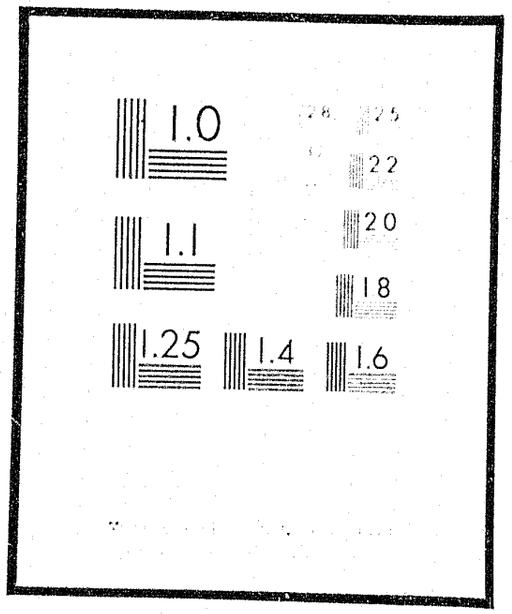

Legislative Document (1974) No. 92

SIXTEENTH ANNUAL REPORT
OF THE
TEMPORARY COMMISSION OF INVESTIGATION OF THE STATE OF NEW YORK
TO
THE GOVERNOR AND THE LEGISLATURE
OF THE
STATE OF NEW YORK

SEPTEMBER 1974

TEMPORARY COMMISSION OF INVESTIGATION OF THE STATE OF NEW YORK

Commissioners

HOWARD SHAPIRO[1]
Chairman

FERDINAND J. MONDELLO

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270 Broadway
New York, N. Y. 10007

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[1] Howard Shapiro was sworn in as chairman of this Commission on November 7, 1973. He succeeded Paul J. Curran who served as Chairman until June 4, 1973, when he resigned to become United States Attorney for the Southern District of New York.

[2] Resigned in September 1973.

[3] Resigned in December 1973.

* Special Unit to Evaluate the Administration of Justice in New York City.

[4] Resigned October 1973.

LETTER OF TRANSMITTAL

To the Governor and the Legislature of the State of New York:

Pursuant to Section 2 (9), Chapter 989 of the Laws of 1958, as amended by Chapter 268 of the Laws of 1972, the Temporary Commission of Investigation respectfully submits this report of its activities during the year 1973, together with its legislative recommendations.

Respectfully submitted,

HOWARD SHAPIRO, *Chairman*
EARL W. BRYDGES, JR.
FERDINAND J. MONDELLO
EDWARD S. SILVER
Commissioners

September 1974

". . . Police corruption is a disease which can affect the roots of our democracy. It must be treated promptly, carefully, continuously and effectively."*

* Excerpt from the Commission's Statement at the conclusion of its public hearing on October 4, 1973 concerning its investigation of alleged police corruption, and other related matters, in the City of Albany.

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FOREWORD

It is, by now, well established that every year is an active and eventful year for this Commission. The past fifteen years have clearly proven that to be so. The year 1973 was no exception.

While at any particular time there are a number of Commission investigations pending in different stages of completion, during the past year the Commission concluded four significant investigations. They involve the following diverse and important areas: (1) real estate tax assessments in New York City; (2) the Village Justice of the Village of Saranac Lake; (3) alleged police corruption in the City of Albany; and (4) the operations of the Special Narcotics Parts of the Supreme Court in New York City, an investigation conducted as a part of the Commission's current inquiry and evaluation of the administration of justice in New York City. In connection with the Albany investigation, a 9-day public hearing was held which evoked great public interest in the State's Capital. The details of these investigations are set forth fully in this report. In addition, the Commission handled numerous miscellaneous matters.

The disclosures made in the first three of the above mentioned investigations reflect that the integrity, competency and effectiveness of local law enforcement continue to be a major problem, as does the conduct of some public officials in other governmental operations.

These serious problems seem to be interminable and require constant watchfulness by the public and by such agencies as this Commission. It appears from these and other investigations conducted by the Commission that, in too many cases, local authorities do not seem able to, nor care to uncover, disclose and deal effectively with existing official deficiencies and improprieties. It is in many such situations that the Commission, as an independent, bi-partisan, non-political body, becomes concerned—and produces constructive results.

In this connection, the Troy Times Record, in an editorial on June 18, 1973, stated in pertinent part, as follows:

> ". . .
> The worth of the SIC has been proven. It can step into local situations where local authorities fail to move. Its mere existence is a prod to keep local au-

thorities on the ball, to keep local governmental operations up to standard."

Also, on the occasion of the announcement that Howard Shapiro would be appointed Chairman of this Commission, the Albany Times-Union stated on October 23, 1973, under "The Editors' Comment," the following:

> ". . . It is the SIC's job to 'look over the shoulders' of public officials, as Mr. Shapiro puts it, and it is its job to receive and investigate complaints from the public about the interests and activities of public officials. Obviously this has always been, and always will be, uncomfortable for those being scrutinized. Thus Mr. Shapiro states he envisions no major changes in the SIC operation, 'maybe only in its style.' Those words should be good news for the public, which is well aware that in investigations across the state, as well as in Albany, the SIC has brought to light and brought about corrections in wrong-doing in many phases of government."

The Commission will continue to function properly, industriously and effectively in fulfillment of its statutory responsibilities and in the public interest.

THE TEMPORARY COMMISSION OF INVESTIGATION

Background of the Commission

In order that everyone may know the circumstances which led to the establishment of this Commission, it has become standard procedure for the Commission to summarize in its Annual Report, the pertinent facts concerning its origin, as well as the areas of its jurisdiction.

From time to time, over a period of many years, this State, and others, have found it necessary to create temporary crime commissions to conduct investigations of current troublesome problems dealing with crime, racketeering and corruption. The most recent such crime commission in this state was established by Executive Order of Governor Thomas E. Dewey, dated May 14, 1951. That Commission, known as the State Crime Commission, was directed, among other things, to "investigate generally the relationship between the government of the State and local criminal law enforcement."

The State Crime Commission recognized the failure of law enforcement under certain conditions to cope with organized crime and corrupt officials. It also deplored the necessity, from time to time, of creating new temporary investigating bodies, with frequent return of the evil conditions when the investigating body's term expired. In recommending the establishment of a permanent Commission of Investigation, it stated as follows:

> "It is the strong view of this Commission that the creation of such a permanent Commission of Investigation, having members, counsel and staff of the highest calibre, would be a long step forward in destroying the stranglehold which organized crime has had in various areas upon the administration of the criminal laws in this State.
>
> The proposed commission would serve the following useful and important functions:
>
> (1) Aid the Governor in carrying out his responsibilities with respect to execution of the laws.
>
> (2) Deter dishonesty and inefficiency on the part of public officials.

(3) Assist the heads of the various state departments and agencies in investigations of their respective organizations.

(4) Aid the Governor in formulating recommendations to the Legislature.

(5) Advise and cooperate with local law enforcement officers.

(6) Keep the public alert to the evils of inadequate law enforcement."

(First Report of the New York State Crime Commission, Leg. Doc. No. 23 (1953)).

On the basis of this strong recommendation, Section 11 of the Executive Law was enacted in 1953 to establish the Office of the Commissioner of Investigation in the Executive Department headed by a single Commissioner (Chapter 887, Laws of 1953). Governor Thomas E. Dewey appointed the first of such Commissioners whose powers and functions were confined to the provisions of former Section 11.

Establishment of the Commission

The need for a State-wide investigative agency was confirmed by the experience of the respective Commissioners as well as the activities of the Joint Legislative Committee on Government Operations (often called the "Watchdog Committee"), established pursuant to a concurrent resolution of the Legislature on April 2, 1955.

To improve and strengthen State investigative activity, as well as eliminate all charges of political motivation, the Legislature in 1958 passed the statute establishing the present Commission. At the same time it repealed Section 11 of the Executive Law (thereby terminating the Office of the Commissioner of Investigation), and dissolved the Joint Legislative Committee on Government Operations. Governor Averell Harriman signed this bill on April 25, 1958 as Chapter 989 of the Laws of 1958, Section 7501, et seq., Unconsolidated Laws. The Act became effective May 1, 1958 and on that date the Commissioners took office.

It can thus be seen that the Commission was created only after long study and mature consideration. It is an investigative body that fulfills the over-all needs of the public welfare. It has many important statutory duties and responsibilities.

The Commission is comprised of four Commissioners. Under the statute, no more than two of the four Commissioners may belong to the same political party. While bi-partisan in organization by law, the Commission is non-partisan in operation.

Jurisdiction of the Commission

The basic jurisdiction of the Commission is set forth in Section 2 of Chapter 989, Laws of 1958, Section 7502, Unconsolidated Laws. The Act provides:

"(1) The Commission shall have the duty and power to conduct investigations in connection with:

a. The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering;

b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;

c. Any matter concerning the public peace, public safety and public justice."

Pursuant to Section 2(2), at the direction of the Governor, the Commission shall conduct investigations and otherwise assist the Governor in connection with: (a) the removal of public officers, (b) the making of recommendations by the Governor to any person or body with respect to the removal of public officers; (c) the making of recommendations to the Legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law.

The Act then sets forth these additional functions:

"(3) The Commission is required to investigate the management or affairs of any department, board, bureau, commission or other agency of the state, upon request of the Governor or the head of any such body;

(4) Upon the request of district attorneys and other law enforcement officers, the Commission is to cooperate with, advise and assist them in the performance of their official powers and duties;

(5) The Commission is directed to cooperate with

departments and officers of the United States Government in the investigation of violations of federal laws within the state;

(6) The Commission is requested to examine into matters relating to law enforcement extending across the boundaries of the state into other states;

(7) Whenever it shall appear to the Commission that there is cause for the prosecution of a crime or for the removal of a public officer for misconduct, the Commission is required to refer the evidence to the official authorized to conduct the prosecution or remove the public officer."

It can thus be seen that the Commission, as an investigative, fact-finding body, has a wide range of statutory responsibilities. It is highly mobile, may compel testimony and production of documents throughout the State, and is authorized to confer immunity upon witnesses. However, the Commission does not have, nor does it exercise any prosecutive, quasi-judicial, or administrative functions.

One of the Commission's important duties, when it uncovers irregularities, improprieties, official misconduct or corruption, is to bring the facts to the public attention. The objective of this policy is to insure corrective action. Indeed, the record of the Commission's activities has illustrated in dramatic fashion that the public hearing, as authorized by the Statute, has been a most effective weapon in combatting official misconduct, corruption and organized crime. In this regard, a very significant comment was made on the subject of public exposure in the *New York Times*. On November 4, 1963, in a news analysis article by McCandlish Phillips concerning the Commission's investigation of gambling and law enforcement in Westchester County, he said in pertinent part:

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

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

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

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

It, therefore, can be seen that the test of the success of a Commission investigation or public hearing is not dependent upon how many Grand Jury indictments result from the evidence adduced but rather upon whether the conditions exposed are corrected. The mere exposure of deeply entrenched, deplorable conditions which are detrimental to the public welfare, in itself, is a most salutary and worthwhile accomplishment.

In practically all of the Commission's investigations, which culminated in a public hearing, or in the issuance of a public report, corrective action closely followed.

Extension of the Commission's Term

Since the expiration of the Commission's original five year term on April 30, 1963, the Commission's life has been extended several times for additional two year periods. Governor Nelson A. Rockefeller, and the Legislature, mindful of the problems faced by the Commission in operating on a short-time basis, undertook to alleviate this situation. During the 1966 Session of the Legislature, the Governor recommended legislation which was introduced and passed, for the advance extension of the Commission's term for two years, from May 1, 1967 to April 30, 1969. During the 1968 Session of the Legislature, Governor Rockefeller again made such recommendation and a bill was introduced and passed extending the Commission's term until April 30, 1971. The Governor, in his Message to the 1970 Session of the Legislature, on January 7, 1970, stated that he will recommend at that Session the extension of the term of the Commission until 1973. A bill to that effect was introduced and passed during that Session, and signed by Governor Rockefeller, extending the Commission's term to April 30, 1973.

During the 1972 Session of the Legislature, again at the recommendation of Governor Rockefeller, a bill was introduced to extend the Commission's term for two years. Such action was

taken at that Session and a bill was signed by the Governor extending the Commission's term to April 30, 1975.

A New Chairman

On June 3, 1973, Commission Chairman Paul J. Curran, after serving with the Commission since April 9, 1968, (appointed Chairman by Governor Nelson A. Rockefeller on March 11, 1969) resigned to become the United States Attorney for the Southern District of New York. On November 7, 1973, Governor Rockefeller appointed Howard Shapiro as Chairman of the Commission. Mr. Shapiro was formerly First Assistant Counsel to the Governor.

In recognition of Commissioner Curran's outstanding record of service with this Commission, the Albany Times-Union, on April 20, 1973, stated in part, as follows:

> "As the state's top investigator, Mr. Curran maintained for the SIC over the last several years its unblemished record of uncovering governmental and judicial corruption in many areas. . . .
>
> Mr. Curran served the people of this state well as SIC chairman. We wish him success in his new office."

The Commission is confident that its new Chairman, Howard Shapiro, a man with an outstanding background and proven talent, also will serve with great distinction.

I

REPORT OF AN INVESTIGATION CONCERNING REAL ESTATE TAX ASSESSMENTS IN THE CITY OF NEW YORK

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I

REPORT OF AN INVESTIGATION CONCERNING REAL ESTATE TAX ASSESSMENTS IN THE CITY OF NEW YORK

PRELIMINARY STATEMENT

At various times since World War II, as the budget of the City of New York grew, often dramatically, in response to increased economic pressures, the City's real estate assessment and taxation practices have come under the study of different institutions and agencies. Although various aspects of the administration of the real estate tax have been the subject of these studies, invariably, a critical issue has been the inconsistencies in determining the assessments placed upon real property.* Notwithstanding these studies and reports, this deficiency within the real estate tax assessment system has continued to exist, to the detriment of the finances of our City and of the taxpaying public.

In the latter part of 1970, this Commission received a complaint alleging certain inequalities and questionable practices relating to the City's assessments of real property for purposes of taxation. The general allegations of this complaint directed the Commission's specific attention to commercial income producing properties. Apart from the alleged uneven treatment of commercial properties, there was also the suggestion that political influences were playing a role in the determination of assessments on real property.**

As a result of these allegations, the Commission decided to undertake an investigation into the practices and procedures involved in the making of real property tax assessments in the City of New York. In view of the vast number of separate real estate parcels in the City, and the enormity of even a limited type of inquiry into the subject matter, the Commission's investigation, in the main, focused on high income pro-

* See, for example: Robert Haig and Carl S. Shoup, *The Financial Problems of the City of New York* (1952); New York University Graduate School of Public Administration, *Financing Government in New York City* (1966).

** The terms "real estate" and "real property" are the same and are used interchangeably in this report.

ducing properties located in the Boroughs of Manhattan and to a lesser extent in Brooklyn.*

At the time the aforesaid complaint was received, the Commission's staff was involved in several other matters, including its investigation and preparation for a public hearing concerning Narcotics Law Enforcement in New York City. Consequently, the progress of the Commission's real estate assessment investigation was delayed at the outset for several months.

While other deficiencies may exist within the real property tax assessment system, this report is addressed primarily to the uneven and uncertain treatment in establishing the values ("assessments") placed upon similar and comparable types of real estate in the City of New York. This deficiency has resulted in a tax assessment system which, at best, appears to be overly receptive to individualized consideration of property values by both the assessors and the reviewing Tax Commissioners.

This report summarizes the facts developed in the Commission's investigation.**

I. *THE REAL ESTATE TAX ASSESSMENT*

A. *Brief History of the Real Estate Tax****

Historically, this country has usually employed some form of a real estate tax as a means of raising revenue. In colonial times, the first approach to a land tax was transported from the Old World in the form of a "feudal due," then commonly referred to as a "quit rent." This was a tax paid by the tenant to the lord of the manor upon his freehold estate. The payment of this "quit rent" tax allowed the tenant to go "quit and free," and absolved him from all other feudal charges. In New York State, this "quit rent" tax was formally abolished in the Constitution of 1846.

As the economy progressed from the colonial period toward

* In 1971 there were 823,209 parcels of ordinary real estate, including exempt properties; see Report of Tax Commission of City of New York, June 9, 1971.

** Unless otherwise stated, all references in this report are as of the time of the Commission's investigation.

*** Leroy A. Quinn, *The Administration of Real Estate Taxes in New York City* (1953) (Municipal Reference Library of the City of New York) is the source for much of the information contained in this section.

our modern society, there has been a periodic shifting emphasis in the policy considerations regarding the different sources of tax revenue used by local governments. This issue with respect to the sources of tax revenue has often resulted in contesting political beliefs over whether a "direct" property tax or an "indirect" duty or excise tax would provide the more efficacious answer to the local jurisdiction's specific needs.

In New York City's history, since the Port of New Amsterdam, as the gateway to the New World, was the center of a booming export trade, tax revenues were originally derived "indirectly" from duty and excise taxes. These taxes continued to be the main sources of tax funds, until 1654, when the colonial Governor, Peter Stuyvesant, imposed a rather minimal "direct" tax on real estate to obtain additional revenue.*

As a result of the American Revolution, and the adoption of the Federal Constitution of 1789, the states were deprived of the power to derive revenue from taxing exports. Consequently, New York State sought to recoup this loss of revenue by the extension of a property tax.

Notwithstanding various changes in our local economic history, by 1928 the real estate tax had grown to provide 80% of New York City's total tax revenues. At that time, although still characterized as a "general property" tax, it had already become a pure real estate tax.**

Since World War II, the income from the real estate tax has experienced a decline in its relative proportion to the total of New York City's tax revenues. This has been primarily a result of increased state and federal aid to the City's expense budget, as well as the imposition of other taxes such as on sales and income. Despite this seeming decline, the real estate tax still maintains a major role in New York City's financial picture. Although more detailed figures will be set forth later in this report, for the fiscal year 1971-72 New York City collected approximately $2,189,000,000 in real estate taxes.

* Thereafter, as early as 1692, when New York was a British Colony, the Colonial Assembly petitioned the Governor of New York to establish a standard for an equal and proportionate taxation of property.

** The personal property tax was, with few minor exceptions, discontinued after 1927. The 1938 New York State Constitution formally abolished all taxes on personal property and other intangibles (Article 16, Sec. 3).

B. *The Real Estate Tax*

The real estate (or real property) tax in the City of New York is an *ad valorem* ("according to value") tax.* This tax, imposed at a certain rate, is based upon the value of the item involved which, in this instance, is real estate. A basic requirement for the fair and effective administration of such an *ad valorem* real estate tax is that there be one set of taxation policies, with a clear standard for determining value. In New York City, however, as will be seen, the real estate tax is not always evenly and consistently administered.

In contrast to practices in other jurisdictions outside of New York State such as California and Florida, where both real and personal property taxes are often combined into one general property tax, the City of New York taxes only real estate. All personal property is exempt from tax. This real estate tax is paid directly or indirectly by most of the people who either live or work in New York City.

The actual rate of the real estate tax which the City may impose is limited by the State Constitution to 2½% of the latest 5-year average of the full value of the City's real estate, with added provision also made for certain debt service requirements.** For example, in arriving at the real estate tax rate for the fiscal year 1972/73, it was first determined by the Tax Commission of the City of New York that the total assessed valuation on all real property subject to taxation within the City of New York, from July 1, 1972 to June 30, 1973, would be $37,865,089,599. Thereafter, through the use of the City's equalization ratio, it was determined that the average full value of the City's real estate over the last five years (1968/69 to 1972/73) was $65,220,384,995.*** Two and one-half (2½) per cent of $65,220,384,995, less certain debt service limitations of $140,100,000, results in a constitutional tax limit of $1,490,409,625.

The City's budgetary need to raise $1,400,772,353 in real estate taxes is then added to certain other debt service obligations of $1,067,154,980, which may also be raised by way of real estate taxes outside the tax limit. (See New York City Charter, Section 1515.) The total amount of real estate tax revenues then required to be levied for the fiscal year July 1, 1972 to June 30, 1973 is $2,467,927,333.

The basic rate of real estate tax is then computed by dividing the total amount of funds to be raised by property tax ($2,467,927,333), by the total assessed valuation of taxable property in the City ($37,865,089,599). This results in a basic tax rate of $6.518 per $100 of assessed valuation.*

Assessing the value of real estate for tax purposes is a function of the local agencies of the City of New York.** Once the value of the real property has been "assessed" it is multiplied by the current tax rate to determine the amount of the tax levy to be imposed on the property. As previously shown, for the fiscal year 1972/73, New York City's real estate tax rate will be $6.518 per hundred dollars of real estate assessment. Therefore, if for example, a certain parcel of real property has been assessed at $10,000, then the real estate tax on this parcel will be $651.80 for the fiscal year 1972/73.

In recent times the total amount of the real estate taxes collected by the City of New York has experienced a steady increase. From the fiscal year 1961/62 to 1971/72, the total assessed value of all taxable real estate within the City of New York grew from $26,094,108,787 to $36,665,007,741.*** During this same period of time, the revenues produced for the New York City expense budget by the real estate tax rose correspondingly from $1,071,000,000 (1961/62) to $2,189,000,000 (1971/72). The growth of the real estate tax revenues may also be attributed in part to the increase in the City's real estate tax rate during this period (1961/62 to 1971/72) from $4.10 to $5.97 per $100 of assessed value. Although the percentage of the City's total budget assumed by the real estate tax has declined as a result of increased state and federal aid, as well as an increase in the City's other taxes such as the sales and income tax, real estate tax revenues continue to be the largest single source of local tax revenues for the City's

* John H. Keith, *Property Tax, Assessment Practices* (1966). In this book the author states that in those jurisdictions where there is a "well administered *ad valorem* tax, there is the highest social development, and the most economic progress."

** New York State Constitution, Article 8, Section 10. However, the New York City tax rate is usually below the limit of the City's full taxing power.

*** The equalization ratio is the rate that the assessed valuation of property bears to its market value. This will be more fully explained later in this report.

* For more detailed information see "Resolution of the Council of the City of New York Fixing the Tax Rate for the Fiscal Year 1972/73." This resolution was adopted on June 22, 1972.

** The procedures for fixing the assessment on real property are outlined in the New York City Charter (Chapter 10, Secs. 151-173) and more specifically implemented by the Administrative Code.

*** The City's fiscal year is from July 1 to June 30.

expense budget. The following chart will illustrate the continuous rise of the City's real estate tax.

EFFECT OF THE REAL ESTATE TAX UPON THE CITY OF NEW YORK

Year	Real Estate Tax Revenues	Percentage of Real Estate Tax to all City Revenues	Real Estate Tax Rate
1972/73	$2,468	26.24	$6.518
1971/72	2,189	25.84	5.970
1970/71	2,080	26.57	5.889
1969/70	1,901	28.37	5.519
1968/69	1,738	29.00	5.218
1967/68	1,648	31.12	5.073
1966/67	1,573	34.98	4.957
1965/66	1,409	37.28	4.56
1964/65	1,314	39.25	4.41
1963/64	1,220	39.32	4.27
1962/63	1,134	40.60	4.160
1961/62	1,071	41.11	4.100
	(000,000 omitted)		(per $100 of assessed value)

Figures supplied by Citizens Budget Commission. The percentage computation in third column is supplied by this Commission. Second and third column figures for 1972/73 are projected.

ASSESSED VALUE OF ALL TAXABLE REAL ESTATE IN THE CITY OF NEW YORK

(EXCLUDING TAX EXEMPT PROPERTIES)

1972/73	$37,865,089,599
1971/72	36,665,007,741
1970/71	35,329,419,599
1969/70	34,292,315,980
1968/69	33,304,878,458
1967/68	32,485,890,140
1966/67	31,734,661,225
1965/66	30,901,763,159
1964/65	29,752,740,109
1963/64	28,557,458,612
1962/63	27,236,319,115
1961/62	26,094,108,787

Figures supplied by the Tax Commission of the City of New York.

It is obvious from these statistical comparisons that as the rate of tax placed upon the real estate assessment increases, the need for clear standards in determining assessed values on real estate assumes greater importance. As has been mentioned, there are two component factors in determining the amount of the real estate tax: (1) the basic tax rate (as fixed by law); and (2) the assessed value of the property. As the tax rate increases, the benefits to the real estate owner of reductions of the assessment on his property become correspondingly greater. Obviously a reduction in real estate assessment is of much greater significance in 1971/72 when the tax rate was $5.97 per $100 of assessed value, than in 1966/67 when the tax rate was $4.957 per $100 of assessed value.

An increase in the tax rate serves to intensify pressures by the real estate community to obtain tax benefits through the reduction of property assessments. It is in this area, where the standards for determining assessed values are loose and uncertain, that possible abuses arise, as will be shown later.

C. *The Declining Equalization Ratio*

One basic aspect of New York City's assessment practices is evidenced by the clear decline in the relationship between the assessed valuation of the City's real estate and its actual market or true value. The yearly differences in these relative values are illustrated in the City's equalization ratio.

The New York State Constitution (Article 16, Sec. 2) requires that the Legislature "provide . . . for the equalization of assessments for purposes of taxation." This equalization ratio is intended to show the difference between the community's *assessed* value of its real estate for tax purposes, and the market or *full* value. Since assessment is a home rule or local function, these equalization ratios vary markedly in the different communities throughout the state.

This function of establishing the equalization ratio in the different jurisdictions throughout the state has been assigned by the State Legislature to the New York State Board of Equalization and Assessment. The equalization ratio is established by comparing the assessed valuations of certain parcels of real estate with what is believed to be the actual market values for these same real estate parcels. These parcels are selected at random from the different classifications of property (e.g., commercial, residential) throughout the local com-

munity, and then analyzed by the staff of the State Board of Equalization and Assessment. This Board then makes a finding of the equalization ratio—the percentage of true value at which the community is assessing its real estate. For example, for 1971/72, New York City's equalization ratio of 53% indicated that, on the average, all real estate in New York City was assessed at 53% of its true or market value.

The main purpose of the state's equalization ratio is to fix the limits on the City's real estate tax and bonded indebtedness. Other uses include apportionment of state aid and establishing a value for purposes of rent control. As previously stated, New York City is specifically limited (New York State Constitution Article 8, Sec. 10) to a real estate tax of 2.5% on the average full value of its real estate for the latest five years, exclusive of allowances for certain debt service requirements. Therefore, it is in the City's interest to establish a lower citywide equalization ratio, to create a higher full or true value for its taxable property.* The logical result is that the City's borrowing power and real estate tax limits are correspondingly increased with a lower equalization ratio.

For example, hypothetically, an equalization ratio of 50% on total real estate assessments of $5,000,000,000, would indicate that the full value of the City's real estate was $10,000,000,000. Accordingly, the City's power to tax and borrow would be based upon this supposed full value of its real estate of $10,000,000,000. If the City's equalization ratio was a higher figure of 75%, and the City's total assessed value of its real estate was this same $5,000,000,000, it would indicate that the full value of the City's real estate was only $7,500,000,000. This, in turn, would result in a reduced taxing and borrowing power for the City, based upon this lower assumed full value for its real estate.

The City's equalization rate, as with that of many other localities, has shown a consistent decline as assessment practices have not kept abreast of an inflationary economy. For example, in 1971/72, the City's equalization ratio was 53%, as contrasted with an equalization ratio of 78% for 1961/62 —a decline of 25% in 10 years. For the reason stated above, a declining equalization ratio may not be an unwise practice in the present economy, provided that it does not merely reflect irregular or sloppy assessment practices. In this regard, maintaining tax assessments in line with rising market values might very well produce difficult problems with the economy of the real estate community.

* The City of New York under special statutory authority (Article 12A of the Real Property Law) may have its equalization ratio adjusted to reflect more current market values. This is in contrast to the regular equalization ratios used in other jurisdictions throughout the state which are based upon a less current standard.

As market conditions have been rising in recent years, the special, more current, equalization ratios for New York City are substantially lower than the regular ratios used elsewhere in the state, which are fixed under a less current standard. These lower ratios allow New York City to increase both its taxing and borrowing power. All references herein to New York City's equalization ratios are based upon these special ratios.

The equalization rates for the City of New York from 1961/62 to 1972/73 have been as follows:

1972/73	51%	1966/67	63%
1971/72	53%	1965/66	67%
1970/71	58%	1964/65	68%
1969/70	59%	1963/64	74%
1968/69	63%	1962/63	77%
1967/68	64%	1961/62	78%

Parenthetically, small home owners in New York City are assessed at a much lower ratio to market values than are income producing properties (1132-3).* This is, apparently, a traditional and deliberate decision on the part of the various City administrations to deter middle income families from leaving the City for the suburbs. This favored tax treatment to small home owners is most evident at the City's borders. For example, Queens homeowners close to the Nassau County border usually receive a lower real estate assessment than is placed upon comparable property owned by their Nassau County counterparts, a short distance away.

II. *THE REAL PROPERTY ASSESSMENT DEPARTMENT*

A. *The Assessment*

The basic task of placing the initial assessment for purposes of taxation on all real estate within the City of New York is a function of the Office of the Finance Administrator of the City of New York. Within the office of the Finance Adminis-

* Reference is to the page numbers of private hearing testimony before the Commission.

trator, the specific duty to assess real property for purposes of taxation is assigned to the Real Property Assessment Department. During the Commission's investigation, the Finance Administrator of the City of New York was Richard Lewisohn* and the Deputy Administrator in charge of the Real Property Assessment Department was Philip Click.

The City's real estate tax base is generally divided into four categories:

(a) Ordinary real estate.

(b) Real estate of utility companies, e.g., Con Edison.

(c) Special franchises,** generally private property located in public places, together with the right to use such places, e.g., a Telephone Company conduit.

(d) Tax exempt property.

The Commission's investigation was directed toward only those problems arising out of the City's assessment and taxation of "ordinary real estate." Ordinary real estate is a generic term encompassing virtually all types of property, vacant land, office buildings, factories, apartment houses and small homes.

At an earlier time, the President of the New York City Tax Commission also served as head of the Real Property Assessment Department. In this capacity he also supervised the assessment of all real estate in the City. As the result of a 1968 amendment to the New York City Charter and an Executive Order of the Mayor, the Real Property Assessment Department became a separate agency within the office of the Finance Administrator. The Tax Commission, to which further reference will be made later, is presently designed to function in a quasi-judicial role as a separate and independent body of review.

For purposes of assessment, the City of New York is divided into 174 separate geographical assessment districts, with each district assigned its own assessor. The number of these separate districts varies from time to time (1542). A lesser number of assistant assessors are employed in each borough to assist the assessors in their administrative duties, including the

*Mr. Lewisohn assumed his position in July 1970, prior to the commencement of the Commission's investigation.

**Although special franchises are assessed for value by the New York State Board of Equalization and Assessment, they are taxed by the City of New York at the rates applicable to all other property (1343).

collection of information relating to the value of the properties located within each of the respective assessment districts. Both of these positions are appointed under the civil service laws. In order to qualify as an assistant assessor, and thereafter as an assessor, an applicant must meet the requirements of both a certain basic educational background and real estate experience (1342).

The assessor's field work period is generally from June to January. As a rule the assessors will also take their vacations within this period (1158; 715). During this time the assessor is required to examine physically (in the field) each property within his district, collect and evaluate all relevant data and information, and where necessary and available, review the property owners' financial statements and records (715-25; 1158).

However, in practice, assessors do not, at least on an annual basis, fully examine each building within their district. Since fixing assessments is a rather wholesale operation that must be completed within a relatively short period of time, the assessors' field work has, properly, been characterized by one writer as more extensive than intensive.* One assessor assigned to a complex mid-Manhattan district, typically stated that of the 2,100 separate parcels within his district, he did not examine the interior of more than 1,000 to 1,200 of these properties over a 4-year period (721). Nevertheless, at the conclusion of the field visits and collection of information, assessors are required to furnish a statement certifying that they have examined all of the taxable property within their district. (New York City Administrative Code, Section E 17-8.0.)

The Statutory Requirements for Assessments

The primary statutory standard for fixing assessments is the requirement in the New York City Administrative Code (Sec. E 17-11.0), that each assessor shall state, under oath, the "sum" for which each parcel in his district would sell "under ordinary circumstances" (1126). This requirement, read together with Section 306 of the Real Property Tax Law, which indicates that all property within each assessment unit shall be assessed at its "full value," provides the statutory basis for the making of assessments within the City of New York.

*See Irving Lew, *Real Estate Tax Reduction Manual* (1961).

As a result of these statutory requirements, the "assessed value" of real property does not necessarily relate to its current market value, but is rather a value assigned to the parcel of real property only for the purposes of taxation (1126). When property is, therefore, assessed under the statutory standard of full value, it is generally interpreted to mean the sum that the property would sell for "under ordinary circumstances." The modifying phrase of sales value "under ordinary circumstances" was originally adopted to provide a theoretical foundation for a stable tax base. It was anticipated that "under ordinary circumstances" there would not be any extreme fluctuations in such factors as rental income, building costs and sales price (1127).

The New York City Administrative Code also provides (Sec. E 17-13.0) that the Finance Administrator shall fix valuations of property for purposes of taxation throughout the city in such a manner as will ". . . establish a just and equal relation between the valuations of property in each borough and throughout the entire city." This requirement that there be an "equality" of assessments for all real property within the same taxing district appears, however, to be of little, if any, meaningful significance in determining assessments. Rather than establishing an orderly procedure for maintaining an equal relationship between assessments throughout the City, the concept of equality is utilized, at most, as merely an amorphic, unscientific gauge in comparing assessed values on what are assumed to be similar types of real properties.

Protest of Assessment

Between February 1 and March 15 of each year, property owners may protest these tentative assessed valuations which have been placed on their property by filing Applications for Correction of Assessment. These protests are filed with the Tax Commission of the City of New York, the reviewing authority for assessments. Personal hearings are granted upon request.

If the individual Tax Commissioner hearing the application decides to reduce the assessment, an agreement is reached as to the amount of the reduction. The corrected assessment is then recorded in the Annual Record of Assessed Valuation. The Tax Commission is not settling a law suit at this juncture, but is rendering an administrative determination as to whether or

not a correction of the district assessor's tentative assessment is in order.*

The assessor will occasionally make some brief written comments to the Tax Commissioner relating to the merits of the property owner's application. These comments are found on the assessor's "back-up" sheets, which are printed forms designed to enable the assessor to pass on whatever information he deems material to the Tax Commissioner. These "back-up" sheets are kept in the file for the property concerned.

In the event that the Tax Commissioner decides that a reduction in assessment is not warranted, or if warranted, an agreement as to the amount of the reduction cannot be reached, the assessor's assessment is confirmed. The property owner may then resort to legal proceedings in the Supreme Court of the State of New York to review the determination of the Tax Commission.

Before trial in Supreme Court, the property owner will attend certain joint conferences with representatives of the Corporation Counsel's office, the Comptroller's office and the Tax Commission with a view towards settling the case. If all attempts at settlement fail, the property owner may, of course, elect to try his case in the Supreme Court with the possibility of further appeal by either side.

The yearly volume of judicial proceedings instituted to adjust real property assessments is quite large. For example, for the period from January 1, 1969 to December 31, 1971, there was a total of 53,513 such proceedings (writs of certiorari) filed by New York City taxpayers for review of their real property assessments. A separate legal proceeding is required to be instituted by the property owner for the review of each year's assessment. In 1971, there were 3,440 cases settled and 534 decided by trial. In that year (1971), there were reductions in assessments of $276,661,200 as a result of out-of-court settlements, and $168,416,050 as a result of court decisions. In interpreting these figures, one "case" may and usually does involve separate applications for reduction of assessment on the same property for several consecutive years.**

It is obvious that at least one major factor contributing to this type of litigation and the resulting burden upon the

*A settlement of a law suit requires the consent of the Comptroller of the City of New York.

** Statistics in this paragraph have been supplied by the Corporation Counsel of the City of New York.

Court, is the uncertainty caused by the absence of more meaningful administrative standards which can be utilized in establishing assessments.

B. *A Mixed Approach to Assessments*

As previously stated, the individual assessors are career men, appointed through civil service examinations. Within each borough there are a certain number of assessors, each assigned to a geographically determined district. There are in each borough office Senior Assessors or "Technical Assistants" who operate in a supervisory capacity, as well as an Assessor in Charge (418; 1121). The Deputy Administrator, who is in charge of the Real Property Assessment Department ("Chief Assessor"), supervises the assessment operation throughout the city, and is responsible for departmental policy. Thus, it would be expected that in such a clearly structured table of organization that the assessment policies throughout the city would be uniform and readily defined.

To the contrary, there appears to be unjustifiable disorder within the Real Property Assessment Department. Although there are an abundance of elusive principles, there are only a minimum of cohesive standards or applicable guidelines to be used in determining assessments. While reasonable men, however competent, will often differ in their estimates of value of real property, in the City's Assessment Department the differences in the treatment of similar properties, rather than resulting from minor variations in judgment, arise from this scarcity of applicable standards. One result of this lack of direction is to minimize the individual accountability for the ultimate determination of assessments.

There are no written guidelines, procedures or relevant manuals issued to the assessors within the Real Property Assessment Department to assist them in determining assessments (697-701).* The assessors (and the Tax Commissioners) repeatedly admitted that there were no such written guidelines or publications within the department. In fact, the Deputy Administrator of the Real Property Assessment Department stated that there was no "need" for any such written guidelines (1134).

* There is one "Assessors Manual" issued by the State Board of Equalization and Assessment, which is available to the assessors in the Real Property Assessment Department. This manual, however, is not considered relevant to the problems of New York City by the Assessment Department (417).

In the State of New York, the applicable law provides for three basic approaches toward establishing assessments for the purposes of taxation on real property. These are cost of construction, sales of comparable property and capitalization of income (1836).* The ultimate objective of these approaches is to determine "the sum" for which the property would sell "under ordinary circumstances." However, there is little effort made within the Real Property Assessment Department to fuse these concepts into a comprehensive approach to assessments.

Even those factors usually considered by the assessors to be indicative of value are weighted with so many imponderables as to be incapable of standardized application to the assessment process. These factors include the capitalization of net income, cost of construction, cost of replacement (428), comparable sales, age and condition of the property, bona fide first mortgages from a recognized lending institution (361), leasehold mortgages (1143) and a dollar multiple based upon the volume of cubic footage in the building. The following is an illustration of the cubic footage factor. If a building has been determined to have a volume of one million cubic feet and the dollar multiple assigned to this type of building for assessment purposes is placed at $1 per cubic foot, it would be anticipated that the assessment on this property would be $1,000,000.

One assessor who had been employed by the Real Property Assessment Department for over twenty years described the variations in assessment practices as follows:

"Q. How much do each of those factors go into consideration or on placing an assessment on an office building? How much do you consider the cubic footage, how much do you consider the rent roll? Do these things vary with each piece of property?

A. They might.

Q. Do they?

A. They could.

* * *

Q. . . .

Is there any one way of assessing a piece of property, whether it is an office building or a residence?

* See also, Irving Lew, *Real Estate Tax Reduction Manual, supra.*

A. No, there are different ways because there are different approaches to the valuation estimate.

Q. Would these approaches vary with each assessor?

A. It could be. Some would be the market data or the comparison approach, some would use the reproduction cost less depreciation, some would use the income. But then they would try to correlate each approach to determine an estimated value.

* * *

Q. But, in any event, there is no one code or no one set of general rules—

A. No. I think in a final analysis, good sound judgment is a very important factor, after considering all the necessary data at hand.

* * *

Q. . . . —on any type of building, one assessor, in the exercise of his judgment—not finding fault with the assessor —but in the exercise of their individual judgment there could be a variance, . . . upon how much the building is worth between what one assessor would assess it at—

A. Yes, because there are no two buildings alike. Every building is a separate entity itself. So one assessor could determine it his way and another assessor could determine it his way." (185-7)

The Cube Factor

The following may, perhaps, further illustrate the disorder that surrounds the efforts made to introduce a standard approach to establishing assessments.

Various assessors testified, at private hearings before the Commission, concerning attempts to obtain some standardization of assessment practices through the assignment of a dollar multiple to the cubic content of different types of buildings. However, in practical application, the use of this cube factor was merely one more item of discretion added to the assessors' storehouse of tools, without any specific formula for its application. These assessors indicated that in arriving at this cube factor, different monetary figures for the various properties were proposed informally, at irregularly held conferences with

the supervising assessors. The specific amounts of these dollar multiples were then placed within the exercise of the individual assessor's discretion (207-8). Consequently, there was so much variance in the amounts of this dollar multiple when applied to the different types of building construction, that its use was meaningless for any purpose other than as a possible control on a decision already reached. As one assessor stated:

"Q. Let us assume that you have a thousand different buildings built either at different times or in different fashions, it is possible that no two of these buildings would have the same dollar amount used as a multiple of their cubic footage; is that correct?

A. That is possible.

Q. The dollar amount that you use for the cubic footage is pretty much discretionary?

A. True.

Q. Discretionary with the tax assessor?

A. Right." (207)

Another assessor of twenty-five years experience stated that the cube factor usually varied with new construction and with the different types of office and residential apartment buildings. Within that range there were further variations depending upon the age, type, size and manner of building construction. Moreover, the cubic factor could also be varied from year to year, either higher or lower, depending upon the assessor's opinion of the building's obsolescence, its increased income, or the changing picture of the economy (702-12).

Capitalization of Income

The capitalization of income, on income producing property, is often considered to be the best standard or surest index in determining value.* Capitalization of income indicates, in percentage figures, the property owner's rate of return based upon the relationship of his net income to the property's assessed valuation. In computing the net income for this purpose, the

* See *Elmhurst Towers* v. *Tax Commission of the City of New York*, 34 App. Div. 2d 570 (1970). This case was, in fact, cited in a New York City Finance Administration Bulletin (Dec. 1970) for the proposition that the "most cogent factor in determining the assessed value of income producing property is net income."

property is treated as if owned free and clear of all debts and encumbrances (1165). For example, if a property is assessed at $1,000,000, and the owner's net income is $100,000, it may be said that the owner has a 10% rate of return.

However, various assessors assigned to high income producing commercial properties have indicated such a wide variation in their concepts of allowable net returns to owners, as to severely limit any meaning to this concept. During the Commission's investigation, various assessors, all men with years of experience, when questioned about similar types of high income producing office buildings, have indicated different figures for allowable returns to property owners. On the basis of the assessed valuation of this type of commercial property, these assessors stated that the property owners would be entitled to such dissimilar returns as 8 to 10% (257), 10% (215), 11% (94), 10 to 13% (733) and 12 to 13% (218) or 14-15% (1227). Some assessors were so confused over the concept that, at different times in their testimony, they gave different percentage figures for allowable returns to the property owner (82,83,94; 215,218; 1225,1227). Obviously, in the absence of clear departmental guidelines, the individualized judgment of the property assessor and, perhaps, his senior assessor will be the prevailing factors in arriving at an allowable rate of return for this type of property (701; 724; 735).

Clearly, such a wide variation in figures constitutes a frivolous application of discretionary standards. Despite the much repeated concept that a certain degree of inexactitude in the assessment process is unavoidable, at least in certain instances, such as capitalization of income and the application of the cube factor, there are avenues available to arrive at a reasonable degree of standardization. Certainly where any possibility exists for establishing uniform treatment for assessments of taxable property, there should be an exhaustive attempt to reach such a consistent standard.

The failure to have done so has led to a tremendous volume of administrative protests, court litigation and the suspicion of questionable conduct.

C. *The Finances of Retired Assessor, Mr. "D"*

(1) *Initial Testimony; A Frugal Existence*

A consequence of the lack of meaningful guidelines within the Real Property Assessment Department was found in the highly questionable circumstances relating to the rise in fortune of one particular real estate tax assessor, who shall be hereinafter referred to as Mr. "D". Mr. D retired as a real estate assessor in 1971, after over 40 years of employment in this capacity. From 1967-1970, Mr. D had been assigned, as an assessor, to a district which encompassed not only prime real estate, but also probably the heart of the real estate tax base in the City of New York. The boundaries of this area extended roughly from 40th to 59th Streets, and Fifth to Park Avenues in the Borough of Manhattan (65-67).

During the course of this investigation, members of the Commission's staff questioned Mr. D to ascertain his understanding of the manner in which assessments were established in his district. Obviously, the properties in Mr. D's former assessment district were a key to any realistic study of income producing property in the City of New York. Mr. D, who was also an attorney, appeared generally well informed on the subject of real estate tax assessments. After speaking to Mr. D, the Commission decided to inquire further into his background and finances. It was believed that this inquiry of Mr. D, as a recently retired assessor from a highly assessed district, would provide a basic insight and useful information.

Mr. D testified before the Commission on four separate occasions. His testimony at these times was, at least, evasive and contradictory. When first questioned on June 16, 1971, Mr. D was asked about the sources of any income other than his salary as an assessor. Mr. D replied that he had "made some legal fees, investments," but that he had not done any "real estate work" in New York (125-6). At that time, Mr. D also denied that he had ever received any money or income from the owners of any real property (126).

The Commission was somewhat skeptical of Mr. D's initial testimony and, accordingly, Mr. D was required to return for further testimony on September 16, 1971 and October 14, 1971. As the Commission's inquiry progressed, the indications were that, contrary to his earlier statements, while he was assigned to this vital real estate district, Mr. D's income from real estate sources and "legal" fees greatly exceeded his salary as an assessor. Although Mr. D's total cumulative salary as an assessor during this 5-year period from 1966 to 1970 inclusive was $59,309, his total other income for this same

period was $123,544.* This other outside income included $49,050 in real estate brokerage commissions, $57,705 as Mr. D's participation in a fee for acting as a managing agent for real estate property located within the City of New York, as well as various other "legal" fees, as a non-practicing attorney, in excess of $5,000. In 1968 alone, Mr. D's salary of $11,004 as a city employee, was less than one-third of his total reported income of $36,555.

During this same period from 1966 to 1970, Mr. D and his wife also maintained a style of living based upon large expenditures of cash for both their routine and extraordinary expenses which, as will be seen, was clearly incompatible with the limited picture of his finances that he sought to present to the Commission. Since Mr. D's wife was not employed at this time, Mr. D's income was the only possible source of the money spent on their rather ample life style.

Mr. D's explanation of the sources for this supply of cash was clearly frivolous. For example, in early testimony, Mr. D stated under oath that he and his wife travelled on several vacation trips and ocean cruises from 1966 to 1971. Included in these trips were a 30-day cruise to South America in 1966, a 2-week Carribbean tour in 1968, a 17-day cruise in November 1969, a 45-day tour of Africa in 1970 and another tour of "about 40 days" to Ireland, Scandinavia and Russia in 1971 (520-45). The basic expenses for these trips were paid for by Mr. D's check drawn upon the proceeds from his various sources of income. The checks for these expenses varied from $212 to $4,800. Mr. D and his wife also apparently took other short domestic trips, including visits to relatives during this same period of time.

Mr. D stated that he did not have any credit cards on the aforesaid trips (539). He could only account for $800 in the purchase of traveler's checks for the use of necessaries and incidentals for both him and his wife on these trips. There was also an occasional "few dollars" in cash that he took along on these trips (543).**

* This represents only those figures ascertainable from Mr. D's records of account which were made available to the Commission's staff. As will be shown, there is reason to believe that Mr. D had other undisclosed sources of income.

** Mr. D also made some vague reference to $1,000 in traveler's checks allegedly purchased by him in 1961, which he claimed to have used on these trips from 1966-71. Mr. D stated that he kept an unspecified amount of these traveler's checks uncashed for five years, and used the balance on his various trips from 1966 to 1971 (523-9).

At the conclusion of this early testimony, Mr. D stated that he withheld roughly $40-$50 per week from his salary as an assessor for his and his wife's living expenses (637). He also stated that these withholdings covered the additional cash expenditures for his trips and holidays, including those mentioned above, as well as lunches, carfare, entertainment, clothes for him and his wife, dinners, gas and upkeep on his Cadillac automobile (purchased by check in 1968 for $6,400) and all of the other incidentals of modern day living in New York City, for which there was and can be no specific accounting (638-41). Obviously, testimony of this nature was absurd and plainly fictitious.

(2) *Mr. D re-examined on December 28, 1971; a sick mother-in-law's gift*

Shortly after Mr. D's examination on October 14, 1971, his attorney wrote the Commission and requested the opportunity for Mr. D to return to "correct certain testimony given by him." Pursuant to his request, the Commission gave Mr. D the opportunity to reappear for further testimony on December 28, 1971.* At this later appearance, Mr. D changed completely his earlier testimony with regard to the extraordinary manner by which he was able to meet his high living expenses as revealed by his records and earlier testimony.

In substance, Mr. D's amended explanation of his financial picture detailed a rather shop-worn account of a dying mother's (Mr. D's mother-in-law) cash gift of $16,000 to her favorite daughter (Mr. D's wife).

"BY MR. SMIGEL:

Q. Mr. [D], I take it you wish to correct certain testimony given by you before this Commission, and I am paraphrasing a statement in your attorney's letter of November 4, 1971.

A. I do.

Q. Would you tell us in what respect you would like to correct the testimony?

* * *

* There was a delay of several weeks prior to D's reappearance occasioned by an industry-wide labor dispute involving stenotype reporters.

A. Back in 1963, my wife's mother had embolisms, an attack of embolisms—clots in the blood stream—and she was very, very sick. . . .
Shortly thereafter, she fell and broke her hip, and there was a very serious problem there because she required an operation.
. . .
They took her to the hospital. At that time she told my wife that she had some money that she wanted to give her. She thought that she was going to die and she gave her $16,000.

Q. In cash?

A. In cash.
. . .
My wife said she didn't want the money. My wife said, you are going to be all right and she didn't want the money.
My mother-in-law said take it. I want you to have it.

* * *

A. I didn't want to get her [his wife] involved. She had a brother and her mother told her not to tell him because he would be chagrined, peeved.

Q. Whose brother?

A. My wife's brother.
She had it at home and that's why I wanted to tell you now." (646-8)

Mr. D then recanted on his previous testimony, in which he had stated that he and his wife had lived on a personal budget of $40-$50 per week for all of their expenditures outlined previously (649). Excerpts of Mr. D's previous testimony relating to his financial situation and cash expenditures were then read back to him. Mr. D unequivocally then admitted that this earlier testimony was untrue and "wrong" (654-5).

Mr. D also contradicted his earlier testimony in which he stated that he had no other source of income for the purchase of the traveler's checks that he used on his trips and vacations other than his savings from the $40-$50 a week that he withheld from his salary (646). Contrary to his earlier testimony, Mr. D then stated that in January-February 1971, he

bought about $2,000 worth of traveler's checks for one of his trips. Mr. D explained that he purchased the traveler's checks at that time, because he did not want "that kind of cash around the house any more" (670).

As Mr. D continued his narrative, it became an almost textbook example of an explanation for unaccountable income.

"Q. In other words, that $16,000 supplemented all your other expenses?

A. That's right.

* * *

Q. Where did you keep the money?

A. At home.

Q. Where?

A. In her clothes closet, in the lining of an old suit.

Q. $16,000 in cash?

A. Yes.

* * *

Q. Did you have a safe deposit box?

A. I had a safe deposit box. I didn't want it there.

* * *

A. When we went on any long trip, we would put the money in an envelope and mark it 'The property of [his wife's name].' (658-60)

Q. At what point did she give, did she actually convey, deliver this money to your wife?
. . .

A. She was taken to the hospital by an ambulance, . . .
At the hospital she told my wife about that, about the money. It's in the house. She didn't want the money to stay there. We went to her house and my wife took it.

Q. Could you tell us in what denominations and what sort of bills the $16,000 was made up of?

A. There were some hundreds, fifties and twenties.

* * *

Q. How long did your mother-in-law remain in the hospital?

A. I think a couple of weeks.

* * *

A. After she came back she had to have a domestic take care of her. My wife took the money. She said she didn't want the money in the house with the domestics. She kept on having new domestics coming in to help her around the house, because she was incapacitated." (665-6)

According to Mr. D's testimony, the $16,000 was given to his wife by her mother in 1963, coincidentally when she was hospitalized and expecting to die. Mr. D's mother-in-law, however, fortunately recovered from her illness and did not, in fact, pass away until 1967.*

(3) *Mr. D's Other Income*

Mr. D, as previously stated, during the period between 1968 and January 1971, while employed as a City assessor, also received $19,050 as his share of brokerage fees on the sale of twenty-three parcels of real estate. This property belonged to a decedent whose estate was being probated in Queens County. Fourteen of these parcels were located in the Borough of Brooklyn, three in Manhattan, two in Queens, and the remaining four parcels in the State of New Jersey. Mr. D, as an attorney, had, for a number of years, maintained a business address and telephone listing with a partnership of two attorneys who represented the estate; one of these attorneys was also an executor of the estate.

Significantly while Mr. D was acting as one of the brokers attempting to sell the aforesaid real estate properties belonging to this estate, these same properties received various reductions in their real estate assessments. For example, in one fiscal year alone (1968-69), nine apartment houses, belonging to this estate, located in Brooklyn, received total reductions of $118,000 as a result of applications made by the attorneys

* The United States Internal Revenue Code (Sec. 2035) provides that a gift within three years of death, is presumed to have been in contemplation of death and therefore is to be included in the decedent's taxable estate. Mr. D's mother-in-law therefore survived by one year the time period within which her alleged gift of $16,000 to Mr. D's wife would have been required to be included in her estate as a taxable item. This in turn also, quite fortuitously, might have relieved Mr. D's mother-in-law's estate of any tax liability as a result of D's testimony. There was no federal gift tax return filed on this gift (663).

for the estate with whom Mr. D was associated (564). The assessment on one of these Brooklyn properties had been reduced from $315,000 to $285,000 over a course of four years (561). Other properties located in Queens, belonging to this estate, also received reductions in assessment while Mr. D was acting as broker.*

Although Mr. D denied being involved in obtaining the reductions in assessment on these properties, he stated that the attorneys for the estate, in preparing their applications for reductions in assessments did "once in a while" ask him "how does this property shape up?" Mr. D responded that he would "look at the thing" (application for reductions of assessment) (633-6).

Moreover, Mr. D also received $57,705.14 as his share of the fees received by the managing agent representing these estate properties. Mr. D did not perform actual work for this fee other than rendering his "opinion" on various matters.** As Mr. D stated:

"Q. As a real matter, other than the several times when you gave advice on various matters, did you put any time in in managing these properties?

A. No." (570)

In another of Mr. D's activities, he assessed a large Park Avenue office building, also owned in part by the owner of the office building where D "had space" with his law associates. The owner of these two buildings (Mr. "S"), who knew Mr. D to be an assessor, also maintained an office on the same floor as Mr. D's "law" office.***

Although Mr. D denied ever discussing assessments with Mr. S, his law associates represented Mr. S in obtaining a reduction in tax assessment on another building owned by Mr. S. From the fiscal year 1968/69 to 1972/73, total reductions in assessments of $2,500,000 were granted on this property, for which these attorneys received fees totalling $30,304. One of these attorneys who was associated with Mr. D, confirmed Mr.

* A lower assessment obviously increases the sale potential of property. Mr. D, as a broker for these properties, was well aware of this fact (560).

** One of these two attorneys subsequently died. The other surviving attorney testified that he did not know until the Commission's investigation that Mr. D had received these fees for participating as managing agent for these properties.

*** The building where Mr. D has office space was not in his assessment district.

D's earlier statements that on several occasions, Mr. D consulted with him and "analyzed" figures on assessment matters, while Mr. D was still an assessor.

Mr. D repeatedly denied participating in any fees with his law associates which specifically concerned any reduction of tax assessments on real property. However, Mr. D shared fees and participated in "investments" with these attorneys on other matters. As one illustration, although he was not actually a practicing attorney, Mr. D received a $1,500 fee from this firm in 1970 for his assistance in preparing a public offering of stock (547-8). Mr. D had never done any previous work of this nature. It is obvious that the transactions between Mr. D and these attorneys represented a picture of highly questionable relationships that were not compatible with Mr. D's public duties as an assessor. At the very least, a serious question arises as to the considerations rendered by Mr. D in return for receiving these different "fees" from these attorneys.

(4) Mr. D's Finances (continued)

In addition to the income Mr. D received by virtue of his various hats as a broker, finder, managing agent and "attorney" during his employment as an assessor for the City of New York, Mr. D also managed to insinuate himself into several substantial real estate ventures, the nature of which would appear to be beyond the means of an assessor's income.

For example, in October 1967, Mr. D invested $15,000 in a real estate venture in Harrisburg, Pennsylvania. The source for this $15,000 was attributed to Mr. D's "income from . . . salary, investments, fees" (495-6). He stated that $8,625 of this money was derived from a brokerage commission which he received for the sale of property in New Jersey.* $1,500 of this money was derived from acting as a managing agent for the previously mentioned New York City real estate properties; and over $1,400 was attributed to receipts from different other real estate investments (497-9).

As a further example, Mr. D, in 1968, invested $18,000 in a Florida real estate transaction, for which he received a return of $29,000, or $11,000 profit (596-7). Also included in Mr. D's other ventures was a loan to a fellow participant in a real estate venture of $18,616 in 1967, for which he received a return of $20,909 (608-10).

* This fee was omitted from D's 1967 tax return. Mr. D stated that it was an accounting error (556).

Mr. D's other investments and transactions are too extensive to detail here. However, it is quite clear that the intricacy and financial scope of these investments, as well as the nature of the parties involved, were clearly beyond the reasonably expected means of a New York City real estate tax assessor.* These financial dealings of Mr. D, in combination with his expensive manner of living, raise serious questions regarding the private use Mr. D may have made of his official position as a real estate tax assessor. Certainly, to the extent that any irregularities are present in Mr. D's official conduct, they must be attributed, at least in part, to the scarcity of any relevant standards to guide an assessor in the performance of his official duties as well as a lack of departmental supervision.

An examination of Mr. D's accounts and *known* assets (excluding personalty, such as his Cadillac), made during this investigation by the Commission's accountants revealed the following:

Cash in banks:	$ 54,148	
Bonds:	$ 75,000	(par value)
Stocks:	$ 43,000	(approximate)
Real Estate:**	$100,000	(approximate)
Total Assets	$272,148	

D. *The Belated Regulations on Ethics—Locking the Barn Door*

During the course of the Commission's investigation and the inquiry into Mr. D's affairs, the Finance Administrator of the City of New York, on November 23, 1971, issued a Memorandum setting forth two rules and regulations which prohibited certain "outside work," activities and investments by assessors. These rules and regulations specifically referred to, and were based upon, a much earlier Board of Ethics Opinion (# 53), issued in 1962. In this regard, the Finance Administrator's Memorandum stated, in part:

> "The New York City Board of Ethics held, in Opinion No. 53, that an assessor may not participate in real estate

* In one instance Mr. D and his fellow investors retained a nationally prominent political figure and the law firm of a then United States Senator to represent their interests with regard to certain property under condemnation by the federal government (582-9).

** Real Estate consists of fractional holdings and mortgages on properties in Florida, Pennsylvania and New York.

transactions, and may not invest in real estate for profit in New York City.

On the basis of that Opinion, the following rules and regulations will govern employees in the assessing service in the Finance Administration:

1. Such employees may not at any time participate in real estate activities in New York City, including real estate brokerage and salesmanship, other than their duties in the Finance Administration.

2. Such employees may not make investments in real estate for profit in New York City.

The foregoing rules and regulations shall be effective without regard to whether (a) purchases are made from private interests or from the City of New York, and (b) the real property is located in an area not currently assessed by such employee."

The relevant portion of the aforesaid 1962 Board of Ethics Opinion is as follows:

"It is the opinion of the Board that participation in real estate transactions for profit in the City of New York by an assessor would be in conflict with his official duties under subdivision a. of the Code of Ethics (Section 898.1-0 of the Administrative Code) and that investments in real estate for profit in the City of New York would constitute a violation of subdivision h. thereof. This would be so whether purchases were made from the City of New York or from private interests. Although the writer may not be assigned to the area assessing the property in question, his interest in such property is in our opinion sufficient to create a conflict of interest because the property in question is part of the assessable area under the jurisdiction of the department in which he is employed and for the further reason that assessors are subject to reassignment and in addition all property assessments are the responsibility of the same department and the same class of employees with whom the City employee works side by side.

DATED May 3, 1962."

It is noteworthy that it took ten years for the City administration to implement this Board of Ethics opinion and that this action was taken only after the head of the agency involved knew that this Commission was investigating this very problem. Only time will tell whether the City acted out of a true commitment to reform or simply for cosmetic purposes.

Thereafter, on March 3, 1972, the Finance Administrator issued a "Statement of Policy as to Outside Work" which detailed both "Permissible Activities" and "Impermissible Activities." These restrictions on the outside activities of assessors, codified and issued at long last, are directly, if somewhat belatedly, applicable to the conduct of Mr. D as disclosed in this investigation.

The Finance Administrator's Statement of Policy of March 31, 1972 reads, in pertinent part, as follows:

"Following is the policy of the Finance Administration concerning outside work of employees in the assessing service adopted pursuant to the rules and regulations set forth in my memorandum of November 23, 1971.

* * *

Impermissible Activities:

* * *

5. Acting as a real estate or mortgage broker or salesman.

6. Acting as a real estate consultant.

7. Appraising real estate.

8. Managing real estate or acting as an agent for the owners thereof.

9. Investing in real estate or in mortgages thereon for profit. * * *

Every employee in the assessing service is required to inform the Deputy Administrator in charge of the Real Property Assessment Department promptly in writing of any interest in real property now owned or hereafter acquired by such employee.

* * *

/s/ RICHARD LEWISOHN
FINANCE ADMINISTRATOR"

The value of these rules, regulations and statement of policy will depend, of course, to a considerable extent upon the Department's sincere enforcement thereof and the effective supervision of the assessors' activities.

III. *THE TAX COMMISSION OF THE CITY OF NEW YORK*

A. *Duties and Organization*

The Tax Commission of the City of New York is an independent quasi-judicial body designed to review and "correct" assessments made for purposes of taxation of real property located within the City of New York (New York City Charter Sec. 153 (b). Upon application by the property owner or his representative, filed in the borough office where the property is located, the Tax Commission will review and rule upon the merits of the tentative assessed valuation as determined by the property assessor (1627).* In determining the "correctness" of this assessment, the Tax Commission has complete discretion over the extent to which it may reduce or confirm the assessment on the property before it for review for the current year. In the event the Tax Commission wishes to adjust the property's assessment for other previous years, the consent of the offices of both the Comptroller and the Corporation Counsel of the City of New York must first be obtained before a reduction in assessment may be granted (1627-9).

The Tax Commission is composed of seven members. Their main function is to review the applications made by property owners for the reduction of their real estate tax assessments, initially determined by the property assessors (1598). One member of the Tax Commission is designated by the Mayor to serve as its president and chief executive. The duties of these Tax Commissioners, including the President, do not require that they devote all of their time to this position. The annual salary of the President of the Tax Commission is $31,500 (1599). The other members of the Tax Commission receive an annual salary of $12,250.

The President of the Tax Commission, in addition to his duties as a hearing officer and chief executive, establishes the policies of the agency, and reviews the applications for exemption from taxation of all real property in the City of New York (1600). The President of the Tax Commission since March 1970 has been Norman A. Levy. Commissioner Levy is also the Borough Commissioner for the County of Richmond (1601).

The President of the Tax Commission and the other Tax Commissioners are, basically, political appointees who are

*The original assessment placed upon the property by the assessor is commonly referred to as the "tentative" assessment. Since an application may be made to reduce this assessment, it is considered "tentative" until such time as a final determination is rendered.

designated to serve for an indefinite term with each new incoming city administration (1174-5). All of the Tax Commissioners who appeared before this Commission have been, in some fashion, active with a political party and participants in previously successful mayoralty election campaigns. A more detailed review of the political activities of these Tax Commissioners will be discussed in a later section of this report.

Although not required by law, these Tax Commissioners are customarily attorneys. Usually, the members of the Tax Commission have not had any meaningful background in real estate tax assessments and Tax Commission procedures prior to assuming their positions (1176-7). By way of illustration, one former Tax Commissioner who served for a brief period as Acting President of the Tax Commission, was not an attorney. This former Tax Commissioner, although a businessman of apparently self-made means, admittedly had no prior real estate experience. He had no qualifications for this position other than his own declarations of his accumulated years of general business experience.

One indication of the rather simplistic approach by this former President of the Tax Commission toward his duties, was his observation that his prior lack of real estate experience was inconsequential, since determining assessments was "a very simple thing." The only skill necessary was "a little business experience." Significantly, despite the eight years that this former Commissioner served on the Tax Commission, his testimony revealed, at best, a lack of appreciation of the complexities of the functions of the Tax Commission. For example, when asked about the criteria he employed in granting a reduction of $270,000 for one year on a high income producing office building in Brooklyn, his total explanation was, in effect, that he "knew the building well," and that he "felt it needed help."

In another situation, according to his testimony before the Commission, while serving as President of the Tax Commission, he admitted considering a property owner's proffered expenses of property depreciation and mortgage amortization in granting a reduction in the property's assessment of $650,000.*

*Since real property is to be assessed as if free and clear of encumbrances, this excludes consideration of such items as depreciation, mortgage amortization and ground rent in determining the property's net income for purposes of arriving at an assessed valuation (1165). See *People ex rel. Gale* v. *Tax Commission of the City of New York* (1962), 17 App. Div. 2d 225, 233 N.Y.S. 2d 501. The tax savings to the property owner resulting from this reduction in assessment was $35,873 for that single year. (The tax rate for that year was $5.519 per $100 of assessed value.)

In another instance concerning a well known office building in midtown Manhattan, again while serving as President, he also improperly considered the property owner's proffered expense items of "ground rent," as well as property depreciation, in granting a reduction in assessment of $225,000. This reduction was granted despite the assessor's written comment on his "back-up" sheet that the property was already "underassessed," with a net return to the owner of 16¾% on the property's assessed valuation. A return of income of this amount is usually considered to be a satisfactory return for the owner. The following fiscal year (1970/71), this assessor also stated on his back-up sheet that he could "never understand this reduction" of $225,000 which was granted in the previous fiscal year (1969/70) by this former President of the Tax Commission.

The reductions granted in real property assessments by this former Tax Commissioner, to the extent that they were based upon a lack of knowledge of what constituted improper items of expense, were clearly unwarranted. The irrelevancy of the aforementioned expense items, when submitted by a property owner to the Tax Commission, was brought to focus by the testimony of Philip Click, the Deputy Administrator of the Real Property Assessment Department. Mr. Click stated clearly that such items as property depreciation, mortgage amortization and ground rent were not proper items for consideration in the determination of assessments (1163). Mr. Click then explained the rationale behind this proposition:

"Q. What is the theory behind the fact that items like interest, amortization, depreciation and ground rent are not valid items for consideration by the Tax Commissioner?

A. The format for all of the years that I have been with the Department is to value property on a free and clear basis.

Q. As if the owner owned [the property] free and clear; is that correct?

A. Right." (1165-6)

Although the members of the Tax Commission are generally newly appointed with each administration, in this particular instance this Commissioner's tenure as a member of the Tax Commission spanned the administrations of the last two Mayors. His brief appointment as Acting President and then

President of the Tax Commission, however, was by the current Mayor.

The President of the Tax Commission, in addition to hearing those applications filed in the borough to which he is officially assigned, also, according to Commissioner Levy, "traditionally" hears applications on assessments throughout the City where "major interests" in the real estate industry are involved (1621). As a practical matter, the term "major interests" appears to refer to large real property owners, major new constructions and applications for reductions made by certain attorneys who specialize in this highly personalized type of legal practice. As with all other rulings by Tax Commissioners in such proceedings, the President of the Tax Commission exercises virtually total discretion in determining the merits of the real estate assessments "tentatively" placed on "major interest" properties by the local assessor.

Commissioner Levy has, at various times, decided applications for reductions in assessments on major interest properties located throughout the five boroughs although most of these properties were located in Manhattan (1620). Commissioner Levy's predecessor, referred to earlier, who had no prior real estate tax assessment experience and yet described the real estate assessment process as "a very simple thing," also decided cases outside the borough to which he was assigned. This presents a serious question concerning the qualifications and expertise of the individual Presidents of the Tax Commission who undertake to rule upon the validity of assessments on different types of real property, including major properties located throughout the City.

B. *The Tax Commission Hearings*

Hearing Time

The hearing period of the Tax Commission, within which it reviews applications for the correction of real estate tax assessments, extends from February 1 to May 25 of each year. Practically, however, the hearings actually commence after March 15, which is the termination date of the protest period. During this period the Tax Commission operates on a full-time basis. The number of applications heard by the Tax Commission is voluminous. For example, in 1971, there were 44,963 applications for reduction of assessments reviewed and decided by the Tax Commissioners. It was estimated by Philip Click,

Deputy Administrator of the Finance Administration in charge of the Real Property Assessment Department, that the individual Tax Commissioners may, on occasion, review from 300 to 500 separate applications per day (1183).

