Philadelphia Police Department. This condition results from the interaction of many factors, including the Police Department's attitude toward the corruption problem, the vice enforcement policy of the Department, various societal pressures on the individual police officers, and the reaction to corruption of other parts of the criminal justice system and the public.

A rookie policeman is assigned to patrol city neighborhoods with complex human problems that society has been unable to resolve. He is placed in difficult situations with almost unlimited discretion to exercise, virtually no guidelines for action, and little or no supervision. There are strong corrupting influences "in the street." His position exposes him to far more

temptations than in other occupations. Public apathy to the enforcement of vice laws helps break down resistance to accepting gifts or bribes or ignoring violations of the law. Also, many practices such as tipping and doing favors that are accepted in the business community are not compatible with the police role. Thus, the police are subjected to conflicting pressures.

The attitudes within the Department to the corruption problem do not assist the individual police officer facing temptations and pressures from his peers. The Department takes the official position that corruption exists only in isolated cases and is a matter of individual conscience. This theory, known as the rotten apple theory, is an obstacle to any meaningful attempt to deal with systematic police corruption. It is impossible to fight successfully a problem that the leadership will not acknowledge exists.

To the individual policeman, the action of the Department leadership speaks louder than pious statements on corruption. Department spokesmen assert, for example, that taking clean notes is against departmental policy; yet, despite its prevalence and openness in the Department, there have been no investigations of the clean note problem by the Internal Affairs Bureau. With this type of official response, the burden of the corruption hazard is placed on the individual policeman without the Department leadership doing its part to assist the individual officer face difficult temptations.

Another indicator of this attitude has been the failure of Department leadership to provide adequate training at the Police Academy to educate young officers about the corruption hazard. Many Crime Commission witnesses testified that the Academy failed to prepare young officers for the temptations that would arise once they are assigned to a district.

The Department's vice policy also contributes to the corruption problem. This policy is ineffective as a means of suppressing vice activity. According to Directive 8, the Department's official statement of its vice policy, all units are required to enforce the vice laws and to file various reports about vice activity. These reports are useless as a law enforcement tool. There is little or no correlation among the number of vice figures arrested, the identities of those arrested, and those listed on the vice reports. The Commission's investigation revealed that most vice reports are essentially recopied from year to year.

In addition to this reporting system, the Department has established vice arrest quotas, which emphasize the quantity and not the quality of the arrest. There is much pressure created at every level of the Department for vice arrests. The number of vice arrests made by a police officer is one factor used to evaluate his ability and performance. Yet the Department does not provide sufficient financial support and equipment to enforce vice laws in any effective way. These pressures for vice arrests and lack of support result in illegal conduct to meet the quota requirements.

The current vice policy of the Department, therefore, is not effective as a law enforcement tool but appears to exist as a shield for the Department leadership. Without the pressure for vice activity, very few arrests would be made. Corrupt officers would be content merely to collect their money from vice centers. Such conduct would become obvious to the public. With current policy, corruption is somewhat hidden from the public by the large number of vice arrests. These vice arrests are not effective against vice centers because the emphasis is only on arrest and not conviction thereby resulting in bad arrest and arrangements between corrupt police and illegal operators to satisfy the quota.

Not only Department policy but pressures created by a "policeman's lot" have an impact on an officer's resistance to corruption. As a young man puts on the police uniform, he becomes a different person in the eyes of many people. His presence creates uneasiness in many people. The paramilitary police organization places further pressures on him and his family. His working schedule isolates him from many prior friends. As a result, he turns inward to the police community. He thereby becomes more susceptible to peer pressures. There will be many pressures on the new policeman to be trusted and accepted by his fellow officers. When a man arrives at a new assignment, he will be tested by the older men to see his reaction to minor indiscretions. He will be told about places he can get the police price on food, clothing, and other merchandise. He will be assigned work which will produce the safe or clean note from a businessman. His reactions and attitudes to police problems and borderline conduct will determine the trust the older men have in him. Once the new man is accepted by the older men, he may be given a permanent sector assignment. When he patrols a permanent sector assignment, he will notice open illegal activity; he must begin to question what is happening. Such inquiry will usually determine whether he will become part of the system. As one officer testified, if he does not go along, he will be "walking the third rail" on subway duty.

For many reasons, there is great hesitancy on the part of police to turn in other police officers. Warnings from supervisors about internal security operations in the district clearly tell the policeman that he should not make any disturbance about activities of fellow officers. If one is caught, he should remain silent.

Systematic corruption of policemen does not occur in a vacuum. Officers succumb to pressures within the Department. Illegal conduct of fellow officers, and especially by superior officers, has a destructive impact on an individual policeman. In Philadelphia, police officers have seen the Police Commissioner held in contempt of court for "blatant disregard" of a court order. They have witnessed the Department leadership fail to take action against open and widespread violations of Department policy such as in the area of safe or clean notes. They see other public officers act in ways

suggesting improper influence or corrupt behavior. They perceive the courts treating policemen as a special category of offenders. Very few police cases get to trial and fewer still are sentenced to jail. The general public seems complacent about corruption problems. Even though large segments of the population are victims of it, people generally do not come forward to protest about police corruption.

All of these various factors contribute to the corruption environment in which a police officer in Philadelphia must work. The Department leadership must acknowledge that corruption is a problem that must be dealt with openly and frankly before there will be any meaningful progress made towards eradication of systematic corruption. The attitudes of members throughout the Department must change to deal effectively with the corruption problem. At the Police Academy, the recruit should be educated about the corruption hazard. Commanders must be held responsible for the conduct of their men. There should be changes in the criminal laws to remove the police from attempting to enforce the unenforceable vice laws. The Commission's investigation established that vice laws cannot be effectively enforced without enormous commitment of resources in terms of support and supervision. Departmental policies toward the vice areas should be modified to reflect realistically the conditions which exist in an urban community.

CONTROL OF THE POLICE

The control of corruption and misconduct by police officers in Philadelphia lies for the most part in the hands of the Police Department itself. The District Attorney's office has shown itself to be ineffective at investigating the police and in fact is forced to rely upon the Police Department to assist in its investigations. The federal authorities also often refer allegations of corruption or misconduct by police officers to the Department, since there is not always a violation of federal law. Although some federal laws do prohibit police officers from taking bribes, the Commission is aware of very few police corruption prosecutions by the federal government in Philadelphia.

The internal control mechanisms within the Police Department are vague, fractionalized, and almost totally ineffective. The Department's attempts at controlling corruption are crippled at the outset by the attitude that there is no widespread or systematic corruption in the Department. Thus, there is little or no serious, active effort made to seek out evidence of corruption in the absence of complaints. Surveillance and exit interviews are conducted but produce few results. There has been no attempt to "turn" a police officer who has been caught and to have him work under-

cover to help improve the system in exchange for lenient treatment. There has been no attempt made to acknowledge the problem of corruption openly and to create an atmosphere within the Department which would allow honest officers to bring forward evidence of corruption without fear of retribution by their colleagues or their commanders.

The responsibility of investigating allegations of both corruption and police "brutality" (a catchword for improper and excessive uses of physical force on citizens) is shared by the commanding officers of the police officers involved and by the Internal Affairs Bureau. There are no written guidelines on who shall investigate particular matters and no special forms for recording allegations of police misconduct. Which unit investigates a complaint appears to depend on a number of various circumstances such as the source of the information, where it was received, the nature of the matter, and the amount of public attention it receives. According to the testimony of Chief Inspector Frank A. Scafidi, most investigations of corruption and brutality in the Police Department are carried out by the Internal Affairs Bureau, while investigations of lesser offenses are carried out by line commanders. Although complaints against police officers are required by police directive to be recorded, the forms used are the same as those for any matter which requires police action, and there are strong indications that the forms are not always filled out.

As the arm of the Police Department with primary responsibility for investigating corruption, the Internal Affairs Bureau is very weak. Under existing procedures it might never even learn of evidence or an allegation of corruption which turns up at the police district level since it might be covered up. Assuming the matter is duly recorded, the incident report would flow up the chain of command rather than be sent directly to the Bureau. Only if the matter is at some point determined to be sufficiently "serious" might a decision be made to bring in Internal Affairs investigators.

Assuming the Internal Affairs Bureau handles an investigation, there is little assurance the Bureau will conduct it vigorously and thoroughly. The officers assigned to the Bureau do not receive any special training in investigating corruption or in the use of undercover techniques. As previously stated, the Bureau has not attempted to exact cooperation from officers who are caught. The Department does not require police officers to submit to polygraph examinations during the course of internal investigations, although it makes frequent use of polygraphs in non-police investigations. Although the present policy is that a member assigned to the Bureau may remain as long as he wishes, Internal Affairs is not in fact a permanent assignment; and as a practical matter, an officer is subject to being transferred out if he displeases his superiors or an influential commander who may be the subject of an investigation. There is also no assurance that Internal Affairs investigators will not later be required to

serve under or alongside officers they have investigated. Finally, the members of the Bureau receive no special rank, status, or pay to go along with the significantly different duties of their assignment.

During the course of its investigation, the Commission came across two incidents which illustrate the manner in which the Internal Affairs Bureau investigates evidence of corruption. In one case, a memorandum was sent from the District Attorney's office to Internal Affairs stating that a Locust Street bar owner had made tape recordings of payoffs to twelve police officers. One of the officers mentioned in the memorandum later testified before the Commission that his immediate commander was notified of the allegation by Internal Affairs and that the officer and his partner were questioned by the commander. At the end of that interview, the two officers were told to go to Internal Affairs the next morning. In the meantime, the two officers had an opportunity to discuss the matter and to make their stories consistent. They decided to deny the allegations. To assist them and to get advice, they also contacted a former policeman. The following day during the Internal Affairs interrogation of the two officers, the former policeman called a staff inspector in Internal Affairs and got a full outline of the evidence against the two officers. Later that day a representative of the Fraternal Order of Police called Chief Inspector Frank Scafidi, head of the Bureau, and was told the two officers need not be concerned since the charges would probably die a natural death. These messages were immediately transmitted to the officers alleged to be involved, which fortified their resolve to deny the whole incident.

In another case, the Commission, in August, 1973, turned over to the Police Department massive evidence of police officers illegally receiving cash payments from businesses. Seventy-seven officers were identified by name and badge number and one hundred and six were identified by assignment, initials, or signatures as being apparently involved. The evidence consisted of documents and testimony. Thorough examination of relevant police records, together with interviews of all witnesses, could have resulted in criminal or disciplinary actions against several hundred police officers. However, the only action taken was that thirty files were "opened." One officer who was apparently deeply involved had been permitted to resign without charges placed against him. No effort was made to contact the business witnesses who testified or to interview additional witnesses. Furthermore, many police patrol logs which would have contained essential corroboration apparently were not examined and were routinely destroyed.

The weakness of the Internal Affairs Bureau is also illustrated by its lack of concentration on internal police matters. Several of its members were assigned during 1973, to conduct an ostensible investigation of corruption in other City agencies.

There is no question that given existing guidelines, attitudes, personnel,

and organization the Police Department cannot effectively police itself. Efforts at internal control should not be abandoned; rather, they should be greatly strengthened and vigorously pursued.

PERSONNEL—SOME CURRENT ISSUES

The Commission examined three personnel issues of current concern: the role of minority group members in the Police Department, promotions, and pensions.

Minority Groups

The Commission has found that the Police Department consciously and intentionally discriminates against women in hiring, promotion, and assignments. There are only 77 policewomen compared to 8,226 policemen. There currently is such a large backlog of women police candidates and so few openings, that the Department has ceased to recruit or test women.

In promotions, women have in the past been restricted to supervising other women, and opportunities for promotion for women are only one-fourth as great as for men. Policewomen in Philadelphia are limited to assignments where they will have contact with women or juveniles. They are not given general patrol, investigative, or staff assignments. This has limited the effectiveness of the Department since women can make valuable contributions. In many other major police departments in the country, women have been given full status as police officers. These departments, including the Pennsylvania State Police, have high praise for the accomplishments of women police officers.

The Police Department has also been found by a federal court to discriminate against black persons through the use of unfair tests for entrance and promotion. In addition, the minimum height and weight limitations imposed by the Department discriminate against males in some racial and ethnic groups.

Promotions

The Commission examined the police promotion system in the wake of four controversial promotions in January, 1973. The promotion system is governed by the civil service procedures and regulations and is primarily sound in concept. However, the system as applied is subject to abuse when the regulations are stretched. This was the case with the creation of four new "supervisor" positions within the Police Department, three of which

are equivalent in pay to inspector and one of which is equivalent to captain. Four officers were immediately appointed to the new positions; first provisionally, then three permanently. (One of the officers died after the provisional appointment and never received a permanent appointment.) Although other officers were permitted to apply for the new positions, only one application was "approved" for each, and only one person was allowed to take the test for each. The examinations were completely oral, which was unprecedented since the implementation of the present civil service system. The circumstances clearly indicate an intention to promote specifically four individuals through whatever means possible. Although there was apparent technical compliance with civil service regulations, these promotions violated the spirit of the civil service system. The Commission has set forth recommended changes in the civil service regulations to guard against such abuses.

Pensions

A sound disability payment and pension system administered without favoritism is critical to good morale within a police department and contributes to the enhancement of police professionalism. The Commission received allegations that "well connected" individuals in the Police Department were given Regulation 32 payments if they were forced to leave the Department prematurely due to a disciplinary problem. Additionally, the Commission was informed that many individuals who were accorded disability payments and a pension then proceeded to get jobs which were inconsistent with the injury they had sustained.

The Commission found that various former police officers receiving pensions and disability payments had histories of corruption or disciplinary problems which might prove an embarrassment to the Department. For example, one was a chronic gambler; two were instrumental in arranging the original "note" from a club owner; one was found by a federal district court to have made numerous illegal arrests and used unnecessary force against racial minorities; and one was about to be dismissed because of a disciplinary problem but suddenly had his dismissal rescinded by the Commissioner.

In another case, an apparently illegal pension was awarded to a detective who had refused to cooperate with the Commission and took his chances with the system. The detective had been tape recorded and photographed by the Commission in the process of receiving a bribe. Following his refusal to cooperate with Commission investigators, he was turned over to the Philadelphia police. Although he was interrogated extensively by staff inspectors, he was not arrested until five days later. On the same day that he was arrested, he was given a 30-day suspension from the Department. Yet another record indicates that he had resigned from the Department on

the day before the arrest and suspension; however, the date on that document is altered. Even accepting the alteration as valid, he was allowed after his arrest to submit his resignation effective prior to the date of his arrest and, thereby, permitted to obtain his pension.

During its investigation the Commission also came across numerous individuals who, after receiving disability pensions, went out and obtained employment of a law enforcement type seemingly inconsistent with their disability. For example, a detective who worked as a polygraph operator received a back injury. He was retired on a disability pension and is presently president of Polygraph Examination Association, and his occupation is administering polygraph examinations in his office. Another policeman slipped in a cell room injuring his lower back. He received a disability pension and is now working for an appliance store moving large appliances such as dishwashers from the warehouse to trucks. Another policeman, while he was reported as permanently and partially disabled, served on active duty with the Pennsylvania Air National Guard and subsequently went to work as a security guard for the Willow Grove Naval Air Station. A list of 35 disability pensioners is included showing the type of their injury and present employment. All the listed employment is law enforcement type work and consists of occupations such as store detective, bank guard, and private investigator. All of these individuals received both their pension and retainer from their new employers.

DRUGS AND LAW ENFORCEMENT

A major portion of the Commission's* effort in the narcotics area was to investigate the nature and scope of drug abuse in Philadelphia and the quality of narcotics control law enforcement rendered by the Philadelphia Police Department. To help fulfill these goals, an undercover narcotics law enforcement unit was organized to infiltrate Philadelphia drug trade and to make high level arrests. In addition, facts were gathered through traditional research methods.

As a result of this work, the Commission concluded that (1) drug abuse is widespread and open within Philadelphia; (2) the criminal justice system has been and continues to be ineffective in reducing drug abuse; (3) the Police Department has a very poor program of drug law enforcement; and (4) thorough changes in the policy and operational techniques of the Police Department's drug law enforcement program are required.

Officials estimate that there are 30,000 heroin addicts and 30,000 to

*The Commission's effort in the narcotics area was primarily performed by the Narcotics Control Strike Force. In this section, no attempt has been made to specify which unit actually coordinated the various operations.

40,000 heavy abusers of other drugs residing in the Philadelphia area. In addition, police and court records indicate that since January 7, 1969, approximately 28,000 drug cases have been processed by the Philadelphia criminal justice system.

The experience of the Commission's undercover agents indicates that drugs can be purchased openly in some areas of the City in full view of the public and the police. At least 448 drug dealers operating in Philadelphia selling a full range of drugs were identified. The Commission's undercover agents, averaging 11 in number, made sufficient purchases of illegal drugs in eight months to result in the issuance of 125 arrest warrants. The conviction rate resulting from these arrests is 90% as of February 1, 1974, which is more than twice the normal conviction rate in Philadelphia.

Empirical studies of all drug case dispositions in the Philadelphia system from January 5, 1969, through March 31, 1973, and the dispositions of East Police Division arrests for the first six months of 1972 were conducted. They showed that the Department arrests large numbers of individuals, primarily addicts and small-volume addicted sellers, most of whom are male, black, and have some history of prior criminal arrest. Most arrests are made by uniformed officers who are limited to employing "sight arrests" as their primary law enforcement tool. The Department has not infiltrated the higher levels of the drug trade in Philadelphia. Few drug sale arrests are made. Over one-half of the police drug arrests are deemed not worthy of prosecution by the District Attorney's office because of poor or unconstitutional conduct by the arresting officer.

The Commission obtained Police Department documents relating to narcotics control and held private hearings with Department personnel as witnesses. The focus of the investigation was on the Department's drug control policy, manpower, resources, operating techniques, and internal evaluation procedures. The Department admits that its policy is directed at addicted possessors or small quantity dealers. It does not aim at high level drug dealers or financiers.

While 96 police officers are assigned to the Narcotics Unit, all but one squad of 17 officers function to process the arrests made by the remainder of the Department. Thus, the entire Department has only 17 officers assigned exclusively to undercover drug work. The Department provides insufficient money to fund a "buy" program aimed at drug dealers. For example, it had made no purchases in excess of \$100 from its own funds in 1972.

Moreover, the Department has no truly undercover narcotics officers. Each officer drives his own vehicle, is provided with no false identification, resides at home, regularly reports to headquarters (where all those arrested for violation of the Controlled Substance Act are processed), is afforded no cover when appearing in City Hall to testify, and has no limit to how long he may serve in an undercover capacity. In addition, the Department has no

women officers assigned to its Narcotics Unit. Plainclothes officers within each district and division also do some undercover narcotics work, but their effectiveness is limited by their multiple duties and lack of training and funding.

No meaningful intelligence system is used by the Department in connection with drug control work. In place of sophisticated computerized analysis of drug markets and distribution systems, the Department operates on a primitive case by case basis. The Narcotics Unit has no analyst or statistician who reviews the data, and the head of the Unit has no information to allow him to give any realistic figure of the number of major heroin dealers in Philadelphia. In addition, the Department has no program to measure its strengths and weaknesses or the performance of individual officers.

THE CORRUPTION INVESTIGATION EXPERIENCE

A corruption investigation into a police department is one of the most difficult investigative tasks which any law enforcement agency can undertake. The Crime Commission has devoted a significant measure of its energies and resources during the past one and one-half years to such an effort. This is the most ambitious and sophisticated project which the Commission has completed in its brief existence. Thus, it was a learning experience, and the lessons which have been learned, some of them painful, will materially assist any agency that conducts a large-scale probe in the future.

The Commission soon discovered that the days of visible corruption payoffs have long since passed. As the corruption system is above all else a conspiracy, the Commission had to resort to creative investigative techniques in order to develop its information. Only by utilizing such techniques could the extremely intense organizational loyalty of the police be breached.

The Commission strongly believes an investigating agency cannot resort to methods beyond the boundaries of legal investigative techniques. Hence, no illegal methods were authorized or utilized. The Commission did make extensive use of tape recordings made by "walking bugs" and microphones placed in rooms with the consent of one of the parties to the conversation. The Commission believes such tape recordings were critical in developing informants, particularly police informants.

The Commission found the immunity system of obtaining information, in which an individual caught in some illegal activity is granted immunity from prosecution in exchange for answering questions concerning illegal activity

and policy payoffs, to be useful but not foolproof. In many instances the individuals preferred to take their chances with the Police Department and the courts.

The Commission also conducted extensive overt operations—issued subpoenas, conducted interviews, and searched countless documents for data—which were helpful in the investigation. Straightforward approaches were made to many members of the business community, current and former members of the Police Department, and individuals engaged in illegal activities, mostly without success.

The Commission supplied information for three major raids during the course of its investigation, one concerning gambling machines, one concerning prostitutes, and one concerning narcotics. In general, while the Commission gained much useful information about substantive criminal problems which tended to be confirmed by the testimony of witnesses who agreed to talk, the raids did not produce a significant amount of direct information on actual police corruption and payoffs.

The greatest success the Commission had with informants was in developing one-to-one relationships with individuals. The Commission's most productive non-Police Department informant was a proprietor of a Locust Street bust-out operation. Another informant, a former professional gambler, made several tapes for the Commission concerning a wide system of police payoffs. He was developed through contacts Commission investigators had had with the individual in the past. Through payments of money and preservation of anonymity, the individual agreed to give information concerning the gambling and police payoff situation in Philadelphia.

Because of the police code of silence, most officers will not come forward with corruption information, especially to an outside investigating agency. The only successful way the Commission had to induce an officer to cooperate was to catch him in some illegal activity, then see if in return for immunity protection the officer would agree to work within the Department, making tape recordings and otherwise corroborating the evidence he produces.

The Commission's initial attempts in this area met with no success. The Commission was unable to persuade a Philadelphia police lieutenant, moonlighting as a bartender and permitting obscene shows in the bar, to cooperate. Likewise, the Commission was unable to persuade a detective who was taped and filmed by the Commission receiving a bribery payoff to cooperate.

Eventually, however, the Commission did obtain the cooperation of some police officers. In one case, the Commission had a tape which one of its informants had made while he made a payoff to one of the police officers. The Commission then contacted the police officer in question and played the tape for him. No amount of mere discussion with the Commis-

sion would have been effective; it was the tape recording which in the end persuaded the officer to cooperate with the Commission.

No informant provides information for nothing, and any agency serious about attempting a corruption probe must have adequate funds with which to provide informants reasonable monetary reimbursement for their information. An investigatory agency also must have subpoena power and, along with unconventional techniques, must employ traditional methods of subpoenaing records and spending long hours searching documents.

The Crime Commission's effort, for many months, was subjected to intense public scrutiny. Maintaining informant relationships under such circumstances is difficult.

A successful major corruption investigation cannot be accomplished in a few weeks or a few months. Dedicated, experienced undercover agents, considerable administrative support, and money are necessary; and if the investigative agency does not possess all three in abundance in advance, it probably should not undertake a police corruption investigation. For a long time, the Crime Commission had neither the manpower nor administrative resources necessary. The investigative staff was eventually drawn from former Philadelphia policemen and state policemen. The Commission had difficulty in getting equipment such as undercover cars, cameras, and tape recording and communications equipment.

During the Philadelphia investigation, the Commission's very constitutionality was litigated in the Pennsylvania Supreme Court. The Commission's most active opponent was the Philadelphia Police Department. The Commission instituted eight separate lawsuits against the Department and was ultimately successful in its litigation efforts. The Commission also had to file actions against persons other than the Philadelphia Police Department.

In contradistinction to the Knapp Commission in New York, the Crime Commission did not have the cooperation of the Mayor or the Police Commissioner in Philadelphia. While an investigation can succeed without such cooperation, the assistance of these officials can materially shorten the investigation. However, delay is not the major obstacle posed by the lack of cooperation; rather it is the attitude of defiance and "I'll take my chances with the system" which is telegraphed from the Mayor and Police Commissioner through the ranks.

Initially the Department's campaign against the Commission's investigation was mainly verbal. Then in October, 1972, a pattern of harassment against Commission agents began. Seven Commission agents and troopers were either improperly treated or unlawfully detained and their cars illegally searched by the Philadelphia Police Department during a three-month period.

RECOMMENDATIONS

Corruption within the Police Department and government in general has been such a constant problem down through history that the Commission believes no single reform can serve as a cure-all. Any progress that is made will have to come through a combined effort on many fronts to change attitudes, systems, and structures within and without the Police Department. However, the Commission believes the establishment of an independent prosecutor, who would institute a full-time, ongoing, active, and inventive integrity campaign is an extremely significant and necessary part of any reform program. Such an official could actively prosecute offenders and serve as a deterrent to future corruption.

A local district attorney cannot properly investigate the very police on whom he must rely for the day-to-day conduct of his job. Throughout its investigation, the Commission repeatedly witnessed examples of this phenomenon; however, the Commission does not ascribe a marked lack of incentive to that particular District Attorney. Rather, an inherent conflict exists, and no district attorney, no matter how dedicated to eradicating police corruption, can properly perform this function. As the Hon. Whitman Knapp, Judge of the United States District Court for the Southern District of New York and former Chairman of the Knapp Commission has remarked, "The District Attorney has to be in partnership with the police, and it is absolutely impossible to suspect your partner."

To remedy this situation, the Commission proposes two solutions: one interim and administrative, the other long-range and legislative.

As an interim measure, the Commission recommends that the Attorney General of Pennsylvania immediately exercise his traditional common law powers and appoint a Special Deputy Attorney General as an independent prosecutor with jurisdiction over police corruption investigations and prosecutions in Philadelphia. The Commission recommends that the Attorney General appoint a committee consisting of the Deans of Pennsylvania's six law schools as well as the Chancellors of the Philadelphia and Allegheny County Bar Associations and the President of the Pennsylvania State Bar Association to nominate three qualified people for the position and that he select one of the three as the Special Prosecutor. Because of the need for continued public confidence in governmental institutions, the appointment should accord the Special Prosecutor the greatest degree of independence consistent with the Attorney General's statutory and constitutional accountability for all matters within the jurisdiction of the Department of Justice. The interim Special Prosecutor should have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel on a full or part-time basis in such numbers and with such qualifications as he may reasonably require. He should have full authority for investigating and prosecuting

cases of bribery, perjury, theft, embezzlement, or other illegal taking of public funds, conspiracy, misfeasance, malfeasance, nonfeasance in office, or any other cases of graft or corruption incident to or in connection with police corruption in Philadelphia. The Special Prosecutor should not be removed from his duties except for extraordinary improprieties on his part.

As a long range measure, the Commission recommends the Legislature create an Office of Special Prosecutor with a staff of attorneys and investigators of its own and an adequate budget. The Special Prosecutor himself should have a six year term of office and be prohibited from holding elective office in the State for a period of four years subsequent to his term.

The Commission suggests that the enabling legislation creating the Office of Special Prosecutor provide for a panel consisting of the Chief Justice of the Pennsylvania Supreme Court, the President Judge of the Commonwealth Court, Chief Judge of the Pennsylvania Superior Court, the Speaker of the Pennsylvania House of Representatives, The President *pro tem* of the Senate, the Chancellors of the Bar Associations of Philadelphia and Allegheny Counties, the President of the Pennsylvania State Bar Association, and the Attorney General. That panel should submit three nominees to the Governor, who shall select one of the three as Special Prosecutor. The Special Prosecutor should be subject to removal from office only upon conviction of misbehavior in office or any infamous crimes, or by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate, as set forth in the Pennsylvania Constitution for removal of civil officers. The Legislature should not permit his removal from office at the pleasure of the appointing authority.

The permanent Special Prosecutor would be responsible for any and all corrupt acts and omissions occurring in the criminal justice system in the Commonwealth of Pennsylvania, and any acts committed to hinder such investigations and prosecutions.

Aside from the Special Prosecutor, the Commission has made specific recommendations for changes in vice laws and enforcement policy and a thorough reevaluation of business notes, as well as changes in internal control, pensions, minorities, promotions, numerous personnel policies, and drug enforcement practices.

6 Gambling and Corruption in Carbondale

In May of 1973, the Pennsylvania Crime Commission officially began an investigation into the nature and extent of organized criminal activity and political corruption in the City of Carbondale. This investigation was undertaken as a result of numerous complaints from citizens of Carbondale concerning various forms of misconduct by City officials, members of the Carbondale Police Department, and private individuals. These citizens displayed a great deal of interest in correcting what they saw as unhealthy conditions in their community and were extremely helpful and cooperative in the Commission's investigation. Not all of the allegations received from members of the public were substantiated during the course of the Commission's investigation. The following report sets forth the facts which the Commission was able to confirm through testimony or other reliable evidence.¹

The investigation included numerous interviews, examination of books and records, and private hearings held in July, September, and November 1973, in Scranton, Pennsylvania. At those hearings, testimony was received from 38 individuals, including Carbondale policemen, City officials, and private citizens. Over 2,300 pages of testimony were recorded at these hearings.

Carbondale is a third class city of approximately 13,000 people and is governed by a mayor and five councilmen. It is located in northeastern Pennsylvania and is the second largest city in Lackawanna County. Carbondale is generally described as economically depressed; its former economic base, railroads and coal, have seriously declined in recent years.

In 1973, the Carbondale Police Department consisted of a chief of police, five sergeants, and nine patrolmen, for a total full-time force of 15 police officers. In addition, Carbondale employed nine auxiliary policemen in 1972 and eighteen in 1973.² From 1960 through March 13, 1973, the Chief of

¹During this investigation many allegations were also received concerning the operation of the Carbondale Nursing Home, the medical practices of physicians serving the nursing home, and Medicare fraud on the part of these physicians. These allegations were forwarded to appropriate officials in the Pennsylvania Department of Welfare and the U. S. Social Security Administration.

²Auxiliary policemen, appointed by the Mayor, have the same powers while on active duty as regular police officers.

Police was Thomas Scalzo.³ He was replaced by Paul Kelly, who is currently the Chief of Police. The Mayor of Carbondale is Abraham J. Kaufman, a practicing physician in Carbondale since 1932. He began serving a second four-year term in January 1972.

GAMBLING

The Commission found that illegal gambling⁴ on a moderate scale operates openly in Carbondale. A total of nine gambling establishments were identified by witnesses who testified at the Commission hearings. Most of these gambling establishments were located on Carbondale's main streets and primarily featured regularly conducted card games. The most prominent among the locations identified were Jake's Pool Parlor on Fallbrook Street, Skippy's Luncheonette on Dundaff Street, and a room above the Irving Theater on South Main Street.⁵ The openness of this illegal gambling is demonstrated by the fact that the persons who ran and profited by these card games, the players in the games, and virtually every police officer testified that they were aware that the games existed and that they had gone on for a substantial period of time without interruption. For example, one sergeant in the Carbondale Police Department testified:

I would say most of them [gambling establishments] were wide open. They ran for months and months and months, even years, some of them. Never been bothered in any way, shape or form; it was common knowledge they were open and doing business.⁶

The scale of the gambling appears to have been relatively moderate for the most part. One gambling proprietor testified that a participant in his poker games "could lose a hundred dollars."⁷ Another proprietor testified that he had never received any complaints about any participants in his

³Former Chief Scalzo died on April 21, 1973. As a result, certain allegations directed at him could not be fully investigated by the Commission.

⁴In Pennsylvania, all forms of gambling are illegal except for the state-operated lottery and bets on horse-racing at authorized race tracks. However, the law does not prohibit mere participation in gambling as a player or frequenter; penalties are attached to such acts as the possession of or sale, etc., of gambling paraphernalia and devices (except playing cards), allowing persons to assemble for unlawful gambling, and soliciting persons to visit an unlawful gambling establishment for gambling purposes. See the Pennsylvania Crimes Code, Act of December 6, 1972, P.L. —, No. 334, effective June 6, 1973, 18 C.P.S.A. §5513.

⁵The proprietors of these three establishments have a combined total of seven convictions on gambling charges.

⁶Testimony of Sergeant John Burke before the Pennsylvania Crime Commission, July 10, 1973, N.T. 10 [hereinafter cited as Burke].

⁷Testimony of John "Skippy" Farber before the Pennsylvania Crime Commission, July 11, 1973, N.T. 8 [hereinafter cited as Farber].

poker games losing more than \$50 a night.⁸ A frequenter of the poker games held in a room above the Irving Theater testified that "[t]he pot could get up to \$100 if you had [enough] raises in the pot."⁹ At the lower end of the scale, there were 50 cent pinochle and knock rummy games. Both proprietors and frequenters testified that cuts, which ranged in size from 25 cents to \$2.00 a hand, were taken (raked) by the operators. One gambler testified that he raked his games for "maybe thirty, forty dollars" an evening.¹⁰

These card games appeared to be locally organized, operated, and controlled. The Commission developed no evidence or information indicating that organized crime from outside the City was involved in Carbondale's card games.

Other forms of gambling that appeared to be prevalent in Carbondale were "punchboards" and coin-operated amusement machines. Among the locations which were identified as having punchboards prominently displayed were the Lucky 8 Restaurant, Salem Diner, Mount Royal Tavern, and Skippy Farber's Luncheonette. Despite the widespread distribution of amusement machines, the City Treasurer's office informed the Commission that the City of Carbondale has collected no amusement device taxes on any pinball machines or jukeboxes in the City since 1971.¹¹

The Commission did not undertake to make a comprehensive survey of community attitudes in Carbondale toward gambling. However, the testimony at the Commission's private hearings indicated that there was a variety of attitudes toward the problem of gambling. Many witnesses expressed the belief that gambling is accepted because it has become ingrained into the social pattern in Carbondale. Others testified that gambling is accepted in the community because no one suffers any harm as a result of participating in such activity. For example, Mayor Kaufman testified that, "The town as a rule don't [sic] object to this little gambling, so-called gambling, because they are not hurting anybody."¹²

The former Chief of Police, Thomas Scalzo, was himself a notorious and inveterate gambler. Testimony of gambling operators, players, and police officers in Carbondale established that former Chief Scalzo frequented card games at ten different specific locations in the City of Carbondale or its

⁸Testimony of Jake Anthony Gillott before the Pennsylvania Crime Commission, September 25, 1973, N.T. 87 [hereinafter cited as Gillott].

⁹Testimony of Roland Paul "Ring" Munley before the Pennsylvania Crime Commission, September 25, 1973, N.T. 11.

¹⁰Farber, N.T. 31.

¹¹Allegations of bookmaking and sports pool ticket selling in Carbondale were received but were not substantiated by the evidence uncovered in the Commission investigation. An informant gave the Commission sports pool tickets that allegedly had been obtained by anonymous Carbondale residents. However, the Commission was unable to develop any further information regarding these tickets.

¹²Testimony of Mayor Abraham J. Kaufman before the Pennsylvania Crime Commission, November 15, 1973, N.T. 55 [hereinafter cited as Kaufman].

near environs. Chief Scalzo appears to have been a relatively heavy gambler, occasionally commenting to other police officers that he had "won a bundle" and displaying a wad of one or two thousand dollars in his hands.¹³ The statements regarding his gambling included: ". . . in my opinion Chief Scalzo was the biggest gambler in the City of Carbondale;"¹⁴ and "all the members of the police force knew he gambled heavily."¹⁵ A police sergeant testified that on Chief Scalzo's instructions, he had on several occasions while still a patrolman picked up cards at one gambling establishment and delivered them to Chief Scalzo at another location where the Chief was participating in a card game.¹⁶

On the other hand, one Commission witness who has been a resident of Carbondale for more than 40 years testified that she thought that the citizens of Carbondale ". . . are against it [gambling] one hundred percent."¹⁷ A retired Carbondale police officer testified that it is his impression that the citizens of Carbondale do not want card games in their town.¹⁸ All of the police officers who testified at Commission hearings indicated that they would like to see the gambling laws enforced. However, many of them also indicated that gambling was an "accepted thing in our community,"¹⁹ and that "everybody knew that gamblers were there."²⁰ One City councilman testified that gambling in Carbondale was such a familiar thing for all the years that he could remember that it was almost a fixture. Before this investigation, he had never thought whether gambling was wrong or should be stopped,²¹ but he said his present view was, "Now I see it's wrong. . . . And if there is anything I could do about it, I would definitely do it."²²

¹³Testimony of Officer Russell Scavo before the Pennsylvania Crime Commission, July 10, 1973, N.T. 21 [hereinafter cited as Scavo].

¹⁴Testimony of former police officer John Monahan before the Pennsylvania Crime Commission, July 11, 1973, N.T. 10 [hereinafter cited as Monahan].

¹⁵Testimony of Sergeant Albert Mazza before the Pennsylvania Crime Commission, July 11, 1973, N.T. 10 [hereinafter cited as Mazza].

¹⁶Burke, N.T. 13.

¹⁷Testimony of Mrs. Charlotte Morrow before the Pennsylvania Crime Commission, July 11, 1973, N.T. 14.

¹⁸Monahan, N.T. 31.

¹⁹Burke, N.T. 9.

²⁰Mazza, N.T. 32.

²¹Testimony of Sam Cassaro before the Pennsylvania Crime Commission, November 14, 1973, N.T. 98-99, 105.

²²Id. at 104.

LACK OF ENFORCEMENT OF THE GAMBLING LAWS

Apparently as a result of the Police Chief's frequent participation in gambling and of the Mayor's toleration of gambling, the Police Department in Carbondale made no effort to enforce the gambling laws in Carbondale. The only "gambling raid" conducted by the Carbondale Police Department, according to the testimony of police officers and gamblers, occurred on March 8, 1970. This "raid" was conducted by then Sergeant Paul Kelly (now Chief of Police) at the direction of Chief Scalzo. As the raid was conducted and the participants were arrested, Sergeant Kelly and the other police officers admittedly accepted fictitious names and addresses from the participants even though they knew the names and addresses were false.²³ Thus, the effort was merely a charade and not a serious attempt to enforce the law.

It is unclear why Chief Scalzo ordered this raid. There was speculation by one officer that it was because the chief had heard the State Police were about to raid this game and wanted to thwart them. This officer testified that on another occasion he heard Chief Scalzo protect the game at Jake's Pool Parlor by calling and giving a warning when he found that State Police agents were in town. The Chief is alleged to have said, "You damned fools, I told you to watch yourselves, as there's an undercover agent up there right now. Get rid of the pinball machines. . . . Knock off the cards."²⁴

Virtually all of the police officers who testified at the Commission hearings stated that they had brought the existence of gambling in Carbondale to the attention of former Chief Scalzo. They consistently stated, however, that Chief Scalzo took no action and made comments such as "I will take care of it" or "don't worry about it" or "just let it go."²⁵

The only real gambling raid that has been conducted in recent years in Carbondale occurred on January 27, 1973, when the State Police entered two Carbondale establishments and arrested 23 persons.²⁶

The mayor of Carbondale, Dr. Kaufman, denied having any substantial knowledge of gambling in Carbondale. However, he admitted having knowledge of several suspected gambling locations and claimed that he had

²³Testimony of Chief of Police Paul Kelly before the Pennsylvania Crime Commission, September 26, 1973, N.T. 15 [hereinafter cited as Kelly].

²⁴Burke, N.T. 29.

²⁵It cannot be said for certain whether these and other statements regarding Chief Scalzo's conduct or motives are true. Regrettably, he died before he could be called to answer questions before the Commission.

²⁶The establishments raided were "Skippy" Farber's Luncheonette on Dundaff Street and 25 South Main Street (over the Irving Theater). "Skippy" Farber testified that the Carbondale Police Department under Chief Scalzo never interfered with his gambling operation. Farber, N.T. 74.

tried to close them up for several years.²⁷ He testified that on many occasions he saw large numbers of cars parked in the vicinity of suspected gambling locations and called police headquarters and told them to find out whether anything was going on at those places, and if so to close them up.²⁸ Yet Mayor Kaufman could not recall any instance where the Carbondale Police Department took action to halt gambling in the community.²⁹ Moreover, he was unable to point to any instance where gambling in Carbondale had been halted as a result of any action he had ever taken.³⁰ Under the Third Class City Code, the mayor has power to demote the police chief without cause.³¹ However, despite the fact that gambling went on in Carbondale without interruption and that the Chief of Police was well known to participate in gambling, there is no record that the Mayor took any action to discipline the Chief of Police.

No direct evidence was uncovered in Carbondale that members of the Police Department received systematic cash payments from gamblers for protection of the gambling operations. There is, however, some evidence of favors being provided to the Chief of Police and to Mayor Kaufman by gamblers. For example, one admitted gambler, Russell "Rossi" Mancuso, told the Commission that he had sold merchandise to Chief Scalzo at "cost."³² Five police officers testified, however, that Chief Scalzo had on various occasions shown them items such as a television set, a tape recorder, a radio, and a wrist watch and that Chief Scalzo had stated at the time that the items had been given to him by Rossi Mancuso.³³ Chief Scalzo was also seen on frequent occasions by a number of police officers in the company of known gamblers in his office at police headquarters.

There is some evidence that gamblers in Carbondale assisted Mayor Kaufman in his election campaign. Rossi Mancuso testified that he had visited Mayor Kaufman in the past to make arrangements to assist the

²⁷Kaufman, N.T. 47-48, 56-57, 60, 66-71.

²⁸*Id.* at 56-57, 70-71.

²⁹*Id.* at 68-69.

³⁰*Id.* at 76.

³¹Act of June 23, 1931, P.L. 932, §2002, *as amended*, 53 P.S. §37002 (Supp. 1974).

³²Testimony of Russell "Rossi" Mancuso before the Pennsylvania Crime Commission, September 24, 1973, N.T. 134, 136 [hereinafter cited as Mancuso].

³³As was the case in Phoenixville and in Philadelphia, the Commission probe in Carbondale also uncovered a pattern of acceptance of gratuities by police officers, particularly at Christmas time. Testimony of police officers revealed that virtually every Carbondale policeman accepted such payments, and on certain occasions members of the force would actively solicit gifts. For example, Officer John Barbaro testified that he and other officers, including Chief Scalzo, went to Carbondale bars and taverns and requested bottles of liquor for police department Christmas parties. Officer Barbaro noted that he was never required to explain to the tavern proprietors why he wanted the free liquor, inasmuch as Chief Scalzo always placed phone calls in advance of the visits by the police officers. Testimony of Officer John Barbaro before the Pennsylvania Crime Commission, September 24, 1973, N.T. 31-32.

mayor in his political campaigning.³⁴ Sergeant Burke testified that in one meeting with the mayor concerning gambling in Carbondale, the mayor stated, "If there isn't a good vote out of that section of Fallbrook Street, 'Jake's' [a known gambling place] is going to get closed down."³⁵ Another police officer testified that several years ago he was instructed by Chief Scalzo to tell Rossi Mancuso not to start a gambling operation until he first went to see Mayor Kaufman. According to that officer, Mr. Mancuso's operation opened up within a few days after Mr. Mancuso had been given that message.³⁶ Mr. Mancuso testified that Mayor Kaufman was aware of his gambling activities; and in response to a question whether the Mayor had given Mr. Mancuso permission to conduct a gambling operation, Mr. Mancuso stated that, "I don't think he gave me any permission that he didn't give anybody else."³⁷

Illegal gambling in Carbondale has not been halted despite the attention brought to it by the Commission investigation. Although gambling appeared to be somewhat less open in early 1974, Chief of Police Kelly acknowledged to Commission agents that he was aware that gambling in the form of organized card games was still taking place in Carbondale. Some police officers testified that after Chief Kelly took office in March 1973, he told the police officers that there would be no gambling in Carbondale, instructed officers to conduct surveillances of known gambling establishments, and sent officers to gambling establishments to inform the proprietors that gambling would no longer be tolerated. However, several other Carbondale police officers testified that Chief Kelly had not given them any instructions or directions to close down gambling establishments in town.

Chief Kelly testified before the Commission on September 26, 1973, that Mayor Kaufman had instructed him to close down all gambling establishments in the City but that he had been unable to do so. He stated that he was aware specifically that gambling was still going on at Jake's and

³⁴Mancuso, N.T. 137-138.

³⁵Testimony of Officer Joseph Mase before the Pennsylvania Crime Commission, July 12, 1973, N.T. 20 [hereinafter cited as Mase].

Jake's Pool Parlor is the subject of a police report filed by a Carbondale police sergeant which reflects Mayor Kaufman's ability to assert his authority on the question whether or not to allow a gambling establishment to remain open. This police report contains the following pertinent entries:

9:30 P.M. 3/15/71 Checked Jake's place on Fallbrook St., observed Chief Scalzo going in and Rossi Mancuso's car parked on Shamrock Ave.

9:40 P.M. 3/15/71 Called Mayor Kaufman and advised him that I believe a game is in progress. He stated he had talked to Chief Scalzo and the Chief told him that he would tell Jake to keep out strangers and not park the cars on Fallbrook St. to attract attention and that he would allow them to play. We have to go slow — Nothing further at this time.

³⁶Scavo, N.T. 26-27.

³⁷Mancuso, N.T. 138.

Skippy's.³⁸ In contrast, Jake Gillot testified on the previous day, September 25, 1973, that "[i]f Chief Kelly comes up and tells me to close, I will close."³⁹

It is clear that the perennial attitude among law enforcement and public officials in Carbondale has been that gambling is a vice that can and should be tolerated. Vestiges of that ingrained attitude continue to manifest themselves today. Although it is difficult to enforce the laws against gambling, it appears that the Carbondale Police Department is making very little effort to do so.

POLITICS IN THE CARBONDALE POLICE DEPARTMENT

In the City of Carbondale, as in every other municipality of the Commonwealth, with the exception of Philadelphia, there are no state statutes prohibiting police officers or other public employees from engaging in active political campaigning. In addition, in all 48 third class cities in the Commonwealth, the power to make all promotions and appointments to higher grades within the police departments is given by statute to the mayor. Although initial appointment to police departments in third class cities must be made under the supervision of the Civil Service Board, with applicants being required to take a test, there are no statutory requirements or guidelines governing appointment to upper level police positions. The lack of statutory restrictions on political activity of police officers and the complete discretion given to the mayor in making promotions within the police department have created a situation in which police are subject to open political influence.

The Crime Commission found that in the City of Carbondale there were overt and strong pressures placed on police officers to participate in the political campaigns of Mayor Kaufman by soliciting votes for him. A total of nine Carbondale police officers testified that they had received explicit instructions from Chief Scalzo or Mayor Kaufman or both to solicit votes for Mayor Kaufman. For example, one sergeant testified that at a meeting of the entire Police Department with the Chief present:

The mayor addressed the police department and stated he wanted to make a showing in the county in the election, and he asked each one of us to go out and get five absentee ballots. This was a request at an open meeting.⁴⁰

³⁸Kelly, N.T. 8, 39.

³⁹Gillott, N.T. 109.

⁴⁰Burke, N.T. 41.

Another officer testified that "... at one time Scalzo did come after me and said you should wise up and go out and get some absentee ballots."⁴¹ Another officer stated that Chief Scalzo always told him for whom he should vote in the next election and instructed him to go out and get absentee ballots to support those candidates.⁴² Still another officer described pre-election "pep sessions" for members of the Police Department at which the Mayor requested members to "[g]o out and get votes for him."⁴³

Political campaigning by Carbondale police officers appears to have occurred, in most cases, during off-duty hours and consisted primarily of soliciting persons to sign requests for absentee ballots. For example, two officers admitted they solicited absentee ballots while off-duty on behalf of Mayor Kaufman's campaign; one of them testified that he was provided by the Mayor a list of people to contact.⁴⁴ However, one police officer testified that he was once ordered by Chief Scalzo to do some campaigning during on-duty working hours.⁴⁵

The Commission was unable in this investigation to document specific instances of police promotions being given or withheld because of performance in political campaigns. However, under the statutes governing third class cities, the potentiality clearly exists for the appointing officer (the mayor) to allow these factors to influence his decision.