The papers in the cases heard by the individual Tax Commissioners are not reviewed by them prior to the time of the actual hearings (1407). When a Tax Commissioner hears an application for the correction of an assessment, it is the first time that the facts of that particular case are presented to him for his consideration. Therefore, in either confirming or reducing the property assessment involved, there is little likelihood that an opportunity is present for a meaningful inquiry or a well-reasoned determination on the application considered.*

One practical effect of this procedure is the resulting depreciation of the efforts of the individual assessor. The assessor is annually required to devote six months to field work. This includes physically inspecting the property in his district, reviewing the relevant financial data, sales of similar properties and other documents and information. Upon completing these assignments, he must then personally attest, under oath, to his judgment of the value of the property he has assessed (1178-9). It must be remembered that the assessor obtains his position through civil service examinations, and is reasonably assumed to be an expert in the making of real estate assessments. The more experienced men are assigned to the highly valued commercial areas in Manhattan (1179). Oddly enough, the heaviest reductions in assessments are granted in those areas.

In contrast, the individual Tax Commissioners are part-time officials, with limited or no actual experience in the assessment field, and with limited, if any, actual personal knowledge of the property before them for consideration. As a rule, the commissioners have not personally examined the physical premises of the property which is before them for consideration (1435). Despite the numerous factors which enter into the separate judgments of the assessor and the Tax Commissioner, the Tax Commissioner, in his almost total discretion,

*Based upon one commissioner's rather low estimate of his handling an average of 135 cases per day, it was computed that each application received consideration of less than 3 minutes of office time (1415). This commissioner was assigned to the Borough of Manhattan, where the more highly assessed property is located and the larger reductions in assessments are granted.

may reserve decision or, in a matter of minutes, rule on the extent to which a reduction in assessment will be granted (1436-9).

A Lack of Communication

The potential hazards of this highly discretionary approach by the Tax Commissioners on applications for reduction of assessments, is compounded by the limited amount of information available to the individual Tax Commissioner on the property before him for review. Generally, with income producing property, the only information submitted in support of an owner's application for correction of assessment is a verified financial statement indicating, in varying degrees of detail, the income and expenses for the property. On occasion, this information may be supplemented by a usually self-serving letter or memorandum by the owner or his representative. On non-income producing property, such as vacant land, or owner occupied industrial or business property, the application for reduction of assessment rarely contains more than a few lines of bare-faced allegations in support of the requested reduction.

For example, in one instance, a Tax Commissioner granted a $200,000 reduction in assessment on an owner occupied building in Brooklyn. This was 10% of the tentative assessment of $2,000,000 (1537). In this property owner's application, without any supporting data, the owner merely submitted a one paragraph statement indicating, in a general fashion, that "all income derived from this property" as well as part of the property's expenses, were attributed to the conduct of the property owner's business. In his written comments to the Tax Commissioner on his back-up sheet, the assessor for this property "suggest[ed] confirmation" of the assessment, with the further observation that the land was already assessed at a rate "less than comparable land" in that same area.

The Tax Commissioner in granting this reduction, obviously rejected this assessor's judgment. In explaining this decision to the Commission, the Tax Commissioner merely expressed her own private opinion that the area within which the property was located was "decaying," and that the assessor did not, in her estimation, properly evaluate the "land factor" (1538-9).

Procedurally, at the Tax Commission hearings, the owner or his representative meets with the individual Tax Commis-

sioner assigned to hear his application, if a personal hearing is requested. The hearing usually takes place in the Tax Commission office in the borough where the property is located. One basic purpose of these hearings is to provide an opportunity for the negotiation of the property's assessment. The Tax Commissioner then sits in a quasi-judicial capacity. Except for the occasional presence of the property assessor, or his usually terse written comments on his back-up sheet to support his assessment figure, there is no effective counter-argument to the property owner's application for a reduction in assessment (1400). In "group" hearings where an attorney or property owner appears at one "hearing," with regard to several parcels of property belonging to the same owner, the assessors are rarely, if ever, present to state their views on the respective properties which they have assessed (1166; 1194). Usually, applications concerning the more highly assessed properties are heard at these "group" hearings (1405).

There does not seem to be any administrative avenue available to assessors, to communicate and discuss their views with the Tax Commissioners respecting those factors which have contributed to the assessments made by the assessors. One Tax Commissioner stated that other than the assessor's "occasional" presence, or his written comments, he had no means of obtaining the benefits of the property assessor's opinions on the property before him for review (1405-6). This commissioner could also not recall any assessor, personally, ever expressing disagreement with any of his decisions where reductions in assessments were granted. As he stated, "It does not operate that way" (1406). Typically, one assessor indicated that he did not "consider it [his] duty" to suggest to any Tax Commissioner that a reduction in assessment on property that he assessed may have been ill-advised (234). Since the Tax Commission apparently takes pride in its "broad view" of the assessment picture, it seems particularly self-defeating that better lines of communication are not established with the property assessors (1605).

It would appear that the rigidly assigned functions and responsibilities within the assessment procedures have not made ample provision for meaningful exchange of facts and information between the assessors who initially determine the assessments, and the Tax Commissioners who rule upon their work and judgment (1631). There are many illustrations contained

in this report to indicate that the divergence between the assessors' judgments and the Tax Commission's subsequent rulings has obstructed the development of a uniform and cohesive real estate taxing policy.

C. *Overriding the Judgment of the Real Property Assessment Department*

A Matter of Opinion

If there is to be an impartial basis for establishing assessments of real estate in New York City, all parties to the deliberative process should know and respond to the same criteria. Obviously, either an arbitrary opinion or a preemptory disregard by the Tax Commission of the detailed work of the members of the Assessment Department is not conducive to the development of clear standards of taxation.

The testimony of one Commissioner is illustrative:

"Q. How do you account . . . that you . . . in your office, without having the benefit of all the things that the assessor has done, can correct, within a matter of minutes, his assessment, even reduce it $1 million or $2 million . . . .

A. I feel that it is my function and I feel I have the qualifications to do that. In effect, all the raw material and necessary facts and figures to make that kind of determination are before me, which, as I might point out, is a great part of the work product of the assessor. . . .

Q. The assessor had all that before him, too . . . with regard to the one district . . . and has been doing this for a number of years . . . and he [has] made his own determination.
You overrule his determination; you correct the assessment.

A. Yes, I do.

* * *

Q. It is just a matter of discretion, your judgment as opposed to his discretion and judgment.

A. Yes. . . . That is a matter on its face."

Another Tax Commissioner states that one reason for overruling the assessors was that not all were "very good assessors . . . there are some who are adequate and some who I would consider poor." Although "on occasion" the judgment of good assessors was also similarly overruled (1522).

"Q. . . .
You substitute your judgment for his [the assessor]. Do you think your judgment is better?

A. Yes, I do. . . .
When I overrule them, it is because the assessor and I have different opinions as to value. (1523)

A. . . .
I think these properties [specific properties located in Brooklyn]—I know the value of them. . . .

Q. You know them better than the assessor does? . . .

A. Yes, this is my opinion." (1528)

A Matter of Authority

The Tax Commissioners often stressed that the nature of their quasi-judicial duty was to "correct" the assessor's assessment, within the "framework" of judicial decisions (1610-11). As previously stated, the New York City Charter (Sec. 153(b)) charges the Tax Commission with the duty of reviewing and correcting all assessments of real property for taxation. In this regard, the Tax Commissioners must also adhere to the standard employed by the assessors, as set forth in the City Charter, to determine the sales price "under ordinary circumstances" (1417).

Despite this definition of the scope of its authority, the Tax Commission has sought to introduce factors that are different from those employed by the assessors in their decision making process. For example, in ascertaining value for assessment purposes, the owner is to be assessed on the basis of the value of the property as it existed on the taxable status date. All other considerations are irrelevant. Yet, Commissioner Norman Levy, in response to inquiries concerning the non-uniform treatment of real property assessments, stated that various other considerations of the Tax Commission superseded the assessors' judgment. He further stated that in his

opinion the assessor's "tools . . . are narrow and confined. . ." (1605).* Accordingly, the Tax Commission feels itself obliged to employ different criteria in taking a "much broader view" of assessments than do the assessors. But this new criteria is beyond the standards set forth in the City Charter or the law pertaining to assessments.

In line with this broader view of his office, Commissioner Levy discussed his private "economic philosophy" to stimulate New York City's growth, expressing his particular concern for "the encouragement of investment capital" (1605). As President of the Tax Commission, those economic factors entered into his decisions. This also included his judgment, in some instances, to insure that a "builder . . . is not overburdened with taxes" (1712).

However, the Tax Commission is a quasi-judicial body, designed primarily to review and correct real estate tax assessments as made by the assessors (1596-7). As Commissioner Levy himself indicated, the Tax Commission does not set assessment policy (1685).

While there can be no question that the local government may implement its own fiscal and political theories to aid in the growth of the general economy, a serious question arises as to whether that function may be arrogated by a quasi-judicial body, in this instance the Tax Commission. To permit this assumption of authority allows a personalized and extra-judicial approach to interfere with what should be uniform standards for assessing real estate. If the City's real estate industry is to be encouraged through fiscal policies, other avenues of executive and legislative action are available. It scarcely seems appropriate that, contrary to the provisions of the City Charter, innovative tax measures should arise out of the singularly expressed policy-making decisions of the head of a quasi-judicial body of assessment review.**

D. *No Memoranda*

Although the Tax Commissioners exercise almost total dis-

* Commissioner Levy testified that "the assessor's tool is to assess a piece of property on a free and clear basis. As far as I am concerned, that has no contact with reality" (1608).

** The fundamental standard in assessments is that all property shall be assessed at the "full value thereof," that is, the price for which the property would sell under ordinary circumstances. *Pepsi Cola* v. *Tax Commission of City of New York*, 19 App. Div. 2d 56, 240 N.Y.S. 2d 770. All other political or economic theories are extraneous.

cretion in either confirming or reducing assessments, there are never any departmental memoranda or explanatory comments issued to accompany their decisions (1625; 1433). Commissioner Levy, as an illustration, has never issued any such explanatory memorandum with his decisions, although he has testified to ruling on over 50,000 such cases since his appointment as a Tax Commissioner in 1966 (1605). This situation only adds to the degree of uncertainty which already exists in assessment practices. Obviously, a reduction of assessment without any explanation, leaves everyone concerned—the assessors, the other Tax Commissioners and the public—uncertain as to the basis for the reduction (1173-4; 1185).

The need for some written statement or notation to indicate the reason for the ruling made would seem to be desirable in view of the broad discretion inherent in both the Tax Commission and the entire real property tax assessment procedure. Without any such explanation, there is no means of determining either the reasonableness of the Tax Commissioner's exercise of discretion or the soundness or significance, if any, that he may have placed upon such various critical factors as comparative sales prices, capitalization of income and cost of construction or other considerations.

There are, quite properly, in most areas of taxation, clearly definable guidelines of income, expenses and deductions. In federal income tax procedures, for example, there are extensive regulations, procedures and decisions indicating the standards of allowances and liabilities. Most relevant factors are itemized for consideration and acted upon accordingly.

However, in assessment practices, with income producing property, the owner, in order to justify his application for tax relief, usually submits a financial statement relating primarily to the return of net income on the property. Since the guiding principle of assessments is that property is to be assessed as if owned "free and clear" of all debts and encumbrances, this in turn, should eliminate from consideration on this financial statement such items as interest, amortization, depreciation and ground rent. Nevertheless, this type of expense item, in the absence of department guidelines, is often included by the property owners in their applications for tax relief, while other relevant items of income may be omitted. In fact, one "major real estate interest" in the City of New York invariably includes items of this sort in its applications for reductions in property assessment. Consequently, when a reduction in assessment is granted without any accompanying explanation, there is no indication as to whether the Tax Commissioner properly considered the facts before him. One potential consequence of an improper recognition of these "expense" items was previously illustrated in the explanation of his decisions given by a former Acting President of the Tax Commission (pp. 49-51, herein).

While the determination of real estate assessments may be an inexact process, the failure of the Tax Commissioners to state, even briefly, the basis for granting reductions, creates additional needless uncertainty.

E. *The Tax Commission's Erratic Decisions*

In attempting to determine if there was any pattern arising out of the various decisions of the Tax Commissioners, the Commission's staff examined at random various instances where assessments were reduced. The results showed that, at least with high income producing commercial property, the treatment by the Tax Commissioners of similar properties was erratic. Not only were there conflicting views between the Tax Commissioners and assessors, but the various decisions of the Tax Commissioners also reflected uneven treatment of the assessments of similar properties.

There are, for example, many factors (e.g., sales price, income, cost of construction) which may be used in evaluating property. However, despite the abundance of available information of this type, there are no standards or guidelines to indicate the manner in which these factors are to be considered and applied in finally arriving at an assessment. One commissioner's testimony in this regard is appropriate:

"Q. You say you also have your experience and all these other factors that you included, the cost, capitalization [of income] . . .

A. I should add, also, the history of the particular property.

Q. But are there standards, guidelines called into play how to apply these [factors]?

A. No direct, concrete standards or guidelines.

* * *

Q. Are there any rules, or guidelines which are issued as to how to apply these factors?

A. No, there are not.

Q. So it is, essentially, a judgmental opinion, decision on your part; is that correct?

A. Yes." (1518)

Capitalization of Income

One method of determining the economic value of real property, as previously discussed, is through establishing a rate, in percentage figures, which would indicate the relationship between the net income derived from the property and the property's assessed valuation. This is often referred to as the "capitalization" of income on the property.

Although the percentage figure for this rate of return on property ("capitalization rate") is but one factor used in determining assessments, it has, in commercial income producing property, often been considered the surest index in establishing the value of property.* However, in this Commission's attempts to determine if there was any systematic approach to the assessments placed upon similar commercial properties, the Tax Commissioners either could not, or would not, specify any guidelines for what would be considered to be a property owner's fair rate of return. As with the results of similar inquiries directed to the assessors, any attempt to ascertain the existence of a standard with regard to a rate of return, became confused with so many imponderables as to frustrate any critical evaluation. Consequently, the rates of return for the different commercial properties upon which reductions in assessment were granted were found to vary in significat amounts. In Commissioner John F. Finnell's testimony alone (a Borough Commissioner for Manhattan), the variations between the rates of return on similar properties which he believed justified reductions in assessments were so laden with individualized discretion as to be almost meaningless.

For example, in one property in a desirable mid-Manhattan location, a reduction of $400,000 was granted for the fiscal year 1971/72 because a return of 8.3% on the assessed valuation was deemed too low to justify the assessment (1441). That same year, in the same area, a reduction of $800,000 or 5% of the total assessment was granted on a similar office building, five years newer than the previously referred to property.* This property had a 9.5% rate of return. After receiving this reduction in assessment, the property's rate of return was raised to 10%.

In the course of Commissioner Finnell's testimony, other instances were reviewed where he granted reductions in assessments, although the property owners' net returns on the assessor's tentative assessments ranged from 11% to over 13%.** One commercial property located in lower Manhattan, operating at a 14.4% return on an assessment of $7,340,000, received a reduction from Commissioner Finnell of $450,000, or over 6% of its assessed valuation. This reduction was granted despite the assessor's written comment to the Tax Commission, on his back-up sheet, that the expenses submitted by the owner on his financial statement to the Tax Commission were "liberal" [i.e., "inflated," according to Commissioner Finnell's testimony (1460)]. As a result of this reduction, the property owner's net return on this property rose to 15.4% for that year (1970/71). Parenthetically, after at least four years of continued reductions in assessments on this property, in 1971/72 the property assessor, possibly bewildered by this time, assessed the property at $7,040,000, its lowest assessment in four years (1968/69-1971/72). Upon confirmation of this assessment by the Tax Commissioner, the owner's net return on this property had increased to 17.2% (1469-70).

In another situation, a former President of the Tax Commission granted a $225,000 reduction in assessment on a well-known office building, in a very desirable location in mid-Manhattan, for the fiscal year 1969/70. The owner's financial statement showed a net return of 14% on the assessment for this property. This reduction was granted despite the assessor's observation that the property was already "underassessed" and that the owner's net return was, more accurately, 16¾%. This property was referred to earlier in discussing the de-

* *See Elmhurst Towers v. Tax Commission of the City of New York* and the cases cited therein (p. 37 herein).

* As a rule of thumb, the allowable rate of return to an owner on an older property, is usually higher than on a newer property (761). In these two instances, the newer property had the higher rate of return.

** Different experienced assessors indicated that in their estimation, returns of this amount in real estate properties such as those reviewed in Commissioner Finnell's testimony were more than adequate to justify the assessment (94; 218).

cisions of this former President of the Tax Commission (p. 52 herein).

The following year (1970/71), the assessor indicated that the net return on this same property was then 16½%. To emphasize his opposition to any further reductions in assessment, the assessor again stated that the property was "underassessed," this time underlining his comment in red (1474). In his unusually crisp written comments, the assessor further noted that the owner's statement of expenses was "ridiculous" and that he could "never understand this (the previous year's) reduction."* However, despite this strenuous opposition by the assessor and the clarity of his views, Commissioner Finnell granted a further reduction of $200,000 in the 1970/71 assessment on this property.

In his testimony before this Commission, Commissioner John Finnell admitted that 16½% was a "good" return (1474). His explanation for this reduction was that, contrary to the assessor's opinion, he personally believed that the "cube factor was too high for a building that age [constructed in 1929]" (1471-72).

Another instance of conflicting views between assessor and Tax Commissioner was revealed through the testimony of Commissioner Helen M. Wolfsohn, a Tax Commissioner for the Borough of Brooklyn. In reviewing an offer of reduction in assessment which she made to a property owner on a choice office building in Brooklyn, Commissioner Wolfsohn stated that in her estimation a fair net return on this type of property would be ". . . 13%. Under certain circumstances, maybe even 12%" (1546). When advised that the assessor on that property had a different opinion, this Commissioner's response was somewhat acidulous:

"Q. . . ., if I told you that the assessor had told us that he thought the fair return on this property would be 7 or 8, or 10% at the highest, would you agree with him?**

A. I certainly would not.

* * *

A. Any person who will tell you that he thinks an 8%, or

*The assessor for this property, in his testimony before the Commission, stated that he believed that a return of 11% would have been both "good" and "substantial" for this property (94).

**The testimony before this Commission of the assessor for this property indicated that 7-10% would be a fair return for this property (257).

even a 10%, on a free and clear basis, on a property of this size . . ., is an adequate return, then I consider his opinion valueless. . . ." (1546-7)

This instance again illustrates the lack of reasonable uniformity of views between the Tax Commissioners and the assessors.

Other Examples of Discretionary Treatment of Real Property

In one instance, for the fiscal year 1970/71, Commissioner Norman Levy granted a $1,000,000 reduction in the assessment of an office building located in lower Manhattan. This lowered the property's assessment from $13,600,000 to $12,600,000. In explaining this reduction to this Commission, Commissioner Levy stated that, since this property was in the course of construction, he believed that "as an administrative policy . . . [the owner] should be granted this relief" (1706).

The property owner's application for reduction of assessment, at this time (1970/71), did not reveal any information relating to the property's income and expenses. Virtually the only information that this owner furnished on his application for reduction of assessment was the bare statement "Building under construction." Despite the failure of this property owner to supply any further details in support of his 1970/71 application, Commissioner Levy rejected, almost out of hand, the assessor's judgment of the property's assessed valuation, and granted this $1,000,000 reduction to the owner. Commissioner Levy's testimony in this regard follows:

"Q. [The assessor] placed an assessment on that property;

* * *

Of $13,600,000, is that right?

A. Right.

Q. And . . . without any further information, you granted a reduction of $1,000,000. . . .

A. That is correct." (1711)

It was also apparent that before granting this $1,000,000 reduction, Commissioner Levy had, in practical terms, made no effort either to verify the extent of the owner's claims, or

inquire further into these factors which contributed to the assessor's original determination of the property's value. Commissioner Levy described the sole extent of his own independent steps to determine this property's value by stating that he might have "sent out" his secretary, or "asked the chief assessor" to bring back further information on the property; however, he could not actually "recall" doing so in this instance (1713). As Commissioner Levy testified:

"BY MR. SMIGEL:

Q. . . . How did you get to see if the building was in the course of construction?

A. I send my secretary out. Or I asked the chief assessor to go out and see if the building is in the course of construction. And the answer comes back. . . .

Q. Does your secretary have any background in assessment?

A. No. She just goes out and asks the chief assessor in Manhattan to see whether the building is complete.

Q. Other than the fact that you *might* have sent your secretary out and the chief assessor *might* have looked at the property himself, there is nothing in the file to indicate on what basis you granted the $1,000,000 reduction; is that correct? (emphasis added)

A. Correct." (1715)

The assessor, however, clearly did inspect the property and, on the basis of his work and findings assessed the property at what he thought to be its correct value. Moreover, the following year (1971/72), it was revealed that contrary to Commissioner Levy's impression, this building had actually been in operation the previous year (1970). The owner's total income from this property in 1970 had, in fact, been in excess of $3,000,000, of which approximately $2,000,000 could properly have been considered net income (1706-9).

This information was obtained from the financial statement of the property owner submitted to the Tax Commission in support of his application for a further reduction of his 1971/72 assessment. In this application concerning his 1971/72 assessment, the owner supplied this financial data relating to his property's 1970 income and expenses. This subsequent

information, of course, at least in part, contradicted the owner's brief unsupported statement of the previous year (1970/71) that the building was under construction. Quite obviously, if a $1,000,000 reduction in this property's assessment for the previous year was warranted, it hardly could have been granted on the basis of the facts presented to Commissioner Levy.*

In another instance, a Tax Commissioner in two successive years granted reductions of $200,000, for each year, on a choice Madison Avenue property. These reductions were granted with only the barest statement of facts submitted by the property owner. As this commissioner testified with regard to the reduction for 1971/72:

"Q. Did the landlord submit any figures? All he said, he paid a rental of $440,000 and earned $243,000? Did he say anything more than that?

A. No.

. . . the application reads The applicant paid a rental of $441,000 and earned *approximately* $243,000 during the fiscal year." (emphasis added) (1484-5)

There was no further financial statement or other data submitted in support of this owner's application. The assessor's comments for this two year period also indicated that the building's assessment was already low, that the gross rentals were higher than the impression conveyed in the owner's application and, significantly, that the property owner "conceal[ed the] real facts" concerning the value of his property and did not furnish "detailed information." For the year 1970/71, the assessor very pointedly asked on his back-up sheet "Why does applicant not disclose rentals." Nevertheless, the Tax Commission granted these substantial reductions in assessment without requesting further details.

* As a result of information brought to the Commission's attention subsequent to the release of this report, it appears that the above building may not have been in operation and receiving income prior to January 25, 1970, the taxable status date for the fiscal year 1970-1971. Therefore, the property owner's statement "Building under construction" may have been technically correct at the time that its application for reduction in assessment was submitted some time between February 1 and March 15, 1970 (see page 65 herein). However, this reduction still remains as a basic illustration of the casual manner by which Commissioner Levy was able to reduce unilaterally that property's tax assessment by $1,000,000. Commissioner Levy's explanation for overriding the considered judgment of the property's assessor and granting this substantial reduction was, at best, insufficient.

These observations are not intended to second-guess or otherwise quarrel with any specific judgment of either the Tax Commissioners or the assessors. However, the aforementioned facts indicate convincingly that the lack of clear standards and the loose, careless and uneven approach to assessment practices constitute an impediment to the fair administration of the taxation of real property in the City of New York.

F. *Irregularities in the Financial Statements of the Real Estate Owners*

The efforts of the owners of high income producing properties to reduce their tax assessments have given rise to certain questionable practices. Usually, commercial office buildings, in addition to being assessed at a higher ratio to market value than other classifications of property, are also subject to greater financial intricacies in determining the income and expenses properly attributed to their operations. Accordingly, there is a greater opportunity afforded this type of property to seek tax benefits through reductions on property assessments. These efforts become especially pronounced at the Tax Commission level.

As stated earlier, one of the best criteria for determining the assessments on commercial property is usually considered to be the owner's percentage of net return on the property's assessed valuation. In order to arrive at a net return figure, the owner will submit a verified financial statement, indicating to varying degrees of detail, the income and expenses for the property.* Based upon the information supplied in this financial statement, the net return on the property is computed. In most instances it provides a major basis for arriving at the property's assessed value.

The Commission's staff, in examining samples of such financial statements of several owners of income producing properties, found in all but one instance, errors and misstatements of income and expenses that could scarcely be considered as inadvertent. These errors consisted of either or both, overstating the property owners' expenses and understating the income for the property. The result was a lower net income for the

* These financial statements, which are part of the owner's application for a "correction" of his assessment, are often submitted by an attorney on behalf of the owner. Usually, these attorneys are retained on the basis of a fee which is contingent upon the amount of tax savings they can obtain for their client.

property, and a compelling argument for a reduced assessment.

One rather surprising aspect of these disclosures was the almost total reluctance of the Tax Commissioners examined by this Commission to acknowledge either the possible existence of these irregularities, or the fact that submission of such false statements may have resulted in unwarranted reductions of assessment. The President of the Tax Commission, Norman Levy, also an attorney, for example, stated that in his own experience as a Tax Commissioner, he has never suspected the financial statement of any property owner as being false or inaccurate (1623). John F. Finnell, Jr., another member of the Tax Commission since 1966, and also an attorney, similarly could not recall any case where false financial statements were submitted to him, or where he had reason to suspect any statement as false (1432).* Certainly, the repeated comments by the assessors drawing attention to possible misstatements in the owners' financial data scarcely warrants such a trusting attitude.

The following are representative instances of irregularities disclosed in the financial statements of property owners.

The percentage escalation ("pass-through") clause in leases

One of the most glaring irregularities was found in the commercial property owners' abuse of the percentage escalation clause. In this clause, now standard in most commercial office buildings, the owner may add to the tenant's rent a specified percentage (often determined by the size of the leased area) of any increase the owner may be obliged to pay in real estate taxes over a base year. In effect, real estate taxes assessed to the owner are then "passed through" to the individual tenants. Since real estate taxes are deducted by the owner as a proper item of expense on his financial statement, standard accounting procedures would indicate that those additional funds, received by the owner from the tenants for his increased real estate taxes, should either be attributed to income, or reflected as a reduction of the expenses already claimed as real estate taxes.

* The Deputy Administrator of the Assessment Department, in response to similar questions, inaccurately stated that his "impression" was that the Tax Commission had "the right to subpoena" an owner's records where there was a question of the accuracy of his statements (1200). The Tax Commission, to the contrary, does not have subpoena power.

Those instances where the owner failed to account for this escalation income, but still deducted his full real estate taxes as an expense, obviously resulted in the false appearance of a lower net return for the property. This, in turn, helped establish a more persuasive argument for a reduced tax assessment. This irregularity apparently sometimes went unnoticed by both the Tax Commissioners and the Real Property Assessment Department.

In the instance of Property "A", a large office building in mid-Manhattan, the owner indicated on his financial statement to the Tax Commission that he had paid $365,253 in real estate taxes in 1970. The Commission's staff, however, in its examination of the owner's records, noted that although the owner listed these real estate taxes as an expense, he had neglected to further indicate that he had received $86,012.54 of additional income from his tenants as a result of the percentage escalation clauses.

John F. Finnell, Jr., the Tax Commissioner who reduced the assessment on this property by $200,000 for this year (1971/72), was unaware of this omitted information until his testimony before this Commission in a private hearing in 1972. At this hearing, Commissioner Finnell stated that this added income would have entered into his consideration in determining the merits of the application for a reduction in tax assessment.

Another property "B", in a choice Manhattan location, specifically noted in its financial statement that it was not including as income the added "percentage escalation" receipts, although it was indicating and claiming real estate taxes of $547,206 as an expense.* Commissioner Finnell, having such notice, nevertheless granted this property owner a $400,000 reduction for that year (1971/72), without inquiring as to whether or not an appropriate allowance had been made for reimbursed real estate taxes.

Commissioner Finnell testified that he granted this reduction because "the net return (8.3%) . . . did not justify [this] assessment" (1441). This Commission's staff discovered that since the owner declared the full amount of his real estate

* This was similarly noted in the financial statement for at least one previous year for this property. The omission of this "escalation" income was highlighted by the owner's notation (by an asterisk) that the income reported to the Tax Commission was "exclusive," among other items, of this "percentage escalation." Commissioner Finnell stated that this phrase related to added income attributed to increased real estate taxes (1445).

taxes, he obviously did not apply any of the income derived from the percentage escalation clause with his tenants toward reducing the amount claimed in expenses as real estate taxes.

Moreover, the property assessor's written comments to the Tax Commissioner specifically noted that the owner's reported "income does not include income from escalation-tenant services and electricity, although they are included as expenses."* It is, therefore, apparent that to the extent that any reduction in assessment resulted from the omission of this income from the owner's financial statement, this reduction was based upon a false premise, and a neglect to evaluate properly and inquire into the property owner's financial statement (1445).

It is obvious that the proper inclusion of the tax escalation income would have raised the owner's net return on his property above the 8.3% which constituted the basis for the reduction granted. This added income from the "escalation" clause, of course, does not include the potential of other added revenues to this owner, as a result of further charges "passed on" to the tenants, as previously mentioned by the property assessor.

Other Examples

In its review of the financial statements of several property owners, the Commission uncovered various other types of inaccuracies. In one case involving a major complex of high income apartment houses, the cost of mortgage insurance was included as an "operating" expense in the financial statements submitted by the property owner in support of an application for a reduction of assessment. This expenditure may not be considered as a proper item of an owner's expenses for purposes of determining an assessed valuation. This was also the position of Commissioner Levy (2037). The amount of this item exceeded $100,000. In this same one year period reviewed by the Commission, these buildings received a reduction in tax assessments of $250,000.

This situation is further significant in that the accountant for this property privately advised members of the Commis-

* The failure of certain owners to properly include the income from these items on their financial statements was not studied at length by this Commission. However, it also does not seem unreasonable to believe that property owners who receive added rental income by "passing" these added charges along to their tenants similarly, on occasion, fail to report this income to the Tax Commission, while still improperly claiming these items as "expenses."

sion's staff that the financial statement which he had originally prepared and submitted to the owner's attorneys had this item properly earmarked as a "financial" expense as opposed to an "operating" expense. The accountant for this property was rather puzzled when this change was brought to his attention by the Commission's staff. The accountant then indicated that the property owner's attorneys had evidently misapplied these "expense" figures to the wrong item of account on the owner's financial statement. As previously mentioned, the attorneys in these matters are retained on a fee contingent upon the amount of tax savings for the client. While it cannot be said that this error by the attorneys was deliberate, the fact remains that these inaccurate figures were submitted to the Tax Commission and accepted as reliable. Moreover, since the attorneys who represented this owner are considered to be among the more expert attorneys in the field of real estate tax assessments, it is surprising that an item of this nature was permitted to be improperly designated.

In another prime office building in midtown Manhattan, in at least two successive years, the actual management fees incurred by the owners were overstated in the financial statements which they submitted in support of applications for assessment reductions, in the amounts of $98,525.97 and $81,336.91, respectively. The correct expenses in the form of reduced management fees would have raised the owner's net return for the property. In these same two years, reductions in assessments of $950,000 and $900,000, respectively, were granted. The inaccuracy of the figures on this owner's financial statement were confirmed by both correspondence from the owner's attorneys and testimony before the Commission of the comptroller for this property owner (799-801).

The cavalier attitude with which realtors, whose financial statements were examined, treated the verified financial statements submitted to the Tax Commission may, perhaps, best be demonstrated by further reference to the case of property "A" mentioned above. In that property, for the year 1970, the Commission was able to compare the owner's "verified" statement as submitted to the Tax Commission, with the actual statement of income and expenses prepared by the Certified Public Accountant for the property.* The figures submitted to

*In those instances where the owner's financial statements were submitted by a Certified Public Accountant, the data supplied was usually found to be much more reliable.

the Tax Commission, when compared with the financial statement prepared by the Certified Public Accountant, showed certain overstatements in expenses and understatements in income, in favor of the property owner. These differences are illustrated, in part, as follows:

Items of Expenses	Overstatement by Owner
"Repairs"	$92,650.00
Painting and Decorating	40,000.00
Fuel	10,000.00
Insurance	5,000.00
	$147,650.00

Gross Income	Understatement by Owner
Rental income	$80,000.00
Real Estate Taxes (reimbursed)	86,012.54*
Interest (omitted from the property owner's financial statement)	2,727.90
Labor charges	3,822.32
	$172,562.76

While many expenses on the statement submitted to the Tax Commission were grossly overstated, others, for unknown reasons, were understated. The final effect, however, was that the net income on the verified financial statement submitted to the Tax Commission by the property owner was understated by approximately $195,000.

As indicated, in the year these figures were submitted to the Tax Commission, the property owner received a $200,000 reduction on his assessment. The Commissioner who granted this reduction stated that were the accurate figures available to him at the time of his determination, "it would have made a difference" (1480).

It may well be that for at least several prior years, when other reductions in assessments were granted to this property, the financial statements submitted to the Tax Commission on behalf of this property contained similar inaccuracies. Obviously, the property owner, were he so inclined, could always have had access to his own accountant's accurate figures. The accountant for this property owner rather blithely conjectured to the Commission's staff that although he did not prepare the "financial statements," which were submitted to the Tax Com-

*The failure of this owner to report $86,012.54 received by him as a result of the "pass-through" tax assessment clause has been dealt with previously.

mission, the inaccuracies contained in them were the inadvertent mistakes of the owner's "bookkeeper." As with virtually all situations of this nature, the "mistakes" were in the property owner's favor.

In another instance, a commercial property owner submitted the very same financial statements on his application for reduction of assessment in two successive fiscal years, 1970/71 and 1971/72. This statement referred back to the owner's purported income and expenses for the fiscal year ending June 30, 1969. Obviously, the income and expenses of a building for the fiscal year 1968/69 are irrelevant to an application for reduction in assessment for the year 1971/72. The assessor clearly made this observation to the Tax Commissioner on his 1971/72 back-up sheets in the following comment: "*Statement is not a correct statement,* but is dated *June 30, 1969.* Building was not fully rented then." (Emphasis his)*

The easy manner with which this property owner submitted this outdated duplicate financial statement for the second successive year is, perhaps, indicative of the owner's disregard for Tax Commission proceedings. Nevertheless, a Tax Commissioner granted a reduction on this property's assessment of $175,000 for the fiscal year 1971/72.

Based upon the Commission's investigation, it would appear that the sworn financial statements submitted by some large commercial property owners in support of their applications for reduction of assessments could not be accepted at face value. Although the accuracy of these statements is verified under oath, there often seems to be little effort to submit truly reliable and correct figures. The repeated instances where assessors questioned the property owners' expense figures confirm the Commission's findings in this regard. Furthermore, these assessors pointed out that there are no means available to them to inspect the property owners' records or otherwise accurately verify the statements submitted to the Tax Comission (32; 364).

Obviously, a contributing factor to these improprieties is that certain segments of the real estate community have come to realize that their verified financial statements are accepted by the Tax Commission without any further inquiry into the

*These observations were confirmed by the assessor in his testimony before the Commission (359).

truthfulness thereof. These property owners have consequently come to feel secure in the knowledge that no action will be taken to call them to account for any misstatements of fact submitted by them under oath to the Tax Commission (1195-1203). The administration of good government should not tolerate the corrosive effect of any segment of society which believes that it can submit false statements under oath, with impunity.

G. *The Properties of Joseph Rae in Staten Island*

Joseph Rae

Joseph Rae ("Rae") was an active real estate investor, who had, among his myriad interests, accumulated a considerable amount of primarily vacant land on Staten Island. In keeping with what is reportedly Rae's usual practices, these properties were purchased by him on speculation, in anticipation of a land boom in Staten Island.* An inquiry into the assessment background of these properties disclosed certain significant aspects of the assessment procedure. The circumstances relating to the assessments of these properties underscored many of the uncertainties and conflicts which surround the making of assessments in the City of New York.

Throughout most of Rae's varied real estate and other business dealings, he was, and evidently still is, represented by certain attorneys with offices in downtown Brooklyn. The nature of Rae's ventures often called into play complex patterns of real estate transactions involving mortgages, written agreements and the payments of large sums of money. It was, therefore, particularly interesting that a knowledgeable businessman as Rae, retained a local Staten Island attorney, Mr. "G", to apply for reductions on the real estate tax assessments of his Staten Island properties, in place of his usual attorneys.

Rae's Attorney, Mr. "G"

Mr. G, a Staten Island attorney, was originally recom-

*Rae has been identified by law enforcement agencies as a known associate of various racketeer and organized crime figures. For example, Rae has participated in real estate transactions on Staten Island with Paul Castellano, a member of the Carlo Gambino crime family.

Rae also was involved in some rather intricate real estate and other business ventures with such organized crime figures as Peter "Petey Pumps" Ferrara and Salvatore Peritore. Ferrara (now deceased), for example, was a captain in the Gambino crime family, with a criminal record of convictions ranging from policy and bookmaking to robbery.

mended to Rae by Mr. K, a close friend of Mr. G and a highly successful Staten Island real estate broker and investor. Mr. K had previously represented Rae, as a broker, on the sale of certain of his other properties. Although Mr. G, as a result of this recommendation by Mr. K, had previously represented Rae in other local legal matters, Rae believed that he "would be better off with a local [Staten Island] attorney" to handle the applications of the reductions of his real estate assessments (1101).

Mr. G, the Staten Island attorney, apparently had little previous background in the field of assessments. With one exception, Mr. G had no other substantial property owners as clients with regard to real estate tax assessment matters when he was first retained by Rae (1059).*

Information obtained in this investigation showed that Rae, through Mr. G's efforts, received a total of $165,550 in reductions of real estate tax assessments by way of Tax Commission hearings held in April 1969. These reductions related to approximately 55 separate real estate parcels, all of which were of essentially vacant land. This was Mr. G's first attempt to obtain reductions in assessments on Rae's properties since being substituted in these matters by Rae, in place of Rae's other attorneys, in October 1968. As a result of these 1969 hearings, Mr. G was able to effectuate settlements resulting in these reductions of assessments going back, in some instances, to matters pending as early as 1962 (1075). These reductions were granted by Norman Levy, the Borough Tax Commissioner for Staten Island.

The question arises as to the basis upon which Mr. G was able to obtain these reductions, whereas the previous efforts of Rae's other attorneys had not been successful. Since Rae's other attorneys had not been able to obtain reductions in assessments through applications to the Tax Commission, they instituted legal proceedings. The reductions in assessments thereafter obtained by Mr. G included a settlement of these matters pending in litigation, going back in many instances over a period of several years.

A Problem with One Property

Thereafter, during the next several months, the reductions

*Mr. K had also recommended Mr. G to the only other major client whom Mr. G represented for the purposes of obtaining reductions in real estate tax assessments (1532).

were also approved by the Corporation Counsel and, with the exception of one parcel, by the office of the Comptroller of the City of New York. As stated previously, since the proposed reductions on this parcel involved several years of retroactive assessments, it was necessary to obtain the consent of both the Corporation Counsel and the Comptroller. In this one exception, the Comptroller's office refused to acquiesce in the several years of retroactive reductions proposed by the Tax Commissioner. The position of the Comptroller's office was based upon their records which reflected a previous sales price of $850,000 for this particular parcel of vacant land. It was therefore believed that certain proposed retroactive reductions on this parcel of property, ranging from $15,000 to $70,000 and totalling $160,000, were inappropriate to this property's assessment of only $350,000. In support of his decision to reduce this assessment, Commissioner Levy stated that, among other factors, the Comptroller's office inaccurately estimated this property's sales price (1676). According to Commissioner Levy, the indicated sales price considered by the Comptroller referred to an area larger than this one parcel.

While the Tax Commission could and did, in its own discretion, reduce the current (1969/70) assessment on this property by $70,000, it could not, without the consent of the Comptroller, grant reductions retroactively for previous years. This had the effect of placing the City in a rather tenuous position in its outstanding litigation for these previous years. In these circumstances the City would be hard pressed to justify maintaining the correctness of its assessments from 1963/64 to 1968/69, when its own Tax Commission reduced the assessment on this same property for 1969/70.

Commissioner Levy testified that he first learned of the Comptroller's rejection of the proposed settlement on this property only a few days before his appearance before this Commission. This was several years after the reduction was first proposed between the Tax Commission and Rae's attorney (1678).

The Explanation for the Reduction

The rationale underlying the reductions in the assessments on the Staten Island properties of Joseph Rae, and others who may have been similarly situated, disclosed a lack of coordination between the Tax Commission and the assessors. The con-

fusion between these two bodies seems inexcusable considering that the situation at hand related to the assessments in one clearly defined area of vacant land in Staten Island.

(1) *The Tax Commission's View*

Commissioner Levy, the Borough Commissioner who granted these reductions, described Rae's properties as "unsewered land" originally restricted to septic tank use as a means of sewage disposal (1660).* In explaining these reductions, Commissioner Levy indicated that in 1968, a decision of the New York City Board of Health prohibiting the construction of a home or any other facility utilizing a septic tank on a plot of less than 10,000 square feet, effectively destroyed the market for this type of septic tank land. Since most of this vacant septic tank land was supposedly earmarked for small homeowners with less than 10,000 square footage, this Board of Health restriction allegedly had a crippling effect on these real estate values (1660-2). Consequently, Commissioner Levy "implemented" or "originated" a policy to reduce the assessments on this land by 25-33% in order to grant some form of relief to these property owners (1661-2).

Although Commissioner Levy stated that the local assessors were advised, either by him or the assessor in charge, of this new policy, Commissioner Levy did not actually discuss this policy with the individual assessors or issue written guidelines or some other form of memorandum (1665). The adequacy of Commissioner Levy's communication to the assessors became a serious issue when the assessors reportedly failed to comply with this new policy. As Commissioner Levy testified:

> "A. To date there isn't an assessor in Staten Island . . . that has recognized these reductions. They restore it the following year.
>
> * * *
>
> But the assessor in a septic tank area—every reduction that I have given has been restored the following year." (1668)

Although this "septic tank" ruling of the Board of Health

* The potential danger to the public health allegedly caused by the installation of septic tanks, where the construction of community sewers is not feasible, has in recent times become a heated issue in Staten Island. This controversy, however, except for the manner in which it may have affected real estate assessments, is not germane to this report.

was issued in 1968, Commissioner Levy, in many instances, granted retroactive reductions in assessment on these properties, for several years prior to 1968. These property owners, therefore, received a grace or windfall in assessment reductions for several years prior to the effect of the 1968 ruling (1673).

(2) *The Tax Assessors' View*

The real estate tax assessors' explanations for the assessments on these Staten Island properties appear to be almost directly at odds with that of the Tax Commission. The general policy established by the Assessment Department was that most of these vacant Staten Island properties were to be assessed at a multiple of 30¢ a square foot (954; 982). In other words, a parcel of property of 4,000 square feet, in this septic tank area, was to be assessed at $1,200. This 30¢ figure held constant not only on Rae's property, but also on the vacant adjoining land (963-4). The assessors indicated that in placing their assessments on any property, whether it be septic tank or sewered land, they had already taken into account any variations in value arising out of these different forms of waste disposal. Accordingly, the assessors could see no reason to further reduce these assessments (983).

Although the assessors may have acquired, obliquely, some knowledge of Commissioner Levy's "septic tank" ruling, it appeared that they viewed that ruling as a mere suggestion from a separate, independent body, and not as part of a uniform tax policy of the City of New York (961). The district assessors were neither consulted nor specifically directed by their supervisors to adhere to this policy of grace to the landowners (962-3). As Commissioner Levy stated, the assessors continued to follow their own departmental guidelines.*

Property owners in this area of Staten Island who were either unaware of this ruling, or did not apply for reduction of assessments, were obliged to continue to pay real estate taxes at the higher assessment. For those attorneys who represented landowners who came within the scope of Commissioner Levy's "septic tank" ruling, and were knowledgeable enough to take advantage of the discord between the assessors and the

* Commissioner Levy stated that he had never heard of this departmental guideline of 30¢ a square foot (1670).

Tax Commission, this situation provided them with a honey-pot of fees.

Obviously, when the assessors and Tax Commission appear to be working at almost cross-purposes, the goal of attaining a sound assessment and tax policy cannot be achieved. The lack of mutual understanding displayed in this instance is inexplicable, since both the geographical area and the basic assessment policies involved were narrowly defined and capable of being readily comprehended and resolved.

Commissioner Levy's Relationship with Mr. "G"

Both Commissioner Levy and Mr. G were practicing attorneys in Richmond County in 1969, at the time Mr. G appeared before Commissioner Levy on behalf of Joseph Rae and one other major property owner in Staten Island on applications for reductions in real estate tax assessments. At that time (1969), Commissioner Levy maintained a law partnership with another attorney. Mr. G, coincidentally, maintained his law offices in the same building in Staten Island where Commissioner Levy had his offices as Tax Commissioner (1102).

Commissioner Levy's positions with the City of New York as both a Tax Commissioner, and later as President of the Tax Commission, were described by him as not being "full-time positions" (1600). Commissioner Levy had been a practicing attorney in this law partnership since 1962, prior to "formally" discontinuing his partnership on December 31, 1971 (1602, 1607). Although he had represented himself to be a partner in this law firm until this partnership was terminated, Commissioner Levy denied being "actively engaged in the practice of law" or receiving any income from this firm "to speak of" since becoming President of the Tax Commission in 1970 (1607). Commissioner Levy, however, still maintains an undistributed equity in the assets of this law firm (1617).

Mr. G, on the other hand, was an attorney with a busy full-time practice, specializing in negligence cases (1107). Sometime after Mr. G first appeared before Commissioner Levy, on the aforementioned applications for reductions in assessments, he entered into an arrangement whereby negligence cases were referred to him by Commissioner Levy's law firm. As a result of this arrangement, Mr. G would represent clients

of Commissioner Levy's firm in their claims for personal injuries. Upon disposition of these cases, Mr. G forwarded an agreed share of his fees to Commissioner Levy's former law firm (1616). Parenthetically, although Mr. G was the only attorney Commissioner Levy could specifically identify by name, he was "sure there [were] other" attorneys who appeared before him as Tax Commissioner with whom his law firm had a similar arrangement of sharing fees on negligence cases (1616). Although these arrangements for the referral of cases were reportedly initiated after Mr. G's appearances on behalf of Rae in 1969, they continued at least until 1971. During this period of time, Mr. G, in addition to obtaining $465,550 in assessment reductions on Rae's property, also obtained assessment reductions of over $500,000 for at least one other major property owner on Staten Island (1688; 1095-6).*

The proffered explanation by Commissioner Levy that the amounts of money involved in these fees from "referred" cases were thought to be "minor" or relatively small is irrelevant (1615). Much the same, Commissioner Levy's repeated observation that "Staten Island is a small town" where private relationships such as these are almost unavoidable, does not lend justification to the questionable appearances of these types of activities (1752).

Mr. "K", Rae, and a $9,000 Campaign Contribution

Mr. K, the real estate broker who introduced Mr. G, the attorney, to Rae, had prior to November 1967 received substantial brokerage fees as a result of his participation in the sale of certain of Rae's properties. Although the various fees

*The original verified statements of this other property owner which Commissioner Levy indicated were the basis for granting the reductions on this other major property, are missing from the Tax Commission files, and have never been seen by the Commission's staff. The property assessor similarly did not recall seeing any such documents for this property (873). Those documents referred to by Commissioner Levy in his testimony were not the originals, but were prepared by the Assessment Department specifically for the purpose of Commissioner Levy's appearance before the Commission (1688-94). Commissioner Levy later indicated by letter that the original applications for this property were "lost."

In explaining the reductions in assessment that he granted on this property, Commissioner Levy stated that one essential factor was that he believed that the net return (8%) for the property was low. Commissioner Levy also stated that, in this instance, it was his "responsibility to encourage an economic climate that keeps people in the city and keeps them flourishing in a commercial way" (1687). The problems raised by this type of rather personalized approach to the Tax Commission's basic responsibility to review the "correctness" of assessments has been mentioned earlier.

received by Mr. G, as a result of Mr. K's recommendations, have been mentioned previously, Mr. G could reasonably anticipate receiving additional fees from Rae in the event reductions in tax assessments were granted on Rae's aforesaid vacant land properties. Mr. K denied participating in any real estate dealings with Rae since November 1967. However, if he were again retained to act as Rae's broker with respect to Rae's above mentioned tract of unimproved land, a reduced tax assessment would have increased the saleability of that property (1683).

As a result of hearings held one month earlier before Commissioner Levy, on May 7, 1969, the Tax Commission received signed stipulations from Mr. G setting forth proposed terms of settlement on Rae's aforementioned vacant land properties. These stipulations indicated reductions of assessments on most, if not all, of these properties, totalling approximately $625,000.*

These stipulations were approved by the Tax Commission and, with the one exception to the retroactive reductions previously noted, by the Corporation Counsel and the Comptroller.

On May 13 and 14, 1969, Mr. K, his wife and one member of his office staff contributed $9,000 ($3,000 each) to the campaign for the re-election of John V. Lindsay as Mayor of the City of New York. $6,000 of this money was paid in cash. While Mr. K had in the past contributed to various political campaigns, these other contributions were by far, smaller in amount.

At that time, Commissioner Norman Levy, an acknowledged long time personal and political associate of Mayor Lindsay, was known to have been active in Mayor Lindsay's 1969 campaign, as he had been in the earlier 1965 campaign (1772).

Although both Mr. K and Commissioner Levy denied any relationship between Mr. K's aforementioned campaign contributions and the reductions in tax assessments on Rae's properties, the pitfalls surrounding situations of this nature are obvious.** It should be noted that Mr. K, Mr. G and Commissioner Levy, all residents of Staten Island, were also personally acquainted with each other (1579; 1101, 1656). The extent that Commissioner Levy may have participated in political fund raising in this 1969 campaign remains uncertain. However, as a "Treasurer" of the 1969 mayoralty campaign stated, the real estate community, as with other major commercial interests in New York City, was, at that time, plainly considered a prime source of campaign funds (1757; 1769; 1775).*

* Reductions of approximately $165,000 were actually granted. The difference in these figures is attributed to the $160,000 in proposed retroactive assessment reductions, previously mentioned as having been disallowed by the Comptroller of the City of New York.

** Mr. K owns substantial real estate interests in Staten Island, the value of which is in excess of $1,000,000. In addition to the reductions in real estate tax assessments granted to some of these properties, Mr. K undoubtedly makes applications of various kinds to other city agencies which regulate the various uses of real estate in the City of New York.

Voluntary campaign contributions by a concerned citizenry are an essential part of our present system of government. It is, however, unfortunate that, as in this situation, circumstances are permitted to arise which may taint not only the motivations behind any such contribution, but also the functions and discretionary judgments of any public official.

Joseph Rae currently resides in Tucson, Arizona. Despite requests for him to appear before the Commission and explain the circumstances relating to his applications for reductions of assessments on his properties, Rae would not appear voluntarily.

Although there has been no direct evidence of any specific irregularity, the above described facts regarding the assessment reductions on the Staten Island properties of Joseph Rae bring into focus some of the problems involved in the assessment practices in New York City. These include incompatible private relationships between City Tax Commissioners and applicants for reductions and their attorneys who appear before them, the possible influence of political campaign contributions, the lack of communication and mutual regard between the Tax Commission and assessors and the personalized approach to what should be a more clearly defined standard of real estate taxation.

A disturbing aspect of the situations detailed herein is that even the most plausible explanations offered for some of the reductions in assessments granted, remain colored with suspicion. Whether a reduction in real estate assessment is granted or denied, the taxpayers of the City are entitled to the assurance that the discretion exercised by a public official, will be based only upon a just, impartial and uniform tax policy.

* Commissioner Levy's activities as a political fund raiser will be discussed later.

IV. *THE POLITICAL INVOLVEMENT OF THE TAX COMMISSIONERS*

A. *Fund-Raising*

In the recent history of the Tax Commission, there has been a tendency on the part of several of its Commissioners, including the last two Presidents of the Tax Commission, to become embroiled in campaign fund-raising activities on behalf of the Mayor of the City of New York. This is, unfortunately, an almost expected consequence of what has now become a highly political appointment to a sensitive position.

One particularly troublesome aspect of these fund-raising activities is that the Tax Commissioners, as they now function, have wide discretion in ruling upon the real estate tax assessments of property owners who appear before them for relief. The owners of large real estate properties, moreover, appear to be especially vulnerable to the solicitation of campaign funds, since their special areas of concern such as tax assessments, zoning and housing codes are under constant regulation by local government. Certainly, the real estate community, as with various other major business interests, was considered a basic source of funds for the various political campaigns of the current Mayor in 1965, 1969 and 1972 (1768-9; 1774-5; 1787).

(1) *Benjamin G. Browdy*

In 1969, Benjamin G. Browdy, then President of the Tax Commission, was the subject of a New York City Board of Ethics ruling (Opinion #135) concerning the propriety of his participation in the sale of tickets to a political fund-raising event. According to reports, at least some of those contributors had previously appeared before the Tax Commission to apply for reductions in real estate assessments. Eventually, and after protests by opposing candidates, Browdy was directed to return this money to the contributors. In ruling upon Browdy's fund-raising activities, the Board of Ethics stated, in pertinent part:

> ". . . the acceptance of funds by a public officer, even though unsolicited and not prohibited by law, from persons who have an interest in matters which come before him or his agency for official action is also offensive to proper ethical standards."

Browdy's actions are further significant since conduct similar to his was also the subject of an earlier New York City Board of Ethics ruling. In 1961, the Board of Ethics ruled (Opinion #35) that solicitation of campaign funds by a member of the City Planning Commission from "real estate men" who were either directly or indirectly interested in business dealings with the City Planning Commission was "offensive to proper ethical standards."* This failure of a public official to heed such a clear earlier warning is inexcusable. There have been rather lame attempts to distinguish between these two situations. The suggestion that, in the earlier instance, the campaign funds were openly solicited by the public official, while in the latter instance (concerning Browdy), the funds were accepted by the public official for the purchase of tickets for a political event, without any reported acts of overt solicitation is, at best, somewhat inventive.

(2) *Commissioners Norman Levy, Helen Wolfsohn and the Brooklyn John V. Lindsay Association*

The practice of members of the Tax Commission engaging in fund-raising continues even presently, although, perhaps, in a somewhat different fashion. Commissioner Norman Levy has been a long-time associate of the current Mayor. He actively participated in Mayor Lindsay's mayoralty campaigns of 1965 and 1969 and in his abortive presidential campaign of 1972.

However, the thrust of Commissioner Levy's political activities while President of the Tax Commission relates to his role as Coordinator of the Brooklyn "John V. Lindsay Association."** In general terms, these are political and "civic" associations, designed primarily to render support to Mayor Lindsay and, occasionally, to other sympathetic local candidates (1633). One major function of these associations was to support Mayor Lindsay in his unsuccessful presidential primary campaign of 1972.

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* The member of the City Planning Commission who was the subject of this ruling is an attorney who is now very actively engaged in appearing before the Tax Commission on behalf of major real estate interests. This attorney represented the owners of various properties described in this report. These two instances further illustrate the vulnerability of the real estate community to political fund-raising.

** There are such separate "associations" for each borough in the city (1632). As Coordinator, Commissioner Levy was, in effect, patronage dispenser for Brooklyn.

The main source of income for this Brooklyn Association came from an annual affair and journal. Although Commissioner Levy indicated that his only function was to "encourage" the other members of this organization to solicit contributions for this affair, he personally received widespread publicity as "Coordinator" and principal spokesman for this Association. Moreover, in this Association's highly publicized "ball" of April 24, 1971, Commissioner Levy received primary recognition as the affair's "Honorary Chairman." Mayor Lindsay's letter expressing gratitude for the efforts of this Association was similarly addressed to Commissioner Levy as "Honorary Chairman" of the event.

Another borough (Brooklyn) Tax Commissioner, Helen M. Wolfsohn, is also an experienced political fund-raiser. As early as 1966, Commissioner Wolfsohn had been engaged in fund-raising activities as president of a neighborhood Brooklyn "civic association." Most of the members of this association were described by Commissioner Wolfsohn as "John Lindsay people" (1559-61). Moreover, following her appointment as a member of the Tax Commission in 1970, Commissioner Wolfsohn then shifted the emphasis of her fund-raising activities to the next two successive annual affairs of the Brooklyn John V. Lindsay Association (1563).

For example, Commissioner Wolfsohn was listed as a Committee Chairman in charge of "Tickets and Seating" for the Brooklyn John V. Lindsay Association's annual affair in 1971. In connection with this affair, Commissioner Wolfsohn also solicited a $150 contribution from her fellow Tax Commissioner for the Borough of Brooklyn (1927-28). Actually, Commissioner Wolfsohn and her own local "civic" association subordinated their own fund-raising activities to those of the John V. Lindsay Association. As Commissioner Wolfsohn testified:

"Q. When did you receive your appointment as Tax Commissioner?

A. February 1970.

Q. And were you a member of the JVL Association at that time?

A. Yes, I was. (1562)

* * *

Q. . . . since your appointment in February 1970, you have participated in at least two fund-raising affairs for the JVL Association?

A. That is right.

Q. Who do you solicit money from?

A. Neighborhood storekeepers, my friends, my firm, members of the organization that I am president of, a civic organization.

I might say that part of the money came back to the civic organization for the payment of its rent and expenses. And that was our understanding when we raised the money, that we were foregoing the fund raising for our organization to participate in this and we would expect that if we needed financial assistance we would get it, and we have gotten it.

Q. Who did you get the financial assistance from?

A. From the JVL Association in Brooklyn, JVL Association.

Q. Who is the head of that?

A. Norman Levy, he is not the president of it, but he is the one that I spoke to." (1563-4)

Commissioner Wolfsohn still continues to be engaged in soliciting funds for the Brooklyn John V. Lindsay Association (1562). Commissioner Norman Levy was keenly aware of her fund-raising activities. As Commissioner Levy testified:

"Q. Did the other tax commissioners engage in fund raising?

A. Helen Wolfsohn is a member of the West Brooklyn Civic Association, which is associated with the John V. Lindsay Association, and she raises money for the JVL Association." (1647)

Commissioners Levy and Wolfsohn both stressed that they made careful attempts to avoid receiving contributions from real estate owners. Commissioner Levy stated, however, that "local [real estate] brokers and managing agents" did contribute money to the Brooklyn John V. Lindsay Association (1648). Undoubtedly, at least in part as a result of their efforts and the use of their names, the fund-raising efforts for this affair of April 1971 were highly successful. The journal for this affair raised over $100,000 (1657).

This journal of over 1,000 pages (2½ inches thick, weighing 6¾ lbs.) was literally bursting with paid advertisements. "Gold" page advertisements were $150, and "silver" page advertisements were $100 (1650). This fund-raising affair and the journal (which had a very limited distribution) have already been the subject of legal proceedings and widespread publicity and require no further comment here.* However, the active participation of Commissioners Levy and Wolfsohn in these fund-raising activities, seemingly oblivious to both the appearance and realities of possible conflict with their public office, is hardly consonant with the service of the public weal.

(3) *The Richmond County Civic Improvement Association*

Commissioner Norman Levy was also an "Honorary Chairman" for the annual fund-raising affairs of the Richmond County Civic Improvement Association from 1967 to 1971 inclusive (1996). This organization was also described by him as a "civic" association, located in Staten Island, which supported Mayor Lindsay and was comprised of his former campaign workers (1653-4; 1999). Although this association claimed to have antedated by several years the John V. Lindsay Associations in the other four boroughs, and professed to be more genuinely "civic" in nature, for all practical purposes it was the Staten Island counterpart of the John V. Lindsay Associations in the other boroughs. Commissioner Levy indicated that his own particular allegiance to this organization resulted from the fact that Staten Island was his borough of origin, notwithstanding his more current role as Coordinator for the Brooklyn John V. Lindsay Association (1996).

Once again there were the inevitable contributions from real estate owners to this association, as indicated by the testimony of Commissioner Levy (1653). Although Commissioner Levy sought to characterize his fund-raising activities for this association as being essentially passive in nature, obviously the use of his name and public office had a salutary effect on the

* These legal proceedings were primarily related to the failure of these John V. Lindsay Associations to disclose the financial data relating to their income and expenditures. The critical issue of these proceedings concerned the attempts of these associations to characterize their activities as "civic," in nature, rather than "political," so as to avoid the requirement that they disclose their finances as political committees (Election Law, Sec. 320, *et seq.*). As a result of proceedings instituted by the New York State Attorney General, these associations, without admitting to any violations of the law, eventually agreed to disclose their financial records.

success of these affairs. Commissioner Levy's name as an "Honorary Chairman" was pointedly referred to in the promotional literature (2005).

Moreover, in this instance there was also the added involvement of certain City tax assessors from the Staten Island Real Property Assessment Department through the purchase of an advertisement in this organization's journal (1652). Many of these assessors were known personally by Commissioner Levy, and some of them had also been politically active in the Mayor's campaigns (1653). Although Commissioner Levy could not recall who actually solicited these contributions from the assessors, he indicated that it "could have been" the Assessor in Charge for Staten Island (1998). The Chief Assessor was recommended for his position by Commissioner Levy (2006).

Here, too, Commissioner Levy stated that contributions to this organization were made by local attorneys who also practiced before the Tax Commission (1654).* Commissioner Levy's response upon being asked if these attorneys contributed to this organization while he was its "Honorary Chairman" was as follows:

"Q. Did they [attorneys who practiced before the Tax Commission] contribute while you were honorary chairman?

A. I cannot answer that. Maybe, yes. From my knowledge now, I do not remember.
It is possible. Yes." (1654)

The solicitation of campaign funds is presently an acceptable practice in our political system. It would be naive to pretend otherwise.** However, by virtue of the sensitive nature of the duties of the Tax Commission, each such involvement by its members cannot help but in some fashion, either through appearance or reality, to compromise the integrity of their office, and give rise to questions concerning the fair administration of real estate assessments.

* Mr. "G", the attorney, and Mr. "K", the real estate broker and investor, both of whom were referred to in discussion of the properties of Joseph Rae, contributed to this organization (1110).

** Commissioner Levy also participated in at least two other fund-raising campaigns concerning members of Congress from Brooklyn.

B. *The Incompatibility of Political Activity and Tax Commission Responsibility*

As previously stated, the Tax Commissioners are, with rare exceptions, the political appointees of each new administration. In addition to Commissioner Levy, all of the other six current members of the Tax Commission, in testifying in connection with the instant investigation, have, to varying degrees, described their own political backgrounds and affiliations with the Mayor, prior to receiving their appointments. Most, if not all, of these Tax Commissioners have continued their political activities subsequent to their being appointed to the Tax Commission.

The following is a brief summary of the political backgrounds of the seven current members of the Tax Commission.

With respect to Tax Commission President Norman A. Levy, reference has already been made to his various political involvements as well as his fund-raising activities on behalf of the John V. Lindsay Associations.

As to the other six Tax Commissioners, one Tax Commissioner received his appointment in October 1970, upon being recommended to the Mayor by the recognized leader of his political party. He had participated in the Mayor's 1969 campaign (1917-18; 1929). This Commissioner's political party was, in fact, the only political party to support the Mayor in the general election of 1969. This Commissioner was also vice-chairman of his county political party and an Associate Assembly District Leader at the time of his appointment to the Tax Commission.

Since assuming his position as a member of the Tax Commission, this Commissioner made three unsuccessful bids for elective office. In 1970 he ran for Congress, in 1971 he ran for Judge of the Civil Court and in 1972 he ran for Justice of the Supreme Court. In 1969, prior to his appointment, this Commissioner also ran unsuccessfully for the Civil Court (1925-6).

A second Tax Commissioner was "active" in the Mayor's 1965 campaign in the borough in which he was residing at the time. He was thereafter appointed as a Tax Commissioner in 1966 (1394).

A third Tax Commissioner testified that at least one consideration for his appointment to the Tax Commission in 1969 related to his having been "active" in politics. This Commissioner's actual recommendation for his position came from his associate in the practice of law, who was then an official in the same political party as this Commissioner.* Prior to receiving his appointment, this Tax Commissioner had, in addition to his other political activities, also rendered gratuitous legal services to his party and the Mayor "in election litigation" (1896). Both before and after his appointment to the Tax Commission, this Commissioner had also been County Vice-Chairman of his political party and Chairman of his party's County Law Committee. Since his appointment to the Tax Commission, he also held positions as Secretary of his party's State Law Committee, and as "Chairman" of his local political club. While a member of the Tax Commission, this Commissioner also ran unsuccessfully for election to the Civil Court of the City of New York (1894).

A fourth Tax Commissioner received his appointment in 1970, upon the recommendation of a "Coordinator" for the John V. Lindsay Association in his borough of residence (1950).** This Commissioner had previously participated in the Mayor's campaign of 1965 and, to a much greater extent, in the campaign of 1969 (1951-3). This Commissioner also participated actively in various local primaries, and at least in one gubernatorial and one congressional campaign (1952-5).

After receiving his appointment to the Tax Commission, this Tax Commissioner also became active in the Mayor's short-lived presidential campaign of 1972 (1957). This Commissioner also solicited contributions for the fund-raising affairs of his borough's John V. Lindsay Association in 1970, 1971 and 1972 (1956-8).

A fifth Tax Commissioner was active in a political party and ran unsuccessfully for the office of Borough President in the same 1969 primary election as the Mayor, at which time he considered himself to have been politically "aligned . . . with the Mayor" (1854). At the time he was defeated in the primary, he worked in the general election campaign for the election of the Mayor. Thereafter, in March 1970, upon the recommendation of the "Coordinator" of the Bronx John V.

* This former law associate of this Commissioner shortly thereafter became a "special assistant" to the Mayor. He is now County Chairman of his political party and a Deputy Mayor of the City of New York.

** This Commissioner first met this borough "Coordinator" during the 1965 Mayoralty election. He thereafter worked under this "Coordinator" on behalf of the Mayor in both the primary and general elections of 1969.

Lindsay Association, this Commissioner received his appointment to the Tax Commission (1852).

This Commissioner also made three earlier unsuccessful election campaigns for the New York State Assembly (1857).

The sixth Tax Commissioner had also been engaged in fund-raising activities on behalf of a borough John V. Lindsay Association. In addition to these fund-raising activities, prior to being appointed in 1970, this Commissioner had also been active on behalf of the Mayor in the 1965 and 1969 mayoralty campaigns in the borough where this Commissioner resides (1502).

There is no suggestion made here that there is anything improper in being politically active. The question raised is whether partisan political activity, particularly that which continues after appointment to the Tax Commission, is consonant with the exercise of official discretion and responsibilities, as well as with the public interest.

The incompatibility of political activity and Tax Commission responsibility is emphasized by the nature of the Tax Commission proceedings which, perhaps more so than many other administrative hearings, represent a departure from the usual forms of litigated matters. For example, there are no records or transcripts taken of the Tax Commission hearings. Despite the extraordinary degree of discretion that the Tax Commissioners may exercise in arriving at their determinations, there are no written explanations in the nature of a court decision or memorandum to accompany their rulings.

Furthermore, these Tax Commission hearings are not truly adversary in nature. The individual Tax Commissioners function in a quasi-judicial capacity, without anyone else specifically assigned or present during these proceedings to represent the City's interests in sustaining the amount of the original tax assessment.* In effect, the hearings are one-sided, *ex parte* applications in which the real estate owners request that the Tax Commissioners, in the exercise of their sole discretion, reduce the amount of their real estate tax assessments. Since the City cannot appeal the decisions of its own Tax Commissioners, there is no avenue available to the City for the correction of any improvident exercise of discretion by a Tax

* There is the occasional presence at these hearings of the property's assessor to advise the Tax Commissioner.

Commissioner in reducing a tax assessment in favor of a real estate owner.

Consequently, the decisions reached by the Tax Commissioners are, to a large degree, the product of highly personalized pressures and negotiations conducted, at loose informal proceedings, in an atmosphere of ever present political reality. Such circumstances are ill-suited to the promotion of a sound and impartial real estate tax assessment policy.

C. *How to Change a Tax Assessment Map*

The susceptibility of assessment practices to political influence occurs in more than one fashion. In one particular instance, an intrusion into the Real Property Assessment practices came in the form of a request to change a real estate tax assessment map relating to a certain parcel of property in the Borough of Queens.

This incident started in April 1967, at a time when the then President of the Tax Commission, Michael Freyberg ("Freyberg"), was also in charge of the New York City Real Property Assessment Department. In this latter capacity, Commissioner Freyberg supervised the assessment of all real estate in the City, as well as the related administrative functions. Subsequently, in 1968, pursuant to a New York City Charter Amendment and Executive Order of the Mayor, the Real Property Assessment Department became a separate agency within the Finance Administration of the City of New York, and the Tax Commission became a distinct, independent agency. However, prior to that time, former Commissioner Freyberg, among his other duties, was also in charge of the Surveying Bureau of the Assessment Department, which prepared, corrected and maintained the maps used for tax assessments.

(1) *The Problem—William Michelman*

William Michelman was an experienced real estate investor who owned a certain undivided parcel of "ocean beach" property in Belle Harbor, Queens. There were twelve separate two-family houses on this beach property, six of which "fronted" on the ocean (1302-3). Michelman rented these houses, separately, primarily on a seasonal basis for the summer months, but also at a lesser rate for the rest of the year (1334).

When Michelman purchased the property, it contained 12 separate structures, all of which were combined into one single

undivided parcel for both title lines and tax assessment purposes (1306). Michelman envisioned selling these houses individually, at what he expected would be a good profit, rather than continuing to own and rent them himself. In order to accomplish this, however, the property had to be subdivided into separate parcels for real estate tax assessment purposes ("tax lots"). The owner of each house would, of practical necessity, have to be separately assessed and billed for the real estate taxes on his own property (1308).

Michelman initially attempted to retain an attorney whose name he could not recall to effectuate a subdivision of this aforementioned parcel into 12 separate tax lots. This attorney, however, advised Michelman that he would be unable to have these changes made (1309-10).

Sometime thereafter, Michelman had occasion to discuss his problem with another attorney. At this time, a bail bondsman, who happened to be present during this discussion, suggested that Michelman contact still another (a third) attorney, who was reportedly a "specialist . . . in getting tax lots changed" (1311-13). According to Michelman, there hardly seemed to be any actual need for a legal specialist to accomplish this change. As Michelman testified:

> "Any attorney that is in the real estate business will certainly inform you that you do not need a so-called genius to get this subdivided." (1313-4)

The special nature of the expertise which this third attorney was supposedly able to provide for Michelman presents cause for serious concern. At his initial meeting with Michelman, this attorney indicated that the desired changes in the tax map could be made. Michelman thereupon paid him a $1,500 fee in advance for his services, at this first meeting (1314-6). This third and obviously self-assured attorney was Herbert Itkin.

(2) *The Means—Herbert Itkin, James Marcus and Michael Freyberg*

Herbert Itkin

At the time of his first meeting with Michelman, Herbert Itkin ("Itkin") was an attorney with offices located in midtown Manhattan. Itkin was, at that time, practicing law in a loose partnership arrangement with another younger attorney,

Charles Rappaport ("Rappaport"). After being retained by Michelman, Itkin was eventually able to bring about a subdivision of Michelman's property in a relatively direct and simple fashion.

The mystery of Herbert Itkin and his operations continues to the present time, despite the wide publicity which surrounded many of his exploits. A shadowy, enigmatic figure, Itkin has surfaced in such varied roles as an attorney specializing in "labor relations" and an intimate of known racketeers; an influence peddler in the early years of the administration of the current Mayor of the City of New York; a criminal defendant, still under felony indictments by a New York County Grand Jury; an alleged operative for the Central Intelligence Agency; and an informant for the Federal Bureau of Investigation who was required to be kept secluded in protective custody for his personal safety.

Regardless of these baffling roles, it is undisputed that Itkin was an associate of certain organized crime figures, that he had insinuated himself into the graces of various public officials and political figures, and that his varied transactions often culminated in bribes, kickbacks and conspiracies of different sorts.

When Michelman first retained Itkin to have his property subdivided for assessment purposes, he made no inquiries concerning the steps that were to be taken on his behalf (1314). According to Michelman, Itkin was expected to take "[a]ny steps that were necessary to get this thing done . . ." (1314). A short time thereafter, Michelman was advised by either Itkin or Rappaport that his property had been successfully subdivided into separate tax lots as he had requested. Michelman then went to the appropriate office in Queens and obtained tax bills for the now 12 separate parcels (1320-1).

However, before Itkin was able to attain the subdivision of Michelman's property, it was first necessary for him to obtain the assistance of his colleague, James Marcus ("Marcus"). Marcus was then Commissioner of the Department of Water Supply, Gas & Electricity for the City of New York.

James Marcus

The affairs of James Marcus have already received widespread notoriety. In summary, Marcus, through the assistance of his social and family connections, and an apparently engag-

ing manner, was, in a relatively short period of time, able to gain the personal confidence and friendship of Mayor Lindsay. After working in the Mayor's 1965 campaign, he rose from an unpaid consultant to the Mayor to Commissioner of Water Supply, Gas & Electricity. According to newspaper reports, it was anticipated that he would become the first head of the Environmental Protection Agency, one of the City's newly proposed "superagencies." Throughout this time, apparently unknown to most, Marcus was personally involved in serious financial difficulties.*

Marcus eventually betrayed both the "public trust" and the "confidence of the friend who appointed him" (Mayor Lindsay).** In quick succession, Marcus was convicted of crimes in both state and federal courts that included initial charges of conspiracy, receiving kickbacks, illegal fees, bribes, and perjury. In virtually all of these instances, Itkin was involved, at least originally, as a co-defendant.***

Similarly, Marcus' contribution to this situation was the utilization of his political contacts and public office. In this instance, Marcus was also able to make use of his friendship with the President of the Tax Commission, Michael Freyberg, to accomplish Itkin's purpose. It was, according to Freyberg, Marcus who prevailed upon Freyberg to make the changes in the tax map.

Michael Freyberg

Michael Freyberg, too, experienced misfortune. A promising young attorney and an industrious worker in Mayor Lindsay's

* Benjamin Browdy, while a member of the Tax Commission, loaned Marcus an undetermined amount of money, ostensibly to "cover a margin call" (1822). Browdy succeeded Freyberg as President of the Tax Commission.

** Remarks of a United States District Court Judge upon sentencing Marcus to prison on September 9, 1968.

*** In one notable instance, Tony "Ducks" Corrallo, a high-ranking member of the Thomas Luchese national crime family, was convicted along with Marcus of conspiring to receive kickbacks. Corrallo, a known labor racketeer, had previously been convicted for possession of narcotics and for a bribery conspiracy to fix a fradulent bankruptcy case, in which case other defendants included a then New York State Supreme Court Justice and a Chief Assistant United States Attorney. Subsequently, in a different case, based at least in part upon the testimony of co-conspirators Itkin and Marcus, Corrallo was also convicted, along with another formerly prominent political figure, of conspiracy to accept bribes and kickbacks.

According to confidential sources, Corrallo was, in a way as yet undetermined, involved in Michelman's Belle Harbor property. For example, in a very guarded fashion, Michelman stated that he was, at some time, "possibly" introduced to Corrallo, whom he thought to be a "union official" (1329-31).

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1 OF 5

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1965 campaign, Freyberg was appointed President of the Tax Commission in 1966 and thus also became head of the Real Property Assessment Department. Unfortunately, Freyberg's career was also disrupted by a criminal act.

Freyberg was indicted by a New York County Grand Jury for perjury concerning a matter, which although unrelated to real estate assessments, did occur while he held public office. Freyberg was allowed to plead guilty to a misdemeanor to cover the entire indictment, including felonies, and was given an unconditional discharge by the Court.

Significantly, certain acts of perjury for which Freyberg was indicted related to a transfer of monies to both Itkin and Marcus. According to the indictment, Freyberg had, either alone or with Itkin and Marcus, attempted to influence the decision of another City agency which was concerned with the regulation of real estate.

As Freyberg testified in this investigation, the matter concerning the proposed changes in the tax assessment map for Michelman's property was "first brought to [his] attention by then Water Commissioner James Marcus" (1796). Marcus raised the point by asking Freyberg "whether there was a way in which the property could be apportioned so that separate "tax bills" could be sent out to "various individuals" (1796).

At that time, Freyberg knew Itkin to be Marcus' friend and "partner," whom he would meet on "occasion" with Marcus (1813). However, Freyberg could not "recall" Marcus ever mentioning Itkin's interest in this property to him (1813-4). As a result of Marcus' proposal, Freyberg thereafter contacted the Chief Assessor Philip Click and directed that the property be subdivided as requested (1345).

A question arises as to the rationale upon which Freyberg acceded to this request from Marcus. At the very least, it represented an unwarranted interference by one agency head into the affairs of another. In view of their prior friendly association, Freyberg's explanation that at the time he "believed" Marcus represented the owner as an "attorney," was fatuous (1797). Marcus was not an attorney and, even if he were, the impropriety of him representing a client before one City agency, while he was Commissioner of another, is beyond question.

In the same vein, Freyberg's assertion that he only directed his Chief Assessor, Philip Click, to "go ahead" and change the

tax map after being assured that it was only a "ministerial act," was also less than frank (1803). As will be shown, the surveyor in charge, for good reason, strenuously objected to making these changes in the manner requested.

Freyberg insisted that there was no "benefit" to be gained by the property owner through the apportionment of this parcel into separate tax lots. In Freyberg's own "opinion as someone knowledgeable in real estate . . . the combination of several parcels into one parcel . . . as an assemblage . . . invariably increases the value of property, not the other way around" (1806). This explanation was equally wanting in candor, and an attempt to evade the issue. The facts of the instant situation were entirely different. Here, the owner specifically wanted to subdivide his property for the very obvious purpose of enabling him to make a substantial profit through the separate sale of these parcels. The proposed sales of these separate properties would have been highly impracticable, had this property remained in its undivided form. As will be seen, the proposed subdivision created certain zoning and structural problems which made the changes objectionable.

(3) *The Solution*

As often happens in situations of this nature, the political appointees in charge of an agency, in response to whatever special influences that have been exerted upon them, direct the career civil service employees working under them to execute the details of their private arrangement. In this instance, Freyberg, who had been President of the Tax Commission for slightly less than one year at that time, called upon his Chief Assessor Philip Click ("Click") and the Assessment Department's Chief Surveyor Benjamin Lee ("Lee") to fulfill the private request of James Marcus.

Although both of these men were protected by civil service status, Click, less than one year earlier, had been appointed by Freyberg to a higher administrative position as Chief Assessor, which position was "exempt" from civil service laws (1181; 1346).* Consequently, when Freyberg decided to act upon Marcus' proposal, he was able to turn to his own very recent appointee to execute his special request.

* Click still maintained his civil service status for his previous lower ranking position. In the event that he was terminated from his exempt position, Click could, if he wished, revert back to his civil service position.

Normally, when specific administrative relief is sought, there are certain well planned departmental procedures to be followed. Usually, a request for a subdivision of a parcel of real estate comes from the property owner or his attorney (1249). The application is made in writing on a standard printed form, furnished by the Assessment Department, which has been approved by the Corporation Counsel of the City of New York (1249; 1253; 1347-8).

Upon receipt of such application, the surveyor usually tries to follow ownership of property or title lines in re-drawing a tax map, or, in the alternative, seeks to ascertain if a sale of separate parcels is actually pending (1253). In this instance, since the property was still undivided, without any sales pending, none of these circumstances was present. Consequently, the surveyor, Lee, regarded Click's request to him to make these changes as highly unusual (1256).

Moreover, Lee had some other well-founded objections to subdividing this property, since under the terms of the proposed subdivision certain of these buildings would not have the necessary access routes ("ingress and egress") to the street (1252). These objections were expressed to Click in advance of the changes in the tax map (1360). As will be seen, Lee's position was well justified.

As a result of these combined factors, Lee was concerned over what he considered to be Click's extraordinary request to him. Lee refused to take any action in this matter simply on oral instructions from his superior, Click. Lee insisted upon receiving a memorandum in writing, directing him to make the changes. Click thereupon gave Lee a written memorandum to that effect (1250-1). As Lee testified:

"Q. . . . The usual procedure is to give you the survey and the form application; is that correct?

A. Yes.

Q. What is your next step, usually, after that?

A. We check title. The lines on the tax maps are title lines—the lots are title lines. And we hold to that, except unless it confuses assessment practices. (1254-5)

* * *

Q. When Mr. Click asked you to make these changes, did you indicate that it was not the regular way of doing it?

A. Yes.

* * *

Q. Did you ask for a memorandum?

A. Yes.

Q. You said you wanted this instruction in writing; is that correct?

A. Correct.

Q. Usually do you request instructions in writing?

A. Not unless something would look out of the ordinary. No. (1257)

* * *

Q. Why did you do it in this situation [ask for a written memorandum]?

A. Because it was of a suspicious nature, and I was told to do it." (1258)

Eventually, at Lee's direction, the property was subdivided by the surveyor for the Borough of Queens. However, several days after these changes were made, a letter was received by the Queens surveyor from the New York City Buildings Department detailing the Buildings Department's objections to these proposed changes and requesting the Queens surveyor not to approve the subdivision of this property.* The letter indicated that certain objections relating to "Zoning and Fire Limits" had been raised by the Buildings Department, years earlier, prior to construction of the buildings on the property. At that earlier time, the builder had filed a waiver, in the form of an affidavit, stating "that the houses would not be sold individually and that the property would operate as a unit" (1362-3). This letter also expressed the opinion that the proposed subdivision would violate certain provisions of both the New York State General City Law as well as the New York City Zoning Resolution (1362).

Upon receiving this letter, Lee became "embarrassed" and brought it directly to Freyberg, by-passing Click, who was his immediate superior. Freyberg, nevertheless, still refused to nullify his previous direction to have the property subdivided (1267; 1269). Lee stated that had he known the contents of

* Although the letter was apparently written before the changes were made on the tax assessment map, it was not actually received until after the property was subdivided, a few days later (1261). In this letter, the Buildings Department requested "assistance in preventing the subdivision" of the property.

this letter beforehand, he would not have acceded to making these changes (1267). Freyberg in his testimony, could not "recall" the Buildings Department's objections concerning the lack of access to the street which resulted from the subdivision of this property (1808).

(4) *A new owner*

Approximately one year later, for reasons which still remain vague, Michelman requested the Assessment Department to merge the individual tax lots and restore them to their original condition. This request was granted and the property was sold to a new owner as one parcel (1262; 1321-2). Michelman's only explanation for nullifying this previous subdivision was the rather empty statement that "it was not done correctly." Michelman could not "remember" further details (1322).

Shortly after this sale, this property was again subdivided into separate tax lots by the new owner. This last subdivision, however, did not occur in the same manner or along the same property lines as the previous apportionment (1264). The last subdivision provided street frontage and, consequently, ingress and egress routes for each parcel (1264). This access to the street neutralized those objections created as a result of Michelman's previous subdivision (1286).

In order to accomplish this last subdivision, the new owners had to utilize the adjacent property to provide each parcel with the necessary street frontage (1285). This was the proper, if somewhat more burdensome, method of subdividing this property into separate lots (1286).

V. *RECOMMENDATIONS*

This report has detailed inconsistencies and deficiencies in the existing practices and procedures for determining real estate assessments, and other related problems, in the City of New York. Although past studies have urged the adoption of certain reforms, nevertheless, little has been done and the situation has continued mainly unchanged. In the light of the facts revealed in the Commission's investigation, it would seem that the time has come to give serious consideration to the problems disclosed and put into effect long overdue improve-

ments. Toward that end, the Commission submits the following recommendations:*

1. *Guidelines for Assessments*

Real property assessments in New York City are now made in an uneven way. The present approach is inequitable to both the City and its taxpayers. A set of fair, clear and uniform standards, with built-in flexibility for treatment of unusual situations, should be developed and promulgated. Such delineated standards or guidelines should then form the basis for all assessments.

2. *Tax Commission Decisions*

Under present procedures, the Tax Commissioners have sole discretion in ruling upon those applications for reduction of assessments which come before them for review. Hearings held in such matters are very brief and only on rare occasions is an assessor present to present his views. Information furnished on assessors' "back-up" sheets is generally sparce. Assessments are often reduced by Tax Commissioners in very substantial amounts without any explanation made as to why the reduction is granted.

(a) It is therefore recommended that when a reduction in assessment is granted by a Tax Commissioner, each such ruling should include a sufficient statement by the Tax Commissioner setting forth, in writing, the basis for the ruling. This procedure need not require a separate written decision or memorandum. The basis for the ruling may be incorporated in the notation as presently made by the Tax Commissioner on the file of the application involved, or on a special form devised by the Tax Commission that would make this requirement simple and convenient.

In this connection, in order that each Tax Commissioner may have the pertinent facts before him, the assessors should be required to state as fully as possible, on their "back-up" sheets, all essential details relating to the property involved. Thus, in addition to supplying complete information, the assessors' views may also be known and given due consideration.

* Although these recommendations relate to the real property assessment practices and procedures in New York City, all, or some of them, may be equally applicable to the real property assessment process in many other parts of this State.

(b) Consideration should also be given to (1) the possibility of enlarging the period during which hearings are held on applications for reduction in assessments and (2) the advisability of having a representative of the Corporation Counsel's office present to protect the public interest at such hearings where the dollar amount of the reduction request is substantial.

(c) It is further recommended that any decision made by a Tax Commissioner reducing an assessment in the amount of $100,000 or more, for one year, on a single property, should be reviewed by the President of the Tax Commission and should require the President's written approval.

3. *Property Owners' Financial Statements*

One striking aspect of this investigation was the careless manner in which many property owners treated the information contained in the financial statements which they submitted to the Tax Commission in support of their applications for reduction of assessments. These documents are important because they not only seek to induce the Tax Commission to reduce the property's assessment for the year in question, but they are also considered at a later date by the property assessor in fixing the assessment for the following year. Instances have also been disclosed in this investigation which indicate that false or incomplete verified financial statements have been submitted to the Tax Commission in connection with the aforementioned applications.

It is therefore recommended, with respect to income-producing properties:

(a) That the financial data presented by the property owner in support of an application for the reduction of assessment should be accompanied by a statement of profit and loss prepared by either a public or certified public accountant with respect to the same year. This requirement should apply only to such properties whose assessments exceed an amount to be fixed by the Tax Commission.

(b) That where a property owner represents that the building involved is still under construction, such assertion and the extent to which the building is unfinished should be supported by a verified statement from a licensed architect or engineer.

(c) That the City's form that is presently used to set forth the schedule of rental income and expenses, which is incorpo-

rated in the Application for Correction of Assessment Valuation of Real Estate, should contain a specific request for the itemization of all expenses of the property owner which have been reimbursed as a result of an escalation or "pass-through" clause. It also should be stated on this form that since real property is assessed as if owned on a free and clear basis, all items such as financial costs, mortgage amortization and ground rent, are not to be included as allowable expenses.

(d) That the City's Application for Correction of Assessment Valuation of Real Estate should contain a clear warning that the making and submitting of a false written statement under oath, with the intent to mislead a public official on a material matter, is punishable as a felony; also, that making and submitting a false written statement to the Tax Commission, even if unverified, is punishable as a misdemeanor.

(e) That the Tax Commission adopt a policy of making spot audits of financial statements submitted to it in support of applications for reduction of assessments. Further, that the Tax Commission adopt a strict policy of referring financial statements which have been submitted as aforesaid and which are believed to be false, to appropriate law enforcement agencies.

(f) That regardless of possible criminal liability, the submission of false or incomplete financial data should result in the denial by the Tax Commission of any reduction of assessment, or, in the case of false financial data, if a reduction has already been granted, a cancellation thereof.

4. *The Assessors' Ethics*

High ethical standards are a basic necessity in any field of public service. With the degree of latitude and discretion now inherent in assessment practices, a code of ethical behavior for assessors has been long overdue. As indicated in this report, it was not until March 1972, while this investigation was under way, that the Finance Administrator of the City of New York promulgated rules and regulations relating to standards of ethical conduct of assessors and restricted certain of their outside activities.

It is recommended that these rules and regulations become not only a matter of record but that they be conscientiously enforced.

5. *Political Involvement of Tax Commissioners*

The facts presented in this report clearly illustrate the problems that can arise from a Tax Commissioner's involvement in political activities. Even though there perhaps may be some difference of views in this regard, there seems little doubt that when such political activity includes the solicitation of funds, this activity is completely incompatible with the Tax Commissioner's public responsibilities.

It is therefore recommended that members of the Tax Commission be prohibited from engaging, directly or indirectly, in any manner of political fund-raising.

While these recommendations may not deal with all the existing deficiencies in the real property assessment process, they sufficiently cover the main general areas which require corrective action. It is hoped that the implementation of these recommendations will help produce an improved system whereby (1) all real property in the City of New York will be assessed for tax purposes on a uniform, fair, sound and impartial basis; (2) the real property assessment process will be administered in such manner as to avoid any possible appearance of the intrusion of improper influences; and (3) the public interest will, at all times, be uppermost in all matters considered.

Subsequent Developments

Following the issuance of the Commission's report in this investigation, demands were made for changes in the real estate tax assessment procedures of the New York City Tax Commission. In response to these demands, the following actions were taken:

I. The New York City Council passed and the then Mayor, John V. Lindsay, signed the following two bills:

(1) One bill changed the structure of the Tax Commission in that it requires the Mayor to appoint commissioners to six-year terms. Prior thereto, commissioners had been appointed by the Mayor to serve unlimited terms, at his pleasure; this bill also requires that the tax commissioners have at least three years of experience in real estate or real estate law.

(2) The second bill requires annual publication in the City Record of all reductions in real property assessments;

it further provides (a) that no reduction in assessment be granted for income producing property unless a statement of income and expenses is submitted, and in the case of property valued at $1,000,000 or more, the statement must be certified by a certified public accountant; and (b) that in all cases where the reduction in assessment for the current year is for $50,000 or more, the concurrence of the President of the Tax Commission is required.

II. In addition, the Acting President of the Tax Commission, Alfred J. Ranieri,* issued a directive requiring the tax commissioners to state in writing their reasons for granting reductions in property assessments. Prior to that directive, assessments were often reduced by tax commissioners without explanation.

III. Thereafter, on February 13, 1974, newly elected Mayor Abraham D. Beame announced that he had ordered a full review of Tax Commission procedures in an attempt to eliminate abuses in the assessment of the City's taxable real estate. In making this announcement, Mayor Beame stated that Deputy Mayor James A. Cavanagh and four other ranking City officials have been directed to conduct this study and submit a report, with recommendations, by April 1, 1974.

The Commission's report, clearly, was instrumental in bringing about significant constructive changes that were long overdue.

* In January 1974, Mayor Beame appointed Philip E. Lagana as President of the Tax Commission.

II

AN EVALUATION OF THE ADMINISTRATION OF JUSTICE IN NEW YORK CITY

Interim Report Concerning the Operations of Special Narcotics Parts of the Supreme Court

PRELIMINARY STATEMENT

On September 19, 1972, pursuant to his statutory authority, Governor Nelson A. Rockefeller directed this Commission "to monitor, evaluate and make recommendations as to the conduct of elected and appointed public officials entrusted with the enforcement of the laws and the administration of justice in New York City." This report deals with one aspect of that continuing inquiry—the operations of the "Special Narcotics Parts" of New York City's Supreme Court.

For the reasons which are set forth herein, the Commission has concluded that the Special Narcotics Parts have failed to bring about any significant improvements in the administration of justice in connection with narcotics felony cases. There are two major causes of this failure. First, the Special Narcotics Parts are not operating effectively and second, the judges assigned to these parts are not imposing appropriate substantial prison sentences. In fact, over 59 per cent (about three out of every five) of the defendants sentenced have received no jail sentences at all. In short, the Special Narcotics Parts are plainly not fulfilling their intended purpose.

THE BACKGROUND

Before reporting the Commission's findings and recommendations, a brief recital of the events which led to the creation of these Special Narcotics Parts ("Special Parts") is in order.

The Special Parts were created at Governor Rockefeller's urging by Chapter 462 of the Laws of 1971. In approving this legislation the Governor stated in part:

> "It is essential that the coordinated prosecution and centralized direction made possible by this bill be utilized at the earliest possible date. The efficient and skillful prosecution of felony narcotics cases will help to remove more narcotic peddlers from our

streets, deter professional drug traffickers and stem the flow of drugs into our communities."

The need for creation of such a mechanism to deal more effectively with felony narcotics cases was also pointed out in 1971 by this Commission. On March 19, 1971, in our Preliminary Report to the Governor concerning narcotics law enforcement, we stated that "too many felony defendants are able to make bargain deals on their agreement to plead guilty to a reduced charge."

That Preliminary Report contained a number of specific recommendations for improved narcotics law enforcement. The following (set forth on page 10) are particularly relevant:

"2. These (narcotics felony) arrests should receive priority in processing for trial; evidence should be presented to grand juries without delay; these cases should be assigned to judges who will handle all aspects, including preliminary motions, as well as the trial; except in special circumstances, these cases should be brought to trial within ninety days of the date of arrest, whether or not the defendant is in jail in lieu of bail. In this regard, dilatory tactics by the defendant or his counsel should not be tolerated.

3. Only in special situations should any reduction of the felony charges be permitted.

4. Upon conviction of a defendant, judges should impose substantial prison sentences and, indeed, when appropriate, the maximum."

The Commission is convinced that the above recommendations are still sound and should be implemented. Moreover, the Commission's public hearing in April 1971 and detailed Recommendations of July 6, 1971 underscored the need for radical changes in the way the prosecutors and the courts handled narcotics felony cases. The Commission believed that the creation of the Special Parts with prosecutions directed by a Special Assistant District Attorney constituted an important step in the right direction. Unfortunately as detailed below, the Special Parts have not brought about the drastic changes which must be made if narcotics law enforcement is to be truly just and effective.

1. *Legislation*

On June 17, 1971 Governor Rockefeller signed into law Chapter 462 of the laws of 1971. This legislation, which declared that an emergency of grave dimension existed in narcotics law enforcement in New York City, amended the Judiciary Law to add Article Five-B to provide for the "Special Narcotics Parts" of the Supreme Court in New York City. The new law required that at least 12 Special Parts be established and that such parts "hear and determine narcotics indictments assigned thereto from any part of the Supreme Court in any county within the City of New York." The measure also directed the five District Attorneys of the City of New York to formulate and adopt a plan dealing with prosecutorial organization. Special federal and state monies were to be made available to finance the new program.

2. *The Plan*

The Plan agreed upon by the five District Attorneys called for the establishment of five Special Parts ("centralized parts") in New York County and two Special Parts in Bronx, Kings, and New York Counties, respectively, with one Special Part in Queens County ("decentralized parts").

The plan provided that a Special Assistant District Attorney ("Special Assistant") would be in charge of the prosecutions in the five centralized parts and would coordinate the work of the seven decentralized parts. In the performance of his duties as coordinator, the Special Assistant was directed to request and to receive information and statistics concerning all narcotics cases and information about informers. He was also directed to formulate policies, practices and standards for prosecution of cases in the Special Parts.*

The District Attorneys were authorized to employ 36 new Assistants, and a like number of experienced Assistants were to be assigned by the District Attorneys to the Special Parts. The Assistants so assigned were to be transferred to the payroll of the Special Assistant.

Under the Plan all cases developed by the Special Assistant were to be tried in the centralized parts. Further, all felony indictments resulting from the work of the New York City Police Department's Special Investigation Unit and the Joint

* "Special Parts" means all twelve parts.

Narcotics Task Force were to be assigned to the centralized parts by the District Attorneys. All other narcotics felony cases were to be prosecuted in the decentralized parts. Thereafter, it was agreed that felony cases developed by the Office of Drug Abuse Law Enforcement would also be assigned to the centralized parts.

3. *Operation of the Special Parts*

On January 17, 1972 Frank J. Rogers was appointed Special Assistant by the five District Attorneys.* On February 7, 1972, the seven decentralized parts commenced operation, with the Special Assistant acting as coordinator thereof and as Chief of the New York County parts. Assistants were assigned by the District Attorneys to these Special Parts, thereby forming a special narcotics unit in each county.

At approximately this time, District Attorney Hogan of New York County and the Special Assistant received permission to modify the plan to the extent of establishing in New York County a third decentralized part. This part was operated without cost to the main program.

The three decentralized parts in New York County (Parts 45, 46 and 47) and the three Criminal Court Judges Peter J. McQuillan, Lawrence J. Tonetti, and Irving Lang, who were assigned to these parts, became known as the "troika". Part 47 handled pretrial matters concerning New York County narcotics indictments and Parts 45 and 46 handled narcotics trials and Criminal Court matters of all kinds. This system in New York County permitted the Assistants of the special narcotics unit to handle cases from indictment to trial. In the four other counties, Assistants from the Supreme Court Bureau handled the arraignments and conferences and, thereafter, if a guilty plea was not entered, the case was assigned to the special narcotics unit where another Assistant had to become familiar with it.

On September 5, 1972 the five centralized parts opened at 111 Centre Street, New York County. The thirteen Special Parts then in operation continued until November 5, 1972 at which time the so-called "troika" was assigned to handle non-narcotics felony cases and New York reverted to two decentralized parts.

* Mr. Rogers was a Senior Assistant on the staff of New York County District Attorney Frank S. Hogan and is an experienced and highly regarded prosecutor.

On November 6, 1972 District Attorney Hogan, faced with the prospect of his Supreme Court Assistants handling narcotics cases, which thereafter would have to be transferred to the Special Assistant (a situation which still exists in the four other counties), agreed to a merger of his two decentralized parts with the centralized parts and assigned all of his narcotics felony prosecutions to the Special Assistant. Thus, from November 6, 1972 there have been seven centralized parts and five decentralized parts, all with city-wide jurisdiction. The seven centralized parts are designated as Parts A through G. Part A has replaced Part 47 and handles all pretrial matters concerning New York County cases.

Each centralized part is manned by three Assistants working under the supervision of Special Assistant Rogers. Mr. Rogers has told the Commission that the three Legal Aid Society lawyers assigned to each centralized part defend about one-third of all the cases in these parts.

Pursuant to Chapter 462, the State Probation Department has provided probation services for the original five centralized parts. The City Probation Department has continued to service the two newer centralized parts which were originally New York County decentralized parts (now Parts F and G) and also services the five decentralized parts.

FINDINGS AND RECOMMENDATIONS

1. *The District Attorneys Have Failed to Provide For Unified Prosecution of Narcotics Felony Cases*

The Special Parts were established to provide a new and more effective approach to narcotics felony prosecutions. The program called for the unification of forces under the leadership of a Special Assistant. The plan for prosecutorial organization, formulated by the District Attorneys, did not fully accomplish this purpose. Rather than providing for meaningful "coordinated prosecution and centralized direction," the District Attorneys created a further division of authority by placing the Special Assistant in charge only of the centralized parts, while retaining for themselves control over the decentralized parts and the assignment of cases to all Special Parts.

2. *The Special Assistant Should Be in Charge of All Felony Narcotics Prosecutions*

(a) *Organization*

The Commission believes that the concept of coordinated prosecution embodied in the legislation establishing the Special Parts is sound and that this concept should be implemented wholeheartedly. The Commission commends District Attorney Hogan for assigning all of his narcotics cases to the centralized parts immediately after indictment*; nevertheless, we believe that even a more basic change is called for. Accordingly, the Commission recommends that the Special Assistant be the prosecutor in charge of all narcotics felony investigations in the City of New York and that his office handle all such cases from the time of arrest and arraignment in Criminal Court through presentation to the Grand Jury and trial. Indeed, the Commission recommends that all felony narcotics violators be arraigned to the extent possible in a Special Part as opposed to arraignment in the Criminal Court, except in Richmond County which has no special part. In Richmond all such arraignments in Criminal Court should be conducted under the supervision of the Special Assistant.

(b) *Plea Bargaining*

By placing an Assistant from the Special Assistant's staff in charge of the case from the outset not only would the entire prosecutive effort be strengthened but also a unified policy with respect to plea bargaining could be established.

Mr. Rogers' present plea bargaining rules with respect to "triable" cases are:

1. No lesser plea will be accepted in Class A or Class B Felony cases.**

2. Where a narcotics indictment also charges either bribery of a public official or criminal possession of a loaded gun, no

*Mr. Hogan is the only District Attorney to have done this.

**A Class A Felony is the possession or sale of 16 oz. (1 lb.) or more of heroin, morphine, cocaine or opium. A Class B Felony is the possession or sale of between 8 oz. to 16 oz. of the same drugs or the sale of a narcotic drug to a person less than 21 years old. A Class A felony is punishable by an indeterminate sentence with a maximum of life imprisonment and a minimum sentence of fifteen years. A Class B Felony is punishable by an indeterminate term with a one year minimum and a 25 year maximum.

lesser plea than to the bribery or gun charge (both are Class D Felonies) will be accepted.

3. In all other "triable" cases except those involving marijuana indictments, the only acceptable plea is "one step down and no promises." This latter rule means that a defendant charged with a Class C Felony (maximum sentence 15 years) may plead guilty to a Class D Felony (maximum sentence 7 years), with no promise by either the judge or the Assistant as to possible sentence.

These rules, Mr. Rogers explained, must be followed unless the Assistant handling the case obtains his prior approval of different treatment. According to Mr. Rogers, such approval is granted only in special situations.

Adoption of this unified approach under Mr. Rogers' control will avoid the kinds of miscarriages of justice which now occur with undue frequency. The following recent case is a typical example of the deficiencies in the present system.

A 32 year old non-addict defendant was arrested and charged with the Class C Felony of selling 15 bags of heroin to an undercover police officer. When arrested, an additional 10 bags were found on his person. The defendant was arraigned in Night Court and held in lieu of bail for appearance in Criminal Court. Two days later, when the case came on in Criminal Court, the defendant was permitted to plead guilty to a Class A misdemeanor charge of possessing dangerous drugs. This meant that instead of conviction of the felony of selling heroin—the crime defendant actually committed and for which he could have received up to 15 years in jail—the defendant pleaded guilty to a reduced misdemeanor charge, which carried a maximum sentence of one year in City Prison. The judge has indicated to the defendant that he will receive at least a nine-month sentence. This case was disposed of in Criminal Court and never reached Mr. Rogers' attention. Moreover, the Commission understands that no meaningful effort was made to develop from this defendant any information as to his source of supply.

The Commission's inquiry into this case established the even more disturbing fact that the Police Department's Narcotics Division did not regard the result as unsatisfactory. This reaction is based on the Department's recognition that in most such cases no jail sentences are imposed. Although perhaps

understandable in the light of present conditions in the courts, this defeatist attitude is nonetheless alarming.

(c) *Coordination with Police and Calendar Control*

Consolidation under the Special Assistant on a city-wide basis would also enable the Police Department to develop cases, many of which transcend county lines, under the supervision of a single prosecutor whose Assistants would all be specialists in narcotics enforcement.

Furthermore, with the Special Assistant in charge of all narcotics prosecutions, the concept of centralized and decentralized parts could also be eliminated. There would be twelve special parts available with city-wide jurisdiction and cases could be handled so as to insure the most rapid disposition of major cases.

The need for such a program is demonstrated by the fact that as of early March 1973 there were 103 Class A and Class B Felony cases awaiting trial in the five decentralized parts, while at the same time only 37 such cases were awaiting trial in the seven centralized parts. In this regard the Commission has found evidence that the District Attorneys of some counties outside of New York County are using the centralized parts as a dumping ground for their older, weaker, and less serious narcotics felonies. This is at odds with the concept of the legislation and indeed would appear to be at odds with the District Attorneys' own plan.

(d) *The Special Assistant's Staff*

In addition to having complete control over all narcotics felony cases, the Special Assistant should also be permitted to recruit and hire his own staff. The present policy of some District Attorneys to rotate Assistants in and out of the Special Parts deprives the Special Assistant of experienced prosecutors.

(e) *Wiretap Orders*

In the war on major drug traffickers one of the principal weapons is the wiretap. Deputy Chief Inspector William T. Bonacum, head of the Police Department Narcotics Division, reported on February 19, 1973 that 72 wiretap orders were obtained by the police in 1972. It is of great importance, therefore, that procedures be established which will guarantee that

any wiretap or eavesdropping order that is obtained will be able to resist legal attack. Following are two examples of recent cases in which the questionable validity of a wiretap order thwarted a major prosecution.

In one case, five defendants were charged with possession of 1 lb. 6 oz. of heroin, a Class A Felony. A motion to suppress was made challenging the validity of the wiretap order obtained by the District Attorney. The Special Assistant, who received the case after indictment and thus played no role in securing the wiretap order, determined that the validity of the wiretap was questionable and, accordingly, was compelled to permit the five defendants to plead to a Class D Felony.

In the second case which involved three kilograms of heroin (over 6½ lbs.), prosecution may be terminated because a copy of an affidavit submitted in support of an application for a renewal of the wiretap order cannot be found by the District Attorney. By requiring that the Special Assistant prepare all wiretap and eavesdropping applications for the District Attorneys* in narcotics cases—cases which his office should handle later anyway—a greater degree of knowledge and legal proficiency should make for fewer defective applications and orders.

Moreover, centralized control of wiretap and eavesdropping orders will better safeguard the tapes and transcripts involved. The Commission has found evidence of a need for greater safeguards of these items.

Further, centralized control over wiretap data will allow the creation of an intelligence system, which will materially aid investigations and lessen the duplication of efforts among prosecutors which now takes place.

(f) *Informers*

An additional reason for granting the Special Assistant control over all felony narcotics prosecutions is that in so doing the use of informers will be better coordinated and regulated.

Effective enforcement of the laws against narcotics trafficking depends, to an extent greater than the enforcement of most other laws, on the use of informers. The "coordinated prosecution and centralized direction" sought by Governor Rockefeller and the Legislature requires a central agency to monitor

* CPL §700.05 limits applicants for wiretap warrants to District Attorneys or the Attorney General in conformity with the federal statute (18 U.S.C. §2516(2)).

and evaluate the information provided by informers—especially when those informers may be engaged in activities which may subject them to criminal prosecution. Serious problems and the possibility of corruption can follow from the absence of "centralized direction" of informers. For example, in 1972 one District Attorney insisted on the arrest and prosecution of an individual who apparently was acting as an informant for another District Attorney's office. Such incidents are an embarrassment to law enforcement and could be avoided by centralized direction of informers.

Another problem is that, at present, representations can be made by police officers and defense counsel to probation personnel and sentencing judges that a person engaged in the narcotics traffic is an informer and therefore entitled to special consideration. Unless properly confirmed, this can sometimes be done even though the person is either not an informer at all or his information is insufficient to justify any special consideration. Centralizing control over informers with the Special Assistant cannot help but reduce the possibility of such abuses. Such control is also vital from an intelligence standpoint.

(g) *Statistics*

One of the important tasks the Special Assistant is required to perform as coordinator of the decentralized parts is the compilation of statistics concerning narcotics prosecutions. To date, this task has been complicated by the difficulty in obtaining such statistics due to both a lack of manpower in the decentralized parts and a shortage of trained personnel. Furthermore, the statistics available relate mainly to those cases which have already been terminated.

The available statistics do not include details with respect to each case including the initial charge, the plea accepted, and the sentence imposed. Such data is crucial in obtaining an accurate picture of how the Special Parts are operating. Finally, information as to the number and types of pending cases and the quality and quantity of drugs involved is not centrally located as it should be.

Recognizing the importance of this type of information, Mr. Rogers has, on occasion, assisted the District Attorneys in collating their statistics by assigning his personnel to their parts. The problem still exists, however, and will only be remedied by the merger of all of the Special Parts under the leadership

of the Special Assistant. Such unification will permit the compilation of meaningful statistics which may then be used effectively to monitor and evaluate the operation of the Special Parts.

3. *Sentences Imposed in Special Parts Are Excessively Lenient*

(a) *Sentencing Statistics*

In the period from September 5, 1972 to March 22, 1973 narcotics felony cases involving 1,966 defendants were assigned to the centralized parts; cases of 703 defendants were completed; and 1263 defendants were awaiting disposition. Of these 703, 17 obtained acquittal and 28 dismissal. Some 135 either pleaded guilty to other charges or had their cases returned to the sending county for disposition. Ten defendants died and one was committed to Mental Hygiene.

Of the remaining 512 defendants who either pleaded guilty or were convicted, 326 were sentenced as follows*:

State Prison	93	28.5%
City Prison	40	12.3%
Narcotics Addiction Control Commission	60	18.4%
Probation	127	39.0%
Conditional Discharge	6	1.8%

Thus, as of March 22, 1973 over 59 per cent of those sentenced in the centralized parts received no jail term. And even taking into consideration those sentenced to the custody of the Narcotics Addiction Control Commission, better than two out of every five defendants have walked out of court with no incarceration of any kind. Similar lenient sentences were meted out in the decentralized parts. These sentences support the conclusion that judges in New York City apparently do not consider narcotics felonies to be serious crimes warranting substantial jail sentences and the removal of narcotics peddlers from our streets.

(b) *Need for Legislation Providing for Mandatory Minimum Sentences*

Since the judges assigned to the Special Parts have not put a stop to the revolving door treatment of narcotics felony

* The remaining 186 had not been sentenced as of March 22, 1973.

offenders, the Commission believes that the time has come for a more positive and realistic approach to this problem.

The Commission recommends that the laws dealing with narcotics crimes be amended to establish mandatory minimum sentences with no probation, parole or commitment to NACC possible.* Drug traffickers must be made to realize that conviction of a narcotics felony will mean a substantial jail sentence.

The Commission's investigation into the operations of the Special Parts has established that without legislation mandating the imposition of substantial prison terms for narcotics felony convictions, most judges simply will not impose such sentences.

For example, the five individuals (see pages 12 and 13, *supra*) who were charged with a Class A felony after being apprehended with 22 oz. of heroin in their possession pleaded guilty to a Class D Felony. Mr. Rogers advised the Commission that, although the lesser pleas were accepted, defendants were told that the Assistant would make a recommendation that a substantial jail sentence be imposed. The prosecutor's recommendation was made to the probation officer assigned to the case but the Probation Department nevertheless recommended outright probation for all. The sentencing judge, although aware that the defendants were arrested in a heroin cutting factory, accepted the Probation Department's recommendation and placed the five defendants on five years' probation. Not one of these defendants cooperated with the State. Such a sentence is insupportable.

In another case a twenty-seven year old non-addict defendant was charged with the Class B felony of selling heroin in a schoolyard to a minor. At the time of his arrest defendant had an additional 120 grains (about ¼ of an ounce) of heroin in his possession. For some unknown reason, which is presently being investigated by Mr. Rogers, the defendant was permitted to plead to a Class E felony and was placed on probation. The probation report highlighted the fact that the defendant was not an addict, was not overly bright, and only wanted a nice home and a good job. Probation stated that with strict supervision there was a possibility of rehabilitation. Thus, in this

* Of course, even enactment of legislation requiring such sentences will be ineffective unless either plea bargaining is eliminated altogether in these cases or, at the very least, the present plea bargaining policies of Mr. Rogers are rigidly followed.

case involving a sale of heroin to a minor strictly for profit, the defendant was permitted to return to the streets without incarceration. Since probation by itself will provide him with neither a nice home nor a good job, it is reasonable to assume that he may well return to selling heroin.

In yet another case the defendant pleaded guilty to a narcotics felony charge and was sentenced to a conditional discharge. Such a sentence is illegal and is presently being investigated.

These sentences, and they are fairly representative of those studied by the Commission, would appear to emphasize that the only way to make sure that defendants receive the sentences fitting their deeds is to establish mandatory minimum jail terms.

(c) *New Correctional Facility*

While some will argue that mandatory minimum sentences are unduly harsh on first offenders, nevertheless the Commission believes that such legislation is necessary. In this connection, the Commission urges that consideration be given to the creation of a new and special type of correctional facility to house those convicted for the first time of narcotics felony charges. While keeping such offenders off the streets and away from bad surroundings, this facility should operate so as to provide ample opportunities for rehabilitation, with particular attention to education and job training. It is clear that many of these violators require incarceration in both their own and the public interest. However, it is also clear that many of them, particularly first offenders, could be rehabilitated if meaningful steps were taken in that direction.

4. *The Probation Department Should Review its Policy of Recommending Probation in Felony Narcotics Cases*

On the basis of the facts developed thus far in the investigation it would appear to be the policy of particular probation personnel of both the State and City Probation Departments to recommend probation where a defendant does not have a previous criminal record. To the extent that this policy exists, it would seem, in effect, to supersede and void the provision of current law applicable to narcotics felony offenders. Such a policy is clearly not in the public interest and it is highly

questionable that it is even in the best interests of the convicted defendants themselves.

Putting to one side first offenders, the Commission was startled to find that of 48 cases reviewed by the Commission, in which probation was recommended after felony conviction in the Special Parts, 27 defendants had prior convictions. This is an extremely serious situation, which requires further study. The Commission is now conducting such an inquiry.

Conclusion

This report has set forth the Commission's findings as to the major shortcomings of the Special Narcotics Parts together with specific recommendations for improving their operations. The instant investigation has left the Commission with a frustrating sense of *déjà vu*. It is 1971 revisited. Justice is still not being administered.

Despite the Commission's 1971 findings and recommendations, and despite the efforts of the Governor and the Legislature and the expenditure of substantial funds to reform the situation which then existed, very little has changed. The Commission again finds that the present system is inadequate and not responding to the needs of the existing deplorable conditions. As presently operated it is not fulfilling the expectations of the Legislature and the stated goals of the Governor which were "to remove more narcotic peddlers from our streets, deter professional drug traffickers and stem the flow of drugs into our communities."

Certainly, it is time we started doing just that. If we do not, government will have failed to discharge one of its most fundamental obligations to the people of New York.

III
REPORT OF AN INVESTIGATION CONCERNING THE OFFICIAL CONDUCT OF CERTAIN MEMBERS OF THE POLICE DEPARTMENT AND THE VILLAGE JUSTICE OF THE VILLAGE OF SARANAC LAKE, NEW YORK

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III

REPORT OF AN INVESTIGATION CONCERNING THE OFFICIAL CONDUCT OF CERTAIN MEMBERS OF THE POLICE DEPARTMENT AND THE VILLAGE JUSTICE OF THE VILLAGE OF SARANAC LAKE, NEW YORK

INTRODUCTION

In July of 1972, the Commission was contacted by the Deputy Mayor of the Village of Saranac Lake, New York. This official alleged that several hundred dollars in cash, representing traffic fines paid to the Saranac Lake Police Department, were missing from police headquarters. He stated further that he considered the local Police Chief's efforts to account for these missing funds to have been totally inadequate; in addition, efforts to gain the active assistance of the Franklin County District Attorney had proven fruitless. The Deputy Mayor was appealing to the State Commission of Investigation for assistance because, in his words, he "didn't know where else to go."

Based upon these allegations, Commission staff members visited Saranac Lake to obtain a comprehensive view of the problem. Following interviews with numerous local officials, it became apparent that the Village of Saranac Lake's problem extended beyond the question of "who took the money?"

The situation, as developed during the course of these interviews, and subsequent examinations of pertinent official documents and records, revealed a trail of ineptitude and inefficiency, extending through the Village of Saranac Lake Police Department and the local court system.

Furthermore, and more significantly, the Commission's inquiry was extended into a full examination of the Saranac Lake Village Justice Court with respect to its operation and the maintenance of its financial accounts and specifically, the arrest, prosecution and incarceration of one Gerard Bombard.* The incredible laxity and confusion with which this case was handled by all concerned, the police, the prosecutor and the

*The Commission's investigation revealed that many of the shortcomings manifested by the Saranac Lake Village Court and its incumbent Justice, are reflected in the operations of a majority of the approximately 2,500 Town and Village Justice Courts throughout New York State. See section entitled "Other Reactions to the Justice Court System."

courts, illustrate the shortcomings of criminal justice at that local level.

I. *THE MISSING TRAFFIC FINES*

By way of background, the Village of Saranac Lake is located in Franklin County in the northeastern part of the State. The Village, with a population of 5,500, which increases to approximately 7,000 during the summer vacation season, has a police department consisting of 14 men, supervised by a Chief of Police. Traffic tickets are routinely written for the usual range of violations by the members of this department. The recipients of these tickets have the option of pleading guilty and paying a statutory fine directly to the Police Department or pleading not guilty and having their case heard by the Saranac Lake Village Justice.

Traffic tickets issued for parking violations consist of three portions: the first is issued to the violator, the second is turned in to police headquarters at the end of a tour of duty, and the third is a stub which remains in the officer's book.

Cash fines were accepted by the desk officer at police headquarters in accordance with the above procedure. These fines were placed routinely in an unlocked file drawer located in the main room where the desk officer was located, which room was also used as the Police Chief's office.

In April 1972, a member of the Saranac Lake Police Department, while checking certain fines received by him during a previous tour as desk officer, found three such fines (totaling $12) and their accompanying informations, to be missing. At approximately the same time, the Deputy Police Chief found that an additional $5 fine and information were also missing.

When these shortages were brought to the attention of the Chief of Police, he directed that duplicate informations be drawn to replace the missing ones and he (the Chief) then personally made up the $17 shortage.

Upon cursory further examination, the Chief apparently found a number of additional cash fines, and their accompanying informations, missing. He thereupon requested the New York State Police to administer polygraph tests to all 14 members of the Saranac Lake Police Department. The Village Justice also underwent a polygraph test, and according to the Police Chief's first statement to the Commission, the results of these tests failed to establish a suspect.

At about the time the Chief requested the polygraph tests, he made his initial report of the missing moneys to the Saranac Lake Village Manager, who in turn reported the matter to the Village Mayor.

The Mayor then requested the New York State Department of Audit and Control to conduct a complete examination of the books and records of the Saranac Lake Police Department, the Saranac Lake Village Court and the Harrietstown Town Court* with a view to determining the exact amount of money missing. The Department of Audit and Control subsequently conducted such an examination and forwarded the results to the Franklin County District Attorney. It is important to note, however, that because the report of this examination had not as yet been released publicly, Audit and Control declined to release said report to the Saranac Lake officials who had requested the examination in the first place.

Unable to secure the results of the Audit and Control examination and dissatisfied with the Police Chief's ineffective efforts at investigating the missing funds, the Mayor and Deputy Mayor contacted the Franklin County District Attorney for assistance. The District Attorney in turn informed these officials that the information supplied to his office by the Department of Audit and Control was insufficient for criminal charges, and that therefore he could render no further help.

Faced with the above described predicament, and feeling greatly frustrated, the Village officials turned to the State Commission of Investigation as a last source of assistance.

The Commission, after conferences with all of the local officials involved in the foregoing chronology, requested and received from the State Department of Audit and Control a copy of the report of its aforesaid examination; in addition, members of the Commission's staff conferred with the auditors who conducted this examination. Based upon the results of this examination, and the subsequent investigation made by the Commission, the following facts were developed.

A. *THE AUDIT AND CONTROL EXAMINATION*

1. *The Saranac Lake Police Department*

As stated previously, parking violation fines were often paid directly to the Police Department. This collection function was

* The Village of Saranac Lake lies partially within the Township of Harrietstown. The Saranac Lake Village Justice also sits as the Harrietstown Town Justice.

performed by the Saranac Lake Police Department without statutory authority.* The General Municipal Law (Article 14-b) authorizes the legislative body of a village to establish a traffic violations bureau to assist in the disposition of offenses in relation to traffic fines. No such action was found to have been taken by the Saranac Lake Village Board. Consequently, the Saranac Lake Village Police Department had no authority to collect traffic fines.

With respect to the parking tickets themselves, the State audit found that no record or control was maintained for the tickets given to police officers for issuance to parking violators. This lack of accountability for tickets, and the variable amount of fines (from $1 to $5) which could have been imposed using the same tickets, prevented a satisfactory verification of the receipts which the Police Department issued for most moneys received.

In addition, the State auditors took a sample test of two different groups of 200 consecutively numbered tickets. The records available to them disclosed the following dispositions:

	%
Total Sample (400 tickets)	100%
Paid	65%
Dismissed	10%
Pending	5%
Total Accounted For	80%
Disposition Unknown	20%

2. *The Village Justice*

Karl J. Griebsch, the Saranac Lake Village Justice, has served in that position since April 6, 1970, following his election. At the time of this investigation, Judge Griebsch conducted Village Court two evenings a week. Prior to his election, Judge Griebsch held the appointive position of Acting Village Justice for several years. In addition to his judicial duties, Judge Griebsch is regularly employed as a member of the "night maintenance crew" at a local armory. He is also a sales representative for a vacuum cleaner manufacturer.

*In some instances, the police officer on duty at police headquarters also performed the "judicial" function of dismissing the charges upon an "appropriate defense" such as "dead battery."

The State auditors were highly critical of the manner in which Justice Griebsch maintained his records and handled fines and bail moneys received by him. The auditors pointed out that "in various instances moneys received as bail were not deposited but later returned to defendants in the form received. Fines and other moneys received by the Justice were seldom deposited in his official bank account within seventy-two hours. Rule 7 of the Judicial Conference* requires that all moneys received by a Justice in his judicial capacity should be deposited in his official bank account within seventy-two hours. Return of bail should be made only by check drawn on the official bank account."

The Department of Audit and Control found further that it was a practice not to issue receipts for fines received by mail at the Police Department. As a result, the records of Judge Griebsch showed that 685 parking fines totaling $2,134.80, which had been accounted for and reported by him, could not be identified with any duplicate receipts found on file in the Police Department.

More significant however, was the fact that duplicate receipts *were* found on file indicating that 485 parking violations totaling $1,679, and 4 other fines totaling $185, were not reflected in Judge Griebsch's records. These fines were not accounted for in cash by either Judge Griebsch or the Police Department. In other words, the State Department of Audit and Control found that $1,864 in fines, for which receipts had been issued, was missing.

B. *THE COMMISSION'S INVESTIGATION*

The Commission, as noted previously, after examining the foregoing material and conferring with the State auditors, decided to probe further into the facts surrounding these missing moneys.

An examination of the Saranac Lake Police Department records for the period in question (April 1970 through May 9, 1972) revealed a large paperboard carton at police headquarters into which had been dumped 2,000-3,000 paid parking tickets. A number of receipt books were produced for the Commission's inspection. While a sampling indicated that some

*The Administrative Board of the Judicial Conference of the State of New York is empowered to enact rules for the operation of the Justice Courts throughout the State of New York. (Uniform Justice Court Act, Section 2103)

of these receipts appeared to cover the aforementioned paid parking tickets, others were issued for a number of other purposes, including the receipt of fines for other miscellaneous criminal matters, the refund of bail moneys, the return of property taken from prisoners while held by the Saranac Lake Police Department and for the transfer of contraband to other police agencies.

Aside from the obvious confusion inherent in this sort of careless and mixed record keeping, it also revealed that criminal fines and bail moneys which, pursuant to Section 2021 of the Uniform Justice Court Act (U.J.C.A.) "must be received by the court," were being received without authority by the Police Department.

An examination of the record-keeping and procedural practices of Village Justice Griebsch in regard to parking and traffic violations produced further evidence of startling inadequacies and repeated violations of statutory requirements.

For example, when the State auditors first asked Judge Griebsch to produce his books and records for examination, he requested additional time to bring them up to date. The Commission's investigation disclosed that he failed to enter cases which came on before him in his docket book as they were heard. This was in contravention of the requirement of Section 2019-a of the U.J.C.A.* which states

> "All justices of courts governed by this act shall forthwith enter correctly at the time thereof, full minutes of all business done before him as such justice in criminal actions and in criminal proceedings and including cases of felony, in a book to be furnished to him by the clerk of the village or town where he shall reside, and which shall be designated 'Justices' Criminal Docket,' . . ."

Further, based upon the facts uncovered by the State auditors, it was determined that Judge Griebsch had not transmitted to the State Comptroller any reports or fines collected by him from October 1969 through August 1970—a period of ten

*This section is derived from Section 220 of the old Code of Criminal Procedure which had substantially the same requirements and was in effect during the period under discussion. Because this new section, 2019-a of the U.J.C.A. is referred to several times throughout this report, it is set forth in its entirety at Appendix "A" hereof.

months. This constituted a clear violation of Village Law Section 185* which requires of the Village Justice that

> "All such costs, fees and expenses, and all fines and penalties or other money so paid to him in any proceeding during any calendar month shall, . . . be paid by such justice to the state comptroller within the first ten days of the month following collection . . ."

It should be noted however, that when this was brought to his attention, Judge Griebsch belatedly submitted the delinquent reports and fines.

In addition, conferences with Judge Griebsch and the examination of his books and records reflected that he regularly failed to make timely deposits of moneys received by him in his official capacity, contrary to the requirements of law as stated above. Upon further examination, the Commission found this failure to make required timely deposits was a major factor in the missing traffic fines.

Under questioning, police officials and Judge Griebsch conceded that cash fines were left to accumulate in the aforementioned unlocked drawer in police headquarters for periods of several weeks at a time. Judge Griebsch's laxity in making deposits led to the situation where relatively large amounts of cash were allowed to lie about, within easy access, in an area where numerous persons moved about under minimal security.

C. *THE POLICE INVESTIGATION*

The Commission attempted to ascertain what efforts were made by the Police Chief to investigate this loss of $1,864 of official funds from his own office.

During the Commission's first conferences with the Chief, he maintained that he regarded the negative results of the previously discussed polygraph tests as indicating that none of the members of his Department were involved in the theft. The Chief failed to mention the existence of any suspect, nor did he indicate that any investigation had been conducted beyond the administration of the polygraph tests. He had decided that the money was probably taken "by some prisoners who had

*Village Law Section 185 directs its provisions at "police justices," which phrase is used interchangeably with "village justice," and the provisions of the section have been held to apply to both offices. In any event, this section has been repealed and replaced with Section 4-410, 1.b of the new Village Law embodying substantially the same provision, effective September 1, 1973.

been left standing around the office." It was obvious to the Commission that this theory was absurd because an analysis of the receipts indicated that the money was taken in small amounts over a period of 26 months (April 1970-May 1972).

When it became apparent that no genuine effort had been made to determine who took the money, the Commission decided to inquire whether in fact a suspect might have been uncovered. This approach proved fruitful.

The Commission, aware of Judge Griebsch's close personal association with members of the Police Department,* decided to question him concerning possible suspects among the Village police officers.

When asked about the polygraph tests given the police officers, the Judge stated that the results of such tests, regarding one of the patrolmen, were sufficiently questionable to warrant investigation. Judge Griebsch further stated that this officer, Patrolman "X"**, had been allowed to resign from the Saranac Lake Police Department shortly after the discovery of the missing funds. As to Patrolman X's then whereabouts, Judge Griebsch added that he was at that time employed by the Deputy Police Chief in his (the Deputy Chief's) private road paving business. Faced with this new information, the Commission attempted to ascertain whether Patrolman X should in fact have been a viable suspect, readily identifiable as such to the Chief. The result of simple record checking answered this strongly in the affirmative.

First, it was decided to review Patrolman X's personnel file to obtain data regarding his background and performance in the Department. The Commission discovered however, that the Saranac Lake Police Department maintains no personnel files on any of its men. Indeed, the Department's files reviewed by Commission representatives, appeared to be so minimal, both in terms of subject heading and substance, as to be virtually useless. When the question of Patrolman X's background was pressed, the Deputy Chief dispatched a messenger to the Chief's home (the Chief being on sick leave at the time), said messenger returning shortly with a single sheet of paper on which had been typed the following facts regarding Patrolman X's service record:

* Judge Griebsch uses the Saranac Lake Village Police Department letterhead as his official stationery.

** Patrolman X's true identity is known to the Commission.

Appointed to the S.L.P.D. on July 24, 1967
Left the Department on January 1, 1972
Reappointed to the Department on January 27, 1972
Resigned on May 25, 1972

These dates proved of considerable interest in that the daily analysis of the missing funds, as compiled by the Department of Audit and Control, revealed that the amount of moneys taken from the unlocked drawer declined to almost nothing during the period of Patrolman X's absence from the force (January 1—January 27, 1972), and then immediately rose upon his return. While it is true that this breakdown of the missing moneys by date was part of the Audit and Control report which the Chief did not have, still, these facts were extracted from Departmental records and as such were always available to him.

In light of the information that Patrolman X had not "passed" his polygraph test, and the further evidence resulting from the foregoing analysis of the missing funds, the Commission then sought to determine under what circumstances Patrolman X was allowed to resign from the Department. Moreover, there was the puzzling allegation that Patrolman X had, immediately following his resignation, been privately employed by the Deputy Police Chief.

When confronted with the suggestion that the results of Patrolman X's polygraph test should have immediately identified him as a possible suspect, the Chief conceded that to be true. This was in contradiction of his earlier statement that such tests had failed to establish a suspect. He stated however, that after "speaking to Patrolman X" and hearing his denial of involvement in the matter, he (the Chief) felt that no further investigation was warranted. In an attempt to justify his failure to take further action, he said that since the State Department of Audit and Control had forwarded a copy of their audit report to the Franklin County District Attorney, he believed that this matter was in the hands of that official and he (the Chief) was relieved of any other responsibility for the case.

It should be noted that the Chief made no effort to contact the District Attorney to determine whether or not he was proceeding further in the matter or to offer whatever assistance might be necessary. Also, the Chief failed to inform the District Attorney of the questionable results of Patrolman X's

polygraph test. The District Attorney, upon receipt of the Audit and Control report, and nothing more, thereafter informed the Mayor of the Village of Saranac Lake that the information contained in said report was insufficient for any criminal charges.

In regard to Patrolman X's history of employment with the Department, the Deputy Chief* explained that on January 1, 1972, Patrolman X resigned rather than accept a fine for a minor Departmental infraction. On January 27, 1972, all parties apparently having undergone a change of heart, Patrolman X was reappointed to the Department. However, on May 25, 1972, Patrolman X again resigned, according to the Deputy Chief, because of his dissatisfaction with working the night shift.

As to Patrolman X's subsequent private employment by the Deputy Chief, the following facts were disclosed.

The practice of unlimited moonlighting, or holding second-front employment by members of the Saranac Lake Police Department is permitted, if not actively encouraged, by the Chief of Police. The result of this is that some members of the Department engage in private activities which, in terms of income and time requirements, appear to make their police duties their secondary employment.

A prime example of this is the Deputy Chief himself. When not actually performing his police functions, he owns and operates a highly profitable road paving business. Its degree of activity and success can be measured by the fact that the Deputy Chief candidly conceded grossing approximately $80,000 per year from this operation, as contrasted with his $9,500 annual salary from the Police Department. The Chief, whose salary is $10,500 per year, made no attempt to hide the fact that he freely permitted members of the Department to engage in virtually unlimited secondary employment. His rationale for this practice was that the salary levels in his Department** are so low that if he were to limit "moonlighting" it simply would not be possible for him to retain patrolmen.

In this connection, it developed that Patrolman X had been moonlighting, for most of the period of his tenure with the Police Department, as an employee of the Deputy Chief's

*At this time the Chief was still on sick leave, however, he later confirmed this information.

**An entering patrolman is paid $5,200 per year.

paving firm. When Patrolman X resigned from the Department on May 25, 1972, the Deputy Chief simply converted him from a part-time to a full-time employee of his firm. The questionable propriety of this action—at the time of his resignation Patrolman X should certainly still have been regarded as a suspect—apparently never occurred to either the Deputy Chief or the Chief of Police.

The laxity and inefficiency of the Saranac Lake Police Department, as indicated above, prompted the Commission to inquire of Village officials as to whether this was typical of local law enforcement. In response, it was suggested that the Commission examine into the handling of a grand larceny committed by one Gerard Bombard. The Commission's subsequent inquiry into this case produced further startling revelations of inept and deficient law enforcement.

II. *JUSTICE COURTS IN NEW YORK STATE*

It appears that an incident occurring in September 1971, approximately six months prior to the theft of the traffic fines, aroused suspicion in the minds of some Saranac Lake Village officials about the efficacy of the Village law enforcement machinery.

At that time, a local resident, one Gerard Bombard, was arrested and charged with the felony of grand larceny in the third degree. He had "confessed" to stealing material from his employer, a local hardware supplier. Bombard's subsequent tortuous course through the confused labyrinth of the local criminal justice system warrants setting forth in detail.

Bombard's post-arrest problems were largely the result of his appearances before the Saranac Lake Village Justice Court. Because of this, some preliminary background concerning the origins and functioning of this judicial office will be helpful before discussing the case itself.

The "criminal courts" of the State of New York are composed of "superior courts" and "local criminal courts." A "superior court" is any supreme or county court. A "local criminal court" is any district, city, village or town court, and any such "local criminal court" where a Supreme Court Justice or County Court Judge may be presiding. Criminal Procedure Law, Section 10.10.

While the Village Court, presided over by a Village Justice, and the Town Court, presided over by a Town Justice, are

not "courts of record," nonetheless they are an integral and important part of the State's judicial system. Judiciary Law, Section 2. The orderly, uniform and just administration of the laws by these courts is of vital importance to the citizens of this State.

Historically, the office of Town Justice, formerly known as the Town Justice of the Peace, can trace its Constitutional origins to England prior to the discovery of America. Its incorporation into the judicial system of the State of New York dates from the British colonization of New York State in 1664. Successive delineations of the powers, duties and responsibilities of the Town Judge were effected by the Revised Laws of 1828, the Justice Court Act of 1920, the 1938 Constitutional Convention Commission, the Town Law adopted in 1934, the 1962 Court Reorganization Amendment and the Uniform Justice Court Act effective September 1, 1967.

With the incorporation of the Village of Lansingburgh in the Town of Rensselaerwyck in 1790, villages made their initial appearance in the local governmental structure of the State of New York.* However, the origin of the office of Village Justice, then known as the Village Police Justice, did not come about until the New York State Constitutional Convention of 1846.** Power was given to the Legislature in 1869 to create this judicial office and that power was first exercised in 1871.

While originally the Village Justice had only criminal jurisdiction concurrent with that of the Town Justice, in 1911 civil jurisdiction was also conferred.*** Its present structure is a product of the Uniform Justice Court Act of 1966.

Hence, while the offices of Village and Town Justice are specifically authorized by the Legislature, implementation of these offices into local government is discretionary with the Board of Trustees of each village and town. If the offices are implemented by resolution of the Board of Trustees, they must be filled by a general election and the tenure of the Justices so elected is four years. Village Law Sections 4-414, 406, 408(3).

The subject matter jurisdiction of the Village Court, while

* History of the Village Law, McKinney's Village Law, 1951 Edition, page VII.

** Temporary State Commission on the Constitutional Convention, 1967, page 266.

*** Laws of 1911, Ch. 501.

limited, is both civil and criminal in nature. Its territorial jurisdiction is co-equal with the geographical boundaries of the village. Village Law Sections 182, 196.

Insofar as its civil jurisdiction is concerned, the monetary limitation of cases coming within its jurisdiction varies according to village population. In Saranac Lake, which is a village of the first class, the Village Justice may entertain causes of action for amounts up to $1,000. Village Law Sections 186, 4-400.

In criminal matters, the Village Justice has trial jurisdiction over all offenses and misdemeanors, subject to the right of removal of misdemeanors to a Grand Jury. The Justice has no trial jurisdiction as to felonies. Criminal Procedure Law Section 10.30, Village Law Section 182.

A. *THE VILLAGE JUSTICE*

As stated above, the creation of the office of Village Justice is discretionary with the Village Board of Trustees. As to the qualifications for such office, it should be noted that a Village Justice need not be a member of the Bar. In addition to the standard requirement of citizenship and residency, if the office of Village Justice is filled by a non-lawyer, such person must complete a brief course of training prescribed by the Administrative Board of the Judicial Conference of the State of New York.

Also, it is permissible for a Village Justice to serve concurrently as Town Justice. In such case, it is mandated that separate books and records be maintained for the Village Court and the Town Court. Village Law Section 4-404. In this connection, it should be noted that Judge Karl J. Griebsch, who is not an attorney, served in the elective posts of both Saranac Lake Village Justice and Harrietstown Town Justice during the period of the events herein detailed.

III. *THE BOMBARD CASE*

ARREST—INCARCERATION—CONVICTION

The facts developed by the Commission revealed that Gerard Bombard had, prior to September 1971, been an employee of a large local hardware and building supply concern. Bom-

bard's employer had gradually developed suspicions concerning certain "sales" of merchandise consummated by Bombard. Following private investigation conducted by the employer, Bombard was confronted with certain facts and conceded that he had, over a period of months, been stealing merchandise from his employer and selling it at discount prices to a local contractor (Mr. "Y").* Bombard admitted that he had previously entered into an agreement with Mr. Y pursuant to which he, Bombard, would periodically furnish Mr. Y with such stolen merchandise at approximately 50% of its retail price.

On September 1, 1971, Bombard's employer accompanied him to the private law office of the Assistant District Attorney of Franklin County, located in Saranac Lake,** where the Assistant District Attorney took a sworn statement from Bombard in which he admitted to the facts stated above and detailed his "arrangement" with Mr. Y. At some time between September 1 and September 29, 1971, the exact date apparently unknown to all officials, a copy of this statement was transmitted by the Assistant District Attorney to the Saranac Lake Police Department.

Despite Bombard's "confession," no further official action was taken on this matter until September 29, 1971. On that date, the Saranac Lake Police took a statement in regard to this matter from Bombard's employer and Bombard was arrested and charged. On the same day, (September 29, 1971) Bombard was apparently brought before Saranac Lake Village Justice Karl J. Griebsch on a grand larceny felony complaint. This is borne out by a commitment of Bombard to the Franklin County Jail on the same grand larceny felony charge. Said commitment, which notes that Bombard was ordered held to "request a Prelim. Hearing or waive such hearing," is dated September 29, 1971 and signed by Village Justice Karl J. Griebsch. The confusion concerning Bombard's appearance on September 29, 1971 arises from the fact that Judge Griebsch's criminal docket book does not record such appearance. However, the records of the Franklin County Jail clearly indicate that Bombard was admitted to that institution, pursuant to Judge Griebsch's above mentioned commitment order, at 10 P. M. on September 29, 1971.

* Mr. "Y's" identity is known to the Commission.

** The Franklin County District Attorney's office consists of the District Attorney, who handles matters in the Northern end of the County and the Assistant District Attorney who handles matters in the Southern end of the County (including Saranac Lake).