Some evidence that Mayor Kaufman did at least consider such factors was provided by the testimony of two witnesses, one a retired police officer and the other a current officer. The retired officer testified that in 1971 he attended a meeting with the Mayor in which one of the persons present told the Mayor that he should replace Chief Scalzo in order to assist him in getting reelected. They discussed as an alternative to Chief Scalzo another police officer. Mayor Kaufman allegedly commented that, "[The other officer] couldn't get you two votes. I can't put him on."⁴⁶ However, Mayor Kaufman denied making this statement.⁴⁷ A current police officer, Joseph Mase, testified that:

... about four or five months ago, there was supposed to be a

⁴¹Testimony of Officer Thomas Murphy before the Pennsylvania Crime Commission, July 10, 1973, N.T. 45.

⁴²Mazza, N.T. 56.

⁴³Testimony of Sergeant Robert Brownell before the Pennsylvania Crime Commission, July 11, 1973; N.T. 39-40.

⁴⁴Testimony of Sergeant Francis Dottle before the Pennsylvania Crime Commission, July 11, 1973, N.T. 47-48; Testimony of Thomas Tierney before the Pennsylvania Crime Commission, July 10, 1973, N.T. 62.

⁴⁵Testimony of Officer Dominick Andidora before the Pennsylvania Crime Commission, July 12, 1973, N.T. 71, 75.

⁴⁶Monahan, N.T. 10-11.

⁴⁷Kaufman, N.T. 19.

promotion for me, and I discussed it with [Chief Scalzo] and he told me, he said, in his words: "You have it in the bag; however, you can make it much easier for yourself if you could pick up a few absentee ballots for the primary election." My comment was: "If I can't get it on my merit I don't want it." And his comment was: "That's the trouble with you, you're too stubborn, you don't listen to people."⁴⁸

The officer did not receive the promotion.

Seven officers complained to the Crime Commission that they had been subjected to harassment in such forms as demotions, suspensions, shift changes, and changes in days off because of their refusal to bend to the political whims of Mayor Kaufman and Chief Scalzo. These officers believed that promotion within the Carbondale Police Department was based on political considerations rather than on ability.

When questioned about political activities involving the Police Department, Mayor Kaufman admitted attending two to three meetings of the Police Department each year and admitted that he may have asked the police officers to vote for him or for candidates of his choice. However, he stated that he never "ordered" anybody to vote for "anybody special."⁴⁹ When questioned on the subject of using police officers to solicit absentee ballots from voters the Mayor's answers vacillated between inability to remember and denials.⁵⁰

The influence of politics in the Carbondale Police Department is exacerbated by the apparent abuse of statutory provisions governing "auxiliary" police or "extra" police officers. Carbondale employed nine auxiliary police officers in 1972 and eighteen in 1973, each of whom worked with varying degrees of regularity. One officer testified that he has worked two days a week for the past thirteen years. Over the last two years, these officers have worked an average of approximately one day per week each.

There are two statutory provisions allowing temporary police officers in third class cities, neither of which envisions regular or steady employment for such officers. Under one statute, "auxiliary" policemen may be nominated by the chief of police and confirmed by the mayor. They may be called to duty "during any period of distress, disaster or emergency."⁵¹ Under another statute, policemen are simply appointed by the mayor for periods up to 30 days, as council may direct, when "it is necessary for the public safety or to preserve order."⁵²

⁴⁸Mase, N.T. 46.

⁴⁹Kaufman, N.T. 11.

⁵⁰*Id.* at 12, 13, 15, 19.

⁵¹Act of January 14, 1952, P.L. (1951) 2016, §2, 53 P.S. §732 (1974).

⁵²Act of June 23, 1931, P.L. 932, §2003, as amended, 53 P.S. §37003 (1957).

Unlike regular police officers, auxiliary or extra policemen are not subject to civil service and thus are, in effect, patronage appointments of the mayor. These part-time policemen are not appointed according to merit, are not required to meet any minimum standards, and receive no training.

VOTING FRAUD

An application for an absentee ballot can be issued only to an elector who appears in person at the office of the county board of election and signs for the application, or who, by mail, requests an application with a written and signed communication. The absentee ballot application is then required to be signed by the person requesting the absentee ballot, unless the applicant is unable to do so by reason of illness or physical disability. The application is then mailed or delivered to the county board of elections, and the board, upon being satisfied that the applicant is qualified to receive an official absentee ballot, delivers or mails out the absentee ballot which must be filled out and returned within a specified period of time. The voter must mark and sign his own ballot and sign the outside envelope in the proper place. He is not eligible to vote if he will be available to go to the polling place on election day.⁵³

The Commission received testimony from three witnesses who saw absentee ballot voting material at either Dr. Kaufman's office or in his residence. One of these witnesses testified to actually filling in absentee ballots that had been signed but not marked by voters and that this activity took place in Mayor Kaufman's home at his direction. If true, this would be a clear violation of the election laws. This witness testified:

- Q: . . . At whose request were you filling those unmarked ballots in?
A: At Mayor Kaufman's. Not request. At Mayor Kaufman's you were being told to be there, that there would be ballots. They were signed. I never signed a ballot; I did mark a ballot.
Q: And did you mark the ballots for the candidates that Mayor Kaufman instructed you to mark?
A: That's correct.⁵⁴

Another witness testified to having seen absentee ballot materials in Mayor Kaufman's home in his living room but did not observe anyone

⁵³See Act of August 13, 1963, P.L. 707; §§20-23, as amended, 25 C.P.S.A. §§3146.1-.6 (Supp. 1974).

⁵⁴Testimony of Witness A before the Pennsylvania Crime Commission, July 10, 1973. N.T. 45. This witness is not identified by name in order to protect the witness against possible recriminations.

marking ballots.⁵⁵ Mrs. Gerald McHale, employed as Dr. Kaufman's medical secretary for 27 years, also testified that sealed absentee ballots were frequently brought to Dr. Kaufman's office and placed on the corner of the desk with the outgoing mail.⁵⁶ However, Mrs. McHale testified she did not know why the ballots were brought to the office or what was done with the absentee ballots after she put them on the desk.⁵⁷

When questioned about the handling of absentee ballots, Mayor Kaufman contradicted two of these three witnesses⁵⁸ by testifying that he never had in his possession absentee ballots or applications for absentee ballots belonging to persons other than himself,⁵⁹ and that he "never had anything to do with the material pertaining to absentee ballots."⁶⁰ On two other occasions, he stated that he never had anything to do with absentee ballots.⁶¹ Mayor Kaufman did admit that "[i]t is possible" that patients did bring absentee ballots to his office ("They might have given them to the girls there and they mailed them in"),⁶² but he could not explain why his patients would bring absentee ballots to his office, stating only, "Maybe it's because they like me or something."⁶³

CONFLICT OF INTEREST

Mayor Kaufman appointed himself to be a member of the Carbondale Redevelopment Authority (Authority) in November 1968, and served as a member until February 1971, when he resigned from that position. The Authority's principal project is the South River Neighborhood Development Project (South River Project), which has involved the acquisition and redevelopment of approximately two square blocks on the south side of Carbondale.

Pennsylvania's Urban Redevelopment Law provides, among other things, that if any member of a redevelopment authority acquires or pos-

⁵⁵Testimony of Witness B before the Pennsylvania Crime Commission, July 11, 1973, N.T. 13-14. This witness is not identified by name in order to protect the witness against possible recriminations. This witness, upon being shown samples of various absentee ballot materials, identified absentee ballot envelopes as being the material seen in the Mayor's home.

⁵⁶Testimony of Mrs. Gerald McHale before the Pennsylvania Crime Commission, November 15, 1973, N.T. 118.

⁵⁷*Id.* at 114, 118, 126-127.

⁵⁸The pertinent testimony of Mayor Kaufman, along with conflicting testimony, will be forwarded to the Lackawanna County District Attorney in order for him to determine whether perjury charges should be initiated.

⁵⁹Kaufman, N.T. 82-83.

⁶⁰*Id.* at 83.

⁶¹*Id.* at 85, 91.

⁶²*Id.* at 85.

⁶³*Id.* at 86.

sesses an interest in any property included or planned to be included in a redevelopment project, he must disclose the interest in writing to the authority, the State Department of Community Affairs, and the local governing body. The statute provides that failure to make such disclosure constitutes "misconduct in office."⁶⁴

Prior to becoming a member of the Authority, Mayor Kaufman owned two properties within the area of the South River Project. These properties were located at 56-60 Main Street and 67 River Street. The Authority's initial application to the State Department of Community Affairs for approval of the South River Project was submitted in May 1970, and the survey and planning application for the project was submitted in September 1970. The minute books of the Authority showed that this project was regularly discussed at all Authority meetings after April 1970, and that Mayor Kaufman was present and active in these discussions.

Despite the clear provisions of the state statute, the Mayor failed to give notice of his interests in the above two properties. He admitted so in his testimony before the Crime Commission.⁶⁵ In July 1972, subsequent to Mayor Kaufman's departure from the Authority, the Authority purchased the two properties owned by the Mayor, one for \$44,432.99 and the other for \$978.10. The Commission found no substantial evidence that the settlement on these properties was excessive, at least in relation to other properties purchased by the Authority.

These facts indicate a possible violation of the disclosure of interest provision of the Redevelopment Law. Although this law contains no express criminal or civil penalty for violators, a criminal prosecution could probably be brought for the common law crime of misfeasance in office, which is defined by the courts as "the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive."⁶⁶ See *Commonwealth v. Peoples*, 345 Pa. 576, 28 A. 2d 792 (1942).

Such a prosecution could be instituted only because the relevant acts occurred prior to June 1973, when the new Crimes Code went into effect. That statute abolished the common law offenses but provided no substitute in the area of "misconduct in office." Thus, under present law, there appears to be no penalty for failure to abide by the disclosure of interest statute. This points to a need for a change in the law to make a violation of such disclosure laws explicitly a criminal offense.

⁶⁴Act of May 24, 1945, P.L. 991, §8, as amended, 35 P.S. §1708 (Supp. 1974).

⁶⁵Kaufman, N.T. 98-99.

⁶⁶The pertinent information on this matter is being forwarded to the Lackawanna County District Attorney for his judgment on whether criminal charges should be instituted.

CONCLUSION AND RECOMMENDATIONS

As in other areas of the Commonwealth, illegal gambling on a moderate scale had flourished in Carbondale in the past. One of the major reasons for that situation is the lackadaisical attitude towards enforcement of the gambling laws by the Chief of Police and the Mayor. Law enforcement efforts in this area have been virtually non-existent, and there is little indication that a greater commitment has been undertaken.

Officials in Carbondale should move immediately to crack down on the gambling activities within their community. The existence of open gambling represents a serious corruption hazard as well as a constant frustration for the honest members of the Carbondale Police Department. Mayor Kaufman should exercise his statutory duty to supervise and control the conduct of the police in this area.⁶⁷

The Carbondale Police Department should also take administrative action through new regulations to prohibit members of the force from associating with gamblers or persons with criminal backgrounds except in the discharge of official duties. Official reports on all such contacts should be required.

The broader problem of the proper method to deal with gambling should be dealt with by the State Legislature. The Commission's findings in this investigation, as well as in other similar investigations throughout the Commonwealth, particularly that reported in *Police Corruption and the Quality of Law Enforcement in Philadelphia*, have led the Commission to conclude there is a need for the State Legislature to reexamine the current regulation of gambling by the criminal laws. The Commission continues to believe that gambling activities can be more effectively controlled through the use of taxation and administrative regulations.

A number of the officers in the Carbondale Police Department were coerced into active participation in support of Mayor Kaufman's political campaigns, which generally has involved solicitation of absentee ballots. The Mayor's power to secure political assistance in his campaign is heightened by the absence of a state law preventing public employees of a third class city from engaging in political campaigning, as well as the mayor's unfettered power to promote police officers. The absence of such laws results in the types of abuses uncovered in Carbondale.

It is essential for police officers, in particular, to remain objective and non-partisan in the performance of their duties. For that reason, the Commission recommends that all police officers of whatever rank should be statutorily prohibited from serving as members of any political committee, taking part in the management affairs of any political party, or taking part in any way in any political campaigns, except to exercise their rights as

⁶⁷Act of June 23, 1931, P.L. 932, §2007, as amended, 53 P.S. §37007.

citizens to express an opinion and to cast a vote.⁶⁸

Both the hiring and the promotion of public employees should be based on consideration of merit rather than political connections, powers, or pressures. There should be a corps of established, knowledgeable, and experienced persons in public jobs. In addition, the people in top level policy-making positions should ideally be answerable to, and removable by, the elected chief executive. Civil service should be flexible enough to accomplish these dual objectives.

The absence of state civil service regulations governing promotions in third class cities creates a situation of potential abuse in other cities as well. There are 48 cities in the Commonwealth governed according to the Third Class City Code, including ten with populations over 50,000 and two with populations over 100,000. In small cities, such as Carbondale, which have correspondingly small police departments, only the chief of police should be subject to appointment by the mayor. In larger third class cities, such as Erie, Allentown, Reading, and Bethlehem, each of which has a population in excess of 70,000, possibly one or two additional top level police positions also should be appointed by the mayor. The Commission recommends that the Third Class City Code be amended to require all other police promotions to be made strictly on the basis of merit under civil service regulations. Furthermore, Pennsylvania's Third Class City Code should be amended to eliminate that portion of Section 2002 requiring appointment of police chiefs from within departmental ranks. Competition for the position should be opened to candidates both from within and outside the department.

The Commission also uncovered evidence that the statutes permitting auxiliary and extra police officers have been abused in Carbondale by the steady employment of such officers over the past two years. This abuse has permitted the Mayor to circumvent civil service requirements and thus appoint police officers on a patronage basis without regard to merit, minimum standards, or training. This abuse of the system of auxiliary police officers should be immediately terminated. If Carbondale in fact needs additional officers, they should be hired on a full-time basis so that the civil service merit requirements will be fulfilled.

The Commission received testimony from several witnesses concerning Mayor Kaufman's involvement with the use of absentee ballots. Much of this evidence was directly contradicted by the Mayor. In addition, the Commission discovered that the Mayor apparently violated the Urban Redevelopment Law in connection with his failure to disclose his ownership of certain property sold to the Carbondale Redevelopment Authority.

⁶⁸Such a prohibition would prevent a mayor from turning limited power to grant police promotions to political advantage. A similar provision is contained in Pennsylvania's First Class City Code, Act of June 25, 1919, P.L. 581, §23, 53 P.S. §12643 (1957). See also, Section 10-107 (4) of the Philadelphia Home Rule Charter (adopted April 17, 1951).

All of this information will be forwarded to the District Attorney of Lackawanna County in order that he can determine if any future action is warranted.

7

Gambling and Corruption in Phoenixville

An investigation by the Pennsylvania Crime Commission of alleged racketeering and official corruption in Phoenixville, Chester County, Pennsylvania, commenced in early 1972, as a result of information received from several concerned residents of the community. The investigation focused on the impact a gambling operation can have on law enforcement personnel and public officials receiving payments from gamblers, and on a general lack of leadership in the Phoenixville Police Department.

The Borough of Phoenixville, located approximately 30 miles northwest of Philadelphia, had a population of nearly 15,000 residents in 1970. It is an industrial-manufacturing community, and Phoenix Steel Company is the major employer. According to U.S. Census Bureau statistics, the mean and median family incomes are approximately \$10,500. Many persons interviewed by the Commission believe that Phoenixville, because of its ethnic and economic composition, is readily susceptible to gambling activity. Both former Mayor Joseph Dougherty and his predecessor described Phoenixville as a gambling town and expressed the belief that Phoenixville residents desire to gamble.¹ Such a public attitude makes it virtually impossible for any police force to enforce effectively the gambling laws of the Commonwealth and is a significant contributing factor to the corruption phenomenon.

The Commission's investigation included nine days of private hearings which involved twenty-three subpoenaed witnesses, including the Chief and thirteen other members of the Phoenixville Police Department. These private hearings accounted for 1,600 pages of recorded testimony. In addition, approximately one hundred persons were interviewed.

Under the borough form of government in Pennsylvania, control over the police department is divided between the mayor and borough council. The council members are given the authority to appoint and remove police officers and to designate one policeman as chief, while the mayor is given administrative control and the power to direct the time, place, and manner in which the chief and the police force perform their duties. At the time of the Commission's investigation, there were twenty-eight members of the Phoenixville Police Department, including four sergeants and the chief.

¹Interview with Joseph Dougherty, June 27, 1972, and interview with Raymond Williams, November 3, 1972.

There were no lieutenants or captains.

During the investigation, the Commission turned over information it developed to the office of the Chester County District Attorney. On November 3, 1972, Phoenixville Police Chief Richard Dolny and Mayor Joseph Dougherty were arrested on charges of extortion, bribery, conspiracy, and misfeasance and nonfeasance in office. Chief Dolny was also charged with blackmail and solicitation of a bribe. All of these criminal charges leveled against these two men arose from evidence concerning payoffs received from Phoenixville gambler Thomas Mastrangelo.

Chief Dolny was tried in Berks County after a request for a change of venue based on a claim of prejudicial pre-trial publicity. Ruling on defense motions, the trial judge dismissed the charges of blackmail, extortion, and solicitation of a bribe. On October 1, 1973, Chief Dolny was convicted of nonfeasance and misfeasance in office and found not guilty of bribery and conspiracy. He filed an appeal from his conviction on October 10, 1973, and that appeal is still pending. Following Chief Dolny's conviction, Phoenixville Borough Council suspended him for six months without pay and appointed an acting chief. On April 9, 1974, he was reinstated by Borough Council as a police sergeant. According to the Council resolution, which passed by a 7-4 vote with one abstention, the Council expressly reserved the option, depending on the outcome of his appeal, to reinstate Mr. Dolny as Chief, reduce his rank, or suspend or discharge him from the force.

On October 23, 1973, Joseph E. Dougherty resigned as mayor of Phoenixville. He was placed on probation for a two year period as part of an accelerated rehabilitative disposition program. In exchange, criminal charges of extortion, bribery, and conspiracy lodged against Mr. Dougherty were dropped by the office of the Chester County District Attorney, but the remaining charges of misfeasance and nonfeasance in office are being held in abeyance during Mr. Dougherty's probation.

OFFICIAL APATHY TOWARD ENFORCEMENT OF GAMBLING LAWS

The name Thomas "Timmy" Mastrangelo is synonymous with Phoenixville gambling.² He is an admitted gambler who testified that he has been in the business "twenty-five years."³ He has operated overtly from the Blue Jay Pool Room, East Bridge Street, Phoenixville, for most of his

²See reference to Mr. Mastrangelo in the Pennsylvania Crime Commission's *Report on Organized Crime*.

³Testimony of Thomas Mastrangelo before the Pennsylvania Crime Commission, April 12, 1973, N.T. 6 [hereinafter cited as Thomas Mastrangelo, April 12, 1973].

gambling life. The gambling operation at the Blue Jay has included book-making, cards, and crap games,⁴ all of which occur in a back room which contains several card tables and is entered from a small room where "spotters" are generally situated. Mr. Mastrangelo has been arrested seven times since 1955 for gambling violations. He has entered guilty pleas in Chester County Common Pleas Court in six of these cases and paid fines. One of the cases has not been tried.

Nearly everyone in Phoenixville knows of Thomas Mastrangelo's reputation as a gambler and is aware that the Blue Jay Pool Room is the focus of his operations. Most witnesses and persons interviewed, including police officers, considered Mr. Mastrangelo to be the major gambling figure in the community, though some disputed this, asserting that Mr. Mastrangelo developed this reputation because of his overt storefront operation and his vociferous public declarations that he was a gambler. There are other gambling operations in Phoenixville of varying sizes which are conducted in a more discreet manner than Mr. Mastrangelo's. The Commission was unable to ascertain the relative sizes of these various operations.

Although the Phoenixville police officers who testified before the Commission were aware of Thomas Mastrangelo and the Blue Jay Pool Room, they testified that they had never received any directions from Chief Dolny to initiate investigations of the Mastrangelo operation. Not only were no directions given, but officers were frustrated in their efforts against Mr. Mastrangelo. For example, these police officers were aware of numerous raids carried out by state and county law enforcement agencies on the Blue Jay Pool Room. Officer Philip Cote testified that after he had obtained some information concerning the Mastrangelo operation, he approached Chief Dolny with the idea of raiding the operation but was rebuked by the Chief who cautioned him not to pull any raids without first "coming through" the Chief.⁵ Another officer, Thomas Dempsey, testified that he was present when Chief Dolny received detailed information about Mastrangelo's operation. The information came from a former Mastrangelo associate named "Dabby" Ingram; but according to Officer Dempsey, Chief Dolny never took any action on the basis of the data provided by Mr. Ingram.⁶ Officer Dempsey further testified that he and Chief Dolny discussed raiding Mr. Mastrangelo's gambling operation "many times," but Chief Dolny always concluded that a raid would be unsuccessful.

Certainly, it is a difficult but by no means an impossible task for the police department in a small town to obtain lawfully sufficient evidence for

⁴Testimony of Thomas Mastrangelo before the Pennsylvania Crime Commission, October 16, 1973, N.T. 8 [hereinafter cited as Thomas Mastrangelo, October 16, 1973].

⁵Testimony of Officer Philip Cote before the Pennsylvania Crime Commission, March 15, 1973, N.T. 23.

⁶Testimony of Officer Thomas Dempsey before the Pennsylvania Crime Commission, February 5, 1973, N.T. 215-220 [hereinafter cited as Dempsey].

a search warrant where all members of the force are known by the local residents. In the case of Phoenixville, the conduct of the Police Chief further aggravated these difficulties. Officer Garfield Adams testified that on the day he was hired to perform undercover work for the Phoenixville Police Department, Chief Dolny insisted on accompanying him around town thereby permitting countless persons, including individuals loitering outside the Blue Jay, to see him with the Chief.⁷

Moreover, the Phoenixville gamblers were so casual about the police that it would not have been difficult to just walk in the front door, as Officer Dempsey testified he had done on one occasion. He entered the Blue Jay in order to serve two arrest warrants for offenses unrelated to gambling and was able to enter the back room where a number of persons were gambling. Officer Dempsey seized a paper bag which contained money.⁸ After Officer Dempsey turned the evidence over to Chief Dolny, the money was returned to Mr. Mastrangelo who later testified that the money was his "cut" of the card game which Officer Dempsey had broken up.⁹ No arrests were ever made growing out of this incident.

Not only were Phoenixville police officers apathetic toward arresting illegal gamblers, but in several instances they actively participated in the gambling. For example, Mr. Mastrangelo testified that former Chief Dolny had in past years placed horse bets with him.¹⁰ Many of the Phoenixville police officers who testified at the Crime Commission hearings stated that they heard that Officer Frank August had been running illegal football pools for many years, and one witness (not a police officer) admitted to a Commission agent during an interview that he had participated in Officer August's gambling operation.¹¹ Several officers observed him with pool tickets in his possession. The rumors circulating in the Police Department concerning Officer August's involvement in an illegal lottery were so strong that eventually Chief Dolny initiated an investigation, which did not, however, prove successful.

Testimony also showed that Officer Patrick Volpe placed horse bets with one of Thomas Mastrangelo's "spotters" outside the Blue Jay,¹² and one police officer testified that on one occasion he placed a \$2 horse bet with Officer Volpe after Volpe told him he "had a hot horse." Officer Volpe paid off \$8 on the \$2 bet.¹³

⁷Testimony of Officer Garfield Adams before the Pennsylvania Crime Commission, February 1, 1973, N.T. 181-186.

⁸Dempsey, N.T. 194-202.

⁹Thomas Mastrangelo, April 12, 1973, N.T. 40-41.

¹⁰*Id.* at 57-58.

¹¹Interview with Mr. August, April 3, 1973.

¹²Testimony of John Dickenson before the Pennsylvania Crime Commission, February 1, 1973, N.T. 265-266.

¹³Testimony of Officer John Kalivik before the Pennsylvania Crime Commission, March 15, 1973, N.T. 78-79 [hereinafter cited as Kalivik].

PAYMENTS BY GAMBLERS TO GOVERNMENT OFFICIALS

There are several possible explanations for the obvious inaction and apathy of police officials in Phoenixville toward open gambling. One is that the police and the Mayor shared the general attitudes of many other Phoenixville citizens toward gambling and felt it simply was not an important concern. Another is that law enforcement officials profited by the existence of this gambling through protection payments. The Commission's investigation uncovered substantial evidence to support the latter explanation.