These same jail records also indicate that Bombard was taken from the Franklin County Jail on October 1, 1971 and transported back to the Saranac Lake Village Court. This record is confirmed by the records of the Saranac Lake Police Department, which indicate that Bombard was in fact brought from the Franklin County Jail to the Saranac Lake Police Department and thence to the Saranac Lake Village Court on the evening of October 1, 1971. The Franklin County Jail records and the Saranac Lake Police Department records indicate further that later that same evening, October 1, 1971, following his appearance before the Saranac Lake Village Justice Court, Bombard was transported back to the Franklin County Jail and readmitted to that institution. The records of the Franklin County Jail also contain a commitment holding Gerard Bombard for action by the Franklin County Grand Jury upon a charge of grand larceny in the third degree, which commitment is dated October 1, 1971 and signed by Judge Karl J. Griebsch.

The October 1, 1971 entry in Judge Griebsch's criminal docket book indicates that Bombard asked for counsel, was represented by the Public Defender, waived examination, was ordered held for the Franklin County Grand Jury and confined in lieu of $2,500 bail. Judge Griebsch was questioned concerning the details of Bombard's appearance on this date. He stated quite specifically that Bombard consulted with the Franklin County Public Defender before waiving his preliminary hearing. Judge Griebsch stressed this point, indicating that he would not have allowed Bombard to waive hearing without consulting with counsel. This point is controverted by the fact that during the Commission's subsequent conferences with the Assistant Public Defender,* that official stated that at no time did he or the Public Defender represent or appear on behalf of Bombard.

The records of the Franklin County Jail further indicate that on October 19, 1971, Gerard Bombard was discharged from that institution with the notation "Returned to Justice Court 10/19/71." This, too, is confirmed by the records of the Saranac Lake Police Department, which show that on that date, October 19, 1971, Bombard was transported from the Franklin County Jail to Saranac Lake accompanied by a Saranac Lake police officer. There being no further record of

* The Assistant Public Defender handles all matters in the Southern end of the County (including the Village of Saranac Lake).

Bombard's incarceration after October 19, 1971, and there being no entry in Judge Griebsch's docket that Bombard appeared before the Court on October 19, 1971, it must be assumed that he was at liberty following that date.

As to how the matter was finally disposed of, Judge Griebsch's criminal docket book indicates that on October 30, 1971, Bombard appeared before that Court. At that time, the felony charges against him were reduced to the misdemeanor of petty larceny, to which Bombard pleaded guilty, and the docket book reflects that Bombard was sentenced to 20 days in jail (which approximates his time already served, September 29, 1971—October 19, 1971), and does not state that Bombard was fined. This entry, too, is of questionable accuracy since Bombard himself insists that he was fined $100, which sum he paid at the Saranac Lake Police Department on October 29, 1971.*

Obviously, the fact that Bombard's receipt is dated October 29, 1971, one day prior to his recorded appearance before Judge Griebsch for the purpose of disposing of this matter, is further proof of the inaccuracy and unreliability of the court records maintained by Judge Griebsch of proceedings in his court.

A. *MORE DERELICTIONS*

Some additional observations concerning the inept and mangled handling of this matter are pertinent.

1. It cannot be disputed that adequate and uniform representation of both the People and the accused, particularly where felony charges are brought, is essential for the fair administration of criminal justice in this State. In this connection, Judge Griebsch's docket book clearly indicates that on Bombard's two recorded appearances before his Court (October 1, 1971 and October 30, 1971), Bombard was represented by the Franklin County Public Defender and no one appeared on behalf of the People. However, while the Assistant Public Defender maintained unequivocally that he never represented, or appeared on behalf of Gerard Bombard, the Assistant District Attorney stated that although he had no personal recollection of the fact, in accord with his standard

* The accuracy of this contention by Bombard is supported by his production of a paid receipt for $100, signed by an officer of the Saranac Lake Police Department, paid for "fine for petty larceny."

policy he "must have appeared" when the felony charge against Bombard was reduced to a misdemeanor.*

2. Of further critical importance is the question of why Bombard, who was held in jail awaiting presentment of his case to the Grand Jury, never in fact had his case brought before such body. The answer to this question provides additional evidence of the inept mishandling of this matter.

Criminal Procedure Law Section 180.30 sub. 1, requires that when a defendant is held for the Grand Jury on a felony charge, the local criminal court ordering such action must "promptly" transmit all papers concerning the case to the appropriate superior court. In this case, there is ample evidence indicating that Bombard was held for the Grand Jury on the charge of grand larceny in the third degree. This point is readily conceded by Judge Griebsch. When asked by a representative of the Commission whether he had adhered to this requirement and had "promptly" forwarded the papers in the Bombard case to the superior court, Judge Griebsch responded that he had most certainly done so. Judge Griebsch's recollection in this regard came into issue when it was discovered that the charges against Bombard had never been brought before a Franklin County Grand Jury. This despite the fact that Bombard had been initially committed to the Franklin County Jail on September 29, 1971, a Franklin County Grand Jury had been convened on or about October 5, 1971 and Bombard was not released from custody until October 19, 1971.

In discussions with the Franklin County District Attorney, the Commission was told, in no uncertain terms, that if the papers in the Bombard case had been forwarded in accordance with the requirements of the Criminal Procedure Law, the charges against Bombard would most assuredly have been brought before the October 5th Grand Jury. The Commission thereupon conducted a detailed search of the records of both the Franklin County District Attorney's office and the Franklin County Court in an effort to determine whether the papers in the Bombard case had been forwarded, filed and forgotten. The search showed clearly that no papers regarding the Bombard case had ever been received by either the Franklin County Court or the Franklin County District Attorney's office. In other words, this apparent neglect of a basic clerical function,

* Criminal Procedure Law Section 180.50 permits a local criminal court to reduce a felony to a misdemeanor only upon consent of the District Attorney.

by Judge Griebsch, led to the situation where a defendant, held on a felony charge, remained incarcerated through the term of a Grand Jury without his case being brought before such body. It is apparent that Bombard's subsequent return to the Saranac Lake Village Justice Court and the reduction of his charge from a felony to a misdemeanor was based upon the fact that there seemed to be no other alternative available in the face of Judge Griebsch's continual neglect or unwillingness to meet basic statutory requirements.

The question of who ordered Bombard returned to Saranac Lake on October 19, 1971 for the purpose of having the charges against him reduced and disposed of remains a further mystery. The Saranac Lake Police Department insists that the Assistant District Attorney ordered Bombard returned to Saranac Lake. The Assistant District Attorney is equally certain of the fact that he gave no such order. Judge Griebsch is even more in the dark on this point since his docket book does not even note Bombard's original appearance before him on September 29, 1971, at which time, as detailed above, ample evidence indicates that Bombard did appear and was remanded to the Franklin County Jail. In addition, there is no docket book entry for October 19, 1971 when, as previously noted, the Franklin County Jail records indicate that Bombard was discharged and "Returned to Justice Court."

The precise manner in which the case was finally disposed of also remains shrouded in confusion. Pursuant to what or whose directive did Bombard appear before the Village Justice Court on October 30, 1971? Was he sentenced to 20 days imprisonment, as stated in Judge Griebsch's docket book or fined $100, as claimed by Bombard and substantiated by his receipt? These unresolved questions and the non-existence of any records from which their answers might be extracted prompted the Commission to inquire further into both the handling of the Bombard case by the Saranac Lake Police Department, and the quality and operational performance of the Saranac Lake Village Justice Court.

B. *THE CHIEF "KEEPS IN TOUCH"*

During the development of the foregoing facts, it appeared to the Commission that the Saranac Lake Police Department did virtually nothing in connection with this case except arrest Gerard Bombard. This was puzzling because of the fact

that Bombard clearly implicated Mr. Y, a local contractor, as a principal in the scheme to steal a considerable amount of material from Bombard's employer.

The Commission interviewed the Police Chief and the officer assigned to the Bombard case for the purpose of determining whether any efforts were made to investigate all aspects of this larceny—or for that matter, to recover any of the stolen merchandise.

The Chief was unclear as to which officer the investigation had been assigned. He first identified one, and then another. The Chief was asked whether any investigation was conducted with a view toward identifying and recovering any of the stolen merchandise. He replied that no such investigation was conducted. He was asked whether an investigation was conducted with a view toward determining the identity of any other persons involved in this larceny. He replied that no such investigation was conducted. He was reminded that Bombard's sworn statement, a copy of which the Chief admitted receiving early in September, clearly stated the details of the conspiracy that Bombard had entered into with Mr. Y. The Chief was then asked whether Mr. Y had ever been spoken to or a statement taken from him in the course of the police investigation. He answered that Mr. Y had never been spoken to nor had a statement ever been taken from him. The Chief was then asked whether he would agree that elementary police procedures dictated that Mr. Y be interviewed, and every effort be made to procure a statement from him. He answered "Yes, it probably should have." He was again asked why Mr. Y was not interviewed and why an attempt was not made to obtain a statement from him. The Chief simply sat mute, obviously unable to answer.

Not being satisfied with this situation, the Commission directed the Chief to produce all investigative files and other memoranda and materials in connection with the Bombard case. The Chief and one of his subordinates, after rummaging through a filing cabinet, produced a manila folder which they identified as "the Bombard file." Upon examination, this folder was found to contain a copy of Bombard's sworn statement of September 1, 1971, a statement of Bombard's employer dated September 29, 1971 and a warrant for Bombard's arrest. When asked what efforts were made to investigate this case, the Chief indicated that he didn't know. The Chief was

then asked to describe the manner in which he directs and supervises investigations conducted by members of his department. His reply was "I stay in touch with the men."

In short, although the Saranac Lake Police Department had a sworn statement as to how the larcenies were committed and who received the stolen goods, no further investigation was made. Indeed, for reasons best known to the Police chief, no action was taken to apprehend the other person or persons involved in the crimes committed. Certainly this did not constitute professional police conduct nor effective law enforcement.

IV. *THE SARANAC LAKE VILLAGE JUSTICE COURT IN OPERATION*

At that point, the question which suggested itself was whether the Bombard case was an isolated instance of horrible mishandling, or was it typical of the way matters were investigated by the Saranac Lake Police Department, and adjudicated by the Saranac Lake Village Justice Court. In an effort to answer this, Commission staff members sat in on several sessions of the Saranac Lake Village Justice Court.

The Saranac Lake Village Court is conducted in the Harrietstown Town Hall. The courtroom itself is approximately 20 by 50 feet in size with a raised desk for the Judge at one end and a rudimentary jury box consisting of 6 chairs set along one wall.

During the first of the observed court sessions, on October 10, 1972, several matters were heard by Judge Griebsch, most apparently dealing with traffic infractions. It was difficult to ascertain the exact nature of these proceedings or the manner in which they were disposed of, since most were dealt with in low whispers among the parties crowding around the Judge at his desk. There was apparently no court calendar in existence, nor did it appear that the Judge was aware of who was scheduled to appear before him. There was no stenographer or clerk present nor were any officials or employees of the Town or Village present other than Judge Griebsch.

Interestingly, it was observed that Judge Griebsch apparently made no official entries in any records concerning the dispositions of the various matters before him except to issue receipts for fines imposed and paid. It was also noted that

Judge Griebsch frequently reached into a large densely packed leather briefcase kept at his feet, extracting papers and cash from it for the purpose, as it appeared, of providing change to persons paying fines or tendering cash bail. When later questioned about the contents of this briefcase, Judge Griebsch replied "That's my file" and proceeded to show his questioners the centents. Astonishingly, the briefcase contained what appeared to be files of cases which had appeared before Judge Griebsch over a period of several weeks. In addition, cash fines and cash bail were attached to the case papers to which they pertained with paper clips. The confusion inherent in this slipshod method of record keeping was, of necessity, further compounded by Judge Griebsch's apparent practice of making change for parties before the Court from the money attached to the handiest of such "cases." In other words, if a defendant was paying a $10 fine with a $20 bill, Judge Griebsch would reach into the briefcase and take $10 change from some available file.

Judge Griebsch was then asked about this considerable amount of cash in his briefcase. He responded that some had been collected by him in his capacity as Village Justice and some in his capacity as Town Justice and that he had been "remiss" in not depositing these funds in an official bank account within the mandated 72-hour period.

Mindful of the inaccurate and incomplete entries in the Judge's docket book, as revealed in the Bombard case, Judge Griebsch was asked to describe the manner in which he made such entries. As previously mentioned, Section 2019-a of the Uniform Justice Court Act (Appendix "A") requires that all Village and Town Justices shall "forthwith enter correctly at the time thereof, full minutes of all business done before him . . ." in the "Justice's criminal docket." Judge Griebsch replied that the details of all matters coming before the Court are entered in the criminal docket book by the official court clerk.* Judge Griebsch was then asked how this could be done in regard to the matters which came on before him on the evening of October 10, since the Court Clerk did not appear to be present in Court. Judge Griebsch admitted that the Court Clerk, indeed, was not present in Court. He explained, however, that on the following day he would describe to her the various matters which he had handled the evening before (pre-

*The Saranac Lake official Court Clerk is Judge Griebsch's wife.

sumably from memory, since Judge Griebsch was observed to make no notations in connection with such matters, other than issuing receipts for cash fines), and she would at that time make the appropriate entries in the docket book.*

In substance then, in addition to the inaccurate court records kept in the Bombard case, Judge Griebsch has apparently violated—and may still continue to violate—other statutory requirements directed at the operations of the Justice Courts.

The seriousness of the neglect of making full and prompt entries in the criminal docket book is further demonstrated by the following: Commission representatives took a sampling of receipts issued by the Saranac Lake Police Department during the three-month period of October, November and December 1971, for fines imposed by Judge Griebsch, and paid to said Department for offenses other than parking violations. In all, 22 such receipts had been issued. In attempting to match these with corresponding entries in Judge Griebsch's criminal docket book, it was discovered that in two cases the docket book carried no entry of the matters at all, and in another case the docket book indicated the imposition of a 15-day jail term and no cash fine.**

In addition, Judge Griebsch does not present his docket book for audit to the Village Auditing Board each year.*** The foregoing omissions constitute further violations of Uniform Justice Court Act Section 2019-a.

Judge Griebsch fails to deposit in official accounts, within 72 hours after receipt, fines and other official collections. As previously stated, this is in violation of Rule 7 of the Rules of the Administrative Board of the Judicial Conference. In this connection, it was found that at various times Judge Griebsch would fail to deposit cash bail received by him, but would later return such bail to defendants in kind. On occasion, this procedure would take rather unusual form. For example, a defendant who had posted $100 cash bail and was subsequently fined $50 would simply get $50 in cash (as representing the difference between his fine and his previously posted bail) returned to him by Judge Griebsch. The State Department of Audit and Control, in its previously mentioned report, clearly stated that "Return of bail should be made only by check drawn on the official bank account."

* Judge Griebsch did not even bring his criminal docket book to Court. It was apparently regularly left at his home.

** These are in addition to the erroneous entries of the Bombard case which occurred during the same three-month period.

*** This requirement might concededly be difficult to meet, since the Village of Saranac Lake has no auditing board and no Village audit of any departmental books has been conducted within the memory of Village officials.

Also, Judge Griebsch failed to pay to the State Comptroller, by the 10th of each month, moneys officially collected by him during the course of the preceding month. This is in clear violation of Village Law Section 4-410, 1.b.

The seriousness of these maladministrations is underscored by the fact that Judge Griebsch, by his own admission, in his capacities as Village and Town Justice, collected $127,000, including bail moneys, during the 16-month period immediately preceding the Commission's investigation.

V. *OTHER REACTIONS TO THE JUSTICE COURT SYSTEM*

Since the Commission's exposure to the Justice Court system was initially limited to its experience in the Village of Saranac Lake, it sought to gain a somewhat broader view by meeting with officials concerned with the problem on a more comprehensive basis. Accordingly, the District Attorney of Franklin County, who is responsible for the prosecution of criminal matters in all of the courts in his County, was interviewed regarding his experiences with the operations of the Franklin County Justice Courts.

The District Attorney pointed out that there are 41 Justice Courts in Franklin County, none of which are presided over by an attorney. One of the results of this multiplicity of courts is that neither the District Attorney nor his single Assistant is able to appear and represent the People in the vast majority of matters coming before these lay judges. In this connection, he explained further, that only when a matter of unusual importance or complexity is to be tried, and the Justice concerned has informed him of such pending case, does he or his Assistant make an effort to appear. The District Attorney was questioned regarding the manner in which jury trials are conducted before these non-attorney judges, with particular reference to how such juries are charged on the law. He stated that, in his opinion, these justices are not qualified to instruct juries and what, in practice, happens is that the District Attorney "instructs the jury" and then the defense attorney is given a similar opportunity for "instruction."

The District Attorney then, based upon his own experience, made several pointed criticisms directed at the operations of

these courts. He spoke at some length regarding the Justices' failure to forward to the superior court, complaints, and other accompanying papers, in connection with defendants held on felonies in accordance with Criminal Procedure Law Section 180.30 sub. 1. He stressed that this failure was so pervasive among the Village and Town Justices of Franklin County that it was his (the District Attorney's) practice, approximately two weeks before convening each Grand Jury, to send a form letter to each of the County's Village and Town Justices reminding them to forward all delinquent felony complaints. Despite this reminder, there are several Justices who are so neglectful of this requirement that the District Attorney must send a policeman to seek out and hand-carry their felony complaints to the County Clerk.

Furthermore, the District Attorney emphasized that he was regularly beset with the need to defend against various writs and applications based upon elementary procedural errors committed by these Justices. As an example, he showed Commission staff members an affidavit submitted in support of a motion for a writ of coram nobis relating to an individual who had been convicted for speeding by one of the Franklin County Town Justices. This matter was heard in the Justice's cow barn. The defendant alleged that he was not notified of his right to a trial, his right to an adjournment, his right to plead not guilty, nor was he informed that a speeding conviction could result in the revocation of his driver's license. The District Attorney stated that such inadequate and careless proceedings are often typical of the operations of rural Justice Courts.

In amplification of this point, the District Attorney explained that a large number of Justices conduct their court in the kitchen of their residence.* This is apparently due to the failure of the Town or Village to provide adequate courtroom facilities for such Justices. It was further explained that this failure to provide the basic necessities for the performance of a minimally satisfactory judicial function further results in the fact that most of Franklin County's Town and Village Justices do not even have a copy of the New York State Penal Law.**

* Hence the common term "kitchen court."

** In this connection, during one of Judge Griebsch's conferences with members of the Commission's staff, he pointedly directed attention to his shelves of "law books." A closer examination of these books indicated their usefulness and age to be typified by the prominently displayed volume of the 1929 Edition of Clevenger's Practice Manual.

The Commission also sought the views of the County Court Judge of Franklin County* and the State Supreme Court Justice designated as Administrative Judge for the Third Judicial District.**

Both of these officials concurred with the general views expressed by the Franklin County District Attorney to the effect that the Justice Courts in Franklin County operated below an acceptable legal standard. It was their position though, that a rough form of homespun justice was administered by these non-lawyer judges, which was "appreciated" by the people within their jurisdiction.

Implicit in this position however, is the generally acknowledged feeling that residents of the local towns and villages prefer appearing before a judge to whom they are personally known. The deleterious result of this situation has been described by the Temporary Commission on the New York State Court System.***

> "Although questions relating to the uniformity of justice are not limited to local courts, reservations have been voiced that town and village courts tend to favor the people in the locality as opposed to people from outside. The Westchester Misdemeanant Survey concluded that 'in every respect for which figures were available, the residents seem to have received somewhat better treatment . . . residents were less likely to be fined and more likely to receive a suspended sentence.' (Westchester Citizens Committee of the National Council on Crime and Delinquency, Westchester Misdemeanant Survey, (1966) at 10.)"

By way of constructive criticism however, all of the officials spoken to—the aforesaid District Attorney, the County Judge and the Administrative Supreme Court Justice, agreed that the replacement of the Town and Village Justice Court system with a District Court system**** would solve many, if not most, of the shortcomings set forth herein. A limited number of such District Courts, presided over by full-time qualified attorneys,

* This is the Franklin County "superior criminal court" to which all felony cases are sent by the Village and Town Justices within the County.

** The Third Judicial District encompasses 11 Counties, including Franklin County.

*** *Report of the Temporary Commission on the New York State Court System*, Part II, page 23, January 1973.

**** The District Court system has already been implemented in Nassau County and part of Suffolk County.

could presumably absorb the workload now handled by the little controlled and even less monitored multiplicity of part-time Town and Village Justice Courts.* For example, these officials agreed that two to five District Courts could adequately replace the 41 Justice Courts now functioning in Franklin County.

In addition, the Commission met with representatives of the Administrative Board of the Judicial Conference of the State of New York. This body has administrative control over the operations of the Town and Village Justice Courts throughout the State and has promulgated rules pursuant to which such courts must operate. It should be noted however, that disciplinary proceedings directed at these Justices must be implemented by the Appellate Division having territorial jurisdiction.

The representatives of the Administrative Board advised that complaints of "procedural lapses and extremely sloppy bookkeeping" on the part of the Town and Village Justices were regularly received. In response to the questions of what action is taken regarding such complaints, they explained that the Administrative Board generally communicates with the Justice complained of and attempts to bring about corrective action. Also, such allegations are forwarded to the appropriate Appellate Division.

The Administrative Board officials further indicated that they are promulgating recommendations requiring mandatory retirement of Town and Village Justices at age 70 (presently there is no mandatory retirement age for such Justices). They are further recommending a uniform system of record keeping to include cash receipt forms, said form to be agreed upon both by the Judiciary and the Department of Audit and Control. Presently, there is no uniform record keeping requirement and, according to the Judicial Conference, record keeping procedures and the forms used therein vary considerably from Village to Village and from Town to Town.

Commission representatives also reviewed reports of audits of towns and villages made by the State Department of Audit and Control. Since there are approximately 500 villages and 900 towns in New York State, the review was made of many

*During the year 1971, the amount collected by way of fees, fines and forfeitures by all of the approximately 2500 Town and Village Justice Courts in New York State was $12,323,629. Source: *Report of the Temporary Commission on the New York Court System*, Part I, page 72, January 1973.

such reports selected on a random basis covering audits conducted during the past several years. These examinations revealed that there are more deficiencies in cash accountability in Justices Courts, than are disclosed in any other office of the towns and villages examined.

Also, in the reports reviewed by the Commission, the records of the majority of town and village justices audited, revealed discrepancies constituting violations of law in one or more of the following areas:

1. Failure to deposit moneys in official accounts on a timely basis.
2. Failure to report and remit official funds promptly to the Justice Court Fund of the State Department of Audit and Control.
3. Failure to issue receipts as required.
4. Failure to impose mandatory fines.

Finally, a Commission representative conferred with each of the Presiding Justices of the Appellate Divisions in the Second, Third and Fourth Judicial Departments.* There appeared to be a consensus, among these members of the Judiciary that the use of part-time, non-lawyer judges does not serve the best interests of the parties appearing before them. One of these Presiding Justices expressed himself quite strongly on the need for attorneys to serve as full-time judges in all courts hearing criminal matters.

In summary then, it seems generally agreed that the quality of justice, as administered by these part-time, untrained judges, is substantially less than adequate. Despite the fact that they are required to undergo a cursory course in legal principles, it is quite clear that this cannot equip them to adequately serve as judges. They can neither protect the rights of persons accused of criminal acts, in the light of the numerous and complex recent changes in criminal law and procedure, nor can they adequately protect the interests of the people of this State.

VI. *RECOMMENDATIONS*

Although this investigation dealt with the Police Department and a Village Justice of a relatively small community,

*These courts, collectively, have disciplinary jurisdiction over all the Village and Town Justices in New York State.

the findings are of more far reaching significance, and are indeed serious. As stated earlier, it is the Commission's view, as confirmed by the considered opinions of well informed responsible officials throughout the State, that the problems revealed here prevail in a majority of counties of the State.* The existence of such deficiencies and ineptitude at the local level of the criminal justice system, simply must not be tolerated. The Commission, accordingly, makes the following recommendations.

A. *THE SARANAC LAKE VILLAGE POLICE DEPARTMENT*

1. Personnel files should be maintained on each member of the Department. These files should contain pertinent background information such as educational attainment, prior employment and results of civil service tests; in addition there should be maintained an on-going work record showing citations, complaints and disciplinary actions and the results thereof, as well as a record of any outside employment.

2. Action should be taken to restrict the present unlimited "moonlighting" in accordance with the spirit and intent of the provisions of Section 208-d of the General Municipal Law.**

3. Guidance and assistance should be requested from the Bureau for Municipal Police of the State Division of Criminal Justice Services at Albany, New York, for the purpose of modernizing and upgrading the record keeping and the investigative and supervisory standards of the Department.

4. If deemed necessary, action should be taken by the Saranac Lake Village Board, in accordance with General Municipal Law Article 14-B, Sections 370-373, to establish a Traffic Violations Bureau. The Village Police Department should desist from collecting moneys received in payment of fines imposed for traffic violations, unless so specifically authorized by the Village Board pursuant to the provisions of the aforesaid Article 14-B.

B. *THE FRANKLIN COUNTY DISTRICT ATTORNEY*

1. The District Attorney should require and receive promptly

* On April 26, 1973, one such Justice in an upstate county, pleaded guilty to the Class E felony of "Receiving Reward for Official Misconduct."

** This section deals with "extra work by members of a police force in cities." However, Opinion 68-27 of the New York State Comptroller (February 2, 1968) indicates that a Village Police Department is free to restrict its policemen from outside employment.

copies of all arrest records from any police agency in Franklin County effecting such arrests.* This will give the District Attorney a record of all felony arrests prior to the preliminary hearing in each case.

2. The Assistant District Attorney presently handling matters in the southern part of Franklin County, should maintain complete official files of all matters handled by him.

3. The District Attorney should, to the extent possible, direct all Town and Village Justices to consolidate preliminary hearings and trials for certain specific times and locations and thus facilitate his participation in such proceedings.

C. *THE JUSTICE COURTS*

With the exception of those few counties with large urban centers,** the practices applicable to the handling of criminal actions in the great majority of Justice Courts are clearly inadequate. These short-comings appear to be attributable to the following factors.

a. The use of part-time, non-lawyer judges, whose legal abilities, interest in their judicial functions, and the facilities and ancillary assistance afforded them, are often so limited as to render them virtually incapable of handling the many questions of law and of rules which are involved in the proceedings brought before them.

b. The multiplicity of these courts (approximately 2500) makes adequate coverage by the District Attorneys and the Public Defenders practically impossible in most counties. The result is that non-lawyer judges often find themselves in the position of acting as prosecutor, defense counsel, or both, in many matters coming before them.

The general supervision of these courts is presently in the hands of the Administrative Board of the State Judicial Conference. There is no doubt that the Administrative Board is aware of the existing problems and deficiencies of the Village Justice Courts. However, in light of what this Commission has

* In Monroe County, such report is received by the District Attorney's Justice Court Screening Bureau, and an evaluation of the case is made before the preliminary hearing is held in the Justice Court.

** Such as Erie, Monroe, Onondaga and Westchester and excluding the five counties of New York City where there are no Justice Courts. In this connection, as noted previously, some 500 of the approximately 2500 Town and Village Justices in New York State are lawyers, and most of these 500 are clustered in and adjacent to large urban centers.

found in its investigation, it seems clear that much more supervision is necessary. Despite the fact that the Administrative Board has promulgated rules governing the operation of these courts, standardization in regard to record keeping and other aspects of Justice Courts operation has not been achieved.

Disciplinary power over Justice Courts is a function of the Appellate Division having appropriate territorial jurisdiction. While copies of all complaints are forwarded to the concerned Appellate Division by the Administrative Board, the institution of disciplinary proceedings appears to be rare.

In view of the foregoing, the Commission feels that the problems inherent in operating a system of 2500 courts, largely presided over by part-time, non-lawyer judges, are not susceptible to the "band-aid" approach of court by court and problem by problem correction. The Commission therefore recommends:

1. All Village and Town Justice Courts throughout New York State should be abolished. Their functions should be included in the enlarged jurisdiction of a new system of District Courts to be established.

2. The number and locations of these District Courts should be determined by the use of appropriate criteria such as population and the case load presently handled by the various Village and Town Justice Courts.*

3. The new District Courts should be presided over by full-time judges who are attorneys and provided with such adequate facilities, resources and ancillary personnel as will assure their efficient and effective operation.

These recommendations are not meant to be all inclusive. There are other aspects concerning the creation of District Courts which, although not pertinent to this investigation, may nevertheless warrant consideration. They include such questions as:

—the exact civil and criminal jurisdictions of the District Courts; whether or not they should absorb the present City Court systems.**

—whether they should be given jurisdiction over traffic offenses, particularly those below the misdemeanor level. Statistics show that these traffic offenses constitute a large portion of the present Justice Courts workload. Consideration should be given to the advisability of establishing administrative adjudication bureaus, where feasible, for the purpose of handling such cases.

* The factors and statistics upon which such criteria is based have, to a limited extent, been presented by the Temporary Commission on the New York State Court System in its report dated January 1973, Part II, pages 22-28.

** Other than those in the City of New York.

The Commission is mindful of the fact that implementation of these recommendations may mean some sacrifice of certain conveniences, such as the nearness of local Justice Courts to rural citizenry and to small police departments. While such considerations should not be ignored, it is, however, more important that a more vital need be served—that is the assurance of the availability of a competent, uniform and impartial administration of criminal justice.

It is toward that end that this investigation was undertaken and this report issued.

EXHIBIT A

UNIFORM JUSTICE COURT ACT

§ 2019-a. Justices' criminal docket

All justices of courts governed by this act shall forthwith enter correctly at the time thereof, full minutes of all business done before him as such justice in criminal actions and in criminal proceedings and including cases of felony, in a book to be furnished to him by the clerk of the village or town where he shall reside, and which shall be designated "justices' criminal docket," and shall be at all times open for inspection to the public. Such docket shall be and remain the property of the village or town of the residence of such justice, and at the expiration of the term of office of such justice shall be forthwith filed by him in the office of the clerk of such village or town, provided, however, that if such dockets are transferred pursuant to section twenty hundred twenty-one of the uniform district court act, the responsibility for such dockets by the city, village or town shall cease and they shall be the property of the district court to which they are transferred. The minutes in every such docket shall state the names of the witnesses sworn and their places of residence, and if in a city, the street and house number; and every proceeding had before him. It shall be the duty of every such justice, at least once a

year and upon the last audit day of such village or town, to present his docket to the auditing board of said village or town, which board shall examine the said docket, or cause same to be examined and a report thereon submitted to the board by a certified public accountant, or a public accountant and enter in the minutes of its proceedings the fact that such docket book has been duly examined, and that the fines therein collected have been turned over to the proper officials of the village or town as required by law. Any such justice who shall willfully fail to make and enter in such docket forthwith, the entries by this section required to be made or to exhibit such docket when reasonably required, or present his docket to the auditing board as herein required, shall be guilty of a misdemeanor and shall, upon conviction, in addition to the punishment provided by law for a misdemeanor, forfeit his office.

Subsequent Action Taken

Upon the issuance of this report, the Commission forwarded a copy to the Presiding Justice of the Third Judicial Department of the Appellate Division of the State of New York, which court has disciplinary jurisdiction over Village Justices in the area encompassing the Village of Saranac Lake. Thereafter, by order of that court, a Referee was appointed to conduct an investigation, pursuant to the provisions of Section 429 of the Judiciary Law, into the conduct of Karl Griebsch, as Village Justice of the Village of Saranac Lake.

Subsequently, the Referee filed a report containing the following findings:

> "FIRST. That Village of Saranac Lake Police Justice Karl Griebsch did, from April of 1970 until April of 1972, by acquiescence, condone a system of fine collection and transmittal for traffic violations which was violative of the provisions of Section 2021 of the Uniform Justice Court Act, Section 4-410 of the Village Law (formerly Section 185 of the Village Law) and Section 20.7 of the Rules of the Administrative Board of the Judicial Conference of the State of New York (formerly Rule No. 7) which conduct may have been a factor in a possible loss of public moneys.
> SECOND. That Village of Saranac Lake Police Justice Karl Griebsch did fail to timely account for moneys received by him to the office of the State Comptroller from October of 1969 through August of 1970, as required by Section 4-410 of the Village Law (formerly Section 185 of the Village Law).
> THIRD. That Village of Saranac Lake Police Justice Karl Griebsch did, from April of 1970 until April of 1972, fail to deposit moneys received by him as Village Justice in his official bank account within 72 hours after receipt of the same as required by Section 20.7 of the Rules of the Administrative Board of the Judicial Conference (formerly Rule No. 7).
> FOURTH. That Village of Saranac Lake Police Justice Karl Griebsch did fail to make adequate and complete entries in his justice's criminal docket as required by Section 2019-a of the Uniform Justice Court Act in connection with a criminal proceeding which was initiated and terminated in his Court relating to one Gerard Bombard during the period of time from September 29, 1971 to October 30, 1971.
> FIFTH. That Village of Saranac Lake Police Justice Karl Griebsch did, on diverse occasions between April 1, 1970, and April 1, 1972, receive cash moneys as bail which were never deposited in his official account and which were later returned in kind to the defendants who had posted the same in violation of Section 20.7 of the Rules of the Administrative Board of the Judicial Conference (formerly Rule No. 7)."

The aforementioned findings supported the facts contained in the Commission's report with respect to Village Justice Griebsch.

The Referee, however, recommended that no further proceedings be initiated for the removal of Village Justice Griebsch for the following reasons, among others: (1) that Village Justice Griebsch, upon assuming that office, continued to operate in the manner which Village officials in Saranac Lake had followed for years; (2) that in an accounting made by the State Department of Audit and Control, there was no evidence revealed that Village Justice Griebsch was guilty of any wrongful taking of fine moneys; (3) "that the other improper practices indulged in by Judge Griebsch with respect to the handling of bail moneys and inefficient record keeping have been discon-

tinued and his Court now apparently functions better than most at that judicial level."

Finally, the Referee stated:

> "In this particular instance the efforts of the State Investigation Commission, the State Department of Audit and Control and this Court appear to have had a therapeutic effect and Judge Griebsch's Court now appears to function in an orderly fashion. His removal would serve no useful purpose and would only lead to a new course of on the job training for his successor with a concurrent loss of the valuable experience which he has gained as a result of this entire proceeding.
>
> Lastly I pass along to this Court the strong recommendation made by the representatives of the Department of Audit and Control with whom I discussed this matter that all local justices be required to maintain a daily cash book with entries therein as to all funds received and the sources thereof."

IV.

REPORT OF AN INVESTIGATION OF ALLEGED POLICE CORRUPTION, AND RELATED MATTERS, IN THE CITY OF ALBANY

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IV.

REPORT OF AN INVESTIGATION OF ALLEGED POLICE CORRUPTION, AND RELATED MATTERS, IN THE CITY OF ALBANY

I. *THE INVESTIGATION*

A. *BACKGROUND*

In the fall of 1971, the *Knickerbocker News,* an Albany newspaper, ran a series of articles on the Albany Police Department.* These articles charged corruption, laxity in the enforcement of the narcotics laws, improper associations between Albany police officers and prostitutes, and other misconduct. The articles concluded with an editorial on October 29 urging the Commission to conduct an investigation.

On November 6, 1971, the Mayor of Albany sent a telegram to Governor Nelson A. Rockefeller in which he stated that he had "sought to identify every person referred to in these articles and to get as much information on each charge" as possible, but that he "had found nothing but hearsay, innuendo, trick writing and no evidence" to support the charges. He characterized the articles as "the products of irresponsible reporting and editorial spleen," and stated that "Albany has the finest Police Department in the state." The Mayor requested, however, that the Governor direct "the State Investigation Commission or the Attorney General to conduct a full and open inquiry into these charges."

Upon receipt of the Mayor's telegram, the Governor contacted the Commission and was informed that the Commission had commenced a preliminary inquiry into law enforcement matters in Albany prior to the publication of the newspaper articles. The Governor, by telegram dated November 8, notified the Mayor that the Commission was conducting an investigation.

The Commission's presence in Albany had been prompted by reports from various sources that all was not well with the Albany Police Department. The reliability of these different sources and the repetition of such stories—transmitted to the Commission independently of each other—led to the Commission's preliminary inquiry, which had been in progress when

* The first article appeared on October 18, 1971.

the newspaper articles appeared. Based upon the results of its initial field work, the Commission undertook a full scale investigation of the Albany Police Department and related law enforcement matters in the capital city.

B. *EFFECT OF THE ANNOUNCEMENT OF THE COMMISSION'S INVESTIGATION*

The Mayor's open call for an investigation and the disclosure that one was already in progress, created practical problems for the Commission, and made its investigation more difficult. The police were now alerted and their actions reflected cognizance of the investigation. The Commission learned that Albany police officers were cautioned by command officers to watch their step because the Commission was in town.

The disclosure of the Commission's investigation had yet another effect. The police made a concerted effort to cover their tracks, and to cut off sources of information. Persons believed to have furnished the *Knickerbocker News* with damaging information about the police were summoned to police headquarters and asked if they had ever engaged in criminal activities, paid off any police officers or knew of others who had. The manner in which they were contacted, and the place and circumstances of their interrogation, left little doubt about the objectives and motives of such police action. One such individual was subsequently located by the Commission and questioned under oath. She described her experience with the police:

"Q. Were you ever questioned by police officers at the Police Department in connection with the investigation that this Commission is conducting?

A. Once, I was walking down Green Street. Excuse me. Clinton Avenue and [Detective A]* approached me and said that he wanted me down at the precinct.
So I naturally got in the car. I went down, and they took me up to, I think it was the second floor, to Mr. Murray somebody. He was an elderly man.

Q. Chief Murray.

A. Chief Murray.

* The witness identified the Detective but neither his name nor the witness' true name are being used here.

Q. Does he wear glasses?

A. Yes.

Q. An older man?

A. Yes.

Q. Go on.

A. I went to his office, and he asked me did I know what I was there for.
I said, no.
He said, I want to know if the SIC is having an investigation.
I told him, I had heard.
Then he started questioning me about the methadone program. Was I on the methadone.
I told him, no.
Then he asked me did I deal.
I said, no.
Did I go to New York and get my own supply for myself.
We kept talking.
Then he said to me, well, [Mary]* you do me a favor and I'll see that you get on the methadone program.
So I asked him what is that.
And he said, have you ever paid off any cops?
I said, no.
So he said, if the SIC asks you that, what are you going to say?
By me being scared and I didn't want to go to jail, I said, no.

Q. What did he say?

A. He told me, he will see about getting me on the methadone program.

Q. When he asked what are you going to say if the SIC questions you and you said you would tell us that you never paid off, did he appear pleased?

A. Yes, he did. He was smiling.

* The witness' true name is not being used in order to protect her identity.

Q. How did you size up the whole purpose of him calling you in? Why did he do that? Why do you think he did it?

A. What we call in the business, like hustling. He knew that I knew a lot about what was going on in the street. He figured—not only me did he call. I know other girls he called. But by me being into the drugs, hustling and armed robbery, he guessed I knew what was going on out in the street.

So he figured he would call me and let me know if I tell the SIC that I never paid off any of the police in Albany that I wouldn't go to jail, he would get me on the metha-done program in return.

Q. He said something about 'doing us a favor?'

A. He said, yes [Mary] you do us a favor. We will go and do something for you.

Q. What was the favor that he wanted you to do for him?

A. He wanted me to tell, if I was questioned by the SIC, then that I never paid off any police.

Q. Was anybody present when he spoke to you there?

A. There was another man, I don't remember his name, and [Detective A] was in the room too. (Pr. H. 2621-4)."*

When "Mary" testified before the Commission, she identified "Detective A" as one of the Albany officers she had witnessed being paid off. His presence in the room while she was asked if she knew of any one ever paying off the police almost guaranteed a negative response. As she noted in her testimony before the Commission, she played the role the police wanted her to play, and told them what she felt they wanted to hear.

C. *THE COMMISSION MEETS WITH THE CHIEF OF POLICE*

On February 4, 1972, the Commission's Chief Counsel who directed the investigation, together with a Special Agent of the Commission, met with Albany Police Chief Edward C. McArdle and his Deputy Chief, John Murray, at the Chief's office in Albany.

* Page reference to Private Hearing testimony will be preceded by "Pr. H."

At the meeting with Chief McArdle, arrangements were discussed for the examination of police records and the appearance of members of the Police Department at private hearings. The Chief pledged his cooperation and also arranged to provide the Commission with certain documents, including a list of officers who had left the police force from January 1, 1968 to the date of the meeting.* In connection with the Police Department's investigation of the newspaper stories, the Chief subsequently provided the Commission with copies of statements his men had taken from persons interviewed in connection with those stories.

The Chief was also advised that when the Commission wished to examine a police officer, it had no desire or intention of disrupting normal police operations and that this was always to be the first consideration. The Chief was also told that "in the event men were not available when we requested them due to Police Department business or even personal reasons, they could contact us and we would arrange another date" (23).**

D. *PHASE I OF THE COMMISSION'S INVESTIGATION*

In addition to obtaining documentary materials from the Police Department, and examining their personnel records, the Commission was engaged in extensive field investigation. Numerous persons were interviewed and examined at private hearings. These individuals, for the most part, were persons involved in criminal activities in Albany over the years, and who allegedly had knowledge of police corruption. Such persons were located by Commission personnel and efforts were made to enlist their cooperation and obtain their information. This was not easy. The overriding consideration running through the minds of most witnesses was fear. They reminded members of the Commission's staff that they had to live in Albany after the investigation was concluded and were afraid of retaliation by the police. It was understandable and expected that for each person who was willing to testify about police corruption, many others were not. There were instances where the Commission had information that a particular person or persons had paid off police officers, but was unable to

* At the time of the February 4, 1972 meeting, there were 280 members of the Albany Police Department and an additional 50 were in training.

** Page reference to Public Hearing Testimony.

convince such individuals to testify about their experiences. One such example will illustrate the problem.

During the investigation, the Commission received sworn testimony from several witnesses that they had personally been present and had observed an individual known as "Ike"* regularly pay off members of the Detective force and other local police officers while he worked in houses of prostitution in Albany. The Commission was also advised by numerous informants that Ike was deadly afraid of the Albany Police Department and had allegedly suffered physical abuse from them.

The Commission spoke to this individual who denied that he had ever given money to Albany detectives or policemen. Ike was then asked if he had any objection to the Commission "letting the word out" that we had spoken to him about police payoffs and that he told "the truth." Ike became frightened and immediately replied "You can't do that, that's not true. You'll get me in a jam. That's not true."

Other witnesses who appeared on the verge of talking asked if the Commission was prepared to guarantee that their information would never become known and that they would never have to repeat their testimony at another forum, such as a grand jury or trial. They were advised that the Commission would protect their identities as much as possible and keep their private hearing testimony confidential but could not provide the absolute guarantees they requested. Other potential witnesses were concerned because of the statements they had given to the police who questioned them about the *Knickerbocker News* stories. They felt "frozen in" by those statements although such statements were neither true nor completely voluntary. These were but a few of the problems the Commission faced in Albany in trying to get witnesses to testify about their criminal activities and their relations with the police even though promised immunity from prosecution.**

An even greater problem existed in trying to get Albany police officers or former officers to testify about their comrades. The code of silence among police officers is difficult to pierce.

These problems are explained here in some detail, and more will be described as this report continues, because it is essential that the public comprehend the extreme difficulties investi-

* The individual's full name is not being used here.

** The Commission has statutory authority to confer immunity upon witnesses under certain prescribed conditions.

gative bodies such as the Commission, as well as prosecutors and law enforcement officials encounter during every corruption investigation, when they attempt to obtain first hand testimony from the individuals involved. It is also essential to understand that the only persons who can provide first hand, personal and direct testimony about criminal activities and corruption are the criminals, the corruptors and the corrupted. While this would appear elementary, there will be those who contend—when it suits their purpose—that if a witness has a criminal background, his testimony is not to be believed and should be discarded automatically. This is sophistry. One can hardly expect to obtain such testimony from members of the clergy or the pillars of society.

In spite of these difficulties and obstacles, the Commission succeeded in obtaining testimony from numerous witnesses, including former and present Albany police officers concerning police corruption by members of the Albany Police Department.* Because these witnesses were testifying about criminal acts, the Commission granted such witnesses immunity from prosecution, pursuant to its statutory authority, after first contacting the appropriate district attorney and Attorney General of the State of New York to determine whether they had any objection to the conferral of immunity. The standard applied in each case was whether it was in the public interest to obtain such vital information toward the objective of ultimate correction of serious conditions.

To obtain such testimony, members of the Commission staff visited witnesses throughout the State of New York, and where necessary, interviewed persons in other states. Private hearing examinations were held in Albany and New York City, in offices, private homes and even in correctional institutions. Some witnesses were seen several times, and were closely questioned by the Commission in order to thoroughly test their credibility. Testimony and leads were checked, verified and double-checked, and if a witness or his story appeared even remotely questionable, neither was presented at the public hearing.**

E. *PHASE II OF THE COMMISSION'S INVESTIGATION: THE LITIGATION COMMENCES*

Once the Commission had obtained sufficient information

* The facts stated in this report are as of the date of the public hearing.

** The Commission's public hearing was held in Albany on September 18, 19, 20, 21, 24, 25 and October 2, 3 and 4, 1973.

and testimony of possible corruption and misconduct on the part of specific, identified police officers, the Commission moved into the second phase of its investigation: questioning these officers themselves.

The Commission encountered no difficulty at first, and examined one or two police officers under oath, at private hearings. The Commission then undertook to examine six police officers over a period of two days at the Commission's office in New York City. New York City was selected as the situs of the hearings because this is where the Commission maintains its office and records and because it was decided that all Commissioners should be present in the event questions of immunity arose, or legal objections were interposed. One of these six officers was a Deputy Chief of Police. His examination was scheduled for a day when he was off duty, at an hour which he himself had assured the Commission would be convenient. Prior to the scheduled examination, the Commission's Chief Counsel received a telephone call from the Executive Assistant Corporation Counsel for the City of Albany who stated that the Mayor and Chief of Police were "up in arms" because the examinations were to be in New York City and requested that they be held in Albany. No reason whatsoever was given to support the request for a change of situs and no request was made that the dates or time of the examinations be adjusted. Accordingly, it was the Commission's judgment that the examinations should be held in New York City. Thereupon, the six officers and the Mayor himself, as the Chief Executive officer of Albany, moved in the Supreme Court, Albany County, to modify the subpoenas to the extent of changing the location of the hearings from New York City to Albany. The Commission, in its opposing papers and at oral argument, cited well-established case law upholding the Commission's statutory authority to conduct private hearings anywhere in the State of New York,* and also pointed out that the Commission would adjust the dates and times of such examinations, if necessary, in order to avoid any disruption of police service. The Court held for the Commission, dismissed the petition and ordered the six officers to comply with the subpoenas. This, however, was not the end of the matter.

* The landmark case *Ryan v. Temporary State Commission of Investigation*, 16 A. D. 2d 1022, aff'd. 12 N. Y. 2d 708, involved an investigation by the Commission of purchasing procedures in the County of Albany in 1962.

The six officers and the Mayor then obtained a stay of the enforcement of that order pending an appeal to the Appellate Division. However, the delay in moving their appeal forward was so obvious that the Commission had to make a formal application to the Appellate Division to dismiss such appeal. It was only after this motion was made that the Mayor and the officers perfected their appeals. After hearing the appeal, the Appellate Division unanimously affirmed the lower court's order, and the Commission's position was further upheld by the Court of Appeals which denied the Mayor and the other petitioners leave to appeal the Appellate Division's decision.

The information which the Commission had gathered against four of these six officers involved their alleged theft of monies from parking meters while they were collecting such revenues as part of their police duties. Once it became clear that they were resisting the Commission's efforts to examine them, and were prepared to stall such examinations as long as possible, the Commission referred its evidence to the District Attorney of Albany County. The District Attorney presented the matter to the Grand Jury and the four officers involved were indicted for larceny of parking meter revenues and official misconduct.

Following the lower court's decision upholding the Commission's right to examine these six witnesses in New York City, the Commission consulted with the Chief of Police to arrange for a private hearing in New York City of Albany Police Lieutenant Kenneth Kennedy. The Chief of Police advised Commission's Chief Counsel that the date selected by the Commission for its examination was convenient, and rejected, as unnecessary, the Commission's offer to change the date of Lieutenant Kennedy's examination to his day off, which happened to be a Saturday. In spite of these prior arrangements and agreement, Lieutenant Kennedy also moved to modify the Commission's subpoena and change the situs to Albany. Although the Commission's authority was ultimately upheld, and the witness was ordered by the Courts to respond to the subpoena and testify, this examination, too, was delayed for over four months.

As the Commission pursued its efforts to examine Albany Police officers, the litigation, delays and other obstacles intensified. The litigation was not limited to opposing Commission subpoenas which were returnable in New York City, but those returnable in Albany as well. Although every challenged sub-

poena was ultimately upheld by the courts, and the Commission's authority reaffirmed, the court appearances, motions and legal work mushroomed. Motions attacking Commission subpoenas were signed by and returnable before several Justices of the Supreme Court, Albany County, and were argued not only in Albany but in Troy and Monticello as well. One matter was presented to a Supreme Court Justice who was sitting in Hudson, N. Y. and a trip was made by Commission counsel to that city. The Commission found it necessary to formally move in court that two Supreme Court Justices who were scheduled to hear matters involving the Commission, disqualify themselves on the grounds of alleged prejudice against the Commission. Both Judges denied these motions, both subsequently rendered decisions against the Commission, and both were unanimously reversed by the Appellate Division, which reversals were unanimously affirmed by the Court of Appeals.

The burden of such litigation upon the courts as well as upon the Commission, and the disruption it caused upon the orderly administration of justice, led the Commission to make a most unusual application to the Appellate Division, Third Judicial Department, which had jurisdiction over these court proceedings.

On May 31, 1973, the Commission's Chief Counsel made an oral motion to the Appellate Division that it appoint an All Purpose Judge to hear and determine all matters involving the Commission's investigation. Following is a copy of the memorandum submitted by the Commission in support of that application.

"STATE OF NEW YORK
COMMISSION OF INVESTIGATION
270 BROADWAY
NEW YORK, NEW YORK 10007

Appellate Division, Third Department
State Justice Building
Albany, New York

Memorandum in Support of Application
for
Appointment of All Purpose Judge

This memorandum is being submitted in support of the application made by the Commission's Chief Counsel Joseph Fisch on May 31, 1973, for the appointment by this Court of an All Purpose Judge to hear and decide all matters involving the Commission's current investigation of law enforcement, alleged police corruption, and related matters, in the City of Albany.

During the 4½ month period since January 15, 1973, when the Commission served subpoenas on Albany police officers to appear at private hearings, the following has transpired:

(1) There have been eight applications to your courts involving challenges to the Commission's authority and constitutionality, or seeking relief from Commission subpoenas.

(2) Six Justices of the Supreme Court have been involved in this litigation.

(3) Oral argument and applications to the court have taken place in Albany, Troy, Monticello and Hudson, New York.

(4) Two Notices of Appeal to this Appellate Division have been filed. The only appeal perfected has been that of the Commission, and that appeal has been argued.

(5) This is the fifth motion addressed to this Appellate Division within the last month. Four of these motions have been argued.

(6) While 20 police officers have appeared and testified at private hearings, 13 others have instituted proceedings as litigants challenging the Commission's subpoenas and authority.

(7) One police litigant has already testified for three hours without raising any challenge to the Commission's authority or jurisdiction. He has now instituted an Article 78 Proceeding claiming the Commission is unconstitutional.

(8) The challenges raised by these 13 police officers involve the Commission's right to subpoena witnesses to private hearings in Albany as well as New York City.

(9) Six attorneys have already appeared in opposition to the Commission.

(10) One attorney, through Orders to Show Cause, obtained a 6 week delay in the scheduled examinations of two police officers *whom he claimed he did not represent at the time.* After accomplishing this delay, he has now challenged the Commission's constitutionality and procedures and is now involved in litigation with the Commission. He has also raised other issues and may very well litigate these other issues in piecemeal fashion.

(11) Orders to Show Cause served upon the Commission have been made returnable three weeks later in one case,* and 16 days

* This was subsequently advanced by one week. However, petitioners were then given an additional full week to submit further legal memoranda. The decision in this case was not handed down until 18 days from the date of hearing, during which time the Commission was stayed from examining this witness.

later in another application. In one case there was a delay of nine days in having an order entered in spite of the Commission's communication to the successful attorney of its intention to appeal and the Commission's repeated requests for an expeditious entry of an order. There have been similar delays in other aspects of these litigated matters.

(12) As an example of what this Commission has faced, on May 30, while examining a witness, his attorney gave us a 'message' that we were due in court one-half hour later to respond to an application for a stay by three other attorneys. The lawyer who delivered this 'message' admitted that he had received it the evening before.

(13) Within the last two months, the Commission has found it necessary to make formal application that two Justices of the Supreme Court disqualify themselves on the basis of their past experiences with the Commission.

(14) In a prior investigation in Albany County, this Commission was involved in litigation concerning its subpoenas and authority for almost one and one-half years. The Commission still has other police officers to examine and has every reason to expect much more obstructive and needless litigation which will be very time-consuming for the courts as well as the Commission.

(15) It is appropriate to relate the following experience of the Commission with one Justice of the Supreme Court during the Commission's investigation in Albany County in 1962.

——During one 6 month period, 9 motions to quash Commission subpoenas came before this Judge.

——8 of those 9 applications were signed by this Judge at times when he was not assigned to Motion Part. These 8 motions to quash were made returnable at his chambers on dates when he was not sitting in Motion Part.

——One of these orders to show cause was signed by His Honor while he was assigned to Trial Term in Schoharie County.

——Undue and unreasonable delay ensued between the hearing of these motions and determination. In each case a stay was granted. Three of these motions were not decided until 4 months or so after the hearing, while two others took over two months.

——In each case, the decision was adverse to the Commission and the subpoenas were quashed.

——In each case where the Commission appealed, the order by this Judge quashing the Commission's subpoena was reversed by the higher courts.

This Judge is one of the six Justices of the Supreme Court referred to earlier as having been involved in the Commission's current litigation.

We respectfully submit that the Courts of this Judicial Department are being abused, your judges over-burdened, and your decisions and orders ignored or circumvented. The orderly administration of justice, we submit, has been disrupted.

We make this application pursuant to the provisions of Section 86 of the Judiciary Law.

We trust the Court will give this matter its earliest attention.

Respectfully submitted,

PAUL J. CURRAN
Chairman
EARL W. BRYDGES, JR.
FERDINAND J. MONDELLO
EDWARD S. SILVER

Commissioners

DATED: May 31, 1973"

The *Knickerbocker News*, in a June 5 editorial titled "Making Mockery of the Courts" cited the Commission's argument and called the request a "valid one." The *Albany Times Union*, on June 6, also endorsed the Commission's application, with the following editorial:

"LET'S GET COURTS OUT OF POLITICS

The obstructionist tactics granted by area Supreme Court judges in the SIC investigations of Albany purchasing practices, police activity and other areas of city management have by now made a mockery of the judicial process.

The local Democratic organization, faced with a continuing SIC probe of its municipal operations, apparently has found a series of willing accomplices to delay, obstruct, confuse and disrupt the SIC attempts to get at the facts it wants and needs in its Albany investigations.

As a result, in a surprise move on Thursday, the SIC appealed to the Appellate Division to appoint a special judge to preside over all further proceedings involving possible corruption in the Albany Police Department.

The Appellate Division has only to look at the record—14 points cited by SIC Chief Counsel Joseph Fisch—in support of his contention that the courts

are 'being abused,' judges are 'overburdened,' and decisions of the Appellate Division are being 'ignored or circumvented.'

So far as the taxpaying public and the ordinary citizen are concerned, what this all amounts to is that Albany apparently has a great deal to hide, which it is desperately trying to keep the SIC from bringing out, and further, that it can depend on certain compliant Supreme Court justices to rule unfavorably on any SIC legal move, and favorably on any request by the local Democrats.

One after another, various local Supreme Court rulings have been overturned by higher courts in connection with the SIC proceedings, and the pattern continues, week after week, in litigation that could extend indefinitely if permitted to continue.

It is time for the higher courts to step in and stop such nonsense. It is a perversion of our legal system. It is an insult to the public intelligence. And most of all it is a backhanded admission on the part of the Albany Democrats that the SIC is into something that they cannot afford to let come out into the open.

If it is to serve the public interest, the Appellate Division will remove the SIC proceedings from the hands of those judges whose records show bias against the SIC, as SIC counsel asks, and provide for a special judge with no local axe to grind or local favors to provide or expect.

For judges who lend themselves to making a mockery of judicial proceedings the public can have only the utmost contempt—a contempt that is undoubtedly shared not only by the higher courts but the remainder of the legal profession that is thus prostituted."

On June 18, the Appellate Division Third Department granted the Commission's motion and designated an additional Special Term "for the purpose of the hearing and disposition of all motions, proceedings and applications pertaining to an investigation by the Temporary State Commission of Investigation of the Police Department of the City of Albany." The Appellate Division assigned Supreme Court Justice DeForest

C. Pitt to preside at such additional Special Term and ordered that all motions, proceedings and applications relating to this investigation be assigned to and returnable before Mr. Justice Pitt. This historic order was signed by the entire Appellate Division Third Department bench, consisting of the Presiding Justice and seven Associate Justices.*

The appointment by the Appellate Division of Mr. Justice Pitt as the "All-Purpose" Judge was warmly greeted by the public, which had grown weary of the endless litigation. In separate and independent editorials, both Albany newspapers lauded both the action and the choice, and prophetically concluded that the legal stalling would now end. Thus, the *Knickerbocker News* stated that although the Commission still faced roadblocks, the Appellate Division "has put to an end the shabby business of shopping around for judges." The paper prognosticated: "No more will politically minded attorneys be able to seek out a Supreme Court justice of parallel political mind to assist, through legalism, in delaying and obfuscating the inquiry."**

The *Times-Union* similarly applauded the Appellate Division's action which it called "a most welcome move toward eliminating politics from the SIC's current probe of alleged corruption in the Albany Police Department." Furthermore, the newspaper, in its June 23, 1973 editorial titled "Step Ahead for the SIC" had the following additional comment:

> "Such a procedure should be undertaken in all future SIC procedures involving Albany. The record is clear that only in this manner will the SIC be able to proceed without the long delays and time consuming arguments that have marked court appearances to date."

The prophesies of the press were fulfilled. It is significant that following the Appellate Division's appointment of Mr. Justice Pitt as the sole judge before whom all litigation was to be brought, the court proceedings came to a complete and total halt. The only subsequent litigation was the completion of pending matters which were awaiting appellate review at the time of the Appellate Division's action. No new proceed-

* Generally only five of the eight Appellate Division Justices hear and determine any single matter.

** Editorial "An 'All-Purpose' Judge," dated June 22, 1973.

ings were ever brought against Commission subpoenas, no challenges were raised to the Commission's authority or further actions. As noted earlier, the Commission was ultimately upheld in every litigated matter.

In addition to the litigation, other resistance and obstruction were placed in the path of the Commission's investigation. Police cooperation, ostensibly complete in the infancy of the investigation, ceased completely as the inquiry continued. The Chief of Police refused to direct his officers to appear for examination and insisted that subpoenas be served. In addition to requiring subpoenas for his men, Albany Police Chief McArdle refused to make certain police records and documents available without a subpoena. Even then, Chief McArdle attempted to deny the Commission access to certain records claiming some couldn't be located, others had been turned over to his attorney, or that the language describing the requested materials was not sufficiently precise.

Finally, however, after all the litigation, adjournments for reasons subsequently proven to be specious, and other stalling tactics, the police were compelled to testify.

II. *THE ALBANY POLICE DEPARTMENT*

A. *POLITICS AND THE POLICE: AN HISTORICAL PERSPECTIVE*

Testimony was received during the investigation concerning the role politics has played, over the years, in the Albany Police Department. According to such testimony, many police officers joined the force through the help of their ward leaders, turned to politicians for assistance in getting favorable assignments or promotions and paid annual tribute to the party in amounts directly related to their positions in the Police Department. When a police officer got in trouble, the party was expected to come to his rescue. While time and civil service have caused changes, many members of the Albany Police Department are still of "the old school."

The Democratic Party in Albany thus has served the police as its unofficial "line" organization, or "P.B.A."* Indeed, there is no professional line organization in the Albany Police Department which makes it one of the most unique police de-

* Police Benevolent Association.

partments in the state. Efforts to form such an organization did not get very far, and the would-be promoters charged harassment by their superior officers because of their efforts.

Several Albany police officers or former officers testified that they had obtained their provisional assignments to the Department through politics. (Pr. H. 1549; Pr. H. 1776-8; Pr. H. 2230-31) Following are two examples:

"Q. Let me repeat that question, how did you get on the Albany Police Department? How did you go about doing that?

A. I approached the ward leader and asked him if I could be assigned to the Albany Police Department.

Q. Why did you do it that way?

A. Because I was told from various City agencies and members of the Department at the time that was the procedure.

Q. You were told that this is the way one became an Albany police officer?

A. That is correct.

Q. Were any references required?

A. Yes.

Q. What type of references were you advised to get for your application?

A. Influential people in the City, preferably politically influential.

Q. Were you told that it would be helpful to have political references?

A. Yes, sir.

Q. I believe you said that you had been advised of this by police officers?

A. Correct.

Q. Was it your understanding that other officers were proceeding in the same manner?

A. Yes, sir.

Q. Was this a common impression and understanding among men?

A. Yes, sir." (302-3)

"Q. All right. Now can you tell us the circumstances leading up to your joining the Department? How did you get on the Albany Police Department?

A. I had just been discharged from the Navy. In 1962 I was looking for a job and a ward leader asked me if I was looking for a job.

I told him that I was.

And he told me that if I wanted to I could either go on the Police Department or the Fire Department.

Q. Did he assist you in getting on the Department?

A. Yes, he assisted me in getting on to the Police Department." (162)

Soon after such men became members of the Department, they were advised that they were expected to demonstrate their appreciation to the Party:

"Q. On this subject, Officer 'Y,' did you ever make any political contribution during these years that you have been on the Albany Police Department?

A. Yes, sir.

Q. How soon after you joined the Department over eight years ago did you make a contribution?

A. Before the first election, after becoming a member.

Q. You are saying the very first year?

A. That is correct.

Q. Can you tell us the circumstances leading up to that contribution? How did you know about it, who told you and so on?

A. The squad leader, a Lieutenant or Sergeant, informed us at the roll call.

Q. You mean in the Police Department?

A. That is correct.

* * *

Q. Were you advised how much money to contribute?

A. Not by the squad leader, and upon talking to the men they told us.

Q. What did they say that you as a patrolman had to contribute?

A. Thirty dollars.

Q. Was it your understanding that this was done by other officers?

A. Yes.

Q. Any doubt in your mind about that?

A. No.

Q. Was it common among the police officers?

A. I believe the majority of them did indulge in this practice.

Q. Did this continue on a regular basis during all the years you have been in the Department?

A. Yes.

Q. Has the amount for patrolmen been the same, roughly?

A. Yes.

* * *

Q. Did you make a contribution each year you have been on the Force?

A. Yes.

Q. Did you make a contribution in 1972?

A. Yes.

Q. Did a command officer make the announcement in '72?

A. Yes.

Q. Do you recall his rank?

A. Either a Sergeant or a Lieutenant, whoever happened to be on the desk at the time." (303-6)

Other witnesses related similar experiences:

"Q. Did there come a time after you joined the Department when the subject of political contributions came up?

A. Yes, there was.

Q. How soon after you joined the Department?

A. The following September.

Q. Was it the very first September after you joined.

A. Yes.

Q. Mr. X, can you tell us the circumstances?

A. It was stated to me by who—I don't recall—but it was general knowledge that a contribution was in order to the amount of thirty, $35 to the Democratic Party, to more or less keep in good standing with the police force.

Q. Can you explain what you mean by 'contribution would be in order' I think the expression?

A. Well, it was expected of the Police Department to contribute money depending upon your given rank. A patrolman, I believe, like myself, I gave thirty, $35. As you went up in rank, the amount also went up.

Q. Can you be more specific with regard to how you learned of this practice?

A. Other than it was general talk around—well, around September it's pay time to pay your dues, that sort of thing.

Q. Was it talk among police officers?

A. Yes, it was.

Q. Was it in the Police Department?

A. Yes, it was.

Q. Did other officers tell you that they were doing it?

A. Yes, they did.

Q. Did you, in fact, make such a political contribution this first year that you were on the force?

A. Yes, I did.

Q. Did you continue making political contributions?

A. Yes, I did.

Q. Did you make them every year that you were on the Police Department?

A. Yes, I did.

Q. Was the amount related to the rank that you held in the Department?

A. Yes, it was.

Q. Was it your understanding from your conversations with the police that they believed this was necessary?

A. Yes, it was." (163-5)

One patrolman described how he made his payment at the Berkshire Hotel, in uniform, the year he joined the force:

"Q. So you went to the Berkshire Hotel?

A. Right.

Q. Were you in uniform?

A. Yes. I was working, yes.

Q. In uniform?

A. Yes.

Q. Would you describe what happened?

A. I walked in, I asked the receptionist at the desk where I could find a Mr. Ryan or a Mr. Bender.*

She pointed to a back room, a room at the end of the hallway and the door was open.

I walked in and I says, 'I am Officer [Z]. I have to see either Mr. Ryan or Mr. Bender. These two individuals are unknown to me.'

One individual stood up and said, 'What can I do for you?'

I says, 'Well, I am here.' I really didn't know what the hell I was there for, to be perfectly honest with you.

* Local Democratic Party officials.

And I explained to him that I was here to, you know, to give him my thirty dollars.

* * *

Q. Let's see if you can recall a little bit more about what you said when you gave him the thirty dollars.

A. Other than that I was there—I don't remember if I said to give my contribution. I don't remember if I said to pay my dues.

I don't know exactly what the hell I said.

* * *

He, which individual it was, stood up, went to a desk, and pulled out a roster and opened it up to my name.

And I gave him the thirty dollars and he crossed off my name.

Q. Have you recognized this as a police roster?

A. An official police roster?

Q. A police roster, official or unofficial, formal or informal.

A. Names.

Q. And he found your name on there?

A. Yes.

Q. And he crossed it off, you said?

A. Yes.

Q. What made you call it a roster?

A. Just because apparently you have a roster in your desk and it looks like a police roster of names." (Pr. H. 3404; 3405; 3406-7)

The second year, this witness testified, he put his money in an envelope, and gave it to a brother officer who brought it to the party official who was collecting that year (Pr. H. 3413).

These payments by police officers to the local political organization were known to superior officers (167; 559; 1456; Pr. H. 1788; Pr. H. 2237-9). One witness, former Detective Sergeant Robert Byers, testified that although he did not make contributions, he recalled a command officer showing members

of the Detective Division a card which bore the name of the place to which contributions were to be brought; the hours and days to do it; and the man to see (558). Byers was asked about one conversation he had had with the Chief of Police concerning this subject:

"Q. Did any officer with the rank of either Deputy or Chief of Police make any comment to you ever about your failure to make contributions?

A. Yes, sir.

Q. Can you relate that?

A. Yes. This is only a rumor that there was a list of violators that were not contributing and that I seemed to be one of the top violators.

And the present Chief of Police, Edward McArdle, stated that I should square up with 75 State Street just in case some time I might need a favor.

Q. What did 75 State Street mean?

A. That's Democratic Headquarters, I believe.

Q. Did he make that comment at a time when the contributions were being made or solicited?

A. It was after, apparently.

Q. In point of time, was it when the men were making their contributions, when the card was being shown? Was it at or about that time?

A. It was after the card was shown. It was after the period of election which then would have shown who did and who didn't.

Q. All right. Well, whether there was a list or not, there is no doubt in your mind about the conversations he had with you, is there?

A. No doubt in my mind." (559-60)

Money was not all the police contributed to the Party. One prostitute, "Penny," described how the police released her from jail before she had served her complete sentence, and what she had to do to earn this unexpected freedom:

"Q. Was there any requirement that you do anything politically in order to operate?

A. Oh, yes.

Q. Tell us about that.

A. I didn't vote Democratic, that was it.
If you didn't vote Democratic, that was it.

Q. Who told you that?

A. Well, I don't know who it was that told me that.
I remember I was in jail one time and they told me before election time that if I would vote, go down and vote Democratic, they would let me out of jail.
They took me down in the paddy wagon down Hudson Avenue where the fire station is, and that is how I got out of jail.

Q. Who got you down there?

A. The paddy wagon.

Q. Who was driving? Do you remember who it was?

A. No.

Q. Do you know who the other girl was? How many girls were involved?

A. There was a gang of us in there then. So this is the one time they were trying to clean up the city for prostitution.

* * *

Q. They wanted you to vote for the person who wanted to clean up the city or did not want to clean up the city?

A. They wanted me to vote for the person who didn't want the city cleaned up. (Pr. H. 460-1)

* * *

Q. You had paid off the police and you have to vote Democratic?

A. Right.

Q. Is that true?

A. That's true." (Pr. H. 464-7)

Other persons involved in prostitution gave similar testimony concerning the "requirement" that girls vote Democratic if they wanted to remain in business (898-9; Pr. H. 345-7; Pr. H. 1039-42; Pr. H. 1193).

B. *NON-ENFORCEMENT OF THE LAWS RELATING TO VICE*

After-Hour Violations

The existence of after-hour "joints" in the City of Albany was well known to the police. A number of witnesses testified that they saw police officers patronize such places, drink with customers—who often had criminal records—and take no law enforcement action. Two police officers admitted as much when they appeared before the Commission (967-75; Pr. H. 3030; Pr. H. 3040).

One such officer, a Detective Sergeant in Community Relations, appeared at the public hearing. He admitted having dated a prostitute over a 3-year period and taking her to a number of such after-hour places:

"Q. Have you ever been with [Joyce] in any after-hour locations?

A. That's quite possible. Yes, I have been in after-hour places.

Q. Have you been with her in places while the ABC laws were violated.

A. You mean have I drank in an after-hour joint?

Q. Yes.

A. Yes, I have. (967)

* * *

Q. Did you know that they were serving liquor in violation of the law?

A. Yes.

Q. All right. And can you tell us whether you have ever seen

any people in any of these after-hour places who were involved in narcotics?

A. That's quite possible.
You know, any time I go out, not only after-hour joints, if I walk into a bar, you know, I might see someone in there that's involved—either hustlers or what have you. That's not uncommon.

Q. Did you ever drink in after-hour places with people involved in narcotics?

A. Where they were present you mean?

Q. Yes, sir.

A. That's quite possible.

Q. Did you ever drink in after-hour places with people who were involved in prostitution?

A. That's quite possible. (973)

* * *

Q. Did you ever take any action against these places that were operating in violation of the law?

MR. KOHN: Objection.

It is a ridiculous question.

He is obviously in there to get a drink.

COMMISSIONER SILVER: Overruled.

A. No, I never have taken any action against them." (975)

The lack of enforcement action by the Albany Police Department in the area of ABC violations can be seen by an examination of the Annual Reports of the Department. The number of arrests by the Albany Police Department for ABC violations during the five year period of 1968 through 1972, inclusive, is as follows:

1968 — 0
1969 — 1
1970 — 0
1971 — 0
1972 — 2

It is appropriate to note that the Commission was conducting its investigation of the Albany Police Department in 1972, and although there were only two arrests in that year, these two represented more arrests than the four previous years combined.

With regard to the non-enforcement of the ABC laws, former Detective Sergeant Robert Byers testified concerning a narcotics arrest he had made in a well-known after-hours place, which he then ordered closed:

"Q. And was this a place that by reason of activity would immediately arouse suspicion of police officers who drove by?

A. Let me say this, that it would be nice if there was that much parking space for cars during the day in the City. There was a block back there and cars were always parked there from 3:00 A.M. on.

Q. In other words, any police officer driving by would have to at least have some suspicion aroused, is that fair?

A. I would say either look for a used car lot sign or you would wonder what they were all doing there, certainly.

Q. Was this place well known within the Department as an after-hour location?

A. It definitely was.

Q. Did you see any effort on the part of the Department to do anything about it?

A. At no time.

Q. You went in with a warrant for a drug dealer and you expected to find him there?

A. I would say warrant to arrest him.
And he was found in there, and he was arrested for a quantity of heroin and cocaine, and so forth—not to get into great detail.
And I decided that I would close the place, and I closed it.

Q. You closed it. All right.
Any repercussions?

A. Well, within a short time thereafter I was in Chief McArdle's office and he stated that the place had the okay. He understood that I had closed the place. He said that the place had the okay.

Q. And this was after you had closed it?

A. Yes. I can't say four days, five days. A short time thereafter.

Q. Well, based upon what you had seen in all this time, did you believe that it was operating with an okay?

A. Yes. Definitely.

Q. And you saw no effort to do anything about it prior to this time?

A. No." (586-7)

Among the top-ranking police witnesses questioned at the public hearing was Deputy Chief of Police William Van Amburgh. Chief Van Amburgh's regular tour of duty was 9 P.M. to 5 A.M. and he had worked those hours for 26 years (1052). He functioned as both the Chief of Detectives and the "Night Chief" (1052). Chief Van Amburgh was questioned about ABC violations:

"Q. Was it the responsibility of members of your command, Chief, to make arrests for ABC violations?

A. AB— we have no right after hours, if they're in a grill, to put the people out. That's up to the ABC Law, isn't it?

Q. You mean police officers cannot make arrests for ABC violations?

A. They can. Yes, sir.

Q. Do you know how many arrests you have made, men under your command have made within the last four or five years.

A. No, sir, I do not.

Q. Well, the Albany Police Department annual report indicates that in 1968 there were no arrests for ABC violations, in 1969 there was one, in 1970 there were none,

and in 1971 there were none. For a four year period there was only one arrest for ABC violations.

In 1972, the year that the Commission was conducting investigations, there were two.

Would you say that in the four years from 1968 through and including 1971 that there was only one ABC violation in the City of Albany during four years?

A. That's all I heard of, sir.

Q. That's all you heard of?

A. That's all I heard of.

COMMISSIONER BRYDGES: You only heard of one violation or one arrest?

THE WITNESS: There is the one arrest.

There is no after hour places.

BY MR. FISCH:

Q. You never heard of any after hour places?

A. I closed them. Yes, sir.

Q. Which places have you closed?

A. I closed the place that—on Herkimer and Green, and I closed a place on Sheridan Avenue called the Head Rest.

Q. Did you ever arrest anybody?

A. No, sir.

Q. Any reason why not?

If you closed them was it because they were in violation of the law?

A. About 3:30 in the morning—I don't know, I don't know if they had a license or not. I didn't go inside the place. I stayed out.

Q. What was your authority for closing them?

A. At 3:30 in the morning it is—I close every place if I go by.

Q. You have to have a basis as a police officer.

Was it because they were in violation of the law?

A. They may not have had a license in that place. I am not sure.

Q. Would that be in violation of the law, that they were serving liquor without a license? Would that be a violation of the law?

A. I don't know if they served liquor. I didn't go inside. I was outside.

Q. What was your basis for closing the place, Chief?

A. The place was open at four o'clock in the morning.

Q. Was there something improper about it being open at four o'clock in the morning?

A. Yes, sir. There were no grills open at four o'clock.

Q. Is that because it is against the law?

A. Yes, sir.

Q. Did you arrest them?
Did you make arrests?
Did you close them because it was a violation of the law?
Did you make any arrests because it was a violation of the law?

A. We didn't make any arrests.

Q. Any reason why not, sir?

A. No, sir.

Q. Isn't that your job, Chief?
(The witness and his counsel confer off the record.)

A. We didn't see any beverages served, which I stated before.

COMMISSIONER BRYDGES: When did you state that before?

THE WITNESS: Just a few minutes ago to Mr. Fisch, that I never went inside. I never seen them serve any beverages.

COMMISSIONER BRYDGES: How did you close the place if you were outside?

THE WITNESS: I stand in the doorway, tell the owner to come out or the bartender, and tell him to close the place.

BY MR. FISCH:

Q. Do you think if you went inside you might see violations of the law and you might see beverages being served?

A. I don't know." (1128-31)

Prostitution

Prostitution in Albany was characterized as "wide open" by numerous witnesses. There were organized houses of prostitution, as well as individual street walkers, and these operations were apparently known to the police.

When police officers were asked at private hearings to name persons known or believed to be involved in prostitution, the names offered were virtually identical. Yet, some of the more notorious madams and prostitutes managed to ply their trade with virtually no interruption of their activities, save an occasional "clean-up" campaign by the police in response to outside pressure.

Sergeant Byers, whose nine years of experience in the Albany Police Department was devoted primarily to enforcement of the laws relating to narcotics and prostitution, had the following observations to make on this subject at the public hearing:

"Q. Now, would you say that houses operated wide open in the City of Albany during this period of time, houses of prostitution?

A. From 1962, yes, right on, right through to—my nine years and five days they did, yes.

Q. Were you ever asked by Chief McArdle to make any arrests or take any action?

A. Yes.

Q. I am referring to an incident you described to me at a private hearing. Why don't you tell the Commission and the public about that?

A. Yes. During one of the meetings, and so forth, with Chief

Edward C. McArdle, he had many reports in reference to a house at 44 Division Street. And he asked me was this a house of prostitution and I said yes.

And he said, well, the men that have been working on it can do nothing with it. Why don't you give it a try?

Q. When he said 'the men who worked on it,' he was talking about men of his own department?

A. Yes.

Q. Detectives?

A. Yes.

Q. All right. Go on.

A. And I took down the information and we obtained what we generally call is a John, which is usually a face that's unknown, who is going to act as a trick with the whore.

And we went around the block once and got the flashlight. He went in and he was propositioned, and so forth.

And we made the arrest and the case was closed.

Q. What do you mean by the flashlight? I think it might be of some interest. What does the flashlight signify? Will you please explain?

A. The coast is clear, I guess you might say, to paraphrase things.

Q. Was this used as a lure for the Johns, in other words, to direct the Johns to the house, a flashlight used by the madam or by the cruiser?

A. Yes. In other words, if they weren't quite sure where it was, sort of like a little beacon signal you might say. All right?

Q. So you had no difficulty in making the arrest, did you?

A. The arrest was accomplished within twenty minutes to a half hour.

Q. Any reason that you can see why the Detectives couldn't have done the same thing?

A. They were looking the other way." (565-7)

Sergeant Byers described another occasion when he was working with the State Police and new Albany police officers on a narcotics investigation in Albany. He became "annoyed" at the brazen manner in which a madam had her girls advertise their wares, so he made a series of felony arrests for maintaining a house of prostitution. Among those he arrested were two of the most notorious madams in Albany:

"A. And I believe our total arrests were twelve that night, including the two felony charges.

Q. Both these women had extensive criminal records and were well known in the City of Albany as madams; is that right?

A. That's correct.

Q. Do you know whether they had ever been arrested for the felony of maintaining a house with two or more girls?

A. No. To my knowledge that was the only time." (568-9)

Another former Albany Detective, John Ruth, who stated prostitution in Albany was wide open (Pr. H. 5665), said that the extent of the Albany Police Department's law enforcement activity against prostitution was "maybe a semi-annual raid on a whorehouse" (803).

The Albany Police Department's own arrest figures support these allegations of ineffective action against prostitution. Following are the number of arrests for prostitution for the period 1968-1972, inclusive.

1968 — 16
1969 — 38
1970 — 22
1971 — 14
1972 — 95

A number of observations are appropriate. It will be recalled that Sergeant Byers testified that he effected 12 arrests in one night in 1969, thus leaving 26 other arrests for the entire year. A number of other arrests during these years were also arrests by Byers, and others may be attributed to State Police action. Finally, it is significant that the number of arrests (95) in 1972, while the Commission's investigation was in progress, exceeded the total number of arrests for the four previous years combined.

The reasons for this breakdown in law enforcement will be discussed more fully in the section dealing with corruption. Generally, however, it can be stated that police officers were not arresting persons involved in prostitution because they were accepting money from them. Other officers were personally involved with prostitutes and admitted this in their sworn testimony before the Commission. Moreover, these relationships were well known in the street, and also in the Police Department.

Narcotics

The relationship between narcotics and prostitution was cited by numerous witnesses at the public hearing and at private hearings (1431; 548; 556-7; 760). Addicts often turn to prostitution for money to support their habit, or even that of their husband's or lover's (555). Pimps and procurers, looking for "the easy buck," will generally not hesitate to earn some money by dealing heroin, cocaine or other drugs. Many of the persons questioned by the Commission about their criminal activities in Albany were persons involved in both narcotics and prostitution. Flo, who began as a prostitute in Albany at the age of 19, worked in various houses operated by William "Billy" Williams. Flo testified that she and Williams made trips to New York City where he purchased heroin and cocaine in ½ kilo quantities (764). This heroin was then brought back to Albany where it was "cut" and "bagged"* in one of Williams' houses of prostitution (763-5).

The head of the Narcotics Enforcement Unit of the Albany Police Department, during the period November 1969 to May 1971, was Robert Byers (549-50). Byers was personally selected by Police Chief McArdle to head this very sensitive and important unit. Despite the fact that the problem of narcotics addiction and drug trafficking was increasing in the City of Albany, Chief McArdle failed to assign sufficient men to the unit:

"Q. How many men did you have in the narcotics unit at the time you left?

A. From the time of my nine years and five days I would have to say that at no time people assigned there—there was never more than four people.

* "Cutting" refers to the adulteration process; "bagging" is packaging.

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Q. This was for the whole City of Albany?

A. This is full-time people for seven days a week, twenty-four hours a day for the entire City of Albany for narcotics and all its related problems.

Q. And you felt that was inadequate?

A. Did I?

Q. Yes, sir.

A. Below inadequate.

Q. Did you tell the chief about that?

A. Yes, I did.

Q. Did you, in fact, submit a letter to Chief McArdle in which you pointed out that you felt there was an overload of narcotics work which could not be handled because of the size of the unit and other reasons?

A. Yes, I did.

Q. All right. Do you have a copy of that letter?

MR. SOLOMON: May we have the date, please?

MR. FISCH: You have made a copy available to me. It is June 29, 1970.

If I may just read into the record some of the comments. 'Number one, due to the fact that I am in charge of the Narcotics Enforcement Unit, I feel that it is my responsibility to inform you of the following conditions:

'Number one, there is an extreme overload of narcotic enforcement work to be done in the City of Albany both during the day and evening hours.

'I feel the abovementioned overload is being neglected at this time in the field of drug trafficking of hard drugs, such as heroin and cocaine, in the ghetto areas of the City of Albany.'

BY MR. FISCH:

Q. And you have a marginal notation here, Chief Byers, which appears on my copy, that there were 368 open cases." (590-2)

In addition to the lack of manpower, the Narcotics Enforcement Unit received very little "buy" money with which to obtain narcotics from drug sellers, and hence were restricted in their ability to make arrests for drug sales:

"BY MR. FISCH:

Q. Let me just—before I do that, Chief Byers, you said you also feel that you were not given sufficient money for narcotics buys, is that right?

A. Yes. There was hardly any money, enough for, you know, an informant. You know, an informant doesn't give you information for a dollar—okay?—and there was very little money given, and it was hardly enough for even one person to deal with as many as five or ten reliable, confidential informants.

Q. And narcotic violations, basically fall into two categories: possession of narcotics and sale of narcotics; is that correct?

A. That's correct.

Q. I am forgetting drug loitering and I am forgetting the possession of hypodermic needles.
I am saying that the sale and possession are basically your substantive crimes; is that correct?

A. That's correct.

Q. And in order to arrest a man for selling narcotics you have to have money to buy the narcotics from him; is that correct?

A. That's correct.

Q. Are you saying that you were not given adequate resources, adequate money to make your arrests of persons selling narcotics?

A. That's correct." (594-5)

The Commission's Chief Counsel read into the record of the public hearing the sworn testimony of Detective Francis Dolan, who headed the Narcotics Enforcement Unit at the time of the Commission's public hearing. The testimony, taken in July 1973, revealed that Dolan also tried to get additional

money and men from Chief McArdle, but enjoyed little more success than Byers:

"Q. Have you instructed your men, men under your command in Narco, whether or not they can give money to informants?

A. No. We only get $150 a month for nine men. So there isn't that much if they do give any that they can give.

Q. What is that money supposed to represent?

A. Their expense.

Q. Do they submit vouchers?

A. No, sir. There isn't enough to submit a voucher on.

Q. $150 for nine men for the month?

A. Yes, sir, and that's just lately. Before that it was a hundred dollars.

Q. What is that money supposed to be used for?

A. Like when they are on stakeouts if they have to have food, and there is times when they have to go into places and they can't be obvious. They might have to spend money and maybe they will have to give an informant money to get a cab back and forth and for buys.

Q. So your buy money is part of the $150 a month?

A. Yes, sir.

Q. Do you think that is adequate?

A. No, sir, I don't.

Q. Have you ever requested that more money be allotted?

A. Yes, sir.

Q. What was the largest buy that you ever made?

A. Well, it never came off with the actual cash but they went up to buy two pounds of marijuana for $300.

Q. What about hard drugs?

A. Our men are known. We usually have to get a state trooper. And they get the money from their funds.

Our men are mostly known where the hardcore drugs are. It is very hard to make it apply on hardcore drugs.

Q. Don't you have new men in the Department?

A. Yes, but you can't take a new man until he has had some training on the street.

Q. Well, have you trained any new men for use as Narco agents?

A. No, sir. You mean keeping them and training them?

Q. Yes.

A. No, sir.

Q. Have you ever suggested that this be done?

A. Yes.

Q. To whom?

A. I asked the Chief one time.

Q. How long ago?

A. This is when I first went over there.

Q. You are talking about two years ago?

A. Yes, sir, 1971.

Q. Did you explain why this should be done?

A. Yes. I told him I would like to get a man who was not known on the street so he could get out there to buy and train him without putting him on the street.

Q. You made that request?

A. Yes.

Q. Was it orally or in writing?

A. Orally, sir.

Q. Have you received any new men?

A. New men on the job, no, sir.

Q. Has your request been met?

A. No, sir. He [illegible] when he had enough men where he can

keep a man on the payroll without putting him on the street he will look into it.

Q. You suggest—and I think that should be 'You suggested,' but I will read it as it is.

Q. You suggest you utilize the services of the State Police?

A. Yes, sir.

Q. Will you say that narcotic crimes have gone up in the two years since you made that request?

A. I think they are going up, yes.

Q. Would you say that the need has gone up, as well, to have a new man working with you so that you can put him on the street?

A. My personal opinion is that I need about twenty-five men.

Q. Let me ask you do you think that a nine-man narcotics unit is adequate?

A. No, sir, I do not.

Q. Have you expressed this view to the Chief of Police?

A. Yes, sir, I have.

Q. When did you first tell him that you felt he didn't have enough men?

A. When I first went in there when there was only five.

Q. And how many men did you request at that time?

A. As many as I could possibly have.

Q. How many men do you feel you should have now?

A. I would like to have twenty-five." (595-600)

Police Chief McArdle was asked at the public hearing about the $150 per month which was allocated to his 9-man narcotics unit, and about the narcotics problem in his city:

"Q. Is it correct that the narcotic crimes basically fall into two categories: possession and sale, Chief?

A. Yes.

Q. And in order to arrest a man for sale you have got to buy narcotics from him?

A. That's correct.

Q. And in order to buy narcotics you have to have the money to buy it with?

A. Yes, sir.

Q. Can you tell me what that $150 represents?

A. It represents the money to use to buy the narcotics, sir.

Q. One hundred fifty dollars to buy narcotics per month, is that right?

A. Yes, sir.

Q. And you have nine men in the Department, in the unit?

A. Yes, sir.

* * *

Q. Can you tell me how much narcotics, how much heroin you can buy for $150 here in the City of Albany?

A. No, sir.

Q. You do not know?

A. No, sir.

Q. You do not know how much?

A. I am not that familiar with it, Mr. Fisch.

Q. Do you know approximately how many heroin addicts there are in the City of Albany?

A. No, sir.

Q. Do you know how many major pushers there are in the City of Albany?

A. I couldn't tell you.

Q. What, sir?

A. I couldn't tell you.

Q. You couldn't tell me as Chief of Police?

A. No, sir." (1305-7)

As will be discussed later in this report, another factor adversely affecting the Albany Police Department's enforcement effort was alleged corruption and other improper associations between police officers and persons involved in narcotics.

Gambling

The Albany Police Department's record of gambling arrests was also very poor, and often the State Police or other outside law enforcement agencies had to step in to fill the void. Following are the gambling arrest figures over the five year period 1968 through 1972, inclusive:

1968 — 0
1969 — 7
1970 — 29
1971 — 0
1972 — 65

Two observations should be made concerning these statistics. In 1970, one gambling raid, conducted by the then head of the Gambling Squad, Inspector Charles Mahar, resulted in 24 arrests (1020). In other words, 24 of the 29 arrests for the entire year were the result of a single police action. Secondly, the dramatic upsurge in arrests in 1972, which represented more police activity than the four preceding years combined, coincidentally took place during the year of the Commission's investigation.

Inspector Mahar testified at the public hearing that the entire "Gambling Squad" of the Albany Police Department consisted of himself and one other man, and that they had other responsibilities and duties:

"Q. Did you have a gambling squad?

A. Yes. Well, I was in charge of gambling so to speak, so you might say that.

Q. How many men did you have in your gambling squad?

A. One.

Q. And over what period of time did that continue?

A. Well, in 1953 I went over, I was assigned to the District Attorney's office, and I stayed there until the middle of January of 1969. So from January, in the middle of Janu-

ary 1969 until I retired, I would say a little over two years four months, that was part of my job, the gambling investigations.

* * *

Q. You said you only had one other man besides yourself?

A. That's right. Of course our duties were somewhat curtailed.

For instance, my day started in the morning. I didn't have that much time to put in actually full time in gambling. I was involved—or we were involved in all types of crimes: Homicides, holdups and just about everything else. And added to that, of course, was my extra duties, which consisted of reading police reports, investigating SLA complaints, just about everything else. And then I threw in the gambling investigations in between.

Q. When you speak of curtailment, are you talking about the lack of time to—

A. That's it. I would say the lack of time on my part certainly prevented me from putting eight hours a day in the gambling picture." (1006; 1021)

A former Albany police officer, with approximately eight years of experience in the Albany Police Department, the last three of which were as a Detective, gave the following assessment of the gambling squad and the gambling problem in the city:

"A. The gambling squad was basically ineffective so I don't think anybody brought in information about gambling because nobody seemed to be concerned.

There were, in most cases, two men assigned. They certainly didn't seek out information and any information or any widespread gambling that might exist or had existed at that time.

Q. Did you see any evidence of widespread gambling?

A. I knew of gamblers or so-called bookies that may have been operating. I would see the activity, the traffic.

Q. Operating apparently without any great concern?

A. Well, the customers certainly weren't concerned about the way they parked or hanging around street corners or what.

Q. Do you put gambling in the same category as prostitution, that it appeared to be wide open?

A. For what little I knew about gambling, I would have to say, in most cases, yes. I never heard of any raids being made by, you know, Albany police solely on their own.

Q. Did you ever see any evidence that the Department was doing anything effective about the gambling problem?

A. No." (Pr. H. 5686-7)

When Chief McArdle appeared at the public hearing, he testified that he had not questioned his gambling squad commanders about the squad's low arrest record, but had merely asked whether "there was gambling going on":

"Q. You asked whether or not there was gambling going on?

A. Yes, sir.

Q. What did they tell you?

A. Told me that there wasn't." (1290)

Chief McArdle stated that there was no need for additional men for his gambling squad, and that two men were sufficient for the City of Albany, which, he stated, has a population of 114,000 (1290).

On August 26, 1971, the New York State Organized Crime Task Force conducted a series of gambling raids and arrested 24 persons in the Albany area. On September 1 of the same year, 7 additional arrests were made, bringing to a total of 31, the number of persons arrested for gambling by this outside law enforcement agency. Thirty of these 31 defendants were charged with gambling crimes committed in the City of Albany, including Seymour Sher. The annual gambling gross of the Sher operation was estimated at between $4-6 million dollars in lay-off action. According to the Organized Crime Task Force, this multi-million dollar operation, based in the City of Albany, was connected to organized crime.

It is interesting to note that the Albany Police Department failed to make a single gambling arrest during that year.

C. *POLICE CORRUPTION*

(1) *Pay-offs from Persons Involved in Narcotics and Prostitution*

The non-enforcement of the vice laws by the Albany Police Department was directly attributable, at least in part, to corruption. Police officers received money on a regular basis, from persons involved in prostitution and narcotics, and did so in an organized fashion. The "regularity" of the pay-offs was related to the nature of the illegal activity and the manner with which it was conducted. Organized houses of prostitution, which maintained fairly regular hours of operation, were contacted by the Detective Squad whose tour of duty corresponded with the time schedule of the house. Houses operating during the night were the prey of the Night Squad Detectives, although other officers sometimes tried to get a piece of the action as well.

Street-walkers paid the police unless they were able to elude them by "sneaking." As one prostitute put it, "if you were a street girl you paid" (Pr. H. 910).

In addition to such payments, which were generally made weekly or bi-weekly, the police also expected—and received—money at Christmas time and other holidays. This was not necessarily all, depending upon the avarice of the police officer or detective. Detective "K" who frequented the racetrack, was quick to spot drug dealer and procurer Billy Williams at the winner's counter or bar and had no difficulty in extracting a "loan" which, not unexpectedly, was never repaid (671). Billy Williams, who started paying off the police as a pimp and continued paying them when he was one of the biggest narcotics dealers in Albany, was an easy touch for the Detectives. In addition to regular pay-offs, they wanted money for their "shopping" needs (673; Pr. H. 250), or because they allegedly provided some special service (665; 855).

As indicated earlier, there is often a very real and direct relationship between narcotics and other criminal activities, such as prostitution. Prostitutes are often users, and thus will buy and sell drugs. Pimps, looking for easy money, found the enormous profits in the illicit drug traffic too tempting to resist. They utilized the houses of prostitution—which operated under police protection—to serve as the centers for the adulteration and packaging of hard drugs, and their girls became their couriers.

Former Detective Albert Maynard, who served in the Albany Police Department for thirteen years, admitted under oath at the public hearing that he and other members of the Detective Squad had accepted money from many persons involved in prostitution and from narcotics dealer Billy Williams, as well. Maynard joined the police force in 1957 by obtaining an application, filling it out, and then leaving it with his ward leader (818). He made his political contributions to the party the very first year he was on the force, beginning with payments of $30 a year as a patrolman and then $50 a year when he became a Detective (820-1). He achieved his assignment to the Detective Division by contacting his "ward leader and also a Senator" (823).

Maynard testified that his first experience in receiving money from anyone involved in prostitution was as a patrolman, when a prostitute walked up to him, handed him some money and walked away (833-4). Robert Byers was confronted with a similar experience as a patrolman. Byers testified that while he was in uniform, a brother officer asked him if he would like to be "broken in on how to receive money from whores" operating in a particular section of town (561). A day or two later, a different officer on another beat asked Byers if he would "remind" a madam that the officer was on the street, so that he could get his money and further, that this would be a "good way" for Byers to "learn" (562). Byers declined. On another occasion while he was in uniform, Byers saw a madam at the window and told her to "close it up." Her reply was "I took care of the Sergeant" (563). On yet another occasion, Byers' plainclothes partner visited a house of prostitution, returned to the car and "stuck a ten dollar bill" in Byers' coat which Byers refused (564).

When Maynard received the money from the prostitute, he "figured" it was for him "to turn the other way" (834). If he had any doubts as a patrolman, they were quickly resolved the first night he went on the street as a Detective:

"Q. Let's take the time you joined the Detective Division. Can you tell us what happened the very first night you went out on the street?

A. I was told to—or another team was told to take me out

and introduce me to the various people on the south end and people who were supposedly informers to us.

Q. And these other police officers were detectives?

A. That's correct.

Q. Were you the third man with a two-man car that particular night?

A. It was a three-man car.

* * *

Q. What happened when you went out to be introduced to people by these officers?

A. Well, some people we did see and some we didn't. And, of course, I believe the first prostitute I came to, she made the remark—

Q. What was her name?

A. She went by the name of Trixie . . .

Q. What was Trixie's reputation and what was her business or occupation?

A. Well, she had been known for years to be a madam.

* * *

Q. All right. Now, you were brought up to Trixie by the other officers?

A. That's correct.

Q. And what happened?

A. Well, after I was introduced—she knew me already, which I don't think the other police officers knew that she knew me. And she asked them if I had to be included.

Q. What was the language she used, as best as you can recall?

A. I believe she said, 'Do I have to include him, too?'" (834-6)

As time passed, Maynard learned, first hand, that detectives were receiving regular payments of money from madams, prostitutes and other criminals. The detectives would drive up

to the house, blow their horn and the madam or prostitute would come to their car with money or tell them when to come back (837; 840-1). These houses of prostitution included locations "where drugs were being peddled," Maynard admitted (841).

Maynard stated that he first started to accept money on a regular basis when he learned that his brother officers were taking money in his name but were not giving it to him. One incident involved drug dealer Williams and his worker, Flo.

Maynard and his partner apprehended Flo for prostitution and took her into custody, but released her upon the instructions of their superior officer who felt their evidence was insufficient (844). Shortly after this incident, Maynard's partner, Detective K, searched for Billy Williams and when he found him, advised Williams that he would have to pay extra money in addition to the regular pay-offs, leading Williams to believe that they had turned Flo loose as an accommodation to Williams (855). Maynard discovered that Williams had given his partner $100 for this alleged favor, and that one-half of that amount was supposed to go to Maynard. Maynard confronted Detective K who denied receiving the money. Shortly thereafter, Maynard was in a detective car with Detective K and another man and spotted Billy Williams:

"Q. What happened after that?

A. Well, I was third man in the detective unit one night when Williams and Flo came over Swan Street.

We stopped them. I went up to the car and asked them to get out of the car. I confronted him on it.

He admitted that he did give him money for both of us. And I brought him over in front of the other two detectives and asked him to repeat what he had told me.

And then, later that evening, I believe—

Q. Let's not leave that. You have Bill Williams. At this time, was he in narcotics?

A. He probably was. I would imagine he was because I think that after he was involved with this Flo, I think he was involved with drugs.

Q. You described him, I believe, at a private hearing as a big dealer in narcotics.

A. He was supposed to have gotten real big. Of course, I don't know exactly what you would consider big but, as far as people on the street, they would consider him big.

Q. As far as Albany was concerned, would you consider him big?

A. I don't know how you would class him. I wasn't in narcotics, myself.

But, as far as the person on the street in the South End, he would class Bill Williams as being a big dealer.

Q. So, at this time, you are saying that you and two other detectives confronted this junk dealer, this man in narcotics and you asked him whether he made a payment of money to another officer half of which was supposed to go to you?

A. That's correct.

Q. Was this done openly out in the street?

A. It was at night and it was in the street.

Q. How many detective cars?

A. Just one detective car.

Q. Did Williams confirm the payoff?

A. He admitted that he did give this other detective money that was supposed to have been for him and also for me." (845-7)

Billy Williams was deeply involved in narcotics at this time, and Flo traveled with him to New York City to obtain the narcotics. Following is Flo's sworn testimony on this subject, as given at the public hearing:

"BY MR. FISCH:

Q. You testified that you went with Billy Williams to New York City for the purpose of his purchasing narcotics?

A. Yes, sir.

* * *

Q. What type of narcotics are we talking about?

A. Heroin.

Q. Anything else?

A. Cocaine.

Q. Heroin and Cocaine?

A. Yes, sir.

Q. What did he do when he brought the narcotics back to the City of Albany?

A. Prepare it for sale.

Q. He prepared it for sale? Could you tell us what he did?

A. It would have to be bagged and cut.

Q. Yes. Did he purchase glassine envelopes for the bagging?

A. Yes, sir.

Q. Where? In the City of Albany?

A. Yes.

Q. Did he purchase quinine for the purpose of adulteration?

A. Yes, sir.

Q. Was that in the City of Albany?

A. Yes.

Q. What quantities of heroin and cocaine did he purchase in New York City and bring back to Albany?

A. I don't know the exact amount. Quite a bit.

Q. You testified at private hearings it was half kilos.

A. It may very well have been, yes.

Q. All right. Did he also tell you that he was bringing back drugs for any other drug dealers in the City of Albany?

A. Did he tell me?

Q. Yes.

A. Yes, he did.

Q. Do you know if Carol was selling narcotics out of the South Lansing address where prostitution was conducted?

A. Yes, sir.

Q. Was that what the signal was to lay off the 'candy,' not to sell narcotics?

A. Correct.

Q. And that was also the place where prostitution was conducted; is that right?

A. Yes, sir." (762-5)

The involvement of Billy Williams and Flo in narcotics was well known to the Albany Police, according to Albany Detective Maynard. As Maynard described it, Williams' drug trafficking "was no secret":

"Q. After this incident with Flo, did you begin to have a relationship with her and see her and speak to her?

A. She became a very good friend of mine, yes.

Q. Did you discuss with her the fact that she was involved in prostitution and narcotics with Billy Williams and with Carol?

A. I am sure I did.

Q. Did you tell her that the Detective Division was aware of her trips to New York City with Billy Williams for the purpose of getting heroin and cocaine?

A. I told her that I had heard it. She was running the trip between Albany and New York to bring drugs back into the City and she had better put a stop to it.

Q. Did you tell her that you had heard it from other detectives?

A. I think—I really don't recall but I am sure that's where I would have had to have heard it.

Q. In other words, Billy Williams' involvement with drugs was very well known to detectives?

A. Yes.

Q. And his trips to New York City for drugs was well known to the detectives?

A. It was getting so just before, finally before he got arrested.

Q. Well, he was never arrested by the Albany Police Department?

A. Not Albany, no.

Q. By the State Police?

A. State Police.

Q. But prior to his arrest the Albany detectives knew that this was a big drug dealer who was making regular trips to New York City and bringing back drugs to Albany; is that right?

A. I would assume so. Everyone on the street knew it.

Q. It was no secret, was it?

A. It was no secret." (850-1)

Maynard explained how the payoffs worked. He testified that after his first night as a Detective on the street, he returned to the madam who had asked his partners whether she had to include him. He told her "I know you are taking care of the rest of the fellows" and he asked to be cut in (855). She told him to return the following week:

"Q. Did you get money from her the next week?

A. I believe I did.

Q. Did this continue on a regular basis?

A. Well, as regular as could be expected. They would give it to you one week and you might not see them for two or three weeks, a month. Sometimes they would give it to you two or three weeks in a row and then you wouldn't see them for a couple of months.

Q. Did this continue on a regular basis for a number of years?

A. Yes.

* * *

Q. Was it basically a weekly thing?

A. It was a weekly thing if you could catch them or if you saw them.

* * *

Q. Were there other people who were involved in prostitu-

tion and narcotics from whom you received money on a regular weekly basis?

A. Yes.

Q. Would you honk your horn at times?

A. Yes, at times.

* * *

Q. Did you receive money in the presence of other police officers?

A. Yes.

Q. Did they receive money in your presence?

A. Yes.

Q. Did you ever have money passed out through the window?

A. Generally that's how it was handed. It was handed in a car window.

Q. Did you ever receive money in that manner and then give it to your partner who was waiting in the car?

A. Yes.

Q. Did your partner ever go out and get the money and then distribute it to you and to the other partners in the car?

A. Yes.

Q. Did you ever collect for other detectives who were not in the car?

A. Yes.

Q. About how many on any one single occasion? What was the largest number of detectives for whom you took money on a single occasion?

A. Including myself it would be a total of ten.

COMMISSIONER BRYDGES: I didn't hear.

MR. FISCH: Including himself a total of ten.

BY MR. FISCH:

Q. What was the amount?

A. Ten dollars a person, which would be a hundred dollars.

* * *

Q. Did teams of detectives ever ask these people who were involved in narcotics and prostitution whether they had already paid other teams?

A. I believe I did once by telephone.

Q. What did you say?

A. I asked a prostitute if she was going to be there, and she said someone else had already stopped and picked it up.

Q. Was it your intention to pick it up for others that night as well as yourself?

A. Yes.

Q. Had you been asked by others to pick up for them?

A. I don't recall anyone in particular asking me, however, I—they did it for me, and I was just going to do it in return." (855-60)

The nine brother Detectives with whom Maynard shared pay-offs, as well as Maynard himself, were named by other witnesses as Detectives to whom they had given money. These ten (including Maynard) constituted about 80% of the entire Detective Squad working those evening hours during the time period in question. In the last year or more before he resigned from the Police Department, Maynard worked with yet another Detective and also shared pay-offs with him. These pay-offs continued until he left the Police Department in July 1970 (Pr. H. 1847). This brought to a total of eleven, including Maynard, the number of Detectives with whom Maynard—by his own admission—shared money received from persons involved in criminal activities.

At the time of the public hearing, ten of these officers were still members of the Albany Police Department; Maynard was the only one who had left the police force.

In addition to these eleven (including Maynard), some seven other officers were identified by witnesses as recipients of pay-offs. At the time of the public hearing, six of these seven men were still members of the Albany Police Department. There were also officers whom witnesses could not identify by name.

Among the persons involved in criminal activities, including narcotics and prostitution, who testified under oath that they had paid off such police officers, and/or witnessed others doing so, were the following:

(1) William "Billy" Williams
(2) Carol*
(3) Flo*
(4) Kitty*
(5) Penny*
(6) Pat*
(7) Judy*
(8) Ruth*
(9) James*
(10) Lucille*

Following are excerpts of testimony given by these witnesses. This testimony discloses the extent of the police corruption and the fact that such corruption was blatant and conducted openly.

"Billy" Williams

Williams, a life-long resident of Albany, began his criminal activities by operating various houses of prostitution in the City of Albany (635). His first operation on Dongan Avenue was "small-time," consisted of but two girls and continued from 1955-1960 (644-5). Payments to the police were made by dropping money into the police vehicle:

"Q. Now, how much were you paying off at this period of time?

A. Well, there was no what we would call set amount at that time because of the fact that you never knew exactly what. But it was always—I can't give you exact figures. But you always assumed that there were always two men in the car. So a twenty-dollar bill was considered—at that time was considered the proper amount.

Q. Was this for detectives, Mr. Williams?

A. Yes. This was for detectives.

Q. Did you also pay uniformed officers?

A. Yes, I did.

Q. How much did you pay them?

A. They rated a little bit lower so it was usually five dollars.

* The Commission has the full names of these individuals, but for the purposes of this report, will not be revealing their identities.

Q. Were there on Dongan Avenue, at this time, other houses of prostitution?

A. Yes, there was.

Q. About how many would you say?

A. Four or five.

Q. Did you see this activity of police cars coming by and blinking lights and window activities take place with the other houses?

A. Most of the time, yes." (647-8)

Williams was asked what his pay-offs totalled:

"Q. You know what you were paying. Were you paying a considerable amount of money at this time?

A. Yes, I was.

Q. Can you give us a ball park figure?

A. From going into the sixties which involved what we call more money, it was in the neighborhood of 240, 245 a week.

Q. A week. Did that cover both detectives and uniformed?

A. That only covered what was regarded as the detectives. That did not cover the uniformeds. I can't even say that because, at that time, five dollars here, five dollars there, you don't have any ideas as just to how much it could be.

Q. Did the officers also ask and receive money on other occasions?

A. (no response.)

Q. Holidays or any other occasions?

A. Oh, yes. It was always something for Christmas. Yes, it was.

Q. Anything else? Any other times?

A. Well, let's see. Not keeping track of what we—now I keep track of it but, at the time, I never gave it any real thought.

But it would happen pretty close to politics. You know, during the election there. A little pressure was put on for a little extra gratuity." (650-1)

After Dongan Avenue, Billy ran houses of prostitution at the Madison Hotel and South Lansing Street (656).

Williams left money with which to pay the police with various persons who worked for him over the years, including Ike (653; 656);* Carol (656); Kitty (656); Penny (657); and others (656; 675).

In addition to money which Billy left for others to pay the police, he identified six officers to whom he had himself given money while Carol was present (658-61; Pr. H. 247; Pr. H. 251-2).

Another girl who worked for Williams as a prostitute and also selling narcotics was Flo. Flo started in Williams' houses and then branched out to call-girl operations in other parts of town (662). The police, knowing of her association with Billy Williams, assumed these to be his operations, and expected him to pay them additional money (665-6).

Williams described an incident which took place at Lincoln Park, and which became widely known throughout Albany. Williams had been complaining at local bars that he was annoyed at having to pay the police and that he had secretly taped conversations with the police concerning these pay-offs. Word reached the police and they left messages for him to meet them at Lincoln Park. He testified that when he arrived, he saw numerous detective cars and found himself surrounded by their occupants. They demanded the tapes and threatened that he would be found "in the river" (613). He denied the existence of any tapes and several days later one of his houses was raided and "ransacked" (643).

Carol

Carol had worked in other houses of prostitution in Albany before going to work for Billy Williams and had been given money by those other madams to be used for pay-offs to the police (687-90). Carol testified that when she worked for Billy Williams, she paid money to between 10-12 different police officers (693). Since the operation was then a night-time operation, the payments were basically to the Detectives

*See p. 161 *supra*.

and uniformed officers who worked evenings, although a few daytime Detectives also received money (694). There were occasions when a uniformed officer, after receiving money, still remained outside. Because his visible presence interfered with her work, Carol contacted the Desk Sergeant and complained:

"Q. All right. You complained. What was your complaint, Carol?

A. The man took my money and is still walking—I couldn't work.

Q. That they took your money and were still around?

A. Then there was another one who came, would come around and he would sit, and I would tell him, 'I just finished doing business with the other man.'
And he said, 'So?'
I would tell him if it was one that, that was supposed to be on the beat, he would get paid, then maybe somebody from another six or seven blocks away would come and they would sit, and I would just say, 'What are you doing here, you know.' And I just complained." (695)

Carol testified that she no longer saw the officers in front of her place after her complaint to the Sergeant (696).

Carol described how the pay-offs were generally made:

"Q. All right. Can you tell me how the money was paid to these detectives and these officers?

A. They stopped by, beep, beep.

Q. Beep, beep?

A. Yes. That meant come outside.

Q. And you came outside?

A. Yes.

Q. Were there other girls working in the house who, on occasion, would go outside for you?

A. Yes. There was—I had two others that used to pay for me.

Q. Who used to pay for you?

A. Who used to work for me.

Q. Can you tell us without their last names who they were?

A. Ike* and Kitty.

Q. Ike and Kitty paid for you?

A. Yes.

Q. Did police ever come to your home, your residence, for money?

A. Yes. One did.

Q. 'One did.'

Did he come on a regular basis?

A. Yes.

Q. How often and what type of schedule did he have?

A. Once a month before he went on duty.

* * *

Q. How much did you pay him each month?

A. Might have been sixty dollars or fifty dollars. I don't know. I don't remember.

Q. You testified at the private hearing—you are not bound by it, if you have a better recollection—you testified at the private hearing that it was eighty dollars, is that right?

A. It might have been eighty dollars. It was supposed to be twenty dollars a week, whatever it is.

Q. So the eighty dollars would represent four weeks?

A. Four weeks.

* * *

Q. As a matter of fact, with regard to all the police officers, was that a regular thing?

A. Yes, it was.

Q. A weekly thing?

A. Yes. Most of them, except for the one that used to come to my home the 3rd of every month.

* See p. 164 *supra*.

Q. With the exception of the man who came once a month, the other detectives you have spoken of here were paid on a weekly basis?

A. Yes.

Q. Did you also operate a house at South Lansing Street?

A. Yes, I did.

Q. Did the payments to police officers continue?

A. Up until, up until I stopped in, I think it was 1968, 1969. . . .

Q. Until 1968 or 1969?

A. Yes. I think I stopped then.

Q. When did you begin with Billy Williams? In 1964?

A. Yes.

* * *

Q. With the exception of those who did not accept it, did the payments continue on a regular weekly basis for the period of 1964—

A. They continued when they could catch me.

Q. Did they try to catch you every week?

A. Yes.

Q. And did they catch you more often than they didn't catch you?

A. Yes, they did.

Q. In addition to that, were there other occasions when they tried to get money, on holidays or any other occasions?

A. Yes." (696-701)

Flo

Flo was a most reluctant witness at both the private hearings and at the public hearing. Nevertheless, accompanied and represented by counsel at each of her hearings, and after receiving immunity, she pieced together a sordid picture of police pay-offs and corruption which corroborated the basic testi-

mony given by Williams, Carol, Kitty, Detective Maynard and other witnesses.

Flo began working as a prostitute in 1965 in houses operated by Billy Williams in the City of Albany (713-14). Others who worked there were Carol, Ike and Kitty. Flo testified that she saw Carol take money out of her boot and hand it out the window and that Ike also paid the police:

"Q. How did you know Ike was paying the police?

A. Ike worked for Bill.

Q. And how do you know about him paying the police?

A. When Bill wasn't there it was Ike's responsibility for the police. It was his responsibility, and that was part of it.

Q. Were you ever there when Ike paid the police?

A. I was there when Ike had a conversation with them. They may have gone outside. That I don't know because that took place in the earlier part.

Q. Did he reach for the boot? Because you had given testimony about Carol.

A. Sometimes. (721-2)

* * *

Q. Now, how many occasions were you present with [Ike] when he met with, or paid or spoke to police officers?

A. Now, when I first worked on Lansing Street and he was present, I remember him opening the window and handing money out the window.

I cannot tell you what police officers, what type of a car or anything else because I could not see it.

Q. You saw the money though, now?

A. I heard the police radio, I saw the money.

Q. How many different occasions? Was it a nightly thing?

A. Yes.

Q. And he had that job at the window, right?

A. Yes.

Q. Now, how long did you remain there and see Ike do that?

A. I think it was only maybe a couple of weeks.

Q. And it was basically every night?

A. Yes.

Q. Seven nights a week?

A. If it was opened seven nights a week, yes.

Q. Was it generally opened seven or six or five nights a week?

A. Yes.

Q. What was it?

A. Six or seven.

Q. How many times a week would you say?

A. A couple of weeks.

Q. Two or three?

A. Two or three or four.

Q. So we are talking about between fourteen to twenty-eight consecutive evenings or between fourteen and twenty-eight occasions when you saw Ike hand money outside to people outside the window?

A. Yes.

Q. And you knew there were police getting money even though you did not know who they were?

A. Unless people installed police radios in their cars. I don't know.

* * *

Q. You heard the police radio?

A. Yes.

Q. Regularly whenever they were there?

A. Not every single time.

Q. Most of the time?

A. Several occasions, yes. Do you want me to go on?

Q. In addition to that, you saw Carol reach into her boot and hand money out?

A. Yes.

Q. And how many times did that happen with Carol?

A. Several times. I can't really remember.

Q. A regular thing every night?

A. Regular thing." (722-5)

Flo testified she had also witnessed Kitty pass money out the window "under similar circumstances" (729-30). From South Lansing Street and Dongan Avenue, Flo moved to State Street and then to Central Avenue where she and another prostitute ran a call-girl operation (737-8). She continued her relationship with Billy Williams and it was while working at her Central Avenue location that Detectives K and Maynard arrested her and brought her to the police station where their superior ordered her released (738; 742-5). Following this, Detective K received $100 from Billy Williams purportedly for releasing Flo, and then failed to give Maynard his share (845).

Following this, Flo and Detective Maynard began a personal relationship. They discussed illegal activities which were taking place in Albany, including Billy Williams' and Flo's narcotics operation (850). Maynard told her of Detective K "shaking down" a prostitute "pretty bad" (748); that certain officers were "on the take" (750); and that the State Police would eventually have to step into Albany because the town "was so wide open" and the Albany police "were not doing anything about it" (759-60). They also discussed after-hour places that were operating and that he had been told by his superior that they had the o.k. to operate (761). Maynard also expressed his concern to Flo that she might be physically hurt by the police (757). They discussed the police threatening Billy Williams because of his dissatisfaction with his payoffs to them, and Maynard told her that the police might have to "torch" Billy Williams' place (754; 852). In fact, after one of Williams' places was burned, Maynard told Flo that he believed two police officers did it (756-7).

Flo testified to other occasions involving Billy Williams and police officers. She was together with others at the Saratoga Race Track and saw Billy Williams give Detective K $100 (772-3). There were also occasions when she was with Billy Williams and his car was stopped by police. He would pull his car over, get out, go over to the police car, and lean through the window of their car. Upon returning, Billy Williams told her he had passed them money (765-6).

Flo was arrested with Billy Williams in September 1968 by the New York State Police on charges of selling narcotics. She received five years probation and Williams received a four year jail term.

Kitty

Kitty worked in various houses of prostitution in the City of Albany from 1953 through 1969 (884). She performed various duties, including those of a "cruiser" which required that she stay at the window and "call various men in" (885). She also worked as a prostitute and madam and had the responsibility to "keep watch" and to "pay the police." She testified she did so on a regular basis (885).

The first house Kitty worked in was located on Franklin Street and was a day time operation (885). She remained there for eight to nine years, during which time she made regular payments to the police (886). The uniformed men received $5, and were paid "every day, sometimes twice a day," while the plainclothes detectives received $10 and were paid weekly (887). These daily and weekly payments continued throughout the eight or nine years of her employment there (887). The money was either dropped out the window or brought down to their car and handed to them personally (887). In addition to these regular payments, additional money, in various amounts, was given to the police on holidays (887-8).

Police officers also visited the house of prostitution to socialize and drink, as well as for payments of money (888), and several also came for the services of the girls who worked there (889-90). One officer came so frequently he was regarded by the girls as "a permanent roomer" (891). Kitty also recalled an incident where a Detective who came to visit was so

drunk and abusive that she called the police who came and removed him in a prowl car (889).*

When Kitty left Franklin Street, she went to work for Billy Williams and operated houses of prostitution for him at South Lansing Street, the Madison Hotel and Green Street (893). She witnessed Billy Williams "bagging up heroin" at his S. Lansing Street location, and corroborated the testimony of other witnesses concerning pay-offs to the police by Williams or his employees, at a time when Williams was involved in narcotics:

"BY MR. FISCH:

Q. Did police officers ever come to 34 South Lansing Street to be paid money?

A. Yes.

Q. Did you pay them at 34 South Lansing Street?

A. Yes, I did.

Q. While Billy was involved in narcotics and prostitution?

A. Yes.

Q. Do you know the name Carol? And I don't want the last name.

A. Yes, I do.

Q. Do you know to whom I am referring?

A. Yes, I do.

Q. Did she also work at 34 South Lansing Street?

A. Yes, she did.

Q. Do you know the name Ike?**

A. Yes, I do.

Q. Did he ever work for Billy Williams?

A. Yes.

* See testiminy of Carol concerning her complaints to the Desk Sergeant, p. 215, *supra*.

** See p. 164, *supra*.

Q. Do you know whether Carol and Ike had the same responsibility you did, to pay off police officers?

A. Yes.

MR. FISCH: Mr. Chairman, I brought that out through this witness because it was testified to by previous witnesses yesterday.

Q. Now, did you pay off at 34 South Lansing Street where Billy bagged narcotics and where prostitution was conducted and at other places on a regular basis?

A. Yes.

Q. Detectives and uniformed officers?

A. Yes, I did.

Q. Did you identify by name a number of detectives and uniformed officers for us?

A. Yes, I did.

MR. FISCH: Mr. Chairman, the witness identified by name ten detectives, three uniformed officers.

Q. Did you also state that there were many uniformed officers whose names you did not then nor do you now know?

A. Yes. That's right." (892-4).

Kitty also testified that she was present and overheard arguments Billy Williams had with police officers who claimed they had not received their share of the money Williams had given their partners (895-6).

Another house Kitty worked in was one operated by Trixie, a well known Albany madam (568-9). Trixie instructed her on pay-offs to the police and also told Kitty "to make sure all the girls voted Democrat" (898-9). The first time Kitty worked for Trixie was a period of one week, during which time another girl paid the police in Kitty's presence. This was done so that Kitty would know whom to pay off herself, when the occasion arose (898-900). Police received money in amounts ranging from $10 to $50 (900), and came in marked and unmarked police cars and their private vehicles as well (900).

The second time Kitty went to work for Trixie she knew

what police officers to pay, and was told by Trixie that the police should be paid during certain hours:

"Q. Did there come a time when you, yourself, made these payments while working at Trixie's?

A. Yes.

Q. You said something about from 5:30 to 9:00. Can you explain what you meant by that and what happened during those hours?

A. Nothing happened. You had to sit by and run down and pay the police. There was no business at all because you had to take your time going up and down the stairs to pay the police.

Q. When you say there was no business, can you explain what you mean by that?

A. Yes. There was no cruising, no tricks, no nothing coming in until after 9:00 o'clock.

Q. Why was that?

A. Because the police was coming.

Q. Is that because you were so busy during those hours that there wasn't time for tricks?

A. That's right.

Q. I don't want to put words in your mouth.

A. You are not putting words in my mouth.

Q. Because this is what you told us at private hearings.

A. That's right.

Q. Do you recall whether there was any particular night of the week when these police would come?

A. Friday nights.

Q. Do you recall the total amount that you would pay off during those hours?

A. Oh, boy. Well, it went anywhere from five, $600 on a Friday night.

* * *

Q. Yes. Did I understand that this was supposed to be the one night during the week when police were to come to Trixie?

A. Yes.

Q. While you worked there during the week, did they come at other times or just that one night during those hours?

A. During the week it was just the uniformed cops on from the eight to twelve shift and twelve to eight shift. Just the uniformed cops.

But on weekends, it was the detectives and, I didn't understand it, but a few other uniformed police. That's the way she had her business arranged.

Q. You are saying that in addition to the five to $600 on Friday, there were also payments to officers during the week as well?

A. Right." (900-3)

Kitty also identified "Penny" as a girl who had worked for Trixie and Billy Williams (903). While Kitty stated she had never herself witnessed Penny making any payments of money to the police, she recalled Penny telling her that she had done so (903).

Penny

Penny, an Albany prostitute whose criminal record includes narcotics violations, was identified at private hearings by Albany detectives as a person involved in narcotics as well as prostitution (Pr. H. 3640; Pr. H. 4079; Pr. H. 5090). She was examined under oath at a private hearing in Albany in December 1971, after expressing great concern and fear about possible retaliation by the Albany police. It is a matter of record that the Albany Police Department attempted to locate and question all persons they believed might have given testimony to the Commission.* The Commission does not know whether the Albany Police Department ever contacted Penny, but the Commission was thereafter unable to find her and accordingly had to read portions of her private hearing testimony into the record of the public hearing.

* See pp. 370-5, *infra*.

Penny testified that she first began working as a prostitute in Albany in 1957, worked for several madams and saw them pay police officers (Pr. H. 426-7). The only time police were not paid, Penny testified, was where the girls were "sneaking" (Pr. H. 428). If the police knew—and "it didn't take long for them to find out"—then they came by to get paid (Pr. H. 429).

"Q. Was it a pretty open operation?

A. It was pretty open, right. In fact, it was like everybody had a license. It looked like everyone had a license because we had to pay for the license.

Q. The people who collected for the license were the police?

A. Right.

Q. Do you know anybody by the name of Trixie?

A. Right.

* * *

Q. And what did she do for a living?

A. Now? She has properties. She has money. She doesn't have to do anything.

Q. How did she make all the money?

A. She had a house.

Q. A house of prostitution?

A. Right.

Q. Did you ever work for Trixie?

A. Yes, I have.

Q. And for what period of time?

A. Off and on for seven years.

Q. When did you begin?

A. First time around 1960, 1961. (Pr. H. 429-30)

* * *

Q. And what about the police, did you have any responsibility with regard to the police?

A. Definitely.

Q. What was your job with regard to the police?

A. I would have to pay them when they came.

Q. What was the arrangement with the police?

A. Well, they came nighttime and usually it was on a weekend.

Q. And what would you do, what would you pay, how much would you pay?

A. You go downstairs and you pay them fifty dollars a car.

Q. Was that for each detective's car?

A. Each car, right.

Q. And how many cars were there?

A. Just about five cars.

* * *

Q. And did this continue during the seven years that you were there on and off?

A. All the time I was there, right.

Q. And when you made payments did you, yourself, hand the money to the police officers?

A. Right.

Q. And was this done every week or every other week?

A. Every other week.

Q. And would there be one or two or more officers in each car?

A. Usually there were two, but there is only a couple of times that there was more than two in there.

* * *

Q. How would you get the money to them? Would you go to them in person or would you drop it in the car or what?

A. I would give them to the person.

Q. And you said it was either a weekend or evening?

A. Usually at night, you know.

* * *

Q. Would they all come, all five cars the same night?

A. Yes, same night. Very seldom that they didn't. Every now and then one might not come, but they would still get it maybe the next day, might be night off or something like that, but they would get it or they would go up to the house and get it. (Pr. H. 431-3)

* * *

Q. Did you ever have men who were not even assigned to that territory come by to get paid?

A. It happened once or twice.

Q. And what would you do in a case like that?

A. I paid them and Trixie would give me hell.

Q. Did she ever say she was going to complain to the police about this?

A. Yes, she has.

Q. What did she do?

A. She called somebody up. Don't ask me who. She would call somebody's house.

* * *

Q. How do you know she called Sergeant [B]?

A. I heard her one day.

* * *

Q. When she made these calls did you find that the men then left?

A. Yes, they left." (Pr. H. 436-8)

Penny identified Ike as another employee of Trixie's who "[took] care of the house" as she did, and who had responsibilities similar to hers. She also testified concerning officers seeking sexual favors.

Penny identified a total of 13 Albany police officers as men to whom she had given money (Pr. H. 440-9; Pr. H. 473). At the time of the public hearing, 11 of these 13 men were still members of the Albany Police Department.

Penny also testified concerning certain political obligations the girls had:

"Q. Was there any requirement that you do anything politically in order to operate? Did you have to register in any certain way or vote or anything like that?

A. Oh, yes.

Q. Tell us about that.

A. If you didn't vote Democratic, that was it. If you didn't vote Democratic, that was it." (Pr. H. 460)

With regard to the political requirements, Penny related an incident which was previously referred to and which occurred when she was in jail:

> ". . . I remember I was in jail one time and they told me before election time that if I would vote, go down and vote Democratic they would let me out of jail. They took me down in the paddy wagon down Hudson Avenue where the fire station is, and that is how I got out of jail." (919-20)

Penny stated that she was not the only girl who was released:

"A. There was a gang of us in there then so—this is the one time they were trying to clean up the City for prostitution.

Q. They wanted you to vote for the person who wanted to clean up the City or did not want to clean up the City?

A. They wanted me to vote for the person who didn't want the City cleaned up.

Q. They released you after that?

A. Yes.

Q. Did the paddy wagon actually pull right up in front of the registration place?

A. They dropped us off right there.

Q. Right in front?

A. Suitcase and everything, right." (920)

Pat

In her own words, Pat had been "into the drugs, hustling

and armed robbery" and had worked as a prostitute "off and on" during the ten years she lived in Albany and up to her arrest for narcotics in December 1971 (Pr. H. 2586; Pr. H. 2623). As a prostitute, she worked in houses and also roamed the streets as a streetwalker. The first house she worked in was on South Lansing Street and was operated by Carol (for Billy Williams) (Pr. H. 2587). She remained there for two years, and claimed that the Albany police were aware of the illegal activities:

"Q. Did the police officers know that prostitution was being conducted there?

A. Yes, they did.

Q. How do you know for a fact that they were aware of that?

A. They used to come in and get paid off." (Pr. H. 2588)

Pat witnessed a number of police officers paid off by different persons connected with the running of the house, including Billy Williams, Carol and Ike* (Pr. H. 2588-2590). Pat herself threw money out the window and saw it retrieved by the uniformed officer who had come for that reason (Pr. H. 2594). In addition, Pat testified that she had personally witnessed streetwalkers, addicts and a procurer pay off police officers up to her arrest in December 1971 (Pr. H. 2604-8; 2616) and had also witnessed prostitutes render sexual favors to police officers (Pr. H. 2592-3; Pr. H. 2606; Pr. H. 2618). She also testified of weekly pay-offs by the owner of a bar to Detectives over a period of five years (Pr. H. 2595-7). She said that the owner of the place "used to sell drugs and girls used to prostitute out of it" (Pr. H. 2595). Pat testified that her own involvement in drugs was known to the police officers who wanted her money:

"Q. So when they took money from you or asked you for money, they knew they were talking about a person who was violating the Narcotics Law as well as prostitution?

A. Yes." (Pr. H. 2621)

Judy

Judy was arrested for possession of drugs in 1971, and had

* See p. 164, *supra*.

also operated as a prostitute in Albany for approximately fifteen years prior to her narcotics arrest (Pr. H. 2540; Pr. H. 2545). During this time, and up to the fall of 1971, she made payments of money and sex to police officers (Pr. H. 2542-75). She described how she and her boyfriend were stopped on the street one evening while she was in possession of narcotics:

"A. . . . We were crossing the street, and I had a couple of bags of stuff in my brassiere, and the works and everything.

All of a sudden a detective's car pulled over, and he yells, hy, Judy, come here a minute.

* * *

He just said, I haven't seen you around much lately. Don't you come out at night?

This must have been about—I don't know—nine o'clock, maybe something like that, close to nine.

I said, no, I haven't been hanging out too much at night.

He said, well, you know there is a lot of tricks down around [A . . .'s].* Business is booming down there. He said, if you want to operate out of there I'll see that nobody bothers you. Just take care of us, ten apiece a night.

He said, you don't have to make a decision now. Think it over. Don't tell Frank. Keep it to yourself.

He was standing over on the curb waiting for me. He pulled down a little bit on Hudson Avenue just below Pearl.

Q. Who was Frank?

A. If I recall, I was going with him at that time. We were just going home.

Q. So he suggested it to you?

A. Yes, that I could operate out there. There was big money to be made down there. If I remember right, he even mentioned the tricks don't spend less than twenty-five. So he told me to think it over.

I said, okay.

* A local bar and grill.

I let it go with that. I never bothered. I figured they would run me crazy and tell everybody else. So every detective would be looking for a piece of the action.

Q. You mean they would run you crazy. You mean, you would be paying each one?

A. Yes, first it would be somebody else that would be coming in looking for some money." (Pr. H. 2559; 2561-2)

This officer, as well as other officers, would see her on the street and ask "how's business":

"Q. Did other police officers ever make a remark to you?

A. They all knew I was working. I have been there for years.

Q. Let me finish that question.

Did other officers make that remark to you 'how's business'?

A. Yes, all of them.

Q. They all knew you were working?

A. Sure, I had the same corner for years." (Pr. H. 2563)

Ruth; James

Ruth testified that within five to six months after she began working as a prostitute, she was approached by Albany Detectives for money. She then began paying them twice a week (Pr. H. 1239-47). Her procurer, James—who was also a drug dealer—testified that he witnessed Ruth paying off Albany Detectives and that on occasion, Ruth borrowed the money from him (Pr. H. 1932-4). James testified that he had paid Albany Detectives himself (Pr. H. 1942; 1946-7).

Lucille

Lucille was married to an addict who had an expensive drug habit. She engaged in prostitution to obtain money for drugs. Her husband knew what she was doing and encouraged her to continue.

Lucille began working as a streetwalker in 1962 and had continued up to the time she was examined by the Commission

at a private hearing in 1972 (Pr. H. 1049). Yet in those ten years, she was never arrested for prostitution:

"Q. During these ten years that you have worked in Albany as a prostitute, have you ever been arrested by the police for prostitution?

A. No.

Q. Can you tell us how you have managed to escape being arrested?

A. First of all, I have paid off a few officers when I worked downtown. And that protected me. . . . " (Pr. H. 1049)

Lucille testified that for the first three years, she paid money to the local beat patrolman, and that she paid him every night she worked (Pr. H. 1055). She was asked how it all began:

"Q. Can you tell us how it began with [Officer W]?*
In other words, did he say, if you want to work the street you have to pay? Or what?

A. I do not know how the word came—you know, how the word came about that I had to pay him.
But if you want to work—I guess it was the word of mouth of cops. That is how.

Q. The word of mouth from the cops.

A. I think so.

Q. Is it fair to say that if a girl wants to work the streets of Albany as a prostitute she can only do it by paying off the police?

A. Yes.

Q. Has that been your experience over ten years?

A. Yes.

Q. And what you know of other girls who have worked?

A. Yes.

Q. And what police and other girls have told you?

A. Right." (Pr. H. 1056)

* The individual is being identified here by the first initial of his last name.

In addition to the first beat officer referred to above, Lucille made similar nightly payments to other officers (Pr. H. 1079; Pr. H. 1085; Pr. H. 1088). Officers knew she was in prostitution, drank with her and visited her socially at her apartment (Pr. H. 1090-1).

In 1964 or 1965, she met a local public official and started going out publicly with him. The police knew of this relationship and this, according to Lucille, was the other reason she was not arrested (Pr. H. 1099). This relationship continued throughout the years. Sometime in 1970, one officer* approached Lucille and sought her assistance. He told Lucille he knew she and the public official were "good friends" (Pr. H. 1100) and that he, the officer, would "look the other way" if he ever saw her "doing anything" (Pr. H. 1103). He then inquired if she could talk to the official about a position in the Police Department that was about to open (Pr. H. 1101). Lucille stated she mentioned it to the official, but did not make a pitch for him (Pr. H. 1105).

The public official, by his open association with this prostitute, actually may have afforded her protection from more than prostitution. The officer's comment about "look[ing] the other way" was probably the reaction of other police officers who saw Lucille being driven around town by the public official in his automobile. As her record indicates, she was not arrested during this time.

Lucille testified that the public official, on occasion, drove her to her "tricks" (Johns), and waited for her in his car until she was through (Pr. H. 1109). He then drove her and/or her addict husband to their "connection houses" where her husband purchased drugs (Pr. H. 1108):

"Q. Before you get to that, let's continue with [Mr. T].** You said he would drive you or your husband or both of you to connections?

A. Yes.

Q. Where you went or your husband went or both of you went to buy drugs for Jerry, your husband,—

A. Right.

* The officer was still a member of the Albany Police Department at the time of the public hearing, and held the rank of Lieutenant.

** The individual is being identified here by the first initial of his last name.

Q. (Continuing)—did he ever take you to the same place more than once in one day or evening?

A. More than once?

Q. Yes.

A. I think so. Yes.

Q. Were they places that you would generally not be going to for any other legitimate purpose?

A. Well, yes, more or less. Yes.

Q. How late at night were some of these trips?

A. I would say up to twelve o'clock.

Q. Could you tell us how it would happen? I mean, what was the procedure? How long did it take? Who drove? Explain it to us. Take a typical night.

A. I would just come home, say, and my husband was sick. If I had money, or if I didn't have money and the trick had called in the meanwhile, and I had to go to the trick's house, and I didn't have no way of transportation, and if the guy didn't want to pick me up, or if I didn't have enough money to take a cab, I would call [Mr. T].

If he was home I just asked him, would you take me to a friend's house. And I would say, will you wait for me? I won't be long.

And, you know, he would say, do you have to turn trick? I said, yes.

I would go and turn trick. And he would wait for me.

Q. In the car?

A. Yes. He would be in the car.

Lots of times I would say, now I am all done. I have to go some place else. Or, will you go up to the house with me? I have to pick up Jerry, because Jerry has to go somewhere.

He said, no. You are going to give him the money to do what he has to do.

Q. Do what he has to do?

A. Yes.

Q. What would you say?

A. I would say, yes. There is nothing I can do about it.

Q. Then you would pick up Jerry?

A. I would say, you don't understand.

Q. Then you would pick up Jerry?

A. And we would go.

Q. Go ahead.

A. We would go down by the bar, if we had to go down by the bar. And we would park away from the bar.
He would go where he had to go, in the bar and home again.

Q. [Mr. T] would be waiting?

A. [Mr. T] would wait for me in the car.

Q. Then you would come back and get into the car?

A. Yes.

Q. Then [Mr. T] would what?

A. We would go home. I would go home, and he would go home.

Q. This was a regular thing where [Mr. T] would drive you?

A. Yes. Right.

Q. Did it average a few times a week?

A. Yes.

Q. Five or ten times a week?

A. I would say that." (Pr. H. 1108-11)

With regard to whether or not the official knew the purpose of these trips, Lucille testified as follows:

"Q. You said before that after he had driven you to the trick's and you had gotten money he made a comment, now you are going to go and get something for Jerry, or words to that effect?

A. He would make some remark, or, is this for a deck?

Q. Is this for a deck?

A. Yes.

Q. Did he mean a deck of cards? Or a deck of heroin?

A. A deck of heroin." (Pr. H. 1111-12)

Although the official warned Lucille that "if we are going to have this stuff on us, he didn't want us in the car with it" (Pr. H. 1112), he continued to drive them.

One time, while Jerry was in jail, Lucille smuggled heroin in to him by secreting it in the folds of a grocery bag which contained his clothes (Pr. H. 1114). She did not bring the bag to the jail herself, but asked the public official if he could deliver it.

"Q. What did he say when you asked him to drop the bag off?

A. He said, there is nothing in this bag? There is only clothes?

Q. What else?

A. He said, there is no decks or stuff?

Q. Did he use the words 'decks' or 'stuff'?

A. I think it was stuff at that time.

Q. In reference to heroin; is that right?

A. Right.
I said, no. Don't be silly. And then, you know, he did bring the bag up.
When they didn't give Jerry the bag—they only gave him the clothes—he started bitching, Jerry.
That is when they got hot. Why is he bitching for the bag after he got the articles? What is so important in this bag?
So they took the bag apart and they found it. But they were just waiting for me to go back up there again. But I didn't go back up there." (Pr. H. 1115-16)

Lucille indicated that prior to the incident referred to above, she had smuggled heroin in to the jail for her husband about three times (Pr. H. 1123), and that the official had brought it in one of those three times (Pr. H. 1123). She testified that she and her husband felt that the guards would not check packages the official brought in and that was why they used him. (Pr. H. 1123)

(2) *Open Associations between Prostitutes and Members of the Albany Police Department*

A number of madams and prostitutes testified that Albany police officers visited houses of prostitution seeking the physical favors of the girls who worked there. Others testified that officers visited their homes and socialized with them, and drank with them in bars and after-hour places. Two detectives whose associations with prostitutes were no secret to their brother officers were Detective Albert Maynard and Detective Sergeant John Dale.

Detective Maynard and his prostitute "friend" Flo both testified at the public hearing and portions of their testimony have already been set forth in this report. It is of particular interest in this connection to relate the testimony of former Detective Robert Byers, who verified this relationship by his arrest of Flo.