Chief Dolny was arrested and charged with bribery, extortion, and nonfeasance and misfeasance in office and was convicted of misfeasance and nonfeasance in office. The crime for which he was convicted is a common law offense, defined as "the performance by a public official of a discretionary act with an improper or corrupt motive."¹⁴ The evidence which was presented at Chief Dolny's trial consisted in large part of testimony previously presented before the Crime Commission. That testimony bears careful examination.

One of the primary witnesses was Thomas Mastrangelo.¹⁵ He testified before the Commission that he had given Chief Dolny cash gifts when Dolny first became a policeman 24 years ago. Payments in small amounts continued as Officer Dolny rose in the ranks from patrolman to sergeant to Acting Chief in 1967.¹⁶ Mr. Mastrangelo further testified that, from the time Officer Dolny became Acting Chief in 1967 through 1971, average payments of \$200 were made monthly to Chief Dolny to afford protection to Mr. Mastrangelo's crap games and horse betting operations.¹⁷

Joseph Marchegiano, who was in Mr. Mastrangelo's employ from approximately 1960 to 1968, testified that he made weekly protection payments to Chief Dolny.¹⁸ According to Mr. Marchegiano, later payments to Chief Dolny were made by Thomas Mastrangelo's cousin, Paul Mastrangelo, Sr., a restaurant owner, who was initially approached by

¹⁴*Commonwealth v. Peoples*, 345 Pa. 576, 28 A.2d 792 (1942).

¹⁵Attempts were made to impeach the credibility of Mr. Mastrangelo at the trial, since he has a criminal record of convictions of the gambling laws. Mr. Mastrangelo testified before the Crime Commission that the reason he was willing to testify against Chief Dolny was that the Chief had arrested his son on a narcotics charge. Mr. Mastrangelo surmised that the arrest occurred because he stopped paying the Chief. However, Mr. Mastrangelo's testimony was corroborated, and the jury evidently found his testimony believable.

¹⁶*Id.* at 22-23.

¹⁷*Id.* at 26-27.

¹⁸Testimony of Joseph Marchegiano before the Pennsylvania Crime Commission, February 14, 1973, N.T. 41 [hereinafter cited as Joseph Marchegiano]. Mr. Marchegiano told Commission agents during an interview on June 16, 1972, that the weekly protection payments were in the amount of \$50.

Chief Dolny.¹⁹ Paul Mastrangelo, Sr., told a Commission agent that Chief Dolny accepted three payments of \$200 from him at Christmas time between 1967 and 1970, and that Chief Dolny accepted three or four other payments of \$50 or \$100 from him during the same period.²⁰

It was the general view of members of the Police Department that payments to the Police Chief explained why no action was taken against Mr. Mastrangelo. Members of the Department had been told by Mr. Mastrangelo that he was paying Chief Dolny for protection.²¹

Payments to other governmental officials also help explain the inaction of the Phoenixville Police Department towards Mr. Mastrangelo. Mayor Joseph Dougherty served as a patrolman in Phoenixville from 1958 through 1963, when he was dismissed from the force by Borough Council for participating in political activity in violation of civil service regulations. He was elected Mayor of Phoenixville in 1965.

According to testimony received by the Commission, Mayor Dougherty also received payments from Thomas Mastrangelo. These payments, like those to Chief Dolny, were initially made directly by Mr. Mastrangelo, but later were made through the auspices of a third party or a middleman. Mr. Mastrangelo testified he made cash payments to Mayor Dougherty from 1958 to 1963 when Dougherty was a member of the Phoenixville Police Department.²² After Dougherty was elected Mayor, monthly payments were made to Dougherty by Mastrangelo until Mastrangelo was raided in 1968.²³

Joseph Marchegiano testified that he made payments on behalf of Thomas Mastrangelo to Mayor Dougherty through his brother, Thomas Marchegiano, who owned a store in Phoenixville.²⁴ Joseph Marchegiano's account of the payments to Mayor Dougherty was verified in an interview with Thomas Marchegiano.²⁵

Mr. Mastrangelo's payments also went to a significant number of other members of the Phoenixville Police Department at Christmas time. For example, Officer Ronald Sweet, who joined the force in 1968, provided the following testimony:

Q: Has Timmy Mastrangelo, either directly or indirectly, ever offered or given you money as a gift?

A: He—one Christmas he gave me \$25 and that was it . . .

¹⁹*Id.*

²⁰Interview with Paul Mastrangelo, Sr., November 3, 1972.

²¹Kalivik, N.T. 68.

²²Thomas Mastrangelo, April 12, 1973, N.T. 22.

²³*Id.* at 21.

²⁴Joseph Marchegiano, N.T. 41.

²⁵Interview with Thomas Marchegiano, June 21, 1972.

[H]e said "Here, and Merry Christmas," and took off and that was it.²⁶

Those officers who received cash gifts from Mr. Mastrangelo equated those gifts received from him with other gifts they received from local businesses at Christmas which they considered "legitimate." There has been a tradition in Phoenixville that local businessmen give gifts to police officers at Christmas.

Veteran police officer Thomas Dempsey, in admitting that he received cash payments from Mr. Mastrangelo, stated that he was given \$20 in cash on three or four occasions around Christmas by other members of the Phoenixville Police Department, none of whom he could (or would) identify for certain. He stated, "A [member of the force] would come up to one of the guys working and, you know, would give them the money and say, 'This is from Tim Mastrangelo' like that."²⁷ Officers Alfred Garwood, Bernard Godlewski, Patrick Volpe, and Pasquel Gazzillo also admitted receiving money from Mr. Mastrangelo at Christmas, and Mr. Mastrangelo confirmed the payments in his testimony.²⁸

Although the State Police did not display the same hesitance shown by the Phoenixville police to raid Mr. Mastrangelo's gambling operation, there is evidence that Mr. Mastrangelo regularly paid three State Police sergeants for warnings of raids and thus extended his corrupt influence into that organization. Mr. Mastrangelo described regular monthly cash protection payments of \$200 or \$300 that he personally made to a now retired State Police sergeant for several years during the late 1950's.²⁹ When that sergeant retired, he introduced Mr. Mastrangelo to another State Police sergeant, Bolick J. "Bud" Tarlecky, Sr., to whom Mr. Mastrangelo proceeded personally to make regular monthly cash payments of \$300 during the 1960's until the sergeant retired.³⁰

According to Mr. Mastrangelo, he also made several monthly payments of \$200 prior to July 1971, to another State Police sergeant, Harry Bullick, who retired in August of that year.³¹ These payments were not made by Mr. Mastrangelo personally:

Q: Who paid Sergeant Bullick?

A: I left it up to Jimmy Cutillo. He paid him—I was there a couple

²⁶Testimony of Officer Ronald Sweet before the Pennsylvania Crime Commission, February 5, 1973, N.T. 128-129 [hereinafter cited as Sweet].

²⁷Dempsey, N.T. 223.

²⁸Thomas Mastrangelo, April 12, 1973, N.T. 31-32.

²⁹Thomas Mastrangelo, October 16, 1973, N.T. 10-12.

³⁰*Id.* at 17-19.

³¹*Id.* at 20-23.

of times and I gave it to Jimmy and Jimmy gave it to him, you know, right in front of me. . . .³²

Mr. Cutillo was described by the witness as a personal friend whom he has known all his life.³³

Mr. Mastrangelo testified as follows regarding what he got in return for his payments:

Q: What did Sergeant Bullick do to earn his \$200 a month?

A: He used to call me.

Q: How often did he call you and what did he say when he called you?

A: Things are hot and don't open up, and stuff like that.

Q: And Sergeant Tarlecky was paid for the same reasons?

A: Same reasons.

Q: How often would these [three sergeants] have occasion to call you?

A: They called me quite a few times. . . .³⁴

A former social acquaintance of Mr. Mastrangelo recalled being with Mr. Mastrangelo on numerous occasions when Mastrangelo would meet Sergeant Tarlecky at different bars and taverns, and that Mr. Mastrangelo had stated that he was paying money to Sergeant Tarlecky in order to gain information about pending State Police gambling raids.³⁵

According to Mr. Mastrangelo, he hasn't paid any money to any members of the State Police since 1971, because ". . . I ain't doing the business and I don't gamble like I used to, either. I can't afford it."³⁶

Aside from the cash payments given by Thomas Mastrangelo to police officers, several other relationships between Mr. Mastrangelo and Phoenixville and State Police officers were uncovered.

One Phoenixville police officer was found to reside in a home owned by Mr. Mastrangelo. Sergeant Edmund Suzenski acknowledged that he has resided in the home approximately four years and further testified that he

³²*Id.* at 22.

³³*Id.* at 28. Information obtained by the Crime Commission as part of its investigation of official corruption in Chester County indicated that James Cutillo was part of a shakedown scheme involving protection payments made by Chester County merchants in order to allow their businesses to remain open on Sundays in violation of Pennsylvania's Blue Laws. This information was turned over to the Chester County District Attorney on October 24, 1973, and on November 8, 1973, James Cutillo was arrested and charged with blackmail and cheating by fraudulent pretenses. His case is still pending. When called as a witness before the Crime Commission, he refused to answer any pertinent questions.

³⁴*Id.* at 23-24.

³⁵Testimony of Mr. B before the Pennsylvania Crime Commission, November 2, 1973, N.T. 16-20.

³⁶Thomas Mastrangelo, October 16, 1973, N.T. 37.

has never executed a rental agreement but rather pays \$100 per month rent on an informal basis. The payments are made in cash and paid directly to Mr. Mastrangelo.³⁷

Several Phoenixville police officers testified about two attempts by Officer Patrick Volpe to influence their discretion in filing criminal charges. Members of the Mastrangelo family appear to have been involved in both cases. One patrolman testified that Officer Volpe approached him and attempted to secure his assistance in having drunken driving charges against a friend of Mr. Mastrangelo dropped. This officer did not drop the charges.³⁸ In another incident, Officer Volpe approached the two officers who arrested Thomas Mastrangelo's son, Ralph, on drug charges, and told both of them that Mr. Mastrangelo wanted to talk to them. These two officers testified they heard "rumors" concerning a \$500 payment that awaited them if they dropped the charges against Ralph Mastrangelo, but the meeting between the officers and Mr. Mastrangelo never took place.³⁹ Officer Volpe admitted his role as described above in the two incidents.⁴⁰

Also, the Commission learned through highly reliable confidential informants in Phoenixville that Mr. Mastrangelo and State Police Trooper Michael Depsky are personal friends who have been seen together on many occasions in the Trio Restaurant, Phoenixville. A review of the records of the Chester County Recorder of Deeds Office revealed that Officer Depsky and his wife purchased approximately two acres of land in Chester County from Mr. Mastrangelo on March 16, 1972, for \$5,000, or \$2,500 per acre. The two acres which Officer Depsky purchased are part of a tract of approximately 26 acres which Mr. Mastrangelo purchased on November 6, 1967, for \$60,000 or approximately \$2,300 per acre. A realtor familiar with property values in Chester County physically observed the Depsky-Mastrangelo property and advised the Commission that in March 1972, the property had certainly appreciated to a value in excess of \$5,000 per acre, thus leading to the conclusion that Officer Depsky obtained the acreage from Mr. Mastrangelo under very favorable terms.

In addition to the above situations, the Commission received testimony, which it was unable to corroborate, that Mr. Mastrangelo made substantial loans to two Phoenixville police officers.

³⁷Testimony of Sergeant Edmund Suzenski before the Pennsylvania Crime Commission, February 20, 1973, N.T. 92-94 [hereinafter cited as Suzenski].

³⁸Testimony of Officer Harry Cowan before the Pennsylvania Crime Commission, February 5, 1973, N.T. 94 [hereinafter cited as Cowan].

³⁹Dempsey, N.T. 249-252; Kalivik, N.T. 77-78, 101.

⁴⁰Testimony of Officer Patrick Volpe before the Pennsylvania Crime Commission, February 20, 1973, N.T. 46-51 [hereinafter cited as Volpe].

LACK OF LEADERSHIP IN THE POLICE DEPARTMENT

In addition to failure to enforce gambling laws, participation in gambling and receipt of money from gamblers, the Commission found a great deal of other evidence of poor discipline, low morale, and inadequate training in the Phoenixville Police Department. These matters are directly attributable to a lack of vigorous leadership in the Department. Since the Commission's investigation took place, the Chief of Police has been removed and reduced to sergeant, and an acting chief has been named in his place. What follows is therefore not to be read necessarily as criticism of the present leadership of the Department. It is important, however, to set forth what the Commission found in order that the problem areas may be outlined and that possible improvements may be suggested.

One form of police misconduct, perhaps common to many other police departments, was the voiding of parking tickets. Several Phoenixville officers casually admitted to engaging in this practice. Officer Harry Cowan explained his actions this way:

... I've voided tickets already; everyone in the Department has. I can't see anything wrong with it. If you void one for a friend, you void one. What the hell's a dollar.⁴¹

Sleeping on duty also was a casually accepted practice in the Phoenixville Police Department, as indicated by Officer Ronald Sweet's testimony:

Q: Are you aware of any officers who sleep on duty?

A: I do it.

Q: How frequently?

A: How frequently? Not too often but once in a while I—I guess just about every guy I work with [does it].

* * * * *

Q: Is this primarily on the night shift?

A: Midnight shift.

* * * * *

Q: You're not talking about in the station?

A: Well, I've slept in the station, too. I mean, that's beside the point—at the desk. I mean, I can hear the phone ring and listen to the radio—[I would] wake up when it rings.

* * * * *

⁴¹Cowan, N.T. 92.

Q: Have you ever been disciplined for sleeping on duty?

A: No.⁴²

Lack of control over police officers by supervisors was also demonstrated by evidence that one officer occasionally went outside the borough while on duty to visit a female friend. When discovered, he was merely told not to do it again. Another officer, according to testimony received by the Commission, brought a woman to the police station and took nude pictures of her for his own purposes. Again, although the Chief of Police was informed of this, no action was taken.

Serious deficiencies in some of the most basic areas of police training and instruction were found to exist in the Phoenixville Police Department. The Phoenixville Police Department not only does not provide a formal schedule for firing of weapons but does not even provide any firearms training or practice sessions at all. Some of the officers did indicate that they go out on their own time and fire their weapons; however, many officers who testified expressed concern over the fact that many members of the force may not be properly qualified to use firearms.

Although the Phoenixville Police Department officially had a "training officer," Patrick Volpe, he testified that he had no training programs set up and that since he had joined the force in 1964, there had never been any organized training program of any sort conducted by the Department.⁴³ Given this level of activity it is not surprising that one sergeant was not even aware that there was a training officer.⁴⁴ Besides conducting no in-service training, the Department also provides no initial training for recruits. Some police officers are occasionally sent to outside classes conducted by other state or federal agencies, but as far as the Commission could determine, there was no program designed to insure that every officer participated in those training programs.

The Commission found further that individual Phoenixville police officers had a low regard for the Department and, in some cases, for their own abilities as police officers. Most police officers who were questioned felt that the Department's reputation was "not good" or "poor." Many frankly stated they thought the Police Chief was guilty of the criminal charges then pending against him. Feelings were expressed that there was favoritism shown toward some officers and that there were cliques in the Department. Several officers stated they had no confidence in the ability of certain other officers to perform police duties adequately. One officer, a six-year veteran, also candidly expressed doubt about his own ability to make an arrest. He stated that he had been at the scene of criminal activity

⁴²Sweet, N.T. 162-164.

⁴³Volpe, N.T. 8, 12-13.

⁴⁴Suzenski, N.T. 83.

on many occasions and simply handed the arrest over to others who he thought could handle the situation.⁴⁵

CONCLUSION AND RECOMMENDATIONS

Virtually every member of the Phoenixville Police Department knew of Thomas Mastrangelo's gambling operation, but no efforts were made to impede or halt these activities. The failure of the Department to take prompt and vigorous action served as an invitation for police corruption. It also served to weaken severely the Department's efficiency as an arm of law enforcement.

One specific outgrowth of this failure of Departmental leadership was that it became a tradition for Phoenixville police officers to accept monetary and other payments from various segments of the public. Although those payments in some cases had no direct, provable connection to overlooking violations of law or giving extra police services, they present a serious corruption hazard. This is especially so when the payments come from a known and admitted gambler. The receipt of these payments, often termed "gifts," has an impact on the integrity of the individual police officer, and their wide acceptance causes everyone to be compromised to some extent. Many honest officers find gifts from the public personally degrading and resent the assumption that they can be easily bought.

Another result was that many close relationships between individual police officers and known gamblers developed. These relationships necessarily compromise the ability to enforce the law objectively and effectively and contribute to a poor public regard for police officers. Contacts between police officers and persons known to be professional gamblers should be scrupulously avoided except in the line of duty. Officers should be required to report on all such contacts.

At the present time, the Pennsylvania bribery statute prohibits only those "pecuniary benefits" paid for the "exercise of discretion" of a public servant.⁴⁶ This would appear to cover any payments to a police officer who has an arrangement with, for example, a gambler to overlook unlawful activity, but arguably may not cover a mere gratuity to a police officer. It also does not cover nonpecuniary "gratuities" such as free liquor or gift certificates, even though they are directly tied to an exercise of police discretion.

⁴⁵Testimony of Officer Frank August before the Pennsylvania Crime Commission, February 7, 1973, N.T. 55.

⁴⁶Act of December 6, 1972, P.L. ____, No. 334, §1, effective June 6, 1973, 18 C.P.S.A. §4701 (1973).

The Crime Commission believes that all monetary or other gratuities paid to police officers and other public officials should be prohibited, and therefore recommends that the Pennsylvania Crimes Code be amended to make it a misdemeanor for any person or company to offer or pay any compensation or gratuity, in the form of money or otherwise, to any public employee in the course of his public work or duties. In addition, the Phoenixville Police Department should establish a strong code of ethics which would clearly prohibit the mere acceptance as well as the solicitation of cash or other payments, sometimes called gratuities. The code should provide for dismissal from the force of any officer found to be soliciting or accepting such payments in the future.

As in any organization, professional leadership of high integrity is mandatory if that organization expects to provide the necessary guidance and discipline which results in a police department being both effective in carrying out its duties in the community and respected by other law enforcement agencies. From the attitudes expressed by Phoenixville police officers during the course of the Commission's hearings, as well as upon other information received during the course of this investigation, it appears that in recent years there has been a deficiency in effective leadership in the Phoenixville Police Department. In selecting a new permanent chief, persons not currently members of the Phoenixville Police Department should be considered.

It is remarkable that although their superiors did not care about corruption and failed to act on obviously corrupt or questionable situations, some members of the Phoenixville police force have remained honest and dedicated. The Phoenixville Police Department has several young and capable officers who could surely form the nucleus for an effective police department.

Finally, any law enforcement officer, particularly a head of a law enforcement agency, cannot continue to serve the public effectively after having been convicted of a serious crime. In view of the position of public trust held by law enforcement officials, they must be held to a higher standard than ordinary citizens. Therefore, the Commission recommends legislation to provide for the automatic dismissal of any law enforcement official found guilty of a felony or misdemeanor defined by the Pennsylvania Crimes Code which occurred during his term in office. Likewise, any person convicted of any such offense while a public official should be barred from later serving as a law enforcement official in the Commonwealth.

8

Corruption in the York Police Department*

In early June 1973, a series of articles appeared in York newspapers concerning an investigation by the York Police Department of allegations that bribes or kickbacks had been paid by tow-truck operators to members of the York police force. On June 8, 1973, Assistant City Solicitor Jay V. Yost was appointed by Mayor Eli Eichelberger to investigate these charges.

As a result of newspaper publicity, a representative of the Pennsylvania Crime Commission met with and offered assistance to Mayor Eichelberger, City Solicitor David Wm. Bupp and Assistant City Solicitor Yost. On June 21, 1973, the City Solicitor wrote the Commission requesting that the Commission conduct an investigation into alleged kickbacks from tow-truck operators to members of the York Police Department.

The Commission's preliminary investigation commenced in late June 1973. Interviews were conducted with towing operators, with representatives of the American Automobile Association (AAA), and with approximately twenty members of the York Police Department. The Commission was informed by some of these police officers that they had received money from tow-truck operators. Some believed that a very substantial percentage of the entire Department had received money from tow-truck operators on at least one occasion, and a number of the officers acknowledged that they had received towing kickbacks from the Chief of the Police Department, Elmer C. Bortner. Three towing companies, James J. Weitkamp, Ammon R. Smith, Inc., and Quick Towing Service were identified as having made numerous payments to police officers.

In light of this information, the Commission decided that a full-scale probe was required. A Commission resolution was approved in July 1973 which provided, in pertinent part, that:

... [a]n investigation shall be conducted by the Pennsylvania Crime Commission to ascertain the nature and extent of alleged kickbacks from tow-truck operators to members of the York City Police Department [and to] . . . ascertain whether existing laws and police regulations are sufficient to deal adequately with the alleged problem.

*This report was previously issued in May 1974.

By virtue of the wording of the resolution, the Commission only concerned itself during the probe with allegations of kickbacks to policemen from tow-truck operators, and this report deals only with that matter.

During the course of the Commission's investigation, forty-three members of the 107-man York Police Department, 31 tow-truck operators or employees, and 19 other persons, including several former members of the York Police Department, were interviewed concerning alleged towing payoffs. Private Commission hearings were held in Harrisburg and York during the months of August through December, 1973, at which a total of 43 witnesses testified under oath pursuant to subpoena. Approximately 1700 pages of testimony were recorded at these hearings.

At the outset of the Commission's investigation, it became clear that payments from tow-truck companies to police officers were a pervasive problem which involved a significant percentage of the Police Department and had existed for a number of years. The Commission concluded that wholesale reform could only be accomplished if the police leadership took strong and effective measures to curb the practice and that singling out of low-level members of the Department would be ineffective. Thus, the Commission agreed to maintain the anonymity of individual police officers in exchange for their complete cooperation in ferreting out the truth. As a result, many of the individual officers quoted in this report are referred to by letter, i.e., "Officer A," "Officer B," "Officer C," etc., rather than by their correct names.

In addition, the identity of the individual referred to as towing operator A, as well as of those persons referred to as employees A, B, and C of Quick Towing Service, have also been protected in exchange for their cooperation.

SYSTEMATIC PAYOFFS TO YORK POLICE

Systematic corruption has existed at all levels of the York Police Department for a number of years as a result of frequent illegal kickbacks or payoffs from tow-truck operators. Twenty-seven members of the York Police Department admitted under oath at Commission hearings that they had received payments from towing companies on at least one occasion; most of these 27 officers further admitted receiving numerous payoffs in the past. Additional evidence uncovered by the Commission pointed to another 20 police officers as having received payments from the tow-truck operators.¹ In addition, overwhelming evidence indicates that the Chief of

¹Not all of those named as being involved were interviewed in an effort to corroborate the allegations regarding their participation, as it was never the purpose of the Commission to gather evidence with a view to seeking prosecution of individuals.

the York Police Department, Elmer C. Bortner, was directly involved in the illegal payoff system as the conduit for payments from a towing company to other members of the Police Department.

Impact on the Public

The tow-truck business in York has been highly competitive. There have been at least nine separate companies competing on a daily basis for towing assignments during the last three years. The Commission obtained the York Police Department's records concerning the allocation of towing jobs to these companies for the period January 1971 through December 1973. The statistical analysis of these records, which is set forth in the chart below, establishes that a few towing companies secured the bulk of the business during this three year period.