Byers testified that Albany Police Chief Edward McArdle spoke to him one day concerning a communication the Chief had received from the District Attorney of Albany County. The District Attorney told McArdle that he had received information that a "Captain Maynard" was involved with a prostitute named "Flo" at a particular address on Myrtle Avenue (577). McArdle told Byers that he, the Chief, had checked the address and that it was a vacant lot (577). Byers told McArdle that the "Captain Maynard" was actually "Detective Maynard." Byers also identified "Flo" for the Chief, explained what he knew of the situation, and gave the Chief the correct location of Flo's criminal activities (578-9). In fact, Byers testified that as soon as McArdle mentioned Maynard's name, he knew the matter he was talking about because Maynard's association with Flo was "known throughout the whole Department" and should also have been known to Chief McArdle (579-80).

McArdle told Byers to look into it, and Byers, after a brief investigation, arrested Flo for prostitution and obtained evidence establishing her relationship with Maynard. Byers turned this evidence over to Chief McArdle, and Maynard resigned. Byers was asked if he knew whether or not Chief McArdle had reported these developments to Albany County District Attorney Arnold Proskin, who had brought this matter to the Chief's attention:

"A. . . . Some time, at some time during this he had stated that he advised District Attorney Arnold Proskin that there was no Captain 'M'* at 530 Myrtle Avenue, that there was nothing going.

Q. In other words, he said that he had checked it out and the address was wrong, it was a vacant lot; is that correct?

A. He stated this to me. That's correct.

Q. That he had advised Mr. Proskin of that, is that right?

A. Right. Because there was no Captain.

* * *

Q. And he also told you at some point that he had advised the District Attorney that there was no Captain 'M'?

A. That's correct.

Q. In spite of the fact that there was a Detective 'M,' he told the DA that there was no Captain 'M,' is that right?

A. That's correct." (581-2)

When Chief McArdle testified, he recalled that District Attorney Proskin had reported to him information that a prostitute was operating at a Myrtle Avenue address, and that he "could well" have given him the name "Flo" (1423-4). While it was "possible" that the District Attorney had also mentioned Maynard's name, the Chief stated he had no recollection of it (1424-5). McArdle further testified:

"Q. You went out. What did you find out, Chief?

A. I went up Myrtle Avenue. I checked the address, the address was non-existent. It was a vacant lot there.

Q. What else?

A. I got back to the district attorney, told him that the information he had given me, the address he had given me was non-existent and I asked him if he got any further information on it to please forward it on to me." (1427)

McArdle admitted he gave the information to Byers, and was asked why he had given him the assignment:

* At the public hearing, Maynard was originally referred to as "M." However, during the same hearing, the Chief of Police and others were questioned and Maynard's true name was used.

"Q. Why Sergeant Byers?

A. Just because he is working in narcotics and with the known relationship between narcotics and prostitution that he might run into this girl if she was operating up in the upper end of town.

Q. Did you have other men who did work in the area of prostitution than Byers, who had greater responsibilities for prostitution investigations?

A. Not on a special note, no.

Q. Not on a special investigation?

A. No.

Q. Is that what you were about to say, 'not on a special investigation'?

A. Not on a special note. Prostitution is the prerogative of the entire detective division. There is no special squad or unit assigned to it.

Q. Is there any reason that on an allegation involving prostitution you didn't go to the detectives, the regular detectives, and you turned instead to a man who handled narcotics?

A. It was just my judgment at the time that they would be more apt to run into her up in this section of town.

Q. Did the allegations from Mr. Proskin involve narcotics?

A. No, sir.

* * *

Q. What happened after that?

A. Some time later, Byers did arrest her at another location.

Q. Did he report anything else to you, Chief?

A. Yes, sir.

Q. What was that?

A. He told me that during the course of the arrest in the premises he found some information there on stationery, greeting cards, and so forth, that indicated that one of our policemen was known to her.

Q. Was there evidence linking the two, Chief?

A. Beg your pardon?

Q. Excuse me.
Was there evidence found linking the two, Maynard and Flo?

A. On a social basis. Yes, sir." (1431-3)

McArdle then asked Deputy Chief Van Amburgh "to interview" Maynard "and see if this was actually a fact, that he was associating with her" (1433-4). Maynard resigned thereafter, no charges were filed against him, and nothing derogatory was placed in his personnel folder (1433; 1436).

Another officer who associated with a prostitute was Detective Sergeant John A. Dale, who also testified at the public hearing. The association of Dale and prostitute Joyce Smith was reportedly known within the Police Department, as well as outside the Department (1109; Pr. H. 485; Pr. H. 1993; Pr. H. 1263-9; Pr. H. 2575; Pr. H. 1182) and was even alluded to in the local press (1176-83). Nevertheless, the Albany Police Department has still taken no action against Dale, despite his admissions at the public hearing concerning his relationship with Joyce Smith.

Witnesses testified before the Commission that Joyce worked as a prostitute for Billy Williams and then left him for Sergeant Dale (Pr. H. 1182; 669; Pr. H. 391-3). Prostitute friends of Joyce testified that she bragged of her relationship with Dale and suggested that they do likewise by getting themselves a policeman-boyfriend (Pr. H. 485; Pr. H. 1172; Pr. H. 1186; Pr. H. 1993). There was testimony that Joyce had further boasted that she had purchased a new automobile for Dale and that he had purchased real estate with money she had given him (Pr. H. 485; Pr. H. 1996; Pr. H. 2624). In the series of articles on alleged police corruption which appeared in the *Knickerbocker News* in the fall of 1971, reference was made* to "Sergeant X" and his prostitute girl-friend "Joyce," an easily recognized reference to Sergeant John Dale and Joyce Smith.

At the public hearing, Dale admitted that he had dated Joyce Smith, off and on over a three-year period and that such

* October 21, 1971.

"dates" averaged seeing her once a week (960). He claimed he did not know she was a prostitute (965) until her arrest in 1970 (965) although he knew she did not work for a living (961). When asked how he believed she supported herself, Dale testified he thought she was being kept (961). At his private hearing, Dale conceded that he "might have suspected" that some of her money came from illegal activities she engaged in (Pr. H. 2710-11). Dale admitted having received from Joyce Smith a ring (966), watch (966) and clothing (965). He paid her rent and telephone bills on occasion, and "most of the times" with her money (966). They took trips outside the state (977) and visited after-hour places (967). Dale admitted he struck Joyce Smith physically (967), and conceded that she "probably" did ask that he put some real property he owned in her name, but could offer no explanation of why she should make such a strange request (978).

Dale was asked about the purchase of his expensive automobile at the public hearing:

"BY MR. FISCH:

Q. Sergeant, in 1969, the latter part of 1969, did you purchase a Thunderbird?

A. Yes, I did.

Q. What was the purchase price?

A. I don't know.

Q. Was it $6,780?

A. Is that what it is in the—yes, that's what it was.

Q. Did you trade in another Thunderbird?

A. Yes, I did.

Q. What was the balance after the trade-in allowance? (The witness and his counsel confer off the record.)

A. I don't know the exact—

* * *

Q. According to the private hearing testimony in the record, there was a $3,780 balance, is that right?

A. Right.

Q. And you testified that you took out a car loan in the amount of $2,000, is that right?

A. That's right. Yes.

Q. And you testified that the balance of $1,780 you paid in cash; is that correct?

A. Right.

Q. Where did you get $1,800 or $1,780 from?

A. It was from savings, and I also borrowed from my retirement, and it was an accumulation of savings.

Q. Where did you keep the money?

A. Where did I keep the money?

Q. Where was the money?

A. In my home.

Q. Where in your home?

A. What part of my house?

Q. That was the question.

A. I kept it in the closet. I have a little box that I, you know, put my car money in.

Q. You testified at the private hearing that you kept it in a little silver box.

A. It is silver, yes." (980-2)

Dale denied receiving any portion of the $1,780 from Joyce Smith (982) and testified that he never received any money from her (965).

Dale's denial of knowledge that Joyce Smith was engaged in prostitution during his three year courtship was at variance with testimony of witnesses who stated, under oath, that her activities were well known to the police and on the street. As already noted, in 1971, the local press referred to Sergeant X and his prostitute girl-friend Joyce and noted that she had not been arrested while she was his girl friend. When the hierarchy of the Albany Police Department read those articles, Dale was called in, interviewed, and given a clean bill of health. The performance of the Albany police leadership in

"investigating" the newspaper reference to Dale and Joyce Smith will be dealt with later.

(3) *Thefts of Parking Meter Revenue*

The Commission's investigation disclosed that Albany police officers assigned to collect coins deposited in parking meters of the city were pocketing portions of such revenue, and had been doing so on a regular basis for many years. This information came from several sources, including two police officers who, after receiving immunity, admitted their participation in such thefts with other members of the Albany Police Department. In addition, the Commission conducted its own surveillances of meter collection by Albany police officers during a period of time in 1972, and observed these thefts. Such surveillances were coordinated with the deposit by the Commission of chemically-treated coins in meters which were due for collection, and then counting the number of these coins which were brought to the bank by the collecting officers.

There was also corroborating testimony from other witnesses who had either direct knowledge of such thefts, or reasonable basis to suspect such activities. Finally, statistical audits by the New York State Department of Audit and Control, and a comparison of Albany parking meter revenue with that of Troy, an adjoining city, further supported the testimony concerning Albany parking meter collections.

The Manner of Collection

For many years, the responsibility of collecting parking meter revenue has been entrusted to members of the Albany Police Department as an official police function. In the earlier periods, each of the two Uniformed Divisions collected the coins deposited in meters located within its own geographical area. Collections were made twice a week, Wednesdays and Fridays, by men working the 4 P.M. to midnight tour and coins from meters in the entire city were collected on those two days. In later years, only officers assigned to the Traffic Division collected meter revenue.

The two police officers referred to above who admitted thefts of such coins, were members of Division I. They testified that the collection receptacles, at first, were cans into which the meters were emptied. Later on, the Police Department switched to pouches, or bags. Collections were handled by two prowl cars; car #7 covering the lower portion of Division I territory, and car #10 the upper portion. If one of these cars was in service because of other police work, the second car would handle the entire Division I territory. There were generally two uniformed officers assigned to each car.

The first car completing its collection—generally car #7—would bring the cans containing the coins to the Division I police station. The second car would bring all the cans (or bags) to the bank at the end of the day.

The Manner of Stealing

"Mr. X"* had been a member of the Albany Police Department for 5½ years, and left in November 1967. He testified that when he first began collecting parking meter coins, he suspected that some of the money was being stolen by his brother officers. He stated that he and his partner would each take a can and proceed separately with their collections. When a particular street was completed, they would bring the cans to their car, take another set of cans, and collect on a different street:

" . . . Now, I found that when I would bring my can in the car the first time it was somewhat let us say half full. When we got finished with Lark Street my can would be about a quarter full.

Q. It was lighter when it left the car than when you brought it into the car; is that it?

A. Yes.

Q. Go on.

A. So it was at this time that I told one of the police officers that I was with that I will in the future, instead of leaving my can in the car, I will carry it with me, and at this time he said 'You could not do that' and I asked him why and he said 'Well, all right, I will tell you why, because this is—we are taking money out of the meters and as long as you know about it, I will cut you in.'

Q. And did he do so?

A. Yes, he did.

*Mr. X's true identity was given to the Commission at his private hearing.

Q. Did this practice continue while you were in the Police Department throughout the time you were in the Police Department whenever you had meter assignments?

A. Yes, it did.

Q. Can you think of any time after this when you had the assignment of collecting meters when you did not take monies from the cans or bags?

A. No, I cannot." (171-2)

Mr. X stated that the locks on the cans were badly worn, and the men were able to open the locks with the ignition key of the police car (176). He was asked how the men removed coins from the bags, when the Department switched from cans to bags:

"Q. Did there come a time when you used bags as receptacles rather than cans?

A. Yes, there was.

Q. Was the collection procedure basically the same with two cars, the Division I territory split up, as you have described it, and the collection method basically the same?

A. Yes, it was.

Q. How did the men get the money out of the bags?

A. The bags had two weights inside the neck of the bag so that if the bag were tipped upside down the weights would cover the hole, thereby not letting any dimes out, and when the bag first came out it presented a problem—

Q. Was that problem overcome by police officers?

A. Yes. Evidently somebody figured out that if you held the weights apart and tipped the bag over, the money would come out.

Q. In other words, you could spread the weights?

A. Yes." (176-7)

Mr. X was asked where the police officers removed the money which they kept:

"A. The money was taken from the bags in the police car. When we finished a zone we would drive off to a side street some place, take the money from the bags and put it into a paper bag, or what have you, a cloth bag.

Q. You were using marked prowl cars, is that correct?

A. Yes, that's correct.

Q. And you were in uniform?

A. Yes.

Q. I think I might have interrupted a part of your answer. Was there anything else that you wanted to add? You said you would put it in bags?

A. Yes. The cloth bags or—we preferred cloth because if we had to dump the dimes we could put the cloth bag under some garbage or a tree and we wouldn't have to worry about it ripping open.

Q. This was thought out rather carefully, then?

A. Oh, yes.

Q. And discussed by the police officers?

A. Yes." (178-9)

Mr. X testified that some officers had keys to the parking meters (194). He related one incident when he and his partner decided to alter their collection route, and by doing so, apprehended two officers from Division II emptying meters located in Division I territory:

" . . . There was a time when another officer and myself decided to do it backwards. We weren't supposed to do it that way, but we thought we would do it that way because there was—every time we went down to do that territory the meters were void of any money whatsoever.

Q. The meters were what?

A. Void, no money was there whatsoever, so we did this.

Q. You mean literally empty?

A. Empty, zero. So we went to that territory. We went to that end first and when we got down there there were two

Division 2 officers collecting these meters, emptying these meters.

Q. Did you have any conversation with them?

A. Yes, I says 'What the hell are you doing?'
He kind of laughed and said 'Well, you know'.

Q. And you did know?

A. Yes, sure, yes. That was it. I mean, I just walked away. You know, that was the end, but by that time the meters were all collected anyway.

Q. Would you say what was going on was common knowledge within the Department?

A. Yes." (190-1)

The second officer who admitted such thefts was "Officer Y,"* who was still a member of the Albany Police Department at the time he appeared as a witness at the Commission's public hearing in September of 1973. He testified that within several months after joining the police force in 1961, he learned of the theft of parking meter coins by police officers (313). He gained this knowledge shortly after he was assigned the parking meter detail by noticing that the receptacles containing the coins were "a lot lighter" when he returned to the car than they were when he first brought them there (313). When he asked his partner about this, he was told what was being done, and further that "it was part of our salary because we were getting so low pay" (314). Officer Y testified how the police removed money from the receptacles:

"Q. Can you tell me how the money was removed from cans, Mr. Witness.

A. Yes, with the bags—

Q. Let us start with the cans and then we will get to the bags; is that all right?

A. Yes.
Usually had keys for the cans to open them.

Q. You mean police officers had actually had keys?

A. Correct.

* Officer Y's true identity is also known to the Commission.

Q. Did you yourself ever have a key?

A. Yes.

Q. Why don't you go on?

A. The key, the squad usually had a key and the man that was picking them up got the key to open them up for the cans.

Q. Where did you open up the cans?

A. In the patrol car.

Q. In a marked prowl car?

A. Yes.

Q. You have, of course, collected in uniform; is that right?

A. Yes.

Q. Would you do this openly in the street?

A. Sometimes, yes.

Q. Are you serious?

A. Yes.

Q. Did you ever go down a sidestreet and—

A. Most of the times we went down the sidestreet or parked behind a building. Couple of times it was done right on the main street.

* * *

Q. Can you tell us, Officer 'Y,' how money was taken out of the bags? You have given us an explanation for the cans. Now, let us talk about the bags.

A. The bags were closed with magnetics. They were separated. Money dumped out or a piece of paper was put in the mouth of the bag to hold the money from falling down in.

Q. You are saying that there are magnets at the top and these could be spread; is that correct?

A. Yes." (316-18)

A. Yes.

Q. So that one third is something that you feel might have been the way you computed it.

A. Yes.

Q. We are not talking about a precise arithmetical formula here, is that correct?

A. That's right.

Q. Why didn't you take more?

A. Well, I felt that if you leave at least two thirds you won't arouse too much suspicion, whereas if you took two thirds and left one third, somebody else might leave two thirds and then you would have too much of a variation in there.
However, there were some fellows who took better than two thirds.

Q. There were some who took better than two thirds?

A. Yes.

Q. You testified in a private hearing that you wanted to protect a good thing.

A. Yes.

Q. Is that it?

A. That's right." (181-2)

Officer Y testified that he judged how much to take "by [the] weight of the can" and that "the older men instructed the new men in approximately the weight that should be handed in by feel" (317). Officer Y also testified that command officers had occasion to tell men under their command that they were "taking too much" (318).

Both officers were asked what dollar amounts were involved. First, Mr. X:

"Q. Can you tell the Commission and the public, Mr. X, just how much money you would average on any particular collection day, when you took parking meter money?

A. That depended on the territory or the zone that you collected.

If you collected Zone 7, which was a very poor collection, you might average seventy-five, $80.

Q. Is that per man?

A. That is per man.

Q. Per collection day?

A. Per collection day.

Q. So on one day you would have, you said, a seventy-five dollar average?

A. Yes.

Q. I want to use conservative figures, Mr. X.

A. That is about an average, seventy, seventy-five.

Q. You would have $150 for two men just for this one zone?

A. Yes.

Q. You collected twice, so that it would be $300 per week?

A. Yes.

Q. Just that half of the Division 1.

A. Yes.

Q. And Division 1 only represented half of the city.

A. Yes, that's true.

Q. All right. What if you had Car 10? Were the pickings better in Car 10?

A. Unit 10 you would average, oh, one hundred twenty, $130. per man.

Q. Per collection day?

A. Per collection day.

Q. Now what was the largest amount you specifically recall netting or taking from parking meters on any particular day?

A. Somewhere in the neighborhood of two hundred fifty to two hundred eighty, somewhere around there.

Q. You specifically recall yourself coming home with $250

to $280 which represented what you took from the cans, from the meters?

A. Yes.

Q. And I think you explained to me that this is on an occasion when you got the entire area.

A. Yes.

Q. In the division.

A. Yes, that is true.

Q. We want to make that clear, and also when you had no partner to share it with.

A. Yes.

Q. That is true.

A. Yes." (179-81)

Officer Y testified on the same subject:

"Q. Can you recall the largest amount you yourself were able to net on any particular day?

A. About $125.

Q. You are sure about that?

A. To the best of my recollection it sticks in my mind.

Q. Do you recall the largest amount that any other officer was able to net on the basis of your conversations?

A. I have heard of them taking about 300 apiece.

Q. Do you recall when? Was there any particular time of the year?

A. Usually around Christmastime." (318-19)

Did Superior Officers and Other Members of the Department Know?

According to the sworn testimony of Mr. X and Officer Y, their Squad Commander, Kenneth Kennedy, directly participated with them and other squad members in the theft of parking meter money.

Mr. X stated that Kennedy, then a Sergeant, took a share of the proceeds when he was the Sergeant on the street, and also when he was the Commander of X's squad:

"Q. Mr. X, the figures you gave represented figures when you only had yourself and the partner to split with; is that right?

A. Yes, that is true.

Q. Did there come a time when you had to give part of the proceeds to anyone else?

A. Yes, there was.

Q. Can you tell us to whom, by name and the circumstances?

A. The money, the collection bags were turned over to a Sergeant Kennedy.

Q. What is his first name?

A. Kenneth Kennedy.

Q. Why to this particular sergeant?

A. Well, he was the sergeant on the street and he was the one who—well, he told us to.

* * *

Q. Can you describe how this came about that he told you he wanted you to do this?

A. He said that he wanted his cut, that he would take his money rather than us ditching it some place or keeping it in the car. He would take the money and he would divide it in three parts.

Q. Did he do that?

A. Well, he took the money.

Q. Let us take your answer and split up your answer. Number one, did he take the money?

A. Yes, he took the money.

Q. Did he divide it in three parts?

A. Not really, no.

Q. Let us put it another way, did he divide it in three equal parts?

A. No, he did not.

Q. What was the normal formula he used?

A. Well, it is called 'two for me and one for you', that is how it worked. And instead of you getting one third you got less than one third.

Q. Would he take the entire collection from the men and then return to them what he felt he wanted them to get?

A. Yes." (186-8)

Officer Y testified that a "morale problem" developed in his squad because some of the men were not getting meter assignments and resented it. He was asked about this morale problem:

Q. A morale problem?

A. Yes, some of the men were unhappy. They didn't think they were getting their share of the money.

Q. Are you talking about men who were not getting the assignment and therefore were not given an opportunity to pilfer money?

A. Correct.

Q. Why don't you go on?

A. They then decided that the best way to solve that problem would be to divide it among the whole squad, no matter who picked it up.

* * *

Q. Who decided to do something about this, quote, morale problem, unquote?

A. Well. Lieutenant, I believe he was a Sergeant at the time, in charge of the squad.

Q. Who was that?

A. Sergeant Kennedy.

Q. What was done about that morale problem?

A. It was decided to divide the money equally amongst all members of the squad.

Q. Was this new system or practice something that became organized?

A. Yes, sir.

Q. And who organized this system?

A. The Lieutenant.

Q. The man who is now a Lieutenant, but was then a Sergeant?

A. Correct.

Q. All right. Can you tell us physically how the distribution was handled?

A. The men picking up the money took the proportion out of the bags and put it into a paper bag, after bringing the bags to the bank, they then took a paper cup and used that as a measuring device to divide the money equally among the number of men that there were in the squad.

Q. In other words, a prowl car going out on meter collection had additional equipment, a cup as a measuring device and paper bags?

A. Yes, sir. Usually they picked them up at the stores, sometimes they went out.

Q. Now can you describe where this measuring took place?

A. They would generally park behind a building, in an alleyway, some place out of view. Once or twice when it was practical to do that, they did it in the street.

Q. You did this yourself?

A. Yes, sir.

Q. As I understand it, you had a paper cup and the money, the initial quantity would go in a paper bag, is that right?

A. Correct.

Q. I want to take this in stages. Is that right so far?

A. Yes.

Q. You would then take the paper cup and you would dip the paper cup into the bag, is that right?

A. Yes, sir.

Q. In other words, you would scoop out a quantity in the cup?

A. Yes, sir.

Q. And then you would pour that cupful into a paper bag for each member of the squad, is that right?

A. Yes, sir.

Q. Where would you physically transfer the individual paper bags which represented each man's split to these men?

A. Whenever you happened to see them, at the end of the tour of duty, or if you ran in to them on the street, or possibly the next day going over.

Q. And this way everyone got his share?

A. Yes, sir." (320-3)

According to Officer Y, the solution worked out by Kennedy did not work:

"Q. All right. Now did this solve the morale problem?

A. No.

Q. Why not?

A. The men started stealing from each other.

Q. How did you know that?

A. The amount of money started to get less. They were unhappy about giving money to the Sergeants, and the desk, and the street, and they decided amongst themselves to keep a portion of it and not cut them in.

Q. Did you ever have occasions when the entire proceeds was first turned over to Kennedy and Kennedy made the distribution?

A. Yes, sir. When it first started, that is the way it was handled until the time that he got off the street and was on the desk." (323)

These two officers, X & Y, also testified that there were occasions when they paid money to other Sergeants who made

up the meter detail so that they would be assigned to collect parking meter money (168; 312). Assignment to the meter detail was regarded as a "favorable assignment" because it afforded the men an opportunity to make some money (169; 312).

Both officers were convinced that the Department had knowledge of what was going on (325):

"Q. . . . When I asked you at the private hearing, Mr. X about whether this was common knowledge, you gave an answer which I would like to read and ask you whether you still feel that way.

You said this, 'But you know, it was common knowledge, I mean there wasn't a cop in the entire police force that didn't know this was going on. It was to a point where they almost believed, maybe it was true, that the city knew that the police were getting so much from the meters and they let it ride as that. Maybe it was to compensate for the pay. It is hard to believe that the city did not know this was going on.'

Then you went on to say, 'Like I say, I am sure everyone from the garage attendant up to the Chief, to the Commissioner, they knew, they had to know that this was going on and it was just, it was standard operation, you know.'

Did you give those answers?

A. Yes, I did.

Q. Do you still feel the same way today?

A. Yes, I do." (197)

These officers also testified that there were occasions when they opened meters and found nothing in them and concluded that other officers, "poaching" on their territory, had been there first (191; 324-5). Once, while collecting meters, Mr. X was approached by a civilian who asked when the meters were scheduled for collection. Mr. X replied that they are collected in the evening at about the time he was then collecting. The civilian retorted: "Well, how come I see a police officer picking these up during the day?" (191)

Mr. X related an incident involving a policeman who had gotten into difficulty not related to parking meters. This officer was removed from his prowl car and given a walking assignment. Mr. X described the reaction of his brother officers:

"Q. Try to speak up, Mr. X.

A. —where there was a police officer who for some reason or other he was habitually getting into some kind of trouble.
They told him that he had to walk the beat for eight hours, Central Avenue beat.
It was a kind of a joke, at least he thought it was because it afforded him the opportunity to empty the meters.
And he said that he was making out better walking the beat eight hours than if he was working on the regular tours in the car.

Q. Now did—

A. I might mention that he had—some officers had keys.

Q. Had keys to what?

A. To these meters.

Q. Do you know that as a fact?

A. Oh, yes.

Q. How do you know that?

A. Well, they said they had keys to them. And it was—well, I will tell you, in 1966, in 1967, the revenue in the meters went down such that a Unit 10 going out to collect the money, the meters weren't nowheres what they used to be.
And the reason for this is these number of officers had keys, they would collect these meters four o'clock in the morning, five o'clock in the morning.
This other officer, he would collect them whenever he got the opportunity because he was walking the beat.
How they got these keys, I don't know." (194-5)

Another former Albany police officer who appeared at the public hearing was Detective Maynard. Maynard's testimony concerning his own experiences in collecting meter money as a patrolman, and references he heard other officers make, over the years, about the subject, further support the conclusion that the Department knew what was going on.

Maynard testified that he noticed a considerable difference in the weight of the receptacles containing the coins after they

were brought to the police station. When he brought the receptacles to headquarters, they were "fairly heavy," but when he picked them up later for delivery to the bank they were so light they could be lifted "with one finger" (824-5). When he commented about this to the Lieutenant at the desk, "I didn't collect meters any more" (824-5). When he later joined the Detective Division, stories persisted that "parking meter money was being taken":

"Q. Did you ever hear any conversations later on when you joined the Detective Division which indicated that there was at least a suspicion among officers concerning thefts of the parking meter money by other officers?

A. Well, as long as I was on the police I don't remember any particular situation, however, it always seemed to be common knowledge, or it seemed to be a reference that there was parking meter money being taken and that sooner or later somebody was going to go to jail for it." (824-5)

Another witness who testified before the Commission during its investigation was the wife of an Albany police officer. This witness did not testify at the public hearing, and her private hearing testimony is being presented here for the first time. She furnished further testimony that police officers were stealing parking meter money. She described how she learned what was happening:

"Q. And can you describe the incident?

A. Well, he used to get parking meters which most of the policemen do, the money. And he would bring it home to wrap it. I assumed this was normal procedure. And it seemed like most of the cops were supposed to be taking money so I didn't say anything.

* * *

Q. And could you describe as best you can recall the scene? Did he come home with a paper bag with coins or—

A. Yes.

Q. . . . did he take it out of his pocket? I do not want to put words in your mouth.

A. He was carrying it in a sack. The thing was like this.

Q. You are indicating about six inches or so?

A. Well, maybe a bag like this.

Q. Ten inches?

A. With money in the bottom of it, you know.

* * *

Q. The type of bag that groceries might come in or something else?

A. Yes, that you pick up in a supermarket.

Q. And what did it contain?

A. Coins from the parking meters.

Q. All right, did he tell you they were from the parking meter?

A. Yes.

Q. And what did you say?

A. I didn't say anything.

Q. And what did he do with these coins?

A. He rolled them up and took them someplace and had them cashed into bills.

Q. You say 'rolled up.' You mean in these wrappers?

A. Yes.

Q. Did you help him do that?

A. Yes.

Q. And do you remember approximately what the amount came to for that night?

A. No.

Q. Do you have any estimate?

A. There may have been $50, $60, I don't know.

* * *

Q. Did he say that other members of the Police Department had gotten—

A. He would say how they went about getting it.

Q. Can you tell us what he said?

A. They supposedly had the little boxes before. Then, they were using something else. It was much easier to get money out. But then they got boxes. Supposedly you can't open it. So they used to stuff a handkerchief into the box. Then they would collect the coins. I guess they took it out and disposed of it in their car to another policeman or, I don't know.

Q. Did he say that other policemen were doing it, other police officers?

A. From the way he talked, I assumed it was just a general practice. Whoever had the meters got the take.

* * *

Q. Now, after this first incident around the first year of your marriage, did this happen again with the meter money?

A. Yes.

* * *

Q. My question, in other words, was, what is the largest amount of money he obtained in this manner from the meters?

A. I don't know. Probably not over a hundred dollars.

* * *

Q. But from your experience in doing it, what do you think the largest amount may have come to?

A. Maybe a hundred dollars.

* * *

Q. Did he ever indicate that even though he did not mention by name, there were others who worked with him or shared with him in the money from the meters?

A. Well, like I said, the way he talked, I assumed that this was a general thing.

Q. Did he ever say that the fellows feel this is part of their job because the salary is low?

A. Oh, yes. He often said that." (Pr. H. 2815-22)

Surveillance by the Commission of Parking Meter Collections During 1972

Based upon such testimony concerning parking meter thefts by the police in years prior to the Commission's investigation, plus allegations received by the Commission during its investigation that such thefts were continuing, the Commission conducted surveillances of meter collections during a period of time in 1972. By this time, the collection of meter money had been transferred from the Uniformed Division to the Traffic Division, where Kenneth Kennedy, now a Lieutenant, was assigned.

Collections by the Traffic Division were made Mondays through Fridays during the morning hours. The City was divided into zones which were collected on designated days. When the collection for a particular zone was completed, the bags containing the money were brought to the bank, and given to a bank official. The bank official then brought the bags down to the vault area where they were opened and counted.

After learning the collection procedure, the Commission decided upon the following investigative technique for testing the allegations that meter thefts were continuing. Several hours before collection time, the Commission deposited chemically-treated coins into meters scheduled for collection. The chemical was a dye which was invisible to the naked eye but luminous under ultra-violet light. A specific number of such coins, e.g., 100, were deposited in certain meters. These meters were then under constant observation until they were collected. The collecting officer was then placed under surveillance until he delivered the bags to the bank. The bags were transported to the bank by the collecting officer in a Traffic Division van (panel truck), or brought there on foot. Unknown to the collecting officer, a member of the State Police assigned to the Commission's investigation, and a State Police chemist, were waiting at the bank. The bags were then opened by bank personnel in the presence of the Commission representatives, placed on a table, and the room darkened. An ultra-violet lamp was then shone on the coins in order to locate the chemically-treated ones, which were then segregated, counted and retained as evidence. On one occasion when 100 chemically-treated dimes were deposited and this surveillance procedure followed, only 23 such dimes were turned in to the bank. This

meant that 77 of the chemically-treated coins were not deposited. On another occasion, only 48 of the 100 dimes were deposited.

There were other occasions when only 50 chemically-treated dimes were used. There were 24 missing on one occasion, 27 missing another time and so on.

In addition to such coins not being deposited, the collecting officers were actually observed placing coins in their pockets, on occasions.

In early 1973, the Commission served subpoenas on four of these officers. It was the Commission's hope that such officers would cooperate with the Commission and, under a grant of immunity, testify fully concerning these thefts. As noted earlier, the Commission's authority to subpoena and question these men was challenged and although the Commission's authority was upheld by the courts, the litigation was protracted and any opportunity for cooperation lost. Accordingly, the Commission turned over its evidence to the District Attorney and these officers were indicted by an Albany County Grand Jury.

The Study of Albany's Parking Meter Revenues by the New York State Department of Audit and Control

In 1971, the New York State Department of Audit and Control conducted an audit of certain fiscal procedures of the City of Albany as part of its regular review of the fiscal policies of municipalities throughout the State. Included in this audit was a review of Albany's parking meter revenue over a six year period. Following is the Audit and Control comment, as contained in its report:

> "*On Street Parking Meter Fees* A review of the records and reports pertaining to parking meter revenues, for the six year period commencing November 1, 1964 and ending October 31, 1970, disclosed collection of amounts ranging from a high of $58,838.58 in 1964-65 to a low of $21,696.18 in 1966-67 as follows:

1964-65	$58,838.58
1965-66	37,076.77
1966-67	21,696.18
1967-68	35,921.15
1968-69	34,028.97
1969-70	29,447.03

> Metered parking is charged at the rate of ten cents an hour. On the basis of the approximately 1400 meters operated by the city in the 1969-70 year, *the average yield was less than seven cents a day per meter.*
> The enforcement and collection procedures and the meter placement ordinances should be reviewed to determine the cause or causes for the continuing decline in parking meter revenues." (Emphasis added)

The Audit and Control report was forwarded to the appropriate officials in the City of Albany, and its criticism of the parking meter collections was reported in the Albany press.

As indicated previously, the average yield from these ten-cent per hour meters was "less than seven cents a day per meter."

It is interesting to note that the highest revenue yield was $58,838 in 1964-65, and thereafter declined, reaching a low of $29,447 in the 1969-70 period.

Lieutenant Kenneth Kennedy appeared at the public hearing and denied any participation in parking meter thefts, or any knowledge or suspicion of such occurrence (518). Kennedy also testified that sometime in "1965, 1966" he became a Desk Lieutenant in the Traffic Division and was then assigned the responsibility of handling parking meter keys and giving them to the men (519-20).

Parking Meter Revenue in Troy, New York

Troy, New York, a city with a population of 63,000, adjoins Albany which has a population of 115,781.* Troy maintains 800 parking meters as compared to Albany's 1400 and also charges for metered parking at the rate of 10¢ an hour.

The following figures on Troy's annual parking meter revenue was obtained by the Commission:

	Total Revenue	Average Yield Per Meter
1968	$51,385	20.5¢
1969	$37,991	11.2¢
1970	$56,757	22.7¢
1971	$83,238	33.2¢

In 1968, Albany's total revenue from its 1400 parking meters was $35,992.15 for an average yield of 8.2¢ per meter.

* *1973 World Almanac and Book of Facts*, p. 175.

In 1969, Albany received $34,028.97 and the average yield was 7.7¢.

In 1970, Albany's meter revenue was $29,447.03 which averaged 6.7¢ per meter. The Commission had not received 1971 figures for Albany at the time of its public hearing.

(4) *Burglaries by Albany Police Officers*

Much testimony was presented at the Commission's public hearing concerning widespread burglaries and larcenies committed by Albany police officers. The testimony revealed that such activities had prevailed for many years, and that the Department was well aware of this problem. When confronted with evidence of such crimes by its men, the Police leadership took no meaningful action against the perpetrators. Officers were permitted to resign without criminal charges or departmental hearings, and no adverse report or even hint of their involvement in criminal activities was noted in their personnel files.

The proof which the Commission received of such matters came from numerous witnesses and other reliable sources of information. Three Albany police officers testified at the public hearing concerning burglaries and larcenies they had committed with brother officers and a fourth invoked his constitutional privilege against self-incrimination when questioned about such crimes. Other officers gave supporting testimony, as did private citizens who witnessed police officers committing such crimes, or who had other direct knowledge of their occurrence. Official police records of the Albany Police Department were located by the Commission which further corroborated the fact of such burglaries by police and revealed the Department's lack of affirmative action. Finally, the present Chief of Police and his predecessor, one of the two Deputy Chiefs of Police and a former Inspector of Police testified relative to their respective roles in investigating instances, over the years, of police officers allegedly involved in burglaries.

In order to show the pervasive nature of this corruption, and its duration as a continuing problem within the Albany Police Department, the Commission cited examples of such crimes committed over a period of years.

The William Sherry Tire Company Incident

One witness at the public hearing was Leslie Kelly, who had lived and worked in Albany from 1958 through 1964. In

August of 1964, Kelly and his wife lived on Central Avenue, across the street from the William Sherry Tire Co. One evening, while the Kellys were awaiting two dinner guests, they observed a uniformed police officer driving police car #10 get out of his car and check the side door of the tire company (55). This activity began at about 10 P.M. and continued throughout the evening, with the officer returning every half hour or so, to check only that particular door (55-6). By this time the guests had arrived and together with Kelly and his wife watched this strange conduct (56). At about 2 A.M. or so, another patrol car appeared together with the first one and both drivers got out, went straight for the door, and "walked right in, as though it was opened, as though they had a key for it" (56). The two uniformed officers rolled tires out of the store and placed them in the police car:

"Q. Were tires observed being put in the trunk or the backseat or what?

A. Well, we observed some being put in the backseat. However, there probably were some put in the trunk because the second patrol car I couldn't hardly see very well back being further in the lot.

Q. But all four of you did observe the officers in uniform putting the tires in at least one, in the backseat of at least one car?

A. No question about it, you could see them rolling the tires out and loading them up. It was after they stacked them inside, then they rolled them out the door." (61)

Kelly contacted the State Police, who contacted the Albany Police Department. About ten minutes later, an unmarked police car, with a driver and another occupant, appeared, parked in front of the Kelly residence which was directly opposite the tire store. Kelly, his wife and their two guests went to greet the occupant who introduced himself as Inspector Van Amburgh:*

"Q. Will you continue?

A. We continued to cross along with Inspector Van Amburgh. In fact, we met him more or less about the area of the front porch. We came out of the back of the house and went up between the two houses. And we met him there. And, of course, it is well lighted there.
And he said, well,—I started to tell him about what happened.
And he said, well, we had better get back out of sight because the patrol car would come back in a few minutes, and it seemed that his car was sitting there and the officer must know what Inspector Van Amburgh's car looks like. So it didn't make any difference whether we were standing there or not. It was already flagged with his car sitting there.

Q. It was what?

A. I would say so. A red flag to say, boys, let's cut it out, you are caught.

Q. In other words, the unmarked car was parked in a rather obvious place?

A. Right in front of our house, right exactly in front of our house, so that whoever was involved would know that our house was where the call came from. No question about that. We were panned at that time.

Q. What happened after that, Mr. Kelly?

A. We continued across, went behind the other house, then out of sight. And just as we did, Car No. 10 was coming down Central Avenue and it was flagged down at that point and he went back to the station house in Car 10. And that was the end of that incident that evening." (59-60)

Shortly after this, according to Mr. Kelly, Car #10 appeared, was stopped, and Van Amburgh went with the men to the station house (60). Although Van Amburgh took Kelly's name, address and telephone number, he heard nothing further from him (60). The next day, Kelly and his wife saw two or three police officers visiting the William Sherry Tire Co., and assumed they were investigating the activities of the previous evening (61). Several days passed, however, "with nothing happening" so Kelly contacted Mr. Sherry, met with him, and told him the entire story (61-2). Sherry appeared "very shocked" (62). Kelly learned that Sherry only main-

*At the time of the public hearing, Mr. Van Amburgh was Deputy Chief of Police.

tained an exact inventory of his new tires, but not of his used or recapped tires, and therefore was in no position to determine whether such tires were stolen or even missing (63-4).

Although Kelly was never contacted again by the police, he and his wife discovered that *they* were being watched:

"A. . . . we observed our house being watched quite a lot by plainclothesmen, and to the point where my wife was very, very nervous and upset. It was very evident that they were watching just continually." (64)

Kelly's comment about the police keeping him and his wife under surveillance was apparently true. The Commission discovered a confidential police report directed to the Chief of Police in which the subject of the report was Leslie Kelly. The report contained information concerning Kelly's marital status, employment, credit information and his background prior to coming to Albany. It identified his wife by name, and the number of their children. The report also contained the following statement:

"No evidence of Mr. Kelly drinking or playing around."

This official police document also reported that

"On Saturday, September 12, 1964, Mr. Kelly will be transferred to Long Island to an advanced position."

The Chief of Police at the time this incident took place was John P. Tuffey. Tuffey testified at the public hearing that he had received a telephone call from Inspector Van Amburgh at about 7:30 or 8 A.M. Van Amburgh related that he had received a call from the State Police that Albany police officers "were seen in the Sherry Tire Co." (368). Van Amburgh also informed the Chief that he had talked to the complainants and had also questioned all the officers in the squad who had worked that night, had searched their prowl and personal cars "and didn't come up with anything." The Chief was asked if Van Amburgh had reported anything else:

"Q. Did he tell you—I don't mean to interrupt you, but did Chief Van Amburgh tell you that the eyewitness had taken the number of the car, had seen the number which is written on the car?

A. To the best of my recollection, Mr. Fisch, there was no

number. I asked them who, what number of the car, and he said they couldn't get the number.

Q. Well, that is interesting.
Chief Van Amburgh reported to you that eye witnesses were not able to get a car number?

A. At that morning, that Sunday morning that they weren't able to. I asked them what car was involved and he said he didn't know, they didn't get the number.

Q. You are absolutely sure of that, Chief?

A. To the best of my recollection.

Q. Because it was the sworn testimony of the witness on Monday—on Tuesday, Mr. Kelly, that he did in fact report the car number to Chief Van Amburgh.

A. That is his word. You are asking me what I recall." (368-9)

When the Commission sought to obtain from the Albany Police Department all its records on this case, it claimed none were available and informed the Commission that all such documents had been turned over to then District Attorney John Garry. The Commission then obtained the file from District Attorney Arnold Proskin, who succeeded Garry. The file contained the aforementioned confidential surveillance report on Leslie Kelly, and other interesting documents.

One such document was a police report by Van Amburgh and another officer, Lieutenant H. Ford, since deceased. In this report, Van Amburgh recorded the telephone call from the State Police concerning "Prowl Unit #10 and another Prowl Unit," and it states that "the men in the prowl cars were taking tires from the building and putting the tires in the prowl cars."

Van Amburgh also reported that after he received the call from the State Police, he and the other officer "went directly to the Sherry Tire Co." where they looked around and noticed that the door looked as if it had been sprung or forced."

It is appropriate to recall Kelly's observation about the Inspector parking his car directly in the street, and his conclusion that this would serve as "a red flag" which would alert the men if they were to return. It is, to say the least, highly questionable police procedure to attempt to apprehend police

officers in criminal activities by parking the Inspector's police vehicle in front of the burglarized premises.

According to Van Amburgh's report, he "then called for unit #10 to meet us at the City Line," and then proceeded to meet Kelly. Van Amburgh reported Kelly's allegations about Unit #10 in his police report. Van Amburgh's report describes the questioning of the men and the search of their vehicles. It also reports that he asked Lieutenant Ford to check "Kennedy's Gas Station, which is at Manning Boulevard and Central Avenue," and that "this was also negative."

According to Van Amburgh's report, he went to Sherry's Tire Co. and apparently merely told Sherry that the police found an open door and wanted to know if anything was missing. Here is how Van Amburgh described it in his report:

> "Lieut. Ford and I went to Sherry's Tire Shop, where Mr. Sherry told us from his observation he could not tell us if any tires were missing, he did not think any was missing, but stated that he would have to wait until Monday when his Son, came in and they would check to see if any tires were missing. Mr. Sherry then told us about the lock being faulty, he was pleased that we found the door open, *but I did not let on to him about our situation.*" (Emphasis in original report)

Chief Tuffey, at the public hearing, verified that Van Amburgh did not tell Mr. Sherry that four eyewitnesses had observed police officers removing tires:

"BY MR. FISCH:

Q. Chief Tuffey, did Van Amburgh, did Inspector Van Amburgh report to you that when he first spoke to Mr. Sherry he did not tell him that police officers were seen removing items and tires from the store?

A. I think that is true. He did not tell Sherry because Mr. Sherry—if that is who it was, Mr. Sherry—I don't remember whether it was the owner or—if his name was Sherry or it was a different name because a lot of companies are under one name and yet the person who owns them is a different name.
But his reaction to it was that he didn't know it was police were involved.

Q. He didn't know?

A. That police were involved." (372-3)

Van Amburgh's report contained further revealing insight into his "investigation" of this incident. According to Van Amburgh's report, he and Lieutenant Ford returned to the Division, questioned the men again, and "told the men we would try to cover this up."

Van Amburgh's report clearly mentions Prowl Unit #10 as the police car which Mr. and Mrs. Kelly and their guests had identified. Chief Tuffey testified that this matter was then referred to the District Attorney. Contained in the files which the Commission received from the District Attorney is a police report dated August 31, 1964 reflecting a telephone call from Mr. Sherry to the Police Department. On that date, Mr. Sherry informed the police that he had checked and found nothing missing. This apparently is a reference to his new tires. Subsequently, Mr. Sherry was questioned by the District Attorney and told the District Attorney that he had, at the request of the police, checked his new tires because his company maintained "an exact running inventory" of such tires, but that "we don't keep a record of re-caps." He also told the District Attorney that the door had been "badly jimmied" but that "other than tires" nothing else was missing.

At the public hearing Chief Tuffey agreed that Inspector Van Amburgh's car was known among the police. He was then asked:

"Q. No, I'm talking about the Inspector. According to Kelly's testimony the Inspector, responding within ten minutes, and parked his car right in front and then telling Mr. Kelly, 'Let us get out of the way because the men may return.'
If the men returned and saw Inspector Van Amburgh's car right in front Mr. Kelly felt that would be a red flag. Do you agree?

A. Yes, yes." (383)

Chief Tuffey was asked why his Department had failed to catch anybody with the stolen property:

"Q. That was done in 1964 when Mr. Kelly had a report made to the inspector.

You didn't catch anybody then, did you? The William Sherry, that was reported to an inspector on the spot.

A. Yes, but apparently there must have been something that alerted those fellows, if they were—I don't know—at Sherry's to get away from there." (391)

As already indicated, Van Amburgh was a Deputy Chief of Police at the time of the Commission's investigation. He was questioned about the William Sherry Tire Co. incident at a private hearing and again at the public hearing.

The Commission did not have the William Sherry police reports at the time it questioned Van Amburgh at his private hearing. At that time, all that he could recall was ". . . there was supposed to have been a prowl car near a tire store and that's about all I recall on it right now" (Pr. H. 5415). Van Amburgh did not recall whether a report was written (Pr. H. 5417), where such a report or reports might be, if in fact any were written (Pr. H. 5418), and he had "no idea" where to look for them (Pr. H. 5418). He was then asked:

"Q. If you had two weeks or three weeks do you think you would be able to come up with any more information on this?

A. I don't think so.

Q. So you are giving us now as much as you would be able to give us in a week or two or three or four; is that correct?

A. Yes, sir." (Pr. H. 5427)

At the public hearing, Deputy Chief Van Amburgh was again asked about the William Sherry Tire Co. incident. He was shown a copy of the report bearing his name, which the Commission had obtained since his private hearing. He did not recall writing it (1059) or even seeing it before (1059). Nor could he recall going to the Sherry Tire Co. (1060; 1067) or talking to Mr. Kelly and his guests (1061). He did not recall telling the men that he would try to "cover it up," although those words are in the report (1070-1). In summary, he could recall virtually nothing of substance concerning the entire incident (1057-97).

This case was never solved.

The Albany-Binghamton Express Company case

Another illustration of police participation in burglaries which the Commission presented at the public hearing was the Albany-Binghamton Express Co. case.

The president of that company, J. Clifford Signor, testified that his firm had been located in Albany from 1944 until early 1969 (72). For about two years prior to his company's departure from Albany, it had suffered heavy losses from thefts of cargo from its Albany terminal. The value of the thefts exceeded $20,000 (74). The firm engaged a private detective agency to keep the terminal under surveillance, and within two weeks after it was hired, its men observed a burglary.

The incident occurred during the evening of December 19, 1968. The private investigators observed two marked Albany prowl cars, with three uniformed officers, drive into the terminal. One of the officers broke the seal of one of the trailers, lifted the overhead door, and entered the loaded trailer with a flashlight. Parcels were removed and passed along to the other officers, who placed them in the trunk of one of the police cars. After repeating this procedure several times, the police closed the trailer door and drove off (77-8).

The private investigators observed this criminal activity, noted the numbers on the prowl cars, but made no effort to stop the burglars. Mr. Signor explained why:

"Q. What did the men do, what did your detectives do when they observed the police officers committing this act?

A. Well, if it had been other than police, they explained to me, that they were very apprehensive or hesitant about apprehending them or approaching them because of the nature of the people who were breaking in. They felt their lives might be in danger or something.

* * *

THE WITNESS: They were very apprehensive of approaching the police officers and they remained in their obscure position throughout.

Had it been other than police officers, they informed me, they would have apprehended them.

They also had dictating equipment in their automobile

which, as they were watching the events unravel, they were talking into this equipment which was then being teletyped, written on teletype in their office on Central Avenue.

Q. Were they able to observe either badge numbers or identifying numbers on the patrol cars?

A. Yes, they were.

Q. What did they observe?

A. I can't recollect the numbers.

Q. The reports that I have indicate that they had the car numbers; is that correct?

A. Yes." (79-80)

The investigators telephoned Mr. Signor, who came to Albany from his home in Binghamton. After hearing the detectives' report, Mr. Signor and the owner of the private detective agency visited the Albany Police Department, and met with the Chief of Police, John P. Tuffey:

"Q. Can you tell us what took place in Chief Tuffey's office that morning?

A. Well, verbatim I don't think I can recall at this time, but the substance of my call was to explain to Chief Tuffey what had taken place the prior night at our trucking terminal, and I do remember he became very indignant.

He became very abusive, to the extent that none of his men were involved, and I do remember that very thoroughly.

Q. He became abusive of you, the complainant?

A. Very abusive and very like a chip on his shoulder and 'None of my people are involved,' and at that point I merely stated to Mr. Tuffey that I wasn't here to, in my words, I think, to be a hero. I was here because this was his department and I felt that he was the man I should notify as to what had transpired with the Albany Police Department.

Q. Did he make you uncomfortable, Mr. Signor?

A. Very uncomfortable." (82)

Mr. Signor testified that after Tuffey "calmed down," and listened to Signor, Tuffey "assured me that the cargo that had been taken that night would be returned" and that he would "discharge the men" (83).

Later that same afternoon, a taxicab pulled into the terminal and the driver delivered the missing merchandise, explaining that two men had paid him to deliver the packages.

The same day or shortly thereafter, three Albany police officers resigned from the Albany Police Department. These were the officers in the prowl cars observed at the terminal. Two of these officers were called to testify at the public hearing; the third had left the Albany area and could not be located.

John Dittmer was one of the three officers involved. He had been a member of the Albany Police Department from 1957 through 1968 when he resigned. Mr. Dittmer testified* that on the evening of December 19, 1968, he was a Sergeant in the Albany Police Department, and together with two patrolmen, drove into the Albany-Binghamton Express Co. terminal, "entered a tractor-trailer that was parked, and removed merchandise . . ." (111). All men were in uniform, driving marked prowl cars (111) and armed. They did this after a brief discussion in which all agreed readily to the idea, with no opposition (117), even though Dittmer knew that he was committing a crime (123). The parcels were put into either the trunk or back seat of the prowl car where they remained until the men went off duty.** At that time, the stolen property was transferred to their private vehicles which were parked near the police station. One of the other officers helped Dittmer make the transfer:

"Q. Did Brodhead help you in removing the parcels from the police car to your own car?

A. Yes.

Q. Was that parked in the vicinity of the police station?

A. Somewheres around there.

Q. Were there other officers either coming on duty or going off duty with cars parked in the same area?

A. Correct, yes.

* * *

*Mr. Dittmer received immunity from the Commission as provided by law.
** The men were working the 4 P.M. to Midnight tour of duty (111).

Q. Two police officers removing parcels from a regular prowl car and putting them into their own private vehicles in the vicinity of the police station; is that correct?

A. Right." (123-4)

Dittmer then went home, leaving the stolen property in the trunk of his car (125). The next morning he received a telephone call from the company clerk at police headquarters asking if he would be home, and shortly thereafter he was visited by the Deputy Chief of Police Edward C. McArdle and Captain DeVane (125-6).

McArdle* and DeVane rang Dittmer's bell and asked him to join them in their car. They asked what had happened the previous night and Dittmer replied "nothing." They then informed him "that they had two other men that resigned already" and told him "what happened."

Dittmer explained:

"Q. What did they tell you?

A. Well, they told me that the Albany-Binghamton Express was under surveillance and we were seen going in the trailer and removing the merchandise and that there would be no complaint if we returned the merchandise and resigned.

Q. Go on, what did you say?

A. Evident, I resigned.

Q. I didn't ask you what you did. I asked what you said when they told you that.

A. Nothing.

Q. Did you say 'all right, I will resign.'

A. That is it.

Q. What did they say about the merchandise?

A. That if it was returned and the officer resigned there would be no prosecution.

Q. Did you say all right, 'I will resign?'

* McArdle was Chief of Police at the time of the Commission's investigation and public hearing.

A. In words to that effect.

Q. Did you say 'I will return the merchandise.'

A. In words to that effect.

Q. All right, in the presence of both DeVane and McArdle?

A. Right.

Q. What happened after that?

A. I returned the merchandise." (127-8)

Dittmer wrote his resignation in the car and turned it over to McArdle, together with his gun and badge (129).

Mr. Dittmer testified that neither Deputy Chief McArdle nor Captain DeVane asked him whether he had ever been involved in any other burglaries, whether he had information concerning other officers being involved in such crimes, or other questions of that nature (131-2).

As will be seen, there was sufficient basis at the time of this incident in December 1968 for command officers to ask such questions.

No criminal charges were brought against Dittmer and his two brother officers and no departmental charges were preferred. The three officers resigned from the Police Department and there is nothing in their personnel files of any derogatory nature. Mr. Dittmer subsequently obtained employment as a private investigator for the Wackenhut Corporation (95). At the time of the Commission's public hearing, he had left Wackenhut, and held an SLA license to own and operate a bar in Albany.

Another of the three officers involved in the Albany-Binghamton Express Co. matter with Dittmer was Clyde Brodhead. Brodhead invoked his privilege against self-incrimination when questioned about this incident, and the Commission discussed with Brodhead's attorney the possibility of granting his client immunity in exchange for his testimony and cooperation. Such cooperation was not forthcoming and hence immunity was not conferred.

The investigation relating to a burglary at Vrbanac's Garage

Approximately five months after the Albany-Binghamton Express Co. case, the police received another complaint alleging

that police officers had stolen some property from a local garage. The incident occurred on Friday night, May 23, 1969, at Vrbanac's garage at Western Avenue and Holmstead Street in Albany. One of the officers who investigated the complaint was Inspector Charles Mahar, who testified at the Commission's public hearing.

It appears that this incident began with a break-in by some youngsters who stole a number of tires and then left. Following their departure, however, neighbors reported seeing police cars respond to the scene, back their police cars up to where the tire rack was loaded, and wheel some tires to the police car (1023-8). Inspector Mahar managed to get the word out to the youngsters involved to contact him, and sure enough, one of them did (1028). The young man telephoned Mahar and told him he had gotten drunk and wanted "to show off" for his girl friend by stealing the tires (1029). He told Mahar, however, that he had stolen fewer tires than was reported missing and that he "didn't want to get blamed" for what the police took (1029). The youngster subsequently returned six tires which he claimed were all he had stolen.

Mahar related a conversation he had with the owner of the garage on May 28, 1969. The owner stated he did not want "to hurt any policemen":

"Q. Now, did you have any conversations with the owner, himself?

A. Yes, I did. I went to see John Vrbanac and John told me —as a matter of fact, I saw him twice. He told me the first time, that was on the first day that I was on this investigation, that he didn't want anything to happen to—he didn't want to hurt any policemen. He didn't want them to get in trouble; that he had contacted his insurance company and that they had made good, and so on; that if any items were recovered, why they would know about it, and so on; to inform the insurance company, that was the general conversation.

Q. He said he didn't want to hurt any policemen?

A. That's what he told me.

Q. And that he had been reimbursed by the insurance company?

A. That is correct." (1031)

On Memorial Day, Mahar had a second conversation with the owner, which Mahar reported in his official police report. Mahar recalled that second conversation at the public hearing.

"Q. And on Memorial Day, you again spoke to Vrbanac, quote, and he told me that, as far as he was concerned, the case was closed because he didn't want any publicity on it and he sure as hell didn't want any cops getting in trouble over it. He said, as far as he was concerned, he didn't even want to discuss it with anybody outside of me; whenever I had something I wanted to know about it. I then told John Vrbanac it was possible we could recover some of the stolen items. And he told me, as far as he was concerned, he would be glad to get them back but it didn't matter if he didn't get everything back, close quote.

A. That's right." (1033)

Included in the police file which the Commission obtained from the Police Department by subpoena, were other reports which disclosed that two witnesses, a 19-year old girl and a 20-year old man had observed a police officer place two tires in his prowl car and drive off (1034). These witnesses were questioned at the police station. The police reports were discussed at the public hearing:

"In any event, the two witnesses were brought down to the police station, questioned by Captain Mooney, and they confirmed the conversation that they had related to someone else that they had seen a patrolman put some tires in the prowl car.

They were then asked if they could identify the patrolman and she said that she had seen him in the other room while she was waiting in the Captain's office and she described the shirt he was wearing.

Then Captain Mooney reported the name of the officer and that was, indeed, one of the officers who had responded to the burglary report.

The report also states, 'Detectives took the names of the above for future talks.'

Now, the police officers who responded were asked to submit statements to the Chief of Police. One officer submitted two statements, one on the 24th and one on the 29th. On the 24th statement he said nothing about moving tires. On the 29th, he said that it was necessary, in trying to close the door, for him to remove three or four tires from the doorway which he then threw back into the station.

On June 6th of 1969 is what appears to be a blotter entry: 'That at 11:30 a.m. the above complainant reports to Lieutenant Kennedy the return of the merchandise stolen and no further action requested.

'And G.O.—' that is what, general order?

THE WITNESS: Yes.

MR. FISCH: 'G.O. cancelled.'

There is nothing in the records of any further follow-up.

As far as these records, and I presume that we received from the Chief of Police pursuant to subpoena the entire file, there is no record of anything further being done.

There is no record of these people whose names were taken by the detective office as having seen a patrolman put tires in the car and drive off; no record of them having been recalled. There is no record of any action against police officers.

It is just a record that the—the last entry I see is that the complainant who had indicated to Inspector Mahar and others that he didn't want any police to get into trouble, asked that no action be taken and the matter was closed.

BY MR. FISCH:

Q. Did you see any type of follow-up after this, Inspector?

A. No, I did not." (1034-6)

The Testimony of Mr. X and Officer Y Concerning Widespread Burglaries and Larcenies by Police Officers

The three incidents related above were not, the evidence demonstrated, isolated cases. In addition to Sergeant Dittmer's testimony concerning his burglary of the Albany-Binghamton Express Co. terminal with two patrolmen, two other Albany police officers gave startling testimony at the public hearing

that burglaries and larcenies by police officers were common and organized occurrences. Their testimony was first-hand and direct—they admitted they were part of these burglaries.

Mr. X, a member of the Albany Police Department from February 1962 to November 1967, testified that his first experience with other officers in the commission of such crimes occurred when he was transferred to the squad of Kenneth Kennedy, who was then a Sergeant.

While walking a foot beat with another officer one day, Kennedy drove by in his prowl car and told them to get in. They drove to the yard of a company selling construction and heavy duty equipment, followed by Patrolman John Dittmer, who was driving a pick-up truck. Mr. X described what happened after that:

"Q. Why don't you continue?

A. He drove into the lot, Lieutenant Kennedy took us over to where a number of plows were stacked and told us to pick up a plow. So we picked up a plow, the truck was backed up, put the plow into the truck. The truck left the lot with the plow.

We got back into the car, the unit, the police unit, and he took us back and dropped us off on the beat.

Q. I want to go over some of this.
You were in uniform, on duty; is that right?

A. Yes, that's right.

* * *

Q. Was it at night, was it dark when you arrived at this building yard?

A. It was at night and dark.

Q. What did he say when he arrived there with you about the plow?

A. Well, he said that he needed a plow for wintertime.

Q. Did he appear he knew exactly where to find one?

A. Yes." (205-6)

Mr. X described the snowplow blade as one that could be hooked onto a pick-up truck, jeep or other small vehicle (206). During its investigation, the Commission located a snowplow

blade matching the description given by Mr. X and also bearing a serial number which corresponded to that of a snowplow blade missing from the company referred to above. This blade was found on the premises of a gas station owned by the uncle of Lieutenant Kennedy, and identified by the uncle as belonging to Kennedy. This will be discussed further at a later point in this report.

The next incident Mr. X could recall, also involved Sergeant Kennedy:

"Q. Let us go on to the second occasion.

A. It was an occasion when myself and another officer were walking a beat.
We were picked up, I don't recall who picked us up, but we were taken up to Westgate and—

Q. You mean the shopping center?

A. Westgate Shopping Center on Central Avenue.
When we arrived there was an open door, entering a shoe store and Lieutenant Kennedy was there at the time and he took some merchandise from the store.

Q. Did he say anything before going into the store?

A. Well yes, he mentioned that the sizes of the shoes were coded and he told us what the code was.

Q. Can you explain that?

A. Well, instead of sizes running numerically, they run alphabetically. Whereas size A would be size 1, size B would be size 2 and et cetera.

Q. Did he tell the officers to go into the store or what?

A. Well, he told the officers and myself to get what you wanted because we are going to button it up as fast as we can.

Q. Going to what?

A. Button the store up, close it up.

Q. And did you do so?

A. Yes, I did.

Q. How many cars were involved?

A. There were two vehicles.

Q. Again we are talking at all times of uniformed men in marked cars; is that right?

A. Yes.

Q. Whatever exceptions we will be noting?

A. Yes.

Q. Did all of the officers enter the store?

A. No, they did not.
Now, myself, Lieutenant Kennedy, another officer entered the store. Another officer who was on the beat with me did not enter the store. He stayed in the car.

Q. What was his role?

A. He was to watch out.

Q. Look out?

A. To look out, watch out.

Q. Of course the shopping center was closed for the night, wasn't it?

A. Yes, it was.

Q. Do you recall how the entry was made?

A. I don't know how. It was made through the front door, but how the door was opened I don't know.

Q. What did you do with the items removed from the store?

A. Well, the items I took were shoes for myself and my family and, of course, we wore them.

Q. You put them in the prowl car?

A. Yes.

Q. The trunk or back seat?

A. Back seat.

Q. Was the place alarmed?

A. No, it was not.

Q. Do you know whether there was any report of the burglary?

A. No, there was no report.

Q. Would police officers learn if reports were written about burglaries, about any burglary?

A. Oh yes.

Q. How would that come about?

A. Well, it would be when a report was made of a burglary it was put on teletype and a copy of the teletype was put in the ready room where the men went to go on duty, and all burglaries or any incidents that happened the previous day would be on these here sheets." (211-13)

Mr. X explained that the men in Kennedy's squad tried to avoid any type of break or forced entry. This would reduce the chance of discovery of the entry and eliminate any report to the police (213-14). Mr. X explained how entry could be effected without a break but pointed out that some officers were not that "sophisticated":

"Q. Now let us go into the details: Did certain officers have certain specialties in committing burglaries or did they have certain particular reputations in the Department or at least within your division?

A. Yes. Some officers were referred to as crashers, breakers. They would break into a place, and I mean break, they would literally, whether it be a door, a window or a block wall, they would go through a block wall and there were others who would not make a break.

They would enter a building in such a manner that the building couldn't [sic] be locked up again, and there would be no evidence of any break.

Q. What about your particular squad? Which method did you prefer?

A. We were more sophisticated.

Q. What was that, you were more sophisticated?

A. We were more sophisticated. We didn't break; we didn't break anything.

Q. How did you do it?

A. Well, there were—well, a number of ways. Obviously if a door was unlocked or there were special devices used.

The tool used mostly was a tool was a tool called a pinch bar which would be inserted between doors, this here would have to be two doors, such as on a department store, two glass swinging doors. You would insert this between the doors and I could spread the doors wide enough so that the lock would come out of the door and you could open the door.

Q. Would that leave any type of—any evidence of forced entry?

A. No, it would not.

Q. If done in a sophisticated, professional way?

A. No, it would not.

Q. Any other ways that you could think of?

A. Yes. There was another way—this wasn't in my squad—it was a case where an officer decided to take out a plate glass window, which he did.

Q. We will get into that later on in your testimony.

A. Yes. And there was a tool that I myself fashioned, which could be inserted between doors, and unlock the locks that go up into the frame of the door and the lower frame of the door." (199-200)

Mr. X related another occasion when Kennedy told him and another officer that he "needed" a submersible pump and told them to get it (215). Kennedy explained exactly what he wanted, where they could find it, and how to get into the place:

"Q. Tell us what he said and what he wanted you to do?

A. Well, he wanted us to go over to a plumbing supply house, told us where it was located. He told us that 'I don't want a sump or, you know, I don't want a surface pump, it has to be submersible' and we told him we didn't know how to get in there.

He said 'This is how you get in there', and he told us how to get in.

Q. How did he explain you might get in?

A. Well, it was a pipe across the door, somewhat like a garage door, and he said 'If you insert an object between the doors, lift the pipe up, thereby you could open up the door.'

Q. What was the place that he told you to go to?

A. I believe it was the Pump Man or something like that.

Q. Do you remember the—

A. Over on Manning Boulevard.

Q. On Livingston Avenue?

A. Yes. Well, Manning Boulevard and Livingston Avenue.

MR. FISCH: Mr. Chairman, there will be more said about this item. I was at those premises. I confirmed with the owner that illegal entries had been made through the back in this manner, and we will be saying more about that.

We will be pointing out, we made efforts to verify every item that this witness gave us in private hearing and, again, there will be testimony on that.

BY MR. FISCH:

Q. All right. He told you what he wanted. He told you exactly where to get it. He told you how to get into the place. Is that right?

A. Yes, that's right.

Q. Well, did you comply?

A. Yes, we did.

Q. Would you tell us about that?

A. Well, we went into the building, as he told us. We found a submersible pump, we left the building, I believe, we locked it back up.

Q. Were you able to get in in exactly the manner that he had described?

A. Yes, yes." (215-17)

The officers put the pump in their police car and brought it back to Kennedy (217).

Another incident with Kennedy involved the theft of paint from a store at the Westgate Shopping Center (218).

Mr. X testified he found a police officer removing the store's padlock and asked him what he was doing (218). The officer replied: "Kennedy wants some paint" (218). X went back to the Division, and asked Kennedy if he knew what the officer was up to. Kennedy said he did and told Mr. X to "go out and help him" (219). X followed orders, and returned to the store. The padlock had already been removed and entry made. X assisted the officer in opening the back door and starting the conveyor belt in order to bring the paint from the basement to street level. About 10 cases of paint were removed and placed in the police car (219).

A favorite target of the police was J. C. Penney's department store, located at the Westgate Shopping Center.

Mr. X testified that his first experience with that store was during a midnight to 8 A.M. tour, when he was patrolling around the premises in a prowl car and observed a brother officer, in civilian clothes, and off-duty, "removing a pane of glass" from the back of the building (222). X spoke to him:

"A. I asked this officer, what are you doing?

He said, taking the window out.

I said, what are you, nuts?

And he said, well, he says, I have got to get Christmas presents.

And I said, You're crazy. I am getting out of here. So I drove out." (223)

Mr. X testified that he drove away and later, upon meeting a Sergeant, told him what he had observed. The sergeant "laughed" and said "let's go see" (224). Together they returned to J.C. Penney's. When they got there the glass was off and this off-duty officer soon came out carrying "quite a bit of merchandise" including a television set (224). When he had concluded and was about to put the pane of glass back in place, the sergeant told him ". . . no, leave it there, we'll put it back" (224). Then the sergeant entered the building and

Mr. X remained outside listening for police calls on their car radio (225). After the sergeant removed clothes and other items, X went in and did the same. They replaced the glass and drove off (226).

The off-duty police officer who removed the glass had a reputation within the Department as a "crasher," and was further reputed to have committed other burglaries while off-duty and armed (222; 224). Mr. X told of visiting the officer's home and being shown a gun cabinet with "half a dozen rifles of various calibers" which the officer described as stolen property (227-8).

Mr. X returned to J.C. Penney's on another occasion with the Sergeant and entered the premises the same way. There were two prowl cars involved. The sergeant removed bicycles which he placed in his car and Mr. X took a portable television and some clothes:

"Q. Go on.

A. On this occasion this sergeant, with, I guess, three, four bicycles. He had an awful lot of merchandise. He was in there quite awhile, half an hour, forty-five minutes, and when he come out with the merchandise I didn't think he was even going to get it in the car, but he did, and I went in and I got some thing, I got a small portable television, more clothes.

I believe we buttoned it up and then he had so much merchandise in his car that it was kind of conspicuous. You had bicycle bars sticking out of the trunk and windows and everything else.

Q. This was a prowl car?

A. Prowl car, so he decided not to drive around that way, so he took it right down to his house which was in Division 2. That is what we did.

We took it down to his house and put it in his house." (229)

Mr. X "didn't particularly like taking the glass out," so he used a pinch-bar, and a special implement which he fashioned himself:

"Q. Can you describe the implement or tool you say you fashioned? What was it? How did you contrive it?