A representative of AAA told the Commission that their approved service charge in the City of York ranged between \$7 and \$10, depending upon towing distance.² Other towing operators disclosed that their standard fee ranged between \$10 and \$15 and that any charge over \$15 was excessive.³

In light of the above figures, the towing fees charged by the three principal towing companies identified as having made frequent payoffs to the police are illuminating. Quick Towing Service's standard fee during regular working hours was \$20, and \$25 thereafter.⁴ Philip Enterline, an employee of Ammon R. Smith, Inc., testified that the average tow job took between 1½ and 2 hours, and that according to Smith's fee schedule, a 1½ hour tow job cost \$22 and a 2 hour tow job cost \$28.⁵ James J. Weitkamp stated that his standard fee was \$20 until midnight and \$25 thereafter.⁶

One of the tow-truck operators told the Commission that when he was paying \$5 kickbacks per tow job to the police, he would bill the customer \$17 but would only record a \$12 fee in his records. When the kickback was increased to \$6, he raised his charge to the customer to \$18.⁷ The Commission's investigation revealed that a substantial percentage of the cost of the kickbacks to the police officers for referring the business was passed on directly to the motorist in higher prices.

²Interview with Gerald Lehman, July 2, 1973.

³Interview with Frank W. Toomey, July 13, 1973 (Toomey added that any charge over \$20 was "suspicious"); interview with C. J. Eyler, July 10, 1973; interview with Leon Ellis, July 9, 1973; interview with Joseph G. Kozman, July 9, 1973.

⁴Testimony of Glenn E. Sheffer, Jr., before the Pennsylvania Crime Commission, September 13, 1973, N.T. 39 [hereinafter cited as Sheffer].

⁵Testimony of Philip Enterline before the Pennsylvania Crime Commission, November 7, 1973, N.T. 42 [hereinafter cited as Enterline].

⁶Interview with James J. Weitkamp, October 18, 1973.

⁷Testimony of towing operator A before the Pennsylvania Crime Commission, July 25, 1973, N.T. 30-31 [hereinafter cited as towing operator A].

NAME	TOWING FOR YEAR 1971												TOTAL
	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	
Ammon R. Smith	6	4	9	7	3	14	20	22	9	16	15	10	135
Weitkamp	14	17	12	8	10	4	6	2	2	1	3	0	79
Ellis	8	5	3	7	8	4	4	5	6	4	1	5	60
Ream's	4	5	3	2	3	2	3	7	6	8	9	1	53
Seitz	2	8	5	3	8	2	4	0	9	0	3	3	50
Quick Tow	0	0	0	0	0	0	0	0	0	12	15	16	43
Smith's	0	2	3	7	9	1	4	3	1	4	4	1	39
Kinnerman's	2	1	0	1	4	3	2	3	1	4	1	3	25
Stambaugh's	2	0	2	0	0	1	2	1	0	4	1	0	10
Miller's	0	2	0	0	0	1	2	3	0	1	0	1	10
													(600)* 504

NAME	TOWING FOR YEAR 1972												TOTAL
	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	
Ammon R. Smith	10	18	18	25	21	19	10	22	15	30	30	42	259
Quick Tow	11	6	8	14	12	13	4	5	1	0	2	0	76
Ellis Brothers	13	5	1	6	2	3	5	7	5	4	5	11	67
Weitkamp	3	2	1	4	1	3	1	0	0	8	12	4	39
Seitz	4	2	5	2	0	6	3	0	0	1	3	3	29
Ream's	1	0	3	3	4	6	1	5	1	0	0	1	25
Anderson	0	0	1	0	2	4	3	5	3	2	0	2	22
Bill's Arco	3	0	2	1	0	1	1	4	2	1	2	1	18
Kinnerman	2	2	0	2	0	0	0	2	1	0	0	0	11
Eyler's	1	1	1	1	0	0	0	0	0	4	2	1	11
													(651)* 557

NAME	TOWING FOR YEAR 1973												TOTAL
	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	
Ammon R. Smith	21	19	32	20	17	19	19	19	21	16	18	25	246
Ellis Brothers	7	3	5	6	8	11	8	8	10	5	5	2	78
Anderson	5	0	3	2	2	6	3	3	5	6	7	2	42
Zech's Sunoco	0	0	0	2	2	3	5	3	2	1	5	4	27
Smith's Arco	0	0	0	11	1	6	1	0	0	0	0	0	19
Seitz	1	2	1	0	5	5	2	3	0	0	0	0	18
Eyler's	7	2	1	1	0	0	2	0	0	3	0	0	16
Lee's 66	0	0	1	0	1	1	0	1	3	6	0	0	13
Weitkamp	0	0	0	0	2	1	2	0	0	0	0	0	6
													(574)* 465

*Figure shown in parenthesis indicates total for the specific year.

The Kickback Scheme

The police officer at the scene of a disabled vehicle has almost unlimited discretion to select which towing company will be called to perform the necessary removal of a vehicle. Participants in an accident or breakdown are frequently emotionally unable or have insufficient knowledge to choose a towing company. In York, it appears that even when a motorist desired a particular towing company, the police officer at the scene often disregarded his choice. An AAA official told the Commission that members of his association have frequently complained that York police have ignored requests for AAA approved towing service after an AAA member was involved in a traffic accident.⁸

A police officer who had worked in the capacity of radio dispatcher for the York Police Department told the Commission that although a list of towing companies was immediately available to the dispatcher, the police officer at the scene ordinarily made the selection of which towing company would be called.⁹ Numerous other police witnesses confirmed the fact that the officer at the scene usually controlled the selection process.¹⁰

The highly competitive nature of the towing business in York and the police officer's generally unlimited discretion to select which towing company will do the work, combined with either the indifference or the highly emotional state of most motorists, have produced a situation which is rife with corruption.¹¹

Many of the 27 police officers who admitted taking payments from the towing companies estimated as follows the number of other police officers on the force involved in the scheme: One officer stated, "Maybe more than 70%";¹² another stated "At least 75%";¹³ and still others stated, "90%";¹⁴ "Most of them";¹⁵ "Almost everybody who works in uniform";¹⁶ and "I

⁸Interview with Gerald Lehman, July 2, 1973.

⁹Interview with Officer A, July 17, 1973.

¹⁰Testimony of Officer B before the Pennsylvania Crime Commission, August 27, 1973, N.T. 107 [hereinafter cited as Officer B]; testimony of Officer C before the Pennsylvania Crime Commission, October 10, 1973, N.T. 83 [hereinafter cited as Officer C]; testimony of Officer D before the Pennsylvania Crime Commission, October 11, 1973, N.T. 8 [hereinafter cited as Officer D]; testimony of Officer E before the Pennsylvania Crime Commission, October 11, 1973, N.T. 67-68 [hereinafter cited as Officer E].

¹¹Payment of any pecuniary benefit to a police officer to influence the exercise of his discretion constitutes the crime of bribery in Pennsylvania, a felony of the third degree. Act of December 6, 1972, P.L. ___, No. 334, §1, 18 C.P.S.A. §4701 (1973).

¹²Testimony of Officer F before the Pennsylvania Crime Commission, October 10, 1973, N.T. 30 [hereinafter cited as Officer F].

¹³Officer D, N.T. 25.

¹⁴Testimony of Officer G before the Pennsylvania Crime Commission, October 10, 1973, N.T. 63 [hereinafter cited as Officer G].

¹⁵Testimony of Officer H before the Pennsylvania Crime Commission, November 8, 1973, N.T. 109 [hereinafter cited as Officer H].

¹⁶Officer C, N.T. 115.

don't believe there was a man on the force who didn't receive any [payoffs]."¹⁷

The genesis of the system of payoffs to police officers from tow-truck companies is unclear. A veteran officer testified that the towing problem started in the early 1960's, probably with one of the original tow-truck operators in mid-city York who owned a paint shop, body shop and inspection station. If a policeman needed some work done on his personal car, the operator would fix the car at a good discount. He also contributed to the Police Pension Fund, and in bad weather, he permitted officers to park their personal cars in his garage free of charge.¹⁸

The climate for the kickbacks undoubtedly developed years before the 1960's during the days of low police pay, long hours, poor working conditions and political interference with police operations. It is clear that free gifts were regarded as a fringe benefit of police work in those days. As one officer recalled his childhood, "I can remember when my father was a policeman at Christmas time and my father, I think he is an honest man. Stuff used to be sent to his house that he never even got the names of. I mean fruit baskets that was lined up, that us kids couldn't eat it all and we had to give it away and we never even knew where it came from."¹⁹

Some of the police officers who admitted receiving payments portrayed the tow-truck operators as the aggressors in the scheme and the police as passive recipients. One policeman expressed his feelings as follows:

... in 1967 when I first became a policeman, most of our towing was done by Seitz Garage and then I think there was a body shop out in West York by the name of Cunningham. And my first year on the job, the only tow trucks that were available were these. I mean the city was really hurting for tow trucks. Then all of a sudden . . . everybody has a tow truck and everybody wants to get the money, and that's how it began. And then you had the greedy tow truck driver, it's not the policeman that's at fault. Sure . . . the policemen were going to accept a dollar, you know, it was cigarette money, beer money. It was these greedy guys. They thought, well we'll pay the dumb policeman a buck and up our towing another \$5.00. That's four extra dollars in our pockets. That's where your fault is, that's the guys who should be up here, not us policemen.²⁰

¹⁷Officer B, N.T. 133.

¹⁸Testimony of Officer I before the Pennsylvania Crime Commission, December 19, 1973, N.T. 122-124 [hereinafter cited as Officer I].

¹⁹Officer D, N.T. 32.

²⁰*Id.* at 37.

Another policeman testified:

I'd say within the first year there were a number of times . . . that I did accept it, not . . . that I asked a guy for it or that I reached out and grabbed it from him or made him pay me or . . . that I used him because of that. . . . They would offer it to you whether you called them or whether the person who was involved in the accident requested them. It didn't really make any difference. You know, they would come up with a couple of bucks or whatever the amount was at that time.²¹

The Commission also received testimony from a number of the principal tow-truck operators to determine their participation in the alleged kickback scheme.

James J. Weitkamp has been self-employed in the service station business for 15 years. In 1966, he commenced operation of a Mobil station at Mount Rose and Hill Streets. In 1971, he moved to an American station at Haines and East Market Streets; and in 1972, he moved to an Exxon station at 980 South George Street. He testified that between 1965 and 1969 he towed a maximum of about twenty cars a month for the York Police Department.

Mr. Weitkamp testified he borrowed \$2,700 from Elmer Bortner (now Police Chief) interest-free to finance two tow-trucks. He was not required to make regular payments and kept no record of his repayments:

Q: Isn't it unusual for someone to borrow that amount of money from another individual and not maintain any records at all?

A: Well, I had an idea in my mind, sir, of how much money was paid back but as far as the actual records, that man kept them himself.

Q: How did you know that you satisfied the encumbrance?

A: When it was getting near the end, he [Bortner] told me it was only a couple hundred bucks owed on it.²²

Mr. Weitkamp denied under oath that he had ever offered any money to York City police officers for towing referrals, and he denied that he had ever paid any York policemen money in return for such towing referrals.²³

²¹Testimony of Officer J before the Pennsylvania Crime Commission, September 12, 1973, N.T. 180-181 [hereinafter cited as Officer J].

²²Testimony of James J. Weitkamp before the Pennsylvania Crime Commission, November 7, 1973, N.T. 38 [hereinafter cited as Weitkamp].

²³*Id.* at 13-14, 18-19.

Mr. Weitkamp's testimony conflicts with that of several police officers.²⁴ For example, a patrolman testified that in 1967 and 1968:

[t]here were times when other tow trucks were called and I was in the office and the message comes over the radio and they wouldn't even bother contacting another truck. We would wait a few minutes and say 'not available' and then the officer on the street would say 'send whoever is available' and Weitkamp is right there in the office and Bortner . . . sends him out.²⁵

The officer said this continued until Mr. Weitkamp moved from Hill Street and Mount Rose Avenue to far out on East Market Street.²⁶

Another officer testified, "Word got around the department in 1969 or 1970 that if a police officer called Weitkamp, he would receive \$5 per tow job through [then] Captain Bortner."²⁷

Q: What happened after you would call Weitkamp?

A: Well, if he wouldn't give you the \$5.00 bill on the spot then maybe the next day or the day after Captain Bortner would come around. He had the names of the men that called Weitkamp for accidents and he'd come around and give you the money.

Q: Where did you receive these payments?

A: Well, from Weitkamp it was out on the street and Captain Bortner, it was in the office.²⁸

A third policeman stated that after being paid by then Lieutenant Bortner in Police Headquarters several times for having called Mr. Weitkamp to accident scenes, he was subsequently paid directly by Mr. Weitkamp on at least ten or fifteen occasions.²⁹ This man assumed Lieutenant Bortner told Mr. Weitkamp which police officers took payoffs, and then Mr. Weitkamp would without hesitation offer money to those policemen.³⁰

²⁴The relevant testimony of Mr. Weitkamp, as well as the conflicting testimony, taken during private Commission hearings held in Harrisburg, Pennsylvania, was forwarded to the Dauphin County District Attorney on December 11, 1973, in order that consideration could be given to initiating perjury charges against Mr. Weitkamp. He was arrested on December 19, 1973, on perjury charges, but the charges were dismissed at a preliminary hearing on January 29, 1974, when the three key prosecution witnesses, all York City police officers (Officers C, D, and M), refused to testify on the ground that their testimony might prove self-incriminating.

²⁵Testimony of Officer K before the Pennsylvania Crime Commission, September 13, 1973, N.T. 82-83 [hereinafter cited as Officer K].

²⁶*Id.* at 83.

²⁷Testimony of Officer L before the Pennsylvania Crime Commission, September 12, 1973, N.T. 13-14 [hereinafter cited as Officer L].

²⁸*Id.* at 14-15.

²⁹Officer C, N.T. 105-106.

³⁰*Id.* at 106.

Four policemen testified under oath that they were handed towing kick-backs directly by James J. Weitkamp.³¹ Two others stated under oath that they were offered bribes by Mr. Weitkamp, and they refused them.³² Another two patrolmen testified that they were handed their share of the payoff by their car partners after the partner had accepted the money from Mr. Weitkamp.³³ One officer personally observed Mr. Weitkamp making payments to police officers on at least six occasions following accidents to which Mr. Weitkamp had been called.³⁴

Ammon R. Smith, Inc., a Chevrolet agency, has handled the bulk of towing work in York during the period January 1971 through December 1973. The police records indicate that of the 1,825 disabled vehicles towed during this period 640 were handled by Ammon R. Smith.³⁵ The next most frequently used tow-truck operator during this same period handled only 205 vehicles.³⁶

Philip Enterline and Michael Newcomer are employed by Ammon R. Smith, Inc., as flat-rate mechanics and towing operators. The tow-trucks are owned by the company, but they are taken home after normal working hours by the two men in order that they can provide 24 hour service. Messrs. Enterline and Newcomer are compensated by the company for their towing according to the amount of time they spend on each towing job. For instance, during normal working hours, a 30 minute towing job will cost the customer \$10, of which \$4 is paid the employee. A towing job taking one hour will cost the customer \$16, of which \$6.40 is paid the employee. A two hour job will cost the customer \$28, of which \$11.20 is paid the employee. After normal working hours, the cost to the customer is increased, as is the payment to Messrs. Enterline and Newcomer. The Ammon R. Smith company does not require Messrs. Enterline and Newcomer to punch in and out on a time clock, and the company accepts their word for the time spent on any towing call they make.³⁷

Michael Newcomer testified at a Pennsylvania Crime Commission hearing, but he denied ever paying a police officer money in return for towing

³¹Officer C, N.T. 105-107; Officer L, N.T. 13-16; testimony of Officer M before the Pennsylvania Crime Commission, October 10, 1973, N.T. 130-134 [hereinafter cited as Officer M]; testimony of Officer N before the Pennsylvania Crime Commission, November 11, 1973, N.T. 9-11 [hereinafter cited as Officer N].

³²Testimony of Officer O before the Pennsylvania Crime Commission, September 12, 1973, N.T. 140-142 [hereinafter cited as Officer O]; Officer D, N.T. 12-19.

³³Testimony of Officer P before the Pennsylvania Crime Commission, November 7, 1973, N.T. 54-56 [hereinafter cited as Officer P] and Officer I, N.T. 111.

³⁴Officer O, N.T. 140-142.

³⁵See chart *supra*.

³⁶*Id.*

³⁷Interview with Vernon R. Smith, Jr., Vice-President, Ammon R. Smith Auto Company, November 2, 1973.

business.³⁸ He stated, however, that he did "favors" for police officers: "Free labor, fixing or adjusting a guy's carburetor, or telling him what is wrong with his air conditioner, something like that, yes, but I do it more as a favor than if you might call it, you know, a hammer and sickle act to get the towing work."³⁹

At times, Mr. Newcomer used Ammon R. Smith's garage facilities for working on policemen's personal cars, but the only thing he admitted to giving was free labor and his time. Usually, the police officers would supply their own parts. Mr. Newcomer testified, "I guess if you want to call it payola, gratitude, or gratuity or whatever you want to call it, I guess you could call it that."⁴⁰ Newcomer further testified:

Q: When you do perform services like this, do you say anything to the police officer like, "Remember me the next time you need a tow truck" or do you just expect something?

A: I more or less expect it but it don't happen and it burns me.⁴¹

A total of ten York police officers testified they received towing kick-backs in cash from Philip Enterline in return for towing referrals to Ammon R. Smith, Inc.⁴² An additional patrolman testified he was offered money by Mr. Enterline for towing business, and he refused to accept it.⁴³

One York patrolman testified that he began calling Ammon R. Smith Company after James J. Weitkamp moved his station further away from the York city limits in July 1971.⁴⁴ He then testified:

Q: What happened when you started calling Ammon R. Smith?

A: He started dropping \$5.00 in the cruiser car.

Q: Now who is the he?

A: . . . It was Enterline.

³⁸Testimony of Michael Newcomer before the Pennsylvania Crime Commission, November 8, 1973, N.T. 25.

³⁹*Id.* at 26.

⁴⁰*Id.*

⁴¹*Id.* at 44-45.

⁴²Officer B, N.T. 123-126; Officer D, N.T. 21; Officer L, N.T. 30-36; Officer J, N.T. 182-185; testimony of Officer Q before the Pennsylvania Crime Commission, October 11, 1973, N.T. 46-48 [hereinafter cited as Officer Q]; testimony of Officer R before the Pennsylvania Crime Commission, November 7, 1973, N.T. 131-134 [hereinafter cited as Officer R]; testimony of Officer S before the Pennsylvania Crime Commission, December 19, 1973, N.T. 26-28 [hereinafter cited as Officer S]; testimony of Officer T before the Pennsylvania Crime Commission, November 7, 1973, N.T. 101-102 [hereinafter cited as Officer T]; testimony of Officer U before the Pennsylvania Crime Commission, November 7, 1973, N.T. 14-16 [hereinafter cited as Officer U]; and testimony of Officer V before the Pennsylvania Crime Commission, December 19, 1973, N.T. 172-174 [hereinafter cited as Officer V].

⁴³Testimony of Officer W before the Pennsylvania Crime Commission, August 28, 1973, N.T. 41-44 [hereinafter cited as Officer W].

⁴⁴Officer D, N.T. 20.

Q: Philip Enterline?

A: Yes, sir.⁴⁵

Another policeman explained:

He'd [Enterline] come up usually to the . . . side of the vehicle and he would either put his hand on the car like he was talking to you and drop it [money] or he'd come up and get the name of the person whose vehicle was being towed off the clipboard where you had your accident report and stick it [money] on the clipboard.⁴⁶

Others testified that the money, which began at \$4 per car and later increased to \$8 per car, was clipped to a business card handed the officer by Enterline.⁴⁷ Sometimes the money was simply dropped on the front seat of the police cruiser car.⁴⁸ On occasions, the payoffs were given to the police at the Ammon R. Smith garage.⁴⁹

Quick Towing Service, operated by Glenn E. Sheffer, Jr., participated briefly in the payoff scheme for several months during 1971 and 1972. Mr. Sheffer testified before the Crime Commission that he did not pay the police for towing referrals when he first started in the towing business.⁵⁰ Rather, he had several friends on the York Police Department who steered customers his way. Then, a member of the Traffic Safety Bureau approached him and said, "everyone else is paying \$5.00 a tow. You raise it to \$6.00 and I will see you get more business."⁵¹ Mr. Sheffer agreed.⁵² A few months later, two patrolmen told him, "The ante is going up. Other drivers are paying \$7.00 and \$8.00."⁵³ They urged him to match the other tow-truck operators' prices. Mr. Sheffer testified that he told them that he would not pay over \$6. He explained he charged \$20 for towing within the City of York and \$25 after midnight.⁵⁴ Mr. Sheffer further stated:

Q: Did it pay you to pay off?

A: Not really. That is why I got out of it.⁵⁵

⁴⁵*Id.*

⁴⁶Officer J, N.T. 183.

⁴⁷Officer V, N.T. 174; Officer U, N.T. 15-16; Officer R, N.T. 131.

⁴⁸Officer D, N.T. 20; Officer J, N.T. 184.

⁴⁹Officer Q, N.T. 47.

⁵⁰Sheffer, N.T. 7, 10-13.

⁵¹*Id.* at 23-24.

⁵²*Id.* at 24.

⁵³*Id.* at 24-25.

⁵⁴*Id.* at 39.

⁵⁵*Id.*

Quick Towing Service has received little business from the York Police Department since Mr. Sheffer quit paying the police for referring customers to him.

Mr. Sheffer testified that it was his belief that 35-40% of the York Police Department received towing payoffs.⁵⁶ During the course of their testimony, Mr. Sheffer and other employees of Quick Towing Service identified twenty York policemen whom they paid or witnessed being paid by co-employees for towing referrals.⁵⁷ The \$6 bribes were paid from petty cash (except that Mr. Sheffer himself generally paid with money taken from his pocket) and were, of course, covered in the customer's bill.⁵⁸

Seven of the police officers who appeared as witnesses at Crime Commission hearings testified that they had accepted cash payments from Quick Towing Service in return for towing referrals.⁵⁹ Some officers admitted receiving a variety of free accessories and parts from Mr. Sheffer after they had expressed a desire for those items.⁶⁰ The gifts included tires, wheel rims, air-conditioner motors and whiskey.

Other tow-truck operators testified during the course of the Commission's investigation. One of the service station operators told how he purchased a tow-truck for his service station and asked one of his friends on the York police force about getting business from the City of York.⁶¹ The policeman "friend" told him that he would have to pay \$5 for each car he towed. This occurred in the fall of 1971.⁶² In early 1972, the towing operator was informed by a different policeman that he would have to pay \$6 to continue receiving business referred from the Police Department. The tow-truck operator increased his basic charge for towing within the city from \$17 to \$18.⁶³

In the late summer or early fall of 1972, two York officers approached the same towing operator again and announced that Ammon R. Smith Company was paying \$8. The operator reluctantly agreed to pay the new

⁵⁶*Id.* at 56.

⁵⁷*Id.* at 20-24, 41-43; testimony of Quick Towing Service employee A before the Pennsylvania Crime Commission, October 11, 1973, N.T. 113-114 [hereinafter cited as Quick Towing Service employee A]; testimony of Quick Towing Service employee B before the Pennsylvania Crime Commission, November 8, 1973, N.T. 124-125, 128 [hereinafter cited as Quick Towing Service employee B]; testimony of Quick Towing Service employee C before the Pennsylvania Crime Commission, December 19, 1973, N.T. 234-243.

⁵⁸Quick Towing Service employee A, N.T. 107-110; Quick Towing Service employee B, N.T. 124-127.

⁵⁹Officer G, N.T. 53-55; Officer H, N.T. 99-100; Officer I, N.T. 111; Officer R, N.T. 138; Officer S, N.T. 14-15; Officer U, N.T. 16-17; Officer V, N.T. 161.

⁶⁰Officer D, N.T. 31; Officer I, N.T. 95-96; Officer P, N.T. 59; and Officer V, N.T. 187.

⁶¹Towing operator A, N.T. 10-11.

⁶²*Id.* at 11.

⁶³*Id.* at 30-31.

amount.⁶⁴ However, in early 1973 he was again told that the kickback rate was going up to \$10, and he then asked the police to remove his name from their list of available tow-truck operators as he could no longer afford to handle the business.⁶⁵

Six York police officers testified that they were paid cash bribes on numerous occasions and in varying amounts by Harold J. Smith, operator of Smittie's Arco, 901 Mount Rose Avenue.⁶⁶ Mr. Smith acknowledged providing special discounts on automobile accessories and service to police officers but denied ever paying cash to policemen.⁶⁷

Direct Involvement of Chief Elmer C. Bortner

Elmer C. Bortner has been a policeman for nearly 23 years in the York Police Department. In September of 1965, he was promoted to Sergeant. In 1967, he became a Lieutenant; and in 1969, he was promoted to Captain. From December, 1971 to March, 1972, he was acting Chief and was formally appointed Chief of Police in March of 1972. He has served in that capacity to the present.