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3 OF 5

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Mr. X "didn't particularly like taking the glass out," so he used a pinch-bar, and a special implement which he fashioned himself:

"Q. Can you describe the implement or tool you say you fashioned? What was it? How did you contrive it?

A. Right. Now, on doors, on swinging doors, you have locks that go up into the door frame and down into the door frame such that the door cannot be moved.

Now, because of that you could not spread the doors because these locks help the door from spreading, so a tool had to be made, such that you could release them locks, and what it was was just a little screwdriver which was welded on to a bar which hit in between the doors, and you just turn the bar and the locks would come down.

Q. Have you ever used any other tool or instrument or implement to gain entrance to J.C. Penney?

A. Yes, the bar.

Q. The pinch bar?

A. Pinch bar, Pinch bar, once you got your locks down you use your pinch bars to open up the door." (230-1)

Mr. X testified that there were three occasions when he and other police officers illegally entered J.C. Penney's and removed property and merchandise (232). He identified the shoe store referred to earlier, as an Endicott Johnson store, and testified that there were two occasions when he participated with brother officers in larcenies from that location (232). Mr. X described other burglaries and larcenies with police officers:

(a) A liquor store on Lark Street. Mr. X received a call that an alarm had gone off in the store and responded to the scene which was located in Division II territory. A glass door had been broken and two uniformed Division II officers were there. Together with Mr. X, these three uniformed officers removed cases of liquor and placed them in the prowl car before the private security people appeared (233-5).

Mr. X explained that even if an alarm is activated, such alarms are normally silent alarms and the police generally would respond before the private security personnel. The police would thus have sufficient time to remove merchandise if they were so inclined (235).

(b) Overmyer's Warehouse at the West Albany Industrial Park. On the first occasion at Overmyer's, Mr. X and one other officer, each driving marked prowl cars, lifted the overhead door, entered the warehouse and removed air condi-

tioners (236). On the second occasion, Mr. X and a uniformed Sergeant entered the premises the same way, namely by lifting the closed but unlocked overhead door. They removed appliances during the interval of time between their activation of the silent alarm and the appearance of the owner or private security personnel (237).

Mr. X was asked how he and the Sergeant arranged to meet at this location:

"Q. How did the two of you in two cars get together at Overmyer's?

A. Well, what one would do is, someone would call on the radio dispatcher 'I would like to —what is Unit 10's location?' And they would—they would ask Unit 10 and the other unit would ask them to meet them some place, and if there was a question, you know, what is the meeting for, 'Well, I want to ask him, you know, directions' to some place, you know. So this is how they communicated.

Q. In other words, you wouldn't say 'Meet me at Overmyer's', you would say 'Meet me at' some place.

A. Yes, then they would go to that place, all right, this place is open, go down or over wherever the place would be.

Q. Did you know that night or each night what officers would be in what unit cars?

A. Oh, yes.

Q. So you knew if you were calling for a particular car unit what officer would be responding?

A. Yes." (236-7)

(c) Firestone's tire store on Central Avenue. Mr. X and another officer found the door unlocked one evening while they were on foot patrol. They reported the open door by means of their walkie-talkies and soon a prowl car appeared. When the car arrived they decided: "Well, as long as you are here, why don't we get something" (240). Items were removed and placed in the prowl car. At the end of their tour of duty, Mr. X and the other foot patrolmen, met the officer driving the car and "collected the merchandise" they had stolen and which the officer had stored in his prowl car for safekeeping (240-1).

(d) A & P Store on Central Avenue. Mr. X described this incident:

"Q. Can you describe the circumstances?

A. There were, I believe, three units, three cars, one officer in each unit, and an officer came up to me and he asked me, say, do you have a pinch bar?

Now at this time I had not gotten into the use of pinch bars, or any other apparatus, so, in fact, I told him I didn't know even what a pinch bar was.

I thought that he was talking about a tire iron.

So he said, no, a tire iron won't do, it leaves marks.

Q. It leaves marks?

A. It leaves marks.

So he said he would look around and see if he could find one.

I asked him what he wanted it for. He said he wanted to go into the A & P.

So I said, well, I don't know where you are going to get a pinch bar—at that time I didn't even know what they used a pinch bar for.

So he managed to get in—I believe that he had used a tire iron.

He come back and he said, I have got the place open.

I said, all right.

So me and this other officer and himself, we went in and we got some hams and cigarettes. That was about it.

And then he closed the place back up." (242-3)

(e) Swire's Furniture Store on Central Avenue. Another officer driving a prowl car met Mr. X and advised him he had managed to open an overhead door. Mr. X felt the opportunities weren't too good because the store had "big furniture" (243). The other officer did not want his efforts wasted and advised Mr. X: ". . . well, we have got it open, let's go see" (243). Mr. X agreed and drove to Swire's, which they then entered and from which he stole a clock. They then closed the door and left (244).

(f) Detroit Supply store. Mr. X found the back door unlocked and removed some tools (244).

(g) Gas station on Western Avenue. Mr. X found the window open and stole a car battery (245).

Mr. X identified 11 police officers as having participated with him in these various burglaries and larcenies (245). He identified 8 by name and three others whose names he did not know. At the time of the public hearing, six of the eight identified by name were still members of the Albany Police Department. One held the rank of Lieutenant; two were Sergeants; one was a Detective; the rest were patrolmen.

In addition to the burglaries and larcenies which Mr. X could recall, he testified that men within his Division boasted of their exploits, and these activities were no secret within the Department (248). Officers were not concerned about another officer appearing on the scene while they were burglarizing a place, and therefore enjoyed a certain feeling of safety (248-9).

He was asked what might happen if a civilian appeared on the scene while he and his armed comrades were committing these crimes:

"Q. Did you ever consider what you might do if you, while armed, and other officers were confronted by a civilian?

A. I thought of it. And I didn't think of it too much because it worried me.

I didn't know what I would do because it is such that you don't know what a situation would be.

I really didn't like to even think about it.

Q. Did you ever discuss this with other police officers?

A. Well, there was discussion about it, and a couple of guys, you know—jokingly—I don't know—supposedly jokingly said, well, we will have to just knock them out or do something, hurt them, you know, or do something to them, so he couldn't tell.

Q. You said you didn't want to think about a situation like that, is that right?

A. Yes.

Q. Because it was fraught with certain possibilities?

A. Yes." (249-50)

Mr. X testified that these crimes in which he participated took place over a period of approximately three years (251). He further testified that the burglaries and larcenies were committed in such fashion that command officers knew or should have known what was going on. As a matter of fact, he described a typical scene in his squad room on a morning when a burglary was reported:

"BY MR. FISCH:

Q. Mr. Witness, there were occasions, were there not, where in spite of your caution and the caution of other members of the Department, burglary reports were, in fact, written and evidence of some illegal activity was left. Is that correct?

A. Yes.

Q. And would you see burglary reports the next day?

A. Yes, we would.

Q. And how did you and the members of your squad react?

A. Well, the initial reaction was, you kind of looked around the squad room and you said, all right, who was in my territory last night?

Q. 'Who was in my territory last night?'

A. Yes.

Q. Are you saying, are you serious, was it the first reaction that a police officer was responsible?

A. Yes.

Q. Can you illustrate that? Were any remarks made by you or others to officers?

You said that they would say, 'Who was in my territory'?

A. Right, right.

Q. Did you ever ask officers to stay out of your territory who had no jurisdiction there?

A. Oh, yes.

Q. Was this done by other officers, if you know?

A. Yes." (247-8)

Mr. X explained why he left the Albany Police Department:

"Q. Why did you leave?

A. Well, a number of reasons: Number one, I guess the initial and the most important I left was because it got such in the squad in the police force that it was unbearable. Not only in particular to the burglaries but there was a lot of dissatisfaction about the men because there was so much of this going around that nobody was really safe in their own territory. They had—that was one reason.

Q. What do you mean by 'No one was safe in their own territory'?

A. Well, you couldn't patrol your territory efficiently. I, for one time, tried to protect my territory. I knew—

Q. Protect your territory from other officers?

A. From other officers. And it was of no avail because what would happen is one of two things: Either they would make a call themselves to the police station, which would take me off my patrol.

Let us say I wanted to protect Central Avenue

I would get a call down to Lark Street, which left it unprotected, and if that didn't do it, they didn't want to go through that trouble, invariably I would have to get gas, sometime during the night I would have to get gas. And when that happened, again the territory was unprotected.

So this is the situation it was. And who needs that, you know? . . ." (252-3)

When Mr. X advised the Department he was resigning, Lieutenant Kennedy told him he was making a mistake and that Mr. X "would be losing money" even though his new job brought an increase in salary (255). Kennedy told him he "[had] it made" in the Albany Police Department, because of, among other reasons, "all the gratuities." He told Mr. X "You got anything you want. You know, all you got to do is go out and get it . . ." (256).

Mr. X left the Albany Police Department for a job as a security man. Kennedy subsequently met Mr. X and suggested that he "leave a door open" so they could "go up and clean

the place out" (255). Mr. X declined. Mr. X subsequently worked as a police officer at another Police Department. He was asked to leave after he and another man removed merchandise from an open warehouse (256-7).

In concluding his testimony, Mr. X stated that when he joined the Albany Police Department he had just left the United States Navy and had no idea of how a police force functioned. He saw these things being done which he knew was wrong and yet they were all handled as normal (259). In other words, "this is how we do things here and if you don't like it, shut up or get out, one or the other" (259-60).

"Q. You are describing what was regarded as normal?

A. Normal. This was normal working procedure. You didn't —well, I will tell you how bad it was, you didn't go out to protect the City per se, you just didn't. You went out to take advantage of the city in fact like I say, I was on there five years, and it wasn't until I got into this Lieutenant Kennedy's squad that I really began to realize what organization can develop when you have someone like Kennedy organizing things.

Like I said, before I went into his squad one of the officers said to me 'I need a pinch bar' and I said I didn't even know what a pinch bar is or what do you use it for.

But it wasn't long after I got into Kennedy's squad that he told us how to get in this place, what you do in this situation and, unfortunately, with a man like this, you either play ball in his ball park or you sit out on the bench, and by sitting on the bench that meant you were out into a car which was out in the boon docks, and you did nothing out there, you never got any calls, you just sit out there.

There was nothing to do, so nobody wanted that. If that wasn't bad enough, he'd see to it that you got the beats, so like I say, I played ball with him and he played ball with you.

I tell you honestly, he has been responsible, not only myself and other men in my squad, but through the years, talking to other officers, he had destroyed so many men whereas, if they weren't with him, you know, they might have gone bad anyway but certainly, there has been a few that would be straight if it weren't for him. You know,

we mentioned rotten apples. Well, there's a lot of rotten apples, but he is the epitome of rotten apples. That is where it all comes from, people like him" (260-1).

Another officer who admitted his participation in burglaries and larcenies was Officer Y, who was still a member of the Albany Police Department at the time of the Commission's public hearing. When Officer Y was asked why he had acquiesced and participated in parking meter thefts, his explanation was similar to that offered by Mr. X:

"Q. Was any consideration given at the beginning by you, or other officers, to refusing to go along with this?

A. Yes. Many of the men were unhappy about the situation. No place to turn.

Q. What do you mean they had no place to turn?

A. It was a well-known practice and if they opened up their mouths, or said anything, their position would be bad and it wouldn't accomplish anything.

* * *

Q. Are you testifying today under oath that the men felt that if they were to go to superior officers to report these crimes, that nothing would be done about it?

A. Some of the men did, yes, sir.

Q. Was this your feeling?

A. Yes, sir.

Q. Was that feeling discussed with other officers?

A. Yes, sir.

Q. And is this why you and others did nothing about it?

A. Yes, sir.

Q. Were there any other reasons why you did not go to command officers to report these crimes?

A. We were afraid of a possibility of putting our lives in danger, that men involved when called to back us up on calls would not show up on time, various things, where we needed assistance, they might not be there on time.

* * *

Q. You are talking about a failure on the part of police officers to respond as they should to assist you and other such men?

A. Correct. In a dangerous situation." (326-7)

Officer Y testified that within a few weeks after joining "the Kennedy Squad" he learned that his squad was committing burglaries and larcenies (329). His brother officers were openly discussing "a burglary they had committed" and the fact that "they got a lot of stuff" (329). Shortly thereafter, Y was physically present and participated with his brother officers in these crimes (330). Officer Y testified that these burglaries and larcenies continued on a regular basis during the more than five years that he served on the Kennedy squad:

"Q. You testified earlier that you were in that squad for over five years?

A. Yes, sir.

Q. Did burglaries and larcenies continue during that period of time on a regular basis?

A. Yes.

Q. Were there many such burglaries and larcenies?

A. Yes.

Q. How many of the squad members were involved, generally?

A. My impression was a good proportion of them were.

Q. Did the men in the squad utilize and employ different methods of getting into premises?

A. Yes.

Q. Can you describe the various ways these places were entered?

A. The preferred way was to open up the place and take out what they want and close it back up so it was not known that the place got hit.

Some of the men were not that patient and at times they broke open doors and had a reportable burglary on their hands." (330-1)

When men found open doors, they generally "would help themselves to the merchandise" (331).

Officer Y described Kenneth Kennedy's role:

"Q. Did Kenneth Kennedy participate in these burglaries and larcenies?

A. Yes, he did.

Q. Was he there on a regular basis?

A. Yes, he was pushing the men many times who didn't want to be involved and he kept pushing on them to get involved.

Q. What do you mean pushing the men?

A. Through intimidation, fear of bad assignments, the position in the squad would be such as they would be getting the bad end of any deals that would happen.

Q. What about times when he was not present, did he ask or expect the proceeds of what the men found?

A. Yes. Many times he told the men get various things for him. Many men at times refused and he got very angry over it." (332-3)

Officer Y related specific examples of these criminal activities by Albany police officers:

(a) Stamp Redemption Store on Madison Avenue. This was a store where merchandise was redeemed by savings stamps, and was located across the street from the police station (334). Officer Y testified that Sergeant Kennedy removed the coal bin door leading to the cellar. The five or six police officers who were involved removed merchandise from the store, placed it in their patrol cars which were parked in the rear parking lot (333-5). These uniformed, armed police officers, driving marked prowl cars, came from other areas in the City:

"Q. Were the police officers' cars that you saw all cars from within the area?

A. Some of them came completely across town.

Q. Do you mean cars came from—

A. Different territories.

Q. How were they advised, or how did they know to respond to this particular location?

A. They were either called on the air to meet the Sergeant for information, or they were told ahead of time before going out that—about an approximate time to enter the place.

Q. Who told them that?

A. Usually the Sergeant." (335-6)

Officer Y testified that he pretended he was taking some merchandise and as time went on often told his brother officers that he had stolen more than he actually had:

"Q. Did you feel that in order to remain in good standing in the squad you had to tell them that you were stealing more than you actually did?

A. Yes, definitely. If I didn't, I was pretty much ostracized. Now I used to let them think that I went along with them. As soon as I let them think I went along with them, my position in the squad automatically improved. I was more accepted. I wasn't harassed or anything." (338)

(b) Furniture store on Central Avenue. According to Officer Y, Sergeant Kennedy "instigated" this job and directed him and 3 or 4 other officers to meet at this store. When Y arrived, Kennedy was there and had already "opened the place up" (340). Small items of furniture, lamps and other appliances were stolen (341).

(c) Paint store at the Westgate Shopping Center. Officer Y saw Sergeant Kennedy pry open the front door on one occasion, and saw it pried open another time. He also understood the store had been entered illegally by the police "many times" (Pr. H. 2385).

(d) Pump store on Livingston Avenue. In order to protect Officer Y's identity, he did not describe this incident at the public hearing, since he was the only officer involved with Sergeant Kennedy. At his private hearing, Officer Y testified that he was walking a beat when Sergeant Kennedy picked him up and drove him to this store. In attempting to enter the premises, they set off an audible alarm, and therefore fled.

The incident occurred while they were on the midnight to 8 A.M. tour (Pr. H. 2369-71).

(e) Plumbing store. Officer Y testified that Kennedy entered through a window or door and removed a sink and possibly a water tank (Pr. H. 2370-2). The door or window was then closed, and the two officers drove off. Kennedy and Officer Y were the only officers involved in this incident.

Officer Y recalled Kennedy occasionally stating that some of these items were going to be used at a summer camp he owned* (Pr. H. 2372) .

(f) J. C. Penney's. Officer Y recalled that this store was "hit" quite often by police officers, and "on a regular basis" (342-3). At his private hearing, he identified 11 police officers who were with him at J.C. Penney's over the years he was a member of the Kennedy squad (342). Items removed by the police included clothing, tools and small appliances, and Officer Y recalled an air conditioner being stolen on one occasion (344).

(g) Overmyer's. Officer Y recalled being at this location more than three times. On such occasions he either participated in thefts of merchandise with other officers or witnessed such thefts (344). Although the premises were alarmed, the men had sufficient time to remove property before the owner or the private alarm company personnel arrived (344-5).

(h) Snowplow part. At his private hearing, Officer Y testified that Sergeant Kennedy once asked him to obtain a small part for a snowplow and to bring it to him at the police station (Pr. H. 3368-9).

(i) Other incidents. Officer Y was asked about other premises:

"Q. Have you heard of police officers removing coins from coin machines, hitting coin machines?

A. Yes, sir.

Q. Do you know, or have you been informed by police officers of guns being stolen by other officers?

A. Yes, sir.

Q. Of food being stolen?

*At his private hearing, Kennedy admitted once owning a summer camp (Pr. H. 4765).

A. Yes, sir.

Q. Have you witnessed any items taken from any of the 5 & 10's in and around the Division 1 territory?

A. Yes, sir.

Q. Were you physically present yourself, and have you witnessed this done?

A. Yes, sir." (345-6)

Officer Y testified that on occasion, when a police officer from a different territory committed a burglary somewhere else, he might give some of the proceeds to the officer in whose jurisdiction he had "poached":

"Q. Did men who removed merchandise or goods ever distribute any such proceeds to officers who were not physically present at the time that items were taken?

A. Sometimes if they went into a man's territory that he was assigned to, to make a break, they might give him something after they made the break, if they hadn't told him that they did, they might give some merchandise or something.

Q. Did that happen with you personally?

A. Yes.

Q. Are you saying that you were given the proceeds of what police officers took from stores, even though you weren't present?

A. Sometimes. That happened very seldom.

Q. But it happened?

A. Yes, sir.

Q. And that was on the theory that it was your territory?

A. Yes, sir." (347)

Officer Y testified that he had also witnessed police officers break into automobiles and remove tires after jacking up the car (348).

At the conclusion of his testimony, the officer explained why he had agreed to testify at the Commission's public hearing:

"Q. Can you tell the Commission and the public why you have agreed under, as is obvious, great difficulty, why you have agreed to give this testimony today?

A. I disapproved of the actions of many members of the Department. I did not like what was going on, but until this time I felt no matter who I went to, or who I talked to it only would be referred back to our own Department and put myself in a bad position, without accomplishing anything.

Q. Did anybody tell you to say that?

A. No. This is how I feel, this is why I am doing what I am doing at a great risk to myself." (349-50)

Corroboration of the testimony of Mr. X and Officer Y

Upon receipt of such testimony from Mr. X and Officer Y at their separate, private hearings, the Commission made every effort to corroborate their stories. The premises they described were visited to see if their descriptions were correct and whether such crimes had actually occurred. Where alterations had been made to the physical structure of the premises, the owners or managers were interviewed to determine what the premises were like at the time of the alleged crimes. For example, the two officers, in independent testimony, described illegal entries to a furniture store, by a side door. At the time of the Commission's investigation this door no longer existed, but the Commission was able to verify the fact that the store did have such a door, matching the description and size given by these officers, at the time period in question.

Another example is the testimony concerning the Pump Man premises. Mr. X testified that he stole equipment from the store by an illegal entry made through rear doors. The Commission examined the proprietor of the store, under oath, at a private hearing, and he verified that burglaries of his premises had occurred by illegal entries in the exact manner described by Mr. X.

"Q. While we were off the record did Investigator Probst describe a possible means of gaining entrance to your premises from the back through garage doors?

A. Yes. This was one of the points of entry.

Q. A possible way of doing it, as he described by—

A. It has been done.

Q. It has been done that way?

A. Yes.

Q. How was that?

A. Breaking and entry by the rear.

Q. You had a bar over—you better describe it.

MR. PROBST: They were swinging garage doors and there was an iron bar that would be placed inside of the two L shaped steel bars.

THE WITNESS: That's right.

MR. PROBST: Entry could be made by slipping a sharp object between the two doors, lifting up the iron bars.

THE WITNESS: That's right.

BY MR. FISCH:

Q. Did, in fact, you ever find that people had gotten in that way?

A. Yes. We have had break ins and entries by that door." (Pr. H. 2989-90)

It will also be recalled that Officer Y testified that he and Sergeant Kennedy once tried to get in the store and set off an alarm and they therefore left. The owner of the Pump Man testified that neighbors had called him and reported seeing police officers in his premises on other occasions (Pr. H. 2979).

"Q. All right. You were telling me off the record that you found some police in the premises and you asked them why they were inside.

A. Yes. They thought there was a fire in here.

Q. Was there a fire in here?

A. No, there wasn't.

Q. And did they tell you on what basis they thought there was a fire inside?

A. No, no. They didn't explain it fully.

Q. Did you say something while we were off the record about an alarm that they said—

A. This was the neighbors had called me. No. Wait a minute. Hold it.

Yes. One time they did tell me that the alarm went off and they broke in because they thought there was a fire in the place.

Q. And this was an occasion when there was, in fact, no fire?

A. No fire." (Pr. H. 2979-80)

The witness testified that on other occasions the police were found inside for no apparent reason:

"Q. Can you think of any times, just as this particular time, when they were inside where you saw no explanation for them being inside?

A. It was a couple of times that they were in here for—with no explanations that I could understand.

Q. Are these occasions when there were no fires?

A. No fires, no burglaries, no break ins.

Q. No alarms?

A. With the exception that they broke the window on the door when they came in.

Q. Let's take the first situation with the alarm that they claimed they had heard and you found was off. How did they gain entrance to the place?

A. They broke off the store window.

Q. Did they ever gain entrance that way on other occasions?

A. I believed that happened twice.

Q. One time you have explained. What about the second time, what were they doing there?

A. It was more or less the same situation, but the alarm was ringing on one of these occasions.

Q. One time the alarm was ringing and one time it was not?

A. Yes." (Pr. H. 2983-4)

The Snowplow Blade

After Mr. X testified at his private hearing concerning the theft of a snowplow blade by Sergeant Kennedy, Patrolman John Dittmer, another patrolman and himself, the Commission succeeded in locating such a blade at a gas station owned by Lieutenant Kennedy's uncle. The blade and its serial number were photographed. The Commission then visited the company from whose yard the snowplow blade was stolen, spoke to the manager, and examined inventory records. The Commission found such a blade listed as part of their inventory during the year Mr. X testified it was stolen from the premises. At the beginning of each year, the company carries over equipment it has not sold to the new year's inventory. When an item is sold during any given year, the sale is noted in a column alongside the listed equipment, together with the name of the purchaser, date of sale, and other pertinent data.

The office manager testified at the public hearing:

"Q. As I understand it, then, on the left side of your ledger would be a listing of equipment, the date purchased and description, is that right?

A. Yes, sir.

Q. And on the right, the right column, you have the disposition, to whom it was sold and date and so forth?

A. That's correct.

Q. What do you do at the end of each business year?

A. With the inventory you are talking about?

Q. Yes, sir.

A. With the inventory we take, of course, a physical inventory at the end of the year, double check it against the accuracy of our records, then whole pieces of equipment are carried forward to the next year, maintaining, of course, the same dates and the same reference number that we have. We just merely carry them forward to the next year.

Q. In other words, if a piece of equipment is not sold and you still have it, it would be carried over to the next inventory business record, is that correct?

A. That's correct.

* * *

Q. I would like to show you Commission's Exhibit 4 and ask you whether this photograph accurately, is an accurate reproduction of a snowplow blade identical to one listed in your 1965 inventory records (handing).

A. (Witness peruses document.) Yes, it is.

Q. All right. Now, in reviewing your records did you find that this snowplow blade was not on your premises in 1967 or 1966?

A. Excuse me just a moment.
(Witness peruses document.) I believe it was at the end of 1966. Yes, right at the end of 1966 that was no longer in our inventory.

Q. In other words, you had it in 1965 and in 1966, or at least part of 1966, and when you came to transfer your inventory to 1967 it was no longer there?

A. On January 1st of 1966 we had it, right. On January 1st of 1967 we did not.

Q. Did you have any record of selling that piece of equipment?

A. No, sir.

Q. Does that mean that something happened to that blade during 1966?

A. Something happened to it.

Q. And you say you have no record of it being sold?

A. No, sir, we don't." (1262-5)

After the Commission identified the snowplow blade, State Police Investigator E. J. Probst, who had been assigned to the Commission's investigation, visited the Albany gas station where the blade was located. The visit was made on March 21, 1973, the same day and at the same time that the Commission was examining John Dittmer at a private hearing in New York City. It will be recalled that Mr. X had identified Dittmer as the officer driving the pick-up truck into which the stolen snowplow blade was loaded.

Investigator Probst testified that when he visited the gas station on March 21, he observed the snowplow blade on the premises (273). He spoke to William Foster, the owner of the business who was Lieutenant Kennedy's uncle:

"Q. Why don't you tell the Commission what conversation you had?

A. I went into the office with Mr. Foster. I identified myself as a member of the State Police and stated that I wanted to speak to him about the plow blade.
Apparently he jumped at the conclusion that I was interested in buying it because he stated that the plow blade did not belong to him, it belonged to his nephew.
He asked me if I knew his nephew, Lieutenant Kennedy, who is a lieutenant with the Albany Police.
I admitted that I heard of him.
He said that he would have to talk to the lieutenant about it, because they were in business and they used to plow snow with it.
However, since Lieutenant Kennedy remarried he wasn't interested in working any more.
He stated that he would have to ask the lieutenant if he wished to sell it because he thought I could get it for a good price.

Q. But did he tell you that it belonged to Kennedy?

A. Yes, sir, he did.

Q. What else? Was anything else said by you to Mr. Foster?

A. Yes, sir, there was. With the conversation he said that he would get in touch with Mr. Kennedy and ask him if there —if he wished to sell it to me and he would be in touch with me.
I told him I would stop back.

Q. Did you ask how long Kennedy had had the blade?

A. I asked him how long the blade was there.
He said four or five years.
I then asked how much the lieutenant paid for it, so I would get some idea of the resale value.
He said he had no idea." (273-5)

At the same time that Investigator was being told by Foster that the blade belonged to Lieutenant Kennedy, Dittmer was being questioned in New York City about this snowplow blade and other matters. As already indicated, the Commission had been told of this theft by Mr. X. Word of the Commission's examination of Dittmer obviously got back to Lieutenant Kennedy. Lieutenant Kennedy then visited the police department where Mr. X worked after he left the Albany Police Department and tried to locate Mr. X. He told one of the officers there that Dittmer had been questioned in New York City about an incident that only Dittmer, Kennedy, Mr. X and one other Albany officer knew about and Kennedy was confident neither Dittmer nor this other officer would betray him. Investigator Probst explained:

"Q. Did you learn, Mr. Probst, that shortly after Mr. Dittmer's testimony in New York City on March 21st, at which time he was asked about the snowplow blade and at which time he testified under oath they had not been involved in taking that blade, did you learn that shortly after that testimony that Lieutenant Kennedy himself had taken some action in apparent response to that testimony?

A. Yes, sir. I understand Lieutenant Kennedy went to Mr. X's former place of employment and asked where Mr. X might be located.

He stated that Dittmer had been called down to New York City to testify and he was asked questions that would indicate that only two other persons knew of Kennedy's involvement with this. One was Mr. X and the other was a patrolman who Kennedy felt wouldn't betray him under any circumstances." (277)

In addition to Kennedy's attempt to locate Mr. X, the examination of Dittmer produced another result: the sudden disappearance of the snowplow blade from the gas station.

Investigator Probst returned to the gas station on April 23:

"Q. All right. On the second visit, April 23rd, was the snowplow blade there?

A. No, sir, it was not.

Q. On the second visit, April 23rd?

A. It wasn't.

Q. Did you have any conversation with Mr. Foster about it on the second occasion?

A. Yes, sir, when I went into the office with Mr. Foster he recognized me and he stated that the last time he told me that that belonged to his nephew, it was a misunderstanding. In reality the blade belonged to a customer, the customer had appeared and claimed it and had taken it away.

I asked Mr. Foster if he knew who the customer was and he said he didn't know him.

I then asked him, did he have any paper work on it? which would indicate who the customer might be.

And he stated that he didn't wish to discuss it any further.

Q. Did anything else happen that day?

A. I subpoenaed Mr. Foster for a private hearing." (275-6)

When Mr. Foster appeared at his private hearing in Albany, he was questioned about the snowplow blade. He testified that he and his nephew, Lieutenant Kenneth Kennedy, had worked together on snowplowing work and had once maintained a joint checking account in connection with such work (283). Mr. Foster recalled the visit to his gas station on March 21, 1973 by Investigator Probst (283). He recalled Probst inquiring about the snowplow blade which was then on the premises (283). Mr. Foster claimed he could not recall whether he had advised Probst that the blade belonged to Kennedy (283). At his private hearing, Foster did remember saying he would have to speak to Kennedy before selling the blade (Pr. H. 3691). Mr. Foster's responses to questions concerning the acquisition of the snowplow blade were as follows:

"Q. Who owns the blade?

A. Well, it is my station.

Q. Who owns the blade?

A. It would be mine.

Q. It was yours?

A. Yes, sir.

Q. How did you acquire the blade?

A. Over the course of years of owning equipment, service station equipment.

Q. How did you acquire the blade?

A. I don't recall.

Q. Do you know what that blade costs new?

A. I don't recall.

Q. Did you just find it in your gas station one day?

A. No, sir.

Q. How did you get it?

A. In the purchase of equipment over the course of years.

Q. Are you saying that you purchased that blade? Is that your sworn testimony, that you purchased that blade?

A. In the course of operating a service station I have had snow plows.

Q. I am asking whether it is your sworn testimony today that you purchased that blade.

A. (No response.)

Q. Take your time, Mr. Foster.

A. I don't recollect.

Q. You what?

A. I don't recollect.

Q. You don't know how this blade got in your gas station?

A. No, no. You asked me if I remembered purchasing it, the blade, itself. I don't recollect.

Q. Do you recall specifically how that particular blade was acquired by you?

A. Pardon me, sir. I couldn't hear you.

Q. Can you tell us, Mr. Foster, how that particular blade was obtained by you?

A. No, sir." (Pr. H. 3693-5)

Mr. Foster was asked about the sudden disappearance of the snowplow blade.

"Q. Is that snow plow blade which was at your premises on March 21, 1973 and which had been there for years, still there?

A. No, sir.

Q. What happened to it, Mr. Foster?

A. I do not know.

Q. Was it stolen?

A. I do not know.

Q. When did you discover that it was no longer in your gas station?

A. Last week.

Q. Did you report it to the Police Department?

A. No, sir.

* * *

Q. Did you make any effort to find out what happened to the blade?

A. No, sir.

* * *

Q. Did you ask any of your employees whether the blade was removed while they were on duty?

A. No, sir.

Q. So is it just one big mystery as to how it came to your place and how it left the place?

A. No, sir.

Q. But you don't know how you got it; is that correct?

A. I can't recall.

Q. And you don't know how it disappeared, do you?

A. No, sir." (Pr. H. 3699-3702)

The Testimony of Former Albany Police Officers Albert Maynard and John Ruth

Former police officer Albert Maynard testified that the Albany Police Department had suspected that members of the uniformed force were committing burglaries:

"Q. Can you tell us about that?

A. Well, it was naturally over a period of time that certain police officers, uniformed police officers, after I became a detective, that remarks would be made in—conversation would be made about burglaries that were committed, and police officers were suspected of committing these burglaries.

And, of course, at one period of time it seemed to take on a pattern that, of course, the police officers, the uniformed men changed shifts every week, so every third week you would get the same squad on the twelve to eight trick in the morning, or the twelve to eight tour, and this —every third week our teletypes for burglaries, especially above Lark Street, which would be Division 1, would increase, or if you had a foggy night we would get a lot of windows knocked out and televisions and so forth stolen out of stores." (826-7)

On one occasion, Maynard testified, he and another detective were assigned "to see if we could catch a police officer committing a burglary."

"Q. Well, were you told to give any particular location special attention?

A. Yes. The Westgate Shopping Center, Grandway Shopping Center, areas where the burglaries had been constantly committed.

Q. Any places within those shopping centers that seemed to be hit a lot?

A. Well, J.C. Penney's was hit quite often. Grandway had the window knocked out once.

Q. Do you remember what your partner said when you went out on that assignment, in substance? I do not expect exact language, in substance.

A. That we were assigned to go up and see if we could catch a policeman pulling the burglaries." (827-8)

Maynard related two incidents pertinent to this subject. On one occasion, he was present when a uniformed officer opened his prowl car, and a pinch bar fell out (828). He stated this was not standard equipment for police cars (828) but the type of equipment used "to force something open, maybe, perhaps a door or forcing—used for a forceful type entry" (829).

The second incident involved information he had received concerning the possible involvement of a police officer in a burglary:

"Q. Can you relate that to us without identifying the officer by name?

A. I received information by telephone that a police officer's girlfriend had returned clothing to J. C. Penney Company, to exchange it for the correct size.

It was our knowledge that the night before there was a burglary. It was either a night or two nights before that there was a burglary at the J. C. Penney Company.

I confronted this police officer in the hope that perhaps I could get next to him and find out if he did commit the burglary.

And he thanked me, of course, but didn't admit that he did commit the burglary.

Q. He thanked you for alerting him to the fact that you had received this information?

A. Correct.

Q. Did he deny it?

A. No, sir, he didn't.

Q. Did he say he didn't know what you were talking about?

A. No, sir, he didn't." (830-1)

The police officer referred to above by Maynard was identified by both Officers X and Y as one who had participated with them in the commission of burglaries and larcenies (Pr. H. 1643-4; Pr. H. 1658; Pr. H. 2378; Pr. H. 2393).

Maynard further testified that by examining the duty rosters, and seeing which Division I Squad was working those evening

tours, "we could almost predict it a week in advance," and that "would be the time that we would be plagued with reports for burglaries" (831).

While Maynard resigned from the Albany Police Department because of his association with narcotics dealer and prostitute, Flo, Officer John Ruth was under no cloud when he resigned. His sworn testimony concerning his experiences as a uniformed member of Division I is further corroboration of the testimony of Officers X and Y that burglaries and larcenies by Albany police officers were widespread and well-known within the Department.

John Ruth served in the Albany Police Department from December 1963 to June 1970 (Pr. H. 5594-5). He testified that while he was a member of the uniformed force assigned to Division I, he was "a loner" and "made it explicitly clear" to his brother officers "that what they did was their own business but don't come into my territory and try to put me into any situation that I want nothing to do with" (Pr. H. 5612-13). Ruth was asked to elaborate on that comment:

"Q. You said you wanted men to stay out of your territory. Why.

A. I felt I was capable of taking care of my own territory. I didn't need any help. I didn't want any excuses if anybody was there, why they were there.

Q. What did you not want them to do in your territory?

A. I didn't want them doing anything that was, you know, illegal.

Q. Burglaries?

A. There was a possibility, you know. As I say, I don't have any personal knowledge but, you know, it could have—well—

MR. ROSENBLUM: Off the record for a second.

(The witness and his attorney confer off the record.)

A. You know, I suspected them of possibly committing burglaries." (Pr. H. 5614)

Ruth related a number of experiences he had while a uniformed officer. One incident involved a new pharmacy which had opened on Coleman Avenue, a street known as "a strip

for burglars" (Pr. H. 5615). While on patrol one evening, Ruth discovered the rear door open, and called on his car radio for assistance. The owner arrived, locked the door and mentioned to Ruth and other officers who had responded that he had not yet had time to install a burglar alarm system (Pr. H. 5615-6). Ruth became concerned about this and explained why:

"Q. What happened after that?

A. The following night, realizing that they didn't have a burglar alarm and there was a pharmacy, I was particularly concerned, you know, with the building. I suspected that, you know, now that knowledge was known that it didn't have a burglar alarm, that it might try to be ripped off.

Q. By the police?

A. Yes.

Q. I mean there was not an announcement in the newspaper?

A. No. By police officers.

Q. Did it reach that point while you were in the Department that you had to be concerned about police officers knowing of vulnerable locations?

A. Yes. If you were assigned to a particular area, I would say yes." (Fr. H. 5617)

Ruth's concern proved correct. At about 3 A.M. he received a call on his radio to get some coffee for his Division, and was out of service for about 30-35 minutes. The fact that he was out of service was known to his brother officers because of the radio transmission (Pr. H. 5618). When he returned, he checked the pharmacy and found a window broken and slightly ajar. He called for assistance and one officer did not respond. Furthermore, the other officers could not account for the absence of this officer during the time Ruth was out of service. Ruth suspected that this officer was involved because of "his reputation in the past," and because this officer was present the previous night when the owner stated his premises did not have a burglar alarm system (Pr. H. 5616-18).

Ruth related an incident one evening when he found a brother officer "who was considered one of Kennedy's boys" in

his territory although his car was assigned to patrol the other side of the city:

> ". . . I jumped out of the car and asked him what the — he was doing over here. He replied that he was looking for a place to eat. I said at that point, 'Just stay out of my territory and don't let me see you over here again.'" (Pr. H. 5626)

The atmosphere in the Police Department was described by Ruth:

"Q. Did you ever see a pattern of burglaries that when particular squads were on duty you were more likely to see burglary reports the next day?

A. No, because I think each particular squad had a certain amount of burglars.

Q. Certain amount of burglars?

A. Burglars.

Q. Was this the reputation of the Department. Was this pretty well known within the Department?

A. Division 1 had a pretty bad reputation as far as burglaries. Division 2 didn't seem to have the same type of problem.

Q. But Division 1 had the reputation among the police officers; is that correct?

A. That's right.

Q. In other words, police officers suspected other police officers of burglaries?

A. I would have to say yes, in a general sort of way. Maybe not everybody. Maybe not everybody was conscious of it.

Q. You would read teletype messages or see burglary reports as a police officer, would you not?

A. Yes, sir, I would.

Q. What would your initial reaction be upon seeing a burglary report or teletype?

A. Well, I liked to presume that it was committed by an actual burglar, an outside sort of professional burglar.

Q. You mean a layman?

A. A layman, yes. In some cases, if you checked the teletype—

Q. Was this a factor that actually ran through your mind; was it a cop or not?

A. Yes.

Q. I am not trying to put words in your mouth.

A. That's one of the reasons I left Division 1 and wanted a day job. It did occur.

You would look at the teletype. You would look at their daily attendance sheet or whatever it was, the assignments, and you could tell generally by who was assigned to that particular area as to it may have been committed by a police officer or by a layman." (Pr. H. 1518-20)

At his private hearing, Ruth identified one officer's reputation within the Albany Police Department as "the axe," and stated that whenever this man was assigned to Unit 10, which covered Central Avenue above Manning Boulevard, "there seemed to be a burglary in the area" (Pr. H. 5621). Ruth recalled hearing that this officer had once thrown a brick through a window "and just walked in, in Westgate Shopping Center" (Pr. H. 5621).*

The Testimony of a Former Wife

The wife of a former Albany police officer assigned to one of the Uniformed Divisions, testified that on occasions when her husband worked the midnight to 8 A.M. tour, she awoke in the morning and found merchandise in her home which had not been there the previous night. For example, a portable T.V. set which was not in her house when she went to bed, but was there when she arose the next morning:

"Q. You were not awakened during the night by a United Parcel making a delivery?

A. No.

* This was the same officer who, according to Mr. X, removed the pane of glass from J. C. Penney's.

Q. Or by an appliance store making a delivery of a television set?

A. No.

Q. So it came through your husband and it came between midnight and eight, is that correct?

A. Right. . . ." (Pr. H. 2836)

She also testified that she awoke one morning and found a vehicle in her driveway which had not been there the night before (Pr. H. 2836; Pr. H. 2839). Albany Detectives came to her home the next day and inspected the vehicle while she nervously watched:

> ". . . I sat there shivering in my boots. I was thinking he is now going to get arrested for sure. They went into the house. They came back and they were talking." (Pr. H. 2846)

However, no arrest was made, and the Detectives left. The husband made certain alterations to the appearance of the vehicle and registered it in a false manner.

The wife testified that on another occasion, her husband came into the house with merchandise

> "which supposedly he got from the stamp store which lots of other guys were supposed to be in on . . . . Supposedly, the door was opened so they helped themselves." (Pr. H. 2830)

(5) *Acceptance of Money from Business Firms*

The Commander of the Traffic Division of the Albany Police Department, Inspector Herbert Devlin, admitted at a private hearing that he had accepted sums of money from a number of firms doing business with the City of Albany. At the public hearing, Inspector Devlin appeared in response to a subpoena, but refused to answer any questions and so the Commission referred to his private hearing testimony.

At the time of the Commission's public hearing, Inspector Devlin had been a member of the Albany Police Department for over 43 years, and the commanding officer of the Traffic Division for 18 years.

Inspector Devlin testified that when the Traffic Division required traffic or road signs, he contacted the Albany Supply and Equipment Co., a firm headed by William Graulty (Pr. H. 2319). Devlin knew Graulty for about 15 years and had gone to him for such signs for a long period of time (Pr. H. 2319). He was asked if he had ever received any money from Graulty:

"A. Around Christmas time, he used to give me $75 and a couple of envelopes, four, five, six envelopes to give to the boys who did work for him through the year. We used to pick our signs up there.

Q. When was the very first time you received money from Mr. Graulty?

A. I couldn't remember that far back. Not truthfully, I don't know just exactly. I wouldn't say every year since the fifteen or I wouldn't say that. I would say, occasionally.

Q. Let us take, you say Christmas you would receive about how much?

A. He would give me about $75. And here is half a dozen envelopes to split it up with the boys. Different fellows that would do little favors for him once in awhile. Pick up signs and things like that.

Q. Are you sure that $75 was the amount?

A. Yes. As near as I can remember. I don't know what was in the envelopes. I would give one to maybe my sergeant. One to my truck man. One of my sign men. I am not sure, exactly, what would be in those.

Q. These are envelopes which Mr. Graulty gave you containing the names or that you recognized to be members of the Police Department?

A. Yes. People that would work on my signs." (Pr. H. 2320-1)

Inspector Devlin further testified that he recalled receiving money from Graulty in 1970 and four or five years prior thereto, and did not believe "it ran back any further than that" (Pr. H. 2324). The amounts were $75 in cash (Pr. H. 2324-5).

Inspector Devlin also admitted the receipt of "a small amount like twenty-five [dollars]" two or three times plus a

"couple of bottles of liquor here and there" from Judge Sign Corporation, another vendor having done work for the City (Pr. H. 2326). He also admitted receiving $20 from William Carey, another vendor, on three or four occasions (Pr. H. 2326).

Another firm doing work for the City of Albany was White Safety Lines of Boston. This firm painted street lines for the City (Pr. H. 2328). Inspector Devlin testified he received "$250, $300" from this firm on two or three occasions (Pr. H. 2328) and claimed it was for work he had done for the firm when he "was not on duty" (Pr. H. 2327). Inspector Devlin was asked to explain:

"Q. What type of equipment was used to paint the street lines?

A. My own equipment?
They have a big machine and they have all kinds of flashing lights on. Two or three trucks. I follow it. I lead them down the street to show them where I want them to put paint. We do this at a time when there is not too much traffic.

Q. What did you do for this money?

A. What did I do for it?
I put in a lot of time. Ten, twelve, fifteen hours a day.

Q. In the evening, you say?

A. Yes, all at night.

Q. Did you use any equipment?

A. Just the police equipment which I would have to use for safety purposes. I was in uniform. It is an off-duty job. The same as if we put an off-duty man directing traffic someplace.

Q. Off-duty and you used police equipment?

A. You have to.

Q. What type of equipment?

A. The regular truck vehicle that I use for my work.

Q. What type of truck is that?

A. GMC, painted yellow. Flashing red lights on it.

Q. Does that truck itself mark the lines?

A. No, it is just my radio communication and my transportation." (Pr. H. 2330-1)

(6) *Tip-Offs to Persons under Investigation*

During its investigation, the Commission obtained testimony and other information concerning tip-offs to suspect criminals by members of the Albany Police Department. These alleged tip-offs occurred in narcotics, gambling and in other investigations.

Narcotics

The former head of the Narcotics Unit of the Albany Police Department, Detective Sergeant Robert Byers, testified at the public hearing concerning tip-offs by Albany police to narcotics dealers.

Byers testified that he had obtained information that one of the members of his Narcotics Unit was informing William "Billy" Williams, a major heroin and cocaine dealer, what the Narcotics Unit was doing:

"BY MR. FISCH:

Q. With regard to your narcotics law enforcement work, did you ever have reason to suspect that any men in your narcotics unit were tipping off narcotic dealers?

A. Yes.

Q. Can you give us any examples of that?

A. After the unfortunate and untimely passing away of the late Sergeant Purcell a number of people were brought into work into the Narcotics Unit.
One person who is no longer in the Department was relating to William Williams where we were, when we were working, what we were doing, was our car out out, in other words, out of the garage, or was it out in the street, so forth." (601)

Byers notified his superiors and "after a period of time" the officer was transferred to the Night Squad of the Detective

Division (602). The officer remained in the Albany Police Department until he left for a job in the District Attorney's office. He was no longer employed in the District Attorney's office at the time of the Commission's public hearing.

Another example which Byers presented at the public hearing involved a "stake-out" he and the State Police had conducted on the New York State Thruway. Byers had received information that a major drug dealer had gone to New York City for a large shipment of heroin and cocaine, and would be returning to Albany with the narcotics via the Thruway. The informant, who had supplied Byers with reliable information for seven years (606), advised Byers what exit the drug dealer would be taking, and Byers and a State Police investigator were waiting. While waiting, they received a radio call from an Albany police officer advising them to call off the stake-out, allegedly because Byers' informant had called the Albany Police Department and left a message for Byers that "it's off." Byers and the State Police investigator left their stake-out and later Byers received a call from his informant. The informant wanted to know what had happened. He told Byers that when he called the Detective Division of the Albany Police Department, he asked them to advise Byers "to stay there," and that the narcotics shipment was "positively on its way": (607)

"Q. Did he also tell you that the drug dealer had been able to come in with the shipment and bring it into Albany as a result of the stake-out being pulled off?

A. Not only that, he said he was put in the position that he had to help him cut it and bag it." (607)

Byers told the Chief of Police about the incident. According to Byers, the Chief spoke to the officers in question, and told them ". . . they better get moving, and so forth and so on." According to Byers, the officers arrested the drug dealer "some time later." (608) No action was taken against the officers, however.

Byers testified that on other occasions, he reported allegations of corruption and tip-offs by narcotics officers to Chief McArdle, who did nothing about such information. Byers testified that was why he resigned:

"Q. Can you tell us briefly about that without too much detail? I think the significance here is why—what he did with the information and why you resigned.

A. That extremely reliable source who had, prior to my resignation, had been responsible for major heroin and cocaine arrests in the City of Albany had brought to my attention that a police officer was advising people as to houses that we were watching, which would not be difficult to do because the City is not that big, and also the fact that we were watching this particular person and the person who would be next.

Q. Did you report the officer by name to the Chief?

A. Yes, I did.

Q. What did he do or what didn't he do?

A. Well, he was more annoyed at the fact that these things existed and that I was bringing them to his attention.

Q. Assuming that your information was cockeyed, that there was nothing to it, did he nevertheless give it the attention which it deserved by way of investigation? Did he attempt, did he show any evidence of trying to check out whether it was true or not?

A. No, absolutely not.

Q. And as a result of that did you resign?

A. Yes." (611-12)

A copy of Byers' letter of resignation was introduced into evidence at the Commission's public hearing.* In his letter, Byers referred to "corruption and dishonesty" by members of the Narcotics Unit.

Gambling

(a) The "parking ticket" telephone call

On May 12, 1971, the State Police were executing search and arrest warrants at the ABC Restaurant** in Albany in connection with a series of gambling raids conducted that day. At about 1:33 P.M., while the State Police were in the premises, the telephone rang. One of the State Police officers answered the telephone by saying "ABC Restaurant." The caller stated:

* Commission's Exhibit #15.

** The actual name of the establishment is not being used.

"Hello John. This is Joe Z.* They are in town."

The name "Joe Z" as well as the voice itself were known to the State Police officer who answered the telephone. Joe Z was a Lieutenant in the Albany Police Department and the State Police officer had spoken to him, on the telephone, in the past, and recognized his voice. The person Joe Z was calling, "John," was the bartender of the restaurant.

The State Police reported what had happened to Albany Chief of Police Edward McArdle. McArdle called Lieutenant Joe Z into his office, told him of the information he had received from the State Police and then transferred Lieutenant Joe Z to another assignment.

There is a conflict between the sworn testimony which Lieutenant Joe Z gave to the Commission concerning his conversation with Chief McArdle and the sworn testimony which Chief McArdle gave the Commission concerning the same matter.**

Chief McArdle testified that:

> "I talked to him about it and he denied emphatically that he ever made any such call." (Pr. H. 3609)

Later on in his testimony, however, Chief McArdle modified and elaborated on his earlier answer when the following specific question was put to him.

"Q. Did you ever advise the State Police that [Lieutenant Z] had told you he had called the owner but he had called them because he wanted to discuss a parking ticket or parking violation with him?

A. I believe I told him that he told me that he made a phone call but not at that particular time and it was before or after.

Q. To this owner? To this individual?

A. To look for somebody in a place, yes.

Q. So he told you that he had called the place?

A. Not at that particular time in question.

Q. But he had called this place?

A. Yes." (Pr. H. 3612-13)

* The true name of the caller is not being used here.

** Chief McArdle and Lieutenant Joe Z were both represented by the same attorney when they testified at private hearings before the Commission.

McArdle's testimony that Lieutenant Joe Z denied calling the ABC Restaurant "at that particular time in question" should be kept in mind and, as will be seen shortly, is at variance with Lieutenant Joe Z's sworn testimony to the Commission.

Lieutenant Z's explanation of his phone call to John, the bartender, was that he had received a message from his partner, "Detective Pat"* that John had called him. The message Lieutenant Z's partner allegedly gave him was to call John "regarding his daughter getting a parking ticket" (Pr. H. 4891).

Lieutenant Z testified he then telephoned the ABC Restaurant and asked to speak to John, whom he had known for "a couple of years" (Pr. H. 4892). The voice on the other end was "faint," and Lieutenant Z said:

> "Hello, hello, John is that you? This is Joe Z. What's your problem." (Pr. H. 4907)

Lieutenant Z testified that there was some noise, and banging, so he said to the person he believed to be John:

> "I will stop by and see you later." (Pr. H. 4907)

Lieutenant Z testified that the day after he made this telephone call, he was called in to Chief McArdle's office (Pr. H. 4888). McArdle told him he had been advised that Lieutenant Z had called a certain place and said "This is Joe Z. Those guys are around" (Pr. H. 4888). According to Lieutenant Z, Chief McArdle never identified the place he allegedly called (Pr. H. 4889). Lieutenant Z denied such a call (Pr. H. 4888). However, Lieutenant Z then did some "checking" on his own and went back to McArdle the next day:

"Q. How did you do some checking?

A. Well, if I was supposed to have tipped off a raid, there was an article in the paper and I went down and I tried to see which people I was supposed to have called. And there was some mention of the [ABC] Restaurant. And at that point I recalled that I had called the [ABC] Restaurant that afternoon at the request of one of my fellow detectives who asked me to call John there regarding a matter concerning his daughter, which I did. And I went back and told the Chief that I had called the

* The actual name of Lieutenant Z's partner is not being used.

[ABC] that day and that I was asked to call by one of the detectives because this fellow John had called the office asking for me and I wasn't there at the time.
And I told him that I had called the place but that it wasn't in regard to a tip-off. I had no knowledge that the State Police was conducting a raid, anyway.

Q. You had called the [ABC] the same day?

A. The same day that the raid was going on, yes, sir. Unfortunately I did, yes, sir." (Pr. H. 4889-90)

It will be recalled that Chief McArdle testified that Lieutenant Z denied calling those premises on the day of the State Police raid (Pr. H. 3613).

Although Lieutenant Z claimed he told John, during his telephone call, that "I will stop by and see you later," Lieutenant Z testified he did not go down to see John that day, nor the next day, nor two days later and not until a week or so after he was questioned about this by McArdle (Pr. H. 4909-10). Moreover, although the purpose of John's call to him, and his return call to John was allegedly regarding a parking ticket received by John's daughter, whom Lieutenant Z did not know (Pr. H. 4892), Lieutenant Z never found out what happened to that important parking ticket.

"Q. Did you ever find out anything more about the parking ticket?

A. No, sir. I didn't find out anything more about it.

Q. Two years have passed. Do you know what happened to the parking ticket?

A. Do I know what happened, what happened to it?

Q. Yes.

A. No. I can't remember what happened to it, no, sir." (4916)

John, the bartender, was also questioned by the Commission. He testified that he had worked at the ABC Restaurant since 1945 (Pr. H. 5486). During his work there, police officers occasionally came in to eat (Pr. H. 5486-7). He specifically mentioned a number of police officers who ate in his restaurant and whom he knew by name, including Lieutenant Z, Z's

partner Detective Pat, and at least two other Detectives who patronized the restaurant as often as Lieutenant Z (Pr. H. 5488; Pr. H. 5491).

John was asked whether Detective Pat had ever spoken to him on the telephone, or he to Detective Pat prior to the State Police raid of May 1971. At first, John answered "No." After giving this answer, John's attorney* had a conference with John and his answer changed:

"Q. Had [Detective Pat] ever spoken to you on the telephone or you to [Detective Pat] prior to the raid?

A. No.
(The witness and his attorney confer off the record.)

A. Well, I called him that day of the raid.

Q. All right. Did [your attorney] remind you of that?

A. Yes." (Pr. H. 5494)

John was then asked why he had called Lieutenant Z. He stated that his married daughter had received a parking ticket which she felt she did not deserve, and wanted to complain (Pr. H. 5498). She did not know "how to go about . . . complaining about it," so she asked John, her father (Pr. H. 5498).

John claimed that neither he nor his daughter read the instructions on the back of the ticket (Pr. H. 5496-7).

"Q. Are there, on the back of the ticket, instructions on how to pay it and what to do if you want to plead not guilty?

A. Yes.

Q. Did you read those instructions?

A. No.

Q. Why not?

A. Well, I read them but I didn't read it. Don't get me wrong. I didn't think of it, in other words.

Q. What do you mean you didn't think about it?

A. I didn't think about reading the back of it.

* John testified that when he received the Commission's subpoena, he contacted Lieutenant Z's attorney who referred him to the attorney who represented him at the private hearing referred to above (Pr. H. 5480).

Q. Did your daughter think about reading the back of it?

A. No. She was upset. She was just upset about it, that's all." (Pr. H. 5497)

John's daughter told him about the ticket one evening when she and her husband were having dinner with John and his wife. Although there were four people who now knew of this ticket, "not one of us read the back" (Pr. H. 5501). At another point in his testimony however, John testified that the ticket carried with it a $5 fine, which he learned by reading the back (Pr. H. 5501-2).

John told his daughter he would "call somebody up and ask if they knew anything about who do you complain to about the ticket" (Pr. H. 5502). John did not know what his daughter's complaint was, but decided to call Lieutenant Joe Z. He did not call Traffic Court directly because he "didn't think of it" (Pr. H. 5565).

According to John's testimony, he called the Albany Police Department and asked for the Detective Bureau. He did not ask for the Traffic Division, nor did he ask for the Uniformed Division to see if they could answer his question (Pr. H. 5507). When his call was connected to the Detective Division, Detective Pat answered the phone. John identified himself as John from the ABC Restaurant and asked for Joe Z. Detective Pat told him Joe Z was out (Pr. H. 5509). Although John knew Detective Pat as well as Lieutenant Joe Z, and although the purpose of the call was ostensibly to seek information about a parking violation, John never asked Detective Pat for such information (Pr. H. 5510). Instead, he told Detective Pat to have Lieutenant Joe Z call him at the ABC Restaurant and, according to John's testimony, told Detective Pat it was in connection with a ticket his daughter had gotten (Pr. H. 5511).

According to John, he placed this telephone call about fifteen minutes before the State Police raid (Pr. H. 5511). John admitted that while the State Police were in his premises, the telephone rang and the State Police answered the phone (Pr. H. 5512).

John's testimony about events subsequent to the State Police activity is at variance with Lieutenant Z's sworn testimony to the Commission, on several points.

It will be recalled that Lieutenant Z testified that he learned of the State Police activity at the ABC Restaurant from the

newspaper stories which appeared the following day, and that he never stopped by at the ABC Restaurant that night, the next day, nor, as a matter of fact, for about a week. John's testimony, however, is different:

"Q. Did [Lieutenant Joe Z] ever come back and find out what you wanted?

A. He came in that night for some sandwiches and I asked him about the ticket. That's all. And he told me you would have to go—you know, about the Traffic Court.
He says if she's got any complaint she has to go to the Traffic Court.

Q. He came in for sandwiches?

A. Yes.

Q. Did he come in reply to the message?

A. Oh, no.

Q. Did you ask him whether he had gotten the message that you left with [Detective Pat]?

A. Yes.

Q. What did he come into your store for, for sandwiches?

A. He asked me what I wanted and he asked me what happened.
I said, 'What do you mean what happened?'
He said, 'I called back and somebody answered the telephone.'
I said, 'Well, I didn't answer the phone.'
Then he heard about the raid.

Q. You mean he didn't know anything about the raid until he came in that night?

A. Not that I know of, no.

* * *

Q. Was he surprised at the fact that there was a raid?

A. Yes. He was surprised.

Q. So he didn't tell you anything you didn't know about that ticket, did he?

A. No." (Pr. H. 5512-13)

John then testified that in spite of his daughter's sense of outraged indignation over her parking ticket, and the fact that it had become such a cause celebre in two households, he did not know what ever happened to the ticket (Pr. H. 5514). He never contacted anyone at Traffic Court as Lieutenant Joe Z suggested, and his daughter never went there "to complain." He returned the ticket to his daughter, told her to pay it, and just forgot about it (Pr. H. 5513-14).

When Lieutenant Joe Z appeared at his private hearing, he claimed that his attorney had "the parking ticket or the results of that parking ticket" (Pr. H. 4928). The Commission requested of the attorney an opportunity to examine the ticket or whatever copy he allegedly had. Despite his assurance to provide the Commission with such documents, they were never forthcoming.

(b) The men who weren't there

The former head of the Albany Police Department's Gambling Squad, Inspector Charles Mahar, testified concerning a gambling raid he conducted in 1970 which was aborted by a tip-off. He testified that a reliable informant had advised him of illegal gambling activity at a specified location, and had also told him the time such illegal activity was being conducted (1017). When Mahar raided the premises, no one was there (1017). Mahar's informant later told him "that somebody tipped the boys off" (1017).

Mahar expected that the gambling would be resumed and was correct. The same informant advised him of the details of the illegal activity and Mahar planned another raid. This time however, he was more cautious. Mahar contacted Detective Sergeant Robert Byers, head of the Narcotics Unit, who was not a member of Mahar's gambling squad (1019). He picked Byers because he felt he could be trusted (1019). The raid on this second occasion was successful and 24 gambling arrests were made (1020). As already noted, the source of information concerning this gambling operation was the same informant who had brought the original information to Mahar, and who later told Mahar of the tip-off (1020).

It is appropriate to note that Chief McArdle testified that he had been advised by his men that there was no gambling in Albany. As noted earlier, the New York State Police and the New York State Organized Crime Task Force raided a

major multi-million dollar gambling operation in Albany which they stated was connected to organized crime.

D. THE LEADERSHIP OF THE ALBANY POLICE DEPARTMENT

The moral tone of any administration, be it police, government, or business, is set at the top. Subordinate employees take their cue from their leaders, and quickly appreciate what is expected of them and how much deviation from rules, regulations and standards will be tolerated.

The attitude of the leadership of the Albany Police Department over the years, towards police corruption, and its reaction to complaints of misconduct within its ranks, must be regarded as a major cause of the corruption problem.

Corruption matters were handled in a number of ways, depending upon the circumstances of each case. In some cases, and to the extent possible, information or allegations of possible misconduct were ignored completely. This was possible in those instances where there was no complainant and no outside agency looking over the shoulders of the Department.

In those cases where citizen complainants did exist, their treatment by the Police Department did not encourage them to press their complaints. In some cases, the complainants were treated almost as the targets and the Albany Police Department's methods appeared calculated to intimidate them.

During its investigation, the Commission discovered instances of face-to-face confrontations initiated by the Police Department, between complainants and the officers they alleged were guilty of some misconduct. No wonder that the complaints were subsequently reported as unfounded.

Where circumstances required that a complaint or allegation be checked, and where the Department was unable to avoid doing so, the "investigation" was conducted in a manner which almost guaranteed negative results. Thus, an officer accused of shoplifting was questioned by a Deputy Chief of Police, and once he denied guilt, the Deputy Chief, without interviewing the complainant, or investigating the officer's story, concluded there was nothing to the charge.

In those cases where officers were caught virtually "red-handed," they were not prosecuted criminally, nor brought up on departmental charges. Instead, they were permitted—indeed, encouraged—to quietly resign, and no report of the incident

was recorded in their personnel files to indicate that they left the Department because of corruption, criminality, or misconduct.

That this "cover-up" approach was the standard policy of the leadership of the Albany Police Department is demonstrated in the following pages. It is important to note that the illustrations which follow all involve participation, or knowledge, by the highest ranking command officers of the Albany Police Department, of the action taken and the results achieved.

Former Chief of Police John P. Tuffey

Former Police Chief John P. Tuffey joined the Albany Police Department in 1932 and rose through the ranks. He became Deputy Chief in 1950, Acting Chief in 1954, and Chief of Police in 1955, a position he held until his retirement in September 1969 (354).

At the public hearing, Tuffey was asked about corruption problems during his tenure as Chief and how such matters were handled.

One case involved an officer who stole a boat while he was a member of the Police Department:*

"Q. Was this crime committed while he was a member of the Department?

A. Yes.

Q. What happened to that man?

A. He was finished.

Q. You mean he was arrested?

A. No, no. There was no complaint.

Q. Well, was he guilty of stealing a boat?

A. I don't know whether he was guilty or not. The State Police arrested him, and when I was advised of it we tried to get the complainant and the complainant wouldn't come in and make the compiaint.

Q. Did you speak to the District Attorney at that time?

* At the time of the public hearing, another former Albany Police officer was under indictment for criminal possession of a stolen boat. That case, which is still pending, involves a different officer, and a second incident known to the Commission, of a stolen boat.

A. I don't recall.

Q. You know, sir, that District Attorneys have subpoena power and that is—

A. Oh, yes.

Q. (Continuing) and it is not unusual for complainants to be reluctant to testify?

A. Oh, yes.

Q. Was that man prosecuted?

A. Not to my knowledge.

Q. When you say finished you mean he left?

A. The crime—can I interject?

Q. Please, sure.

A. The crime didn't happen in Albany.

Q. Well, did you contact the District Attorney whose jurisdiction the crime did take place in?

A. I didn't because it wasn't my case, it was the State Police case.

Q. Did you have any conversation, whether it was a State Police case or not, did you have any conversation with the District Attorney of the county in which the crime was committed with regard to a prosecution?

A. Did I? No.

Q. Did you have any conversation with the complainant or the reluctant complainant or the man who did not want to be a complainant with regard to appearing at a departmental trial?

A. No.

Q. Is there any reason why you did not take departmental action against that police officer who stole the boat?

A. The man, when he was accused of the crime in our office, he immediately resigned, tendered his resignation.

Q. Do you think that is enough?

A. Do I think it is enough?

A. Yes, sir, that is the question.

Q. You mean as to the theft? The crime did not occur in Albany County.

Q. But he was a police officer?

A. That's right.

Q. Could you not try the man? Were there no rules or regulations which he broke by stealing a boat?

A. If we had corroborative witnesses.

Q. Did you try to get corroborative witnesses?

A. No, I had no jurisdiction in it." (362-4)

This policy of exacting or accepting a resignation and taking no departmental disciplinary action, was repeated in other corruption cases which the Commission uncovered in its investigation.

As already noted in an earlier section, three police officers were observed by private investigators in the act of burglarizing a trailer truck of the Albany Binghamton Express Co. in December 1968. The owner testified that when he reported this to Chief Tuffey, Tuffey became abusive and made him—the complainant—very uncomfortable. Tuffey's resolution of the problem was to assure the owner that the stolen property would be returned and the guilty police officers would resign.

Chief Tuffey recalled that the private investigators for the Albany Binghamton Express Company had obtained the numbers of the prowl cars. He stated "it was easy to determine who was in the car" merely by examining the police records which listed the men assigned to those cars (390). Tuffey testified that the Department was able to establish that the three men in question were in fact in those cars at that particular time and had committed the crime (395).

Chief Tuffey was asked what instructions he gave to Deputy Chief McArdle who went out to speak to the men. Chief Tuffey said that if the men were guilty or implicated "I want them off the police. I want them arrested" (392). He testified he told McArdle to "thoroughly investigate it" (394):

"Q. When you said you told him to thoroughly investigate it, what did that mean?

A. To talk—to get the names of the men, talk to them, see if we could get any information.

Q. What type of information?

A. From them?

Q. Yes, sir.

A. Any kind we could get from them.

Q. Could you tell me what you mean? What type did you hope to get from them?

A. If you question them, see if we could find any stuff that was reported stolen.

Q. Did you expect McArdle to question them?

A. Yes.

Q. What did you expect him to ask them?

A. Well, look, I can't tell you what he was going to ask them. He was the man of some twenty years in the police.

Q. If you had received that assignment, what would you have asked the men? How would you have investigated it?

A. I would first find out if they were there.

Q. All right. Did you establish that?

A. Did I establish it?

Q. Was it established that these were the men in those cars at that particular time?

A. Yes.

* * *

Q. All right. Now what else would you have done if you had received such an assignment from your Chief of Police, having established that? What else would you do? How would you go about conducting an investigation? What questions would you ask? What would be the objective?

A. To find out if they were involved and to get evidence connecting them with that.

Q. For what ultimate objective?

A. For an arrest.

Q. All right. Would you be interested in knowing whether other police officers were involved?

A. Oh, yes.

Q. Would you be interested in knowing whether these officers had ever been involved in other burglaries?

Q. Now wait a minute. You asked me what McArdle was to do when he went out to investigate that burglary.

Q. Yes, sir.

A. Now you are drifting into other burglaries.
Let's confine ourselves to one, to this specific case.

Q. You don't think it is—well, all right.
If you were conducting an investigation of one burglary by police officers, do you think it would be drifting to ask them if they had ever been involved in any other burglaries?

A. Oh, no. No. It certainly would not.

* * *

Q. You said that if they had anything on them you would expect an arrest to be made.

A. That's right.

Q. Would you expect the officer you had assigned in this case—in this case the Deputy Chief—to seek their consent to make a search?

A. Would I—

Q. If you went out, would you ask the men's permission, since they are still members of your Department to search their vehicles, to search their homes?

A. I would ask them, yes.

Q. In other words, even if you did not have a complainant for the burglary, if you find evidence of the crime, they could still be prosecuted by you or by police officers for having criminal possession of stolen property. Is that right?

A. They could be prosecuted by the courts.

Q. So you didn't need a complainant for the burglary if you find evidence in their possession, is that right?

A. That's right.

Q. Would you say that was elementary for a Deputy Chief of Police to know?

A. I would say he ought to know it, yes." (394-8)

Chief McArdle was a witness at the public hearing and was questioned about the Albany-Binghamton Express Co. case and other matters. He testified that when the owner of the company came to Chief Tuffey's office, he told Tuffey he wanted the merchandise back and felt these men should not be on the police force (1405). McArdle said he was then instructed by Tuffey "to find out who the men were, to talk to them, to tell them what the man had said and see if they had anything to say" (1406).

McArdle testified that Tuffey did not say anything about arresting the men, but assumed this was left to his judgment "if we got an admission of any kind from them, that I would" (1407).

McArdle visited the men and told them what had transpired in Chief Tuffey's office and what the men from the Albany-Binghamton Express Co. had said. This included advising the officers that the Express Company expected the merchandise returned and the dismissal of the officers:

"Q. Well, Chief Tuffey was also interested in arresting them if they had evidence of the crime, is that right?

A. I would have been, too.

Q. Did you ask permission to search their vehicles?

A. No, sir. I did not.

Q. Did you ask permission to search their homes?

A. No, sir.

Q. Is there any reason why you did not?

A. Because they made no admission to me that they were involved in this.

Q. Assuming they made no admissions, did you believe the story of the Albany-Binghamton people that there were eyewitnesses who saw these men?

A. I had no reason to doubt them.

Q. All right. Did you try to obtain a search warrant based upon this information?

A. I didn't. No.

Q. Did you consider it with Chief Tuffey? Did you talk about it?

A. I don't believe so.

Q. Now, assuming they made no admissions, if you had found them in possession of criminal property you could have arrested them on the spot, isn't that right?

A. Yes, sir." (1411-12)

McArdle further conceded that he did not ask the men whether other officers were involved, or whether they had ever done this before. Nor did he ask them whether they had given any of the merchandise to other police officers (1413).

"Q. Well, what type of investigation did you conduct?

A. Just what I was, in my opinion, sent out to do.

Q. Doesn't it boil down to, Chief, that you went out there and merely related a message to them?

A. Well, it boils down to this, Mr. Fisch, in my opinion that if these people refused to make a complaint, that we couldn't go out and not know whether we would get any backing or not from them.

Q. Chief, you didn't need them if you found evidence of stolen property in their possession, did you?

A. Would you repeat that, Mr. Fisch?

Q. Insofar as Albany-Binghamton people are concerned, if you found evidence of stolen property in their possession—

A. Not if I found it, no.

Q. But you didn't look for it?

A. I had no idea where to look, Mr. Fisch.

Q. A car is one possibility; a home is another.
You didn't look and you didn't ask for permission.

A. No, sir." (1414-15)

Chief McArdle testified that the men resigned on the spot, and he collected their badges and firearms (1416-17). Once this was done, McArdle testified he felt that his objective had been accomplished (1418). The merchandise was returned within a day or so after their resignation. McArdle made no notation in the personnel files of the officers who thus left the Department with "perfectly clean" personnel records (1420).

At his public hearing examination, Chief Tuffey was also asked about the William Sherry Tire Co. theft.

He was asked the purpose of the confidential police report on the complainant, Leslie Kelly, which was forwarded to him, in which the investigating officer reported "No evidence of Mr. Kelly drinking or playing around" (67):

> "COMMISSIONER BRYDGES: He did what he should have done; isn't that correct?
>
> THE WITNESS: Absolutely, absolutely, no question.
>
> COMMISSIONER BRYDGES: And yet you ran a confidential check on Kelly.
>
> THE WITNESS: Yes, because we didn't know anything about Kelly. His information didn't check out.
>
> COMMISSIONER BRYDGES: As I understand it he was not the defendant and he was not the subject of the surveillance, was he?
> He was a complainant and a citizen; isn't that right?
>
> THE WITNESS: That is right. Any citizen that has nothing to hide has no objection if the police make an investigation on him to my way of thinking." (435-6)

At the conclusion of Chief Tuffey's testimony, he was asked about examples of internal discipline during his tenure as Chief of Police:

"Q. What was the most serious charge during your tenure as Chief of Police that you ever leveled against a police officer?

A. As Chief?

A. Yes, sir.

A. I don't recall.
(The witness and his counsel confer off the record.)

A. (Continuing) I don't know. We didn't have any burglaries.

Q. No men, no charges against any men for burglary?

A. No.

Q. Any charge leveled against a man because of possible larceny that they had committed?

A. No. If there were, they would be given to the District Attorney.

Q. All right. Any charges ever brought against a man where they were accused of bribery, accepting bribes?

A. Never had an instance like that.

Q. Did you ever have a man brought up on charges because he was improperly associating with a known criminal?

A. No.

Q. Did you ever have any charges brought up against a man because of his failure to take legitimate police action against a house of prostitution?

MR. ROCHE: Neglect of duty, counsel?

Q. Neglect of duty.

A. A lot of them, but not because they didn't take action against a house of prostitution.

Q. Can you give me any serious example of neglect of duty during your service as Chief of Police?

A. Counselor, you are asking me here to go back over fourteen, fifteen years and tell you what have I in mind? I can't do it; you can't do it either.

Q. Chief, I am not asking you for the names, sir.
I just wondered whether you can think of any outstanding examples of neglect of duty, the most serious charge that you leveled against a man while you were Chief of Police.

The most serious. I am not asking you for details. The most serious charge that you have brought against a man while you were Chief of Police.

A. Offhand right now I can't tell you." (442-4)

The Deputy Chiefs of Police

Two other high-ranking officers who testified at the Commission's public hearing were the two Deputy Chiefs of Police, William Van Amburgh and John Murray.

Deputy Chief Murray, a veteran of thirty years of investigative police work, was assigned by Chief McArdle to "check . . . out" the allegations of police misconduct which appeared in a series of newspaper articles in the Albany press in the fall of 1971 (1164). Chief Murray conceded that it is necessary to "put a witness at ease and make a witness comfortable" in order to obtain the truth from him or her, and furthermore that the place where a witness is questioned, and who is present during the questioning, are important. (1165). The objective, Chief Murray testified, is "to convince them that you are trying honestly to get the right part of the story . . ." (1166).

The manner by which the Police Department tried to "check . . . out" the allegations of police corruption should be viewed within the framework of Chief Murray's own guidelines and objectives.

Chief Murray testified that he had "some of the men from the Detective Division" contact the people and "ask them to come in and talk to me" at Police Headquarters (1166). He chose Detectives for this assignment, and selected them "at random" (1167) although the newspaper articles alleged that the people being brought in for questioning had paid off members of the Detective Division (1167).

The persons summoned to police headquarters had to walk through police corridors, use a police elevator, and "come through a hallway in the detective office" before arriving at the office where they were to be questioned (1167). Chief Murray conceded that they might see and be seen by other police officers while coming to his office:

"Q. Do you think there is any chance that these prostitutes and others might run into people that they allegedly paid off while going to your office?

A. I can't eliminate that factor.

Q. That was a factor, was it not?

A. It's a possibility. If somebody got paid off.

Q. That's correct. But this is something you were trying to find out, wasn't it?

A. That's right.

Q. Do you think that their presence in the Police Department would become known to other police officers?

A. It's a possibility.

Q. Do you think the fact that they were called into the police station would become known on the street?

A. Well, I don't think that we would go out publicly and reveal it, because I can't say that it didn't get to the street.

Q. Do you know whether it did get out in the street?

A. I am afraid I couldn't answer that. I don't know." (1169-70)

Chief Murray, nevertheless, stated that the police station was the proper place to get the truth from people about payments to the police (1170). No signed statements were taken from these individuals, Chief Murray testified. When the Commission met with Deputy Chief Murray and Chief McArdle at the commencement of its investigation, Chief Murray was asked whether he believed these people and why he had not requested signed statements from them. According to an official Commission memorandum prepared within days of that meeting, and based upon notes taken at the meeting, Chief Murray stated that he did not believe all of them because "perhaps they were afraid of being charged with bribery" (1174). At his public hearing, Chief Murray testified he could not recall that remark (1174).

In addition to asking people brought into the Albany police headquarters whether they had ever paid off Albany police, and obtaining, generally, negative replies, Chief Murray also questioned Albany police officers.

One such officer was John Dale. Chief Murray testified that he questioned this Detective about his alleged relationship

with a prostitute because of the following item which appeared in the series of newspaper articles on the Albany Police Department:

> "Joyce was a light colored black girl from New York City. He said really good looking. She was Sergeant X's girl. The cops never hassled her at all. They might sweep the streets, clean up everyone else, but not her. Business was sure good for her."*

Although Dale was not identified by name in the newspaper article, and although there were other sergeants in the Albany Police Department, Murray questioned Dale about this allegation because he "got it somewhere" that the article was referring to him (1181). Murray "went right to Dale" without seeking any background information (1178) or doing any prior investigative work (1178).

Murray testified that the Detective admitted knowing and seeing the girl socially but denied knowing she was a prostitute. According to Murray, Dale also denied giving her any protection (1179).

Murray testified he questioned Dale directly because he had "a lot of faith" in him, had "known him for sometime" and "never known him to lie" (1184).

"Q. Did you form any judgment as to whether or not the article was truthful before speaking to Dale?

A. Did I form any opinion?

Q. Yes, sir.

A. I would have to say, to the best of my recollection, I didn't believe a lot of it. But, it was there and it had to be checked out." (1187)

Murray did not ask any of the other detectives if they had known whether the girl, Joyce Smith, was a prostitute (1186), and did not ask Dale how long he had been seeing Joyce or how often (1188). Nor did he ask Dale whether he had ever accepted any gifts from her (1191), had paid any of her bills (1191), or what places they had gone to together (1191). He did not ask whether Dale had ever been to her apartment (1192), nor did he ask if Dale knew how she supported herself (1192).

* This article appeared in the *Knickerbocker News* on October 21, 1971.

When Deputy Chief Murray was asked why he had not asked Dale more about his relationship with Joyce Smith, Chief Murray replied:

> "I had the information I wanted. I mean, he denied the allegations that were in the paper." (1188)

The other Deputy Chief of the Albany Police Department, William Van Amburgh, was also involved in an "investigation" of John Dale and Joyce Smith. At his private hearing on August 22, 1973, he testified that he had never heard of Dale associating with a prostitute, and had never heard the name Joyce Smith (Pr. H. 5459).

At the public hearing, however, Chief Van Amburgh testified differently. He was first asked about the newspaper articles alleging police corruption, and his response to them. It should be noted that Van Amburgh, as Deputy Chief of Police, was the second ranking officer in the entire Police Department.

"Q. Now, did you read the Knickerbocker News stories which appeared in 1971?

A. Most of them. Yes, sir.

Q. You did not read all of them, Chief?

A. No, sir.

Q. Didn't the stories allege police corruption?

A. I didn't read all the stories.

Q. Didn't the stories allege police corruption?

A. I didn't read them all. I just took the paper and I didn't read it all. That's all.

Q. Did anybody tell you anything about the stories?

A. I heard it, yes, sir.

Q. I mean did you ever have any type of staff meeting to discuss these allegations?

A. Yes, sir, we did.

Q. Do you recall anything in the newspapers in which it was alleged that a girl by the name of Joyce, a prostitute, was associating with a sergeant in the Albany Police Department?

A. I didn't read that, sir.

Q. You didn't read that.
Did anybody bring it to your attention?

A. Not to my knowledge.

* * *

Q. Did you know that in November of 1971 [Deputy Chief Murray] took a statement from Sergeant John Dale in connection with that newspaper story?

A. Yes, I do recall now. Yes.

Q. So you do recall that?

A. I do.

Q. Did you read that statement?

A. I am not sure.

Q. You are not sure.
Do you recall that he took a statement? Do you recall that, Chief?

A. Yes, sir.

Q. Do you recall what the statement was all about?

A. If I remember correctly, it was about Joyce Smith.

Q. Was it about Joyce Smith and Sergeant Dale?

A. If I remember right—now that you bring it back to me—yes.

Q. All right. So that prior to your examination in August of 1973, you had heard something about John Dale and Joyce Smith?

A. Yes, I had to." (1106-9)

Later in his public hearing appearance, Van Amburgh testified that he was present when Deputy Chief Murray questioned Dale on November 5, 1971 (1116).

Chief Van Amburgh testified at the public hearing that prior to Joyce Smith's arrest in January 1970, he had received information alleging that Dale was associating with this prostitute. When he received such information, he "tried to catch them" (1109):

"Q. For how long did this surveillance continue?

A. It was just a hit and miss proposition. I would drive by and see if I could catch them, and that was it.

Q. How long did you hit and miss, over what period of time?

A. I can't—I don't recall how many times.

* * *

Q. Can you tell me what you tried to do?
You said you tried to catch them. Where did you look for them?

A. On the street.

Q. Did you question any people who might have information about this?

A. No, sir.

* * *

Q. Did you check her home?

A. No, sir.

Q. Did you check bars and grills?

A. Yes, sir, I did.

Q. Did you ever—

A. (Continuing) From the outside. I don't go in the bars and grills." (1111-13)

Van Amburgh then revealed that he did not know what Joyce Smith looked like, and would not have been able to recognize her if he had seen her:

"Q. Did the man driving you know what Joyce Smith looked like?

A. No, sir, I don't know. I didn't say anything to him. I don't know.

Q. Don't you think that would help, Chief?

A. No, sir. I was doing it on my own.

Q. You were looking for two people and you do not know what one person looks like. Isn't that what it boils down to?

A. That's true.

Q. Did you ever write any report on this hit and miss investigation?

A. No, sir.

Q. Did you ever question John Dale about it?

A. No, sir.

Q. Did you ever report to the Chief on your results?

A. No, sir.

Q. Did you ever put anything in the files, anything at all, any scrap of paper to account for what you did?

A. Not that I recall, sir. No." (1114-15)

Former Albany Police Inspector Charles Mahar testified that sometime in early October of 1969 (1010), he reported to Albany Chief of Police Edward C. McArdle information concerning Dale and Joyce Smith. His information came from a cab driver who told Mahar that Joyce Smith had been a fare, and "would brag to him about nothing would happen to her because of her boyfriend" John Dale (1007-8). The cab driver also told Mahar that Joyce had told him this on "numerous occasions" and that he had driven "Johns" (customers) to Joyce's apartment several times (1009). The cab driver gave Joyce's address to Mahar and asked Mahar to transmit all this information to the Chief of Police on behalf of himself and others who wanted to see something done about this.

Mahar testified he immediately went to see the Chief, and gave him this information. He was asked what happened after that:

"Q. Did anything happen after that?

A. Yes. About three or four days later, the Chief came over to me and closed the door and said to me, in words or substance, that he had talked to Dale and Dale admitted to him that he had gone with that girl for quite sometime but he had given her up.
And he said, 'As far as I am concerned, Charlie, the case is closed,' and started to leave my office.
I spoke up and said, 'Of course, Chief, all I did was relay a message.'

And he turned around and said to me, 'Charlie, the case is closed,' and he left the office." (1009-10)

It is interesting to note that Mahar fixed the date of his conversation with Chief McArdle as October 1969 (1008; 1010). Joyce Smith was arrested in January 1970 by Detective Robert Byers.

Detective Sergeant Robert Byers also testified at the public hearing that he, too, transmitted information to Chief McArdle about this Detective and the girl.

Chief McArdle testified at the public hearing that he had questioned Dale, who advised McArdle that he had "completely severed" his relationship with the girl as soon as he learned she was a prostitute. Chief McArdle was asked what else he had learned from Dale about this association:

"Q. Did Mr. Dale, Sergeant Dale, tell you he had been with the girl in places where liquor was served after hours in violation of the law?

A. No, sir.

Q. Would you regard that as serious enough to prefer charges against the man?

A. If he had told me?

Q. Yes.

A. I believe so.

Q. If you received admissions from the man that he had visited places with this girl or even with any girl, on more than one occasion while off duty, observed violations of the law being committed, would you prefer charges against the man?

A. I'm sure I would.

Q. Are you aware of Sergeant Dale's testimony before this Commission to that effect, sir?

A. No, sir.

Q. You have not been advised that he so testified before this Commission?

A. No, sir." (1445)

Following the public hearing, Dale's testimony was forwarded to Chief McArdle. As of the date of this report, no action has been taken against Dale.

Another example of how the Albany Police Department "investigated" allegations of corruption and misconduct was given at the public hearing by former Inspector Mahar. It should be emphasized that the Commission is citing this example to illustrate the Police Department's attitude towards and manner of dealing with such complaints, and not as proof that the allegation was well-founded.

In January 1970, Inspector Mahar received information from the manager of a supermarket alleging that certain individuals had shoplifted some merchandise and then driven off in an automobile. The license number of the automobile was observed by the manager, who reported it to Mahar. Mahar wrote this up in a report and listed the license number. The car belonged to a member of the Albany Police Department. The investigation of this complaint was conducted by two officers, one of whom, unbelievably, was the officer who owned the automobile. In other words, the subject of the investigation investigated himself. The officer testified at the public hearing that he went with the other officer to see the complainant "to check this out" (949), but claimed he merely accompanied the other officer, and that it was the latter who conducted the investigation. He did not feel that by coming "face to face" with the complainant, his presence might have an intimidating effect upon him (953).

In another example, an Albany store owner's premises were burglarized in March 1973, and property stolen. He subsequently received information from a stranger that an Albany police officer had offered to sell the stranger some of the stolen property and that this police officer would be at a particular location at a specified future time, presumably with the stolen property. This information, including the name of the police officer, was reported to the Albany police. Some time later, the store owner contacted the police to determine what they had done with this information. The Lieutenant conducting the "investigation" said he would come by to see the store owner and shortly thereafter appeared at the store with the officer who allegedly had been seen in possession of the stolen property, and who allegedly had offered it for sale. The Lieutenant brought this officer to the storeowner, and turned to the latter

and said "This is Officer [K], the one that's accused of the break-in" (Pr. H. 4573). The storeowner denied making any accusations and stated he merely reported information he had received. The crime was never solved.

Deputy Chief Van Amburgh was questioned at the public hearing about a number of matters, some of which have already been referred to. He was unable to recall many significant aspects relating to his personal investigations of police corruption. For example:

(1) Van Amburgh could not recall a report which purported to be his, bore his name and which dealt with an alleged theft of tires by Albany police officers. He could not explain why the report stated that he and the Lieutenant questioning the police officers told them "we would try to cover this up." He could not recall such a statement although it is contained in the report.

(2) Patrolman John Ruth testified that when Van Amburgh saw him after the report of the above burglary, Van Amburgh told him "we have a burglar or we have got a f..... problem here with thieves," referring to police officers (Pr. H. 5631-2). Van Amburgh could not recall such a conversation, in words or substance, and could not even recall talking to Ruth (1076-7).

(3) Van Amburgh could not recall ever advising members of the Detective Division to pay particular attention to the shopping centers because a particular uniformed squad was on duty that night, and because of his suspicion that such squad was involved in burglaries (1097). Detective Maynard testified that he and his partner were asked to do this by Van Amburgh (Pr. H. 1825-8).

(4) Van Amburgh could not recall whether he had ever directed any of his men to place the residence of Leslie Kelly under surveillance (1087).

(5) Van Amburgh could not recall any of the questions put to Sergeant Dale by Deputy Chief Murray, following the newspaper articles about "Sergeant X" and a prostitute named Joyce (1116), nor could he recall Dale's answers (1116), although he was present during the questioning (1116).

Van Amburgh was also asked about the lack of enforcement action by the Detective Division in the area of prostitution. He conceded that Sergeant Byers' arrest of two well-known madams was the first time that these women had been arrested for the felony charge of maintaining a house of prostitution, and that his own men should have made the arrest (1103-4). He also conceded he "chewed them out" and told them they were not doing their job:

"Q. I see. Did you ever question the men as to why they were not able to come up with information leading to that type of arrest?

A. I don't recall that, sir.

Q. Is there any reason why you did not, Chief, if you felt that they should have made the arrest instead of Byers, is there any reason why you did not ask them why they did not make it?

A. I said before that I reprimanded the men for not making the arrest.

Q. You reprimanded them for not doing it.
Did you ask them why they had not done so?

A. No, sir, I did not." (1105)

With regard to enforcement of the Liquor Laws, Van Amburgh was shown copies of the Albany Police Department's Annual Reports which disclosed that there was only 1 arrest for ABC violations by the Albany Police Department during the 4-year period from 1968 through and including 1971. When asked if that meant there was only 1 ABC violation in Albany during these 4 years, Van Amburgh replied: "That's all I heard of" (1129). He then testified that he closed places which operated beyond the legal hours, but did not make arrests (1131). Van Amburgh testified that he had never seen beverages served, but then testified that he never entered these after-hour places:

"COMMISSIONER BRYDGES: How did you close the place if you were outside?

THE WITNESS: I stand in the doorway, tell the owner to come out or the bartender, and tell him to close the place.

BY MR. FISCH:

Q. Do you think if you went inside you might see violations of the law and you might see beverages being served?

A. I don't know.

COMMISSIONER BRYDGES: What did you think they had a bartender there for, sir?

THE WITNESS: But I still didn't see any beverages being served." (1131-2)

Another subject discussed with Van Amburgh at the public hearing related to the testimony of police officers that illegal political contributions were being made by the men, and that details concerning the place and time to make such contributions were announced at police headquarters:

"Q. Have you ever heard that police officers were making contributions?

A. No, sir.

Q. When for the first time did you ever hear that this might be a possibility?

A. When it came out in this investigation I heard.

Q. In December of 1972 this Commission held public hearings in the area of purchasing, and a member of the Department who worked in the Traffic Division by the name of Lindeman testified publicly in the newspapers that he had made political contributions.
Did you read that in the newspapers?

A. Yes, sir, I did.

* * *

Q. Did you make any effort to determine whether members of your command were making political contributions?

A. No, sir.

* * *

Q. Did you discuss with other command officers the fact that a member of the Albany Police Department had committed a violation of the law?

A. No, sir, I did not." (1134-5; 1138-9)

Another allegation of police misconduct which Deputy Chief Van Amburgh investigated involved a complaint that a Detective had been apprehended in September 1972 by security personnel of a department store while shoplifting. Deputy Chief Van Amburgh was instructed by the Chief of Police, Edward

McArdle, "to talk to this certain detective, to find out what was going on, which I did" (1146).

Van Amburgh questioned the Detective, who told him that the incident occurred on his day off, that "he had a few drinks," and upon walking out of the store was approached by the store personnel who accused him of stealing some merchandise. According to the Detective, they searched him, found nothing, and upon returning inside the store, located the items on the counter. According to Chief Van Amburgh, the Detective told him he was asked to sign "some kind of affidavit" which he refused to do, was then brought to the Colonie Police Department and released:

"Q. He was brought to the Colonie Police Department even though, according to this detective, there was nothing found on him?

A. There was nothing found on him, no, sir.
There was nothing found on him outside of the store.

Q. All right. Anything else on this? Did you write a report?

A. Yes, sir, I did.

Q. Did you reach any conclusions as to whether this incident had taken place or not?

A. To the best of my knowledge, it didn't.

Q. In other words, you concluded that there was nothing to this allegation?

A. Yes, sir." (1147-8)

Van Amburgh was asked what type of investigation he conducted which led him to conclude that the complaint was unfounded:

"Q. Did you speak to the people at the store to find out their side of the story?

A. No, sir. I did not.

Q. In other words, you only heard the officer's side of the story and you concluded that there wasn't anything to it?

MR. KOHN: Objection. . . .

* * *

Q. Is that right?

A. That's true.

* * *

Q. So without seeing the other report, and without speaking to the complainant, you concluded, just because the officer denied it, that there was nothing to the allegation?

A. I did for the simple reason that the man was drinking and they found nothing on him. There was no complaint. That was it.

Q. How do you know they found nothing on him?

A. Just what he told me." (1148-50)

As will be seen later in this report, an interview of the store personnel by other Albany officers resulted in a different version of what had transpired, and revealed that this Detective had allegedly been involved in more than one incident.

Chief of Police Edward McArdle

Chief McArdle joined the Albany Police Department in February 1939, and with the exception of five years of military service during World War II, has served in the Department ever since. He became a Deputy Chief of Police in 1967, and was appointed Chief of Police by the Mayor in 1969. At the time of his appearance at the Commission's public hearing on October 3, 1973, he had accumulated a total of almost 30 years of experience as a member of the Albany Police Department (1272).

Attitude towards Police Corruption and Misconduct

When Chief McArdle appeared at a private hearing in April 1973, he was asked his views concerning police corruption. His apparent difficulty in answering the following important question on that subject is significant:

"Q. Do you feel that a police officer who is guilty of a crime should be treated any differently than any other individual?

A. A police officer that's guilty of a crime?

Q. That's correct.

A. In what respect, Mr. Fisch?

Q. If you have two people who have committed identical crimes and one is a police officer and one is not, do you feel that the police officer, solely by reason that he is a police officer, should get any special consideration?

A. (No response.)

Q. Take your time.

A. I don't believe that I ever got into it that deeply that I would form an opinion.

Q. Do you have an opinion now? You are certainly an expert. You have had 33 years of experience.
Do you think that a police officer should get any special consideration because he is a police officer?

A. Consideration from whom?

Q. Assuming you have a police officer who is guilty of a crime and there is no doubt but that he has committed crime, all right? Should he be treated any differently than any other individual?

A. If he is convicted of it?

Q. Yes. No doubt about it. Should he be treated any differently?

A. (No response.)

Q. Take your time.

A. I would be making a hasty judgment. I don't believe that I ever gave it that much thought.

Q. Could you answer it now as to whether or not you think that a police officer should be getting any special breaks because he is a police officer?

A. You mean he shouldn't be punished?

Q. That's one of the factors or things I am asking about, yes.

A. (No response.)

Q. Take your time.

A. I just can't make up my mind, Mr. Fisch." (Pr. H. 3555-6)

When the question was pursued, Chief McArdle stated "I don't think that I could sit down here and reason it out in five or ten minutes and come up with any decision of my own . . ." (Pr. H. 3556) and finally, after the question was repeated many times, concluded "I wouldn't overlook it" (Pr. H. 3559).

Chief McArdle conceded that from the time he became Deputy Chief in 1967 through his tenure as Chief of Police, there were situations where men were permitted to resign because of corruption rather than being brought up on departmental charges (1400-1; Pr. H. 3582). He testified that there were no instances during this period of time where men were brought up on charges in connection with corruption (1400; Pr. H. 3581). He also testified that he could not recall ever receiving information on police corruption from any police officer except Detective Sergeant Robert Byers (Pr. H. 3587; Pr. H. 3590). It is appropriate to recall Byers' testimony that he brought such information to the Chief both orally and in writing, and that he resigned because of the Chief's failure to act upon his allegation of corruption. It is also appropriate to recall the testimony of Inspector Charles Mahar that he, too, reported information of possible police misconduct on the part of a Detective to McArdle, and when he saw McArdle several days later, McArdle told him, in essence, that there was nothing to the allegation, and concluded "As far as I am concerned, Charlie, the case is closed." (1010)

Other officers testified that they failed to report corruption to their leaders because they were certain that nothing would be done, and feared some possible retaliation against themselves. As former Detective John Ruth explained, there was nowhere to go with such information:

"Q. Would you say that the climate in the Department as of the time you left was such that men were not encouraged to bring information to command officers about brother officers?

A. I don't think there was any route that you could go. If there was a problem or, you know, some particular incident, there was nowhere to go with it. Nobody had an open ear. You just didn't walk in to McArdle with a problem. He wasn't that type of boss. And then he wanted you

to request permission from your Lieutenant or whatever it may be. It wasn't an open door policy. . . ." (Pr. H. 5684-5)

The absence of any affirmative program to deal with the subject of corruption is evidenced by the following testimony given by Chief McArdle at the Commission's public hearing. When asked to describe what program, if any, existed within the Department to "curb . . . eliminate . . . detect (or) fight" corruption and to discipline officers, McArdle replied:

"A. We have it with staff meetings with command personnel. We have the same type of program at roll call training.

Q. 'Roll call training'?

A. Yes.

Q. What is that?

A. Before the men go to work they stand roll call and various things are explained to them by the supervisory personnel, orders of the day, and complaints and various things like that.

Q. I don't understand that answer in connection with the question.

A. When the men come to work, Mr. Fisch, they, say, ten minutes before they go on duty, the sergeant or supervisor meets with them—

Q. Right.

A. —and goes over everything that happened from the time they were last on duty, tells them where various crimes have been committed, what complaints have been received and what areas—

Q. Complaints about corruption?

A. About anything, Mr. Fisch.

Q. Yes?

A. Say, for instance, a gang of kids hang around and then at the same time we have a community relations' unit meet with these people once a day and go over all of this type of stuff with the men.

Q. Is that the sum total of it, Chief?

A. At the moment, yes." (Pr. H. 1363-6)

Chief McArdle's treatment of police misconduct and corruption problems has already been illustrated. Following are additional examples:

Inspector Herbert Devlin

No action has been taken against this officer although it was revealed at the public hearing that he had admitted accepting sums of money over a period of years, from business firms in the City of Albany. A transcript of Devlin's testimony, in which he admitted receipt of such monies, was forwarded to Chief McArdle following the public hearing.*

Detective Albert Maynard

After the arrest of Flo, a narcotics seller and prostitute, the arresting officer (Byers) presented evidence to McArdle that Detective Maynard had been involved with her. McArdle was asked at the public hearing what he did with the evidence and how he handled that situation:

"Q. Did you consider that you had sufficient evidence in that case to prefer charges?

A. First of all, I felt that he should talk to the officer and see what his feelings were, what his response to this would be, the evidence that we had and—

Q. Chief, I do not mean to interrupt—I apologize for doing it—but can you tell me what difference his feelings would make if you had evidence for departmental charges, if you feel you had evidence for departmental charges against him?

A. If it came to that point, yes, sir.

Q. All right.
Did you prefer charges against him?

A. No, sir.

*A similar situation exists with regard to Detective Sergeant John Dale whose public hearing testimony containing his admissions of participation in after-hour violations with a prostitute was forwarded to Chief McArdle, together with Devlin's.

Q. Can you tell us why not?

A. Because I asked Deputy Chief Van Amburgh to interview him and see if this was actually a fact, that he was associating with her.

Q. What was the purpose of the interview if you had the evidence, Chief?

A. Just like I say, to acquaint him with the fact, and if there was anything other than just a social relationship, then there was a possibility that we might have gone further with it.
If there was any possibility in going further, then departmental charges probably would have been held in abeyance.

Q. What do you mean by 'further'?

A. If we found out that he was in any way influencing other policemen in regard to the girl, or something like that. That would have been grounds for criminal charges.

Q. Did you ask any of the men about that rather than Maynard?

A. No, sir.

Q. Is there any reason why you did not ask the men if Maynard ever tried to influence their actions against this girl?

A. Because I turned it over to Deputy Chief Van Amburgh to investigate.

Q. Did you ask Van Amburgh to speak to the other men and find out whether Maynard had ever attempted to influence their official office with regard to this girl?

A. Not in so many words. No, sir.

Q. Did you do it in any words at all, Chief?

A. Beg your pardon?

Q. You said, 'not in so many words.'
Did you do it in any type of words? Did you tell Van Amburgh to speak to the men and find out what Maynard—

A. I didn't tell him to do that. No, sir.

* * *

Q. Did you learn whether there were any other officers involved with Flo?

A. No, sir. I didn't.

Q. Did you learn whether Maynard was associating with other prostitutes?

A. No, sir.

Q. Did you learn whether other detectives were aware of this situation?

A. No, sir.

Q. Did you learn whether Maynard had, in fact, afforded protection to Flo?

A. No, sir.

Q. Did you learn whether or not he had ever received money from Flo?

A. No, sir.

Q. Was anything put in the man's personnel folder to indicate the circumstances for his resigning?

A. No, sir." (Pr. H. 1433-6)

Allegations of shoplifting in September 1972 by a Detective

In September 1972, Chief McArdle received information that one of the Albany night detectives had been caught shoplifting by the security personnel of a store in Colonie (1458). McArdle turned the matter over to Deputy Chief Van Amburgh, and also had Captain Sorenson speak to the store personnel (1461). When Chief McArdle was questioned about this at the public hearing, he claimed he could not recall any of the details of this serious allegation (1462).

Chief McArdle was then shown copies of the police reports.

"Q. Chief, is there a reference in the report by Captain Sorenson to three different occasions?

A. Yes, sir.

Q. And is there reference to the fact that in order to avoid embarrassing both the officer and the Albany Police Department that they are not pressing criminal charges?

A. Yes, sir.

Q. And may I say that I understand this is an error, that it was not three occasions but two occasions, and out of fairness to the officer I would like to point it out to your attention. All right?

A. All right.

Q. You saw those reports?

A. Yes, sir.

Q. What was your reaction when you read them, sir?
I would like you to look at this one, again, the first one of Chief Van Amburgh of September 5th.
Is it fair to say that the September 5th report describes what might be considered a drinking problem that this man had?

A. It specifically refers to drinking off duty, Mr. Fisch.

Q. 'Drinking off duty.'
Do you think that might represent a problem for a police officer, that he is in the habit of doing that?

A. Well, it could possibly be a problem, yes, sir.

* * *

Q. All right.
Do you think the other part, the other report of two incidents of shoplifting, did that raise any questions in your mind as to the man's fitness to serve as a police officer?

A. Not coupled with his denial of it.

Q. Do you feel because the man denied it, that was the end of it, sir?

A. In this particular instance, as long as they won't go any further than just to give information—

Q. Sir?

A. As long as they went no further than to give just this information and indicate that they don't want to be embarrassing anybody. This I would take to mean that they don't want it to go any further. Sir, if I have nothing to go on, what can I do?

Q. You could ask them whether they would be prepared to go further.
Did you ask them that?

A. I didn't ask them. I sent Captain Sorenson out there, Mr. Fisch.

Q. You read the report?

A. Yes, sir.

* * *

Q. Now, apart from the embarrassment to the Department, did it raise any questions in your mind as to the man's fitness to serve, apart from whether it be embarrassing for him or for the Department, did it raise any questions in your mind as to whether this man had a problem and should be a police officer?

A. No, sir." (1464-7)

Chief McArdle stated that he himself never called the officer in or spoke to him, even after reading the two police reports (1468). This officer is still a member of the Police Department.

Illegal Political Contributions

Earlier in this report, the Commission presented testimony from police officers concerning illegal political contributions they had made each year to the local political organization. The amounts of such contributions related to an officer's rank, and were generally made after announcements to the men in police station houses. The testimony was that such contributions were well known in the Department.

Chief McArdle was questioned about this at the public hearing. He was asked whether he had ever heard of such illegal contributions by his men and if so, what he did about it. He was reminded that at a public hearing by the Commission in December 1972,* a police officer admitted having made such contributions. McArdle's testimony on this subject reveals that he not only failed to investigate general allegations of such illegality, but did not even respond to specific information consisting of a public admission by one of his men that he had violated the law:

*That hearing dealt with purchasing procedures by the City of Albany.

"Q. Chief, at a time when political contributions by police officers were illegal, did you ever hear that a member of your command made such contributions?

A. Not with any degree of certainty.
The only thing I might have heard might have been newspaper talk, or something like that.

Q. Well, did you read the newspapers in December of 1972, when they reported that Sergeant Harry Lindeman, a member of the Department, had testified in this very room at a public hearing that he had made political contributions and that the amount related to his rank?

A. I didn't read that in the newspaper. No, Mr. Fisch.

Q. Did you hear it on television?

A. No, sir.

Q. Or on the radio?

A. No, sir.

Q. Do you get the newspapers, Chief?

A. Yes, sir.

Q. Did anybody report it to you, anybody who had possibly read it in the Department?

A. No, sir.

Q. When was the first time you heard about it?

A. When you spoke to me about it.

Q. Well, I spoke to you about it at a private hearing in July of 1973—is that correct?—at pages 4996 through 5001 and pages 5006 through 5007.

(The witness and Mr. Richard Kohn confer off the record.)

Q. Do you recall me talking to you about it during the private hearings, Chief?

A. I do.

Q. Did you ever check it out—

A. No.

Q. —since July of 1973 until today?

A. No, sir.

* * *

Q. You said that it has been alleged in the newspapers for years, Chief, is that right?

A. Yes. Back—I don't recall whether it was in any particular articles or not, but off and on the newspapers carry a story to that effect.

Q. Well, when you have read those stories at a time when such contributions were illegal did you ever check out those stories?

A. No, sir.

Q. Is there any reason why you did not, Chief?

A. There was no names mentioned, not to my recollection.

Q. Well, you have conducted investigations, have you not, where you didn't have names to begin with, where you learned the names after the investigation. Isn't that right?

A. Yes, sir.

Q. Did you ever attempt to find out by having your commanders question men whether any men had made such contributions?

A. Only insofar as that I have asked them on different occasions to notify me of any wrong doing they know of.

Q. On the specific question of political contributions, have you ever questioned any men or commanders to find out whether this was going on within your Department?

A. No, sir." (1453-7)

Apart from the illegality of such political contributions at the time they were allegedly being solicited from the men at police headquarters, it would certainly appear that such a practice is neither healthy nor advisable. It would also seem that, as a minimum, such reports warranted investigation to determine all the facts and circumstances of such activities.

Reports of Burglaries and Thefts of Parking Meter Revenue

As noted earlier, a number of witnesses testified that burglaries and thefts of parking meter revenue by Albany police

officers were general knowledge within the Department. The question then arises whether command officers knew or should have known what apparently all the men knew, namely, what was going on within the Department, particularly by men under their immediate command.

Chief McArdle had more than one occasion as a command officer to suspect what was happening and to ask questions.

As a Captain, working the street, the bags containing the coins, were turned over to him for inspection.

One former police officer, John Ruth, testified that McArdle once commented that the bag containing the parking meter coins, which another officer turned over to McArdle for inspection, was lighter than Ruth's bag, and that he, Ruth, assumed that "maybe somewhere along the line something happened" (Pr. H. 5607). At the public hearing, McArdle testified that he had physically inspected the bags and cans "to see if they were locked" and whether the seals were intact:

"Q. Did you ever inspect them to see how they felt, how the weight felt?

A. I probably did.

Q. You did.
Did you ever make any comments to any of the men about the bags being rather light?

A. I might have in an offhanded way." (1352)

As Chief of Police, McArdle is made aware of the exact amount of parking meter revenue deposited daily in the bank by the collecting officers (1350-1).

Chief McArdle was asked if he knew the average daily yield per parking meter in the City of Albany. His reply was:

"A. Specifically, no. Not even generally, I don't believe, no." (1353)

McArdle testified that he had "no recollection of seeing" the figures of Albany's parking meter revenue contained in the 1971 report by the New York State Department of Audit & Control, which revealed that the average yield per meter per day in Albany was less than 7¢ (1353). He also testified that such information was never brought to his attention even though the report was public and even though his Department had the responsibility for collection of parking meter revenue.

Chief McArdle testified that in all the time he was a member of the Albany Police Department he never suspected that police officers were stealing parking meter coins (1352).

With regard to burglaries, Chief McArdle's testimony at his public hearing on October 3, 1973 appeared at variance with his private hearing testimony of April 25, 1973.

At his public hearing, Chief McArdle seemed to say that he had never heard anything about the possible involvement of Albany police officers in burglaries prior to the Commission's investigation (1389-91). At his private hearing, however, he testified that "on occasion" he had heard rumors that police had committed burglaries (Pr. H. 3540), but McArdle could offer no specifics.

Chief McArdle's Activities Concerning the Commission's Investigation

Chief McArdle was questioned about a visit he made to the Colonie Police Department on April 6, 1973. He stated the purpose of this visit was to ask the Colonie Police Chief "what one of our former patrolman's performance was while he was with the Colonie Police" (Pr. H. 3535). The former Albany police officer in whom Chief McArdle was so interested was "Mr. X", who had supplied the Commission with information concerning burglaries by Albany police officers. At the time of Chief McArdle's private hearing in April, however, the Commission had not revealed this information. The only way Chief McArdle could have suspected that this individual was a source of information to the Commission was by being informed of the questions put to members of his Department who were questioned at the Commission's private hearings.

McArdle testified that the source of these rumors was "street talk" or "word of mouth." He could not recall where he heard these rumors, how they reached him, nor from whom (Pr. H. 3537-8). At the time of McArdle's trip to Colonie, Mr. X had been out of the Albany Police Department for over five years, and McArdle testified he had never heard any "rumors" about Mr. X being involved in burglaries while he was a member of McArdle's Department (Pr. H. 3540).

The following testimony by Chief McArdle is significant as to the purpose of his visit to Colonie:

"A. . . . It is my recollection that somebody had mentioned

the fact that this Commission was investigating burglaries and that they had talked to [Mr. X], I believe. I believe this is the substance of what I had heard.

Q. Go ahead.

A. And that he, being on the Albany Police at one time, he was questioned by the Commission in regard to some alleged burglaries committed in Albany.
And when I found out about this, I just inquired of [Chief] Flater what his performance was out there, whether he could verify or deny anything that I heard.

Q. What was your purpose in going to Flater?
I still don't understand.
Assuming he was involved in burglaries in Colonie, do you have jurisdiction?

A. No, I don't.

* * *

Q. I am trying to find out what you were out there for in the first place.

A. Because of the fact that I had understood that this Commission had talked to [Mr. X] about burglaries in Albany and tried to correlate what street talk I had about—I learned about him being involved in one in Colonie.

Q. How did you intend to correlate this information?

A. I don't know." (Pr. H. 3539-41)

Chief McArdle testified that he did not ask the Colonie Police Chief about any other former members of his Department (Pr. H. 3543) although a number of them had left the Albany Police Department and were then working for the Colonie Police Department. McArdle testified that he had never gone to check on former members of his Department after they left and that this was the only time he had done so (Pr. H. 3543).

McArdle testified that the Colonie Police officials notified him that Mr. X had, in fact, committed a crime in Colonie. Having learned this, and having confirmed the "rumors," McArdle returned to Albany and did nothing with the information. He did not notify the District Attorney because "it wasn't in our jurisdiction," and he placed no report or memorandum

in the files (Pr. H. 3543-4). Moreover, he made no notation in Mr. X's personnel files, thus leaving Mr. X with a "clean bill of health." He gave as a reason for his inaction, "when they leave our Department . . . we close the file on them" (Pr. H. 3546). When asked again what he intended to do with the information he sought from the Colonie Police officials, and why he made this unusual trip, McArdle replied "I would say to satisfy my own curiosity" (Pr. H. 3546).

Chief McArdle's visit to Colonie was not his only effort to locate individuals whom he, or others, believed might have furnished unfavorable information to the Commission. The facts will speak for themselves as to whether the objective was to satisfy McArdle's "curiosity" (as he claimed) or to achieve some other purpose.

During the latter stages of its investigation, the Commission learned that witnesses who had given information to the Commission, and other individuals contacted by the Commission, were brought to police headquarters by Albany police officers. These tactics, employed by the police, and their purpose can be seen by the following example.

"Kitty" had testified at private hearings concerning payoffs she had made to the police. In the course of examining police officers, the Commission asked whether they had ever accepted money from persons involved in criminal activities, and mentioned "Kitty's" name and others. These names were noted by the attorneys representing the police. Subsequent to her private hearing, agents of the Commission went to see Kitty and saw an Albany Detective Division automobile parked in front of her house. Although unmarked, the vehicle was clearly identifiable. The Commission waited until the Detectives left, and then entered the house. They found Kitty highly agitated, in tears, and in her own words, "frightened" and "a nervous wreck" (906). Kitty described what had happened:

"A. The detectives came in and told me that I was wanted down to Police Headquarters. I asked him for what, and he says, 'Don't be afraid, we just want to ask you some questions.'

Q. Had you known this officer?

A. Yes, I did, for many years.

Q. How had you known him?

A. I drank with him and I had paid him off.

Q. This was a man you had been paying off for years?

A. Yes.

* * *

Q. After that occasion were there other visits by other police officers?

A. Yes, there were.

Q. What did they ask you to do?

A. They told me to come down to Headquarters. They just wanted to talk to me.
The third time they came they said they wanted me to come down, to talk to me, to stop your men from harassing me.

Q. Were we harassing you?

A. I told them there was no one harassing me.

Q. But they mentioned, specifically, that they wanted to speak to you in connection with this Commission and its investigation?

A. Yes, they did." (906-8)

Kitty further testified that she was worried about physical repercussions from the Albany police because of the testimony she had given the Commission (909).

While Kitty resisted these invitations to Headquarters, others complied. The police questioned these witnesses concerning the Commission's investigation and asked them whether they had given information to the Commission.

Chief McArdle was asked why Albany Detectives had contacted these individuals:

"Q. Under whose instructions?

A. Could have been mine.

Q. Could have been? Do you know—was there someone other than you?

A. If you could give me a specific—

Q. Have you had Trixie in the Police Department? Has she been called in?

A. Yes.

Q. Why?

A. Because we were asked to interview her.

Q. Who asked you to interview her?

A. Mr. Kohn.*

Q. Mr. Kohn?

A. Yes.

Q. For what purpose?

A. To see if she had, as you say, paid off any policemen and things like that.

Q. Any others that you were asked to bring in by Mr. Kohn.

A. I think there were several of them.

Q. Who were the others?

A. Off the top of my head I can't answer that. I would have to find out.

Q. Did you ask Mr. Kohn the purpose of selecting these particular people?

A. No, I didn't.

Q. Did you just take his instructions and call these people in and interview them?

A. Well, let's say I acceded to his request.

Q. What?

A. I acceded to his request to do it." (Pr. H. 4421-2)

McArdle, at first, testified that he did not ask Mr. Kohn why he wanted these people brought to Headquarters but "assumed" it pertained to the Commission's investigation (Pr. H. 4423). When they were questioned, statements were taken from them. The Commission requested copies of such statements:

"A. I don't have them.

Q. Where are they?

*Mr. Kohn represented many of the Albany police officers who were questioned by the Commission.

A. I gave them to Mr. Kohn.

Q. This was an official investigation by the Police Department?

A. It was an investigation—it was something that was done at his request.

Q. Did you consider that to be an official police investigation or not?

A. I consider it to be something connected with this investigation." (Pr. H. 4423-4)

Chief McArdle testified that some individuals "came on their own" to Headquarters after being contacted by the police and some "were driven there" by Albany Detectives (Pr. H. 4693). The officers were sent out on this assignment while they were on official duty and while they were working as police officers (Pr. H. 4428). After the statements were obtained, Chief McArdle had police officers deliver all copies to Mr. Kohn's office, and none were retained by the Police Department (Pr. H. 4428; Pr. H. 4703).

When asked again why these people were summoned to police headquarters, Chief McArdle testified that Mr. Kohn "asked us to bring them in because he heard they had been talked to by the Commission" (Pr. H. 4717). Chief McArdle elaborated.

> ". . . As far as my recollection is that he asked me to have Lieutenant Halpin get certain individuals and the specific instructions were not given to me. They were given to Lieutenant Halpin. This is why I am confused on it.
>
> COMMISSIONER BRYDGES: Did you care to know why Mr. Kohn wanted these people brought in?
>
> THE WITNESS: I think I testified that—the last time, if my recollection is correct, that he wanted them in defense of certain clients he had, policemen clients." (Pr. H. 4718)

In other words, Albany police officers were taken from their crime-fighting duties to locate witnesses and bring them to headquarters in an effort to obtain information which an attorney could use "in defense of . . . policemen clients." Rather than seek the truth about possible corruption in his Police Depart-

ment, the Chief made the Department's manpower available for their defense. One might reasonably question whether the Chief of Police considered the possible intimidating effect a visit by the police might have upon such witnesses.

Chief McArdle also testified that while the Commission's investigation was in progress, he told Mr. Kohn what police officers the Commission was summoning to private hearings "if [Mr. Kohn] asked" (Pr. H. 4370). Chief McArdle also advised the officers being subpoenaed that Mr. Kohn was available to represent them:

"A. I have as I passed the subpoenas out to the men and told them that they were entitled *to get their own lawyer, if they had one of their own choice,* but that Kohn, Bookstein and Karp had agreed to represent others before them and that he had represented them and they were satisfied and *if they cared to contact him, I had no objection.*" (Pr. H. 3509) (Emphasis added)

A shocking example of Chief McArdle's attempt to discredit witnesses who had furnished the Commission with important information was his testimony at the public hearing on the subject of Detective Sergeant Robert Byers. McArdle's attitude in 1973 concerning Byers was quite different from his views about the same man in earlier years.

On May 6, 1970, Chief McArdle wrote a letter to Albany Mayor Erastus Corning in which he recommended that Byers be promoted from Detective to the rank of Detective Sergeant so that he could be assigned to command the Narcotics Enforcement Unit (NEU). In this letter,* McArdle praised Byers as a "recognized specialist in the narcotics field" and "the most capable officer to direct this unit." McArdle also credited Byers for the past narcotics enforcement activities of the Albany Police Department which, McArdle stated, "was largely done by the Detective Division, mostly under the direction of Detective Raymond R. Byers."

Chief McArdle also nominated Byers for Albany Policeman of the Year (617) and on a subsequent occasion for the Distinguished Service Award (618). In his letter nominating Byers for the Distinguished Service Award,** McArdle stated: "Law and Order can only exist with the blending of compas-

* Commission Exhibit No. 12 at the Public Hearing.
** Commission Exhibit No. 14 at the Public Hearing.

sion and justice and it is men like Bob Byers who personify the image."

When Chief McArdle testified at the Commission's public hearing on October 3, 1973, his feelings about Robert Byers had changed. Byers had appeared at the public hearing on September 24, 1973 and had given public testimony and presented documentary evidence that Chief McArdle had failed or refused to act upon his reports of police corruption. A copy of Byers' letter of resignation in which he spelled out his complaint of "corruption" and "dishonesty" had been introduced in evidence.

Byers' testimony was repeated to McArdle for explanation and McArdle's responses have been noted elsewhere in this report. As the Commission's Chief Counsel was about to move on to another area, Chief McArdle asked for an opportunity to "go back to Sergeant Byers for a minute." When given the opportunity, McArdle stated that although he "hated" to "run anybody down," Sergeant Byers, during his last five or six months in the Police Department, "was not the man that he was in the beginning." McArdle further stated that "This man was irrational at times . . ." (1336). McArdle stated that Byers would complain about his men "and he just wasn't acting normal, as a Sergeant should . . ." (1337). McArdle was questioned about this serious charge:

"Q. You used the word 'irrational.' Is that your sworn testimony, that for five months he behaved in an irrational manner?

A. In this respect, that he would complain about the men, and I wouldn't call it a normal fashion.

Q. All right. You felt the man was not normal?

A. I didn't say that, Mr. Fisch. No.

Q. You felt he was irrational?

A. That is a figure of speech only.

Q. It was your figure of speech.

A. That's right.

Q. Did you order a mental examination?

A. No, sir, I did not.

Q. Did you remove him as head of the Narcotics Enforcement Unit?

A. No, sir.

Q. You permitted him to command so sensitive a unit in the Police Department while you regarded him as being irrational?

A. Maybe I used the wrong terminology, Mr. Fisch.
What I am trying to get across is the way he was acting with the men.

* * *

Q. You said you questioned his behavior and the complaints he was making, and you used the word 'irrational.'
Did you question the man's stability and judgment?

A. No, I just thought that he had turned into a chronic complainer.

* * *

Q. Did you do anything to get rid of this man during the five months that he behaved so strangely?

A. No, because off and on he would be as regular as he ever was.

* * *

Q. What did you do about the man during the five months that you questioned his behavior?

A. What did I do about him?

Q. That was the question.

A. I don't know that I did anything specific, except to try and get him to run his unit as it should properly be run.

* * *

Q. . . .
You used the word 'complainer.' Is that what your feeling boils down to, that he was a chronic complainer?

A. He did complain quite a number of times.

Q. Is that your complaint today, that he was a chronic complainer for five months and in that way he wasn't acting himself?

A. I have no complaint against the man at all, Mr. Fisch.

* * *

Q. Do you or do you not have a complaint about Byers?

A. Not today but I did then.

Q. What was the complaint?

A. The fact that he wasn't doing his work.

Q. He was not doing his work?

A. That's right.

Q. Did you see this over a five-month period?

A. Gradually coming up, yes.

Q. Why didn't you remove him?

A. Because he resigned before it got to the point where I thought it was necessary to do something about it.

Q. Why did you wait five months? He is a man who was in charge of the narcotics' unit.

A. (No response.)

Q. I am waiting for an answer, Chief.

* * *

A. I was trying to get the man to do his work, Mr. Fisch.

Q. Were you successful during the five months in getting him to do his work?

A. Very little.

Q. 'Very little.'
So why didn't you remove him?

A. First of all, it would have been an embarrassment to him to do it.

Q. It would have been an embarrassment to do what?

A. I said it would have embarrassed him to have me do it.
And I thought that he eventually, I could get him to get back to where he would operate with the men that he had rather than continue to express the feeling that they weren't doing their work and that this one was out to get him and he was going to get this one and things of that nature.

Q. Did you bring him up on charges for neglect of duty?

A. No.

Q. And you ordered no physical examination or mental examination?

A. No, sir.

Q. And you did not remove his gun?

A. No, sir.

Q. And you did not take any action against him?

A. No, sir." (1338-47)

Several days after Byers resigned from the Police Department in 1971, the Mayor was asked by the press for an explanation. He was quoted in the press as stating:

> "I inquired of the Chief about it and he said as far as he understood it was for personal reasons and that's all I know."

When asked whether he felt Byers had been a competent police officer and had done good work, the Mayor replied:

> "I certainly do. He was an extremely competent man in the field and I was personally very sorry to see him leave."

Chief McArdle was asked at the public hearing whether he had informed the Mayor of the reasons for Byers' resignation and whether he had shown him a copy of the letter of resignation which spoke of police "corruption" and "dishonesty." McArdle "did not believe" that he showed Byers' letter to the Mayor, but stated that he did inform the Mayor of the "substance" of the letter in "general terms" (1329-30).

Lack of Knowledge of Crime Problems and the Police Department's Law Enforcement Operations

Although Chief McArdle conceded the severity of the narcotics problem in his city (1304), he lacked basic knowledge, or was indifferent about police activities and requirements in this important field. Thus, he assigned only 9 men to his narcotics unit and allocated to them a total of $150 per month for narcotic "buys" for the entire unit:

"Q. Can you tell me how much narcotics, how much heroin you can buy for $150 here in the City of Albany?

A. No, sir.

Q. You do not know?

A. No, sir.

Q. You do not know how much?

A. I am not that familiar with it, Mr. Fisch." (1305-7)

Chief McArdle also was unaware of other important aspects of the narcotics crime problem:

"Q. Do you know approximately how many heroin addicts there are in the City of Albany?

A. No, sir.

Q. Do you know how many major pushers there are in the City of Albany?

A. I couldn't tell you.

Q. What, sir?

A. I couldn't tell you.

Q. You couldn't tell me as Chief of Police?

A. No, sir." (1307)

Chief McArdle, at his private hearing, testified that he did not know whether his men used real heroin in their narcotics displays (Pr. H. 5023-4) and testified he had never heard of brown heroin (Pr. H. 5058).

With regard to gambling, Chief McArdle testified that he asked his men if there was any gambling in Albany and was advised there was not (1290). He had only two men assigned to his gambling squad and felt no need to expand it (1298), although outside law enforcement agencies came to Albany to conduct gambling raids. He explained that when the State Police made good cases in Albany "most of that stuff is on wiretap" (1298). McArdle conceded, however, that his men were also able to obtain court orders for wiretaps (1298), and also conceded that he had never requested assistance from the State Police to conduct gambling investigations (1298).

McArdle testified that he reviewed arrest figures before they

were published in the Police Department's Annual Reports. He was then shown copies of such reports for the 5-year period of 1968 through 1972. In 1968, there was not a single gambling arrest by the Albany Police Department during the entire year. The total number of arrests for ABC violations for the 4-year period of 1968 through 1971 was one, and there were two such arrests in 1972 when the Commission's investigation was in progress. McArdle testified that he never asked his men why there were so few arrests (1289).

In this connection, it is appropriate to note the testimony of former Detective John Ruth that the gambling squad was ineffective and no one reported information about gambling "because nobody seemed to be concerned" (Pr. H. 5686).

As noted earlier, McArdle testified that in all his experience in the Albany Police Department, he never suspected that police officers were stealing parking meter coins (1352). Although the bank supplies the Police Department with copies of daily deposits of meter revenue and although he examines these when they are forwarded to him, McArdle did not know specifically and "not even generally" what the average daily yield was (1351-3). He also had "no recollection" of seeing a public report disclosing that the average yield was less than 7¢ per meter per day (1353).

McArdle was unaware of other matters affecting his Department, or else, did little about them. Serious allegations appeared to have been treated with indifference. Investigations were shoddy, officers undisciplined, and files incomplete.

In 1962, the Commission conducted an investigation of a police department in a major upstate city. Following its public hearing, the Commission issued a Report wherein it quoted the following excerpt from the Rules and Regulations of that police department on the subject of "Leadership":

> "Most of the defects or weakness in police work may be traced to the inefficiency of commanding officers . . . . If subordinates fail or neglect to perform their duties they must be disciplined . . . . Command is synonymous with initiative and self reliance in meeting and accepting responsibility.
>
> A command officer must command . . . . He must see that the force under his command discharges its full duty.

> A capable superior is known by his integrity and manner of command and a weak commander is likewise conspicuous. Thus, commanding officers must realize that their ability and character are accurately reflected by the work of the personnel under them . . . ."

The Commission believes this injunction is particularly relevant to the Albany Police Department.

III. *EVENTS SUBSEQUENT TO THE HEARING*

The Commission's public hearing in September-October of 1973 did not conclude the Commission's work nor terminate its interest in law enforcement matters in the City of Albany.

Immediately after its public hearing, the Commission forwarded copies of transcripts of the hearing, together with pertinent transcripts of private hearing testimony, to the District Attorney of Albany County. The Commissioner also forwarded transcripts of testimony to the Chief of Police for his consideration and appropriate disciplinary action. A Grand Jury investigation, commenced by the District Attorney, resulted in the return of a multi-count 1st degree perjury indictment against Lieutenant Kenneth Kennedy. The Grand Jury also returned a report and recommendations. This report, however, was ordered sealed by County Court Judge John Clyne, and therefore its findings and recommendations in regard to the Albany Police Department were not made public.

Prior to the Grand Jury action, the Commission had issued a detailed 32-page Report of Recommendations for the improvement of the Albany Police Department. These Recommendations, released publicly on November 27, 1973, contained specific proposals in such areas as Corruption, Internal Discipline, Leadership, Narcotics Law Enforcement, Professional Training, and related matters.

Other "follow-up" action taken by the Commission was the filing with the Chief Judge of the New York State Court of Appeals of a formal Complaint alleging judicial misconduct on the part of Mr. Justice John H. Pennock of the Supreme Court, Third Judicial District. This Complaint was based upon Mr. Justice Pennock's conduct during legal proceedings instituted in connection with the Commission's instant police investigation and also during an earlier investigation by the Commission of purchasing practices and procedures in the City of

Albany. Mr. Justice Pennock was one of two Supreme Court Justices whom the Commission had asked to disqualify themselves on the grounds of alleged bias against the Commission. The Chief Judge referred the Commission's complaint to his State Committee on Judicial Conduct, which forwarded it to the Appellate Division, Third Department, for investigation and a report.

The Appellate Division reviewed the Commission's Complaint, and asked Mr. Justice Pennock to respond to the allegations therein. It then reported its findings to the Chief Judge and the Committee on Judicial Conduct. The Committee adopted the findings of the Appellate Division and recommended to the Chief Judge that they be made public together with "[the Committee's] own disapproval of the conduct of Judge Pennock." The Committee found that the actions of Judge Pennock "violate the high standards of propriety expected of judicial officers."

On September 30th both the Committee's report and the Appellate Division's findings were made public. Among the findings were the following:

(1) Judge Pennock granted excessive relief to a petitioner-witness by staying the Commission from any investigation relating to this petitioner-witness, although this was more than the petitioner-witness had requested.

(2) Judge Pennock, without legal basis, excluded the public and press from a proceeding and, without legal basis, deleted a passage from the Commission's answering affidavit.

(3) Judge Pennock improperly quashed a subpoena which the Commission had served upon a police-witness. The Appellate Division noted that the grounds for attacking the Commission's subpoena had previously been rejected by the courts and "Mr. Justice Pennock must have been aware of these prior decisions." The Appellate Division further stated that "The action taken by Mr. Justice Pennock in quashing the subpoena justifies a suspicion on the part of the State Investigation Commission that he was impeding the operations of the State Investigation Commission."

(4) The Appellate Division held that Judge Pennock should have granted the Commission's motions that he disqualify himself, stating "There is . . . an appearance of impropriety."

With regard to police personnel, a number of retirements and a resignation, plus Lieutenant Kennedy's indictment, represented the only changes since the conclusion of the hearing. Officer Y resigned and Deputy Chief John Murray and Inspector Herbert Devlin retired. No disciplinary action was commenced by the Chief of Police against any of the officers involved in the Commission's investigation.

One event of great significance in Albany was the formation of a police union following an overwhelming vote in favor of such action by the rank and file of the Albany Police Department.

Finally, on May 22, 1974, Mayor Erastus Corning met with the Commission at the Commission's office in New York City. The purpose of this conference was to discuss the Commission's Recommendations for improving the Albany Police Department and other matters, and also to review another study of the Albany Police Department which had been conducted at the Mayor's request by the Chief of Police and others. The latter study generally confirmed several of the Commission's criticisms of the Albany Police Department. The Commission commented on that study, and the Mayor advised the Commission that a number of changes, conforming in principle to the Commission's recommendations, were being planned for the Albany Police Department.

CONCLUSION

This report, in substantial detail, has demonstrated the deficiencies of the Albany Police Department and even more important, it has shown how officers have betrayed their trust and denigrated the entire Department.

The Commission's Fifteenth Annual Report contains a section entitled "Law Enforcement" in which there is a review of investigations which were conducted by the Commission of various police departments throughout the state. In that section, the Commission stressed the following proposition: "In order for law enforcement to be effective and meaningful, police officers—must possess and demonstrate the highest possible standards of professional competence, integrity, dedication and impartiality." This proposition cannot be sufficiently emphasized.

In this same vein, Clarence M. Kelley, Director of the Federal Bureau of Investigation, discussing professionalism in law enforcement, very aptly said as follows:

"...

But there is still one more quality of professionalism. It is by far the most important and brings all the others together in a meaningful manner. That quality is *integrity*. No law enforcement officer can be a professional without being honest. No officer deserves to serve the public unless he can be trusted. . . ."*

And in a further most cogent and illuminating statement on integrity, Mr. Kelley said:

"Integrity is an indispensable ingredient of law enforcement performance. *It should be as clearly visible among the police as their badges and uniforms.*"** (italics supplied)

These propositions, together with effective leadership and efficient management, succinctly express what is required to make the Albany Police Department a credit to itself—and to the people of the City of Albany.

It is sincerely hoped that the disclosures made as a result of the Commission's investigation and public hearing will produce satisfying and lasting corrective action.

* Message from the Director dated June 1, 1974, in FBI Law Enforcement Bulletin.

** Message from the Director dated August 1, 1974, in FBI Law Enforcement Bulletin.

V.

MISCELLANEOUS COMPLAINTS
(The Commission's Ombudsman Role)

The Commission, in addition to conducting major investigations requiring considerable time and effort, also handles, each year, a large number and variety of miscellaneous complaints. These complaints are received by telephone calls, telegrams, letters and personal visits to the Commission's office. In 1973, the Commission received and processed about 300 such miscellaneous complaints.

It should be emphasized that merely because these complaints are called miscellaneous, does not mean that they are not important. Although these matters generally do not receive publicity, investigations made by the Commission regarding these complaints have produced substantial beneficial results. The following are examples of some of such miscellaneous complaints.

1. In the fall of 1973, the owner of certain premises in a city not far from New York City, complained to another State agency that he was encountering problems in trying to obtain a certificate of occupancy. The complaint was forwarded to this Commission for consideration.

It appeared that after the complainant applied for a certificate of occupancy, his premises were visited at different times by inspectors of various city departments such as fire, police, health and building and they separately claimed that violations existed at the premises without being too clear about them. After doing what was suggested, the complainant alleged that re-inspections were delayed and he was referred by one inspector to another to ascertain whether he had satisfactorily removed the violations. Finally, frustrated by this delay and run-around and because he questioned the soundness of some of the changes he was requested to make, he decided to complain about the situation. Upon receipt of the complaint, the Commission communicated with the City Manager of the city involved regarding the allegations made by the complainant.

Subsequently, the Commission was advised by the City Manager that as a result of the complaint made herein, "a review of procedures for the issuance of a certificate of occupancy

was made, and the responsibility for the issuance of C. O.'s was placed in the hands of [the] Director of Buildings and Housing thus eliminating the need for an applicant to deal directly with more than one Bureau." This very constructive change of procedure was not only helpful to the complainant but will be of great benefit in the future to all persons in that city who apply for a certificate of occupancy.

2. In the spring of 1973, information was brought to the Commission's attention, by way of an anonymous letter, regarding questionable conduct by a state employee. It was alleged that a state employee, whose work included the inspection of certain highway construction work, had a daughter who was on the payroll of two construction companies doing state highway construction in his area. It was also alleged that the daughter's employment was, in effect, "no-show" jobs because she was attending college as a full-time student.

A member of the Commission's staff conferred in Albany with an Assistant Commissioner of the state agency involved regarding this matter. That agency extended full cooperation to the Commission. A plan of inquiry was arranged to ascertain whether the allegations made were, in fact, true. During the inquiry that followed, the state employee admitted the above stated allegations. He, however, attempted to show that the work which his daughter was required to do as a night watchman, was actually done by her at times and by other members of the family at other times. At the conclusion of the inquiry, the agency found the state employee guilty of misjudgment and imposed, administratively, a two-month suspension which involved a loss in salary and other benefits of approximately $4,500.

Moreover, in addition to the above stated action, the department involved advised this Commission: "Prior to the . . . incident the Department has been studying definite guidelines with respect to conflict of interest situations. We believe the . . . incident speeded up the finalization of these guidelines which will be put into effect in the very near future." Here, again, the result went beyond remedying a single situation but produced a more far-reaching accomplishment which will serve the public interest.

3. The Commission also receives some complaints from residents of this state who, because of frustrating or exigent circumstances, turn to the Commission for assistance in their

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3. The Commission also receives some complaints from residents of this state who, because of frustrating or exigent circumstances, turn to the Commission for assistance in their

personal problems. The Commission tries to be helpful to the extent that it can. The following is an example of this type of miscellaneous complaint.

On April 12, 1973, the Commission received a letter from a woman residing in an upstate city, in which she related a pathetic situation. It seems that this woman and her husband owned certain bonds in the amount of $50,000 and they requested brokers in St. Louis, Missouri, to change the bonds to coupon bonds. She was advised by the brokers that they had forwarded the bonds to a bank in New York City, which was the transfer agent, for re-issuance as coupon bonds and for transmission to her and her husband. Not having received the bonds after waiting several weeks, she and her husband communicated with the brokers and the bank on several occasions, but to no avail. The tone of the letter to the Commission indicated that the woman and her husband were in a state of panic. The complainant stated, in part:

> "This has been going on now for eight weeks and I am very up-set and worried requiring medical attention.
> Just what can I do? We need these bonds which represent our live's savings; we are in our 60's and are worried sick. Can you help us? *Please* would you call the [bank] and help us."

The Commission communicated with the bank involved about the complainant's problem and requested cooperation in locating the bonds. The bank was most cooperative.

By letter dated April 18, 1973, the complainant wrote the Commission:

> "With the arrival of your letter of 4/16/73, came the—bonds in the same mail. We think that your contacting the [bank] cleared up this very serious delay;—
> Anyway, all is back to normal now and we thank you *most sincerely* for your kind assistance."

VI

LEGISLATIVE RECOMMENDATIONS

The Commission respectfully submitted for consideration during the 1974 Legislative Session, the following proposals:

1. JUDICIAL CONDUCT

Enactment of a statute that would establish a Commission on Judicial Conduct* which would not only have the power to investigate judges but the power to discipline judges, including removal, censure and retirement. By allowing a direct right of appeal to the Court of Appeals for the purpose of Appellate review, the judge involved would be assured that the Commission's actions were fairly taken. The Court on the Judiciary would be eliminated under this proposal.

2. ILLEGAL POSSESSION AND LICENSING OF HANDGUNS

State Level

A. Amendment of Section 265.05 of the Penal Law** so as to make the illegal possession of a handgun with intent to use that gun—now a Class "D" felony—a Class "C" felony and subject to a mandatory sentence of imprisonment by further amendment of Section 60.05 of the Penal Law. The provisions of this bill would raise the penalty for illegal possession of handguns from a maximum of seven years in prison under the present law to a maximum of fifteen years in prison.

B. Amendment of Section 400.00 (10) [previously Section 1903 (10) of the Penal Law] to provide that licenses to carry or possess a pistol, elsewhere than in the City of New York and the Counties of Nassau and Suffolk, issued subsequent to

* That Commission would be a Temporary Commission pending second passage by the Legislature and approval by the people of a constitutional amendment revising present procedures for disciplining judges. The Legislature enacted Senate Bill Number 6438-B, Assembly Reprint Number 31021 (Chapter 739), signed by Governor Malcolm Wilson on June 7, 1974, which established a Temporary State Commission on Judicial Conduct. The powers of that Temporary Commission are somewhat different from those recommended by this Commission.

** This recommendation supported Governor Malcolm Wilson's Program Bill which was enacted by the Legislature, Senate Bill Number 10431-A (Chapter 1041), and Assembly Bill Number 12332 (Chapter 1042), and signed by the Governor on June 15, 1974.

the date of this amendment shall expire on the third anniversary of such license. Further, that all prior outstanding pistol licenses within such jurisdiction shall terminate within three years of the date of enactment of such amendment, at a time and in a manner to be determined by the Board of Supervisors or County Legislators of each county. This recommendation reiterates the recommendation made by this Commission following its investigation in 1964 of pistol licensing laws and procedures in New York State.

Federal Level

C. Enactment by the Congress of the United States of appropriate legislation that would require:

(1) An outright ban on the manufacture and sale of handguns that are not suitable for legitimate sporting, military or law enforcement purposes, otherwise generally referred to as "Saturday Night Specials."

(2) The licensing, pursuant to appropriate standards, of all persons who own or seek to purchase handguns so as to prevent the easy sale of handguns to persons having criminal intentions.

(3) The registration of every handgun in the United States so as to provide an improved system for law enforcement agencies to trace and apprehend those who commit crimes with handguns.