Early in the Pennsylvania Crime Commission's investigation, Chief Bortner was interviewed, and he promised the full cooperation of the York Police Department. He told Commission agents that shortly after he became acting Chief in December, 1971, he heard rumors of police officers accepting money in return for favoring certain towing services but that he has never received any complaints regarding kickbacks, payoffs, or bribes being received by members of his Department. He stated that he issued a directive ordering a halt to the alleged towing kickbacks but admitted that no investigation was conducted at that time. Chief Bortner was unable to furnish the Commission with a copy of this directive and said no permanent administrative file was kept in which all such directives were retained. Chief Bortner also stated that no permanent record was made of citizen complaints of excessive towing charges.⁶⁸

Chief of Police Bortner testified at a private Crime Commission hearing that he has been a friend of James J. Weitkamp for 22 or 23 years.⁶⁹ He stated that on two occasions he has loaned Mr. Weitkamp a total of \$2,700

⁶⁴*Id.* at 31-32.

⁶⁵*Id.* at 32-33.

⁶⁶Officer C, N.T. 104-105; Officer D, N.T. 27-29; Officer G, N.T. 56-57; Officer I, N.T. 111; Officer T, N.T. 104; Officer V, N.T. 160.

⁶⁷Testimony of Harold J. Smith before the Pennsylvania Crime Commission, August 28, 1973, N.T. 16-21.

⁶⁸Interview with Elmer C. Bortner, July 3, 1973, at York Police Headquarters.

⁶⁹Testimony of Elmer C. Bortner before the Pennsylvania Crime Commission, December 20, 1973, N.T. 89 [hereinafter cited as Bortner].

to be used for the purchase of two tow-trucks.⁷⁰ Chief Bortner stated that no interest was charged by him for these loans and that his records for the repayments were thrown away after the money was repaid by Mr. Weitkamp.⁷¹ Chief Bortner asserted that he had no proprietary interest in the tow-truck operation, and he received no share of the profits.⁷²

Title records of the Pennsylvania Bureau of Motor Vehicles reflect that James J. Weitkamp is the registered owner of a FWD truck, manufacturer's number A20145, and a Dodge truck, manufacturer's number 1381784557, which formerly bore encumbrances totaling \$2,700 in favor of E. C. Bortner, 1218 East King Street, York, Pennsylvania. Both of these encumbrances were satisfied on May 14, 1971.

Chief Bortner was twice asked under oath if he paid money to members of the York City Police Department on behalf of any tow-truck operator. Chief Bortner replied, "No, sir," on both occasions.⁷³

Chief Bortner's testimony conflicts with that of thirteen members of the York Police Department who testified under oath that they had personally been paid by Police Chief Elmer C. Bortner prior to the time of his promotion to Chief of Police for their referring towing business to a particular tow-truck operator.⁷⁴

One police officer testified as follows:

Q: Would you tell us of the first instance you can recall where you received money from somebody for referring business to a tow truck operator?

A: It was from the man who now is our Chief of Police. . . . I think he was either a sergeant or a lieutenant at that time. . . . I would say it was maybe 1966 or 1967.

Q: How much was involved?

A: One dollar.

Q: How did you receive the money?

A: He handed it to me.

Q: Where?

⁷⁰*Id.* at 90.

⁷¹*Id.* at 91.

⁷²*Id.* at 92.

⁷³*Id.* at 89, 93.

⁷⁴Officer B, N.T. 138-139; Officer W, N.T. 48-50; Officer L, N.T. 13-16; Officer O, N.T. 133-134; Officer K, N.T. 80-81; Officer F, N.T. 12-14; Officer G, N.T. 49-51; Officer C, N.T. 95-98; Officer D, N.T. 15-19; Officer Q, N.T. 50-51; Officer E, N.T. 70-74; Officer P, N.T. 61-62; testimony of Officer X before the Pennsylvania Crime Commission, November 8, 1973, N.T. 62-66.

The relevant testimony of Chief Bortner, as well as conflicting testimony, taken during private Commission hearings held in Harrisburg, Pennsylvania, was forwarded to the Dauphin County District Attorney on January 22, 1974, in order that consideration could be given to initiating perjury charges against Chief Bortner. The material is presently being reviewed by that office.

- A: In the police station.
 Q: Were you in uniform?
 A: Yes, sir.
 Q: Was he?
 A: Yes, sir.
 Q: Was anything said at the time that the money was handed to you?
 A: Yes, I asked him what it was for. He said, 'I owe it to you.' I said, 'You don't owe me any money' and then he told me. He said it was for the accident I had either yesterday or when ever it might have been and then I knew what he meant.
 Q: What did he mean?
 A: That it was because this certain tow truck operator picked the car up.
 Q: What operator?
 A: It was Weitkamp's.⁷⁵

The witness then related he was given money by Chief Bortner under similar circumstances approximately six times.⁷⁶

Another officer testified that during his first two years on the York police force (1967 through 1969) he was paid \$5 on four or five occasions by then Lieutenant or Captain Bortner for referring towing business to James Weitkamp. The explanation given by Bortner would be, "Here's for the tow job." These events took place in the police station while both men were in uniform. In this policeman's opinion, towing payoffs on a systematic basis began with Messrs. Weitkamp and Bortner in about 1967.⁷⁷

Yet another patrolman testified that the first instance he can recall of accepting a towing payoff was in late 1967 or early 1968 when he was paid by then Sergeant or Lieutenant Bortner either two or three dollars in City Hall while both were in uniform:

- Q: Was anything said to you at the time this money was handed to you?
 A: Well, he gave me the money and I asked him what it was for and he said, 'Didn't you investigate an accident where Weitkamp towed the car away?' and I said 'Yes' and he said, 'That is what it is for.'⁷⁸

The same witness further testified as follows:

- Q: Do you believe that the practice [towing payoffs] might have

⁷⁵Officer C, N.T. 95-97.

⁷⁶*Id.* at 98.

⁷⁷Officer E, N.T. 70-74.

⁷⁸Officer G, N.T. 49-50.

been halted . . . if you and other men had taken the initiative and really raised a ruckus about the fact that the practice was allowed to continue?

- A: I feel if the officers were that concerned about the practice it wouldn't have existed in the first place.
 Q: Why do you think the officers were not concerned about the practice?
 A: It is my opinion that it has been going on for so long, it was going on when we came on the police department and it continued to go on.
 Q: Do you think the fact that the person who is now the Chief of the Department was knowingly involved in the practice . . . had any bearing on the fact that it has been allowed to continue?
 A: Yes, sir, I feel if . . . a new man on the job . . . is offered money by a sergeant or now the Chief of Police, I would feel that the officer would feel that there is no harm in this. That this was a policy and he plays along with it.⁷⁹

A fourth policeman stated that after being paid by then Lieutenant Bortner in police headquarters several times for having called Mr. Weitkamp to accident scenes, he was subsequently paid directly by Mr. Weitkamp on "ten or fifteen occasions and probably more than that." This officer assumed Officer Bortner told Mr. Weitkamp which police officers took payoffs and then Mr. Weitkamp paid those policemen.⁸⁰

A fifth officer testified, "Word got around the department in 1969 or 1970 that if a police officer called Weitkamp, he would receive \$5 per tow job through [then] Captain Bortner:"

- Q: What happened after you would call Weitkamp?
 A: Well, if he wouldn't give you the \$5 bill on the spot then maybe the next day or the day after Captain Bortner would come around. He had the names of the men that called Weitkamp for accidents and he'd come around and give you the money.
 Q: Where did you receive these payments?
 A: Well, from Weitkamp it was out on the street and Captain Bortner, it was in the office.⁸¹

A sixth officer testified that after being paid two or more times by then Sergeant Bortner for having referred towing business to Mr. Weitkamp, he stopped calling for Mr. Weitkamp to come to accident scenes because of a

⁷⁹*Id.* at 59-60.

⁸⁰Officer C, N.T. 106.

⁸¹Officer L, N.T. 14-15.

personal disagreement between the officer and Mr. Weitkamp. Sometime thereafter Sergeant Bortner approached the patrolman and asked about the argument involving Mr. Weitkamp. According to the officer, after being told of the nature of the argument, Sergeant Bortner said, "Well, you know that you're not only hurting Weitkamp, you're hurting me."⁸²

This officer further stated:

Q: What happened as a result of your conversation with Sergeant Bortner?

A: He said to me that if Weitkamp was willing to apologize, would I accept the apology? And I told him that if he was man enough to apologize, I'm man enough to accept it. And he said, 'Well, Weitkamp's up at the office now. Would you walk up and he'll apologize to you.' Which I did and he did apologize.⁸³

FAILURE OF DEPARTMENT LEADERSHIP

The failure of the leadership of the York Police Department to take prompt, vigorous and aggressive action against towing kickbacks had a direct impact upon the rank and file members of the Department. Chief Bortner's involvement in the payoff system and the failures of the other leaders, combined with inadequate training, rendered corrective action almost impossible. As a result of these factors, systematic payments from tow-truck operators to police officers have flourished for years.

Numerous members of the York Police Department testified that they never seriously considered registering any complaints about the payoff system because they knew Chief Bortner had been involved in it; and still others testified that they did not believe they could complain about the system of payoffs because they had received cash payments from Elmer Bortner before he became Chief.

A patrolman with four years service testified concerning Chief Bortner's involvement that:

I feel in my own mind that the Chief of Police knew that it was going on. . . . I do feel if the pressure was put there . . . maybe 80 or 90% of it could have been eliminated if the pressure would have said the money is being given by tow truck operators and if anyone is caught receiving money they would get this, so on and so forth.⁸⁴

⁸²Officer D, N.T. 17-18.

⁸³*Id.*

⁸⁴Officer J, N.T. 193.

When questioned if he had ever complained to Chief Bortner concerning the towing kickbacks, one patrolman answered:

Never directly to Chief Bortner. I was always left under the impression that he was more so involved in this than anyone. Had more to do with it. Had started this.⁸⁵

One officer explained that when he first came on the force about nine years ago, he was handed two payments of \$2 each by Elmer Bortner:

At the time, he gave me \$2.00 and he said, "put it in your pocket." The first time he did and the second time he did, I started to think a little bit. First of all, I was a new policeman. I liked my job. I wanted to keep my job, and the only way I could see to avoid this was by not using the truck, which was Weitkamp.⁸⁶

Other police leaders also abdicated their responsibility to take corrective action. Regarding the responsibilities of the commanding officers, a police officer stated:

I think that's where it all starts from, from the top down as to what you can do and what you can't do, and I think they should govern the enforcement of these things but they let it go and it was just a practice that got to be a regular thing.⁸⁷

This same officer further testified that he believed that almost every uniformed man on the force, at one time or another, accepted towing payoffs.⁸⁸

One evening "about five or six years ago," York police officer Jay Ressler, on foot patrol alone, came on the scene of a traffic accident at George and Princess Streets in York. The owner of a disabled car requested a tower named Baum and the policeman dutifully relayed this wish. Shortly thereafter, the police radio operator notified Officer Ressler that Baum was not available and that James J. Weitkamp was being sent to the accident scene.⁸⁹

In due time Mr. Weitkamp arrived, hooked up the wrecked vehicle, walked up to the patrolman, said a few words in passing, stuck something in

⁸⁵Officer Q, N.T. 59.

⁸⁶Officer W, N.T. 49.

⁸⁷Officer I, N.T. 121.

⁸⁸*Id.*

⁸⁹Testimony of Patrolman Jay A. Ressler before the Pennsylvania Crime Commission, October 11, 1973, N.T. 8-9.

Patrolman Ressler's coat pocket, and then entered his truck and drove away. Jay Ressler subsequently checked his pocket and discovered he was the recipient of \$5.⁹⁰

Patrolman Ressler promptly reported the bribe to his superior officer, Lieutenant Elmer C. Bortner, who said, "There's nothing I can do about it." Officer Ressler then reported the bribe to Chief of Police Leonard L. Landis, who told Officer Ressler to make a written report to him and to the Director of Public Safety. Patrolman Ressler turned in the report and the \$5, and that was the last he ever heard from his superiors or from any departmental investigating officer.⁹¹

However, then Lieutenant Bortner did take some action. He told Mr. Weitkamp that a report had been filed against him and that Mr. Weitkamp would likely be contacted by an investigating officer, probably Chief of Police Landis or a Captain.⁹² Chief Bortner explained this unusual step at a Crime Commission hearing at which he testified that Mr. Weitkamp was a personal friend and he could see no harm in telling him that a bribery report had been filed against him by a policeman.⁹³ Chief Bortner testified, "I don't think I would have told him [Weitkamp]" had it been a burglary complaint, for example, rather than one dealing with an alleged bribe.⁹⁴ Chief Bortner also testified he was aware that bribery, if substantiated, could have resulted in criminal charges being instituted against Mr. Weitkamp.⁹⁵

James J. Weitkamp testified that he subsequently received a telephone call from Captain Russell K. Kootz of the York Police Department concerning the reported bribe incident. "He asked me about it and I told him that there wasn't any truth to it and that was the end of it."⁹⁶ Mr. Weitkamp was quite correct when he stated "that was the end of it."

Captain Newton D. Brown of the Traffic Safety Bureau (a five-member unit of the York Police Department specifically assigned, among other things, to investigate motor vehicle accidents) testified that a year and a half or so ago, he was approached by Glenn E. Sheffer of Quick Towing Service, a towing operator who was dissatisfied with his share of towing

⁹⁰*Id.* at 9-11.

⁹¹*Id.* at 11.

⁹²Bortner, N.T. 77.

⁹³*Id.* at 78.

⁹⁴*Id.* at 79.

⁹⁵*Id.* It is also interesting to note that Chief Bortner testified he could not recall any arrests being made for bribe, or attempted bribery by the York Police Department during his 22 years on the force. Bortner, N.T. 82.

⁹⁶Weitkamp, N.T. 20.

business from the City of York.⁹⁷ During their conversation, Mr. Sheffer told Captain Brown that York towing operators were giving policemen money in return for being called to accident scenes, and Mr. Sheffer specified that Traffic Safety Bureau men were involved in the payoffs.⁹⁸ Captain Brown reported this incident to Chief Bortner.⁹⁹

Captain Brown testified that he told Mr. Sheffer, "I'm not interested in it, I don't want to know about it. You just leave and as far as I'm concerned, if they [Traffic Safety Bureau men] want you, they'll call you."¹⁰⁰ Shortly thereafter, Captain Brown, who was then a Lieutenant, told his five Traffic Safety men that, "If anybody is taking money from the tow trucks and I find it out, they are going to be either without a job or under suspension."¹⁰¹ None of the men admitted to Captain Brown that they had taken such graft. Captain Brown's account of his warning to the Traffic Safety officers was verified by testimony from members of the Traffic Safety Bureau.

Captain Brown conducted a brief investigation of his own which consisted simply of contacting several towing operators and briefly asking them if they were paying off his men.¹⁰² The tow-truck operators denied making payoffs and Captain Brown discontinued his investigation. Although there were persistent rumors that payoffs were continuing, he did not press the investigation further. He later admitted in testimony before the Commission that his investigation was inadequate:

No, I don't feel it [the investigation] was adequate. . . . I questioned them [Traffic Safety Bureau members] about it. I was getting nowhere. . . . I guess I put the fear in them that they wouldn't tell me that they were taking it because I was quite serious about it. I kept hearing so many rumors and I wanted to do something about it. . . . I just never got anything done.¹⁰³

In April 1973, Patrolman Willard C. Dinges, while in the Community Relations office of the York Police Department, bragged that he had made

⁹⁷Testimony of Captain Newton D. Brown before the Pennsylvania Crime Commission, December 20, 1973, N.T. 10-11 [hereinafter cited as Brown]. Glenn Sheffer must be credited with a role in exposing the kickback system, for he complained not only to Captain Brown in 1972, but again to Captain Charles F. McCaffery in 1973. Testimony of Captain Charles F. McCaffery before the Pennsylvania Crime Commission, August 27, 1973, N.T. 15-16 [hereinafter cited as McCaffery].

⁹⁸Brown, N.T. 11.

⁹⁹Bortner, N.T. 72.

¹⁰⁰Brown, N.T. 10-11.

¹⁰¹*Id.* at 11-12.

¹⁰²*Id.* at 21-22.

¹⁰³*Id.* at 24-25.

\$80 on tow jobs in one week. Present when Dinges uttered his statement was Captain Charles L. McCaffery, and the latter's curiosity was aroused.¹⁰⁴ He told the York City Director of Public Safety, Leslie Jackson, and Police Chief Elmer C. Bortner that the Police Department had a serious problem on its hands involving towing kickbacks.¹⁰⁵ Captain McCaffery was ordered by Mr. Jackson¹⁰⁶ to investigate the allegations. So, after many years of inertia, the initial step was taken to probe officially the question of towing payoffs.

The history of the chronic failures on the part of police leadership to take effective action hindered the investigation. In June, 1973, ten York police officers were questioned by Assistant City Solicitor Jay V. Yost regarding their receipt of towing kickbacks.¹⁰⁷ Eight of these men testified before the Crime Commission that they lied to Mr. Yost when they denied accepting towing kickbacks.¹⁰⁸

One patrolman told the Commission he lied because, "I wasn't under oath at the time and I was afraid naturally . . . afraid of losing my job."¹⁰⁹ Another officer explained, "I guess you would call it being afraid more than anything, trying to protect my interests, and my job and my family and so forth. I had no advice at all. It was more or less on-the-spot thinking at the time."¹¹⁰ Another officer stated, "I was very much concerned about myself and my family and everything else."¹¹¹ Other officers also admitted

¹⁰⁴McCaffery, N.T. 18-19.

The relevant testimony of Patrolman Willard C. Dinges, as well as the conflicting testimony, taken during private Commission hearings held in Harrisburg, Pennsylvania, was forwarded to the Dauphin County District Attorney on December 11, 1973, in order that consideration could be given to initiating perjury charges against Dinges. Dinges was arrested on December 19, 1973, on a perjury charge. A preliminary hearing for Dinges was held on February 11, 1974, at which he was ordered held for grand jury action. Dinges was suspended without pay from the police force on February 12, 1974, pending final disposition of the perjury charge.

¹⁰⁵*Id.*, at 43.

¹⁰⁶Although Mr. Jackson is generally credited with having ordered the investigation by the York Police Department in the spring of 1973, his role in the subsequent Crime Commission investigation was surprisingly disruptive. Mr. Jackson's statements to the media on a number of occasions clouded the public view of the real issues. For example, Mr. Jackson publicly charged on various occasions that the Crime Commission was conducting "a fishing expedition," that the Commission's moves to have perjury charges leveled against certain witnesses were "scare tactics" and an "old trick," and that the Commission was "out to get" Chief Bortner.

¹⁰⁷Information supplied by the York City Solicitor on June 28, 1973.

¹⁰⁸Officer G, N.T. 68-69; Officer H, N.T. 101-102; Officer I, N.T. 134-136; Officer R, N.T. 141-143; Officer S, N.T. 41-42; Officer T, N.T. 110-113; Officer U, N.T. 19-20; Officer V, N.T. 179-180. It is perhaps significant that Chief Bortner was in and out of the City Solicitor's office while the questioning of these officers took place.

¹⁰⁹Officer V, N.T. 180.

¹¹⁰Officer U, N.T. 19.

¹¹¹Officer H, N.T. 101.

to lying to the Assistant City Solicitor because of concern for their jobs and families.¹¹²

Shortly after these interviews were conducted by the Assistant City Solicitor, the transcripts of the interviews were turned over to the Commission in order to assist the Commission in initiating its investigation. The City did not press its investigation further.

The failure of the leadership of the Department to take prompt and vigorous action against towing kickbacks was compounded by the fact that many of the older officers were taking money from the tow-truck operators, and the new recruits, emulating the conduct of the veterans, quickly became accustomed to the practice. A veteran officer testified that: "[t]o some of our younger men, this [towing payoffs] is evidently a way of life with them and they learned it from some of the older people, . . . not that they shouldn't know better."¹¹³

A patrolman with six years experience explained the role of the veteran officer when he testified:

I know it's wrong and it shouldn't have been done. When I came on the job it was procedure that whoever was senior man, in other words, that you rode with, you went along right with what he did. They were really strict back then when I came on the job. . . . In other words, a guy like me, I came on the job and I was a new guy and I went along with what the rest did.¹¹⁴

Another patrolman explained:

It's nothing that's particularly said about it. The money is handed to an older patrolman who has been taking it and he gives to the new patrolman. The new patrolman doesn't even know what it is until he has taken it several times and he figured it out for himself.¹¹⁵

Another officer testified:

When I came on the job, everybody says keep your eyes and ears open and your mouth shut and do what the senior man tells you to do. . . . So just don't make any waves, just go along with whatever

¹¹²Officer R, N.T. 143; Officer S, N.T. 42.

¹¹³Testimony of Officer Y before the Pennsylvania Crime Commission, September 12, 1973, N.T. 75.

¹¹⁴Officer V, N.T. 182-183.

¹¹⁵Testimony of Officer Z before the Pennsylvania Crime Commission, September 12, 1973, N.T. 75.

anybody tells you. So in order not to cause any problem I just took the money.¹¹⁶

Still another officer stated:

I came out on the job, I just come out of the service. I applied for the job and I was young there and I just went along with it and didn't make no waves.¹¹⁷

Yet another officer stated:

. . . [T]he procedure is when you are with an older man on the job, they tell you the first year you are there, you do what the older man does and you keep your mouth shut and towing was in then at the time and you more or less just went along with it . . .¹¹⁸

A veteran, age 43, with 19 years of service on the York police force, admitted to taking money from junior car partners who had initially received the cash from tow-truck operators and also to accepting free gifts from them and many other businessmen.¹¹⁹ He was questioned at length concerning the effect of his conduct on the younger men in the Department, and he responded as follows:

Well, the only thing I can say, this [accepting money] has been a practice over the years and it's never nothing really justified or said it was illegal [sic] or anything like that, and it's just been a practice, a routine thing through the Department since 1960.¹²⁰

* * *

Q: I don't want to beat the same question to death, but you do owe it to the younger men to set the example.

A: Yes, sir, I understand that.

Q: And there are other men, our hearings have brought in other older men such as yourself, who very firmly told junior partners, 'while you're working with me you don't take a dime.' We've had that kind of testimony, and I think you know one or two men with time on the Force who you believe would set that kind of example.

¹¹⁶Officer O, N.T. 132-133.

¹¹⁷Officer K, N.T. 82.

¹¹⁸Officer L, N.T. 27.

¹¹⁹Officer I, N.T. 95, 110-111, 126-132.

¹²⁰*Id.* at 115.

A: Yes. I used to work with some like that, sir.¹²¹

Besides the veteran policemen who actually took part in the payoffs, other officers contributed to the problem by taking the position that the corruption did not affect them if they were not personally involved in the towing payoff. One man with five years service on the force expressed this detached viewpoint in the following fashion:

Frequently sometimes I hear officers talking about receiving money. I haven't really heard from whom specifically or if I did, I walked away.¹²²

Further testimony by this officer went as follows:

Q: . . . [I]t seems to me for you to walk away from information or talk [of] corruption is contrary to your responsibility as a police officer, especially as a city detective.

A: Yes, sir, you are right in some aspects. I am of the opinion where I don't like to bother other people and get into other people's business unless it is absolutely necessary in my line of duty, and I don't care for people to enter my business.

Q: But this is police business we are talking about. I am not talking about someone's personal business. We are talking about performance on the job of police business so that is your business.

A: I feel if a man decides he wants to take money for something that he shouldn't, that is his personal business.

Q: That is not your business as a police officer?

A: If he wants to get himself in trouble or something with the police department, that is his business. If it involves me, then it becomes my business.¹²³

Some of the veteran police officers, such as Jay A. Ressler, did not succumb to the practice of accepting money from tow-truck operators. An officer who admitted to having taken towing payoffs early in his police career but who had stopped participating in this practice, testified:

I think one of the main reasons I really felt bad about it is . . . our police department is very young and even though I've only had five years on the job, most of the fellows I work with now and in

¹²¹*Id.* at 116-117.

¹²²Testimony of Officer AA before the Pennsylvania Crime Commission, November 7, 1973, N.T. 71.

¹²³*Id.* at 73-74.

maybe the past six months are under me. And I try to, more or less, set an example for them and try to guide them a little bit.¹²⁴

A young officer who had accepted money testified that he stopped the practice when told by his senior car partner that such payoffs were illegal.¹²⁵

Inadequate training and instruction undoubtedly helped foster a corrupt climate in the York Police Department. For example, only a handful of the thirty-three members of the York Police Department who testified at Crime Commission hearings were familiar with General Rule 18 of the Rules and Regulations of the Bureau of Police, York, Pennsylvania, adopted on December 2, 1969, which provides as follows:

No member or employee of the service shall collect or attempt to collect any gratuities in any form whatever for the performance or non-performance of his sworn duties, salary, witness fees, awards, and rewards as permitted by law excepted. . . .

Twenty-seven of the police officers who appeared as witnesses at the Crime Commission hearings testified that they could not recall ever receiving any training or instruction from the York Police Department on the legality or morality of a police officer accepting money from businessmen because of their position as policemen. Only four police officers mentioned occasional reminders by their platoon leader or other superior officer on this point.

A young patrolman stated:

As far as morality goes . . . I remember he [the Department's recruit training officer] gave a speech one day in which [he stated] we must be above reproach. We must set examples to the community, and the next day he brought a 16 millimeter stag film in for us to watch so it really didn't mean anything.¹²⁶

Other statements elicited from members of the York Police Department tend to support the conclusion that the police leadership and training were inadequate. One of the York officers testified that:

I thought it [accepting payoffs from tow-truck operators] was just a common ordinary thing. I thought it was something that's been

¹²⁴Testimony of Officer BB before the Pennsylvania Crime Commission, December 19, 1973, N.T. 72-73.

¹²⁵Officer B, N.T. 125.

¹²⁶Officer Z, N.T. 74.

CONTINUED

2 OF 3

done for years. Sure as hell if I knew that I was going to wind up here [before the Crime Commission], they could have stuck their \$5.00 or whatever amount it was because my job is more important than a little beer money.¹²⁷

Another young officer with less than three years service testified:

You might consider me pretty naive. I didn't have any idea whatsoever . . . when I accepted this money [towing payoffs], I did not realize there was anything illegal about it. I thought it was competition between the tow-truck drivers at the most. . . . I had no idea that this money was coming out of other people's pockets or that they were overcharging people to give us the kickbacks or the payoffs.¹²⁸

One officer's testimony reflects a failure to understand the difference in the ethical standards applicable to public as opposed to private employees. He asserted:

At the time and even now, my opinion is that it wasn't wrong. I shouldn't say wasn't wrong but I didn't think it was such a terrible thing to do because of my experience in the business world as like a sales representative giving you a sample or like in electric work, you buy like three gears and they'll give you a tool with it. It's almost a way of life, you know, to me.¹²⁹

Proper training would presumably have prevented this and other officers from participating in towing payoffs, since they might have perceived the more exacting ethical requirements and applied them to their own behavior.

CONCLUSION

This report describes an institutionalized system of payments by private business to York police officers. Such payments are a serious matter. Where a discretionary act of a police officer is involved, such as where he chooses which tow-truck operator to call to the scene of an accident, receipt of money may constitute the crime of bribery. In cases where a police officer demands or pressures the tow-truck operator to pay him for

¹²⁷Officer D, N.T. 25.

¹²⁸Officer U, N.T. 21.

¹²⁹Officer S, N.T. 24-25.

referrals of towing, the crime of extortion may have occurred. These crimes have a direct financial impact on individual citizens who, in fact, are forced to pay the bribe through inflated charges. The amounts of money paid accumulate to rather large sums and result in a substantial cost to the public.

Even where payments to police officers do not fall within the bribery laws, they present a serious corruption hazard. The receipt of such payments has an impact on the integrity of the individual police officer, and their wide acceptance causes everyone to be compromised to some extent. Many honest police officers find them personally degrading and resent the assumption that they can be easily bought. The Commission has found in its Philadelphia Police Department investigation that payments from businesses are a means by which officers are tested by other officers who want to see if they will go along with the system of corruption.¹³⁰ Even an officer who will not personally take such money learns that he must look the other way when his colleagues receive bribes or risk being an outcast. In some cases where police officers have received a modest but steady payment, they can become dependent on the extra income, causing them to look for other sources of payments if transferred. Furthermore, the fact that policemen so often engage in this activity and that the police leadership fails to halt it contributes to a general sense of cynicism and hypocrisy.

Institutionalized illegal payments to police officers is a situation requiring corrective action. Certain of the recommendations set forth in the concluding part of this report are intended to assist the York Police Department in assuring that individual police officers are prevented from participating in the corrupt system of towing payoffs or any similar ugly patterns of corruption.

However, the problem does not lie only with the York Police Department, but also with those businessmen who find an incentive for influencing the exercise of police discretion by giving a "tip" or "gratuity," or in less polite terms, a bribe. The Crime Commission believes that the incentive for businesses to pay policemen should be countered by a clear statutory prohibition on all such payments.

At the present time, the Pennsylvania bribery statute prohibits only those "pecuniary benefits" paid for the "exercise of discretion" of a public servant.¹³¹ This would appear to cover any payments to a police officer who has an arrangement with a towing operator to call him to the scene of an accident, but arguably may not cover a mere tip to a police officer who has called a tow-truck operator at random or has called the operator selected by the motorist. It also does not cover nonpecuniary "gratuities"

¹³⁰Pennsylvania Crime Commission, *Report on Police Corruption and the Quality of Law Enforcement in Philadelphia*, March 1974, *passim*.

¹³¹Act of December 6, 1972, P.L. ____, No. 334, §1, 18 C.P.S.A. §4701 (1973).

such as free auto service or accessories, even though they are directly tied to an exercise of police discretion.

The Crime Commission believes that all monetary or other gratuities paid to police officers and other public officials should be prohibited, as a misdemeanor offense for the payor or the recipient.

The most important corrective action to be taken in the area of business payments to police is firm and vigorous enforcement by the York Police Department in the future of the law and its own regulations. As for past corruption, no one will ever be able to judge for certain the debilitating effect upon the York Police Department which has undoubtedly flowed from the existence of the system of payoffs described in this report. Where the sort of corruption in this report is as rampant as it has been in York, the quality of the law enforcement effort must be diminished accordingly. It is likely that the specific type of corruption discussed in this report has fostered still more corruption within the York Police Department.

The facts in this report indicate that there has been a total absence in the York Police Department of effective leadership aimed at maintaining honest law enforcement. At the very least, this situation must be corrected.

RECOMMENDATIONS

1. The Rules and Regulations of the York Police Department presently forbid the collection or attempted collection of gratuities in any form but arguably may not cover the "acceptance" of gratuities. The regulations should be amended so that it is clear to members of the Department that the mere acceptance of gratuities, as well as the solicitation thereof, is prohibited. The regulations should also be amended to provide for dismissal from the force of any officer found to be soliciting or accepting gratuities in the future.

2. The York Police Department should formulate written directives outlining procedures for police officers to follow in arranging for the removal of disabled vehicles from the streets of York.

3. The appropriate York city officials should devise a suitable system for towing disabled vehicles which will eliminate the discretionary role of the police officer at the scene. There are a number of alternatives such as establishing a city towing service either by contracting to have the work performed by a private company or by performing the service with city employees and equipment. In addition, consideration should be given to regulating rates which can be charged by the tow-truck operators.

4. Personnel of the York Police Department assigned to the Traffic Safety Bureau should be regularly rotated on a staggered basis.

5. The York Police Department should revitalize and upgrade its own

training program so that emphasis is placed on meaningful education in the area of police ethics.

6. The Pennsylvania Crimes Code should be amended to make it a misdemeanor for any person or company to offer or pay any compensation or gratuity, in the form of money or otherwise, to any public employee in the course of his public work or duties, and for any public employee to solicit or accept any such compensation or gratuity in the course of his public work or duties.

7. The Mayor of York should consider, based on the information contained in this report, whether official action should be initiated to remove permanently Elmer C. Bortner as Police Chief and as a member of the York Police Department.

PART II

OTHER CRIME COMMISSION ACTIVITIES

During the 1973-74 period, the Commission has been involved in a large number of activities in addition to those reflected in the major reports contained in Part I. These activities involved other investigations as well as efforts to work with the state legislature in an attempt to improve the criminal justice system. Although these investigations were not as extensive as those discussed in Part I, they formed an important part of the Commission's work during this period, and the Commission believes it should report on them.

Contents: Part II

1 Investigative	185
State Contracts to Extinguish Coal Mine Fires	185
Charitable Solicitation Frauds	185
Narcotics Law Enforcement Problems in Lancaster	188
Prostitution in Columbia	190
Wyoming Valley Sanitary Authority	191
Cooperation with Law Enforcement Agencies	192
2 Legislative	195
Office of the Special Prosecutor	195
Election Laws	196
Vice Laws	199
Second Class Township Code	200
Organized Crime Legislation	202
Other Recommendations	203
Conclusion	205

1

Investigative

STATE CONTRACTS TO EXTINGUISH COAL MINE FIRES

In the fall of 1971, the Crime Commission received allegations concerning substantial corrupt practices in the awarding of state contracts to extinguish coal refuse bank and underground mine fires and to prevent subsidence of earth over old mines. Among the allegations investigated were that a political official pressured at least one potential bidder not to bid on a state contract to extinguish mine fires, when his bid would have been substantially lower than the bid ultimately accepted; that contracts to extinguish the mine fires were awarded improperly under state procedures; that large cost overruns were improperly engendered; and that the costs of the contracts were excessively high, resulting in tremendous profits to the successful bidder and to a "non-profit" corporation.

During the investigation, a lawsuit was filed against the Commission and others claiming civil rights violations. Because of the pendency of that litigation, the Pennsylvania Department of Justice has advised the Commission to refrain from publicly disclosing details of the investigation at this time.

At the conclusion of its investigation, the Commission turned its information over to the Intelligence Division of the Internal Revenue Service. Three individuals were indicted on 28 counts of evading \$4.3 million in income taxes on behalf of themselves and three firms in which they served as executives. Each pleaded not guilty on January 4, 1974, to one count of income tax evasion. One was sentenced to nine months imprisonment, a fine, and to pay all taxes owed, but he remains free pending an appeal. The other two were sentenced to suspended prison terms, probation, and fines and were ordered to pay all taxes owed. In addition, changes in procedures have been instituted by the Department of Environmental Resources to eliminate many of the problems uncovered by the investigation.

CHARITABLE SOLICITATION FRAUDS

Philanthropy now has become a "major business" in this country. According to the best available estimates, Americans have given over \$20

billion annually to philanthropic causes in recent years. Individuals have been providing approximately 75% of the total, while bequests, foundations, and corporations have accounted for the remainder. The demonstrated eagerness of the American public to express its generosity in support of charitable causes, and even to make contributions in instances where there is no indication of a cause, has rendered them highly susceptible to fraudulent fund raisers.

The Commission received information in the summer of 1973 that there were patterns of organized fraudulent charitable solicitations occurring in the southeastern section of the Commonwealth. Various fraudulent charitable solicitation schemes were alleged to be used.

Pennsylvania has enacted a law requiring public registration and approval by the Commission on Charitable Organizations of fund raising by charitable organizations, periodic detailed financial reporting by the collecting charities, and registration and bonding of professional fund raisers and their paid solicitors.¹ The Commission on Charitable Organizations is authorized to investigate registrants and must disapprove any application in which the solicitation would be a fraud upon the public or the expected cost of solicitation and fund raising is expected to or, in any of the past three years, has exceeded 35 per cent of the total monies raised. The statute specifically prohibits charitable organizations from paying a professional solicitor more than 15 per cent of the total monies raised, and from incurring solicitation and fund raising expenses of more than 35 per cent of total monies raised. Violations of the act are criminal offenses, and the Attorney General or any district attorney may seek to enjoin charitable organizations or persons from continuing any violation of the act.

The Commission's investigation uncovered several types of organized charitable solicitation frauds. The first type involved misrepresentation of a profit-making business as a charitable organization for the benefit of the physically handicapped. The Commission received sworn testimony from a former principle in the firm of Toiletries Packed by the Blind, Inc., a multi-state seller of toiletries which sold its product in Pennsylvania.² The toiletries were packaged, *i.e.*, containers were filled with a toiletry product, labels and caps were placed on containers, and then containers were packed in cartons by blind and visually handicapped people. A total of no more than 45 blind and visually handicapped people were employed during the company's five year existence and were generally paid the statutory minimum wage. During that time, 4,000 to 5,000 other people were em-

¹Act of August 9, 1963, P.L. 628, §§1-17, as amended, 10 P.S. 160-1 to -17 (Supp. 1974). See "Sweet Charity . . . As Amended—A Review of Pennsylvania's Charitable Solicitation Law," Pa. Bar Assn. Quarterly, Vol. XLV, No. 3, p. 369 (June 1974).

²Testimony of Lance Zeaman before the Pennsylvania Crime Commission, June 11, 1973, N.T. *passim*. Mr. Zeaman was granted immunity from criminal prosecution in exchange for his cooperation in exposing these organized charitable solicitation frauds.

ployed, almost all of whom were in sales, and none of whom were visually handicapped or blind. The usual sales method was telephone solicitation. Telephone solicitors were given a canned presentation, and they and their supervisors received a bonus on sales over a quota. The telephone solicitors were allowed to vary the sales pitch, and telephone solicitors misrepresented to prospective customers that the goods were produced by blind people and that proceeds of the sale would go to helping pay the salaries of blind people. Only if a sale were made would a customer receive a fine print disclaimer on the label of the container and on the sales invoice stating: "This is a business enterprise—not charity."

A second type of charitable solicitation fraud involved the use of collection cans. Mr. Zeaman testified that he, along with others, purchased collection cans and the use of the originals of various documents³ from an officer of the Handicapped Foundation,⁴ Paul Calesnick. Mr. Zeaman reproduced hundreds of copies of the various documents and supplied them to the numerous teenagers he hired to solicit with the cans in the Philadelphia area. The teenage solicitors were stationed in heavily traveled areas, such as shopping centers or in front of supermarkets. The money collected did not go to the charitable foundation but into the pockets of Mr. Zeaman and the other organizers of this fraudulent scheme. After cutting the cans open to remove the proceeds, they taped them up and put new labels they had printed over the cut in order to avoid the expense of buying new cans from Mr. Calesnick.

Another variation of the collection can scheme was to place them in stores. The proceeds were substantially less, but cans deployed in this manner cost less to purchase and there was no hourly pay for solicitors. An even more sophisticated variation was the placing of cans with different colored labels in different parts of the store, for example, placing a can with a green label at the back of the store and one with a purple label near the cash register, counting on the public to believe that the cans represented different charities.

A third type of charitable solicitation fraud involved the sale of advertising for a book to be printed by a charitable organization. The Commission received testimony from Mr. Zeaman that Mr. Calesnick offered to allow him to solicit money for advertising for a book to be published by the Handicapped Foundation. The solicitors for the book represented that the

³The documents were a certificate of registration issued by Pennsylvania's Commission on Charitable Organizations, a letter from the Internal Revenue Service granting the Handicapped Foundation tax exempt status, and a letter signed by Mr. Calesnick, an officer of the Foundation, authorizing the person named in the letter to solicit for charitable donations on behalf of the Handicapped Foundation.

⁴The Handicapped Foundation received tax exempt status from the Internal Revenue Service and had an approved registration with Pennsylvania's Commission on Charitable Organizations.

proceeds were to go to the Handicapped Foundation's annual spring drive to send children to summer camp and to buy them some essentials for rehabilitation, such as braces, when there was in fact no such drive. Furthermore, the solicitors kept the 80% of the contributions which were made by cash rather than check, and Mr. Calesnick received the other 20%.

A fourth type of charitable solicitation fraud involved obtaining a forged license to solicit for charitable purposes. Mr. Zeaman testified that he and two others each purchased such a fictitious license to solicit for a charitable organization. The purported purpose of the solicitation was relief for flood victims. In a period of four to six hours a day, Mr. Zeaman was able to solicit door-to-door \$85 to \$125 per day, six days a week, in various counties in Southeastern Pennsylvania. Mr. Zeaman and the others pocketed all of the money they collected.

After the Commission terminated its investigation in the summer of 1973, several charitable solicitation frauds were exposed by the Bureau of Consumer Protection and the Commission on Charitable Organizations. Delaware Valley Handicapped Industries of Conshohocken and its owner, Arthur S. Kauffman, and Renaissance Products, Inc., Penn Quality Products, and their owner, Jeffrey Rush, were all charged with falsely representing in telephone solicitations that their organization benefited the blind or handicapped. All the organizations were also accused of selling household items or toiletries at inflated prices. Those agencies are continuing to take legal action against violators of the law.

The activities of unscrupulous fund raisers, such as those detailed above, pose a continuing threat to legitimate charity appeals. In addition, they victimize thousands of kind hearted but naive contributors. Thus, it is extremely important that the public be aware of the types of frauds which are practiced, and that the public make inquiry of the Commission on Charitable Organizations before contributing to questionable charitable appeals.

NARCOTICS LAW ENFORCEMENT PROBLEMS IN LANCASTER

In April 1973, the Crime Commission began investigating an interstate heroin trafficking ring which made the bulk of its sales in the City of Lancaster. The investigation was started after a request for assistance was received from the Lancaster Police Department. The Commission was particularly interested in studying the law enforcement problems involved in a small city's attempt to deal with a modern urban problem which was relatively new and important to it.

The Commission learned that the Lancaster Police Department had made a number of attempts to infiltrate a heroin trafficking ring and make a buy from the major supplier but was unsuccessful. The Department discovered that its undercover agents were too well known to be successful in reaching the upper echelons of the ring. The Department then requested State Police assistance. On two occasions, the State Police sent undercover agents to assist, but they were unsuccessful on both occasions. The Department also sought assistance from the federal Drug Enforcement Agency (DEA) and the Intelligence Division of the Internal Revenue Service (IRS). The Commission was informed that, although assistance was promised by both agencies, it was on a "we will contact you" basis, and contact was never made. Then, the Lancaster Police Department sought the assistance of the Crime Commission. In the course of the Commission's investigation, the Commission was to view firsthand the frustration of local officials faced with problems of not having the proper resources available and not being able to follow all leads because much activity occurred outside of its limited territorial jurisdiction. The Commission was able to provide substantial assistance through its larger resources and extensive contacts in the law enforcement community.

During the course of the Commission's seven month investigation, Commission agents conducted thirty-five interviews, twenty criminal record checks, and numerous surveillances, and also subpoenaed telephone toll call records. Informant information, as well as other intelligence gathered by the Commission from various sources in New Jersey, New York, Puerto Rico, and Pennsylvania, independently supported the conclusion of Lancaster authorities that Richard A. Santiago was the major supplier of illicit heroin in Lancaster County and indicated that he was obtaining the heroin in either New York City or Puerto Rico.

The Commission and the Lancaster Police Department again contacted DEA officials, this time with even more substantial information of an interstate heroin trafficking ring. DEA officials stated that their resources were otherwise deployed and that they could not spare them. The Intelligence Division of the Internal Revenue Service was re-contacted on April 16, 1973, with specific information that indicated possible income tax evasion. The Intelligence Division stated that it was particularly interested in the activities and financial dealings of middle and upper echelon narcotics pushers, that it had a special unit to deal with such information, and that it would have the special unit contact the Commission. It is not known what, if any, action was taken by IRS, as IRS did not contact the Commission until November 1973, after Santiago's arrest. Next, the Commission contacted the Bureau of Drug Control of the Pennsylvania Department of Health (now a part of the Pennsylvania Justice Department). It supplied two undercover agents at the Commission's request. They were assigned to the investigation for two months but were unsuccess-

cessful in infiltrating the ring.

The Commission contacted the New York City Police Department's Organized Crime Control Board and Narcotics Division, which worked with the Commission and the Lancaster Police Department until the probe culminated on October 26, 1973, with the arrest of Richard Santiago by members of the New York City Police Department's 14th Narcotics District. The arrest took place as Santiago and a known associate were leaving Manhattan, presumably en route to Lancaster County, after having purchased a quantity of heroin from the subject of a major narcotic investigation in New York City. At the time of his arrest, Santiago was in possession of heroin with an estimated street value of \$34,000. A loaded automatic pistol was found hidden in the driver's seat of the rented vehicle in which the two men were traveling.

The Commission rendered assistance in this case to study and highlight the problems faced by a small police department in its efforts to combat heroin trafficking in its city. Unfortunately, there are no agencies in the Commonwealth prepared to render routinely this type of assistance.

The Commission urges increased cooperation between law enforcement agencies, particularly between state and federal agencies. The Commission recommends that the Pennsylvania Justice Department oversee and coordinate a statewide undercover agent exchange program for all interested police departments. This program would give local departments in small and mid-size municipalities a new dimension in narcotics trafficking investigations heretofore available only from frequently understaffed federal and state agencies.

PROSTITUTION IN COLUMBIA

In early 1973, Crime Commission investigators received general information from numerous law enforcement officers in Lancaster and York Counties indicating the presence of organized prostitution operations in Columbia, a city with approximately 13,000 inhabitants in Lancaster County. As a result of specific information received in March 1973, from a former member of the Columbia Police Department and residents of the community, the Crime Commission decided to conduct a preliminary inquiry. The information received indicated, among other things, that James Gibson, Edna Black, Charles Matthews, and Edward Smith were involved in a prostitution ring at Dewan's Franklin House, 139-141 Locust Street, Columbia, the Community Restaurant, 319 South Front Street, Columbia, and a red brick house located at the corner of Front and Perry Streets, Columbia.

Crime Commission investigators conducted interviews with law en-

forcement officials and residents of Columbia, examined numerous records to obtain background information and ownership of the properties suspected of being used as houses of prostitution, and conducted fixed and vehicular surveillances of the key figures and establishments involved in the alleged prostitution ring. Commission investigators observed activity indicating that substantial prostitution activity was taking place. Commission agents made no attempt to be solicited for immoral purposes.

When the Columbia Chief of Police, Gardener T. Bink, was interviewed, he admitted he was aware that prostitution existed in Columbia. He acknowledged that Edward Smith operated a house of prostitution at the corner of Front and Perry Streets, that Jimmy Gibson and Edna Black kept women in rooms above the Franklin House and the Community Restaurant for the purpose of prostitution, and that Charles Matthews was suspected of transporting women from Baltimore, Maryland, and York to Columbia for Gibson. Chief Bink claimed he never had enough hard evidence to proceed against the prostitution activities, and he said he did not consider it a serious law enforcement problem. He considered the serious problems facing his department to be vandalism, loitering, shoplifting, and underage drinking.

The information concerning organized prostitution in Columbia was turned over to the Commissioner of the Pennsylvania State Police. On August 9, 1973, the State Police raided the Community Restaurant, 319 South Front Street, Columbia, and arrested four persons, charging them with prostitution and related offenses. The four arrested were identified as James W. Gibson, 319 South Front Street, Columbia, Edna Black, same address, Christina Jacobs, same address, and Mattie Hines, Pittsburgh, Pennsylvania. Criminal charges are pending. According to State Police records, this was the first such raid in Columbia since 1961.

Commission investigators have returned to Columbia since the State Police raid and determined that, although the activity has decreased, organized prostitution continues.

WYOMING VALLEY SANITARY AUTHORITY

In April 1972, the Commission began an investigation of citizen complaints that bribery and extortion were connected with the awarding of a contract to an engineering firm to design an estimated \$10 million secondary sewage treatment plant for the Wyoming Valley Sanitary Authority. After an investigation which continued over a ten month period and included several days of private hearings, the Commission found some evidence indicating questionable conduct on the part of two engineers, one architect, and several authority members but concluded that the evidence

was not substantial enough to warrant being turned over to a prosecutor. The Commission also concluded that Authority members had been negligent in checking the qualifications of the engineering firms bidding on the project.

COOPERATION WITH LAW ENFORCEMENT AGENCIES

Although there have been difficulties in particular cases obtaining cooperation from some agencies such as discussed in the Lancaster matter reported above, the Commission's activities generally have led to a close working relationship with federal, state, and local law enforcement agencies which are responsible for prosecuting crimes. The Commission has achieved significant progress in establishing trust and mutual cooperation with most of these agencies. Thus, the Commission has been able to provide law enforcement bodies with specific evidence and intelligence data which has been material to their criminal prosecutions. In turn, these bodies have provided the Commission with important information which had aided in its investigative functions.

The Commission uncovered evidence of the existence of a major numbers bank in Penn Hills Township in Allegheny County during the course of its continuing investigation of the effectiveness of the criminal justice system in dealing with organized gambling activities. In August 1972, the Commission provided this information to Edward Arnold, Chief of Police of Penn Hills Township and learned that Penn Hills was conducting an independent investigation on this same matter. The Commission was responsible for effecting liaison between the Pennsylvania State Police and the Penn Hills Police Department. As a result of this joint effort, a raid was conducted which resulted in the arrest of the three principle figures in the numbers bank and the seizure of more than \$3,000 in numbers slips and \$2,000 in cash. Two of the principles have already been convicted and one was sentenced to a prison term.

The Commission investigators have obtained substantial intelligence data concerning large scale numbers operations in McKeesport, Allegheny County, and Aliquippa, Beaver County. This information has been turned over to the Pennsylvania State Police. Recently, the Commission uncovered evidence of numbers activity in a downtown Pittsburgh office building. This information was turned over to the Pittsburgh Police Department, Organized Crime Squad, and led to an arrest on May 15, 1974.

During late 1972 and early 1973, the Commission received information from a local police chief that substantial quantities of what was believed to be gambling paraphernalia were being shipped into the north central area of

Pennsylvania through a major motor freight carrier. An informant provided useful information to Commission agents concerning the shipping and distribution of the gambling materials. Surveillances were conducted to verify the informant's information, and records checks and interviews were conducted.

It was learned that the source of the gambling paraphernalia, punchboards and lottery tickets, was located in Chicago, Illinois. The goods were shipped to Pennsylvania via a variety of motor freight carriers and traveled under such nondescript shipping classifications as "Printed Advertising Material." In April 1973, the information developed was formally referred to the Commissioner of the Pennsylvania State Police. During July and September 1973, State Police from Montoursville and Hazleton obtained search and seizure warrants and conducted raids, confiscating a large quantity of punchboards, lottery tickets, and shipping documents and arrested two key distributors in the ring. Gambling material which would have a street value estimated at over \$500,000, if fully used, was seized. Confiscated cartons of the contraband contained between 25 and 100 punchboards, and others contained as many as 24,000 lottery tickets each. Punchboards may have as many as 500 "plays" on them, with cost per play generally \$.25 to \$1.00. The cost of a lottery ticket is usually within the same range.

The Commission's ongoing investigation into the activities of organized crime has produced important intelligence data which has been disseminated to responsible state and federal law enforcement agencies. Of particular note was information gathered concerning organized crime activities in Westmoreland County.

This information was turned over to the federal Strike Force which was already looking into organized crime activity in the same area.

The Commission's investigation into official corruption and organized criminal activity in Bucks County had uncovered evidence that organized crime figures from New Jersey have recently been moving their criminal activities, particularly gambling and loan-sharking, into that county. The Commission has moved to have Charles F. Warrington cited for civil contempt for failing to testify before the Commission on this subject after having received a grant of immunity from prosecution. This case is currently pending in Commonwealth Court. Similar charges are expected to be filed shortly against Carl Ippolito who has also refused to testify after receiving a grant of immunity, and who is reputedly a member of an organized crime syndicate. Other information developed during the course of the Commission's investigation of organized crime and official corruption in Bucks County was furnished to the Bucks County District Attorney in June 1974. The information related to criminal conduct by present and past members of the Bristol Borough Police Department.

During an investigation in Dauphin County, substantial evidence of

corrupt misconduct of District Justice William J. Gardner, Jr., of Steelton was uncovered. The evidence indicated, among other things, that Gardner offered a bribe to a local police chief on behalf of organized gambling figures to ignore organized gambling activity. In April 1973, this data uncovered by the Commission was referred to the Judicial Inquiry and Review Board.

In addition to providing information to various law enforcement agencies, the Commission has had the opportunity on several occasions to provide direct assistance to them in order to improve the quality of the criminal justice system. The newly elected Mayor of a large municipality in Allegheny County requested information concerning vice activities within his jurisdiction in order to assist him in restructuring the police department. The Commission provided the requested assistance as well as all of the available information about individuals being considered for responsible positions within the department.

The Commission has also provided assistance to the newly appointed District Attorney of Allegheny County in his effort to reorganize and restructure his office. These efforts have centered on exchanges of information concerning previous practices in the District Attorney's office as well as the proper role of the County Detectives.

2 Legislative

One of the most important elements of the Pennsylvania Crime Commission's work is assisting the State Legislature in reforming the criminal justice system. This assistance is most frequently provided through written recommendations contained in the Commission's reports of completed investigations and through direct testimony before legislative committees considering criminal justice matters. This section outlines the Commission's major recommendations in these areas.

OFFICE OF THE SPECIAL PROSECUTOR

The most important recommendation of the Commission in its published reports in the last two years, is for the establishment of a permanent, independent state-wide Office of Special Prosecutor. The Commission has found a specific need for a Special Prosecutor in Philadelphia and Delaware Counties.

As the Commission originally conceived the permanent Office of Special Prosecutor, it would have state-wide jurisdiction in cases of corruption in the criminal justice system. However, the results of investigations elsewhere in the state have convinced the Commission that the jurisdiction of the Office of Special Prosecutor should include all governmental corruption. Corruption in government is by no means limited to the criminal justice system. Separately staffed and funded, the permanent Special Prosecutor should be empowered to convene special investigating grand juries whenever necessary.

The Special Prosecutor could be selected in a number of ways. The guiding principle must be to insure the selection of a competent and independent man who will not attempt to use his office as a platform for political gains. The Commission recommends that the enabling legislation create a merit selection panel consisting of the Chief Justice of the Pennsylvania Supreme Court, the President Judge of the Commonwealth Court, the Chief Judge of the Pennsylvania Superior Court, the Speaker of the Pennsylvania House of Representatives, the President *pro tem* of the Senate, the Chancellors of the Bar Associations of Philadelphia and Allegheny Counties, the President of the Pennsylvania State Bar Association, and the Attorney General. The panel should nominate three people to the Governor for appointment as Special Prosecutor. If the Governor does not make the appointment within 30 days of submission of the nominations, the

committee should be required to select one of the three nominees as Special Prosecutor.

The Special Prosecutor should serve for a term of six years and should not be eligible for elective office in Pennsylvania for four years after completion of his term of office. He should be removed from office for cause only with a vote of two thirds of the Senate unless he himself is convicted of a crime committed in office.

It is imperative that the legislation should provide liberal funding for the Office of Special Prosecutor. The Special Prosecutor will need a staff of investigators to assist him. The Crime Commission's experience clearly indicates that the Office of Special Prosecutor cannot rely on a borrowed staff or rely upon internal security units of various police departments to do the investigative phase of its work. In general, the employees of the office should have civil service status, although there should be provisions made to allow the Special Prosecutor to employ a small part of his staff without civil service requirements. In a corruption investigation there often arises a need for particular talents and individuals that cannot be easily satisfied through a civil service mechanism.

ELECTION LAWS

Pennsylvania's Election Code regulating campaign financing was passed in 1937, and since that time has neither been enforced nor re-examined on any consistent basis. Indeed, there has not been a single reported criminal prosecution instituted since 1937, against either a candidate or a political committee for failure to account accurately for campaign financing activities. As a result, Pennsylvania's election laws have become obsolete and currently have little, if any, deterrent effect on illegal campaign practices.

The cornerstone of the Pennsylvania Election Code is contained in its provisions which require every candidate and every political committee to file a detailed report thirty days after each election to account for all monies received and expended. This report must include a specific itemization of the names of all contributors, the amounts contributed, the dates of receipt of contributions, and the specific purpose for which all monies were disbursed. The concept of full disclosure of all campaign financing is essential; the public has the right to know who has contributed to each candidate's campaign and how that money has been spent. The present law is defective in that it should require additional facts to be disclosed, particularly including the address and occupation of each contributor. This would provide a sharper picture for the public of the source of contributions. The primary defect in the present law, however, is the lack of an effective

enforcement mechanism.

The Commission has recommended several alternatives for creation of an effective enforcement mechanism. One method would be to augment the resources and authority of county boards of election and the Secretary of the Commonwealth. Under the current system, the county boards of election have neither the authority nor the manpower to police any of the Election Code's campaign financing provisions. However, their power and resources could be easily expanded by establishing an enforcement branch within each board so that they could become an effective vehicle for insuring compliance with the Election Code. In addition to augmenting the boards of election for county-wide campaigns, the office of the Secretary of the Commonwealth would have to be expanded and given similar power in order to police state-wide elections.

A second alternative would be to create an independent investigative commission or agency whose exclusive function would be the policing of all provisions of the Election Code. Such a commission or agency would have to be granted sufficient powers and resources, including broad subpoena powers, in order to achieve effectively its mandate. In addition, this unit would have to be governed on a non-partisan basis.

In addition to the creation of a viable mechanism to achieve vigorous enforcement of the Election Code, there is a recognizable need to plug a series of loopholes which currently exist in the present Election Code. One of the most glaring loopholes in the Election Code is its failure to limit the size of cash contributions. Since contributions can be made by check, there is no legitimate need for massive cash contributions. The use of cash serves only to raise the spectre of dishonesty and illegality since the source of cash is very difficult to trace. It is thus recommended that the Election Code be amended to include a specific provision forbidding cash contributions from a single source in excess of \$25 in any campaign.

Similarly, the present Election Code does not regulate the size of cash purchases of tickets to political fund raising affairs. Because ticket purchases to political affairs often involve substantial sums of money, a serious loophole would exist if there were not a strict limitation on the use of cash in connection with these purchases. It is thus recommended that a provision be added to the Election Code which would prohibit a cash purchase of tickets in excess of \$25.

Along the same lines, the present Election Code contains no provisions regulating the size of cash expenditures. Any campaign expenditure can be made as easily by check as by cash, and is much more easily traceable. It is therefore recommended that the Election Code be amended to include a specific prohibition against cash expenditures in excess of \$25.

One of the additional problems in the current Election Code is the absence of provisions which facilitate the auditing and verification of the accuracy of election expense accounts which have been filed. For instance,

there are no provisions in the Code which require that all funds received by either a candidate or a political committee be deposited in a bank prior to being expended nor are there any provisions which require the filing of all material bank records. Such requirements would increase the accountability of both the candidate and all political committees and would deter violations of the campaign financing regulations. The Commission, therefore, recommended that candidates and political committees be required to handle all their financial activities through a bank and then file, as part of their election expense accounts, a complete set of all of their bank records.

Under the current Election Code, the County boards of election are required to maintain election expense accounts filed with them for a period of only two years. Because the applicable statute of limitations for prosecution of a public official is, in many cases, longer than two years, the Commission recommended that records be maintained for five years.

Although the Election Code requires that every candidate and every political committee report the names of all contributors and the amounts contributed, the Code is ambiguous concerning whether it is necessary to report funds raised from the sale of tickets to campaign affairs as well as the identity of individual ticket purchasers. There is no question that ticket sales are important vehicles for the solicitation of significantly large amounts of campaign funds. Because the proceeds from ticket sales often involve large sums of money, there must be strict reporting requirements. Although it may be unduly burdensome to require reporting of the identity of each and every ticket purchaser, there must be provisions which prohibit large ticket purchasers from remaining anonymous and thereby allowing substantial contributions to go unreported. Consequently, in addition to the provision recommended above prohibiting cash purchases of tickets in excess of \$25, the Commission recommended that the Code be amended to require specific reporting of all receipts and expenditures in relation to ticket sales and the identity of all purchasers of tickets in an amount in excess of \$200.

The Election Code does not contain any provisions controlling the dispensation of leftover campaign finances in the event that a candidate becomes disabled, dies, or chooses not to seek re-election, or in the event that a political committee goes out of existence. It seems clear that there should be an orderly transfer of such leftover monies. The Commission recommended that each political candidate and committee be required to file a statement listing how surplus funds will be distributed in the event of dissolution.

Under the current Election Code, the penalties for violations of the campaign financing provisions are minimal. Violations are punishable by a maximum fine of \$1,000, or imprisonment of not less than one month nor more than two years, or both. Such penalties are inordinately lenient and lack the necessary force to achieve substantial deterrence. The Com-

mission believes that because of the importance of compliance with the Election Code, violations should be considered to be of the utmost seriousness. Thus, it is recommended that the penalty provisions of the Election Code be made more severe by classifying them as misdemeanors of the first degree, punishable by a maximum of five years imprisonment and a maximum fine of \$10,000.

VICE LAWS

Commission investigations revealed substantial problems statewide concerning enforcement of vice laws in general, and enforcement of laws against gambling and prostitution in particular. Problems in these areas were found in Philadelphia, Phoenixville, Columbia, Carbondale, and Allegheny County. Many studies, e.g., Morris and Hawkins, *The Honest Politician's Guide to Crime Control* (1970), and James F. Ahern, *Police in Trouble* (1972), have concluded that the criminal law cannot enforce a moral code to which society is not willing to subscribe. The Commission believes that it is now time for the Pennsylvania Legislature to reconsider the vice areas. In the re-evaluation, the costs to society in terms of integrity problems and law enforcement corruption should be weighed. There may be other competing values which outweigh or cause some compromise in the legislative approach to dealing with integrity problems in government. However, the Commission believes it is important to understand the costs of these competing interests in terms of integrity in government. For example, present efforts to combat victimless crimes are totally ineffectual and supply the underpinning for systematic police corruption. Consequently, the Commission recommends that it is inappropriate to utilize police to enforce most vice laws, with narcotics being an exception to this view. This is not a mere assertion that simple legalization is the answer. On the contrary, the Commission recommends the use of different methods of regulation supported in some areas by criminal sanctions. However, the police should not be charged with this regulatory or criminal enforcement responsibility. One immediate response to the Commission proposals may be that only the identities of who is corrupt will be changed. To some extent that may be so, but removal of the source of most corruption from police departments could enable them to concentrate their efforts to protect society from physical violation, while other agencies of government, such as the recommended Office of Special Prosecutor, could be charged with the anti-corruption responsibility. The Commission believes that such a change would materially improve the quality of government in the urban community.

The Commission does not advocate the mere legalization of the traditional vice conduct. Rather there should be reconsideration of the use of

the criminal laws in this area and the substitution of a scheme of regulation coupled with criminal sanctions. For example, fraudulent gambling practices should be criminal, and disobeying the appropriate state regulations should be punishable. The state regulation should consist, however, primarily of taxing gambling proceeds, so that organized crime's greatest source of revenue will be significantly reduced, if not eliminated. Gambling profits should be utilized for the benefit of society as a whole. Police should not be involved in the enforcement of the state civil regulation of gambling.

The present policy of regulating sexual conduct between consenting adults should also be re-evaluated and revised. The state unquestionably has an interest in protecting children from sexual exploitation by adults, as well as protecting society as a whole from violent sexual attacks and certain types of fraud. However, using police resources to curb prostitution and homosexuality not only is ineffective and wasteful, but it produces a greater moral problem, corruption, than the one it is seeking to cure.

The Commission notes that various legislative committees are considering changes in the Liquor Laws, such as lengthening hours of operation of bars and after-hours clubs and revising the drinking age. The Commission believes that while the sale of alcoholic beverages, like gambling, is appropriate for state regulation, police officers should be relieved from enforcing liquor laws as far as possible. Only if a threat to order exists, or if the regulatory agency involved so requests, should an on-duty police officer even enter a tavern, after-hours Club, speakeasy, or bar.

SECOND CLASS TOWNSHIP CODE

The abuse of official position for personal gain as uncovered in Chartiers may well exist in scores of Second Class Townships throughout the state. Such abuse often flows from established, informal methods and attitudes toward governmental functions which allow persons to assume positions of high responsibility regardless of whether they have the requisite education, background, or experience to properly discharge their responsibility. No form of local government should permit a group of two or three individuals to not only make all governmental decisions, but also determine how much they can pay themselves, create the paperwork justifying such payments, and actually write checks to themselves. Since officials of Second Class Townships are currently permitted to do all of these things, the Commission recommended that the Second Class Township form of government be amended to adopt a number of sections that currently exist in the First Class Township Code as follows:

(1) Section 511 of the Act 53 P.S. §65511 (Supp. 1974), should be

amended to require the board to select a non-board member, qualified in secretarial skills as the secretary, and a non-board member, trust company, or banking institution, as treasurer. This will assure the township of an independent and qualified record keeper. This would also bring second class townships in accord with first class townships which already select a secretary and treasurer independent from the board of supervisors. See Act of June 24, 1931, P.L. 1206, §§510, 511, 901, as amended, 53 P.S. §§55510, 55511, 55901 (Supp. 1974).

(2) Section 411 of the Act 53 P.S. §65411 (Supp. 1974), should be amended to eliminate the election of auditors in second class townships and to provide that the board shall appoint an independent Certified Public Accountant to audit its accounts at the end of each fiscal year. Such provision, in optional form, is presently included in the First Class Township Code: 53 P.S. §66620 (Supp. 1974):

Any township may, instead of electing three auditors as above provided or one controller as hereinafter provided, provide, by ordinance, for the audit of its accounts by an independent auditor who shall be a certified public accountant, registered in Pennsylvania, a firm of certified public accounts so registered, or a competent public accountant, or a competent firm of public accountants. Where such an ordinance has been so adopted, an independent auditor shall be appointed, annually, by resolution before the close of the fiscal year, to make an independent examination of all the accounts and accounting records of the township for the fiscal year then closing. Said appointment shall be made at least thirty days prior to the close of the fiscal year. Such independent auditor shall have and possess all the powers and perform all the duties provided in this act for elected auditors; the compensation of any such type of appointed auditor shall be fixed by the board of commissioners. When an independent auditor is appointed as herein provided, the office of elected auditor is hereby abolished.

(3) Regardless of whether the mandatory appointment of an accountant is provided or the present position of auditor is retained, Sections 545 and 547 of the Act (53 P.S. §§65545 and 65547 (Supp. 1974)) should be amended to: clarify the precise authority and responsibility of the auditor to review township records and conduct investigations concerning the lawfulness of particular expenditures; increase the maximum compensation payable to the auditors; increase the time in which the audit can be conducted; and permit an audit on at least a quarterly basis.

ORGANIZED CRIME LEGISLATION

On March 1, 1973, a representative of the Commission testified before the Senate Judiciary Committee concerning three anti-organized crime bills which were drafted by the Commission for submission to the General Assembly.¹ The first of these bills would provide use immunity for witnesses who are compelled to testify after having initially refused to do so on grounds of self-incrimination. Use immunity, the type of immunity granted in the federal system and in some states, forbids the use in future prosecutions of compelled testimony and evidence derived therefrom. Pennsylvania's present immunity law, which provides transactional immunity, offers a broader protection to the witness than use immunity because the witness cannot subsequently be prosecuted with respect to any transaction about which he testifies, even if evidence were gathered from a source independent of his testimony.

The second bill would provide for the impaneling of county and state-wide investigative grand juries to overcome the present common law restrictions which exist in Pennsylvania with respect to instituting grand jury investigations. The investigative grand juries would be granted broad investigative powers.

The third bill would define new substantive criminal offenses covering persons involved in gambling "businesses." This bill also makes it a felony for a public official or employee to conspire with any person conducting, financing, managing or owning a gambling "business" to obstruct the enforcement of the criminal laws with the intent to facilitate an illegal gambling "business." The bill is designed to attack the types of syndicated gambling which provide a financial base for organized crime. The intent of this bill drafted several years ago by the Commission staff, could also be achieved, according to some experts in the field, by regulating gambling without the use of the criminal sanction. In light of the Commission's more recent recommendations that vice laws in general and the gambling laws in particular be reexamined, this alternative should also be considered by the legislature.

On January 31, 1973, a Commission representative testified about the witness immunity and investigative grand jury bills before the House Committee on Law and Justice, emphasizing in particular that strong investigative grand juries and use immunity are important tools in the fight against organized crime.

¹A fourth bill drafted by the Commission making loansharking, the loaning of money above a certain rate of interest, a criminal offense was enacted into law in 1972.

OTHER RECOMMENDATIONS

Another serious corruption problem the Commission found in several areas of the state involves payments by businesses to police officers. Such payments were found in York, Phoenixville, Carbondale, and Philadelphia. The Commission, therefore, recommended that the Pennsylvania Crimes Code be amended to make it a misdemeanor for any person or company to offer or pay any compensation or gratuity in the form of money or otherwise, to any public employee in the course of his public work or duties, and for any public employee to solicit or accept any such compensation in the course of his public work or duties.

The Commission also has recommended legislation to provide for the automatic dismissal of any law enforcement official found guilty of a felony or misdemeanor as defined by the Crimes Code which occurred during his term in office. Likewise, any person convicted of any such offense while a public official should be barred from serving as a law enforcement official in the Commonwealth.

The strong pressures placed on police officers in Carbondale to participate in political campaigns pointed to a need to strengthen the laws placing police under civil service and decreasing political control over promotions. Therefore, the Commission recommended that the General Assembly enact legislation prohibiting any police officer in the Commonwealth from serving as a member of any political committee, participating in the management affairs of any political party, or taking part in any way in any political campaign, except to exercise his right as a citizen to express an opinion and to cast a vote. Furthermore, Pennsylvania's Third Class City Code should be amended to eliminate that portion of Section 2002 requiring appointment of police chiefs from within departmental ranks. Competition for the position should be opened to candidates both from within and outside the department. The Code should also be amended to require that promotions to sergeant, lieutenant, and captain positions in third class cities be made on the basis of merit through civil service.

The abolition of all common law crimes, which was accomplished by the new Pennsylvania Crimes Code, has resulted in the abolition of the crime of misfeasance in office. Since there is no direct substitute for that offense, the legislature should consider amending the Crimes Code to make it a statutory crime. In addition, the legislature should consider adding explicit criminal penalties to statutes which require disclosure of conflicts of interest by public officials, such as in Section 8 of the Urban Redevelopment Law.

A Commission representative appeared before the House Select Bipartisan Committee from Allegheny County to Study the Feasibility of Establishing an Independent Law Enforcement Agency for Criminal Investigation on November 23, 1973, to provide testimony concerning the

problems of proliferation of law enforcement agencies in Allegheny County. The Commission provided the House Committee with an up-to-date assessment of the activities of all law enforcement agencies within the county, a description of the problems created by the overlapping jurisdiction of the various agencies, as well as a series of potential reform measures to improve the current situation.

On March 15 and 29, 1974, Commission representatives appeared before the House Committee to investigate the Administration of Justice. The testimony concerned subjects ranging from the operation of the Crime Commission to payments by private businesses to police for extra services.

CONCLUSION

Crime poses a substantial challenge to our institutions. Official corruption and the glaring deficiencies within the criminal justice system have materially increased its impact. The phenomenon of crime is a manifestation of deeper troubles within society which have to date defied solution. Comprehensive in-depth studies, more sophisticated information gathering, and highly qualified people are all required if the complex problems of crime are to be solved.

The numerous examples of misconduct by public officials disclosed by the Crime Commission over the past two years indicate a need for a strengthening of the laws and institutions dealing with corruption. Equally important, however, is the need for the public and its elected and appointed representatives to strengthen their individual and collective resolve to deal firmly with corrupt public officials and to demand honesty in government. The integrity of our political system and public confidence in it cannot otherwise be maintained.

END